
The Parliament of the Commonwealth of Australia

Back on the job:

Report into aspects of Australian workers' compensation schemes

House of Representatives Standing Committee on Employment and Workplace Relations

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Foreword

Workers' compensation schemes should aim to provide workers with a meaningful and sustainable outcome following a workplace injury. The best long term prospects for an injured worker lie in a safe and timely return to work with reasonable compensation for medical costs, work time lost and for non-economic loss in the event of injury. Early intervention through rehabilitation and retraining as required is the best approach to achieve a return to work appropriate to the capability of the injured worker.

Workers' compensation schemes should foster a safer working environment with effective prevention strategies to reduce and, to the extent possible, eliminate injuries. When things do go wrong, there needs to be a total injury management approach to workers' compensation including prevention, compensation and rehabilitation.

Schemes should provide compensation at a reasonable cost through active claims management and should achieve a balance between the level of premiums paid by employers and the appropriate, adequate, fair and equitable benefits that are available to the injured workers. This should not need to be supplemented by the Australian taxpayers.

While there is currently an air of reform to workers' compensation and a genuine effort to improve processes, there is still a long way to go. This inquiry found that there is a tendency to attribute fraudulent activities to other sectors of the workers' compensation industry. In no area was there sufficient data to enable the accurate determination of the level of fraud. A strong message for all was that there are problems in each sector and everyone can contribute to the reduction and elimination of fraudulent behaviour in workers' compensation.

Of particular concern is the plight of those injured workers who were led to believe that a lump sum outcome would set them up for life. Injured workers should be supported and encouraged to return to work and compensated for their loss after this, or in those cases where the injury is of such severity that re-employment is not an option in their circumstances.

I would like to thank the many individuals and organisation who contributed to this inquiry and the resulting report. All contributions have assisted in painting the bigger picture.

I would like to acknowledge those who tirelessly work to improve the outcomes for the injured workers and their families who are faced with enormous changes to their lives. This includes the families and friends, those in injured worker support associations, employers who provide safer workplaces and deal well with existing claims, service providers and workers' compensation schemes who provide good service. This includes all those who attempt to eliminate fraud to ensure that those with genuine injuries receive the maximum benefits.

De-Anne Kelly MP
Chair



Membership of the Committee

Chair Mrs De-Anne Kelly MP

Deputy Chair Hon Arch Bevis MP

Members Mr Phillip Barresi MP (until 26/09/02)

Mr Peter Dutton MP

Ms Jill Hall MP

Mr Luke Hartsuyker MP

Mr Jim Lloyd MP (from 26/9/02)

Ms Sophie Panopoulos MP

Mr Don Randall MP (from 19/8/02)

Mr Alby Schultz MP (until 19/8/02)

Ms Maria Vamvakinou MP

Mr Kim Wilkie MP

Committee Secretariat

Secretary	Mr Richard Selth
Inquiry Secretaries	Ms Cheryl Scarlett Ms Julia Morris
Research Officer	Ms Alison Childs
Administrative Officers	Mrs Gaye Milner Mr Peter Ratas



Terms of reference

On 20 June 2002 the Minister for Employment and Workplace Relations asked the Committee to inquire into and report on matters that are relevant and incidental to Australian workers' compensation schemes in respect of:

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



List of abbreviations

ABS	Australian Bureau of Statistics
AIG	Australian Industry Group
AMA	Australian Medical Association
AMWU	Australian Manufacturing Workers' Union
ANF	Australian Nursing Federation
ARIMA	Association of Risk and Insurance Managers of Australasia
ARPA	Australian Rehabilitation Providers Association
CCI	Chamber of Commerce and Industry Western Australia
CFMEU	Construction, Forestry, Mining and Energy Union
CPM	Comparative Performance Monitoring
CPSU	Community and Public Service Union
DEWR	Department of Employment and Workplace Relations
GP	General Practitioner
GST	Goods and Services Tax
HWCA	Heads of Workers Compensation Authorities
IAG	Insurance Australia Group
IPASA	Injured Persons Action and Support Association
MCGWA	Master Cleaners Guild of Western Australia Inc

NFF	National Farmers' Federation
NMAA	National Meat Association of Australia
NOHSC	National Occupational Health and Safety Commission
OHS	Occupational Health and Safety
OOS	Occupational Overuse Syndrome
OR	Occupational Rehabilitation
Q-COMP	The Workers' Compensation Regulatory Service of Queensland
RDO	Rostered day off
RCSA	Recruitment and Consulting Services Association
RSI	Repetitive Strain Injury
RTW	Return to work
VACC	Victorian Automobile Chamber of Commerce
VTHC	Victorian Trades Hall Council
VWA	Victorian WorkCover Authority
WIC	WorkCover Industry Classification
WMC	Workers' Medical Centre



List of recommendations

Recommendation 1

The Committee recommends that the Minister for Employment and Workplace Relations request that the Workplace Relations Ministers' Council conduct a study to identify the extent to which workers are currently not covered by any workers' compensation system, with a view to adopting a national standard that covers the widest possible number of workers. (Paragraph 8.19)

Recommendation 2

The Committee recommends that the Commonwealth Government, in collaboration with the State and Territory workers' compensation authorities, and with other stakeholders, look at the need to amend the Australian and New Zealand Standard Industrial Classification in relation to its applicability to workers' compensation systems and interjurisdictional consistency. (Paragraph 8.29)

Recommendation 3

The Committee recommends that the Minister for Employment and Workplace Relations request that the Workplace Relations Ministers' Council continue to work towards the introduction of nationally consistent Memoranda of Understanding between the jurisdictions to ensure that employees have equivalent workers' compensation cover when working in other jurisdictions. (Paragraph 8.35)

Recommendation 4

The Committee recommends that the Commonwealth Government:

- examine the need to extend the National Data Set for Compensation-based Statistics, to provide nationally relevant workers' compensation data that assists meaningful interjurisdictional comparisons for policy analysis and contributes to the development of a national framework.
- further investigate the implications and appropriateness of a national database on workers' compensation claims which identifies injured workers, employers, service providers and insurance companies.
- further investigate the implications and appropriateness of additional data matching capacity between Commonwealth agencies and the State and Territory workers' compensation authorities.

The Committee strongly believes that confidentiality should be exercised in relation to the use of these databases. (Paragraph 8.47)

Recommendation 5

The Committee recommends that the Commonwealth, with the States and Territories, conduct a qualitative study of injured workers who have received a lump sum or who have been in receipt of workers' compensation benefits for twelve or more continuous months, to identify if they have subsequently accessed income support entitlements and to determine the extent to which this system is subsidising the workers' compensation industry. (Paragraph 8.49)

Recommendation 6

The Committee recommends that the Minister for Employment and Workplace Relations work with the Workplace Relations Ministers' Council to develop a set of benchmarks and best practice for all aspects of workers' compensation, to ensure that the responsibility for assisting people suffering compensable injuries rests with the compensation authorities and not with taxpayer funded social security programs or the burden placed on the injured worker. (Paragraph 8.63)

Recommendation 7

The Committee recommends that the Commonwealth Government urgently investigate the extent to which current taxation legislation is inhibiting initiatives of workers' compensation schemes which may benefit the injured workers, such as structured settlements. (Paragraph 8.65)

Recommendation 8

The Committee recommends that the Minister for Employment and Workplace Relations work with the Workplace Relations Ministers' Council to develop a process for identification and national implementation of best practice to consider initiatives such as the Queensland Government's approach of educating and maintaining a close relationship with doctors and requiring them to fill out a form declaring that the injury is work related. (Paragraph 8.67)

Recommendation 9

The Committee recommends that the Commonwealth Government determine the extent to which the medical expenses of injured workers are being met by Medicare and the extent to which this system is subsidising the workers' compensation industry. (Paragraph 8.69)

Recommendation 10

The Committee recommends that the Minister for Employment and Workplace Relations work with the Workplace Relations Ministers' Council to implement a process whereby the relevant agencies or authorities in each jurisdiction forward educational material to the injured worker on the various options available and the possible associated pitfalls, and offer financial counselling and support through Centrelink with the view to ensuring a timely return to work where possible. (Paragraph 8.78)

Recommendation 11

The Committee recommends that the Commonwealth Government, in collaboration with the States and Territories, develop a program to implement the National Occupational Health and Safety Commission *Guidance notes for best practice rehabilitation management of occupational injuries and disease* nationally. (Paragraph 8.90)

Recommendation 12

The Committee recommends that the Minister for Employment and Workplace Relations work through the Workplace Relations Ministers' Council to eliminate vertical integration whereby insurance companies own and operate rehabilitation and return to work providers. (Paragraph 8.94)

Recommendation 13

The Committee recommends that the Commonwealth Government, in collaboration with the States and Territories, investigate the potential interface of Commonwealth employment schemes with State re-employment programs to develop more effective ways to assist injured workers to return to work, including communication of this information to providers who are responsible for return to work programs, without additional cost to the Commonwealth. (Paragraph 8.95)

Recommendation 14

The Committee recommends that the Commonwealth Government support and facilitate where possible the development of a national framework to achieve greater national consistency in all aspects of the operation of workers' compensation schemes. (Paragraph 8.100)

Recommendation 15

The Committee recommends that the Minister for Employment and Workplace Relations work with the Workplace Relations Ministers' Council to develop, in consultation with other relevant Ministers in each jurisdiction, a national code of practice for those engaged as investigators in pursuing potentially fraudulent claims. (Paragraph 8.110)



Executive summary

Introduction

Workers' compensation schemes should aim to provide workers with a meaningful and sustainable outcome following a workplace injury. This is best achieved by a return to work appropriate to the worker's capability and supported by rehabilitation and retraining as required.

While compensation has been and is the main intent of schemes, the best long term prospects for an injured worker lie in a safe and timely return to work with reasonable compensation for medical costs, work time lost and for non-economic loss in the event of injury.

Workers' compensation schemes should foster a safer working environment with effective prevention strategies to reduce and, to the extent possible, eliminate injuries. A total injury management approach to workers' compensation includes prevention, compensation and rehabilitation. The scheme should provide compensation at a reasonable cost through active claims management.

The Committee's inquiry

The Committee's inquiry was timely as there are substantial human and economic costs of work-related injuries, premiums for employers have increased notwithstanding a reported drop in injury rates, and there is a changing labour market. There are also suggestions that fraudulent activities within the industry may contribute to the cost. The Committee was also asked to inquire into the safety records and claims profiles of different industries and the adequacy and appropriateness of rehabilitation programs.

It is important that the coverage and benefits available to injured workers in Australia should not differ significantly depending on the State or Territory in which the injury occurs. Inconsistencies can result in an inability to make meaningful comparisons of data collected in the various jurisdictions, which hinders policy analysis and the identification of emerging trends and best practice.

Fraud

The assessment of what constitutes fraud and fraudulent behaviour is subjective, and differs across the various participants involved in workers' compensation. In a highly adversarial and litigious industry, incompetence, mismanagement and inefficiencies may be all perceived by other participants as deliberate fraud.

At a time when injured workers are at their most vulnerable they are suddenly confronted with a complex, often bureaucratic, system with delays that they do not understand. Better explanations of injured workers' rights and the compensation process would significantly assist workers in a stressful process. The claimants' perceptions of fraudulent behaviour may reflect their frustration and inability to negotiate their way through this complex, unfamiliar and bureaucratic process.

A number of jurisdictions now have significant strategies to identify and eliminate employer non-compliance in relation to the failure to pay the correct premiums. There is, however, a perception among injured workers that employer fraud is not frequently or adequately penalised.

In relation to service providers, as the various workers' compensation schemes move to implement evidence based medicine and exception based reporting, and other strategies to increase the accountability of service providers, the problems identified should become significantly less prevalent.

Cost of fraudulent claims

The incidence and cost of fraud or fraudulent behaviour by employees, employers, service providers, lawyers, insurance companies and workers' compensation schemes is difficult to quantify. While it was argued that there is some fraud in all of these sectors, perceptions of the frequency and quantity of fraud within the system can reflect an individual's experiences and roles within the industry rather than an analysis of data. The Committee could not quantify the significance or otherwise of fraud within any sector without sound data, which is presently not available. While fraud may not be common, when it does happen in workers' compensation schemes it does have costs and it is very expensive.

It is clear to the Committee that there are opportunities for improvement in relation to the practices of all sectors: employees, employers, service providers, lawyers and insurance companies, and in the design and operation of the workers' compensation schemes. Many of the issues raised in this inquiry reflect inadequate communication and non-alignment of expectations of the various participants. In all sectors there is misinterpretation, misunderstanding and a lack of understanding of the process.

The workers' compensation industry over the next decade is faced with a number of challenges in relation to changing work arrangements, the aging of the workforce and changing lifestyles. The need for the implementation of best practice is more important than previously. The Committee believes that in attempting to move towards greater national consistency, with the benefits of that approach, there are also opportunities for the various schemes to review their current activities in terms of best practice.

Employee fraud

The level of employee fraud is generally considered to be low, although it is difficult to quantify. Fraud by exaggeration is more prevalent than deliberate initiation of a claim to commit fraud. Some participants in the inquiry argued that there are significant levels of employee fraud although very few figures are available. The inadequacy of available data is a significant issue. The Committee believes that the level of fraud cannot be estimated without accurate information on:

- the number of claims withdrawn or closed by the claimant or the insurer when evidence showed the claim to be fraudulent;
- instances when the matter was not pursued because of the small amount of money involved; or
- instances when another penalty such as a fine was imposed or the money repaid.

There are potentially greater savings from actions such as ceasing benefits, penalties and recovery of money, rather than from prosecutions.

The Committee noted a general perception that injured workers are automatically suspected of fraud. The adversarial system is damaging to claimants who have to endure attacks on their integrity and the reality of the injury, intimidation, pressure and a lack of control over many aspects of their lives. The adversarial system can mean that the injured worker is 'effectively doubly injured'.

It was suggested that individuals may undertake fraudulent activities in response to a lack of more appropriate support and direction. It may be more cost effective and efficient to provide these cases with greater support rather than engage in significant efforts in attempting to prove that the behaviour is fraudulent.

The majority of injured workers are committed to an early and successful return to work. Employees face a highly complex scheme of arrangements to determine whether or not they have suffered compensable injury or illness. This may be one of the reasons why over 50 per cent of employees who report having a workplace injury or illness do not lodge a claim for workers' compensation. Injured workers have to fight continually for their basic legislated rights, and may be faced with a life of misery through continued poor health, no rehabilitation and no money.

Employer fraud

While there are now significant compliance investigation strategies in place to detect employer non-compliance, there is a perception among some injured workers that employers are not penalised for non-compliance.

Service providers

The lack of checks and balances on rehabilitation providers means that there may be over-servicing by provider organisations. There are also insufficient financial incentives for employees to rehabilitate to the level where they can either reduce or cease treatment. There is a tendency to accept rehabilitation treatment as a substitute for a return to work, and some employees seem to perceive that rehabilitation is as an end in itself.

Workers' compensation schemes

The Committee heard a number of allegations about fraud in workers' compensation schemes. There was widespread evidence that at least one significant form of "fraud", if it could be called that, occurs against the Commonwealth in the form of cost shifting either covertly or overtly from State based workers' compensation schemes.

Need for change

It is clear to the Committee that there are opportunities for improvement in relation to the practices of all sectors: employees, employers, service providers and insurance companies, and in the design and operation of the workers' compensation schemes.

There are already processes for the detection of employee fraud. There are also increasing efforts to identify non-compliance by employers, just as there is a move to monitor service providers and to require increased accountability. Regulatory bodies in jurisdictions monitor the activities of the various workers' compensation schemes.

Need for national consistency

The need for greater national consistency in the operation of workers' compensation schemes was frequently raised in the evidence to the inquiry. There are currently ten different schemes operating in Australia for nine million employees. This complexity places a burden on the community which is an unnecessary drain on the economy.

A national framework for workers' compensation coverage could remove the complexity, deal with cross border issues and lessen the potential for fraud and/or

non-compliance. The implementation of a national framework need not seek to have the States refer their powers to the Commonwealth. The primary responsibility should remain with the States and Territories. A nationally consistent approach does not mean a national workers' compensation scheme.

Administrative costs for the existing schemes are currently more than sixteen per cent of the premiums collected, and there are additional costs for employers and injured workers. A simpler approach, greater consistency, clarification of a number of issues and greater communication between the participants may address many of the issues.

The failure of workers or employers to meet their responsibilities in this area may result in substantial costs to the community. The Committee is concerned that the assumption that workers under some contract arrangements have private insurance has not been tested. The Committee recommends that the Minister for Employment and Workplace Relations request that the Workplace Relations Ministers' Council conduct a study to identify the extent to which workers are currently not covered by any workers' compensation system, with a view to adopting a national standard that covers the widest possible number of workers (*Recommendation 1*).

The Committee believes that if all jurisdictions work cooperatively there is the potential to develop best practice initiatives and greater consistency in scheme design and administration. This would provide opportunities for benchmarking of scheme performance if appropriate and comparable data collection facilitated greater analysis. There is also duplication in the system at the Commonwealth and State levels in terms of developing initiatives, which could be addressed by greater cooperation and awareness of activities in other jurisdictions.

WorkCover Industry Code system

There were suggestions for improvements in the industry codes and greater interjurisdictional consistency. The Committee recommends that the Commonwealth Government, in collaboration with the State and Territory workers' compensation authorities, and with other stakeholders, look at the need to amend the Australian and New Zealand Standard Industrial Classification in relation to its applicability to workers' compensation systems and interjurisdictional consistency (*Recommendation 2*).

Inter-jurisdictional issues

Some states have Memoranda of Understanding to ensure that employees injured in another jurisdiction are not left without cover. The Committee recommends that the Minister for Employment and Workplace Relations request that the Workplace Relations Ministers' Council continue to work towards the introduction of

nationally consistent Memoranda of Understanding between the jurisdictions to ensure that employees have equivalent workers' compensation cover when working in other jurisdictions (*Recommendation 3*).

National database

Currently there is little consistency in the format or the data collected, which makes interstate comparisons difficult. Better data about actual claims experience would enable a proper analysis of the instances that give rise to claims. It is extremely difficult to establish meaningful national benchmarks, to identify performance standards or to monitor emerging trends on a national basis, although the National Data Set for Compensation-based Statistics is a positive step in this direction. Improved data recording would also enable industry trends in terms of health and safety and workers' compensation management to be tracked.

Repeat offenders

There was also some support for a centralised database on fraud as there is no way of identifying repeat offenders. Further, it was suggested that an effective reporting process would also identify a claimant who has seen a large number of medical practitioners in a short time in an attempt to find one who would confirm the work-relatedness of an injury or illness. Access to Health Insurance Commission records could assist in looking at the work relatedness of an illness.

The Committee has a number of concerns about the implementation of a national database on fraudulent activities. Although there are significant potential benefits in terms of the capacity to analyse trends and issues, there are a number of potential dangers. For example, the Committee received a number of allegations about inappropriate activities by service providers and investigators, which raises concerns about injured workers being unjustly included on the database.

It was argued that a national database would ensure that injured workers are placed in the best role for them. Such a database would assist with the redeployment of injured workers to assist rehabilitation and would ensure that they were not put into a position where another level of problems occurs. The Committee is also concerned that a national database would create a subclass of untouchable injured employees who would not be able to find employment again.

A database could also include information on non-compliant employers, service providers and insurance agents or companies who have been prosecuted or penalised for inappropriate activities or practices.

Data sharing

In some jurisdictions the workers' compensation schemes have in place legislative powers to disclose information to other statutory bodies within that jurisdiction.

However, data matching raises considerable privacy issues which would need to be addressed. The Committee recommends that the Commonwealth Government:

- examine the need to extend the National Data Set for Compensation-based Statistics, to provide nationally relevant workers' compensation data that assists meaningful interjurisdictional comparisons for policy analysis and contributes to the development of a national framework.
- further investigate the implications and appropriateness of a national database on workers' compensation claims which identifies injured workers, employers, service providers and insurance companies.
- further investigate the implications and appropriateness of additional data matching capacity between Commonwealth agencies and the State and Territory workers' compensation authorities

The Committee strongly believes that confidentiality should be exercised in relation to the use of these databases (*Recommendation 4*).

Currently the Commonwealth does not collect information on the compensation history of Centrelink clients unless it impacts on the individual's income support entitlements. The Committee believes that this information should form part of the national database to assist in the analysis of emerging trends and the identification of best practice initiatives in workers' compensation management. The Committee recommends that the Commonwealth, with the States and Territories, conduct a qualitative study of injured workers who have received a lump sum or who have been in receipt of workers' compensation benefits for twelve or more continuous months, to identify if they have subsequently accessed income support entitlements and to determine the extent to which this system is subsidising the workers' compensation industry (*Recommendation 5*).

Commonwealth social security benefits

A number of submissions refer to the transfer of costs to the taxpayer in situations where employees are willing to work but are denied the opportunity. It was strongly argued that this is very stressful for people who find themselves in this situation, and is a very unsatisfactory outcome for people who wish to lead a meaningful life through their work. Social security was not established to subsidise insurance companies.

It was suggested that there needs to be national uniformity in relation to the interfaces between workers' compensation and health and social welfare, so that these are clearly known, understood and designed.

The Committee recommends that the Minister for Employment and Workplace Relations work with the Workplace Relations Ministers' Council to develop a set

of benchmarks and best practice for all aspects of workers' compensation to ensure that the responsibility for assisting people suffering compensable injuries rests with the compensation authorities and not with taxpayer funded social security programs or the burden placed on the injured worker (*Recommendation 6*).

Taxation legislation

There are issues that need to be resolved in relation to the crossover between Commonwealth and State legislative systems. The Heads of Workplace Safety and Compensation Authorities is currently examining the implications of the Federal Government's taxation reforms on aspects of workers' compensation schemes. The Committee recommends that the Commonwealth Government urgently investigate the extent to which current taxation legislation is inhibiting initiatives of workers' compensation schemes which may benefit the injured workers, such as structured settlements (*Recommendation 7*).

Health services

If there were a national system, the Council of Small Business Organisations of Australia would like to see minor injuries treated by the employee's doctor or local hospital, without processing this as a workers' compensation claim, which would increase the cost. It was suggested that the insurer would be notified to protect the employee in case later complications of a more serious nature developed.

It is a widely held view that the majority of medical support is professional and appropriate. However, at the margins there is evidence that some doctors feel pressured into signing workers' compensation certificates while at the other extreme some medical panels can be unduly harsh and confusing for claimants, effectively delaying rehabilitation and return to work and contributing to "acquired disability". The Committee recommends that the Minister for Employment and Workplace Relations work with the Workplace Relations Ministers' Council to develop a process for identification and national implementation of best practice to consider initiatives such as the Queensland Government's approach of educating and maintaining a close relationship with doctors and requiring them to fill out a form declaring that the injury is work related (*Recommendation 8*).

The extent to which the Medicare system is utilised for workplace injuries by those who do not enter the workers' compensation system is unknown. The establishment of a national database would facilitate the identification of those on workers' compensation and enable the monitoring of Medicare for the treatment of workplace injuries. The Committee recommends that the Commonwealth Government determine the extent to which the medical expenses of injured

workers are being met by Medicare and the extent to which this system is subsidising the workers' compensation industry (*Recommendation 9*).

Plaintiff lawyers

The advice offered by lawyers may not always be in the best interests of the clients in terms of the goal of achieving a timely return to work. Some solicitors may encourage clients to keep their options open by not returning to work and maintaining a level of disability. It was alleged that some lawyers allowed claims to drag on for years, and that there was systematic collusion.

The Committee received arguments for and against access to common law for injured workers. It was suggested that legal action was encouraged even if a claim was unlikely to succeed, on the presumption that the matter would be settled out of court. However, it was argued that one of the benefits of common law is that in its absence there is no incentive to provide a safe working environment if the employee cannot sue for negligence.

On the other hand, it was argued that common law has been the greatest barrier to successful injury management or return to work. Workers may be encouraged to act in a manner which would maximise a possible lump sum payment because of access to common law. It was suggested that there be some limitation on the common law approach.

The Committee is concerned that while in some cases settlements may be the appropriate option, in other situations injured workers come to believe that there is no advantage in returning to work as they believe that the lump sum will set them up for the rest of their life.

Monetary compensation is about compensating people for their loss and not about fixing the problem, while compensation schemes are moving towards early intervention and return to work and a normal life. Workers' compensation schemes are designed to look after the health of people and money is just another tool for getting the job done.

The Committee recommends that the Minister for Employment and Workplace Relations work with the Workplace Relations Ministers' Council to implement a process whereby the relevant agencies or authorities in each jurisdiction forward educational material to the injured worker on the various options available and the possible associated pitfalls, and offer financial counselling and support through Centrelink with the view to ensuring a timely return to work where possible (*Recommendation 10*).

Occupational health and safety

The legislative provisions covering rehabilitation and return to work, and the approaches to the management of occupational health and safety, vary in different jurisdictions. In 1995 the Industry Commission found over 150 statutes which regulate health and safety at work across Australia. Efforts have been made to reduce the complexity but there is still significant work to be done.

The National Occupational Health and Safety Strategy for 2002 – 2012 highlights the unacceptable level of workplace injury and fatality. The Workplace Relations Ministers' Council has committed to five national priorities and nine areas for national action. The Committee commends these initiatives and looks forward to seeing the results of this cooperative approach.

Rehabilitation and return to work

Similarly, there would be advantages in the implementation of nationally consistent rehabilitation and return to work practices, and measurement of occupational rehabilitation outcomes to identify where best practice is occurring. A set of national occupational rehabilitation standards would ensure that quality occupational rehabilitation services are being delivered nationally. The NOHSC has developed guidance notes for best practice rehabilitation management of occupational injuries and disease. The Committee recommends that the Commonwealth Government, in collaboration with the States and Territories, develop a program to implement the National Occupational Health and Safety Commission *Guidance notes for best practice rehabilitation management of occupational injuries and disease* nationally (*Recommendation 11*).

Another issue of concern was the extent to which there is vertical integration in situations where insurance companies own and operate rehabilitation and return to work providers. There is frequently a dilemma between the financial incentive for the insurer to process the worker's compensation claim expediently and ensuring the best possible long-term outcome for the injured worker. There is currently inadequate accountability. The Committee recommends that the Minister for Employment and Workplace Relations work through the Workplace Relations Ministers' Council to eliminate vertical integration whereby insurance companies own and operate rehabilitation and return to work providers (*Recommendation 12*).

It was suggested that returning injured people to work could be better managed through a larger plan, and that the Commonwealth has available the Job Network program and Jobsearch database. The Committee recommends that the Commonwealth Government, in collaboration with the States and Territories, investigate the potential interface of Commonwealth employment schemes with State re-employment programs, to develop more effective ways to assist injured

workers to return to work, including communication of this information to providers who are responsible for return to work programs, without additional cost to the Commonwealth (*Recommendation 13*).

Concluding comments

There are a number of current and previous reviews which overlap the issues outlined in the terms of reference for this inquiry. Accordingly, the Committee believes that it may be timely for the States, Territories and the Commonwealth to consider jointly the feasibility, benefits and disadvantages of greater national consistency in workers' compensation arrangements. While the Committee believes that the primary responsibility for workers' compensation and occupational health and safety should stay within the respective Commonwealth, State and Territory jurisdictions, there is significant capacity for increased national consistency and cooperation.

There is a need to ensure that injured workers are not falling through the gaps when they are working in more than one jurisdiction and that the employer should not have to obtain cover for a particular worker in a number of jurisdictions. There would also be considerable benefit in greater administrative and operational consistency for employers operating in more than one jurisdiction.

There is also a need to develop an agreed position on a number of definitions, particularly that of employee, as there are a number of 'workers' not covered by a workers' compensation scheme, who may not have taken out an alternative forms of insurance. There is the potential for the cost of an injury to fall on the Commonwealth social security system or the state's secondary funds. The Committee recommends that the Commonwealth Government support and facilitate where possible the development of a national framework to achieve greater national consistency in all aspects of the operations of workers' compensation schemes (*Recommendation 14*).

The Committee believes that streamlining the workers' compensation system has the potential to have a much greater financial impact than allocating significant additional resources to the detection of fraud. Much of the perceived fraud is related to incompetence and inefficiencies within the existing schemes and participants in the process. If the system operated more effectively and efficiently, with greater accountabilities, this would largely eliminate any fraudulent behaviour.

It is generally accepted that in most situations the level of employee fraud is minimal. The Committee believes that caution should be exercised in the allocation of money for the detection and elimination of fraud. This allocation must have some relevance to the level of fraud and the impact of fraud on premium levels for employers. With the current system in place, in many

instances, resources would be better allocated to preventive activities and improving efficiency.

An important aspect of workers' compensation is that culture, custom and practice can have a significant impact on the economic and non-economic costs of claims. Many of the problems arise from the administration, practices and attitudes of some employers, service providers, insurers and workers' compensation schemes. The accountability of each of the sectors of the workers' compensation system needs to be enhanced and the qualitative aspects as well as the quantitative aspects must be appropriately dealt with in achieving an equitable balance.

The Committee is particularly concerned with the level of suicides among injured workers. This aspect is worthy of attention in all workers' compensation schemes.

In relation to injured workers, of particular concern are the return to meaningful employment, the support required for those who need major changes to their careers, and the need for explanation of the benefits of appropriate alternative options to a lump sum payment for those unable to return to work.

The need for early rehabilitation and for encouraging early return to work cannot be underestimated in terms of personal and financial costs. There are opportunities for greater accountability of service providers. A move to evidence based medicine and exception based reporting will address many of these issues. As the focus moves more to outcomes and a quicker return to work for the injured worker, these costs will be reduced.

This in turn should ensure a significant reduction in the involvement of 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.

Of concern to the Committee were the reports of inefficient, unethical and inappropriate actions by investigators who are engaged to monitor an injured worker's behaviour. This is one area that should be relatively easily addressed and the Committee urges all jurisdictions to look at their activities in this area. The Committee recommends that the Minister for Employment and Workplace Relations work with the Workplace Relations Ministers' Council to develop, in consultation with other relevant Ministers in each jurisdiction, a national code of practice for those engaged as investigators in pursuing potentially fraudulent claims (*Recommendation 15*).

Greater communication and cooperation between the participants are essential. A greater focus on partnerships involving all participants will result in a better alignment of expectations. Without this cooperation there is a significant cost to the community through injured workers not attaining their maximum potential

rehabilitation and not receiving optimum management of their disability, and through employers paying higher levies, penalties and premiums, and coping with workplace disruptions.

What is also evident to the Committee is that there is a great deal of knowledge and expertise in relation to what is best practice in every aspect of the workers' compensation industry. The Committee believes that greater cooperation and liaison between the various partners would enable a number of improvements to workers' compensation, which could result in a simpler, more efficient and effective rehabilitation of injured workers, and at the same time reduce or eliminate fraudulent activities and the associated costs.

