

6

Safety records and claims profiles

- 6.1 This chapter addresses the term of reference “*factors that lead to different safety records and claims profiles from industry to industry*”. Safety records relate to the recording of injuries, and do not usually include the incidence of occupationally related illness and disease. Submissions to the inquiry indicate that there are many factors that can affect safety records. These relate to the legislative environment, inherent industry factors such as the nature of the work and a range of factors within an organisation.
- 6.2 Claims profiles are the result of a legal process for compensable workplace injuries. The profile reflects the outcome of how cases are managed or accepted, their severity and relevant legal rights.¹ Claims profiles also reflect on the management of claims and on opportunities for return to work. The increased duration of claims has prompted many workers’ compensation and rehabilitation schemes to introduce incentive schemes for better occupational health and safety (OHS) practices and to re-examine their methods of assisting injured workers.
- 6.3 A consistent theme of a number of submissions is a call to standardise definitions and data collection to enable better comparisons across jurisdictions and within industries.

Occupational Health and Safety in Australia

- 6.4 The Department of Employment and Workplace Relations (DEWR) provided an overview to the Committee on workplace safety in Australia.² The Workplace Relations Ministers’ Council publishes comparative information on the different approaches to workplace health and safety in

1 Australian Manufacturing Workers’ Union, Submission No. 35, p. 12.

2 Department of Employment and Workplace Relations, Submission No. 48, p. 28.

the Commonwealth, State and Territory jurisdictions. It allows comparison of the performance of workers' compensation schemes in Australia on a standardised basis. The Comparative Performance Monitoring (CPM) reports on compensated workplace injuries and fatalities but does not cover work related disease or journey claims.³

- 6.5 There were 206 compensated fatalities in Australia in 2000-01 compared with 220 the previous year. The incidence of injury resulting in one or more weeks off work was 15.2 per 1000 workers. This is a 21 per cent reduction since 1996 -97.⁴ However, DEWR indicates that it cannot be concluded that workplace safety in Australia is improving as the CPM does not include all injuries or disease related claims.
- 6.6 A significant issue that a number of submissions highlighted is that the CPM reports on *accepted* claims and therefore underreports all injuries or disease.⁵ Workers do not always put in a claim for minor accidents or if they do not believe the workers' compensation scheme covers them or if they have taken out other insurance arrangements. The Australian Bureau of Statistics (ABS) survey on work related injuries released in October 2001 found that the incidence rate figure was 49.3 per 1000 workers, much higher than the CPM finding.

Definitions and data

- 6.7 The matter of varying definitions of injury between jurisdictions was raised as having implications for comparisons.⁶ Others question the data collection methods⁷ and adequacy of reporting, and state that there is also underreporting.⁸
- 6.8 The NOHSC has among its priorities the provision of national data on occupational health and safety. The definition for injuries and disease are included in Chapter 2, which are based on the National Data Set consistent with international standards.
- 6.9 In addition to the above exclusions for the CPM, the National Data Set doesn't cover occupational injuries of the self-employed, where there is

3 Comcare, Submission No. 32, p. 24.

4 Workplace Relations Ministers' Council, *Comparative Performance Monitoring, Fourth Report, Australia and New Zealand Occupational Health and Safety and Workers' Compensation Schemes*, August 2002, p. 7.

5 Department of Employment and Workplace Relations, Submission No. 48, p. 29.

6 See DEWR, Submission No. 48, Attachment C.

7 Master Cleaners Guild of Western Australia Inc, Submission No. 59, p. 7; Miss Lynn Gailey, Media Entertainment and Arts Alliance, Transcript of Evidence, 18 October 2002, p. 123.

8 Australian Nursing Federation, Submission No. 67, p. 5; New South Wales Labor Council, Submission No. 52, p. 2.

separate legislation for specific groups of workers, or fatalities resulting from disease or commuting. Australian data on occupational disease is considered incomplete and unreliable for reporting purposes.⁹ The ABS survey also did not include fatalities.

- 6.10 The Recruitment and Consulting Services Association also wrote of difficulties when trying to compare cross border industry safety records, as there are different WorkCover Industry Codes (WIC) in each state.¹⁰ The example was provided of difficulties for the on-hired employee service providers in assessing cross-border industry safety records because of the varying workers' compensation schemes between jurisdictions.¹¹
- 6.11 There was criticism of the inadequate data collection¹² and analysis available to compare companies in the same industry. Drawing on an analogy from another sector of the health industry, Dr Sherryl Catchpole commented on that:
- If the Health Insurance Commission can perform a profile of billing for my medical practice and a profile of prescribing, another arm of government should be able to measure a company's performance with regard to safety and claims, and this may form the basis for counseling of a company.¹³
- 6.12 The implications of the difficulties with definitions and data collections are that conclusive findings associating changing injury rates with safety factors or OHS prevention methods are 'rubbery'.¹⁴
- 6.13 The most pressing matter to be addressed is the introduction of a nationally consistent system of coding for all injuries, irrespective of whether those injuries are work-related or not.¹⁵ In addition, the lack of data on disease and illness also needs to be addressed. One major failing in

9 Workplace Relations Ministers' Council, *Comparative Performance Monitoring, Australia and New Zealand Occupational Health and Safety and Workers' Compensation Schemes, Fourth Report, August 2002*, p. 35. See also Department of Employment and Workplace Relations, Submission No. 48, p. 28.