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Introduction

Workers' compensation

- 1.1 Workers' compensation schemes should aim to provide workers with a meaningful and sustainable outcome following a workplace injury. This is best achieved by a return to work appropriate to their capability and supported by early intervention through rehabilitation and retraining as required.
- 1.2 While compensation has been and is the main intent of schemes, the best long term prospects for an injured worker lie in a safe and timely return to work with reasonable compensation for medical costs, work time lost and for non-economic loss in the event of injury.
- 1.3 Workers' compensation schemes should foster a safer working environment with effective prevention strategies to reduce and, to the extent possible, eliminate injuries. A total injury management approach to workers' compensation includes prevention, compensation and rehabilitation.
- 1.4 Schemes should provide compensation at a reasonable cost through active claims management and should achieve a balance between the level of premiums paid by employers and the appropriate, adequate, fair and equitable benefits that are available to the injured workers.

Cost of workers' compensation

- 1.5 Each State and Territory in Australia has a workers' compensation scheme, and there are two at the Commonwealth level. In 1995 the Industry Commission estimated the cost of work related injury and disease to be at least \$20 billion annually.¹ In addition to these costs are the social costs to the injured workers, their families and the community.

1 Industry Commission, *Work, Health and Safety Report No. 47*, 11 September 1995, p. xviii.

- 1.6 In Australia workers' compensation insurance is compulsory and employers are required to obtain cover in each jurisdiction in which they employ workers. Nationally, workers' compensations schemes collected \$5.71 billion in premiums in 2000-01, an increase of 30 per cent from the 1997-98 financial year.² In 2002 only two Australian workers' compensation schemes were fully funded.³
- 1.7 Schemes must be affordable and provide adequate benefits. About 90 per cent of workers' compensation claims proceed through the relevant scheme without any impediment to injured workers receiving their benefits, followed by a return to work.⁴

The Committee's inquiry and terms of reference

- 1.8 On 20 June 2002 the Minister for Employment and Workplace Relations requested that the House of Representatives Standing Committee on Employment and Workplace Relations inquire into and report on matters that are relevant and incidental to Australian workers' compensation schemes in respect of:
- The incidence and costs of fraudulent claims and fraudulent conduct by employees and employers, and the structural factors that may encourage such behaviour;
 - The methods used and costs incurred by workers' compensation schemes to detect and eliminate:
 - (a) fraudulent claims; and
 - (b) the failure of employers to pay the required workers' compensation premiums or otherwise fail to comply with their obligations; and
 - factors that lead to different safety records and claims profiles from industry to industry and the adequacy, appropriateness and practicability of rehabilitation programs and their benefits.
- 1.9 The Minister's reference of these matters to the Committee was timely as there are substantial human and economic costs of work-related injuries, there have recently been increases in premiums for employers notwithstanding a reported drop in injury rates, and there is a changing labour market, which may mean that up to 40 per cent of the workforce may no longer be covered by workers' compensation schemes under the

2 Workplace Relations Ministers' Council, *Comparative Performance Monitoring Fourth Report*, August 2002, p. 74.

3 Workplace Relations Ministers' Council, *Comparative Performance Monitoring Fourth Report*, August 2002, p. 52.

4 Mr Harry Neesham, WorkCover Western Australia, Transcript of Evidence, 20 November 2002, p. 177.

existing criteria. There are also suggestions that fraudulent activities by employees, employers and service providers may contribute to the cost.⁵

- 1.10 Further, while the incidence of injuries which result in more than a week off work is decreasing, there continues to be a significant number of claims of longer duration, and about 25 per cent of these claimants have not returned to work after three months.⁶ The Committee was also asked to inquire into the factors affecting safety records and claims profiles of different industries and the adequacy of rehabilitation programs.

The structure of the report

Other inquiries

- 1.11 The Committee notes that there are a number of current and previous inquiries into, or reviews of, workers' compensation arrangements across various jurisdictions.⁷ It is therefore not the intention of this Committee to comment in any detail on the matters under investigation elsewhere.
- 1.12 On 24 July 2002 the Minister for Employment and Workplace Relations, Hon Tony Abbott MP, and Senator the Hon Ian Campbell, Parliamentary Secretary to the Treasurer, jointly announced an inquiry by the Productivity Commission into the streamlining of Australia's various workers' compensation and occupational health and safety schemes. The issues prompting that inquiry include the need for national businesses to acquire cover in up to eight schemes, which results in varying levels of entitlements for employees, depending on where they work and the diverse arrangements for occupational health and safety.⁸

5 Department of Employment and Workplace Relations, Submission No. 48, p. 3.

6 Department of Employment and Workplace Relations, Submission No. 48, p. 4.

7 For example, Industry Commission *Workers' Compensation in Australia, Report No. 36*, February 1994; Industry Commission *Work, health and safety: An inquiry into occupational health and safety*, September 1995; NSW Review of Employers' Compliance with Workers' Compensation, Premiums and Payroll Tax; NSW Legislative Council's General Purpose Standing Committee *Review and Monitoring of the NSW Workers' Compensation Scheme*, September 2002; WorkCover Queensland, *Restoring the balance: Delivering a fair and equitable system of workers compensation in Queensland*, March 1999; Labour Ministers' Council *Promoting Excellence: National Consistency in Australian Workers' Compensation*, May 2001; Mr Robert Guthrie, *Report on the Labor Party Direction Statement in Relation to Workers' Compensation*, Presented to the Workers' Compensation and Rehabilitation Commission, July 2001; Joint Select Committee of Inquiry, *Tasmanian Workers' Compensation System*, May 1998; South Australian Government, *Review of Workers Compensation and Occupational Health, Safety and Welfare Systems in South Australia, Issues Paper*, August 2002; Victorian WorkCover Authority, *Strategy 2000*.

8 The Hon Tony Abbott, MP, Minister for Employment and Workplace Relations and Senator the Hon Ian Campbell, Parliamentary Secretary to the Treasurer, Joint Media Release, *Government to Consider Workers' Compensation Reform*, 24 July 2002, p. 1.

The Committee's inquiry

- 1.13 There are significant differences in perceptions of what constitutes fraud or fraudulent behaviour, depending on the individual's role and experience with workers' compensation schemes and the various participants in the management of claims. As background to this inquiry, Chapter 2 provides a brief outline of the issues raised in relation to the need for clarification and consistency in the definitions of fraud, injury and employee, and what is described as fraudulent activities by the various participants. In an adversarial and litigious industry, incompetence, mismanagement, inefficiencies, indecision and delays are sometimes perceived by other participants as deliberate fraud.
- 1.14 In attempting to ascertain the extent of the incidence of fraud perpetrated by employees, employers, service providers, insurance companies and workers' compensation schemes, the Committee found significant differences in opinion but an almost complete absence of proof. These matters are discussed in Chapter 3. While the Committee appreciates that the cost of fraud is difficult to measure, some submissions provided estimates, or in many cases 'guesstimates', of figures for particular aspects of schemes. These were fragmented, and none of the amounts provided to the Committee comprehensively cover the amount of fraud in any area, and in most cases the incidence and cost of fraudulent activity was simply unknown.
- 1.15 A number of operational issues and aspects of current practice that hinder the effective management of workers' compensation schemes were identified in submissions. These are discussed in Chapter 4. Some were specifically identified as encouraging or enabling fraudulent activities while others perpetuated gross inefficiencies which are perceived by other participants as fraud. Notwithstanding the lack of precision in estimating the incidence and cost of fraudulent activities, there are a number of structural factors that provide significant potential for improvement. Addressing these aspects would also significantly reduce the opportunities for participants to err inadvertently or to deliberately abuse the system.
- 1.16 Chapter 5 deals with the detection and elimination of fraud and fraudulent behaviour. While some compensation schemes have sophisticated operational detection schemes, some insurers or agents do not have the capacity to investigate fraud. The inquiry revealed considerable concern about the mechanisms used to detect and deal with fraud by insurance companies, including surveillance activities and the attitudes and approaches taken by some service providers. Some claimants believe that unethical practices are used to intimidate workers.

- 1.17 Many of the activities perceived as fraud or fraudulent behaviour may be inaction or incompetence but nonetheless need to be rectified. The extent of these problems indicates that many aspects of workers' compensation urgently require significant reform.
- 1.18 There are many factors, legislative, economic and organisational, as well as inherent risks in different kinds of work, that are recognised as impacting on safety performance. These are outlined in Chapter 6. Conclusions on the impact of safety initiatives are necessarily qualified by varying definitions and inadequate data collection methods across jurisdictions and schemes.
- 1.19 Employers have a key role in managing safety and facilitating rehabilitation and return to work. However, the operation of workers' compensation schemes needs to be examined to determine their impact on claims profiles. The trend of increasing duration of claims leading to increasing costs is affecting the credibility of schemes in the face of some reduction in reported workplace injury. Improved workplace practices linked to premium reduction is considered to be one effective incentive to reduce workplace injury.
- 1.20 The findings in Chapter 7 indicate that early access to rehabilitation and injury management, and return to work, lead to improved outcomes for the injured worker, the employer and the workers' compensation system generally. A more cooperative and supportive approach by all parties is advocated to encourage partnerships to assist injured workers. The Committee regards a better demonstration by medical practitioners and rehabilitation providers of evidence based treatment in occupational medicine as a key to the improvement of services. The Committee also considers that claims and case management systems in many jurisdictions require review to facilitate optimum rehabilitation and a sustainable return to work, where appropriate. Other key areas for improvement include the provision of appropriate retraining options for injured workers and support for rural workers and small business.
- 1.21 The Committee believes that the need to address the current inadequacies and streamline the workers' compensation system is much more important than allocating significant additional resources to the detection and elimination of fraud. If the system operated more effectively and efficiently, this would largely eliminate opportunities for fraudulent behaviour by any of the participants. Chapter 8 looks at national issues and the need for greater interjurisdictional consistency in a number of key areas.

Aim of the report

- 1.22 The aim of the report is to provide the Parliament with an insight into the current issues facing the Australian workers' compensation schemes in relation to fraudulent activities, the concerns of the community and opportunities to encourage the improvement of existing arrangements.
- 1.23 The Committee hopes that this report will inform the Parliament in its future consideration of workers' compensation and occupational health and safety arrangements. The Productivity Commission inquiry will no doubt provide further input in relation to many of the issues raised in this report.

2

Background

- 2.1 One of the issues raised consistently during this inquiry was the lack of uniformity in definitions and entitlements of key aspects of workers' compensation. While it is universally accepted that all workers are entitled to compensation for work related injury and disease, it is also important that the coverage and benefits available to injured workers in Australia should not differ significantly depending on the industry or the jurisdiction.
- 2.2 These inconsistencies in definitions and entitlements can lead to confusion and misinterpretation, particularly for employers and employees operating in more than one jurisdiction. This also results in an inability to make meaningful comparisons of data collected in the various jurisdictions, and this hinders policy analysis and the identification of emerging trends and best practice.

Fraud

- 2.3 There is significant subjectivity in the assessment of what constitutes fraud and fraudulent behaviour. Submissions to the inquiry indicate that the perceptions of fraudulent behaviour are by no means consistent across the various participants involved in workers' compensation.
- 2.4 The Department of Employment and Workplace Relations (DEWR) defines fraud in the workers' compensation context as:
- any deceitful or dishonest conduct, involving acts or omissions or the making of false statements orally or in writing, with the object of obtaining money or other benefit from, or evading a liability. In general terms, fraud is the use of deceit to obtain an advantage or avoid an obligation; or
 - any intentionally dishonest act or omission done with the purpose of deceiving. Fraud can be committed by workers, employers,

lawyers, service providers like medical and health practitioners, and interpreters; or

- an intentional act or series of acts resulting in payments or benefits to a person or entity that is not entitled to receive those payments or benefits.¹

2.5 More generally, fraud can include dishonest advantage, trickery, sharp practice, or breach of confidence, by which it is sought to gain some unfair or dishonest advantage.

2.6 The definition of fraud is complex as it covers a number of situations where the level of intent cannot be determined. DEWR included in the definition of fraud activities that arise from misunderstanding by employers and employees of their obligations. The Department stated that some acts or omissions by employers, employees or service providers could be considered fraud even though they were unintentional, and that an employer or employee could have to defend themselves against a charge of fraud through their inadvertence.²

2.7 Employers First believe that much of the exaggeration of injury is deliberate and conscious and therefore fraudulent, but posed the question as to whether subconscious exaggeration is also fraudulent in some circumstances.³

2.8 Some saw this as a spectrum, which starts with unwitting and innocuous embellishment that is then reinforced by doctors, solicitors, unions, family and friends until it becomes a deliberate, conscious and focussed attempt to deceive. Insurance Australia Group agreed that the lack of consensus for a definition of fraud in workers' compensation, as distinct from exaggeration and behaviours typical of an adversarial system, is a significant issue.⁴ The ACT Government made the point that:

The nature and structure of compensation schemes, the adversarial approach often taken by parties to a compensation claim and an increasingly litigious attitude in the community make it very difficult to distinguish fraud with criminal intent from what simply amounts to each party asserting their legal rights in the system in which they find themselves operating. In combination with the lack of practical experience and understanding of the processes involved

1 Department of Employment and Workplace Relations, Submission No. 48, p. 9.

2 Department of Employment and Workplace Relations, Submission No. 48, p. 9.

3 Mr Garry Brack, Employers First, Transcript of Evidence, 18 October 2002, p. 83.

4 Insurance Australia Group, Submission No. 47, p. 2.

in compensation claims, it is common for a claimant to be perceived as exhibiting behaviours that can be interpreted as fraudulent.⁵

- 2.9 MAXNetwork used the term ‘maladaptive’ fraud in relation to fraud which occurs when people are ‘coping as best they can in their circumstances but it is apparent that the system is not quite matching their needs, so they do other things to cope, without deliberate fraud as their objective’.⁶
- 2.10 In some jurisdictions, the legislation does not provide a definition of fraud. This is the case in the *Commonwealth Workers’ Compensation Amendment Act 2000*. The New South Wales *Workplace Injury Management and Workers’ Compensation Act 1998* defines fraud as an offence by persons who obtain a financial advantage from the workers’ compensation scheme by deception.⁷ The National Meat Association of Australia believes that fraud should be clearly defined in any workers’ compensation legislative scheme.⁸

Injury

- 2.11 In this inquiry, the term injury includes the harm of any kind done or sustained. There was some concern, however, that workers’ compensation schemes have not kept abreast of the changing nature of work injuries.
- 2.12 The Risknet Group asserted that among those concerns is the issue of lifestyle related injuries which often become compensable, because the injury manifests itself at the work site.⁹
- 2.13 Also, with the aging of the workforce and no retirement age, employers may increasingly be exposed to the cost of claims resulting from the aggravation of pre-existing condition. There have been a number of recent changes in workers’ compensation schemes to address this issue. For example, the Queensland Government has changed the definition of injury to ensure that aggravated injury claims are covered.¹⁰ There have been changes to the definitions of stress and musculoskeletal injuries and diseases, and what constitutes a ‘work related injury’, used by WorkCover Queensland.¹¹

5 Australian Capital Territory Government, Submission No. 45, pp. 1-2.

6 Mrs Leonie Green, MAXNetwork Pty Ltd, Transcript of Evidence, 22 November 2002, p. 333.

7 New South Wales, *Workplace Injury Management and Workers’ Compensation Act 1998*, Section 235A.

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

9 The Risknet Group, Submission No. 10, p. 3.

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

11 Workers’ Medical Centre and Queensland Workers’ Health Centre, Submission No. 14b, p. 2.

- 2.14 The Workers Medical Centre (WMC) perceived that changes to the legislation occurred after a number of successful claims, and believes that this has made it difficult for injured workers to demonstrate the work relatedness of their condition. The WMC argued that it is almost impossible to prove a claim for musculoskeletal injury because of degenerative changes to bone structure which are part of the natural ageing process that commences at fifteen years of age. The WMC added that the legislation makes it difficult to receive compensation if workers are unable to claim for what they see as a work related injury, and that this helps create a perception among other participants of fraud by employers.¹²
- 2.15 Despite some changes, there are still a number of matters to be clarified, as the system has incongruent outcomes. For example, Mr Stig Hellsing stated that the outcome of his claim was that he was found to be totally disabled under workers' compensation law and fully capable of working under common law.¹³

Employee/Worker

- 2.16 Over the last two decades different forms of employment have become increasingly prevalent as Australians make choices about work, family, lifestyle and security and as a result of the changes to the Australian economy. These developments include:
- more flexible working hours; a strong growth in casual, part-time and fixed term employment; a rapidly expanding use of contractors and outsourcing; an increase in the number of owner-managers; and moves to home based work and tele-working.¹⁴
- 2.17 The Department of Employment and Workplace Relations commented that all Australian workers' compensation jurisdictions have relied upon the simple common law definition of contract of services (employee) in providing cover to workers, and that this usually excludes those engaged under a contract for services as an independent contractor. The employer's control over the manner in which the work is performed is the determining factor.¹⁵

12 Workers' Medical Centre and Queensland Workers' Health Centre, Submission No. 14b, p. 2.

13 Mr Stig Hellsing, Submission No. 33, p. 1.

14 Department of Employment and Workplace Relations, Submission No. 48, p. 22; See also Tasmanian Joint Select Committee of Inquiry, *Tasmanian Workers' Compensation System*, 1998 and Queensland Government, *Restoring the Balance*, 1999.

15 Department of Employment and Workplace Relations, Submission No. 48, p. 10.

2.18 This approach is not always easily implemented across all industries. In the cleaning industry there are many people working in isolation, which creates difficulties in terms of who is responsible when a claim arises.¹⁶ The Master Cleaners Guild of Western Australia also raised the problem of labour hire trends that further distance the relationship between employer and employee in such arrangements and the tendency:

across the industry - to seek to distance responsibility for workers compensation and public liabilities by contracting out. This understanding on the part of many employers is fundamentally flawed, because it is not possible, by our understanding ... to abrogate responsibility to third parties under such arrangements. There is continuing responsibility on the principal contractor or the principal employer to follow through and enact their responsibilities to supervise the labour hire organisations, the contractors or whoever it may be. So there is a whole area of misunderstanding and misinformation, which indicates a need for education, training and also, very much, clarification of who the principal employer is, who the principal contractor is and the responsibilities of those individuals.¹⁷

2.19 WorkCover Queensland commented that some employers do attempt to employ workers who are outside the definition of worker.¹⁸ The Queensland Government has broadened the definition of worker so that persons under a contract of service including labour-only workers are included.¹⁹ WorkCover Queensland explained that broadening the definition of worker to include a range of different employment relationships provides protection for employers, as they are then not exposed to the potential for common law suits.²⁰ The Committee supports this approach and believes that the Workplace Relations Ministers' Council should consider the adoption of this approach in other jurisdictions.

2.20 Deeming provisions can then be used to provide cover to a range of employee categories that are not included within the contract of service

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

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

18 Mr Gordon Lawson, WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 320.

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

20 Mr Paul Goldsbrough, Queensland Department of Industrial Relations, Transcript of Evidence, 22 November 2002, p. 313.

test. Those performing socially desirable activities such as voluntary fire fighting may also be deemed to be employees.²¹

- 2.21 The recent *Review of Employers' compliance with Workers' Compensation Premiums and Pay-roll Tax in NSW Final Report* found that the complexity of the legislative arrangements used to provide a definition of employees who are covered by workers' compensation cover is a significant factor in employers' non-compliance in that jurisdiction.²²
- 2.22 The manufacturing sector has a high level of casual and labour hire employees.²³ The Australian Manufacturing Workers' Union stated that there is general recognition that casual employees are in a less favourable position than permanent employees. The evidence indicates that while non standard employment arrangements are increasing within the manufacturing industry, these employees are less likely to lodge workers' compensation claims for work related injuries.²⁴ The AMWU pointed out that casuals are less likely to have workers' compensation cover or to have had formal training.²⁵
- 2.23 In relation to the definition of worker in the Western Australian legislation, the Chamber of Commerce and Industry of Western Australia stated that:
- The definition is very complex and does not provide clear direction to employers in a number of areas including payments that may or may not be included as part of a worker's remuneration. Also it does not support more contemporary labour market arrangements in that it requires both the direct employer of a contracted employer to obtain workers' compensation insurance cover as well as the employer to whom that worker is contracted.²⁶
- 2.24 The Master Cleaners Guild of Western Australia added the need to clarify the terms 'principal employer' or 'principal contractor' to address the issue of duplication of insurance cover that currently exists.²⁷ In

21 Department of Employment and Workplace Relations, Submission No. 48, p. 10.

22 *Review of Employers' Compliance with Workers' Compensation Premiums and Pay-roll Tax in NSW – Final Report*, September 2002, p. 32.

23 Australian Manufacturing Workers' Union, Submission No. 35, p. 5.

24 Australian Manufacturing Workers' Union, Submission No. 35, p. 5.

25 Australian Manufacturing Workers' Union, Submission No. 35, p. 5 citing the ABS *Employment Arrangement and Superannuation Report* March 2001 No. 6361.0.

26 Chamber of Commerce and Industry of Western Australia, Submission No. 21, p. 6.

27 Master Cleaners Guild of Western Australia Inc, Submission No. 59, p. 6.

Queensland some employers were found to have made errors in deciding whether a person was covered by the definition of worker.²⁸

2.25 The Australian Manufacturing Workers' Union commented that:

The difficulty is that the labour hire firm really does not have any day-to-day control over the health and safety practices at the host employer's site, nor do they have any ability to place people for rehabilitation because there is no legal responsibility on the host employer to provide rehabilitation opportunities.²⁹

2.26 In response to the increase in the level of uncertainty about the extent of workers' compensation coverage and entitlements with these changing working arrangements, DEWR expressed concern at the lack of change in Australian workers' compensation schemes to reflect this trend:

The approach adopted to date appears to be focused on increased attempts to reincorporate within the system those under new arrangements, rather than recognise that employers and employees are making legitimate choices – including alternative injury risk assumptions and insurance arrangements ... seeking to identify a possible resolution in isolation and a resolution that involves potentially further layers of complexity and the further attenuation of the common law test of employment.³⁰

2.27 Submissions to the Committee noted a wide range of activities by employees, employers, service providers, insurance companies and workers' compensation schemes that were considered fraudulent by the various participants in the process. These are listed below under these various categories.

Employee fraud

2.28 The various activities which may be perceived as fraudulent behaviour by employees included:

- providing false statements or information in connection with claims including claiming for treatment not received, failing to inform WorkCover of return to work, claiming for an injury that is not work related, or exaggerating the extent of injury;³¹

28 Mr Gordon Lawson, WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 320.

29 Ms Gwyneth Regione, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, p. 383.

30 Department of Employment and Workplace Relations, Submission No. 48, pp. 23-24.

31 Department of Employment and Workplace Relations, Submission No. 48, pp. 16-17.

- providing false statements or information in connection with claims including claiming for an injury that did not occur in the workplace, working elsewhere while receiving benefits, false medical certificates, or self-employed people using a claim as ongoing income while there is a dispute over the level of incapacity;³²
- claiming for an injury that does not exist or has not arisen in the course of employment, claiming weekly payments whilst receiving other undeclared earnings, altering medical certificates to obtain compensation or an increased benefit, providing false information in relation to a claim for compensation, or substantial activity which contradicts medical certificates/reports;³³
- claims for accidents or injuries that did not occur in the workplace, work elsewhere while on 'total incapacity' claims, workers who claim total incapacity and play competitive sport on weekends, altered certificates of incapacity, exaggeration of extent of injury, falsely representing the nature and extent of injury to doctor to obtain medical certification, claims commencing following redundancy payouts or plant closing down, 'milking the system', or employees resume normal duties with another employer after settlement of claim;³⁴
- supplementing their income with 'cash in hand' work, prolonging their recovery and limiting their return to employment, or exaggerating their level of disability;³⁵
- claiming when there is no injury, injury sustained but not in the workplace, gross exaggeration of workplace injury, injury that occurred with a previous employer or on a second job, or copy cat claim;³⁶
- overstatement of level of impairment and disability;³⁷
- claiming when there is no injury or illness, or when the injury is not work related, having a second job while receiving compensation, or exaggeration or embellishment of injury to continue receiving compensation;³⁸
- having a script at work to verify injury and behaving differently away from work, or getting preferred duties by getting the medical practitioner to list these as the only duties a worker can do;³⁹

32 Insurance Australia Group, Submission No. 47, pp. 2-3.

33 Australian Plaintiff Lawyers Association, Submission No. 39, p. 4.

34 National Meat Association of Australia, Submission No. 41, pp. 3-4.

35 MAXNetwork Pty Ltd, Submission No. 4, pp. 2-3.

36 Australian Industry Group, Submission No. 53, pp. 6-10; See also Mr Mark Goodsell, Australian Industry Group, Transcript of Evidence, 18 October 2002, p. 53.

37 Mr Kerry Jones, Master Cleaners Guild of Western Australia Inc, Transcript of Evidence, p. 213.

38 Victorian Automobile Chamber of Commerce, Submission No. 65, p. 4.

39 Dr Christine Roberts-Yates, Transcript of Evidence, 21 November 2002, pp. 261-2.

- employees who are not suited to a particular position finding it easier to be paid not to work on workers' compensation, than to claim unemployment benefits or to look for alternative work;⁴⁰ or
- workers assuming two identities and opening two claims with two different employers at the same time.⁴¹

2.29 MAXNetworks Pty Ltd believes that while few injured workers deliberately set out to commit fraud, many participate in fraudulent activities.⁴² The National Meat Association of Australia believes that the prolonging of claims is a greater problem than predetermined fraud by employees. Employers are frustrated by difficulties in getting people back to work:

The efforts of the companies in getting people back to the workplace are frustrated because of the medical reports and the reactions from the employee of not being fit to come back and even do suitable or light duties.⁴³

2.30 The Master Cleaners Guild of WA agreed that outright fraud is not an issue, but overstating a worker's impairments and disabilities that prevents complying with injury management and vocational rehabilitation is anecdotally reported.⁴⁴

2.31 The identification of fraudulent activities is not always clear cut:

There is definitely more sympathy for visible injuries. There is also the issue of how one manages visible injuries which become invisible but with lingering pain. So the psychosocial aspects are really important. All the stakeholders must enable the worker to move forward rather than disable the worker by focusing on the pain syndrome. But I do not think I would like to be the doctor or whoever determining whether it was fraud, because the variables are so many. But, yes, if a person with an invisible injury had a protracted claim there would be bias or suspicion that there was fraud, though it would not necessarily be stated.⁴⁵

40 Confidential submission.

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

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

43 Mr Ken McKell, National Meat Association of Australia, Transcript of Evidence, 13 November 2002, p. 151.

44 Master Cleaners Guild of Western Australia Inc, Submission No. 59, p. 2.

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

Employer fraud

2.32 The various activities which may be perceived as fraudulent behaviour by employers included:

- not obtaining insurance cover, fragmentation of businesses that have common ownership to reduce overall liabilities for workers' compensation, underinsurance by not declaring wages that form part of the definition of remuneration for premium purposes, exclusion of deemed workers from wage declarations, artificially isolating lower risk activities undertaken into separate entities within a group, providing false statements in connection with an application for an insurance policy, deducting monies from wages for workers' compensation purposes, failing to pass on compensation benefits to workers or passing on a lesser amount, or informing workers that they are not covered by compensation;⁴⁶
- provide incorrect information concerning rights and entitlements, not paying employee's full entitlements and/or withholding access to certain services, automatically rejecting claims and delaying the process leaving the employee without adequate income support, or putting up continual obstacles making the process distressful and difficult;⁴⁷
- underinsurance and employer premium avoidance;⁴⁸
- safety breaches not recorded, people not encouraged to record safety concerns and unaware that they could or how to report these, management taking over OHS role if cannot find a representative on their side, fear of being labelled a WorkCover fraud prevents people reporting safety breaches, or supporting the view that workers' compensation is for physical injury only;⁴⁹
- incorrectly informing employees that they are not covered under the legislation or by the workers' compensation scheme, failure to declare remuneration/wages for the purposes of evading or minimising the insurance premium, incorrectly classifying the business to attract a lower premium, not having workers' compensation cover, deducting monies from wages for the purposes of workers' compensation premiums, pressuring employees to take other leave instead of lodging a workers' compensation claim, failing to submit a claim to the insurer, requesting employees to enter into a work agreement that does not reflect the true nature of the working relationship, coverup of company negligence during the case, such as modifying equipment after an injury to avoid occupational health and safety prosecution, or failing to comply with Occupational Health and Safety Standards;⁵⁰

46 Department of Employment and Workplace Relations, Submission No. 48, pp. 11-12.

47 Australian Nursing Federation, Submission No. 67, p. 4.

48 Mr Harry Neesham, WorkCover Western Australia, Transcript of Evidence, 20 November 2002, p. 179; The RiskNet Group, Submission No. 10, pp. 4, 9.

49 Confidential submission.

50 Australian Plaintiff Lawyers Association, Submission No. 39, p. 9.

- providing false statements or information during a claims process;⁵¹
- using duress to prevent employee's lodging claims, employers not paying on an accepted claim,⁵²
- not paying premiums, deeming employees to be independent contractors, failure to process workers' compensation claims, underestimation of payroll, misrepresenting the nature of the enterprise to achieve lower premium ratings, failure to take out policies in all jurisdictions in which work might be undertaken, failure to provide suitable duties for injured workers, or failure to give access to quality rehabilitation and vocational training services;⁵³
- understating their position by providing false statements of wages and employee numbers, not having insurance at all, or not paying the correct premium for the particular industry;⁵⁴
- failure to enter into appropriate insurance arrangements, falsifying claim or payment records to adjust insurance premiums, or falsifying records to exhort money from insurers;⁵⁵
- failure to pay premiums, pay premiums at a lower level than required, fail to process workers' compensation claims, providing incentives for workers not to lodge claims, not providing suitable duties for injured workers, failure to give access to quality rehabilitation and vocational retraining services, discrimination against injured workers during redundancy processes, incorrect classification of work to pay lower premiums, incorrect number of employees insured, not paying premiums in relevant jurisdictions, pressure employee to take other types of leave, strategies to limit workers access to their entitlements, use of income protection schemes for work related injuries, not submitting claims, or not advising employees of the need to fill out a worker report form;⁵⁶
- providing a statement of wages and employee numbers which are false by underestimating their true position, self-employed people using a claim as a form of ongoing income whilst there is a dispute over the level of incapacity;⁵⁷
- not providing suitable duties for rehabilitation of injured workers, or providing cash in hand employment to someone who has English as a second language and then claiming that they were a contractor when injured;⁵⁸

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

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

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

54 Injuries Australia Ltd, Submission No. 27, p. 2; Labor Council of NSW, Submission No. 52, p. 4.

55 Comcare, Submission No. 32, p. 16.

56 Australian Manufacturing Workers' Union, Submission No. 35, pp. 1-2, 7-9.

57 Insurance Australia Group, Submission No. 47, pp. 2-3.

58 Dr Sherryl Catchpole, Workers' Medical Centre, Transcript of Evidence, 22 November 2002, p. 343; Workers' Medical Centre and Queensland Workers' Health Centre, Submission No. 14a, p. 2.

- forcing an employee to sign a discharge form denying the injury or stating that there was no employer negligence;⁵⁹
- not paying a premium or percentage;⁶⁰
- coverup of company negligence;⁶¹
- ignoring duty of care by encouraging employees to work faster or requiring them to perform at a level that ignores internationally recognised safety limits in order to increase productivity, falsifying claim records, not providing adequate tools or equipment in good working order, not providing adequate training in the use of dangerous equipment, providing some safety equipment to enable a worker to continue working in an area, without fixing the problem, denying or hindering attempts to get medical assistance and rehabilitation, intimidating treatment of medical practitioners who provide workers' compensation certificates, or declaring bankruptcy to avoid payment of back wages;⁶² or
- failure to report incidence to a workers' compensation scheme within the required timeframe, failure to record incidents or work injuries, falsely denying report and observation, lack of notices advising of the need to report incidences, or making genuine injuries appear to be non-genuine or fraudulent.⁶³

2.33 The Department of Employment and Workplace Relations notes that all schemes contain provisions to ensure that injured workers still have compensation coverage if the employer does not have insurance cover. Also, an injured employee who cannot identify the employer may be eligible for assistance under the Commonwealth's social security system.⁶⁴ The extent to which the nominal funds are used may reflect the level of compliance in that jurisdiction or the extent to which the injured worker uses other sources rather than obtaining compensation through the scheme.⁶⁵

Employer obligations

2.34 It is the responsibility of the employer to ensure that the injured worker is treated with respect, compassion and dignity, that the claims are dealt with in a genuine and timely fashion, and to provide a return to work to

59 O'Halloran & Associates, Submission No. 62, p. 2.

60 Mr Markham Moore-McQuillan, Submission No. 16, p. 3.

61 Name withheld, Submission No. 1, p. 1.

62 Injured Persons Action & Support Association, Submission No. 69, Appendix 1.

63 Mrs Muriel Dekker, Submission No. 57, p. 2; Mrs Muriel Dekker, Workers' Compensation Support Network, Transcript of Evidence, 22 November 2002, p. 348 and Submission No. 5, p. 1.

64 Department of Employment and Workplace Relations, Submission No. 48, pp. 9-10.

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

the same or an equivalent position with the agreement of the worker, medical practitioner and other representatives.⁶⁶

- 2.35 The Australian Manufacturing Workers' Union made the point that when a business changes hands the new employer does not have the same legal obligations for the injured workers as the previous employer and that when the new owners restructure and downsize the injured workers are often the first to be laid off if staff are selected on the basis of skills.⁶⁷

Service provider fraud

- 2.36 The various activities that may be perceived as fraudulent behaviour by service providers included:

- submitting false invoices for services not provided, or overservicing by rehabilitation providers;⁶⁸
- submitting false invoices for services not provided;⁶⁹
- medical incompetence and unprofessional behaviour of general practitioners;⁷⁰
- allowing the claim to drag on for years before settlement, possibly meaning more money for lawyers;⁷¹
- overservicing by rehabilitation providers, medical practitioners who accept the word of the patient without verification of accuracy of claims, and the current system provides incentives for legal practitioners to encourage their client to enhance, exaggerate and in the worst cases fabricate the nature of their claims;⁷²
- claims being granted with money amounts far outweighing the injury, lawyers chasing speculative actions and fuelling the fire, doctors providing certificates on the flimsiest of evidence or doctors showing complete partiality to the worker, insurers and statutory body officers advising employers to 'just pay up', or employee trade unions pushing any compensation claims of members with ferocity and in consultation with sympathetic law firms;⁷³

66 Victorian Trades Hall Council, Submission No. 26, p. 2.

67 Ms Gwyneth Regione, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, pp. 378, 386.

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

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

70 Mr Kerry Jones, Master Cleaners Guild of Western Australia, Transcript of Evidence, 20 November 2002, p. 213.

71 Mr Mark Moore-McQuillan, Transcript of Evidence, 21 November 2002, p. 292.

72 Australian Industry Group, Submission No. 53, pp. 10-12, 24.

73 National Meat Association of Australia, Submission No. 41, p. 4.

- providing misleading or false reports, or doctors representing the insurer, injured worker made to return to work while still in pain;⁷⁴ or
- lawyers allowed case to drag on for years.⁷⁵

2.37 Service provider fraud can be related to activities that the injured worker is not aware of, such as overservicing. The Australian Industry Group stated that this is described as parallel fraud or parallel misrepresentation by service providers and representatives.⁷⁶ Dr Robert Kaplan suggested that some agents are clearly colluding with the claimants in the belief that they are assisting them, although there is also the aspect of ‘tertiary gain’ where they collude with someone in their illness behaviour because of the benefit to themselves.⁷⁷

Insurance company fraud

2.38 The various activities that may be perceived as fraudulent activities by insurance companies included:

- inaction by insurer which contributes to fraudulent claims;⁷⁸
- claims being processed even though the employer seriously questions the genuineness, employers complaining about particular claims and the insurers not having the resources or being unwilling to investigate, or insurers advising employers to just ‘pay up’;⁷⁹
- obtaining medico-legal reports who have a vested interest in providing reports that favour the insurer, or lack of duty of care in not presenting medical reports that favour the injured worker;⁸⁰
- companies are able to buy self insurer status as a commercial transaction without scrutiny of good health and safety performance, pressuring an injured worker to return to work before they are ready, self insurers making it difficult for injured workers to make claims, self insurer retain exempt status after failing to meet criteria;⁸¹
- endemic systematic collusion or failure to provide natural justice;⁸²

74 Injured Persons Action & Support Association, Submission No. 69, Appendix 1.

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

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

77 Dr Robert Kaplan, Transcript of Evidence, 18 October 2002, p. 101.

78 Australian Industry Group, Submission No. 53, p. 10.

79 National Meat Association of Australia, Submission No. 41, p. 4.

80 Mr Stig Hellsing, Transcript of Evidence, 16 October 2002, pp. 44, 50.

81 Australian Manufacturing Workers’ Union, Submission No. 35, p. 9; Dr Deborah Vallance, Australian manufacturing Workers’ Union, Transcript of Evidence, 26 November 2002, p. 375; Ms Gwyneth Regione, Australian Manufacturing Workers’ Union, Transcript of Evidence, 26 November 2002, p. 276.

82 Workers’ Compensation Support Network, Submission No. 5, pp. 1-2.

- failure to notify the injured worker of contradictions by the employer;⁸³
- failure of insurers to assist injured worker when employer does not report injury accurately;⁸⁴
- cancellation of payments without warning;⁸⁵
- doctor shopping and collusion between insurer and doctors they appoint, delays in processing claims and allowing required surgery, accepting documents not tabled before review for injured workers to see, withholding financial entitlements, use of standover tactics or interfering with witnesses for the claimant, used video evidence that was false including two cases where video was of someone other than the claimant, inconsistencies in admitting liability but only paying partial compensation, failure to advise people of their rights, providing false or misleading information and providing conflicting advice depending on which officer deals with the claim that day, claiming that the staff officer who signed a form was unaware of what they approved, providing wrong and misleading evidence to judge, possible conflict of interest between the rehabilitation provider and the insurer, failure to explain claims process to injured worker and making claimant sign papers without understanding the content, not allowing time for claimant to get specialist reports, failure to pay for services promptly making some service providers reluctant to treat injured workers, or inaction by insurers and failing to return calls when claimant asked questions;⁸⁶ or
- telling employers who employ claimants that their premiums will rise and that they will be audited, or outsourcing to agencies owned by WorkCover employees.⁸⁷

The Committee's comments

2.39 There are significant differences in perception about what constitutes fraud or fraudulent behaviour, depending on the individual's role and experience with the workers' compensation scheme and the various participants in the management of the claim. What is apparent is that there are significant issues in all sectors of the industry and that these are considered to be fraudulent by others involved.

83 Mrs Muriel Dekker, Submission No. 57, p. 1.

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

85 Injuries Australia Ltd, Submission 27, p. 3.

86 Injured Persons Action & Support Association, Submission No. 69, Appendix 1.

87 Mr Mark Moore-McQuillan, Submission No. 16, p. 2 and Transcript of Evidence, 21 November 2002, pp. 295, 300.

- 2.40 In a highly adversarial and litigious industry incompetence, mismanagement, inefficiencies and flaws in the design of schemes are all perceived by other participants as deliberate fraud. At a time when injured workers are at their most vulnerable they are suddenly confronted with a complex, often bureaucratic, system with delays that they do not understand, and they perceive inefficiencies and incompetence as fraud. The increased costs of premiums and the impact on the workplace make employers understandably frustrated if they suspect fraud, especially those who have made significant efforts to introduce appropriate occupational health and safety measures.
- 2.41 The workers' compensation schemes already have in place substantial employee fraud detection processes. A number of jurisdictions are implementing significant strategies to identify and eliminate employer non-compliance in relation to the failure to pay the correct premiums and significant improvements can be expected in this area. Also as the various workers' compensation schemes move to implement evidence based medicine and exception based reporting, and other strategies to increase the accountability of service providers, the issues identified should significantly decrease in prevalence.
- 2.42 A number of submissions expressed concern about fraudulent activities by the workers' compensation schemes and the insurance companies. In a number of jurisdictions improvements in the monitoring and accountability of these sectors of the industry could greatly decrease the perceived extent of fraud at this level. Better explanations of injured workers' rights and the compensation processes would go a long way to relieving the stress experienced by workers in these situations. What is frequently perceived as fraudulent behaviour by claimants may reflect their frustration and inability to negotiate their way through a complex, unfamiliar and bureaucratic process.
- 2.43 There are a number of changes occurring that will affect the types of injuries and the duration of the workers' compensation claims. The trend to an ageing of the workforce, and changing lifestyle, may also affect the type of injury sustained and the extent to which degenerative conditions affect the capacity of the injured worker to make claims. While some workers' compensation schemes have moved to address these issues, there is a need for national consistency.
- 2.44 The number of workers not covered by the current definitions of 'worker' used by the various workers' compensation schemes is also of concern to the Committee. The assumption that these workers have private insurance arrangements has not been adequately tested. The extent to which these workers take responsibility for the costs incurred when they are injured, or

to which these costs are met by the taxpayers through the various Commonwealth programs such as disability support, sickness benefits or Medicare is also unknown. These issues need an urgent and consistent approach.

3

Incidence and cost of fraudulent claims

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

Incidence of fraud

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

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

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

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

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

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

Employee fraud

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Quantifying the level of fraud

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

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

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

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

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

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

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

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

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

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

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

Number of prosecutions

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

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

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

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

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

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

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

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

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

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

Understatement or non-reporting of injury

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

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

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

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

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

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

3.31 The reasons why employees do not lodge claims include:

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

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

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

Impact on injured workers accused of fraud

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

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

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

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

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

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

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

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

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

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

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

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

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

fraud is rare, workers who are treated with dignity get well quicker, and there is a perception of less natural justice in the decision making of self-insurers.⁵⁷

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

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

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

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

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

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

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

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

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

- 3.38 The RSI and Overuse Injury Association of the ACT added that if the injury is treated as real by the workplace rather than as a fraudulent claim, then there are much better outcomes, and that attacks on people's integrity are not very productive.⁵⁹ The pressures of being suspected of fraud do not assist recovery.⁶⁰ Dr Christine Roberts-Yates referred to:
- the lack of acknowledgment and the idea that people did not believe that they were genuine. The residual impact of their injury is this psychological distrust of organisations and the people in them.⁶¹
- 3.39 There are a number of factors outside the injured worker's control that can impact on the duration of claims, and it should not be assumed that the injured worker is malingering. There are delays, the attitude of the employer may worsen a situation and the process of dealing with the injury may cause further injury.⁶² The adversarial system currently in place means that the injured worker is 'effectively doubly injured'.⁶³ These issues are discussed in more detail in Chapter 7.
- 3.40 Dr Roberts-Yates emphasised that injured workers want respect, as they feel guilt, a sense of shame and dislocation and fear. In particular, males who are the main providers and for whom work is an important part of their identity can feel that that role has been destroyed. They experience a sense of panic and feel they must get back to work sooner but this may re-aggravate the injury. It could be argued that exceeding their return to work plan is negligent behaviour.⁶⁴
- 3.41 Dr Roberts-Yates added that workers need to feel that they are genuinely believed, and to know that their injury is acknowledged:
- They need to believe and know that the employer is doing something about it with an investigation report and that something is being done. So many times workers have said that the machine or whatever it was is still operating as it was, just waiting for somebody else to come along. They need to feel more respect.⁶⁵
- 3.42 Other injured workers told the Committee that they are made to feel like 'dirt', like they 'did not exist', like criminals, like a dog, and that they feel
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59 Ms Ann Thomson, RSI and Overuse Injury Association of the ACT, Transcript of Evidence, 16 October 2002, p. 31, 34.

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

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

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

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

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

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

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

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

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

Appropriate support and direction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Perceptions of injured workers

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

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

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

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

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

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

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

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

Employer fraud

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recovery of unpaid/avoided Premium:

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

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

Qld: 1995-9: approx \$15m

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

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

Reasons for non-compliance

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

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

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

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

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

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

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

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

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

3.61 Small businesses may also be confused in relation to the application of the rating system to a particular business.

Premiums should be based on the business as a whole, not on the portion of the business that attracts the highest rating, because this rating has come from a claims history that has often occurred in large business or certain industry types as distinct from what happens in small business. The ratings should be based on real risk that occurs in the small business premises and based on past history.⁹⁷

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

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

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

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

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

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

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

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

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

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

Premium avoidance

No workers' compensation coverage

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

Understating payroll

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

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

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

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

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

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

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

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

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

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

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

Business arrangements to avoid/reduce premiums

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

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

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

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

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

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

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

Penalties for employer non-compliance

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Employers' perspective

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

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

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

Service providers

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

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

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

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

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

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

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

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

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

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

Evidence based treatment

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

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

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

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

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

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

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

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

- 3.83 The Committee is concerned, however, that if a system were implemented that was based primarily on outcomes, this would provide an incentive for service providers to treat the less injured and avoid clients with the most serious injuries that would take longer to reach a satisfactory outcome. Ms Anita Grindlay made the point that there are payment systems that could ensure that this did not occur.¹³³
- 3.84 The Chamber of Commerce and Industry of Western Australia stated that:
- We have taken the hardest stand with externally provided services. We believe that there are some cases where those services are used as a claims management tool. They could be used by either party. When they are used as a claims management tool, it provides great discouragement to the whole principle of return to work. It is not about return to work: on the part of the insurer, it is about showing a capacity or, on the part of an employee, showing an inability to work, because that may well benefit them in a common law claim.¹³⁴
- 3.85 In 1995 the Victorian WorkCover Authority initiated a peer review process which has led to a change in servicing patterns for some providers. The Australian Plaintiff Lawyers Association stated that the dubious practices of some service providers resulted in changes to the *Accident Compensation (Further Amendment) Act 1996*.¹³⁵ There were four providers prosecuted over the period 1996-1998.

Medical practitioners

- 3.86 There were allegations from all sectors of the workers' compensation system that medical practitioners are biased in favour of the opposing sector and that doctor shopping is widespread.
- 3.87 It was suggested that some doctors were aiding and abetting fraud through exaggeration in order to maintain their business relationships with injured workers, or that doctors only have the client's version of events, especially in cases where the injury does not have visible symptoms.¹³⁶ It was also suggested that doctors may allow enormous

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The doctor is not the gatekeeper; the person who accepts the claim is the gatekeeper. That is the way it works ... The insurer makes the decision on claim acceptance. These patients have a genuine belief in their theory of causation and are therefore not attempting fraud.¹⁴³

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Medical panels

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Legal system

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

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

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

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

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

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

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

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

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

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

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

Cost of legal fees

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

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

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

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

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

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

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

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

Legal professionals

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

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

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

3.107 The APLA argued that:

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

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

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

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

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

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

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

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

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

We, as a member of APLA, see a range of legal professionals and some of these are very insightful and realise that it is in the best interests of their clients and their business to help people achieve positive outcomes. Some others would be encouraging of a more passive approach by telling people not to get rehabilitated immediately but to wait until the lump sum is received.¹⁷⁵

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

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

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

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

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

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

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

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

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

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

Australia there are inadequate checks and balances between those two conflicting principles.¹⁷⁹

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

Courts and judges

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Common law

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

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

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

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

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

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

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

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

elements of any system, and getting those in balance is the challenge.¹⁹⁰

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

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

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

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

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

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

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

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

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

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

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

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

Insurance companies

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

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

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

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

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

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

Automatic acceptance of small claims

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

In many instances with minor injuries that would make claims hard to prove and which result in a few days off, the claim is paid by the insurance companies because the cost of trying to prove otherwise is very difficult and costly.²⁰³

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

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

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

Alleged incompetence and inaction by insurers

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Treatment of injured workers

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

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

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

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

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

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

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

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

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

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

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

Accountability of workers' compensation schemes

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

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

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

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

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

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

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

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

Self insurers

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

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

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

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

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

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

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

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

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

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

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

Workers' compensation costs

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

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

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

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

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

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

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

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

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

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

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

Cost to injured workers and their families

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

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

- 3.154 MAXNetwork expressed empathy for injured workers in dire straits:

I have had people telling me how they had to sell their children's toys and that they have lost their homes and their marriages break up. I see that, apart from the direct costs in terms of welfare payments, the failure of some of these systems to articulate very effectively has an enormous socioeconomic impact on the community in terms of hospitalisations and increased health costs.²⁴³

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

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

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

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

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

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

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

Cost to the employer

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

Costs to the workers' compensation scheme

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

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

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

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

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

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

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

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

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

Costs to the Commonwealth

Social Security

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

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

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

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

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

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

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

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

WorkCover claim. There needs to be much better and more effective rehabilitation.²⁵⁶

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Health services

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

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

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

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

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

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

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

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

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

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

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

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

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

The Committee's comments

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

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

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

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

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

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

4

Workers' compensation schemes: issues and practices

- 4.1 The Department of Employment and Workplace Relations (DEWR) argued that the complexity of the framework underpinning workers' compensation schemes, and the inconsistencies across jurisdictions may create possible confusion and opportunities for fraud and/or non-compliance by employers, employees and others.¹ Insurance Australia Group also attributes many of the problems with workers' compensation to the inherent structures and procedures of the schemes.²
- 4.2 Workers' compensation reform is rarely off the political agenda. It is very difficult to achieve a fair and equitable balance in a system of limited resources which is required to meet the needs of many injured workers.³ Nationally, there is a lack of consistency, with some states treating fraud harshly while others take a different approach.⁴
- 4.3 The National Meat Association of Australia (NMAA) stated that the practical operation of schemes is the issue and not just the legislative scheme *per se*. The Association believes that systems are not perfect in practice and substantial changes are required to remedy the underlying defects in the framework. The NMAA provided an extensive overview of the primary problems it perceives in each scheme in relation to possible fraud and rehabilitation.⁵
- 4.4 The Committee views the term 'structural factors' as encompassing the full range of legislation, process and practice of the workers' compensation schemes. Issues that have been raised in submissions in relation to an

1 Mr Rex Hoy, Department of Employment and Workplace Relations, *Transcript of Evidence*, 25 September 2002, p. 14; DEWR, Submission No. 48, p. i.

2 Insurance Australia Group Ltd, Submission No. 47, p. 2.

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

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

5 National Meat Association of Australia, Submission No. 41, pp. 12-57.

aspect of the operation of the system which may impact on the outcomes of a claim have been incorporated in this chapter.

- 4.5 Mr Andrew Hemming commented that if governments listened to people who understand the issues the complexity of the system could be fixed. He argued that governments successively bandaiding legislation has not helped, and that workers' compensation legislation needs to be simple, easy to understand and a step by step process.⁶
- 4.6 Injuries Australia emphasised the need to involve injured workers in discussions of the effectiveness of a scheme and of potential improvements. The group cited the example of the review of independent medical assessment being undertaken in New South Wales, which does not have employers or injured workers represented on the Committee.⁷
- 4.7 In designing workers' compensation systems and making legislative changes, Mr Kim Mettam believes that there also appears to be a lack of knowledge about the problems that employers have with the dynamics of workers' compensation.⁸ The National Meat Association of Australia also believes that deficiencies in the practical operation of schemes result in increased base premium rates for the industry or sector and the employer's specific premiums.⁹
- 4.8 There are a number of operational issues and current practices that may hinder the effectiveness of workers' compensation schemes. The issues raised in terms of the employees, employers, services providers, insurance companies and workers' compensation schemes are outlined below in instances where problems arise that can result in activities that can be perceived as fraudulent behaviour by the other participants in the process.

Changing working arrangements

- 4.9 The Department of Employment and Workplace Relations considers that the inflexibility of workers' compensation schemes in not adapting to the different forms of employment is another factor contributing to the level of fraud and non-compliance.¹⁰ Australians are making personal choices about work, lifestyle, family and security. The workforce is more mobile and employers are operating in more than one jurisdiction, and more workers are not covered under the existing arrangements:

6 Mr Andrew Hemming, HEMSEM, Transcript of Evidence, 13 November 2002, pp. 175-176.

7 Mr George Cooper, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, pp. 91-92.

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

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

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

Increasingly, employers and employees are entering into non-traditional working arrangements which best suit their individual circumstances. Often these arrangements fall outside the scope of the traditional coverage under the various workers compensation schemes. The response by the states to these changes in the labour market has been to increase the regulatory complexity regarding coverage. This has tended to compound the problems whereby each state seeks its own solution. Each state scheme operates as if workers and employers are rigid and unchanging.¹¹

- 4.10 The complexities of the various schemes may encourage or assist some employers in deliberately avoiding their obligations, or result in their inadvertently doing so.¹² DEWR estimates that about 40 per cent of the workforce may no longer be covered by the traditional arrangements in workers' compensation schemes.¹³
- 4.11 The Department believes that the various schemes approach the issue of coverage in different ways. DEWR added that it is fairly easy to establish whether an employer-employee relationship exists but that the various schemes have not recognised this as an issue and have not taken this into account.¹⁴ DEWR considers that a single solution would enable workers to move between jurisdictions without confronting different solutions under each jurisdiction.¹⁵
- 4.12 DEWR made the point that there are alternative insurance markets available to contractors, subcontractors and others such as income support and disability support arrangements. In some cases, alternative forms of insurance and alternative arrangements may be more appropriate.¹⁶ It is important to identify the extent to which these alternatives to workers' compensation are being accessed, whether there are adequate insurance arrangements and whether there is competition between the forms of insurance.¹⁷
- 4.13 The Department added that schemes tend to assume that most contractors have made alternative insurance arrangements or assume the risk themselves. DEWR made the point that:

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

12 Mr Rex Hoy, DEWR, Transcript of Evidence, 25 September 2002, p. 14.

13 Mr Tom Kenna, DEWR, Transcript of Evidence, 25 September 2002, p. 19.

14 Mr Rex Hoy, DEWR, Transcript of Evidence, 25 September 2002, p. 23.

15 Mr Tom Kenna, DEWR, Transcript of Evidence, 25 September 2002, p. 19.

16 Mr John Rowling, DEWR, Transcript of Evidence, 25 September 2002, p. 25.

17 Mr John Rowling, DEWR, Transcript of Evidence, 25 September 2002, pp. 19-20.

The difficulty with assuming the risk themselves is effectively the community and the Commonwealth are also assuming the risk.¹⁸

Employee issues

- 4.14 In workplaces where there is a poor relationship between the employer and employee the injured worker may be reluctant to return to that environment, and negative psychological factors can impede recovery.¹⁹ There may be a stigma attached to being on a workers' compensation claim because of the loss of a bonus for others.²⁰
- 4.15 Some television stations present sensationalised stories of workers' compensation claims that may not be accurate.²¹ The Injured Workers Association believes that most mass media publications on workers' rehabilitation and compensation issues portray workers as fraudulent and trying to 'milk the system' and present very few items relating to injured workers being deprived of their rights.²²
- 4.16 Another important issue is the delays within the workers' compensation system. Dr Paul Pers commented that the system is plagued by monitoring, delays and waiting which costs money and costs injured workers proper rehabilitation.²³ In some jurisdictions there are a significant number of employers who are late in reporting claims.²⁴
- 4.17 Further, in situations where there is a company medical centre, injured workers can be treated in-house and this does not appear in workers' compensation statistics.²⁵ If the medical centre delays the process for some time, some injured workers may not be able to claim workers' compensation.²⁶
- 4.18 If the costs are met in-house, the worker will not be disadvantaged immediately:

18 Mr John Rowling, Department of Employment and Workplace Relations, Transcript of Evidence, 25 September 2002, p. 24.

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

20 Dr Peter Shannon, Submission No. 3, p. 1.

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

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

23 Dr Paul Pers, Transcript of Evidence, 26 November 2002, p. 361.

24 For example, Victorian WorkCover Authority, *The Case for Change*, p. 9.

25 Ms Gwyneth Regione, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, p. 378.

26 Ms Gwyneth Regione, AMWU, Transcript of Evidence, 26 November 2002, p. 378.

but if there is the problem of access to a permanent impairment payment, for instance, then that whole process becomes incredibly difficult because of the delays through the system.²⁷

Benefit and compensation levels

4.19 The Australian Manufacturing Workers' Union considers one of the major difficulties to be that employers and workers see the workers' compensation system as a benefit system rather than a system of entitlement.²⁸ There are a number of issues relating to lack of access:

the people who are not covered, the people who do not claim and the people who claim but the processes take a very long time and so they are actually disadvantaged through the process. That is particularly the case for casuals and for labour hire employees, and unfortunately we are finding that a lot of self-insurers are also making it rather difficult for employees to actually claim when they are injured or made ill at work.²⁹

4.20 The AMWU made the point that there are people who are not covered, and because of the reductions in the period during which people are able to access workers' compensation payments, these are the injured workers who go onto the Commonwealth assistance system.³⁰

4.21 Another issue raised in evidence to the Committee was the possible effect of the levels and type of benefits and compensation on the recovery time. It was suggested that the statistics available on behaviour are totally inadequate due to the lack of a cohesive national examination of the issue.³¹ The Chamber of Commerce and Industry of WA stated that:

Another important issue lies in the exaggeration of symptoms. With high benefit levels, individuals find that they are pressured to justify their absence and begin to exaggerate the extent of their injuries or illness. This process can have deep psychological implications, in that individuals often come to believe their own exaggerations, thus perpetuating the duration of absence and underpinning the potential for effective recovery.³²

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

28 Ms Gwyneth Regione, AMWU, Transcript of Evidence, 26 November 2002, p. 376.

29 Dr Deborah Vallance, AMWU, Transcript of Evidence, 26 November 2002, p. 375.

30 Dr Deborah Vallance, AMWU, Transcript of Evidence, 26 November 2002, p. 375.

31 Chamber of Commerce and Industry of Western Australia, Submission No. 21, p. 2.

32 Chamber of Commerce and Industry of Western Australia, Submission No. 21, p. 3.

Structure of weekly benefits

4.22 The Australian Industry Group (AIG) suggested that weekly benefits should be based on ordinary time earnings. In New South Wales the current compensation rate is set at below ordinary time earnings and the additional compensation comes from employer arrangements and awards and industry agreements.³³ AIG believes that in order to discourage fraudulent activity, there should be a message that people are better off back at work, and describes the current situation as :

What you should do, perhaps, is standardise all of that. Having standardised that some people may receive more than they currently do. In that light, we would still like some sort of control mechanism that sends a signal that people are better off back at work. This is a crude control mechanism, but it is probably borne of our frustration with the system.³⁴

4.23 AIG cited the example of employees returning to work and never getting better because while they are partially injured they can get overtime benefits without working for it.³⁵

4.24 The NMAA suggested that in some circumstances people can get paid more to stay home than to work under certain legislation, awards and industrial agreements.³⁶ In the meat processing industry, employees can be stood down and not paid when there is no work but the person on workers' compensation continues to get paid.³⁷

Medical and rehabilitation costs

4.25 Concerns were voiced by a range of witnesses to the Committee on overservicing by service providers.³⁸ Although not quantified, AIG suggested that both service providers and workers may benefit from overservicing. As an example in the Victorian system the APLA suggested that the system may support overservicing as the review process to

33 Mr Mark Goodsell, Australian Industry Group, Transcript of Evidence, 18 October 2002, p. 64.

34 Mr Mark Goodsell, AIG, Transcript of Evidence, 18 October 2002, p. 64.

35 Mr Mark Goodsell, Australian Industry Group, Transcript of Evidence, 18 October 2002, p. 65.

36 Mr Garry Johnston, National Meat Association of Australia, Transcript of Evidence, 13 November 2002, p. 164.

37 Mr Ross Wotherspoon, National Meat Association of Australia, Transcript of Evidence, 13 November 2002, p. 165.

38 For example Mr Mark Goodsell, AIG, Transcript of Evidence, 18 October 2002, pp. 53, 65; Mr Simon Garnett, Australian Plaintiff Lawyers Association, Transcript of Evidence, 26 November 2002; p. 406; Mr Mary Yaagar, Labor Council New South Wales, Transcript of Evidence, 18 October 2002, p. 119.

continue entitlements requires monthly reviews for WorkCover certificates.³⁹

- 4.26 The Australian Industry Group suggests that one mechanism to control the amount of overservicing would be to require employees to pay some of the medical costs and rehabilitation service costs. The Group argued that this would provide an incentive to keep the treatment focused and the costs to a minimum.⁴⁰

This proportion would [be] recoverable when the employee achieves a return to work on pre injury duties or on conclusion of the claim where the employee is accepted as permanently unfit for their pre injury duties.⁴¹

- 4.27 The Labor Council of NSW suggests a more pivotal role for doctors to monitor other providers to ensure that overservicing does not occur, and to control costs in that area.⁴²

- 4.28 The opposing experience is also present where there is delayed or no access to rehabilitation services. Where insurers refuse the claim, the worker cannot access rehabilitation.⁴³ For people who are not covered, or think they cannot claim, or where there are significant delays workers are actually disadvantaged through the process. The Australian Manufacturing Workers' Union suggests that this is particularly the case for casuals and for labour hire employees. The AMWU also suggests that self-insurers are also making it difficult for employees to claim,⁴⁴ effectively to minimise their costs.

- 4.29 The Australian Rehabilitation Providers Association also comments on limits to accessing rehabilitation:

there needs to be continuing emphasis on the education of employers facilitating their level and assumption of responsibility of the injury management of their own employees. Again, we support the idea of assisting employers to keep their injured workers in employment instead of having them look at the simplest and easiest way to remove them from their books to remove a problem. We all

39 Australian Plaintiff Lawyers Association, Transcript of Evidence, 26 November 2002; p. 406

40 Mr Mark Goodsell, AIG, Transcript of Evidence, 18 October 2002, p. 63.

41 Australian Industry Group, Submission No. 53, p. 25.

42 Mr Mary Yaagar, Labor Council New South Wales, Transcript of Evidence, 18 October 2002, p. 119.

43 Mrs Margaret Pursey, Injured Persons Action and Support Association, Transcript of Evidence, 12 February 2003, p. 454.