10 Recruitment and Consulting Services Association, Submission No. 20, p. 6. See also Mr Duncan Fraser, National Farmers' Federation, Transcript of Evidence, 23 October 2002, p. 145; Mr Kerry Jones, Master Cleaners Guild of Western Australia, Transcript of Evidence, 20 November 2002, p. 216.

11 Recruitment and Consulting Services Association, Submission No. 20, pp. 3, 6.

12 Mr Douglas Pearce, Insurance Australia Group, Transcript of Evidence, 18 October 2002, p. 71; Mr Ross Wotherspoon, National Meat Association of Australia, Transcript of Evidence, 13 November 2002, p. 160.

13 Workers' Medical Centre and Queensland Workers' Health Centre, Submission No. 14a, p. 3.

14 See for example Department of Employment and Workplace Relations, Submission No. 48, p. 30.

15 ACT Government, Submission No. 45, p. 4.

the encouragement of improved prevention is the inability to conclusively demonstrate the cost benefit.¹⁶ In the submissions provided only the initiative “No lift” in the aged care sector evaluated the outcomes and demonstrated that an approach that combines institutional, industry and workplace factors will have the maximum impact on safety performance.¹⁷

Industry differences

- 6.14 The CPM report illustrates that there is considerable variation in the incidence of injuries across different industries and across jurisdictions in Australia. The maritime, mining, and construction industries report the highest incidence of workplace injuries.¹⁸
- 6.15 Some apparently low risk areas also generate significant claims, such as those providing public services and administrative environments which may relate to high levels of stress dealing with the public as well as tensions relating to workplace change.¹⁹

Factors leading to different safety records

- 6.16 Safety performance varies across industries and reflects a range of factors generic to each industry,²⁰ as well as reflecting broader cultural and behavioural factors. The factors contributing to different safety records across industries include system factors, structural factors, physical working environments and the nature of the work, and organisational factors.

System factors

- 6.17 System factors include the legislative frameworks that specify occupational health and safety requirements and the delivery of OHS services. Legislative frameworks also provide systems of compensation and rehabilitation. Differences across jurisdictions in the design, coverage,

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

17 Australian Nursing Federation, Submission No. 67, p. 7. See also Workplace Relations Ministers' Council. *Comparative Performance Monitoring, Case Study on Performance Outcomes in the Aged Care Sector*, Second Report on the Health and Community Services Industry, Bryan Bottonley and Associates, August 2002, pp. 49-58.

18 Workplace Relations Ministers' Council, *Comparative Performance Monitoring, Australia and New Zealand Occupational Health and Safety and Workers' Compensation Schemes, Fourth Report*, August 2002, p. 8.

19 Australian Rehabilitation Providers Association, Submission No. 17, p.1.

20 Industry Commission, *Work, Health and Safety*, 1995, p. xx.

structure and operation of the frameworks and the institutions that operate under them may explain differences in safety and claims performance.²¹ Other system factors include incentives, benefit structures in workers' compensation, and dedicated staffing.

Regulation

- 6.18 The DEWR submission argues that over-regulation is affecting employers' ability to comply with legislation, and thereby influencing workplace safety. A simplified approach is recommended, with more individual workplace solutions rather than prescriptive regulations.²² The Small Business Council indicated that it supported a greater focus on individual workplace solutions.²³ The Victorian Automobile Chamber of Commerce stated that small employers also struggle with the cost burden of resourcing safety management systems and alternate duties compliance requirements for rehabilitation.²⁴ Some national organisations find staying across legislative changes for each state time consuming. Comparisons of best practice in OHS can be problematic due to differences in data collection.
- 6.19 Recent attempts to improve compliance in occupational health and safety in order to reduce fatal workplace accidents through legislation have had mixed success. For example, the Victorian Crimes (Workplace Deaths and Serious Injuries) Bill did not pass through the Victorian Upper House in May 2002,²⁵ but the South Australian Government recently increased the penalties under its occupational safety laws.²⁶
- 6.20 Comcare suggested that in the Commonwealth arena the approach has been to integrate prevention, compensation and rehabilitation. This integration will be discussed in more detail later in the chapter. The Commonwealth's performance in the *Comparative Performance Monitoring* indicates that it has one of the lowest records of compensated workplace injury of any of the jurisdictions.²⁷ Other features of the Commonwealth scheme which Comcare argues improves its performance include:

21 Comcare, Submission No. 32, p. 31.

22 Department of Employment and Workplace Relations, Submission No. 48, pp. 43- 44.

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

24 Victorian Automobile Chamber of Commerce, Submission No. 65, p. 10.

25 Sarre, R, 'Legislative attempts to imprison those prosecuted for criminal manslaughter in the workplace', *E Law – Murdoch University Electronic Journal of Law*, Vol 9 No. 3, 2002, p. 3.

26 South Australian Parliament, Occupational Health Safety and Welfare (Penalties) Amendment Act, Hansard, 28 November 2000, p. 653; See also Hepworth, A, 'Work manslaughter laws dead but not buried', *Australian Financial Review*, 29 January 2003, p. 8.