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

know that what tends to happen is that these people move from the state based system quite often into a federal system through Centrelink and some form of income maintenance program. That is not helping Australia as a whole.⁴⁵

Return to work

4.30 Initially, injured workers usually want to return to work, and the current structures may not be providing adequate support to enable them to do so in a timely manner:

an occupational physician at a seminar once said that he had never treated an injured worker on the day of injury who did not actually want to return to work. It was only as time went by that the psychosocial issues developed. The injury became less of the actual problem and more the external issues and the legal involvement and those sorts of things actually developed. If there is a good management culture within the employer organisation towards assisting an injured worker's return to work immediately and safely and seeing them within four hours of the injury, then a relationship is strengthened with the employer and the employee rather than one where the employee goes off to see a solicitor because their neighbour over the back fence says, 'You've got to go and do this,' or they have seen a television ad that says, 'Come and see us and you will get the compensation you are entitled to.' It is that 'entitled to' expectation that needs to be taken out of the system, and people should just get back to work.⁴⁶

4.31 The link between workers' compensation programs and insurance schemes imposes budget limitations and timeframes.⁴⁷ The focus, expertise and timeframe variations of workers' compensation schemes can lead to an increase in fraudulent behaviour by injured workers.⁴⁸

The limited time frame of workers' compensation systems results in the development of different objectives, expertise and strategies to assist clients. Federal Government programs operate within a more holistic and socio-economic framework, with a "never-ending" responsibility to the community and welfare agenda.⁴⁹

45 Mr Brendan Delaney, Australian Rehabilitation Providers Association, Transcript of Evidence, 18 October 2002, p. 108.

46 Mr Robert Gordon, Australian Rehabilitation Providers Association, Transcript of Evidence, 18 October 2002, p. 115.

47 MAXNetwork Pty Ltd, Submission No. 4, p. 2.

48 MAXNetwork Pty Ltd, Submission No. 4, p. 2.

49 MAXNetwork Pty Ltd, Submission No. 4, p. 2.

- 4.32 In situations where light duties are required for the rehabilitation of an injured worker, Dr Sherryl Catchpole has found that frequently co-workers will agree to give up the lighter duties for a limited time.⁵⁰ Others have seen situations where employers have denied light duties to an injured worker on the basis that they did not want them back even though they offered similar light duties to other injured workers.⁵¹
- 4.33 There is a reluctance for insurers to 'dob in' employers who refuse to offer alternative duties because large employers are their clients and they may lose their business to another insurer.⁵²
- 4.34 The strategies developed by government programs to meet the ongoing responsibility for community and welfare agenda differ from those used by workers' compensation schemes. The time and costs constraints on workers' compensation systems do not always lead to the most effective approach to long term issues and rehabilitation.⁵³ The delays and 'fraudulent' activity can hinder the effectiveness of employment service assistance.⁵⁴ MAXNetwork comments that:

Typically those professionals involved in the short term programs of workers' compensation systems possess clinical skills more related to medical intervention, rehabilitation, ergonomics and return to work programs within a relatively short time period following injury. As compared with those staff involved in federal welfare and employment programs whose skills need to be more about improving social and economic participation, facilitating attitudinal and behavioural change, and over coming longer term (and often multiple) barriers to employment.⁵⁵

- 4.35 There is a small percentage of cases where injured workers develop an 'imposed disability function' where they genuinely believe they have a disability which is more severe than it is. The perception becomes reality and that drives the next step, which is not returning to work. These workers need some kind of assistance.⁵⁶

They actually genuinely believe that it is the real thing, and they believe that because it is appropriate in their life. Some people would say it is a way of socially withdrawing from the workplace or

50 Dr Sherryl Catchpole, Workers' Medical Centre, Transcript of Evidence, 22 November 2002, p. 347.

51 Ms Anita Grindlay, Transcript of Evidence, 26 November 2002, p. 357.

52 Ms Anita Grindlay, Transcript of Evidence, 26 November 2002, p. 357.

53 MAXNetwork Pty Ltd, Submission No. 4, p. 2.

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

55 MAXNetwork Pty Ltd, Submission No. 4, p. 2.

56 Dr Christine Roberts-Yates, Transcript of Evidence, 21 November 2002, p. 266.

it is a way of being able to make somebody responsible for some problems in their life.⁵⁷

Support for major career changes

4.36 Workers' compensation schemes commonly do not have the expertise needed to assist injured workers in developing positive career plans. The person managing the initial stages of the injured worker's case is not usually accountable or responsible for the long term consequences if the client is unable to return to work, or for the potential costs in the form of common law settlements. There are particular skills and expertise required in supporting injured workers to change careers and employment options.⁵⁸

4.37 There are situations in which transitional jobs will not solve the problem for some injured workers and there needs to be a permanent change of job.⁵⁹ Those unable to return to their previous work often present as feeling helpless and lack insight into alternative work options or methods to find other work.⁶⁰

It is a different set of skills required to help the client develop positive career plans, adequate self esteem and self efficacy and understanding the mechanisms involved in accessing new areas of the labour market. This expertise is not commonly observed within most workers' compensation systems.⁶¹

4.38 The Council of Small Business Organisations of Australia states that at some point the provider should identify the individual's capacity to return to pre-injury employment:

If that is assessed in the beginning, it would make sense to stop working right away with that individual to get them retrained into something that they can do. But having got them retrained, the question is: who employs them? If the small business does not, then who do we offer it to.⁶²

4.39 Dr Peter Shannon also made the point that retraining costs money and that people on workers' compensation usually have families who are dependent on them and so do not get the retraining. Some of these people

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

58 MAXNetwork Pty Ltd, Submission No. 4, p. 2.

59 Mr Kim Mettam, Charles Taylor Consulting, Transcript of Evidence, 20 November 2002, p. 247.

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

61 MAXNetwork Pty Ltd, Submission No. 4, p. 2.

62 Mr Michael Potter, Council of Small Business Organisations of Australia Ltd, Transcript of Evidence, 4 December 2002, p. 419.

have years of work experience, and when their life is in chaos they become depressed in a system that is not retraining or helping them.⁶³

The acute rehabilitation is great for those 95 per cent of people who are going to go back to their jobs, but it is that five per cent who tend to be the longer term, more difficult, more costly cases. They are the people who need to be identified and perhaps rehabilitated, if that is the word, in a different way, before those feelings of negativity et cetera are entrenched. It is important to offer them the options, the self-efficacy and the skills early on so the Job Network members or social welfare system is not picking them up, six or 12 months down the track. The intervention needs to be earlier. The interventions are right in both places. They are just timed wrong. They are not married together.⁶⁴

4.40 Mrs Leonie Green of MAXNetwork stated that:

The mindset of the workers comp system is very focused, and rightfully so, about going back to the same job and the same employer. Their ability to do alternate jobs is only at a beginning stage.⁶⁵

4.41 Queensland has introduced a host employment program, where other employers assist in rehabilitating injured workers back to work. When every endeavour to get people back to their pre-injury employment has not succeeded, the host employment program is used to get people work hardened to return to their original employer or to provide another job.⁶⁶

4.42 Mrs Green believes that injured workers may develop an 'imposed disability' because their coping strategies are diminished. People's ability to cope and adapt can be influenced by the opportunities and the skills of the managers who present the alternatives. It needs to be explained that there are other options:

They do not need to exaggerate their illness, because they are not going to be forced into a job that they cannot do. They will be given the assistance that they need. When people see that, they respond and those impediments disappear.⁶⁷

4.43 If people are linked in with the services to get them back to work instead of doing cash in hand work:

63 Dr Peter Shannon, Transcript of Evidence, 20 November 2002, p. 198.

64 Mr Paul Stokes, MAXNetwork Pty Ltd, Transcript of Evidence, 22 November 2002, p. 337.

65 Mrs Leonie Green, MAXNetwork Pty Ltd, Transcript of Evidence, 22 November 2002, p. 337.

66 Ms Evron McMahon. WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 323.

67 Mrs Leonie Green, MAXNetwork Pty Ltd, Transcript of Evidence, 22 November 2002, p. 338.

This could reassure them that they would not be harmed. The issue raised before was that medical practitioners can be overly cautious and protective of their patients, which keeps them out of work. I do not have an issue so much with the pay scale but with individuals seeing that there are other options.⁶⁸

- 4.44 Mr Robert Guthrie made the point that getting people back to work involves skilled injury management which recognises the person's potential to return to work, the right medical advice and treatment and a job to go to. He adds that the return to work may be to another employer and that incentives may assist in that process.⁶⁹

Lump sum payments

- 4.45 The ACT Government put the view that:

The greatest structural incentive to fraudulent claims is a scheme that is not tailored to rehabilitate the worker, but one that substitutes lump sum payments for a genuine injury management program. Such a scheme quickly creates an adversarial culture, setting employee, employer, insurer and doctor in opposition to each other. Adversarial schemes associate liability and responsibility with a cash settlement rather than a meaningful plan to assist injured people to return to work.⁷⁰

- 4.46 MAXNetwork believes that the process of returning injured workers to their existing employer is being well addressed by the relevant state bodies but that the people who take lump sums are the ones falling through the cracks.⁷¹ The person who manages the initial stages of a claim is not the person ultimately accountable and does not have to explain the cost of unemployment in the Senate estimates process:

They work in a fairly repetitive loop. People are injured, they go through to that lump sum payment and then the emphasis of the insurance company goes back to the new client, and it becomes a federal responsibility for those other people. I do not know that insurers have demonstrated a good insight into that.⁷²

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

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

69 Mr Robert Guthrie, School of Business Law, Curtin University, Transcript of Evidence, 20 November 2002, p. 191.

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

71 Mrs Leonie Green, MAXNetwork Pty Ltd, Transcript of Evidence, 22 November 2002, p. 333.

72 Mrs Leonie Green, MAXNetwork Pty Ltd, Transcript of Evidence, 22 November 2002, p. 333.

A key consideration in the design of any benefit structure for a workers' compensation scheme should be focussed on the rehabilitation of the injured worker. Allowing access to common law for a workplace injury can break the connection of the injured worker with a scheme, thus inhibiting rehabilitation and return to work. There are also the added factors of uncertainty as to compensation and the time lag in receiving any compensation.⁷³

- 4.48 Insurance Australia Group commented that the cost of a workers' compensation scheme can be twice that of an injury being handled through another system.⁷⁴ IAG believes that current workers' compensation schemes encourage employees to remain ill or incapacitated.⁷⁵ IAG make the point that:

insurance claims that encourage a person to appear injured so they can be awarded more favourable compensation is unlikely to produce a state of mind focused on recovery.⁷⁶

- 4.49 The Australian Industry Group also commented that people who go through a long-term disputed claim may be worse off than if they had actually gone back to work as early as possible, and often do not find employment again.⁷⁷ Mr Mark Goodsell of AIG told the Committee that people involved in a long-term workers' compensation claim focus on the lump sum and the process and do not consider the longer-term benefits of a return to work.⁷⁸

The people who do the immediate return-to-work programs are very medically and ergonomically orientated and do those things exceptionally well. A different set of professional skills are needed to help people change their mindset from focusing on the lump sum to seeing that it is in their long-term benefit to get another option. I do not see it as a real issue with the employer because most times that is addressed by WorkCover. I think the issue is getting people to consider other options when returning to their original job is not an option because of the discrepancy between their physical abilities now and what they used to do.⁷⁹

73 Mr Tom Kenna, Department of Employment and Workplace Relations, paper presented to Workers' Comp 2003, National Workers' Compensation Summit, Sydney, 17 February 2003, p. 9.

74 Insurance Australia Group, Submission No. 47, p. 14.

75 Insurance Australia Group, Submission No. 47, p. 12.

76 Insurance Australia Group, Submission No. 47, p. 13.

77 Mr Mark Goodsell, Australian Industry Group, Transcript of Evidence, 18 October 2002, p. 66.

78 Mr Mark Goodsell, AIG, Transcript of Evidence, 18 October 2002, p. 66.

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

- 4.50 In relation to the level of benefit awarded, Mr Kim Mettam of Charles Taylor Consulting stated that:

I have seen some people who have been very seriously injured and I do not think that they got anywhere near enough money out of the system for their serious injuries, whereas I have seen some people with extremely tenuous links to work enjoy very large benefits. This is where there is an imbalance in the allocation that society makes in workers compensation.⁸⁰

- 4.51 Injuries Australia sees the amount of the settlement as a 'big raffle':

it depends on who's the judge, how good your lawyer is, what the weather is like today and who is the other solicitor. You can see similar injuries and the figures are anywhere.⁸¹

- 4.52 In evidence from Injuries Australia, Mr Graham Stewart told the Committee that the settlement he received was 'peanuts' compared to what he was capable of earning, and that substantial medical and legal fees were then taken out of the settlement.⁸²

- 4.53 The Committee is concerned that in some situations injured workers come to believe that there is no advantage in returning to work as they believe that the lump sum will set them up for the rest of their life. Injuries Australia made the point that:

The people who get hurt are the ones who do the three Ds—the dirty, the difficult and the dangerous. They have not had the good fortune to have the education that you and I might have had. So some smart solicitor waves a cheque in front of them, it seems like a lot of money and it is the end of the world. We know that, to their credit, even the solicitors have tried to set up a system to help people to handle their money. But where do they go from there? Listen to what I said before: get them back to work before there is any talk of settlements.⁸³

- 4.54 Mr B Glover believes that workers' compensation payments are inadequate, are less than or equivalent to the dole and are probably one of the worst circumstances in the community.⁸⁴ The alternative view is that scheme benefits are an incentive to exaggerate symptoms and the extent of disability.⁸⁵ It was suggested that recovery after settlement is a sign of a

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

81 Mr George Cooper, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, p. 98.

82 Mr Graham Stewart, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, p. 93.

83 Mr George Cooper, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, p. 98.

84 Mr B C Glover, Submission No. 44, pp.1-2.

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

fraudulent claim, although it is also argued that recovery is more likely after the pressure of the claim has been removed.⁸⁶

4.55 Injuries Australia pointed out that in some cases settlements may be the appropriate option, particularly in very severe cases where people need to be looked after.⁸⁷

4.56 AIG stated that a system that could provide structured settlements might assist in addressing some wider issues to ensure the best overall outcome for the injured worker:

The main concentration is on saying, 'Here is a person who has rights; those rights have been infringed. Let's get a legal process remedy for those immediate rights. The minute that is resolved we do not want to know about that particular person.'⁸⁸

4.57 The Insurance Australia Group commented on the move away from tort based compensation. Money compensation is about compensating people for their loss and not about fixing the problem, while compensation schemes are moving towards early intervention and return to work and a normal life.⁸⁹ Injuries Australia also emphasised that safety and workers' compensation schemes are about looking after the health of people and that the money is just another tool for getting the job done.⁹⁰

4.58 The Committee is concerned that injured workers continue to focus on lump sum payments and do not appreciate that this may result in them being on the disability support pension, if they are eligible, for the rest of their life. MAXNetwork argues that state based insurers could do more to help people to see other options. People are motivated by safety concerns and do not return to work for fear of being reinjured as well as because of issues of self-esteem and self-efficacy. They are motivated by the lump sum in the absence of an alternative as they cannot access other options until they get into the Commonwealth system.⁹¹

4.59 Mr Robert Guthrie made the point that an injured worker simply cannot make a profit from workers' compensation:

Everyone who goes into the compensation system suffers some kind of loss, either because they stay on weekly payments for an extended period and the system says that those payments should be capped

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

87 Mr George Cooper, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, p. 98.

88 Mr Mark Goodsell, Australian Industry Group, Transcript of Evidence, 18 October 2002, p. 66.

89 Mr Douglas Pearce, Insurance Australia Group, Transcript of Evidence, 18 October 2002, p. 77.

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

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

and reduced, or because overall there is a loss of earnings because they have not returned to work and they could have made extra money.⁹²

- 4.60 Mrs Leonie Green commented that in situations where an injured worker receives a lump sum and will move onto the social security system after a period of time:

terrible negative behaviours and patterns and well adapted nonworking lifestyles have been found.⁹³

- 4.61 The point was made that there is not sufficient data on cases once they leave the insurers' books, and that more longitudinal monitoring of return to work outcomes is needed.⁹⁴ WorkCover Queensland, as is also the case in other jurisdictions, does not have contact with people after a common law claim has been completed.⁹⁵

Employee penalties

- 4.62 Employers First pointed out that individuals may simply 'try it on' and that the scheme or the employers bear the cost of the investigation. Mr Garry Brack suggested that perhaps the individual should be required to bear the costs because in the present system they do not lose anything.⁹⁶ The National Meat Association of Australia has a similar view and argued that lodging a fraudulent claim should be a criminal offence punishable by a substantial fine or imprisonment, as it is stealing from the employer, affects other employers in the industry and may cost other employees jobs and work.⁹⁷ The Association of Risk and Insurance Managers of Australia (ARIMA) concludes that improved prosecution rates for fraudulent claims will assist in the removal of the incentive for fraud.⁹⁸
- 4.63 The Chamber of Commerce and Industry of Western Australia is also concerned at the ease of entry into the workers' compensation system and the lack of enforcement of penalties for fraudulent entry into the system.⁹⁹ The Chamber suggested that employees should be required to contribute

92 Mr Robert Guthrie, School of Business Law, Curtin University, Transcript of Evidence, 20 November 2002, p. 190.

93 Mrs Leonie Green, MAXNetwork Pty Ltd, Transcript of Evidence, 22 November 2002, p. 337

94 Mr Paul Stokes, MAXNetwork Pty Ltd, Transcript of Evidence, 22 November 2002, p. 337.

95 Ms Evron McMahon. WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 324.

96 Mr Garry Brack, Employers First, Transcript of Evidence, 18 October 2002, p. 84.

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

98 Association of Risk and Insurance Managers of Australasia, Submission No. 11, p. 4.

99 Ms Annette Bellamy, Chamber of Commerce and Industry of Western Australia, Transcript of Evidence, 20 November 2002, p. 203.

to the cost of the investigation of any claim found not to be work related and that strategies be put in place to identify and punish fraudulent behaviour.¹⁰⁰

4.64 The Victorian Automobile Chamber of Commerce suggested that:

Penalties, such as demerit points to reduce future compensation claims and subsequent payments, could be given to employees who lodge a claim of a fraudulent nature, that was successfully disputed by the employer.¹⁰¹

Employer issues

4.65 Dr Christine Roberts-Yates identified as a major concern of employers that workers have nothing to lose by lodging a fraudulent claim but that the claim could cost the employer everything. Further concerns are that there is a psychological extension of the claim which is deemed as fraudulent and that there is a crossover between industrial issues and claims.¹⁰²

Complexity

4.66 The Chamber of Commerce and Industry of Western Australia describes the regulatory framework for workers' compensation as 'unnecessarily complex and convoluted'. The Chamber argued that governments should not treat workers' compensation liability differently from other forms of compulsory insurance.¹⁰³ The CCI added that:

The level of statutory intervention in the provision of workers' compensation has stifled competition and the process of determining premiums creates stagnancy and discourages innovation, negotiation and adaptation.¹⁰⁴

Non-compliance

4.67 Employers may be disadvantaged through fraudulent claims by the employee, the non-compliance of other employers and through the increased premiums because of industry classifications. The Risknet Group suggested that in comparing average workers' compensation costs employer groups should also consider the legal costs, employer premium

100 Chamber of Commerce and Industry of Western Australia, Submission No. 21, p. 4.

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

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

103 Chamber of Commerce and Industry of Western Australia, Submission No. 21, p. 3.

104 Chamber of Commerce and Industry of Western Australia, Submission No. 21, p. 3.

avoidance schemes and cost shifting to the Commonwealth social security system, which are significant influences on scheme costs.¹⁰⁵

In challenging a claim, the cost and any other action required to disprove the claim rests with the employer. The direct and indirect costs associated with mounting a challenge are generally prohibitive for minor claims. In addition, the employer bears a cost through increased premiums.¹⁰⁶

- 4.68 The Victorian Automobile Chamber of Commerce believes that the limited categories in the WorkCover Industry Classification system create a number of problems for employers across many industries.¹⁰⁷ In the meat industry:

Every claim that is paid out ultimately generates further revenue for WorkCover through the premium calculation formula. I am aware of one member who, over a five-year period, has paid out just over a million dollars in premium and the claims paid on that employer's behalf are about \$260,000.¹⁰⁸

- 4.69 The Chamber of Commerce and Industry of Western Australia agree that workers' compensation insurance should be compulsory and fraud prevented, but argues for deregulation to:

provide a more equitable system where employers can insure against their own performance at a relevant and competitive price rather than what many now perceive to be at a premium that subsidises other employers.¹⁰⁹

- 4.70 The Australian Manufacturing Workers' Union also raised the issue of company doctors advising employees to use income protection insurance in 7 to 10 per cent of claims, to avoid the company's workers' compensation responsibilities. The insurance companies then deny the claim as these are compensable injuries and the injured worker is left in the position of making a claim some months after the injury.¹¹⁰

105 The RiskNet Group, Submission No. 10, p. 4.

106 Victorian Automobile Chamber of Commerce, Submission No. 65, p. 4.

107 Victorian Automobile Chamber of Commerce, Submission No. 65, p. 3.

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

109 Chamber of Commerce and Industry of Western Australia, Submission No. 21, p. 3.

110 Ms Gwyneth Regione, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, p. 377; Dr Deborah Vallance, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, pp. 382-383.

Compliance incentives

4.71 The Master Cleaners Guild of Western Australia supports a performance based system that rewards a sound safety and injury management system and further premium incentives based on achievement of positive performance indicators:

To some extent the recognition of such efforts can be built into risk assessment formulae that ensures uniformity in incentive or penalty subject to management performance in workers' compensation and occupational safety and health. These two management areas should be closely linked in policy, planning, management and evaluation.¹¹¹

4.72 Mr Hemming of HEMSEM also suggested the following improvements:

- no claims bonuses - incentive;
- workplace safety auditing and accreditation – recognition of practice;
- injury management system auditing – recognition of best practice;
- government subsidy of premiums for one year – incentive;
- statutory monetary caps on claims – disincentive for monetary gain;
- statutory review of premium – premium fixing body; and
- statutory review of claim process including rehabilitation – gatekeeper.¹¹²

4.73 As an incentive to improve work safety on farms, the Western Australian Government provides a 15 per cent reduction in premiums for farmers who attend a farm safety course, implement a farm safety plan and have no claims for twelve months. WorkCover Western Australia believes that an incentive approach has affected the attitude of a lot of employers.¹¹³

4.74 Some incentives may have different outcomes in practice. The Recruitment and Consulting Services Association provided the example of exemption from WorkCover premiums as an incentive for employers to take on. RCSA argued, however, that these incentives mean that employers are not accountable to create a safe work environment, there is no incentive to have apprentices return to work and they can be employed elsewhere while receiving their workers' compensation payments.¹¹⁴

111 Master Cleaners Guild of Western Australia Inc, Submission No. 59, p. 9.

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

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

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

Relationship between employer and injured worker

4.75 Workers' compensation claims may be considered by employers to be:

doubtless an irritation, extra expense and frequently a cause of disruption to work schedules ... When the negative view is expressed openly and forcefully, as is often the case, it is my clear experience that things tend to deteriorate from a functional and psychological point of view.¹¹⁵

4.76 In situations where an employer does not believe that the injury is work related, the employer may go on to believe that the worker is also not ill.¹¹⁶

When there is a poor relationship between employer and employee, the injured worker is reluctant to return to the workplace. There is a psychological component to all illness and, if negative, this may impede recovery. The perception by the employer that the worker is malingering will, if communicated to the injured worker, significantly erode any remaining trust and ensure that the worker remains focused on being ill.¹¹⁷

4.77 Dr Sherryl Catchpole gave the example of an employer about to take punitive action against a terminally ill worker.¹¹⁸

Making a workers' compensation claim is stressful for a patient who is ill, who often is unfamiliar with bureaucracy and who is going through a time of reduced income. It is my observation that when patients perceive that they are not being treated with dignity they become resentful. Recovery and rehabilitation then become more difficult. If the illness is prolonged beyond the expectation of the employer, the situation deteriorates ... It is my observation that these situations are likely to engender perceptions in the employer that the patient is committing fraud both with the claim and with the slow recovery.¹¹⁹

4.78 Research by Dr Christine Roberts-Yates has found that the relationship between the claimant and the employer depends on a number of factors:

It is based on the needs of the individual. It is even based on the personalities of both the worker and the employer. It is based on the

115 Dr Peter Shannon, Submission No. 3, p. 1.

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

117 Dr Sherryl Catchpole, Workers' Medical Centre, Transcript of Evidence, 22 November 2002, pp. 342-343.

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

119 Dr Sherryl Catchpole, Workers' Medical Centre, Transcript of Evidence, 22 November 2002, p. 343. See also Workers' Medical Centre and Queensland Workers' Health Centre, Submission No. 14a, p. 2.

records for those who have preceded the injured worker ... So it is terribly complex in terms of social factors, psychological factors, work factors, colleagues, family, the worker's financial dilemma, whether the worker's relationship has broken down, whether depression has set in and whether everybody says, 'I've had enough'—and then everybody really just wants an out.¹²⁰

- 4.79 Recovery and rehabilitation are more difficult and prolonged in situations where there is a poor relationship between the employer and the claimant.¹²¹ The Injured Workers Association believes that the hostilities and isolation of management and co-workers jeopardises rehabilitation attempts and adds to the deterioration in the health of the injured worker.¹²² Mr Harry Neesham of WorkCover WA referred to the introduction of an injury management program in 1997:

where the relationship between the injured worker and the employer and the treating medical practitioner was emphasised, in an endeavour to focus more at the very point of injury on what the future for the injured worker was—how it can best be managed. So instead of creating a gap between the worker and the employer the aim is to maintain contact, which is the best outcome for a worker. If they are able to go back to their same employer with the same or modified duties that is certainly a better outcome in terms of the person concerned.¹²³

- 4.80 In situations where recovery is prolonged and the relationship with the employer deteriorates:

A number of patients in the above situations become stuck and no improvement occurs until prolonged legal action is completed. The likelihood that there will be significant improvement in the medical condition diminishes with time. In fact, work that has been done suggests that, if an injured worker is not rehabilitated within six months, there is a minimal chance of getting that person back to work¹²⁴

- 4.81 Dr Roberts-Yates found that over a three year period up to June 2000, 579 injured workers were dismissed by employers in South Australia after

120 Dr Christine Roberts-Yates, Transcript of Evidence, 21 November 2002, p. 258.

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

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

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

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

workers' compensation claims.¹²⁵ The need to access Centrelink payments which have to be paid back, and the 80 per cent reduction,¹²⁶ was a cause of stress. On the other hand employers believe that an earlier introduction of the 80 per cent reduction would be an incentive to return to work:

So there are these two perspectives: the employer is stating, 'Somebody is getting paid for staying at home and adopting a sick role,' and the worker is saying, 'But I was injured; this was not my fault. I have a mortgage to pay, I have financial commitments, and I can't do it.' It is a question of how to turn it around so that they are returning to work as quickly and as safely as possible when they are healthy enough to do so.¹²⁷

- 4.82 The Victorian WorkCover Authority has introduced measures to address the approximately 12,000 claims submitted late each year, and also the 26 per cent of injured workers in Victoria that do not return to work due to 'loss of job attachment'.¹²⁸ The Victorian Trades Hall Council (VTHC) suggested that employer organisations should have an obligation to educate employers of the benefits of early claim reporting and providing return to work opportunities.¹²⁹ The VTHC also raised the issue of the inadequacy of unfair dismissal laws, as they currently operate in Victoria, in relation to the dismissal of injured workers who claim under the *Victorian Accident Compensation Act 1985*.
- 4.83 Ms Vicky Behrakis found from her experience as an employer that employees who lodge fraudulent claims are getting increasingly 'street-wise' and perhaps passing on instructions to others. Small business owners feel unsupported compared to the support available to the employee and some are becoming very cynical towards the system when they see or hear about so many fraudulent cases.¹³⁰

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

126 This refers to step-downs: a reduction of benefits for all claimants after a given period. Each jurisdiction has its own step-down timing. See CPM Fourth Report, Australia and NZ, OHS and Workers' Compensation Schemes, August 2002 p. 92.

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

128 Victorian Trades Hall Council, Submission No. 26, pp. 2-3 citing Victorian WorkCover Authority *The case for change*, pp. 9, 14.