27 Comcare, Submission No. 32, pp. 24-25.

- a no fault scheme, with limited access to common law;
 - cost accountability, with an incentive-based premium system;
 - efficient service, structural change and management at the agency level;
 - no employer excess; and
 - comprehensive benefits.
- 6.21 The comprehensive benefits structure provides an incentive for employers to minimize claims and encourages early reporting. Comcare suggested that relatively lower benefit structures may provide less incentive for employers and contribute to delayed or under-reporting. Delayed reporting can contribute to a higher incidence of more chronic injuries.²⁸

Financial incentives

- 6.22 Financial incentives built into workers' compensation premiums were suggested as a strong motivator for better performance in the agricultural sector.²⁹ It was suggested, however, that the NSW Premium Discount scheme is ideally suited to good performers but is not targeted towards poor performers. The success of these incentives needs to be closely monitored.³⁰
- 6.23 The National Farmers' Federation (NFF) supported this approach of offering incentives for the implementation of preventive measures. In their review of premium rates across jurisdictions compared to an all industry average of 2.42 per cent for 1999-2000 the range of rates for the agricultural sector was 3 per cent to 8.5 per cent, with higher increases in 2002-03. The NFF contended that there are minimal incentives in place for employers to actively pursue OHS best practice.³¹
- 6.24 The Industry Commission's 1994 inquiry concluded that:
- Existing workers' compensation arrangements do not encourage desirable behaviour on the part of the various parties, and their inconsistencies add to the problem.³²

28 Comcare, Submission No. 32, pp. 33-35.

29 Mr Duncan Fraser, National Farmers' Federation, Transcript of Evidence, 23 October 2002 p. 137.

30 The Risknet Group, Submission No. 10, p. 11. Premium rates are often linked to claims profiles across industries or for larger companies their organisational record.

31 National Farmers' Federation, Submission No. 19, pp. 7- 8.

32 Industry Commission, *Workers Compensation in Australia*, 1994, Report No. 36, p. xxxi.

- 6.25 The NFF submitted that there has been little movement since that time in resolving the above concerns.³³ They suggested a review of premium rates across jurisdictions, as they conclude that better workers' compensation arrangements may exist in differing schemes. The Head of WorkCover in Western Australia supported the view that incentives affect the attitude of a lot of employers and brought a greater awareness of their responsibilities.³⁴
- 6.26 Previous reviews of financial incentives for injury prevention found a decline in new claims following the introduction of incentives for prevention, such as experience-rated premiums or bonus-penalty schemes. However, some of this change may be attributable to other factors than solely improved safety, for example a tightening of claims management, changing definitions or employee concerns over job security.³⁵ For financial incentives to affect workplace safety improvement rather than suppressing claims they need to be directly targeted to remedial actions that prevent injury, illness or fatality.³⁶

Dedicated staff

- 6.27 In evidence to the Committee the Queensland Government stated that it requires workplaces with greater than thirty employees to employ a workplace health and safety officer to help implement risk assessments in the workplace.³⁷

Structural factors

- 6.28 Different labour markets, contractual arrangements and competitive and operational factors also can affect safety. Economic factors are also thought to play a role. DEWR cited a study where injury rates were lowest when economic activity is high.³⁸
- 6.29 A recent study in the CPM in the aged care sector identified a range of factors that vary across an industry. These include age, occupation, size of facility, location, ownership and type of residential care as impacting OHS

33 National Farmers' Federation, Submission No. 19, p. 9.

34 Mr Harry Neesham, WorkCover Western Australia, Transcript of Evidence, 20 November 2002, p 183.

35 Industry Commission, *Work, Health and Safety*, Report No. 47, p. 181.

36 Clayton, A, *The Prevention of Occupational Injuries and Illness: The Role of Economic Incentives*, Working Paper No. 5, National Research Centre for OHS Regulation, August 2002, p. 27. See also for more detailed description of experience ratings.

37 Queensland Government, Submission No. 30, p. 6.

38 Department of Employment and Workplace Relations, Submission No. 48, p. 45.

performance. Working hours also impinge on safety performance.³⁹ The introduction of specific policies such as 'no lift' reduced risks, injuries and consequently claims.⁴⁰

Contracting

- 6.30 The Committee received evidence that the increasing trend towards contractor, subcontractor and casual employment has affected safety outcomes. These employment relationships invoke a grey or weaker link between the employer and employee, resulting in a perceived reduced duty of care towards their 'workers'.
- 6.31 The Australian Manufacturing Workers' Union commented on the higher injury rates in clothing outworkers compared to their counterparts employed in factories. In the metal industry maintenance work or spray painting is often contracted out to smaller enterprises or to labour hire companies as it is considered more hazardous. The difficulty is that the labour hire companies have little control over the safety practices at the host employer's site.⁴¹
- 6.32 Evidence to the Committee from the Recruitment and Consulting Services Association advocates that there should be greater responsibility by the host organization to ensure that a safe work environment is maintained. There also needs to be clearer definitions of the obligations of the three parties involved in a labour hire relationship: the on-hired employees, the host organization and the on-hired employee service provider.⁴²
- 6.33 Representatives of the cleaning industry also commented on the misunderstanding in the community about the responsibilities of the principal employer or contractor. There is the suggestion that by contracting out some operators are seeking to distance responsibility for workers' compensation and public liability, which also may affect workplace safety.⁴³ Research in this area has found in that situations where the outsourcing of labour has become common, OHS deteriorated for both

39 Comcare, Submission No. 32, p. 31.

40 Australian Nursing Federation, Submission No. 67, p. 6.

41 Australian Manufacturing Workers' Union, Submission No. 35, p. 12.

42 Mr Charles Cameron, Recruitment and Consulting Services Association, Transcript of Evidence, 4 December 2002, pp. 430, 434.

43 Mr Kerry Jones, Master Cleaners Guild of Western Australia, Transcript of Evidence, 20 November 2002, p. 217.

the subcontracted and the employee workers. At the same time, the OHS of self-employed workers was placed even more at risk.⁴⁴

Nature of the work

6.34 The physical working environment and the nature of the work itself are a source of occupational hazards and can vary both between and within industries. These factors include:

- the degree of inherent risk;
- the extent of reliance on physical labour; and
- the extent of reliance on repetitive or monotonous activity.

6.35 As an example, the National Farmers' Federation acknowledged that workplace safety is a major issue within the farming industry. There is a wide variety of hazards, and farms are often the most difficult to reach to provide support in OHS practices. The NFF is working with the industry and educators to try to improve safety outcomes.⁴⁵

Industry bodies

6.36 Industry representation is another factor cited as affecting safety.⁴⁶As the above example demonstrates, industry bodies also can affect safety practices and standards. The number of submissions that the Committee received from industry bodies indicated that many are committed to assisting their members in workplace safety and managing claims in their sector.

Organisational factors

6.37 At the workplace a large number of factors relating to the way the workplace is managed affects safety and claims performance. Those suggested in submissions include:

- organizational stability and employment security;
- induction, training and promotion systems;
- leave provisions, childcare facilities and sexual harassment programs;

44 Mayhew, C, Quinlan, M and Bennett, L, *The effects of subcontracting/outsourcing on occupational health and safety*. Industrial Relations Research Centre, 1996, No. 38. The Productivity Commission also has a research project investigating labour hire employment consequences.

45 National Farmers' Federation, Submission No. 19, p. 10. A sample publication is *Preventing Farm Injuries – Overcoming the Barriers*.

46 Insurance Australia Group, Submission No. 47, p. 17.

- management policies and commitment to OHS;
- management structures, supervisory and discipline systems;
- arrangement of work processes and task structures;
- payment, reward and incentive system;
- hours of work and shift arrangements;
- staffing levels, workload and production pressures;
- workforce age, education, experience, language skills and literacy;
- union involvement or employee involvement;
- different workplace cultures;
- use of outsourcing and subcontracting;
- impact of industrial relations;
- changes in technology; and
- safety performance monitoring.⁴⁷

6.38 As an example, the meat industry sector has a number of risk factors present. The industry is labour intensive and has a large component of repetitive tasks and difficulties with workplace culture and various zoonotic diseases may be prevalent.⁴⁸ This gives rise to the industry's injury rate and high premiums. A range of improvements has been encouraged by the NMAA such as mechanization and better education of safety and hygiene standards. However, there are still many challenges and many improvements are required.⁴⁹

6.39 More detail is provided below on some of the listed factors.

6.40 The Queensland Government commented that in the meat industry while there has been an increased awareness of known hazards and risks in the industry, the injury rate remains unacceptably high.⁵⁰ For those employers who initially paid very high premiums and then addressed their workplace health and safety issues, premiums reduced substantially.

47 Comcare, Submission No. 32, pp. 31-32 and Submission No. 32b, p. 1; Australian Industry Group, Submission No. 53, p.22; Community and Public Sector Union, Submission No. 42, p. 5; Chamber of Commerce and Industry of Western Australia, Submission No. 21, p. 7; Queensland Government, Submission No. 30, p. 5; Insurance Australia Group, Submission No. 47, p. 17.

48 National Meat Association of Australia, Submission No. 41, pp. 10-11.

49 Queensland Government, Submission No. 30a, p. 2.

50 Queensland Government, Submission No. 30a p.2.

Those that have not addressed those issues properly are still paying high premiums.⁵¹

6.41 Queensland WorkCover in working with the meat industry suggested that a number of businesses pro-actively assist in the management of claims. Typically they:

- have adequate prevention and risk management strategies in place;
- have safe systems of work fully documented;
- have excellent training programs in place; and
- appear to have human resource practices that develop a sound work culture.

6.42 In the case of businesses providing less assistance to WorkCover, problems include:

- lack of attendance at settlement conferences, or trials as witnesses;
- poor attitude towards workers and investigations, with some employers maintaining that all claimants are fraudulent, and that employers demand to be present when witness statements are taken; and
- poor human resource practices, such as terminating the services of plaintiffs after the claim has been finalised.⁵²

Management

6.43 One of the most significant factors contributing to industry injury profiles is management culture and competence.⁵³ These play a significant role in determining the rates of injury, workplace disruption, claims cost and level of premium. Where there is concern and a commitment to OHS, management typically sees expenditure on safety as an investment with reduced injury, disruption, workers' compensation claims frequency and costs leading to reduced premiums.⁵⁴

6.44 Many would assume that employers are aware of their obligations to provide a safe workplace. However, evidence was presented to a NSW inquiry into workers' compensation that:

approximately 30% of employers are unaware of their legal responsibility to provide a safe place of work. Training in safe work

51 Mr Paul Goldsbrough, Queensland Department of Industrial Relations, Transcript of Evidence, 22 November 2002, p. 327.

52 Queensland Government, Submission No. 30a pp. 5-6.

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

54 Australian Rehabilitation Providers Association, Submission No. 17, p. 2.

practices is only given to 54% of new employees and supervisors in 40% of workplaces did not receive any health and safety training.⁵⁵

Occupational overuse syndrome

6.45 In relation to the field of occupational overuse syndrome, the following factors related to the development of injury are in the control of the organization to manage:

- lack of training in safe use of equipment;
- equipment that is not ergonomically designed and/or set up to suit the particular user;
- pressure to be highly productive at work, especially measures such as automatic counting of keying rates;
- workplace culture;
- lack of variety at work; and
- long hours.⁵⁶

Apprentices

6.46 The Recruitment and Consulting Services Association indicates that there are problems with work classifications for apprentices and also safety concerns.⁵⁷ In Victoria apprentices in group training schemes are incorporated inappropriately into the 'employment service' WorkCover Industry Classification. Employers of apprentices are not liable for WorkCover premiums. This results in a lack of accountability by the employers.