129 Victorian Trades Hall Council, Submission No. 26, p. 3.

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

Service providers

Medical practitioners

4.84 The Master Cleaners Guild of Western Australia was critical of the medical practitioners' role in supporting injured workers' return to work. The Guild stated that the general operation of a medical practice means that there is a high turnover, short consultations and, in the common practice based model, the doctor does not leave the office.¹³¹ This restricted contact with the injured worker and employer is exacerbated by a lack of communication, and because of the litigious nature of the system, the doctors are reluctant to provide certification without direction from a specialist. This can cause delays in the doctor being prepared to allow the injured worker to return to work.¹³²

4.85 Dr Paul Pers stated that specialist surgeons and others are highly paid people and the community expects some accountability from them.¹³³

So GPs might have five minutes on their books. Workers compensation is not just about injury, and we would argue after six weeks it is not about injury at all in the majority of cases. There are often a lot of other complex issues that cause the claim. GPs neither have the time nor necessarily the skills to work through those issues.¹³⁴

Support for medical practitioners

4.86 One suggestion was having a trained case manager, directly accountable to the system, who can support the medical practitioners. It was argued that training doctors would not improve the system as they do not have the time and the case manager could have responsibility for developing a proactive plan and aligning employer and employee expectations and getting the employee back to work.¹³⁵

Participation in the process

4.87 The RiskNet Group saw doctors as gatekeepers through the provision of the medical certificates needed to lodge a claim.¹³⁶ The Group's concerns

131 Mr Kerry Jones, Master Cleaners Guild of Western Australia, Transcript of Evidence, 20 November 2002, p. 213.

132 Mr Kerry Jones, Master Cleaners Guild of Western Australia, Transcript of Evidence, 20 November 2002, p. 218.

133 Dr Paul Pers, Transcript of Evidence, 26 November 2002, p. 361.

134 Ms Anita Grindlay, Transcript of Evidence, 26 November 2002, pp. 361-362.

135 Ms Anita Grindlay, Transcript of Evidence, 26 November 2002, p. 362.

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

include the refusal of doctors to communicate and cooperate with employers and a lack of awareness or understanding about their role in workers' compensation. The Group suggested that employers and rehabilitation providers should be able to ensure that the injured worker is treated by a medical practitioner who is prepared to cooperate.¹³⁷

- 4.88 The Victorian Automobile Chamber of Commerce commented that medical practitioners appear reluctant to verify the accuracy of events and do not necessarily have an understanding of the situation in which the injury occurred or the employee's work environment.¹³⁸ The Chamber suggested that medical practitioners should be required to investigate incidents prior to making their assessment and should have a checklist of appropriate questions to ask the injured worker. The Chamber also suggested that examinations should only be conducted by occupational physicians trained to deal with work related injuries.¹³⁹
- 4.89 Where there are legislative requirements for medical practitioners to participate actively in the injury management process, there has been minimal enforcement.¹⁴⁰ Moreton Exhibitions and Events outlined an employee's compensation case which 'defies medical science' according to the specialist, but for which the treating the doctor is prepared to provide ongoing certification.¹⁴¹
- 4.90 The NMAA commented that in cases where employers submit a list of alternative duties on the basis that people get better at work, these may not be considered by the doctor who will still write a certificate on the opinion of the patient, stating that the injured worker is unfit for any duties.¹⁴²
- 4.91 The Master Cleaners Guild of Western Australia argued that there is evidence of widespread failure by doctors to communicate with the workplace, with employers and other service providers in support of the injured worker's return to work:

There is uniform evidence of the failure to properly investigate the workplace when a worker submits for what is reportedly a work related injury. There is often a failure to consult and/or identify at the work site the nature of the duties other than by means of what the worker reports. With due respect to the worker, the reality is that

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

138 Victorian Automobile Chamber of Commerce, Submission No. 65, p. 4.

139 Victorian Automobile Chamber of Commerce, Submission No. 65, p. 5.

140 Insurance Australia Group, Submission No. 47, p. 15.

141 Moreton Exhibitions and Events, Submission No. 63, pp. 1-2.

142 Mr Andrew Westlake, National Meat Association of Australia, Transcript of Evidence, 13 November 2002, p. 162.

many workers cannot describe in sufficient detail the content that is necessary to make an informed and professional decision on which we believe certification should occur and, for that matter, it is not an independent assessment.¹⁴³

- 4.92 In relation to treating doctors, the AIG also believes that many certificates are being completed in a most cursory fashion with little response to the opportunity for the doctor to contact the employer and take a more active role in injury management. AIG suggested that medical certificates should require contact between the treating doctor and the workplace to establish the nature of the work, whether suitable duties are in fact available and any other facts relevant to the accurate diagnosis of injury.¹⁴⁴

People get into their minds that they have a WorkCover injury, they have a WorkCover certificate, they have a doctor who is going to continue to write out a certificate based on what they say, and so they stay at home and convince themselves that they are actually quite unwell, whereas in fact they could come to the workplace and genuinely contribute, not aggravate their condition, and let it heal over time, as it would ... Certainly the employer would never want the employee to feel like they were being forced back to work, but the doctors need to be aware that there are genuine duties available.¹⁴⁵

- 4.93 The Committee believes that requiring appropriate treating professionals to contact the workplace and determine if suitable duties are present would hasten the rehabilitation and return to work process.
- 4.94 Mr Peter Reynolds submitted to the Committee that his experience as an investigator suggested that some doctors avoid, ignore and/or cover over certain important pertinent information relevant to the individual claimant who is being assessed in the claims system.¹⁴⁶ Mr Reynolds expressed concern that this adds considerable monetary cost to the system and social cost to the injured worker and family.¹⁴⁷
- 4.95 The Workers' Compensation Support Network believes there is an over-emphasis on doctors' reports and that more importance should be placed on the work situation, witnesses and the consideration of all relevant

143 Mr Kerry Jones, Master Cleaners Guild of Western Australia, Transcript of Evidence, 20 November 2002, pp. 213-214.

144 Australian Industry Group, Submission No. 53, pp. 18-19.

145 Mr Andrew Westlake, National Meat Association of Australia, Transcript of Evidence, 13 November 2002, p. 163.

146 Mr Peter Reynolds, Submission No. 9a, p. 1.

147 Mr Peter Reynolds, Submission No. 9a, p. 1.

facts.¹⁴⁸ Workers perceive that the use of medical practitioners to deny workers' compensation claims is fraud by the Workers' Compensation Board in Queensland.¹⁴⁹ The Network, made the point, however, that some witnesses in the work environment do not tell the truth for fear of losing their own jobs.¹⁵⁰

- 4.96 The Australian Industry Group commented on the usual two-way relationship between a doctor and his patient in which no third party is affected by the quality of the diagnosis or the cost of the treatment. The AIG argued that medical practitioners will accept the word of the patient and will not usually be required to verify the accuracy of the employee's statements.¹⁵¹ Under a compensation claim, there is a legitimate third party interest in the treatment of the injury and the patient's presentation.¹⁵² It should be a requirement that the medical practitioner contact the workplace in a workers' compensation case.¹⁵³

It is a very great source of frustration for employers that there is this third party called a medical provider who is making judgments about their businesses and has never had any contact with them.¹⁵⁴

- 4.97 The Labor Council of New South Wales believes that medical practitioners need to be educated to take more of a role in the clinical management of the injured workers, to make sure that there is no over-servicing and that there is a return to work.¹⁵⁵ WorkCover Queensland has a qualified doctor on staff who is able to speak with treating doctors when a problem arises, and this model appears to be working well.¹⁵⁶
- 4.98 The Committee believes that supporting doctors in practice in workplace injury management, and encouraging greater communication with experienced occupational physicians and or other appropriate health professionals and workplaces would be of great benefit.

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

149 Workers' Medical Centre and Queensland Workers' Health Centre, Submission No. 14b, p. 2.

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

151 Australian Industry Group, Submission No. 53, p. 11.

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

153 Mr David Russell, AIG, Transcript of Evidence, 18 October 2002, p. 57.

154 Mr Mark Goodsell, AIG, Transcript of Evidence, 18 October 2002, p. 57.

155 Ms Mary-Louise Yaagar, Labor Council of New South Wales, Transcript of Evidence, 18 October 2002, p. 119.

156 Ms Evron McMahon, WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 331.

Pressure on medical practitioners

4.99 Medical practitioners form an important structural link between the insurer and the workplace, and doctors have a very significant power in convincing the patient whether or not to proceed with a claim. Dr William Marchione has seen the threshold at which people make a claim fall and told the Committee that:

it depends on external influences rather than on their own problem. A determinant might be a financial problem, so basically how sick they are will depend on other problems in their life - and often money is the solution ... If you are in a situation where the patient trusts you and they have been seeing you for years, you are in a dilemma. They may have admitted to you that it is fraudulent. You have a dilemma as to whether to reveal the fraudulent nature of the claim or abide by the fiduciary doctor-patient privacy relationship.¹⁵⁷

4.100 Dr Marchione believes that privacy laws and the rules relating to the nature of the doctor-patient fiduciary relationship need to change. He argued that workers' compensation claims should go to a general practitioner other than the worker's regular doctor.¹⁵⁸ He added that medical practitioners have a dilemma about not reporting someone for fear of breaching privacy provisions, but they have an obligation to report a criminal act:

The national privacy principles, which came into effect in December last year, very specifically outline an exemption in 2(f). A group is exempt if 'the organisation has reason to suspect ... unlawful activity'. It used to be only in a life or death situation; now they have expanded it. If you get doctors to document undesirable patient behaviour - that is, fraudulent behaviour ... and you can provide an adequate indemnity to them, or any member of the public, you can have a system that prevents fraud before it happens, rather than wait to count the costs afterwards and lose all that money.¹⁵⁹

4.101 The problem of medical practitioners writing a certificate to protect themselves from liability could be changed by forming a network of approved registered WorkCover doctors from which the employers could select, whom employees could see if injured at work.¹⁶⁰

4.102 Mr Hemming emphasised that while there will always be a doctor-patient relationship, doctors need to understand the consequences of issuing a

157 Dr William Marchione, Transcript of Evidence, 18 October 2002, pp. 125-126.

158 Dr William Marchione, Transcript of Evidence, 18 October 2002, pp. 126-7.

159 Dr William Marchione, Transcript of Evidence, 18 October 2002, p. 126.

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

workers' compensation certificate. He suggested training that demonstrated:

the potential for protecting the doctor-patient relationship and yet still achieved a good outcome for the rest of the parties in the system. It will be employers and insurers who will be most interested in that.¹⁶¹

- 4.103 The Chamber of Commerce and Industry of Western Australia commented that there are two aspects of the role of medical practitioners, the medical condition and the work relatedness of the condition.¹⁶² The CCI believe that medical practitioners should have a choice on whether they make a determination in relation to the work relatedness of a claim:

That brings in a sharing of the responsibility in regard to the acceptance or denial of a claim because the responsibility now is totally on the employer, possibly through the insurer, to do it.¹⁶³

- 4.104 The New South Wales legislation requires only that work be 'a' substantial contributing factor and not 'the' substantial contributing factor. According to Insurance Australia Group, the wording in the legislation does create areas of greyness for insurers in regard to being able to detect it.¹⁶⁴ The Australian Industry Group argued that there is an institutional bias towards accepting claims as being work related rather than having been caused by some other source.¹⁶⁵
- 4.105 The CCI (WA) suggested that doctors be provided with the option of determining the work relatedness of an injury or alternatively declaring an inability to make conclusive determination, and also that doctors be held statutorily responsible for their determinations of work relatedness.¹⁶⁶ In relation to medical practitioners having such a statutory responsibility, Dr Peter Shannon pointed out that the decisions would be open to common law claims if doctors made outrageous suggestions about individuals working or not working.¹⁶⁷

161 Mr Andrew Hemming, HEMSEM, Transcript of Evidence, 13 November 2002, p. 176.

162 Ms Annette Bellamy, Chamber of Commerce and Industry of Western Australia, Transcript of Evidence, 20 November 2002, p. 208.

163 Ms Annette Bellamy, CCI of WA, Transcript of Evidence, 20 November 2002, p. 205.

164 Ms Carolyn Ingram, Insurance Australia Group, Transcript of Evidence, 18 October 2002, p. 77.

165 Mr Mark Goodsell, Australian Industry Group, Transcript of Evidence, 18 October 2002, p. 61.

166 Chamber of Commerce and Industry of Western Australia, Submission No. 21, p. 4.

167 Dr Peter Shannon, Transcript of Evidence, 20 November 2002, p. 201.

Specialist opinions

- 4.106 The NMAA argued for a system of accreditation and the capacity for the employer to seek a second opinion. Currently employers are concerned at the lack of cooperation from doctors and the fact that claims management goes to the insurer and is taken out of the hands of the employer.¹⁶⁸ The Master Cleaners Guild of Western Australia believes that relying on one opinion very severely erodes the possibility of getting an unbiased and accurate assessment of a patient's abilities.¹⁶⁹
- 4.107 The Workers' Compensation Support Network also raised the issue of workers' reliance on WorkCover doctors' reports, as the injured is often not able to pay for an independent specialist opinion. They added that some medical practitioners will not treat injured workers because WorkCover will not pay if the injury is considered not to be work related. The Network added that some workers feel that the delay in receiving medical treatment can decrease the likelihood of recovery,¹⁷⁰ that injured workers should have the doctor of their choice and that Medicare should accept injured workers visits to ensure speedy treatment.¹⁷¹
- 4.108 The Australian Industry Group considers that while there is an efficiency in using the local medical practitioner in short term claims, the longer a claim continues, the more value there might be in having a different practitioner involved.¹⁷²
- 4.109 In an adversarial system, each side will attempt to get the best evidence it can to further its case. The Insurance Australia Group supports the use of independent, accredited doctors measuring impairment and for that measurement to be binding as long as it is a standard process.¹⁷³ The lack of uniformity of impairment ratings nationally, and the lack of a standardisation in approach, makes the validity and reliability of assessments very questionable.¹⁷⁴

If it were the case that all licensed doctors had to adhere in assessment of workers to a standardised impairment rating, then the

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

169 Mr Kerry Jones, Master Cleaners Guild of Western Australia Inc, Transcript of Evidence, 20 November 2002, p. 219.

170 Workers' Compensation Support Network, Submission No. 5, p. 4.

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

172 Mr Mark Goodsell, Australian Industry Group, Transcript of Evidence, 18 October 2002, pp. 56-57.

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

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

probability of bias would to a great extent be eliminated. By process of random allotment of reviewing medical specialist to certify impairment, the ability of various proponents to manipulate outcomes would be better controlled.¹⁷⁵

Evidence based medicine approach

4.110 Employers First are pursuing an effective workers' compensation system partly through an injury management and evidence based approach. They argued that if the medical practitioner is complicit with injured workers' fraudulent representation of return to work capacity, the rehabilitation process is undermined and the doctor's certificates provide support in court debates about the dispute resolution.¹⁷⁶

4.111 There would be benefit in the development of treatment protocols for particular injuries, outlining best practice using evidence based medicine to assist medical practitioners in managing claims.¹⁷⁷ The Master Cleaners Guild of Western Australia supports the use of management protocols by specialists and emphasises that return to work should be one of the fundamental points of discussion in the overall patient care.¹⁷⁸

Very often I see workers and they say, 'I have never put in a claim before; I did not know what happened', and they are quite mystified. I have seen some situations where employers bend over backwards to help workers, and that seems to work very well. Sometimes the employers do a whole lot to help somebody and then feel that it has not worked, and then they get frustrated, but at other times people are not dealt with well, right from the very beginning. That is where a good, clear protocol would play a very important role, ensuring that everybody knew what to do.¹⁷⁹

4.112 The RiskNet Group believes that evidence based medicine is one way of controlling medical costs. The Group suggests that treatment protocols could be developed for the top three or four cost impact injuries. Some protocols are already in use in Victoria and South Australia and enable the audit of treatments against the protocols and monitoring of recovery times against those expected.¹⁸⁰ This approach has already been taken for back

175 Master Cleaners Guild of Western Australia Inc, Submission No. 59, p. 4.

176 Mr Garry Brack, Employers First, Transcript of Evidence, 18 October 2002, p. 87.

177 The Risknet Group, Submission No. 10, p. 9.

178 Mr Kerry Jones, Master Cleaners Guild of Western Australia Inc, Transcript of Evidence, 20 November 2002, p. 218.

179 Dr Peter Shannon, Transcript of Evidence, 20 November 2002, p. 199.

180 The Risknet Group, Submission No. 10, p. 9; Mr Richard Gilley, The RiskNet Group, Transcript of Evidence, 18 October 2002, p. 135.

injuries and stress claims in Victoria and South Australia and could perhaps be adopted in other jurisdictions.¹⁸¹

The central point of system performance in this process pertains to the failure across States to adopt a uniform definition and protocol on disability and impairment rating, such that when one begins to talk about comparisons in systems performance, the validity and reliability of statistically comparisons is highly questionable. It is further observed that emphasis is nevertheless placed on quantitative measures of system performance rather than a balance alongside qualitative measures the latter likely to reveal detail of the attitudinal and cultural issues that underpin participant responses within the system.¹⁸²

Training and accreditation of medical practitioners

- 4.113 The National Meat Association of Australia believes that doctors involved with workers' compensation claims and rehabilitation programs should be trained and accredited and fully conversant with the operation of the systems. The NMAA sees as one of the issues the fact that the doctor issuing the certificate is not familiar with the workplace.¹⁸³
- 4.114 The Australian Industry Group saw the training of doctors as a common issue across jurisdictions. The professional training for doctors engaged in occupational medicine should cover the difference between treating an injury in the work environment and treating for a 'private injury', because there is a employer-employee relationship overlaying the injury.¹⁸⁴
- 4.115 The AIG suggested a split approach to the accreditation of doctors and argued that the implementation of national accreditation would need to have a positive cost benefit. The AIG suggested that potentially significant problems could be addressed in an accredited medical scheme.¹⁸⁵
- 4.116 Mr Andrew Hemming of HEMSEM argued that the medical profession is a pivotal part of the workers' compensation system and that there needs to be proper registration, certification and accreditation, followed up by meaningful and continuous training of medical practitioners, to ensure that workers' compensation systems can properly discourage fraudulent behaviour.¹⁸⁶

181 Mr Richard Gilley, The RiskNet Group, Transcript of Evidence, 18 October 2002, p. 135.

182 Master Cleaners Guild of Western Australia Inc, Submission No. 59, p. 4.

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

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

185 Mr Mark Goodsell, AIG, Transcript of Evidence, 18 October 2002, p. 67.

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

4.117 The Western Australian system gives the injured worker the right to a choice of doctor. This may mean that in some circumstances the medical practitioner may not be skilled in occupational medicine, unless every doctor is trained in this field. The training of GPs in injury management is voluntary but it would be helpful if:

medical practitioners had a degree of knowledge of occupational medicine and knowledge of the occupations in which their patients operate, because it would give them a much clearer understanding of the ability to be part of injury management.¹⁸⁷

4.118 Some educational programs are already available. For example, WorkCover Queensland participates in a general practitioners education program.¹⁸⁸ In Western Australia, however, over 90 per cent of doctors have not been able to avail themselves of the training offered and their lack of understanding of the system means that the advice that they give to injured workers can be fundamentally flawed.¹⁸⁹

4.119 The Master Cleaners Guild of Western Australia (MCGWA) commented on the lack of uniform training available throughout Australia for this speciality area of practice and the need for an implementation schedule, after which workers' compensation matters will only be dealt with by accredited practitioners who have demonstrated competency.¹⁹⁰

4.120 The Guild members are disillusioned with the performance of medical practitioners and strongly recommend the licensing of medical practitioners, because they believe that:

It is further noted that over statement in claims arises very often from the inception of medical certification, often a manifestation of medical incompetence and unprofessional behaviour than necessarily, a result of calculated worker behaviour.¹⁹¹

4.121 MCGWA argued that doctors are not familiar with the scheme and therefore do not:

communicate and demonstrate commitment to early intervention and return to work principles and familiarise themselves with the

187 Mr Harry Neesham, WorkCover Western Australia, Transcript of Evidence, 20 November 2002, p. 185.

188 Ms Evron McMahon, WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 331.

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

190 Mr Kerry Jones, Master Cleaners Guild of Western Australia Inc, Transcript of Evidence, 20 November 2002, p. 219.

191 Master Cleaners Guild of Western Australia Inc, Submission No. 59, p. 3.

specifics of the worker's duties and work environment, severely erodes in our view the validity and reliability of the contribution made, to the point that such actions are tantamount to contributory negligence and mal practice in the system.¹⁹²

- 4.122 They argued that medical practice in workers' compensation must be recognised as a specialised field, and that occupational physician training is needed in Western Australia to overcome the current structural limitations on the ability of practitioners to improve their performance.¹⁹³

Medical panels

- 4.123 It was suggested that review by a panel of doctors could provide a speedier and more precise estimation of disability and lead to earlier rehabilitation with better goals.¹⁹⁴ The Rehabilitation Providers Association of Western Australia, were of the view that if the process involves a panel would delay the process even further and the indications were that this is already blowing out.¹⁹⁵ However, it was also suggested that having an independent panel to adjudicate claims on the facts to break the conundrum between competing medical opinions, provided it was conducted in a forensic, structured medical way, has a lot to offer.¹⁹⁶

Some countries have panels of assessors who are regarded as leaders in their profession. They do not work for either side; they are randomly selected and they monitor and assess each other via a peer review. I have always thought that is an outstanding way to go to produce the best possible result.¹⁹⁷

- 4.124 Injured workers also raised a number of concerns about the operation of medical panels. It was alleged that medical panels can be 'handpicked' and are therefore biased.¹⁹⁸ The accuracy of the information provided to

192 Master Cleaners Guild of Western Australia Inc, Submission No. 59, p. 3.

193 Master Cleaners Guild of Western Australia Inc, Submission No. 59, p. 3.

194 Dr Peter Shannon, Submission No. 3, p. 2.

195 Mr Robert Gordon, Rehabilitation Providers Association Western Australia, Transcript of Evidence, 20 November 2002, p. 238

196 Mr Harry Neesham, WorkCover Western Australia, Transcript of Evidence, 20 November 2002, p. 182.

197 Dr Robert Kaplan, Transcript of Evidence, 18 October 2002, p. 103.

198 Mrs Lorraine Briggs, Injured Persons Support and Action Association, Transcript of Evidence, 12 February 2003, p. 446; see also Mrs Margaret Pursey, Injured Persons Support and Action Association, Transcript of Evidence, 12 February 2003, p. 442; Mr Paul O'Halloran, Transcript of Evidence, 20 November 2002, p. 223.

medical panels on which these determinations were based was also questioned.¹⁹⁹

- 4.125 Dr Sherryl Catchpole put the view that the general practitioner is the effective person in the area of workers' compensation as they see a patient all the way through the process and access the various services. She said that the system operates better if the doctor is kept in the loop, and that panels can be used for advice but should not manage the claim.²⁰⁰

Medico-legal opinions

- 4.126 There were a number of concerns in relation to the use of doctors conducting medico-legal assessments.²⁰¹ It was suggested that they:

- are required to recommend treatment even if they have no experience in treating patients with a particular condition;
- are expensive;
- present polarised views that do not assist either party;
- lack independence as they derive the income from insurers;
- may cause pain while forcing patients to make particular movements; and
- do not always follow the AMA code of practice and treat patients disrespectfully by being curt or by making remarks about their bodies.²⁰²

- 4.127 It was also argued that patients are at a disadvantage if they do not understand the nature of a medico-legal consultation.²⁰³ One witness found the three psychiatrists involved in his case to be unscrupulous, unprofessional and intimidating.²⁰⁴

- 4.128 A number of submitters referred to the inappropriate manner in which they were treated by the doctors preparing medico-legal reports. The RSI and Overuse Injury Association of the ACT commented that injured

199 Mrs Muriel Dekker, Workers' Compensation Support Network, Transcript of Evidence, 22 November 2002, p. 349; Mrs Lorraine Briggs, Injured Persons Support and Action Association, Transcript of Evidence, 12 February 2003, p. 446.

200 Dr Sherryl Catchpole, Workers' Medical Centre, Transcript of Evidence, 22 November 2002, p. 346.

201 This is an independent assessment of a person's present and potential capacity for employment or independent living. It may be presented as evidence in a law court. The assessment will include recommendations regarding future needs. Assessments are generally requested by solicitors or insurance companies. Source: CRS Australia: <http://www.crsrehab.gov.au/176.htm>.

202 The RSI and Overuse Injury Association of the ACT, Submission No. 24, p. 1; Ms Ann Thomson, RSI and Overuse Injury Association of the ACT, Transcript of Evidence, 16 October 2002, p.35.

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

204 Mr Stig Hellsing, Submission No. 33, p. 2.

workers who are badly treated by a medico-legal doctor will not complain to the Australian Medical Association as they are already dealing with conflict in a number of other areas.²⁰⁵

Psychological issues

- 4.129 Ms Gwyneth Regione from the Australian Manufacturing Workers' Union told the Committee that 80 per cent of the long-term injured people that she sees suffer from psychological disorders due partly to living in pain and with a disability but also partly to the stigma attached to being on workers' compensation and going through the workers' compensation system. According to Ms Regione there is a high incidence of depression and suicide among injured workers, and the South Australian WorkCover Corporation is examining the issue.²⁰⁶
- 4.130 The Committee was told that there needs to be a more useful and reliable way of assessing psychological injury. The existing tools for measuring psychological disorders are not necessarily applicable to the disorders associated with workers' compensation claims. The development of a reliable scale for assessing psychological impairment could be a great advance in resolving difficulties in this area.²⁰⁷ The scales being introduced into New South Wales are the subject of significant debate, and there is an attempt to draft a more objective set of criteria.²⁰⁸
- 4.131 The Committee was told that the image seen in courts or tribunals for compensation may be very different from that seen at the 'coalface'. Representatives of injured workers involved in the process may collude with the claimant to produce the best financial outcome, which may be to the detriment of the claimant's return to health or to work. Treating and assessing agents who are not sufficiently trained in psychiatric diagnosis are a significant aspect of the problem. Some do not accept that there is a degree of emotional distress in workplace stress claims that does not constitute a psychiatric disorder and which is not compensable. It was suggested that the available codes are underutilised. There is a certain degree of stress which is regarded as excessive or pathological and is considered a disorder.²⁰⁹ Similarly Comcare commented that stress claims

205 Ms Ann Thomson, RSI and Overuse Injury Association of the ACT, Transcript of Evidence, 16 October 2002, p. 36.

206 Ms Gwyneth Regione, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, p. 381.

207 Dr Peter Shannon, Submission No. 3, p. 3.

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

209 Dr Robert Kaplan, Transcript of Evidence, 18 October 2002, pp. 101-103.

should not be awarded or liability granted unless there is an actual mental illness.²¹⁰

Illness based conditions

- 4.132 Mr Kim Mettam suggested that 10-15 per cent of claims account for 80 - 85 per cent of the costs and should be looked at. He suggested that most of the costs relate to 'illness based conditions'. For example, an individual's back problems may be a symptom of personal problems, as an inability to cope with stress can make the back susceptible to soft tissue injury and heightens vigilance in reporting pain symptoms. He cited the example of a Boeing study in the United States that found that the strongest predictor for sprains, strains and back injuries was the employee's happiness in the job.²¹¹ Mr Mettam argued that you cannot change the motivation of an injured employee if the job does not satisfy the employee's needs.²¹²

When you have people with illness based conditions who may be imposing disability because of reasons to do with life coping skills or a whole series of particular problems, it becomes so much more difficult to make that transitional job available. Once you bring a person back in, you undermine the morale of the working group who look around and quickly frame a view that might say, 'This person is really here for reasons other than a medical reason, it might be a life coping reason.' Often a work force will be less sympathetic or understanding, particularly when it happens to them over a sustained period of time with many cases.²¹³

- 4.133 It was suggested that workers' compensation should move to exception based reporting and management. An injury that should be healed in six weeks would be looked at before the 26 or 52 review period, which reflects the legislative time schedules. Review periods should be changed to reflect the appropriate healing periods for particular injuries.²¹⁴ Currently insurers do not have IT systems that will support this and you cannot manage something that is not measured.²¹⁵

210 Mr Barry Leahy, Comcare, Transcript of Evidence, 18 September 2002, p. 2.

211 Mr Kim Mettam, Submission No. 54, pp. 1-2.

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

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

214 Ms Anita Grindlay, Transcript of Evidence, 26 November 2002, p. 360.

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

Stress claims

- 4.134 There is considerable cost to the community, workers and insurance systems from work related stress. Dr Kaplan has found that in some occupational groups many claims that are based on workplace stress are dubious and may have an external agenda and he suspects that occasionally these are fraudulently based.²¹⁶ Work related issues can be slow to settle, and have numerous psychosocial elements such as work dissatisfaction, intended litigation and relative ease of process with no outlay to the individual and motivation.
- 4.135 Stress related injury is difficult to prove and can therefore be denied by the insurer.²¹⁷ Stress does not fit neatly into the reporting guidelines or time frames and it may not be easy to identify the time the injury occurred.²¹⁸ It is not in the interests of the employer to recognise stress as it is a sign of poor management.²¹⁹
- 4.136 Also, there may be an underreporting of incidences as workers believe that stress related illnesses do not have any chance of getting through the workers' compensation system and that the trauma of the process will not help.²²⁰ Because of the difficulty in proving a stress claim, many people simply elect to use sick leave and bear the costs, as the process of lodging and fighting a claim often ends up exacerbating the original injury.²²¹
- 4.137 Mr Stig Hellsing stated that in stress related claims the current workers' compensation system and the court system exacerbate the condition, and argued these claims should be approached differently to minimise the additional trauma on the injured worker.²²² The claims could be minimised by recognising stress in the workplace and providing early intervention.²²³
- 4.138 The legal system aims to win monetary compensation for the injured worker while some claimants are fighting to regain 'some sort of life'.²²⁴ Stress can result from a gradual change and it is difficult to regain normal functions when the process has been going on for a number of years.²²⁵

216 Dr Robert Kaplan, Transcript of Evidence, 18 October 2002, p. 102.

217 Mr Stig Hellsing, Submission No. 33, p. 2; Community and Public Sector Union, Submission No. 42, p. 8.

218 Mr Stig Hellsing, Submission No. 33, p. 2.

219 Mr Stig Hellsing, Transcript of Evidence, 16 October 2002, p. 49.

220 Dr Deborah Vallance, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, p. 389.

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

222 Mr Stig Hellsing, Submission No. 33, p. 1.

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

224 Mr Stig Hellsing, Transcript of Evidence, 16 October 2002, p. 48.

225 Mr Stig Hellsing, Transcript of Evidence, 16 October 2002, p. 49.

Mr Hellsing suggested that if these workers had their concerns addressed, conflicts resolved and rehabilitation programs commenced at an early stage, this would limit the extent to which the original stress injury is exacerbated.²²⁶

In many stress cases, it is not the monetary compensation that is the driving force; rather, it is a desire for acknowledgement of the injury, conflict resolution and some sort of justice.²²⁷

4.139 Dr Peter Shannon agreed that the adversarial approach is the worst way to deal with stress claims but added that a better way has not been developed.²²⁸ He suggested that there is some exaggeration of stress claims when people do not feel that they have been taken seriously and blame the original injury when they become agitated.²²⁹

4.140 Dr Robert Guthrie referred to insurance companies which accept stress claims without serious investigation, as it is more economical to treat the person to try to facilitate their return to work than it is to aggravate the injury by taking them through the compensation system.²³⁰

4.141 Particularly stressful for some injured workers is the fact that they do not have their payments made promptly, concerns about the future, the community stigma, family disbelief and suspicion, alternative duties that are demeaning particularly for tradespeople and, for older people, the requirement to retrain:

There is an arousal of emotions that is escalated by the process - by the perceived cavalier fashion of stakeholders, including rehab providers and case managers and including doctors that the worker believes are on the side of the employer. They also have family issues and relationship breakdowns within the family. Then they have the frustration of not being able to do the chores and having to be dependent on other people. There is all of this.²³¹

4.142 It was suggested that in relation to stress claims, an independent team should provide support and mediation to try to resolve the workplace problem instead of referral to the legal system. If stress is recognised early

226 Mr Stig Hellsing, Submission No. 33, p. 1.

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

228 Dr Peter Shannon, Transcript of Evidence, 20 November 2002, p. 199.

229 Dr Peter Shannon, Transcript of Evidence, 20 November 2002, p. 199.

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

231 Dr Christine Roberts-Yates, Transcript of Evidence, 21 November 2002, p. 264.

it may be rectified with professional help.²³² Centrelink has developed some early intervention programs in an attempt to reduce premiums.²³³

Personality

- 4.143 Personality can influence workers' compensation claims. The insurer may use personality factors in an attempt to diminish a claim. Some assert that a worker's personality may contribute to the situation. The assessment of personality is an issue of debate and there should be caution in listing personality as an important aspect in the workplace.²³⁴
- 4.144 To use personality factors in a worker's compensation claim may result in the oversimplification of a complex situation, as workplace changes may affect the capacity of a worker to continue in a particular position. The example was given of the thoroughly meticulous person subjected to new and unexpected pressures. It was argued that the selective use of personality factors is neither scientific nor fair.²³⁵