Apprentices are prone to workplace accidents. They are new to the worksite; they are young, unskilled and subject at times to a lack of proper supervision and bullying.

Because the host employer does not pay premiums they are therefore not accountable to create a safe workplace, because there are no penalties or incentive and they don't rehabilitate injured apprentices. At the same time the apprentices receive 75% of their income through workers' compensation while they recover. As there is no incentive for the employer to have them return to work, they

55 The Risknet Group, Submission No. 10, p. 11.

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

57 Recruitment and Consulting Services Association, Submission No. 20, p. 9.

can often 'hide' and continue to receive their payments while gaining employment elsewhere.⁵⁸

Older workers

6.47 The Committee received submissions suggesting that in labour intensive jobs, older workers are generally more prone to injury.⁵⁹ (Data from the CPM suggests this would have to include those aged 35 and over.⁶⁰) It may be appropriate to provide retraining to ensure that injuries are less likely to occur. The National Farmers' Federation suggested that they had more success in educating younger farm workers in rural schools and communities than older workers, which suggests that there are significant OHS education challenges for improving safety in the short term.⁶¹

Safety performance monitoring

6.48 It was suggested to the Committee that the use of Lost Time Injury Frequency Ratios as safety evidence for tenders sometimes has the effect of not encouraging safety but the reverse. While the use of the ratio promotes high safety standards, it also encourages under reporting of incidents⁶² and not allowing an injured employee time to recover, harassment and possibly other activities designed to reduce the 'down time'.⁶³

Individual and social factors

6.49 Beyond the environment that the system and organisation provides for occupational health and safety individuals have a responsibility for their own and others' well being. In many cases workers are diligent. However:

Individual behaviour (for example apathy or carelessness that results in breach of formal safety rules, or the exaggeration of claims) has a role to play in understanding safety records and claims profiles. But such behaviour may need to be seen in its broader social and organizational context. For example, organizational and

58 Recruitment and Consulting Services Association, Submission No. 20, p. 9.

59 Recruitment and Consulting Services Association, Submission No. 20, p. 10; Confidential Submission.

60 Workplace Relations Ministers' Council, *Comparative Performance Monitoring, Australia and New Zealand Occupational Health and Safety and Workers' Compensation Schemes, Fourth Report*, August 2002, p. 27.

61 Miss Denita Harris, National Farmers' Federation, Transcript of Evidence, 23 October 2002, p. 142.

62 Ms Gwyneth Regione, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, p. 389.

63 Insurance Australia Group, Submission No. 47, p. 17.

social factors that contribute to fatigue, frustration and stress may, in turn, promote careless or unsafe behaviour.⁶⁴

- 6.50 Factors that may influence the individual's behavior include the:
- degree of control workers exert over their work; and
 - degree of satisfaction workers derive from their work.⁶⁵
- 6.51 In summary, there is a vast array of factors that may impinge on safety in the workplace. Many are within the domain of employers, but there are broader system issues that require action at a legislative or scheme level. The impact of contracting or on-hire arrangements appears to be one of the most significant recent factors likely to affect safety.

Factors leading to different claims profiles

- 6.52 Premium rates are a reflection of claim profiles and risk ratings. Some submissions provided evidence of the calculation of premiums with a call for the premiums to reflect the safety performance of the organisation and the occupations within it more directly, rather than the industry sector.⁶⁶
- 6.53 In general very little information was provided to the inquiry on workplace disease. The CPM does not provide data, and very few submissions referred to the issue. As disease related claims are usually of long duration there would be implications for claim profiles. However, the Committee is unable to form any view due to the lack of presented findings. Disease incidence and claims profiles rest on the identification of known workplace links, which in some cases are recognised overseas but not necessarily in Australia.⁶⁷
- 6.54 The DEWR submission indicated that body stressing is the highest reported claim for all industries.⁶⁸ As an example the Health and Community Services Sector has the highest percentage of body stressing (manual handling) injuries and the highest rate of repetitive movement injuries, which are often the high cost injuries.⁶⁹ Employers in agriculture,

64 Comcare, Submission No. 32, p. 32.

65 Australian Rehabilitation Providers Association, Submission No. 17, p. 1.

66 Council of Small Business Organisations of Australia, Submission No. 49, p. 1, Insurance Australia Group, Submission No. 47, pp. 7-8.

67 Dr Deborah Vallance, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, pp. 374-376.

68 Department of Employment and Workplace Relations, Submission No. 48, p. 39.

69 Australian Nursing Federation, Submission No. 67, p. 5.

forestry and fishing paid the highest premium rate, although they didn't have the highest incidence or frequency of injury.⁷⁰

Structural Factors

6.55 Trends in claims profiles indicate that injured persons are spending longer periods off work, as there is an increase in the incidence of injuries resulting in twelve weeks or more compensation. Comcare states that although the Commonwealth has one of the lowest incidence and frequency rates, similarly the duration of claims is increasing with injured workers staying off work longer.⁷¹ DEWR suggested that the current regulatory framework in the jurisdictions may be contributing to workplace safety outcomes.⁷² Access to common law has also been claimed to delay return to work and affect claim profiles:

The further a scheme goes to an unrestricted common law and lump sum benefit structure then the further it departs from early intervention and a quick return to work. The incentive structures are such that they drive the employee, the injured worker, to be off work as long as possible in order to maximise the compensation payment when it finally goes to court or is settled. This is as opposed to the no-fault schemes where the primary aim is to get people back to work quickly.⁷³

6.56 Structural change in the economy or industry may also result in increased frequency of workers' compensation claims due to the uncertainty of employment. Workplace change such as downsizing and the consequent increased levels of uncertainty and anxiety for both management and employees tends to increase the frequency of workers' compensation claims. Workers who have carried injuries in their present workplace may make claims fearing they will not be able to obtain a job in a new environment.⁷⁴

Comparing industries

6.57 In comparing industries the hazards of the industry influence claims profiles. As the hazards within an industry are generally consistent the

70 Workplace Relations Ministers' Council, *Comparative Performance Monitoring, Australia and New Zealand Occupational Health and Safety and Workers' Compensation Schemes, Fourth Report*, August 2002, pp. 10, 16-17.

71 Comcare, Submission No. 32, p. 48.

72 Department of Employment and Workplace Relations, Submission No. 48, p. 44.

73 Mr Douglas Pearce, Insurance Australia Group, Transcript of Evidence, 18 October 2002, p. 71.

74 Australian Rehabilitation Providers Association, Submission No. 17, p.2; See also Australian Industry Group, Submission No. 53, p. 22.

industry shows a similar profile over time. To alter this, significant industry cooperation, resources and commitment would be required to change the profile. It has been suggested by industry groups that some industries have been making a concerted effort through their OHS efforts to achieve this, for example, the farming sector, building and construction, and mining.⁷⁵

Employer or scheme effects

- 6.58 One perspective is that it is of more concern when the profiles of companies working in the same industry differ. The practices of management and how cases are handled may then be influencing outcomes.⁷⁶ Insurance Australia Group suggested that the severity of an incident (in terms of cost and time loss) is a product of the workers' compensation scheme, while the claims frequency is a product of the employer. The increased duration of claims and severity of incidents is attributable to inadequacies in the scheme.⁷⁷ Australian Industry Group have a similar view:

People who say, 'If employers just didn't injure people they would not have a problem with workers compensation,' are missing the point. The major determinant of workers compensation costs is the level of injuries that are caused but trend fluctuations ... can often be attributed to what we call systemic flaws in schemes, not to the fact that injuries are happening at a greater rate. So the response has to be something other than pointing the finger at employers and just saying, 'You provide safer workplaces.' We take that for granted. We are doing that and trying to do that and the evidence of major injuries shows that we are doing that. So there is something else going on and it happens in every state and in all schemes at various times.⁷⁸

- 6.59 Along similar lines, the Chamber of Commerce and Industry of Western Australian stated that early return to work may be influenced more by the ability of the employer to provide suitable employment, the willingness of the employee to return to work, and the influence of service providers.⁷⁹ These components all then affect claims profiles.

75 Department of Employment and Workplace Relations, Submission No. 48, p. 46; Chamber of Commerce and Industry of WA, Submission No. 21, p. 7.

76 Workers' Medical Centre and Queensland Workers' Health Centre, Submission No. 14, p. 2; Australian Industry Group, Submission No. 53, p. 23.

77 Insurance Australia Group, Submission No. 47, p. 18.

78 Mr Mark Goodsell, Australian Industry Group, Transcript of Evidence, 18 October 2002, p. 67.

79 Chamber of Commerce and Industry of Western Australia, Submission No. 21, p. 8.

6.60 As discussed, premium discounts are suggested as an effective incentive to encourage better health and safety practices. Small business would like to see a rating on the business rather than the type of work, to provide more incentives for good OHS practices and no claims.⁸⁰ Similarly, workplace safety accreditation needs to be recognised more by insurers.⁸¹ Other witnesses recommended that there should be direct statutory links between the employer's achievement in terms of safety records and return to work, and their insurance premium.⁸² Other suggestions included: no claim bonuses and government subsidy of premiums for one year as incentives, plus statutory monetary caps on claims as a disincentive for monetary gain.⁸³

Within industry

- 6.61 Rather than being due to a high incidence of claims, claims costs of an industry may reflect higher wages for that industry or difficulties in finding suitable duties for rehabilitation, for example mining or construction. In other industries more complex injury types such as back strain or psychological claims affect claim cost and duration profiles.⁸⁴
- 6.62 The opinion expressed in some submissions was that with the ageing of the workforce and no retirement age, employers may be increasingly be exposed to the cost of claims resulting from the aggravation of pre-existing condition. It was suggested that an employer is expected to arrange more suitable employment for potential claimants if it is the employer's responsibility to prevent injury.
- 6.63 The NMAA claimed that in some geographical locations there is a culture of 'milking the system', which continues irrespective of safety initiatives put in place by the employer.⁸⁵ Mr Kim Mettam also investigated a large corporation with a young workforce in a highly mechanised workplace, who were highly paid with good conditions but with a high number of illness based claims:

These are all the things where we would normally expect people would want to continue to work. The problem was that the area around was primarily a secondary labour market and all sorts of distortions and behaviour over several generations had occurred in