Disability assessments

- 4.145 In relation to psychiatric disability assessment, Dr Kaplan argued that minor disabilities that are treatable should be treated and the worker rehabilitated. He added that he has assessed people who have been on disability support for a very long time and was surprised at the extent to which they had been 'cruising in neutral in the system without any checks and balances'.²³⁶

Insurance companies

- 4.146 There are a number of submissions that raised concerns about the manner in which insurance companies manage claims. It was suggested that some claims procedures have been identified as needing improvement, and claims have been inappropriately accepted or denied on the basis of inefficiencies and inadequacies in administrative practices. These are listed in Chapter 2.
- 4.147 One key issue relates to insurance companies aggressively opposing a claim and the assumption that every claim is fraudulent. This may exacerbate symptoms and prolong the difficulties, particularly if

232 Mr Stig Hellsing, Submission No. 33, p. 3.

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

234 Dr Peter Shannon, Submission No. 3, p. 4.

235 Dr Peter Shannon, Submission No. 3, p. 4.

236 Dr Robert Kaplan, Transcript of Evidence, 18 October 2002, pp. 104-105.

psychological issues are involved.²³⁷ Insurance companies have a pivotal role and a positive attitude can lead to gains for all concerned.²³⁸

4.148 It was suggested that the culture of automatic assumption of guilt of the injured worker must be as costly to the community as the fraud itself.²³⁹ There is a perception that some workers' compensation schemes will send injured workers to doctors who are known to give adverse medico-legal reports.²⁴⁰

4.149 The Workers' Medical Centre told the Committee that:

From the moment the claim is made the worker is presumed to be attempting fraud. The onus is placed on the worker to prove their injury or health condition was work related. The worker is often sent to a rude and unsympathetic doctor. They are accused of lying about their condition. They are told this is a natural aging process or it is self-inflicted.²⁴¹

4.150 The RSI and Overuse Injury Association of the ACT believes that the stress of the adversarial process can exacerbate the original injury and make it more difficult to recover.²⁴² The Medical Health Centre argued that few people would be prepared to go through with the level of stress placed on the injured worker making a claim if they were not genuinely seeking fair compensation.²⁴³

Assessments required by doctors and therapists who are seemingly on the side of the employer and show no real concern for the worker who is injured can cause frustration, bitterness and anger in the belief that the employee is not being trusted by the employer.²⁴⁴

4.151 Injured workers may be sent for repeated examinations and the various opinions may not be particularly helpful in returning the worker to the workforce and may assist in making litigation more vigorous.²⁴⁵ Obtaining opinions from independent specialists can be expensive, and the cost

237 Dr Peter Shannon, Submission No. 3, p. 2.

238 Dr Peter Shannon, Submission No. 3, p. 2.

239 Ms Heather McLean, Submission No. 15, p. 3.

240 Ms Ann Thomson, RSI and Overuse Injury Association of the ACT, Transcript of Evidence, 16 October 2002, p.32.

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

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

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

244 Workers' Medical Centre and Queensland Workers' Health Centre, Submission No. 14, pp. 1-2.

245 Dr Peter Shannon, Submission No. 3, p. 2.

factor may cause stress for the injured worker who has no or limited income.²⁴⁶

- 4.152 The RSI and Overuse Injury Association of the ACT believes that it is important to look at the previous history, and that the record of those claimants who had not previously taken time off work before the injury should be taken into account before accusing the claimant of malingering.²⁴⁷
- 4.153 The anger experienced by the injured worker can delay the recovery process and the change from a legitimate to an apparently fraudulent claim in the eyes of the employer can be a gradual process caused by stress.²⁴⁸ The majority of injured workers prefer to be rehabilitated and return to work and being treated with dignity would assist this process.²⁴⁹
- 4.154 In situations where an injured worker is not satisfied with the service provided by an insurance company, Injuries Australia believes that the injured worker and their families do not have access to state consumer laws, as the employer has paid for the insurance and the claimant must deal with an insurance company which they believe does not represent their interests. They also believe that the appeal avenues are loaded against the non-consumer injured workers.²⁵⁰
- 4.155 Another key issue is the attitude of insurance agents who are paid on the basis of the number of claims finalised, and the lack of accountability in this area. A number of submissions raised the issue of the need for meaningful work and referred to the demeaning job opportunities offered to injured workers. Ms Julia Mourant stated that injured workers should be provided with retraining and should not have to take any job just to be off the insurer books.²⁵¹ Ms Mourant had previously held executive positions and found the attitude of the insurer was to:
- “find a job, any job” and if I can’t find what I want “then get a job in a call centre or as a receptionist”.²⁵²
- 4.156 Another issue raised in a number of submissions was the lack of accountability of insurance companies that provide in-house services or their collusion with service providers or employers. MAXNetwork

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

247 Ms Kate Beckett, RSI and Overuse Injury Association of the ACT, Transcript of Evidence, 16 October 2002, p. 33; See also Mr Stig Hellsing, Transcript of Evidence, 16 October 2002, p. 50.

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

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

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

251 Ms Julia Mourant, Submission No. 12, p. 2.

252 Ms Julia Mourant, Submission No. 12, p. 1.

believes that insurance companies are looking at their in-house and outsourcing services and the effectiveness and conflict of interest issues, and that:

Insurance companies are getting wiser about looking at whether they really make a difference to the bottom line and to the impact on the client.²⁵³

- 4.157 It was argued that insurers are committed to delivering the best services to injured workers in order to avoid retribution from WorkCover for inadequate performance. MAXNetwork believes that if the insurer has responsibility to WorkCover that will take precedence. One insurer that MAXNetwork has been working with is committed to providing the best service to injured workers and consequently reducing the costs.²⁵⁴
- 4.158 Mr Paul Stokes commented that a close relationship between all the key stakeholders needs to be developed and nurtured even if it was not an in-house relationship.²⁵⁵

Relationship between employer and insurer

- 4.159 Employers in South Australia are frustrated that a lot of the focus of insurers is on compliance with WorkCover standards and believes that there is less flexibility for these employers to manage cases outside the prescribed guidelines than for self-managed and exempt companies.²⁵⁶
- 4.160 The Chamber of Commerce and Industry of Western Australia is also concerned at the lack of employer involvement in claims management, which results in a separation of responsibility, action and outcome. No party is fully accountable for the efficient administration of claims and most employers are unable to take their business to another insurer.²⁵⁷
- 4.161 The National Meat Association of Australia's members raised a number of structural factors in relation to the operations of insurers, that impact on employers and which they believe are relevant to one of more of the workers' compensation schemes. These include the following:
- employer reports and complaints are ignored; in some jurisdictions there is a perception that it is easier for agencies to pay a claim than investigate it. Insurers should be compelled to investigate possible fraudulent claims;
 - insurers fail to challenge questionable medical decisions;

253 Mrs Leonie Green, MAXNetwork Pty Ltd, Transcript of Evidence, 22 November 2002, p. 334.

254 Mrs Leonie Green, MAXNetwork Pty Ltd, Transcript of Evidence, 22 November 2002, p. 334.

255 Mr Paul Stokes, MAXNetwork Pty Ltd, Transcript of Evidence, 22 November 2002, p. 334.

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

257 Chamber of Commerce and Industry of Western Australia, Submission No. 21, p. 4.

- insurers do not investigate suspect claims and false claims by ex-employees;
- excessive time is taken to assess claims. Claims for minor impairments may take months with little assistance from the insurer;
- there is little contact with any officer from WorkCover face to face and multiple WorkCover or insurer staff may be involved, leading to confusion and delay;
- investigating officers are ill prepared, resulting in wasting of both WorkCover and the employer's time;
- inefficiencies and inadequacies increase costs, which are borne by the employer;
- estimated costs are based on the 'worst case scenario';
- claims disallowed by WorkCover are often overruled by the WorkCover review unit;
- non-compliance by employees not cooperating with rehabilitation program should lead to cancellation of benefits in more specific terms by the insurer;
- claims are allowed in redundancy or stand-down situations;
- there is a conflict of interest in WorkCover who collect premiums and process claims;
- the premium system is wrong and rises exceed the actual cost of the claims; and
- insurers in NSW are more responsive to WorkCover as they are licensed and paid by WorkCover in NSW.²⁵⁸

4.162 From the employer's perspective:

Ultimately employers will react to nature and structure of the operating environment. If it is perceived to be unfair and inefficient and in particular permits fraud in certain areas without any retribution, adverse behaviour within the system will be difficult to eliminate.²⁵⁹

4.163 From an injured worker's perspective, in the case of self insurers, the claimant may be resentful that in providing the insurer with access to details of the medical condition, the employer also has the right to access this information.²⁶⁰

patients who are covered by a self-insured employer and are having a bad time with recovery have great difficulty identifying a difference between the insurer's decision making and that of the employer. Very often the person who manages the rehabilitation

258 National Meat Association of Australia, Submission No. 41, pp. 16-39.

259 Chamber of Commerce and Industry of Western Australia Inc, Submission No. 21, p. 4.

260 Dr Sherryl Catchpole, Workers' Medical Centre, Transcript of Evidence, 22 November 2002, pp. 343-344.

program is also perceived to be a manager for the employer. The worker feels that natural justice is not being observed and becomes angry. The self-insurer's aim, by effective case management, is to return injured workers to the workplace and to close cases as soon as possible, thereby cutting costs. The worker may perceive active case management to be harassment from the employer.²⁶¹

- 4.164 There are also cases where claimants who do not turn up for medical appointments and do not meet their rehabilitation conditions receive numerous letters about payments being stopped but nothing happens:

the first time something happens, a letter should go out, stating very clearly: 'These are your rights and responsibilities. If you do not meet your responsibilities, these will be the consequences.' Sometimes it takes three or four cancelled appointments before a letter goes out.²⁶²

Insurance agents

- 4.165 The insurance industry performs claims management for all schemes except Queensland and Comcare, who have in-house arrangements.²⁶³ The RiskNet Group believes that:

There is no expertise in fraud detection by the various insurers who act as agents for the various government schemes. That is a symptom of the schemes not being owned by the insurer. It is not their money that they are paying out, it is somebody else's money, so nobody really owns it.²⁶⁴

- 4.166 The Insurance Australia Group believes that insurance agents do not have the same incentive to develop best practice when they have no underwriting exposure and no direct financial interest in the scheme.²⁶⁵

Independent regulatory bodies

- 4.167 There is a concern among injured workers that there is a lack of accountability for WorkCover authorities. In Queensland the concern was raised that while it is claimed that the regulatory body Q-Comp is separate from Queensland WorkCover, they answer to the same Minister, the same

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

262 Ms Anita Grindlay, Transcript of Evidence, 26 November 2002, p. 361.

263 Department of Employment and Workplace Relations, Submission No. 48, p. 27.

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

265 Insurance Australia Group, Submission No. 47, p. 14.

Board and the same Chief Executive Officer.²⁶⁶ Similar concerns were expressed by injured workers in other jurisdictions. For example, it was suggested that a complaints authority similar to a police complaints authority, with the power to investigate non-compliance by WorkCover authorities and to issue penalties should be established.²⁶⁷

Investigation and dispute procedures

4.168 The cost of investigations is a disincentive for employers to investigate potentially fraudulent claims, because that cost will be incorporated within their premium and their yearly claims cost.²⁶⁸ The Insurance Australia Group suggested that the relevant scheme legislation should include financial and structural incentives for pursuing fraudulent claims.²⁶⁹

4.169 Self-insurers may also be discouraged from disputing a claim. For example, in the Western Australian system there is a program of monitoring insurers and self-insurers, which includes the measurement of disputes that go to the Conciliation and Review Directorate:

There are other ways in which you can deal with a claim than taking it to dispute, so that in itself does not assist in the identification of fraud. It also does not assist in dealing with fraudulent behaviour, should it be discovered.²⁷⁰

4.170 The Victorian Automobile Chamber of Commerce suggested that the role and services of legal practitioners should be regulated with the scope of their involvement in workers' compensation claims. VACC expressed concern at the use of advertising to entice injured workers to obtain compensation lump sums, and believes that regulation of advertising by legal practitioners is required.²⁷¹

4.171 It was also suggested that there needs to be a complaints authority which could take the judicial system and the conflict and the adversarial nature out of the system.²⁷² The establishment of a specialised Workers' Compensation Court in all jurisdictions could ensure that all the relevant

266 Ms Heather McLean, Submission No. 15, p. 3.

267 Mr Markham Moore-McQuillan, Submission No. 16, p. 1.

268 Insurance Australia Group, Submission No. 47, p. 11; Ms Annette Bellamy, Chamber of Commerce and Industry of Western Australia Inc, Transcript of Evidence, 20 November 2002, p. 204.

269 Insurance Australia Group, Submission No. 47, p. 11.

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

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

272 Mr Markham Moore-McQuillan, Transcript of Evidence, 21 November 2002, p. 292.

and correct facts of the case are considered.²⁷³ The RiskNet Group argued, however, that there are a number of reasons why fraud flourishes:

Workers compensation courts typically have no jurisdiction over fraud; they are administrative by nature. They determine whether or not a claimant is entitled to benefits. They are not able to make a determination on whether the claimant or anybody else involved in that particular case has perjured themselves or set out to commit fraud ... The very nature of workers' compensation claims means that there is a no-fault system across all of Australia. From the outset, there does not seem to be any major attempt to bring to the attention of claimants the fact that committing a fraud or exaggerating a claim are fraudulent matters which can be dealt with under the various crimes act legislation.²⁷⁴

- 4.172 Employers First noted that while the employer may have evidence, it is nearly always rejected by the court and that judges, with the benefit of considerable hindsight, will say that the incident was foreseeable and that the employer was guilty. Employers First added that once a claim is approved, all subsequent cases of that kind will include a similar statement of claim.²⁷⁵

Appeal processes

- 4.173 Injured workers who do not receive workers' compensation and are unable to work do not have other alternatives. The Workers' Medical Centre does not advise these clients to appeal as this process is so stressful that their condition deteriorates. Many workers pursue common law claims as a result of the way they have been treated.²⁷⁶ However, it was suggested that most injured workers do not have the right of appeal to an industrial magistrate against a workers' compensation decision, because of the economic aspects of our social structure.²⁷⁷ In Western Australia it costs \$15 000 to appeal in the Compensation Magistrates Court and injured workers do not have the money.²⁷⁸

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

274 Mr Richard Gilley, The RiskNet Group, Transcript of Evidence, 18 October 2002, pp. 131-132.

275 Mr Garry Brack, Employers First, Transcript of Evidence, 18 October 2002, pp. 84-5, 88.

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

277 Ms Heather McLean, Submission No. 15, p. 2.

278 Mrs Margaret Pursey, Injured Persons Action and Support Association, Transcript of Evidence, 12 February 2003, p. 459.

No fault systems

4.174 All Australian workers' compensation schemes are based on a 'no-fault' principle.²⁷⁹ The Recruitment and Consulting Services Association commented that the no fault system may be open to exploitation as workers' compensation claims can be made without a review of the circumstance in which the injury occurred.²⁸⁰ The RCSA believes that workers should have a level of accountability for their own safety.²⁸¹ Under the current system employees who repeatedly ignore safety procedures can still be compensated.²⁸² The Master Cleaners Guild of Western Australia stated that the onus of proof in a no fault system moves very quickly to the employer.²⁸³

4.175 Problems with the system permit illness based cases to proceed:

I think there is a lack of objectivity in the medical assessments; that is one thing. I think a lack of understanding of the problems that the employer faces contributes. I also think it goes to the judiciary; it is a common subject these days, but over the years there has been such a mutation in the tests of negligence that we have now developed a no-fault system in common law. In my view, that is the fundamental reason we have all the problems we have, because no country can afford two no-fault systems—at its origin, workers comp was to have a no-fault system. I have seen time and time again common law undermine the capacity to bring people back to work and to fire up the imposition of disability. That is really sad. I have seen people lose their cases and virtually lose their whole lives, because the system has taken them that way.²⁸⁴

Settlement

4.176 Insurers see settlement as the most effective means of damage control.²⁸⁵ The settlement process is used to eliminate fraudulent claims and behaviour:

This problem is the hard to resolve, hard to pin down condition which will not respond adequately to treatment, to rehabilitation, or to redeployment or retraining. This is usually a sign or message that

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

280 Recruitment and Consulting Services Association, Submission No. 20, p. 8.

281 Recruitment and Consulting Services Association, Submission No. 20, p. 8.

282 Recruitment and Consulting Services Association, Submission No. 20, p. 8.

283 Master Cleaners Guild of Western Australia Inc, Submission No. 59, p. 3.

284 Mr Kim Mettam, Charles Taylor Consulting, Transcript of Evidence, 20 November 2002, p. 247.

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

is being given. It gives rise to a chronic condition that is fuelled by advice, by learned behaviour and by monetary gain. Thus settlement is used to overcome this behaviour. The behaviour in itself is fraudulent because it is a conscious decision to stick with the system playing the same game for monetary reward.²⁸⁶

- 4.177 WorkCover Queensland prefers to settle rather than go to court and therefore does not have a lot of matters at court.²⁸⁷ When an injured worker reaches a level of stability in terms of their medical condition, their claim is escalated through their lawyer and goes through the common law arena so the person can move on with their life.²⁸⁸
- 4.178 People in Queensland can take an annuity by agreement. The structured settlements can be purchased for a person who receives a common law payout, which will give them some certainty of income over the longer term.²⁸⁹
- 4.179 The Labor Council of New South Wales commented that there are only two ways to manage the tail of a claim, and that is that you can buy out your liability through a lump sum or look at employment incentives and redeployment schemes to achieve a return to work for those claims.²⁹⁰

Journey claims

- 4.180 The Council of Small Business Organisations would like to see a tightening in journey claims so that workers' compensation can revert to coverage at work, not to and from.²⁹¹ The Council argued that the workers' duty of care would support the view that workers are responsible for getting themselves to work safely, and that this might reduce the costs, as currently the no-fault system only leads to increased premiums for small business.²⁹² The Australian Industry Group also sees this as a potential

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

287 Ms Evron McMahon, WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 315.

288 Ms Evron McMahon, WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 322.

289 Mr Paul Goldsbrough, Queensland Department of Industrial Relations, Transcript of Evidence, 22 November 2002, p. 322.

290 Ms Mary-Louise Yaagar, Labor Council of New South Wales, Transcript of Evidence, 18 October 2002, p. 117.

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

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

massive weakness in most schemes but the volume of claims does not indicate that it is being exploited in a fraudulent manner.²⁹³

The Committee's comments

- 4.181 A number of structural factors have been identified which may encourage or allow fraudulent behaviour by employees, employers, service providers, insurance companies and workers' compensation schemes. Much of the alleged fraud is due to a lack of understanding of the system and the perspectives of the other participants. A simpler approach, clarification of a number of issues and an educational approach for all participants may address many of these issues.
- 4.182 While it is generally accepted that the level of fraud by injured workers is minimal, fraudulent activity may be encouraged by various aspects of the scheme design and the manner in which the legislative imperatives are implemented in practice. While there needs to be greater consistency in legislative outcomes for the workers' compensation schemes nationally, many of the problems arise from the administration, practices and the attitudes of some employers, service providers, insurers and workers' compensation schemes.
- 4.183 The accountability of each of the sectors of the workers' compensation system needs to be enhanced to address the inefficiencies and lack of appropriateness and effectiveness of the practices. Significant improvements may be achieved by a lesser focus on potential fraud and greater attention to the consideration of best practice models.
- 4.184 There also needs to be better consideration of the overall scheme design and the goals, as there are many aspects where possible improvements are stifled by the inflexibility of the current processes. One important issue is the need to ensure that the trend to other employment arrangements does not mean that many workers are not covered by workers' compensation schemes.
- 4.185 In relation to injured workers, of particular concern are the return to meaningful employment, the support required for those who need major changes to their careers, and the need for explanation of the benefits of appropriate alternative options to a lump sum payment for those unable to return to work.

293 Mr Mark Goodsell, Australian Industry Group, Transcript of Evidence, 18 October 2002, p. 55.

- 4.186 In many respects, the area of service provision provides opportunities for greater accountability and improved participation. The perception of fraud in relation to this sector of the industry reflects, in part, inadequacies and inefficiencies in the operation of the workers' compensation system, but this is perceived as fraud on the part of the services providers. A move to evidence based medicine and exception based reported will address many of these issues.
- 4.187 The extent to which insurance companies and workers' compensation schemes are able to simplify their procedures and provide an adequate explanation of these to the injured employees and their employers will determine the extent to which the perceptions of fraud on their part can be reduced. Inefficiencies and mismanagement not only add to their costs but also add to the perception of fraud.
- 4.188 Of concern to the Committee were the number of reports of inefficient, unethical and inappropriate actions by investigators who are engaged to monitor an injured worker's behaviour. The case was made strongly that these practices cause unnecessary stress for the injured worker and their families, this adds substantial costs to the investigation and these are often met by the employers and the resulting evidence produced by this method is often of questionable value. This is one area that should be relatively easily addressed and the Committee urges all jurisdictions to look at their activities in this area.

5

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.¹
- 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.² Insurance Australia Group believes that statutory provisions should require a fraud investigation capacity to be mandatory.³

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

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.⁴ Comcare complies fully with the Commonwealth Fraud Control Guidelines 2002.⁵ The cost of investigations in 2000-01 was \$752 073 and the estimated savings of the 129 investigations closed was approximately \$8 million.⁶

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.⁷ In the identification of fraud, Comcare utilises audit and quality systems, informants, employers, providers and other agencies such as police.⁸ Another initiative by Comcare is the introduction of fraud filters to assist in a more proactive approach to the identification of potentially fraudulent claims.⁹

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.¹⁰

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.¹¹ The ACT's Workers'

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.¹²

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.¹³

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.¹⁴ However, ultimately this preserves funds for those most in need and will benefit genuinely injured workers.¹⁵

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

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.¹⁷ 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.¹⁸ Provisional liability claims can continue for 12 weeks and up to \$5000 in medical expenses can be paid with virtually no questions asked.¹⁹ Some see this as another opportunity for rorting as this only requires verbal notification to either the employer or the insurer.

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.²⁰
- 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.²¹ 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.²²
- 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.²³
- 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.²⁴

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.²⁵

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.²⁶ 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.²⁷

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.²⁸

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

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.³¹ The RCSA believes that there is a need to ensure that employers and workers' compensation authorities are not exploited by workers who do not

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.³² Other submissions referred to previous injuries which are perhaps aggravated in the new employment being accepted as a claim by the insurer.³³

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.³⁴
- 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.³⁵ The Victorian Government stated that the extent to which audits achieve subsequent compliance from both audited and non-audited companies has not been quantified.³⁶
- 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.³⁷
- 5.24 Employers not complying usually receive administrative penalties. For example, in compliance enforcement the Western Australian Government

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.³⁸

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.³⁹ 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.⁴⁰

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.⁴¹

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.⁴² 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.⁴³

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.⁴⁴
- 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.⁴⁵

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.⁴⁶
- 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.⁴⁷
- 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.⁴⁸
- 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.⁴⁹

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

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.⁵⁰

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.⁵¹

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 \$225 000.⁵² 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.⁵³

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.⁵⁴ The use of video surveillance is still widespread in Tasmania but is usually only used to force settlement negotiation.⁵⁵ 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.⁵⁶

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

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.⁵⁷

- 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.⁵⁸
- 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.⁵⁹

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.⁶⁰

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.

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.⁶¹

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.⁶²

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.⁶³

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-

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.⁶⁴

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.⁶⁵

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.⁶⁶ In some States the necessary legislation is in place but there are, in ARIMA's view, insufficient investigations and prosecutions.⁶⁷

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.⁶⁸

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.⁶⁹ The situation is not always clear cut:

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.⁷⁰

- 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.⁷¹
- 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.⁷² 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.⁷³ 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.⁷⁴ Queensland has legislative provisions including penalties up to \$30 000 or eighteen months imprisonment.⁷⁵ 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.⁷⁶
- 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

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.⁷⁷

- 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.⁷⁸ If a claim is declined because it is found to be fraudulent, there are no ramifications or penalties for the employee.⁷⁹
- 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.⁸⁰ 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.⁸¹

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.⁸²
- 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

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.⁸³

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.⁸⁴

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.⁸⁵

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.⁸⁶

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.⁸⁷ The confidentiality clause in the release signed by the claimant should be eliminated to ensure greater accountability for the employer.⁸⁸

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.

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.

7

Rehabilitation programs and benefits

- 7.1 The terms of reference require an examination of *the adequacy, appropriateness and practicability of rehabilitation programs and their benefits*. There is a general acceptance that early access to rehabilitation and injury management, and return to work, leads to improved outcomes for the injured worker and the workers' compensation system.
- 7.2 The key elements for effective rehabilitation and return to work scheme design have been identified nationally in the *Promoting Excellence* report.¹ There remains, however, significant concern at the lack of comparability across schemes in determining outcomes and benefits, due to the different arrangements. This information would enhance the analysis of current trends and assist in the identification and monitoring of best practice.
- 7.3 This chapter outlines the practice of rehabilitation and return to work in Australia, with perspectives provided by and on employees, employers, service providers and insurers.

Definition of rehabilitation

- 7.4 The National Occupational Health and Safety Commission (NOHSC), defines occupational rehabilitation as a managed process involving early intervention with appropriate, adequate and timely services based on assessed needs, and which is aimed at maintaining injured or ill employees in, or returning them to, suitable employment.²

1 Heads of Workers' Compensation Authorities, *Promoting Excellence: National Consistency in Australian Workers' Compensation*, Final and Interim Reports to the Labour Ministers' Council, Melbourne, May 1997 cited in Comcare, Submission No. 32, pp. 43-44.

2 Uniform Guidelines for Accreditation of Rehabilitation Providers [NOHSC:7032(1995)]; <http://www.nohsc.gov.au/PDF/Standards/Guidelines/AccreditRehabilitation.pdf>

- 7.5 Much of the evidence received highlights the varying expectations that different parties hold in terms of what is adequate, appropriate and practicable. The Committee clarifies the terms of reference in the following way:
- adequacy: sufficient and satisfactory rehabilitation to meet the needs of the injured worker to return to work;
 - appropriateness: suitable rehabilitation designed to meet the longer term needs of injured workers and employers; and
 - practicability: rehabilitation programs that are feasible and are cost effective in relation to desired outcomes.
- 7.6 Occupational rehabilitation providers involve many professions such as occupational therapists, physiotherapists, ergonomists and psychologists and social workers. They operate with those backgrounds in delivery of occupational rehabilitation.

Occupational rehabilitation in Australia

- 7.7 The systems of operation of Commonwealth, State and Territory occupational rehabilitation (OR) vary significantly. The Return to Work Monitor published by the Heads of Workplace Safety and Compensation Authorities provides a comparison of injured workers' participation in rehabilitation and the costs for each jurisdiction.³
- 7.8 The 2001-02 Return to Work Monitor indicates that 35 per cent of injured workers participated in rehabilitation during 2001-02 with an average cost of rehabilitation of \$1 360.⁴ Across jurisdictions there is considerable variation in the average cost of rehabilitation, with the ACT costs highest (\$2 156) and South Australian costs being the lowest at \$639.⁵
- 7.9 However, given that the benefits available under each scheme differ significantly, the comparisons are limited. The lack of comparable measurement undermines the management of effective rehabilitation

3 The Heads of Workplace Safety and Compensation Authorities, *2001/2002 Australia & New Zealand Return to Work Monitor*, August 2002.

4 The Heads of Workplace Safety and Compensation Authorities, *2001/2002 Australia & New Zealand Return to Work Monitor*, August 2002, pp. 52-53.

5 The fifth annual *Return to Work Monitor* includes all Australian jurisdictions and New Zealand except Western Australia and the Northern Territory.

Australia wide.⁶ This inability to compare system characteristics restricts the analysis of system effects on outcomes. The Australian Rehabilitation Providers Association suggested that there should be increased emphasis on national data gathering and statistical analysis.⁷

7.10 In addition, the manner in which rehabilitation providers are involved in the system vary. The schemes differ, for example, in terms of:

- accreditation of occupational rehabilitation providers;
- fee regulation;
- services provided;
- insurance system; and
- referral sources.

7.11 The Department of Employment and Workplace Relations (DEWR) provided an indication of the variation across jurisdictions comparing rehabilitation and return to work provisions.⁸ To varying degrees, Australian workers' compensation systems encourage employers to implement best practice workplace rehabilitation. Firstly, each system incorporates statutory rehabilitation obligations for employers (which may be supported by financial penalties for non-compliance). Secondly, employers' claim experience and return to work performance effects insurance costs.

7.12 Currently there is concern that:

the workers' compensation system is plagued by monitoring, delays and waiting. This waiting costs money and it costs injured workers proper rehabilitation.⁹

Elements of best practice

7.13 In 1997 the Labour Ministers' Council adopted a strategy for continuing workers' compensation reform nationally, noting five key principles of Australian workers' compensation scheme design. The principles were

6 Department of Employment and Workplace Relations, Submission No. 48, p.54; Master Cleaners Guild of Western Australia Inc, Submission No. 59, p. 7; Australian Rehabilitation Providers Association, Submission No. 17, p. 3.

7 Australian Rehabilitation Providers Association, Submission No. 17, p. 5.

8 See Department of Employment and Workplace Relations, Submission No. 48, Attachment E.

9 Dr Paul Pers, Transcript of evidence, 26 November 2002, p.361.

identified by the Heads of Workers' Compensation Authorities (HWCA) in the report, *Promoting Excellence*.¹⁰

7.14 The *Promoting Excellence* report also identified seven elements of best practice scheme design in relation to rehabilitation and return to work arrangements, often described as total injury management. These total injury management elements are:

- in a workers' compensation system, early return to work is the expected outcome of occupational rehabilitation intervention. Occupational rehabilitation should be workplace based with services aimed at the maintenance or restoration of a worker to appropriate employment;
- the employer should be responsible for assisting in the occupational rehabilitation of injured workers, as well as keeping the job available for a reasonable period;
- occupational rehabilitation services are not required for all injured workers, but where necessary to achieve a return to work, services are most effective when delivered as soon as possible after injury, and subject to regular assessment for relevance, effectiveness and results;
- workers' compensation systems should provide an environment where an early return to work is seen by the injured worker as the most appropriate outcome. This involves an obligation on the injured workers to participate positively in the occupational rehabilitation program and return to work plan;
- insurers and managed fund agents should ensure that there is a clear focus on occupational rehabilitation and return to work as part of the workers' compensation claims management process;
- occupational rehabilitation is most effective when the employee, workers, medical and rehabilitation providers (where involved) jointly develop, implement and show a commitment to return to work programs; and
- the workers' compensation system regulator should have a responsibility to develop and foster a culture that supports and reinforces the expectation of return to work as the normal outcome for any work related injury or disease. The regulator's role should be to develop, communicate, promote and enforce the legislative framework

10 Heads of Workers' Compensation Authorities, *Promoting Excellence: National Consistency in Australian Workers' Compensation*, Final and Interim Reports to the Labour Ministers' Council, Melbourne, May 1997 cited in Comcare, Submission No. 32, pp. 43-44.

required to achieve a return to work and the provision of occupational rehabilitation.

In practice

7.15 The Australian Rehabilitation Providers Association suggested that increasing control and regulation does not necessarily lead to better outcomes. The Association cites Tasmania as an example, having a higher than Australian average durable Return to Work (RTW) rate (79 per cent for 2001-02), with no accreditation procedures, fee setting or other operational controls.¹¹

7.16 While specialist intervention is very effective in certain cases, the Western Australian Government commented that it is not always required or appropriate. The cost effectiveness and performance of specialised occupational rehabilitation services needs to be examined.¹² Rehabilitation providers such as ARPA support more comprehensive data collection. Employer groups also identify the need for performance measurement:

Whilst calls for performance measurement will no doubt result in re-examination of current quantitative outputs it is important that some focus begins to evolve on appropriate qualitative evaluation of the system cultures that underpin operations or as some would say, undermine the various schemes operational around Australia.¹³

7.17 DEWR endorses the elements of total injury management identified in *Promoting Excellence*, however, does not accept the principle of the HWCA model that the cost of an injury to an employee should be shared between the employer, the worker and the community through social welfare programs.

DEWR considers that the primary responsibility for the cost of a workplace injury, including rehabilitation rests with the employer (via the insurance coverage an employer is required to have with a scheme) and not taxpayer funded social welfare programmes.¹⁴

11 Australian Rehabilitation Providers Association, Submission No. 17, p. 5; See also the Heads of Workplace Safety and Compensation Authorities, *2001/2002 Australia & New Zealand Return to Work Monitor*, August 2002.

12 Western Australian Government, Submission No. 36, p. 3; See also Chamber of Commerce and Industry of Western Australia, Submission No. 21, p. 10.

13 Masters Cleaners Guild of Western Australia Inc, Submission No. 59, p. 7.

14 Department of Employment and Workplace Relations, Submission No. 48, p. 51.

The environment

- 7.18 Management culture and competence play a significant role in determining the rates of injury, workplace disruption and claims cost and level of premium. Workplace change such as downsizing and the significant trend towards more contractor, subcontractor and casual employment relationships have implications for the duty of care to employees by employers.¹⁵

The factors outlined above which contribute to higher or lower levels of workplace injury, also directly impact on the effectiveness of OR [Occupational Rehabilitation]. Workplaces that place a high emphasis on care for employee health and safety correlate highly with a management culture that accepts responsibility for employee rehabilitation. Such workplaces participate positively, creatively and constructively in return-to-work programs, and achieve higher return-to-work rates and lower associated costs. Workplaces with low commitment on these measures achieve poorer outcomes.¹⁶

- 7.19 The way in which that supportive environment is maintained is important. Anything that undermines the credibility of workers' compensation and rehabilitation schemes will reduce their effectiveness.

One [indirect cost] is the poor credibility of workers compensation schemes from time to time with employers. That creates risks for injury management. Employers have a very profound responsibility in relation to workers compensation to make sure that they contribute what they can to an injured worker's recovery through offering them alternative duties where they are available to offering a supportive environment et cetera. To the extent that there is fraud in a scheme, that jaundices or prejudices employers' views about the legitimacy of that role, and I think that should not be underestimated.¹⁷

- 7.20 The chapter will now provide details of evidence that the Committee received in respect to adequacy, appropriateness and practicability.

15 Master Cleaners Guild of Western Australia Inc, Submission No. 59, p. 6.

16 Victorian Council of Occupational Rehabilitation Providers, Submission No. 46, p. 2.

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

Adequacy

- 7.21 The adequacy of rehabilitation requires that it is sufficient and satisfactory to the needs of the injured worker, enabling a return to work. The view of the Australian Manufacturing Workers' Union, Injuries Australia and the Victorian Council of Occupational Rehabilitation Providers was that the practical application of occupational rehabilitation falls well short of the original intent of the legislation.¹⁸
- 7.22 Ms Anita Grindlay, following a recent review of 1000 workers' compensation claims commented that:
- a lot of poor return to work outcomes are due to the fact that employers are often acting to the letter of the legislation without necessarily to the spirit.¹⁹
- 7.23 Injured workers' support groups are more broadly critical of rehabilitation and rehabilitation providers. They have concerns about timeliness, the amount of worker control in relation to decisions made, the professionalism of the rehabilitation and whether any rehabilitation is provided at all.²⁰
- 7.24 The Australian Nursing Federation (ANF) reports that rehabilitation is not taken seriously by either employers or insurers. The ANF lists problems including:
- injured workers having difficulty accessing rehabilitation or information about available services, and little support from management; and
 - the employer not providing alternate duties, or if not possible to return to pre-injury then opportunities for retraining are extremely limited.²¹
- 7.25 Unions are committed to rehabilitation and return to work as an essential part of the workers' compensation system and to providing justice to workers and long term savings to the system.²²

18 Australian Manufacturing Workers' Union; Submission No. 35, p. 13; Injuries Australia Ltd, Submission No. 27, p. 6; Victorian Council of Occupational Rehabilitation Providers, Submission No. 46, p. 3.

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

20 Workers' Compensation Support Network, Submission No. 5, p. 5; Mr Ian Trinne, Injured Workers Association, Transcript of Evidence, 21 November 2002, p. 278; Injuries Australia Ltd, Submission No. 27 p. 6; Mr B C Glover, Submission No. 44, pp. 1-3; Mrs Margaret Pursey, Injured Persons Action and Support Association, Transcript of Evidence, 12 February 2003, p. 442.

21 Australian Nursing Federation, Submission No. 67, p. 8.

22 Community and Public Sector Union, Submission No. 42, p. 3.

Employer perspectives

- 7.26 A number of employer groups described their commitment to rehabilitation and return to work. Employer groups such as those in the automotive industry are often challenged to find alternative duties that are meaningful and suitable, especially where there may be language, literacy and/or numeracy issues. They suggested that simpler rehabilitation and return to work obligations be implemented.²³ Small businesses echoed these concerns, citing similar problems and requesting simplification.²⁴
- 7.27 Greater success is achieved when an injured worker is able to return in some capacity to pre-injury duties. In 1997 a review of rehabilitation by the Workers' Compensation and Rehabilitation Commission of Western Australia recommended that the major responsibility of injury management and rehabilitation rests with the employer and the injured worker, in consultation with the medical practitioner. Difficulties arise when this cannot occur, because of the unavailability of alternate duties, poor relationships between the employer and worker and/or the medical practitioner.²⁵
- 7.28 The 80-20 *pareto principle* was mentioned by a number of witnesses. Eighty per cent of people who have an injury get back to work with little assistance required, but 20 per cent of the claims become long term and make up 80 per cent of the costs. It is these 20 per cent of claims that need to be better managed not processed.²⁶ This could be facilitated by a move to exception-based reporting and management.²⁷
- 7.29 Where an injury occurs in manual or labouring trades other employment opportunities are often limited, unless workers have specific skills.²⁸ This is especially debilitating for younger workers.
- 7.30 Small business organisations recognise the difficulty with return to work and cited their difficulty in having spare capacity to offer alternative duties which are suitable.²⁹ They suggested that a pooling arrangement may be helpful to increase the possible supply of available suitable positions.

23 Victorian Automobile Chamber of Commerce, Submission No. 65, pp. 9-10.

24 Council of Small Business Organisations of Australia, Submission No. 49, pp. 2-3.

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

26 Ms Anita Grindlay, Transcript of Evidence, 26 November 2002, p. 355; Mr Kim Mettam, Charles Taylor Consulting, Transcript of Evidence, 20 November 2002, p. 241.

27 Ms Anita Grindlay, Transcript of Evidence, 26 November 2002, p. 360.

28 Dr Peter Shannon, Submission No. 3, p. 5.

29 Mr Michael Potter, Council of Small Business Organisation of Australia, Transcript of Evidence, 4 December 2002, p. 418.

Referrals

- 7.31 Much of the discussion of rehabilitation has focused on the time lapse between the injury and the worker's involvement in rehabilitation programs. Often much of the focus of rehabilitation is on acute medical treatment immediately following the injury and for a relatively short time period.³⁰ However, access to other rehabilitation services is often delayed. For example, where all parties must agree to a referral to a rehabilitation provider this can lead to significant delays. Delays of up to 240 days have been quoted by the Australian Rehabilitation Providers Association (ARPA). ARPA suggests that removing systemic barriers to early referral should be a priority.³¹
- 7.32 Other examples have also been given where no rehabilitation or ongoing support was provided.³² In these examples psychological or mental injury was the reason for seeking workers' compensation. There is criticism that any system that takes into account physical problems but ignores the psychological aspects is only a partial system.³³
- 7.33 A number of submissions suggested that educating employers about injury management of their own employees would lead to significant improvements in injured workers' rehabilitation.³⁴ ARPA also suggested that for smaller employers rehabilitation of injured workers' could be helped by insurers at claims management level referring injured workers to occupational rehabilitation services.³⁵
- 7.34 ARPA stated that often the best results for rehabilitation occur in larger organisations and worksites, and that often these are self-insured. Such organisations usually have in-house expertise and the commitment to manage the rehabilitation closely, using internal and external rehabilitation resources. Most small or medium sized employers have limited experience or resources to devote to rehabilitation. ARPA suggested that:

Achieving early referral and streaming injured workers into appropriate occupational rehabilitation services is the biggest

30 MAXNetwork Pty Ltd, Submission No. 4, p. 2.

31 Australian Rehabilitation Providers Association, Submission No. 17, Appendix 1, p. 5; See also Master Cleaners Guild of Western Australia Inc, Submission No. 59, p. 7.

32 Mr Stig Hellsing, Transcript of Evidence, 16 October 2002, p. 45; Ms Heather McLean, Submission No. 15, p. 3.

33 Dr Peter Shannon, Transcript of Evidence, 20 November 2002, p. 197.

34 For example Australian Industry Group, Submission No. 53, pp. 25-26.

35 Australian Rehabilitation Providers Association, Submission No. 17, p. 4.

challenge confronting the workers compensation OR [occupational rehabilitation] system today.³⁶

- 7.35 DEWR recommended that more emphasis on early intervention should be on resolving issues at the workplace rather than requiring further regulation.³⁷ ARPA were also of the view that the most effective occupational rehabilitation is workplace based.³⁸ The Queensland Government is examining workplace rehabilitation accreditation and factoring in organisational size and risk factors, plus incentives for early intervention and employer reporting.³⁹
- 7.36 The Chamber of Commerce and Industry of Western Australia questioned the efficacy of externally provided rehabilitation. Using Western Australia as an example the Chamber cited a 1997 rehabilitation review:
- ‘the utilisation of vocational rehabilitation as a strategy to assist injured workers return to work was associated with an increase in the return to work rate for closed cases from 59% in 1993/94 to 64% in 1994/95’. It also found that the referral to external vocational rehabilitation increased by 39% in the first two years and the cost in the first three years by 186%. Since 1995 the return to work rate has remained reasonably stable.⁴⁰
- 7.37 Evidence was received of delays in referral leading to reduced likelihood of return to work, reduced worker confidence and higher costs to the schemes. The Committee received evidence that in one state the occupational providers are under significant pressure to assess claimants as having work capacity, not necessarily leading to redeployment assistance but rather to termination strategies if the claimant is reaching the 104 weeks time limit.⁴¹

Return to work

- 7.38 Return to work (RTW) refers to an injured worker returning to any paid employment, with the pre-injury employer or with another employer.

36 Australian Rehabilitation Providers Association, Submission No. 17, p. 4.

37 Department of Employment and Workplace Relations, Submission No. 48, p. 54.

38 Australian Rehabilitation Providers Association, Submission No. 17, pp. 6-7.

39 Queensland Government, Submission No. 30, pp. 9-10.

40 Chamber of Commerce and Industry of Western Australia, Submission 21, p. 8.

41 Victorian Council of Occupational Rehabilitation Providers, Submission No. 46, p. 6.

- 7.39 The Australia and New Zealand Return to Work Monitor provides an indication of jurisdictional performance.⁴² In 2001-2002, 83 per cent of injured workers in Australia had returned to work for some period just over six months after submitting a claim. However this rate has fallen over the last three years, as has the durable RTW rate. Ten per cent of injured workers had attempted to return to work but were not able to sustain employment. This fall in RTW is associated with a rise in average number of days compensation paid per claim, and an increase in national average claim cost to \$9 708.⁴³
- 7.40 Other concerns from injured workers involve instances where workers have had their claims for compensation rejected, and then miss out on rehabilitation, thereby reducing their ability to return to work.⁴⁴
- 7.41 The Australian Manufacturing Workers' Union cited a range of concerns with rehabilitation programs and their administration. In general the AMWU believes that injured workers, especially those with musculoskeletal disorders or psychological injury are discriminated against during return to work or retraining. This includes:
- the lack of provision of suitable duties;
 - the lack of or inappropriate vocational retraining;
 - the dismissal of injured employees; and
 - workers being treated differently through redundancy processes.⁴⁵
- 7.42 The Recruitment and Consulting Services Association outlined the difficulties in determining obligations for on-hired service providers and host organisations with return to work for injured workers.⁴⁶ The assessment of the AMWU is that:
- The lack of suitable duties for people who are employed under labour hire arrangements is appalling. Basically, what happens is that you are injured, you do not get rehab.⁴⁷

42 The Heads of Workplace Safety and Compensation Authorities, *2001/2002 Australia & New Zealand Return to Work Monitor*, August 2002.

43 The Heads of Workplace Safety and Compensation Authorities, *2001/2002 Australia & New Zealand Return to Work Monitor*, August 2002, pp ii, vi; see also Figure 2, 4, 64.

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

45 Australian Manufacturing Workers' Union, Submission No. 35, pp. 13 -16.

46 Ms Charles Cameron, Recruitment and Consulting Services Association, Transcript of Evidence, 4 December 2002, p. 430.

47 Dr Deborah Vallance, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, p. 383.

- 7.43 Injured workers involved with intensive redeployment efforts can have success but many become de-motivated as discussed above, and alternative strategies need to be found.⁴⁸ In addition, injury can lead to declining self esteem and identity problems. In some cases poor decisions relating to the difficulties in returning to work tragically lead to suicide.⁴⁹
- 7.44 Significant concerns were raised on the substantial loss of income to workers who are injured at work. For example, in a survey of injured nurses in Victoria, for those that were to return to some form of work, 46 per cent were receiving less income compared to their pre-injury earnings and only 48 per cent were able to work at their pre-injury job or hours.⁵⁰ Therefore, the effect of work injury is significant also in financial terms.
- 7.45 Where there is successful return to work, either to their previous job or alternative employment, then the worker exits the workers' compensation scheme. In some cases this does not occur and the injured worker then seeks other economic compensation where possible, or access to commonwealth benefits schemes.
- 7.46 Evidence to the Committee stated that rarely is the initial claims manager made accountable for the long term consequences of the inability to return an injured worker to employment. Injured workers' support groups view inadequate rehabilitation efforts and ceasing payments as cost savings to the State and insurers. This is then followed by a cost burden to the Commonwealth, possibly accounting for part of the increase in people receiving a Disability Support Pension.⁵¹ DEWR also raised the issue that allowing claimants to redeem their benefits in a lump sum or a common law settlement rather than return to work may or may not be in the long term best interest of the claimant.⁵²
- 7.47 In relation to outcomes and comparative data there is also criticism of the lack of measurement where a return to work is not achieved. The Victorian Automobile Chamber of Commerce suggested more regular file reviews where there are unsatisfactory delays in an early return to work.⁵³ Occupational provider groups have criticized the current national measurement of return to work outcomes:

48 Australian Rehabilitation Providers Association, Submission No. 17, p. 5.

49 Injuries Australia Ltd; Submission No. 27, p. 6.

50 Australian Nursing Federation, Submission No. 67, p. 9.

51 Injuries Australia Ltd; Submission No. 27, p. 7; Injured Workers Association, Submission No. 29, p. 6.

52 Department of Employment and Workplace Relations, Submission No. 48, p. 53.

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

the Campbell survey [Return to Work Monitor], is not an appropriate measure of occupational rehabilitation effectiveness, as occupational rehabilitation is only involved in a minority of open claims.⁵⁴

- 7.48 Insurers play a crucial role in encouraging rehabilitation and ongoing management. Representatives of the Association of Risk and Insurance Managers of Australasia suggested that schemes discourage recovery because financial incentives mitigate against quick recoveries.⁵⁵ The adversarial environment of many workers' compensation schemes does not focus the motivation and commitment on the earliest possible return to work.

Terminations - Discontinuances

- 7.49 Matching a worker's capabilities and achieving meaningful work should be a key outcome of rehabilitation. However, injured workers are dissatisfied with the 'find a job, any job' approach of some insurers who simply want the workers 'off the books'⁵⁶. Injuries Australia referred to bonuses that insurers or their agents receive in closing cases, rather than effectively managing the rehabilitation of injured workers. It raises the need for appropriate performance measures and incentives for insurers or vocational employment providers.⁵⁷ It has been suggested that there needs to be a refocus from short term to long term claims cost thinking.⁵⁸
- 7.50 The Queensland Government acknowledges the complexity of trying to measure the outcome of rehabilitation once a claim has been closed. WorkCover Queensland has commissioned research to investigate rehabilitation and return to work outcomes.⁵⁹ Similarly, the NSW Government through its regulatory authority, WorkCover, has also commissioned research in these areas on health, social and economic outcomes.⁶⁰ In particular, the South Australian WorkCover Corporation has been investigating the incidence of suicide, as depression is a significant issue for injured workers.⁶¹

54 Ms Jane Barnett, Victorian Council of Occupational Rehabilitation Providers, Transcript of Evidence, 26 November 2002, p. 393.

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

56 Ms Julia Mourant, Submission No. 12, p. 1.

57 Injuries Australia Ltd, Submission No. 27, p. 6.

58 Comcare, Submission No. 32, p. 45.

59 Queensland Government, Submission No. 30, p. 9.

60 Labor Council of New South Wales, Submission No. 52, p. 3.

61 Ms Gwyneth Regione, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, p. 381.

Appropriateness

- 7.51 The appropriateness of rehabilitation refers to suitable rehabilitation designed to meet the longer term needs of injured workers and employers.
- 7.52 The RSI and Overuse Injury Association of the ACT suggested a more cautious approach to rehabilitation and return to work dependant on the injury type. The assumption that all injured workers need to return to work as quickly as possible after injury does not hold for workers with occupational overuse syndrome. The Association submitted that if they are returned to previous duties, this approach jeopardises recovery. OOS recovery is recognised as needing months rather than weeks to improve.⁶² Suitable duties and appropriate equipment and training need to be provided in a timely manner, for example in the use of voice-operated software or telephone headsets. Research conducted by the AMWU also noted that a significant number of workers were pressured by management to return to work before they were ready.⁶³
- 7.53 Greater flexibility from insurers is also sought in treatment to meet the current needs of the injured worker to enable more control over their rehabilitation.

At the moment, if you make any changes to the type of treatment you have, it is also assumed that there may be fraud involved. One of the problems with RSI is that it is cumulative in the sense that it depends what you have done that week how bad your condition is and what you might have done to actually flare up the condition. For example, with massage treatment, you get to a stage where you may not need it every week but, if you change that at all, Comcare—I have experience only with Comcare—get a bit strange about changing your treatment regime. I think a lot of people feel like they do not have very much control. I feel there is a lot of money wasted as well because either the doctor makes the decision about what treatment you have or it is an ongoing thing.⁶⁴

Support for changes to career or employment options

- 7.54 If early return to work is not achieved workers' compensation schemes may not have the requisite longer term skills to assist injured workers make significant changes in their career or employment options. These

62 The RSI and Overuse Injury Association of ACT, Submission No. 24, pp. 2-3.

63 Australian Manufacturing Workers' Union, Submission No. 35, p. 13.

64 Ms Kate Beckett, RSI and Overuse Injury Association of the ACT, Transcript of Evidence, 16 October 2002, p. 30.

required skills may include those most usually displayed in welfare and employment programs; for example, skills facilitating attitudinal and behavioural change to overcome longer term and multiple barriers to employment.⁶⁵ This suggests that the programs for longer term injured workers should be re-examined to determine if they are effectively meeting the workers' needs.

- 7.55 Where retraining and other skills are provided there also needs to be alignment between the injured worker and realistic job expectations. It was reported that the need for retraining is not very well dealt with.⁶⁶ In evidence to the Committee, an injured worker cited his frustration with his retraining process. Mr Graham Stewart, previously a truck driver, said:

They put me in a computer class with 18 women. As I said, I left school halfway through my second year of high school, with very minimal English ability as far as spelling and that. They put me in a room with 18 women to learn a computer. I could not even type therefore I could not keep up with the course, and after about five weeks I dropped out because I could not do it.⁶⁷

- 7.56 In another case, a production worker with carpal tunnel injuries from repetitive assembly work was provided a word processing course by her insurer. Keyboard work is a significant risk factor for that type of injury.⁶⁸ Similarly in other industries, the National Farmers' Federation suggests that rehabilitation services need to have a wider scope with a need for training and retraining services.⁶⁹

- 7.57 Where it has been identified that injuries sustained by the worker are unlikely to enable return to work, then alternatives to continuing rehabilitation for work purposes should be provided. It was suggested that there would be benefits in allowing greater flexibility in how this is managed rather than pursuing rehabilitation where there is very minimal improvement. Continuing from this point ARPA suggested that schemes should maintain a capacity to settle claims where no positive occupational rehabilitation outcome is realistic.⁷⁰

65 MaxNetwork Pty Ltd, Submission No. 4, p. 2.

66 Dr Peter Shannon, Transcript of Evidence, 20 November 2002, p. 198.

67 Mr Graham Stewart, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, p. 94.

68 Australian Manufacturing Workers' Union, Submission No. 35, p. 14.

69 National Farmers' Federation, Submission No. 19, p. 13.

70 Australian Rehabilitation Providers Association, Submission No. 17, pp. 5-7.

Practicability

Compliance

- 7.58 With respect to workers meeting their obligations, the National Meat Association of Australia (NMAA) raised concerns about injured workers not participating in rehabilitation, and suggested that workers' compensation authorities appear reluctant to take actions against workers.⁷¹ The NMAA claimed that there is little incentive for a worker to return to work.⁷² Evidence from reviewing claim files also indicated examples of claimants not turning up for medical appointments and not meeting their rehabilitation conditions after receiving numerous letters outlining their obligations, but the payments do not always cease.⁷³
- 7.59 Evidence from the Victorian Trades Hall Council cited Victorian WorkCover Authority statistics that employers need to meet their legislative responsibilities, and that dismissal of injured workers needs to be further investigated.⁷⁴
- 26% of injured workers do not return to work due to 'loss of job attachment'. 9% are dismissed or retrenched, 7% resign or retire and 10% find that work is no longer available due to its nature (seasonal) or the employer close down.⁷⁵
- 7.60 Australian jurisdictions have legislative provisions and sanctions which can be imposed on employers for failing to find suitable employment.⁷⁶ However, it was suggested that enforcement of non-compliance is scant.⁷⁷ The Queensland Government is further investigating and/or developing a trial of a compliance strategy.⁷⁸
- 7.61 The Victorian Government cited a campaign in April 2002 of distributing CD-ROMs to 180 000 employers, plus advertisements outlining employers' return to work obligations to ensure that injured workers receive

71 National Meat Association of Australia, Submission No. 41, pp. 18, 25, 34, 55-56.

72 National Meat Association of Australia, Submission No. 41, pp. 39, 53-56.

73 Ms Anita Grindlay, Transcript of Evidence, 26 November 2002, p. 361.

74 Victorian Trades Hall Council, Submission No. 26, p. 3; See also Labor Council of New South Wales, Submission No. 52, p. 3.

75 *The Case for Change*, Victorian WorkCover Authority, 2001, p.14 cited in Victorian Trades Hall Council, Submission No. 26, p.3.

76 See for example, Australian Capital Territory Government, Submission No. 45, pp.4-5.

77 Australian Plaintiff Lawyers Association, Submission No. 39, p. 18; Australian Manufacturing Workers' Union, Submission No. 35, p. 14.

78 Queensland Government, Submission No. 30, pp. 9-10.

appropriate support.⁷⁹ Improving return to work outcomes is a major focus of the Victorian WorkCover Authority's new claims management model. Where a claim is identified as high risk the case manager must undertake three-point contact with the employer, the worker and the treating practitioner to establish expectations and clarify obligations in the return to work process. The Australian Capital Territory introduced amendments effective from 1 July 2002, to its Workers' Compensation Act with similar three point contacts and clearer obligations, and personal injury plans, and significant increases in penalties to encourage scheme compliance.⁸⁰

Rural workers

7.62 Injured rural workers have specific needs associated with the high incidence of injury⁸¹ and their frequent remoteness from many services. Injured workers in rural areas also have limited redeployment opportunities, as many work opportunities in agriculture require manual labour. This leads in part to the high cost of claims in the farming sector.⁸² Similarly, in the meat industry there are few light duties for return to work programs.⁸³ The National Farmers' Federation believes that more support is required for rural and regional areas in respect to rehabilitation, return to work and alternative work options. Access to medical specialists, rehabilitation providers, government authorities and claims officers is more difficult and expensive due to travelling time and limited access.⁸⁴

7.63 In Western Australia WorkCover commented on the rural issues:

There are, particularly in Western Australia, significant issues relating to injured workers being able to receive specialist vocational rehabilitation in country areas. Six vocational rehabilitation providers have country offices and the Commonwealth Rehabilitation Service services most major centres, but that does not detract from the problem for injured workers. If they are injured in a country location, part of vocational rehabilitation is to try to place them in other jobs when they are not able to go back to their existing jobs, and the availability of appropriate employment is a major issue for country people. I am not sure that putting more vocational

79 Victorian Government, Submission No. 37, pp. 14-15.

80 Australian Capital Territory Government, Submission No. 45, Attachment 1.

81 Ms Mary Yaagar, Labour Council of New South Wales, Transcript of Evidence, 18 October 2002, p. 120.

82 National Farmers' Federation, Submission No. 19, p. 11.

83 National Meat Association of Australia, Submission No. 41, p. 34.

84 National Farmers' Federation, Submission No. 19, p. 12.

rehabilitation people into the country areas would overcome that. It is certainly a major issue.⁸⁵

- 7.64 The Recruitment and Consulting Services Association voiced their members' concerns on rehabilitation and redeployment. Some employers state that they do not have suitable alternate duties required for rehabilitation and assisting in return to work. They also indicated that there was a fear by some employers of taking on 'someone else's liability' in cases of redeployment.⁸⁶

State arrangements

- 7.65 Workers' compensation arrangements in relation to rehabilitation vary across the states, as described previously. This has consequences for the rehabilitation and return to work of injured workers employed in other jurisdictions. Employees who move to a different state after becoming injured can have difficulties in receiving the full range of assistance that is normally available to help them achieve a return to work.⁸⁷

For example, WorkCover New South Wales makes available to New South Wales employers a range of financial and other benefits to encourage them to employ a worker who has been injured while working for another employer in that state. While this is a good initiative, not all of these incentives are made available to an interstate employer who takes on a worker injured in New South Wales.⁸⁸

Service providers

- 7.66 Interested parties in the rehabilitation and return to work process provided a range of views to the inquiry. Some comments were supportive of rehabilitation service providers,⁸⁹ and another publication, the Return to Work Monitor, provides more detailed feedback on the helpfulness of sources of assistance with return to work.⁹⁰ However, other comments

85 Mr Harry Neesham, WorkCover Western Australia, Transcript of Evidence, 20 November 2002, p. 180.

86 Recruitment and Consulting Services Association, Submission No. 20, pp. 8-9.

87 Mr George Smit, Submission No. 61, p. 9.

88 Mr Rex Hoy, Department of Employment and Workplace Relations, Transcript of Evidence, 25 September 2002, p. 15.

89 For example Dr Sherryl Catchpole, Workers' Medical Centre, Submission No. 14a, p. 3; Mr Simon Cocker, Community and Public Sector Union, Transcript of Evidence, 26 November 2002, p. 372.

90 The Heads of Workplace Safety and Compensation Authorities, *2001/2002 Australia & New Zealand Return to Work Monitor*, August 2002, pp. 37-48.

were more critical of the services provided. The number of providers may vary depending on the state arrangements and the severity and the needs of the injured worker. However, it is clear that better communication and cooperation are required to improve services. Depending on the scheme the involvement of claims/case/ and workplace rehabilitation coordinators may be required, and the roles of each are not clearly defined. However, in all schemes the medical practitioner plays a key role.

Medical practitioners

7.67 A number of submissions indicated the pivotal role of the medical practitioner in rehabilitation and early return to work.⁹¹ The need to provide a medical certificate to initiate workers' compensation processes and to recommend suitable duties indicates their pivotal role. Many rehabilitation providers and others have been critical of the performance of medical practitioners, due to limited consultation with the employer, limited demonstration of evidence based care for rehabilitation⁹² and limited willingness to participate actively in the injury management and return to work.⁹³ The need for medical education of practitioners was suggested as necessary to address some of the above concerns.⁹⁴

Third party interest

7.68 Other submissions also outlined possible concerns about medical practitioners, where other providers in the rehabilitation process wish to be involved and affect the outcome of a medical consultation. This raises the topic of partnerships in injury management which will be discussed later in the chapter and are discussed in Chapter 4. Examples of the perceived need for greater involvement in the RTW process were given where rehabilitation providers or return to work practitioners request to be present during medical practitioner interviews or examinations. Workers suggest that this interferes with the doctor/patient relationship.⁹⁵

7.69 Some employer groups state that they are a legitimate third party in the interaction and outcome.

91 The RiskNet Group, Submission No. 10, p. 10; Chamber of Commerce and Industry of Western Australia, Submission No. 21, p. 9.

92 Evidence based medicine is the use of the best available evidence from the international literature in making decisions about the care of individual patients. Dr Paul Pers, Transcript of Evidence, 26 November 2002, p. 357.

93 National Meat Association of Australia, Submission No. 41, p.44; Master Cleaners Guild of Western Australia Inc, Submission No. 59, p. 7; Mr Mark Goodsell, Australian Industry Group, Transcript of Evidence, 18 October 2002, p. 57.