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

81 Mr Andrew Hemming, HEMSEM, Transcript of Evidence, 13 November 2002, p. 174.

82 Mr Robert Guthrie, Curtin University, Transcript of Evidence, 20 November 2002, p. 194.

83 HEMSEM, Submission No. 28, p. 6.

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

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

that area. For those reasons there was a propensity to make illness based claims. What it suggested was that, in our system, it is very easy to make an illness based claim. So there was a culture which was basically to make an illness based claim, retire at about 33 years of age and sue the hell out of your employer.⁸⁶

- 6.64 The Media Entertainment and Arts Alliance cited some concerns with short term employment arrangements or contracting. The non-compliance by employers in the media entertainment and arts industry affects reporting of claims because workers are under the impression that they are not employees, so they are unlikely to make a claim. They wear the costs themselves or resort to sickness benefits.

film and video production is identified by a freelance or casual workforce, short term engagements (television commercials can be filmed in as little as a day, most feature films in less than ten weeks), companies established for a particular production and arrangements whereby many employees are expected to characterise themselves as independent contractors. Consequently, there is a higher level of non-compliance in respect of workers compensation and under-reporting leading to a statistical profile that is likely to be better than is the case in reality.

With highly mobile freelance and casual workforces, education and training becomes a serious issue.⁸⁷

- 6.65 Other evidence suggests that some smaller businesses attempt to persuade workers not to make claims, as this would affect their claims history and premiums.⁸⁸ Another example was also provided of self-insurers not supporting claims lodgment.⁸⁹ As discussed earlier in the chapter, claims profiles are not solely contingent on injury rates, but can also be affected by claims management and return to work.

- 6.66 Strategies adopted by the Commonwealth system to address the trend of increasing claims duration across all industries and within an industry include:

- restructuring to increase claims management focus on minimizing claim duration and preventing disputes; and

86 Mr Kim Mettam, Charles Taylor Consulting, Transcript of Evidence, 20 November 2002, p. 243.

87 Media Entertainment and Arts Alliance, Submission No. 43, pp. 4-5.

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

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

- introducing measures to increase senior management leadership and accountability for prevention and injury management in agencies, and continuing to improve return to work arrangements in the Commonwealth.⁹⁰

Classification of mental injury

6.67 Evidence was presented to the Committee raising concern about the classification of and inherent discrimination against mental injury, with the result that many mental injuries never become claims and the incidence and disabling effects and cost will remain hidden.⁹¹

CPSU submits that the scheme design and current interpretation understates the level of workplace injury reported in workers compensation due to the rejection of a significant proportion of workplace mental injuries.⁹²

6.68 Comcare responded that it is guided by decisions made by the courts and is effectively administering the relevant Act.⁹³ Other clinical specialists commented on the difference between stress as a normal response and the situation where clinicians diagnose it as an illness, such as anxiety disorder.⁹⁴

6.69 Information was provided to the Committee about early intervention programs to try to prevent early stress signs advancing to a more serious condition.⁹⁵ Mr Robert Guthrie described the difficulty of dealing with stress claims and the changes that are occurring with some insurers. There may be a commercial advantage in accepting the claim and reducing costs rather than rejecting the claim:

It has been the practice of insurers in this state and I think most states to decline stress claims as a matter of course. But I should also say that there are a number of insurers who have actually changed their mind and their strategy in relation to that ... they are simply accepting that if a worker lodges a stress claim it is more economical to treat the person to try and facilitate their return to work and put them through the compensation system than it is to actually aggravate that person's condition and make it virtually impossible

90 Comcare, Submission No. 32, p. 49.

91 Community and Public Sector Union, Submission No. 42, p. 8.

92 Community and Public Sector Union, Submission No. 42, p. 8.

93 Comcare, Submission No 32b, pp. 1-3.

94 Dr Robert Kaplan, Transcript of Evidence, 18 October 2002, pp. 102-103.

95 Mr Simon Cocker, Community and Public Sector Union, Transcript of Evidence, 26 November 2002, p. 369.

for them to make a claim and put them through the compensation system. So sometimes, in fact, it is commercially sensible for claims to be accepted.⁹⁶

- 6.70 The Committee believes that one of the areas where there is potential for significant improvement is the consideration of the longer term implication of the claims management approach to stress and mental injuries.

Separation of the regulator

- 6.71 The consideration of the effectiveness of schemes in reducing injury and managing claims involved a debate about the arrangements for information provision and data sharing. Comcare administers and regulates the occupational health and safety of Commonwealth employees. In a number of other jurisdictions these two functions are distinct. Comcare submits that integration enables claims to be minimized through preventive action by agencies. Data from its claims management system is used to identify illness and injury trends. Where claims do occur cooperative arrangements between agencies enables a smooth transition between claims processing and rehabilitation and return to work.

One of the great strengths of Comcare—and this is a view that others do not agree with, I should say; it is my personal view—is that we administer both workers compensation and occupational health and safety and we have a leading role in rehabilitation. That enables us to approach the whole process and deal with the whole process whereas in some other jurisdictions you have a separate OH&S regulator and a separate workers compensation regulator or insurer.⁹⁷

- 6.72 In Western Australia, a similar view was expressed, that good links are necessary between the insurer and the provider of occupational health and safety. It was suggested that it may be appropriate for the two current organisations to be brought together as one body.⁹⁸

- 6.73 The alternate view was presented by the Australian Industry Group:
- to the extent that a workers compensation scheme lacks credibility, that must undermine people's efforts to create a safer workplace.

96 Mr Robert Guthrie, School of Business Law, Curtin University, Transcript of Evidence, 20 November 2002, p. 193.

97 Mr Barry Leahy, Comcare, Transcript of Evidence, 18 September 2002, p. 9.

98 Mr Robert Guthrie, School of Business Law, Curtin University, Transcript of Evidence, 20 November 2002 p. 195, Mr Kerry Jones, Master Cleaners Guild of Western Australia, Transcript of Evidence, 20 November 2002 , pp. 216-217.

That is a concern that we are conscious of. Indeed, we are of the view that, for a lot of purposes, the two issues of workers compensation and OH&S ought to be structurally separated. They are often thrown back into the same basket for administrative reasons, but they are two different exercises. Perceptions and prejudices about what is going on in workers compensation get in the way of proper safety management from time to time.⁹⁹

- 6.74 The Industry Commission in *Work, Health and Safety* reviewed the need for integration of occupational health and safety, workers' compensation and rehabilitation. In considering the advantages of integration or separation of functions, the Commission concluded that it is more important to integrate the policy making in workplace health and safety, workers' compensation and rehabilitation, irrespective of whether the administration is performed by one or more agencies.¹⁰⁰

National OHS Strategy

- 6.75 A major national occupational health and safety strategy initiative was introduced in 2002. On 24 May 2002, the Workplace Relations Ministers' Council endorsed the National OHS Strategy. Under this strategy, for the first time, all jurisdictions and peak employers and unions have committed to minimum national targets and five national priorities for improving OHS. The national targets are:
- a significant reduction in the incidence of work-related fatalities, with a reduction of 10 per cent by mid 2007 and at least 20 per cent by July 2012; and
 - a reduction in the incidence of workplace injury of 20 per cent by mid 2007 and at least 40 per cent by July 2012.
- 6.76 There are five initial national priority areas for action to achieve short-term and longer-term improvements. They recognise that cooperation among OHS stakeholders will lead to more efficient and effective prevention efforts. The priorities are:
- reduce high incidence/severity risks;
 - improve the capacity of business operators and workers to manage OHS effectively;

⁹⁹ Mr Mark Goodsell, Australian Industry Group, Transcript of Evidence, 18 October 2002, p. 54.

¹⁰⁰ Industry Commission, *Work, Health and Safety*, Report No. 47, 1995, p. 269.

- prevent occupational disease more effectively;
- eliminate hazards at the design stage; and
- strengthen the capacity of government to influence OHS outcomes.¹⁰¹

Other Initiatives

6.77 There are other initiatives that are under way in particular jurisdictions, many of them encouraging senior managers to integrate OHS risk management into their daily business.¹⁰² For example, the Victorian WorkCover Authority is:

- increasing the emphasis on prevention by information and education;
- encouraging investment in health and safety;
- reviewing their premium system; and
- developing more effective claims management.¹⁰³

In addition to the requirement for greater consistency in definitions and data collection, these priorities align closely with evidence the Committee has received in relation to matters requiring action.

Education

6.78 Safety and Health for work should be taught in schools and not wait until the tertiary level.¹⁰⁴ An example is Farmsafe who have produced a schools resource kit in farm safety for rural schools.¹⁰⁵ Beyond this, making new employees aware of their rights and obligations under the relevant OHS legislation, and training, should occur on a regular basis.¹⁰⁶ In the on-hire industry a generic occupational health and safety induction program has been developed for use with all on-hired employees before they enter work sites. As on-hire employees are in all industry sectors, it cannot cover everything. Currently it is developed in English but there is the potential for it to be produced in other languages.¹⁰⁷

101 Department of Employment and Workplace Relations, Submission No. 48, p. 49.

102 See for example Comcare, Submission No. 32, pp. 36, 37, 51; Queensland Government, Submission No. 30; ACT Government, Submission No. 45; Victorian Government, Submission No. 37.

103 Victorian Government, Submission No. 37, p. 6-7.

104 Recruitment and Consulting Services Association, Submission No. 20, p. 5.

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

106 ACT Government, Submission No. 45, p. 4.

107 Ms Julie Mills, Recruitment and Consulting Services Association, Transcript of Evidence, 4 December 2002, p. 433.

- 6.79 The Committee believes that to aid understanding and recognise efforts, awards or accreditation should be continued or introduced for workplace safety to recognize good practice. Similarly, there should also be injury management system awards to recognise best practice in this area.¹⁰⁸

The Committee's comments

- 6.80 The Committee believes that considerable investigation has occurred into factors that influence workplace safety, and that the NOHSC Strategy has significant potential to raise awareness and reduce the incidence of workplace injury. Of significant concern is the perception and reality of the duty of care with less direct employer/employee relationships with changing work patterns. The clarification of responsibilities is a priority task for jurisdictions.
- 6.81 Additional support is required for industries with poor safety records, and where access to information and support is difficult such as in small business enterprises, or directly to the employee in farm or labour-hire situations.
- 6.82 The evidence presented to the Committee indicates that the role of workplace and management culture as a factor in reducing the incidence and severity of occupational injury and disease cannot be understated. The support and attitude of management and co-workers also play a significant part in returning injured workers to employment.
- 6.83 The impact of safety records on claims profiles should be more straightforward. However, the range of other factors that is beyond the control of the employer makes the assumed link between OHS practices and premiums disjointed. Claims management practices and injury management need to be improved. The significant cost to employers who bear approximately 40 per cent of the total cost of injury¹⁰⁹ makes it frustrating for them when their improved OHS efforts are not matched by reduced premiums as a result of their claims profile.

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

109 Industry Commission, *Work, Health and Safety*, Report No. 47, 1995 p. xix.