94 Queensland Government, Submission No. 30, pp. 9-10;

95 Australian Manufacturing Workers' Union, Submission No. 35, pp. 15-16.

The general point we make is that the medical profession seem to bring to workers compensation their traditional private practice/private patient model of treatment. ... The question we are really asking is: is that entirely appropriate for a scheme where there is a legitimate third-party interest in how that patient presents and what is done about that injury?⁹⁶

7.70 The Australian Industry Group recommends education campaigns and performance monitoring of medical practitioners involved in occupational medicine to ensure that appropriate return to work rates are achieved. Claims that are likely to have longer term effects could be dealt with by more specifically trained occupational medical practitioners.⁹⁷ In addition, the education of medical practitioners needs to tie in more closely with community needs, rather than the hospital training model.⁹⁸

7.71 Positive work is being done in various jurisdictions in this area. WorkCover in Queensland has a medical unit with a qualified doctor who visits various regions to assist in complaints resolution and develop relationships with doctors in rural towns.⁹⁹ Tasmania has a system of accreditation of medical practitioners, and a former chief commissioner of the Workers Rehabilitation and Compensation Tribunal in Tasmania commented that:

unless medical practitioners are properly trained, know workplaces and understand workplaces, rehabilitation is going to be difficult.¹⁰⁰

Rehabilitation providers

7.72 Industry groups had differing views on the role of external occupational rehabilitation providers. Overall, submissions from employer groups supported the early intervention and rehabilitation of workplace injuries.¹⁰¹ However, the Chamber of Commerce and Industry (WA) were more critical of the role of external rehabilitation providers, calling for the cost and performance of vocational rehabilitation to be measured nationally.¹⁰²

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

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

98 Dr Paul Pers, Transcript of Evidence, 26 November 2002, p. 361.

99 Ms Evron McMahon, WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 331.

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

101 Australian Industry Group, Submission No. 53, p. 23.

102 Chamber of Commerce and Industry of Western Australia, Submission No. 21, pp. 9-10.

7.73 The problems Australian Industry Group members experience with rehabilitation providers, though generally not as often, are usually similar to those they face with medical practitioners in the type of patient-provider relationship that is developed, which can exclude the employer from being involved in the development of a rehabilitation plan. Two additional problems were provided when utilising rehabilitation providers:

- There is no check or balance on over-servicing.¹⁰³ A third party is funding the patient. There is no financial incentive for the patient to rehabilitate to a point where they either reduce or cease treatment. In Victoria, providers are paid on an hourly rate, and their outcomes are not measured.¹⁰⁴ The Australian Rehabilitation Providers Association suggests a fee-for-service provision, and that outcome focussed performance standards should be introduced to address issues of over-servicing.¹⁰⁵ The Committee was concerned that this partial fee-for-service may be an additional cost burden to injured workers' who may already be on lower incomes following their injury.
- There is a tendency for some employees to begin to believe that rehabilitation treatment is a substitute for an actual return to work strategy. Australian Industry Group suggested that outcomes in workers' compensation need to be linked to work based outcomes rather than general improvements in the injured workers welfare.¹⁰⁶ The Australian Industry Group also advocate increased regulation of rehabilitation providers to ensure better outcome of service.

Rehabilitation and return to work managers

7.74 The roles of a workplace rehabilitation coordinator and a case manager are often similar, depending on the jurisdiction. For example in a publication explaining to injured workers the role of the case manager:

A case manager's role may include:

- assessing your need for occupational rehabilitation;
- contracting a (Comcare) approved provider of rehabilitation services;
- consulting with you and your treating medical practitioner;

103 Australian Industry Group, Submission No. 53, p. 11-12. See also Moreton Exhibitions and Events, Submission No. 63, p. 3; Victorian Automobile Chamber of Commerce, Submission No. 65, p. 8.

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

105 Australian Rehabilitation Providers Association, Submission No. 17, p. 7. See also Australian Industry Group, Submission No. 53, p. 25

106 Australian Industry Group, Submission No. 53, pp. 12, 25.

- negotiating with you and your managers on suitable duties for your return to work;
- the processing of all relevant forms; and
- liaison with you and (Comcare).¹⁰⁷

7.75 Workplace Rehabilitation Coordinators are a requirement of some States' legislation, with approved training and annual audits to meet legislative requirements.¹⁰⁸ However, examples were given where co-ordinators were appointed with little experience or background in rehabilitation.¹⁰⁹ In this situation, training and education need to be provided. Comcare provided an example of the training that they can provide for case managers, and the need for approved rehabilitation providers.¹¹⁰

Insurers

Claims managers

7.76 Claims managers and staff are responsible for the management of a worker's claim, which includes determination of liability and benefit payment.¹¹¹ Workers' compensation authorities and claims agents acting on behalf of governments employ claims managers to liaise with the stakeholders and process claims. Much of the success for the injured worker's rehabilitation rests on the effectiveness of the claims manager in promptly processing claims and organising injury management. However, a dilemma frequently arises between expediently processing the worker's compensation claim in financial terms for the insurer and ensuring the best possible long-term outcome for the injured worker.¹¹²

7.77 Claims staff at insurers are often inexperienced and have enormous case loads. In Victoria they are supposed to have about eighty cases but average about 120. They are lucky to get through the processing let alone manage the claim. The Australian Rehabilitation Providers Association suggested that insurers should be encouraged to increase their in-house occupational rehabilitation expertise to better manage claims.¹¹³

107 Comcare, *All about Workers' Compensation. a guide for employees*, sourced 4 February 2003 <http://www.comcare.gov.au/publications/wc-employees/contents.html>.

108 Queensland Government, Submission No. 30, p. 9.

109 Workers Medical Centre, Submission No. 14a, p. 3.

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

111 Australian National Audit Office, *Better Practice Guide – Return to Work*, 1996.

112 Dr Christine Roberts-Yates, *The dilemma of the case manager in workers' compensation, Exhibit No. 80*; See also Queensland Government, Submission No. 30, p. 9.

113 Australian Rehabilitation Providers Association, Submission No. 17, p. 7.

Other insurer issues

- 7.78 Evidence presented to the Committee suggests that self insurers manage rehabilitation more effectively because of their longer term interest in the worker and the financial outcome.¹¹⁴ However, in those cases, some other injured workers feel more pressured to return to work when they are not ready.¹¹⁵ Where there are difficulties with the case the injured worker may feel resentment to the employer as their manager rather than as an insurer and have difficulty separating those roles.¹¹⁶
- 7.79 Criticism was presented that if the insurers have a vested financial interest in rehabilitation providers, then rehabilitation on an hourly basis would enable increased fees, and there is no incentive to reduce costs or servicing. These greater costs could lead to increased premiums, leading to greater profits for insurance companies, and suggesting a conflict of interest. It was suggested that if this were the case then there would be no incentive for insurers to encourage effective rehabilitation.¹¹⁷
- 7.80 In Victoria, with changes to the incentive structure focussing more on return to work, the Victorian Council of Occupational Rehabilitation Providers commented that they have no indication of unethical practices between rehabilitation providers and insurers occurring.¹¹⁸ Along similar lines MAXNetwork indicated that a close relationship between all the key stakeholders is a positive thing. The best service for the injured worker was clearly where partnerships produced the best outcome.¹¹⁹

Adversarial system effects

- 7.81 Rehabilitation providers in some jurisdictions were concerned about the effect of common law access on rehabilitation and return to work. The view expressed by APRA was echoed by a number of other submissions and witnesses.¹²⁰

114 Mr Bruce Ferguson, Association of Risk and Insurance Managers of Australasia, Transcript of evidence, 20 November 2002, p. 249; Mr George Cooper, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, p. 91.

115 Dr Deborah Vallance, Australian Manufacturing Workers' Union, Transcript of Evidence, 26 November 2002, pp. 376, 379.

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

117 Injured Persons Action and Support Association, Submission No. 71, p. 7; O'Halloran and Associates, Submission No. 62, pp. 11-12.

118 Mr John Elrington, Victorian Council of Occupational Rehabilitation Providers, Transcript of Evidence, 26 November 2002, p. 396.

119 Mr Paul Stokes, MAXNetwork Pty Ltd, Transcript of Evidence, 22 November 2002, p. 334.

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

Common law actions focused on negligence generally encourage injured workers and their lawyers to maximise apparent disability in order to achieve the maximum financial settlement of their claims, while insurers and employers conversely seek to minimise apparent disability. Meaningful rehabilitation cannot occur in such a competitive and uncooperative environment.¹²¹

- 7.82 Mr Kazimir Kowalski commented that workers' compensation is supposed to be a non-adversarial system, but that it is adversarial, with the concern that WorkCover agencies or similar spend considerable funds on legal advice and representation and little on rehabilitation.¹²²
- 7.83 Limited access to common law has occurred in some jurisdictions; but concerns have been raised by injured workers and their advocates that adequate compensation must remain available for injured workers. From the rehabilitation perspective disputes about liability delay the commencement of rehabilitation, which leads to a lower rate of recovery and return to work. ARPA cited some insurers using occupational rehabilitation services on a 'without prejudice basis' to encourage rehabilitation.
- 7.84 In response to the trend of people taking more time off work following workplace injuries, insurers are placing greater emphasis on improving rehabilitation strategies.¹²³
- In particular, we are working on some strategies to get early intervention operating more effectively in the Commonwealth, even before liability is determined, whether or not a case is compensable.¹²⁴

Rehabilitation costs compared to legal costs

- 7.85 Associated with the adversarial nature of many workers' compensation schemes, injured workers in part and occupational rehabilitation providers believe that rehabilitation and return to work are considered a secondary concern, and are often overtaken by legal or financial considerations.¹²⁵

121 Australian Rehabilitation Providers Association, Submission No. 17, p. 5.

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

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

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

125 Australian Rehabilitation Providers Association, Submission No. 17, p. 6; See also the RSI and Overuse Injury Association of ACT, Submission No. 24, p. 2; Injuries Australia Ltd; Submission No. 27, p. 6.

- 7.86 Injured workers presented evidence demonstrating the disparity in legal costs compared to rehabilitation costs.¹²⁶ An example was provided of approximately \$250 000 spent on legal costs and \$35 for rehabilitation.¹²⁷

Speed of recovery

- 7.87 Insurers and employer groups have expressed concern about the slower than expected recovery rate, believing that financial disincentives to return to work play a key role.¹²⁸

- 7.88 An alternative view is that slower than expected recovery is associated with the stress of the workers' compensation system. This frustration, bitterness and anger is due in part to workers feeling that insurers and providers show no real concern for the injured worker, and the belief that the worker is not being trusted by the employer.¹²⁹ It is interesting to note that workers injured in motor vehicle collisions in non-work related accidents do not report similar stress or distrust by their employers and associated parties.¹³⁰

- 7.89 The amount of control that a person has over their life circumstances impacts on their health outcomes:

What happens to people in the workers compensation system largely is that they lose control over their lives. They not only lose control over their working lives; they often lose control over their home lives as well because you can no longer help your children and your family in the way that you did previously. That is one reason why workers compensation claimants have poorer outcomes than people with the same injury who are not workers compensation claimants. It is really important to bring this element of control back into workers compensation.¹³¹

- 7.90 Research on compensable injuries and health outcomes found that people who are injured and claim compensation for that injury have poorer health outcomes than those who have similar injuries not involved in the compensation process. The findings suggest that a complex interaction is

126 For example Mr Kazimir Kowalski, Submission No. 18, p. 1; Mr Stig Hellsing, Submission No. 33, p. 1.

127 Mr Markham Moore-McQuillan, Submission No. 16, p. 3.

128 Australian Industry Group, Submission No. 53, p. 4; Insurance Australia Group, Submission No. 47, p. 12.

129 Workers' Medical Centre and Queensland Worker's Health Centre, Submission No. 14, pp. 1-2.

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

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

present. There is an indication that psychosocial factors play a role and appropriate early intervention can reduce chronicity.¹³²

Partnership approach

7.91 The importance of workplace culture in affecting OHS outcomes has been referred to. Similarly, the support from managers and co-workers in rehabilitation is equally important.¹³³ The Victorian Trades Hall Council outlined the responsibilities of employers in the *Accident Compensation Act 1985 (Vic)*, which relate to ensuring a supportive workplace culture. Employers have a responsibility to ensure that:

- injured workers are treated with respect, compassion and dignity;
- injured workers claims are treated with genuineness and forwarded to claims agents in a timely fashion; and
- injured workers are afforded the opportunity to return to work, when they are able, to their previous position or failing this to an equivalent position agreeable to the worker, their treating medical practitioner and other representatives.¹³⁴

7.92 The Committee received additional evidence on the importance of developing a partnership approach rather than what has been described as an adversarial system. The need for change by all stakeholders in the rehabilitation process has been identified. The claims/injury management and rehabilitation system has been characterised by organisational rigidity and fixed expectations, where a more flexible system is required to minimise the stressors of the system improve communication and outcomes for all concerned in the system.¹³⁵

7.93 This partnership approach underpins Comcare's Return to Work Model:

The best outcomes in rehabilitation are achieved when the employee, employer, approved rehabilitation provider and treating doctor are all focussed on a common goal – that is, making it possible for an individual to remain in their job or return to productive employment following a work related injury.¹³⁶

132 The Australasian Faculty of Occupational Medicine, *Compensable Injuries and Health Outcomes*, The Royal Australasian College of Physicians, 2001, p. 12.

133 The RSI and Overuse Injury Association of ACT, Submission No. 24, pp. 2- 3.

134 Victorian Trades Hall Council, Submission No. 26, p. 2.

135 Dr Christine Roberts-Yates, Submission No. 56, p. 1.

136 Comcare, Submission No. 32, p. 40.

7.94 Dr Christine Roberts-Yates has examined the role of the parties in the South Australian system, identifying the perceptions of all the stakeholders in the system. She argued that a committed partnership would improve most outcomes rather than an adversarial or disrespectful approach. A considerable range of recommendations have been made. The examples provided below highlight the greater need for:

- education of all parties in injury management and return to work processes;
- greater participation by the injured workers in the process with improved communication with all parties; and
- a reduction in case load for case managers.¹³⁷

Recent initiatives

7.95 A number of initiatives were referred to in the course of the inquiry. Examples are the fact that Comcare's future work will focus on workplace culture and a whole of agency approach including:

- leadership and accountability to improve OHS performance recognising the integration of safety, rehabilitation and compensation arrangements;
- claims management – ensuring development of arrangements to address claims that may potentially lead to extended periods off work. This would include stress claims, soft tissue and occupational overuse injuries; and
- return to work – trans-agency mobility of injured employees, and Return to Work publications.¹³⁸

7.96 The Community and Public Sector Union reports positive outcomes working with Commonwealth government agencies such as the Australian Tax Office.¹³⁹ Other initiatives which involve participative arrangements include industry based rehabilitation models. The Queensland Government has been involved with the respective unions, employer associations, and larger employers in building and construction, health,

137 Dr Christine Roberts-Yates, Transcript of Evidence, 21 November 2002, pp. 253-256; See also Comcare, Submission No. 32, p. 44; The RSI and Overuse Injury Association of ACT, Submission No. 24, pp. 2-3.

138 Comcare, Submission No. 32, pp. 48 - 50.

139 Mr Simon Cocker, Community and Public Sector Union, Transcript of Evidence, 26 November 2002, pp. 364-365.

and mining. The Queensland Government also aims to involve injured workers.¹⁴⁰

- 7.97 A number of witnesses commented on the benefits of second injury funds or re-employment schemes which have been established in some states.¹⁴¹ The Queensland Government is researching expanding host employment or job placement options.¹⁴²

Re-employment schemes and incentives

- 7.98 The National Farmers' Federation commented on the lack of incentives to encourage and implement rehabilitation and return to work best practice.¹⁴³ They support the fostering of a culture that reinforces the expectation of return to work as a normal outcome. Incentives to rehabilitate would encourage earlier recovery both from perspectives of the injured worker and cost containment.¹⁴⁴
- 7.99 Employment schemes such as the WorkCover Incentive Scheme for Employers in Victoria are supported by the Recruitment and Consulting Services Association as strategies to assist return to work.¹⁴⁵
- 7.100 Similarly NSW WorkCover operates a JobCover placement program to encourage employers to employ partially incapacitated workers. A range of financial and other incentives are used to encourage employers to participate.¹⁴⁶ Small business representatives suggested the pooling of opportunities to assist injured workers find positions with suitable duties.¹⁴⁷
- 7.101 The Australian Rehabilitation Providers Association advocates the development of a national second injury scheme to assist redeployment of injured workers with limited premium protection for the new employer.¹⁴⁸

140 Ms Evron McMahon, WorkCover Queensland, Transcript of Evidence, 22 November 2002, p. 325.

141 For example Mr Robert Guthrie, Transcript of Evidence, 20 November 2002, p. 191; Mr Kim Mettam, Charles Taylor Consulting, Transcript of Evidence, 20 November 2002, p. 247.

142 Queensland Government, Submission No. 30, pp. 9-10.

143 National Farmers' Federation, Submission No. 19, pp. 12-13. See also Victorian Automobile Chamber of Commerce, Submission No.65, p. 8.

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

145 Recruitment and Consulting Services Association, Submission No. 20, p. 10.

146 Department of Employment and Workplace Relations, Submission No. 48, p. 53.

147 Mr Michael Potter, Council of Small Business Organisations of Australia, Transcript of Evidence, 4 December 2002, p. 418.

148 Australian Rehabilitation Providers Association, Submission No. 17, pp.6-7. See also Ms Julie Mills, Recruitment and Consulting Services Association, Transcript of Evidence, 4 December 2002, p. 428.

Australian Industry Group cited participation in the NSW Premium Discount Scheme as a positive example of how education combined with incentives can assist employers in getting better workers' compensation outcomes.¹⁴⁹ Chapter 6 included other comments on the effectiveness of financial incentive schemes.

In review

7.102 In 1998 WorkCover Western Australia published the *Report to the Workers Compensation and Rehabilitation Commission - Review of Rehabilitation*.¹⁵⁰ The report presents a number of recommendations which were similar to the evidence received by this Committee. Below is a summary of findings that are consistent with evidence presented to this Committee.

- workers were often reluctant to commit to vocational rehabilitation programs in fear of demonstrating a capacity for work and having weekly entitlements reduced or ceased;
- there is a need for employers to develop and implement vocational rehabilitation policies and to play a more active role in rehabilitating injured workers;
- there is a need for incentives and more assistance for employers to rehabilitate injured workers;
- there is a poor understanding of the compensation and rehabilitation system by medical practitioners and allied health professionals;
- accredited rehabilitation providers need to be more accountable and their performance more closely monitored, assessed and reviewed;
- legislation does not always provide for appropriate action to be taken in cases where it can be substantiated that an injured worker has not reasonably cooperated in or refused to carry out vocational rehabilitation ;
- the opinions, vested interests and roles of the stakeholders and other parties in the system creates tension and conflict to the detriment of vocational rehabilitation; and
- performance indicators are required to evaluate the effectiveness and efficiency of vocational rehabilitation.¹⁵¹

149 Australian Industry Group, Submission No. 53, pp. 25-6.

150 Workers' Compensation and Rehabilitation Commission (WA), *Report to the Workers' Compensation and Rehabilitation Commission - Review of Rehabilitation*. 1998.

151 Original list of findings provided by Chamber of Commerce and Industry of Western Australia, Submission No. 21, p. 9.

The Committee's comments

- 7.103 The Committee notes that a significant proportion of the evidence received by this inquiry on rehabilitation is similar to evidence received by previous inquiries. Although this suggests a validation of findings, it is of concern that in the ten years since the Industry Commission's inquiry into workers' compensation, which included rehabilitation, there has been little movement in injured workers' and employers' concerns.
- 7.104 The Committee believes that the need for early rehabilitation and for encouraging early safe return to work cannot be underestimated in terms of personal, business and financial costs. However, this needs to occur in a supportive environment, appropriate to the worker's needs, with clear and realistic expectations and suitable meaningful duties.
- 7.105 The case has been made to the Committee for the need to change the culture away from an adversarial system to a partnership approach. This requires a range of strategies to inform employers, service providers, injured workers and other interested parties of the benefits of such cooperation. The business case has been clearly made for effective rehabilitation. The current restricted data collection and comparison poses some problems. If information was available this would provide greater persuasive evidence to employers. In addition, the need for evidence based treatment and more enthusiastic involvement by medical practitioners is essential.
- 7.106 Some jurisdictions have introduced additional incentives and broader based re-employment schemes. Both should provide more support to smaller and or regional employers, and to reduce the stigma that injured workers feel they have when applying for re-deployment. However, there also needs to be continued support for legislative compliance to ensure that employees and employers meet their obligations related to rehabilitation and return to work.

8

Conclusions

- 8.1 There is anecdotal evidence of fraud in workers' compensation schemes. However, each sector, including insurance companies, employers, employees, service providers and plaintiff lawyers, perceives this to be endemic in another sector. In most cases employee fraud was estimated to be at very low levels.¹ The Committee could not quantify the significance or otherwise of fraud within any sector without sound data, which is presently not available.
- 8.2 The perception of what constitutes fraud and fraudulent behaviour differs across the various sectors of the workers' compensation industry. Nonetheless, there was widespread evidence that at least one significant form of "fraud", if it could be called that, occurs against the Commonwealth in the form of cost shifting either covertly or overtly from State based workers' compensation schemes.
- 8.3 It is clear to the Committee that there are issues and opportunities for improvement in relation to the practices of all sectors: employees, employers, service providers and insurance companies, and in the design and operation of the workers' compensation schemes. Many of the issues raised in this inquiry reflect inadequate communication and alignment of expectations of the various participants. In all sectors there is

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

misinterpretation, misunderstanding and a lack of understanding of the process.

- 8.4 There are already processes for the detection of employee fraud in the workers' compensation schemes. There are also increasing efforts to identify non-compliance by employers, just as there is a move to monitor service providers and to require increased accountability. Regulatory bodies in jurisdictions monitor the activities of the various workers' compensation schemes.
- 8.5 The workers' compensation industry is faced with a number of challenges in relation to changing work arrangements, the ageing of the workforce and changing lifestyles. The need for the implementation of best practice is more important than previously. The Committee believes that in attempting to move towards greater national consistency, with the benefits of that approach, there are also opportunities for the various schemes to review their current activities in terms of best practice.

Need for national consistency

- 8.6 The need for greater national consistency in the operation of workers' compensation schemes was frequently raised in the evidence to this inquiry. There are currently ten different schemes operating in Australia for nine million employees.
- 8.7 The Department of Employment and Workplace Relations (DEWR) believes that the complexity and inconsistencies in the legislative framework can create confusion and opportunities that can generate avenues for fraud.² DEWR believes that this complexity places a burden on the community which is an unnecessary drain on the economy.³
- 8.8 The Department considers that a single national framework for workers' compensation coverage could remove the complexity, deal with cross border issues and lessen the potential for fraud and/or non-compliance.⁴ In relation to the separate jurisdictions, DEWR argued that:

2 Mr Rex Hoy, Department of Employment and Workplace Relations, Transcript of Evidence, 25 September 2002, p. 14; Department of Employment and Workplace Relations, Submission No. 48, p. 19.

3 Mr Tom Kenna, DEWR, Paper presented at Workerscomp 2003, National Workers' Compensation Summit, Sydney, 17 February 2003, p. 2.

4 Mr Rex Hoy, Department of Employment and Workplace Relations, Transcript of Evidence, 25 September 2002, pp. 14, 17.

Each scheme has, since initially established, evolved in isolation from other schemes. The legislators responsible for each scheme have taken the position that perceived local conditions guide the structure and framework of all aspects of their individual scheme. The scheme designers have had little regard to the structure of other schemes that participants necessarily interact with and/or the changing nature of the environment in which they operate.⁵

- 8.9 The implementation of a national framework need not seek to have the States refer their powers to the Commonwealth.⁶ The Government considers that the primary responsibility should remain with the States and Territories and that a nationally consistent approach does not mean a national workers' compensation scheme.⁷ The Department made the point that there is, for example, already a national framework operating in respect to food standards, with an overarching system and the state systems operating under that.⁸

A key objective would be the development of a fair and consistent system that meets the need of a modern and productive society. This would encompass an effective continuum of assistance to injured workers and a streamlined approach to the provision of early intervention, rehabilitation and income support.⁹

- 8.10 The Council of Small Business Organisations of Australia pointed out that work is being done on the national level for public liability insurance and suggested that this approach be extended to workers' compensation:

The Council of Small Business Organisations of Australia would like to see a national approach to workers compensation, with uniform laws and guidelines. This should take into account funding, premium levels, with caps for small business, and a simpler method of arbitration because one of the biggest costs is the legal fees involved.¹⁰

- 8.11 Injuries Australia supports the introduction of a national system of workers' compensation. Injuries Australia also proposed a change from

5 Department of Employment and Workplace Relations, Submission No. 48, p. 19.

6 Mr Rex Hoy, Department of Employment and Workplace Relations, Transcript of Evidence, 25 September 2002, p. 17.

7 Mr Tom Kenna, DEWR, Paper presented at Workerscomp 2003, National Workers' Compensation Summit, Sydney, 17 February 2003, p. 2.

8 Mr Rex Hoy, DEWR, Transcript of Evidence, 25 September 2002, p. 17.

9 Mr Tom Kenna, DEWR, Paper presented at Workerscomp 2003, National Workers' Compensation Summit, Sydney, 17 February 2003, p. 10.

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

workers' compensation to a mutual workplace injury indemnity as part of any review, and stated that the current schemes are incapable of conducting workers' compensation in an economically just and humane manner.¹¹ DEWR acknowledged that injured workers and their families are treated inconsistently and in some cases unfairly under the current arrangements.¹²

- 8.12 The Media Entertainment and Arts Alliance also suggested the establishment of an uninsured liability and indemnity scheme at the Commonwealth level to cover the circumstances where a worker may be left without workers' compensation cover. The Alliance pointed out that this may not reflect the employer's lack of intention, and that there are circumstances where there has been no way these workers could be insured. People without cover end up in the Commonwealth system on sickness benefits.¹³

Administrative complexity

- 8.13 Administrative costs for the existing schemes are currently about 16 per cent of the premiums collected and there are additional costs for employers and injured workers.¹⁴ The Committee believes that a large proportion of what is currently perceived as fraud or fraudulent behaviour reflects inefficiencies, incompetence, mismanagement, misinterpretation and a lack of understanding of the process. A simpler approach, clarification of a number of issues and greater communication between the participants may address many of these issues.
- 8.14 There are administrative complexities for those organisations that deal with different rules and regulations in the various jurisdictions.¹⁵ For example, DEWR commented on the variation in the application of penalties in the different Australian workers' compensation schemes.¹⁶
- 8.15 DEWR made the point that while all Australian workers' compensation schemes are based on a 'no-fault' principle, there are a number of essential differences between the schemes:
- varying levels of compensation payable to the injured employees;

11 Injuries Australia Ltd, Submission No. 27a, p. 2.

12 Mr Tom Kenna, DEWR, Paper presented at Workerscomp 2003, National Workers' Compensation Summit, Sydney, 17 February 2003, p. 2.

13 Ms Lynn Gailey, Media Entertainment and Arts Alliance, Transcript of Evidence, 18 October 2002, pp. 121-122.

14 Department of Employment and Workplace Relations, Submission No. 48, p. 19.

15 Association of Risk and Insurance Managers of Australasia, Submission No. 11, p. 2.

16 Department of Employment and Workplace Relations, Submission No. 48, p. 26.

- some have overlays of the ‘no-fault’ system with access to common law fault based remedies;
 - inconsistent legislative provisions for the same category of employee;
 - varying insurance arrangements with some having government controlled central or managed fund while some are privately underwritten by the insurance industry and Comcare is effectively a self insurance arrangement;
 - different approaches and legislative provisions relating to rehabilitation/return to work of the injured employee; and
 - different approaches to the management of claims.¹⁷
- 8.16 These differences involve significant costs for organisations operating in more than one State or Territory. The Association of Risk and Insurance Managers of Australasia stated that its members favour a national workers’ compensation scheme which incorporates the best aspects of the separate schemes and would significantly reduce costs.¹⁸ However, ARIMA has subsequently conducted a survey of its members, particularly those that operate in a number of jurisdictions, and found that 56.6 per cent opposed a national scheme. The Association was surprised by this result and commented that it has always been a truism that the members support a national scheme.¹⁹ This may indicate that the extent of support for a national scheme may require further substantiation or that the issue was the need for national consistency.
- 8.17 The Recruitment and Consulting Services Association believes that a national scheme could reduce the level of compliance burdens.²⁰ The Association argued that there would be greater efficiency if the various jurisdictions adopted consistent definitions, benefits and obligations.²¹
- 8.18 There are still inconsistencies in the deeming provisions and the interpretation of the definition of contractor in the jurisdictions.²² There is also complexity in establishing remuneration of employees in the various jurisdictions.²³
- 8.19 There are a number of workers not covered by the current definitions of employee. If these workers are not covered by workers’ compensation or a
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17 Department of Employment and Workplace Relations, Submission No. 48, pp. 5-6.

18 Association of Risk and Insurance Managers of Australasia, Submission No. 11, pp. 2, 4.

19 Mr Bruce Ferguson, Association of Risk and Insurance Managers of Australasia, Transcript of Evidence, 20 November 2002, p. 248.

20 Mr Charles Cameron, Recruitment and Consulting Services Association, Transcript of Evidence, 4 December 2002, p. 428.

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

22 Department of Employment and Workplace Relations, Submission No. 48, p. 10.

23 Department of Employment and Workplace Relations, Submission No. 48, p. 11.

comparable form of private insurance, then in the case of an injury they may rely on the Commonwealth social security system of sickness or other benefits. The failure of the workers or their employers to meet their responsibilities in this area may result in substantial costs the community. The Committee is concerned that the assumption that these workers have private insurance arrangement has not been tested.

Recommendation 1

The Committee recommends that the Minister for Employment and Workplace Relations request that the Workplace Relations Ministers' Council conduct a study to identify the extent to which workers are currently not covered by any workers' compensation system, with a view to adopting a national standard that covers the widest possible number of workers.

- 8.20 DEWR also pointed out that what constitutes a compensable injury or illness varies under the different workers' compensation schemes.²⁴ For example, some schemes cover journey and recess injuries while some only cover injuries that occur while performing work.²⁵

Employees face a highly complex scheme of arrangements to determine whether or not they have suffered compensable injury or illness. This may be one of the reasons over 50 per cent of employees who reported having a workplace injury or illness did not lodge a claim for workers' compensation.²⁶

- 8.21 The National Meat Association of Australia supports the view that the increase in regulatory complexity of the workers' compensation schemes only compounds the problem. The NMAA has a number of members operating across borders, and the interaction between Commonwealth industrial awards and various state schemes can lead to confusion and to manoeuvres by vested interests.²⁷

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

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

26 Department of Employment and Workplace Relations, Submission No. 48, p. 15 citing Workplace relations ministers' Council, *Comparative Performance Monitoring Fourth Report*, August 2002, p. 121.

27 National Meat Association of Australia, Submission No. 41a, pp. 6, 8, 11-12. The NMAA pointed out that the Certified Agreements and Australian Workplace Agreements in section 170LZ(2) and 170VR(3) of the Commonwealth *Workplace Relations Act 1996* are subject to the provisions of state law dealing with workers compensation and occupational health and safety.

8.22 The NMAA believes that radical steps are needed to reform the workers' compensation schemes and that there should be a commitment to developing a national codified framework.²⁸

Fraud is a real problem. We agree that the various state-based schemes are complex and inconsistent. There are varying levels of compensation, overlays by a number of States with common law systems, different definitions of worker and injury, varying deeming provisions, varying insurance arrangements, different rehabilitation provisions, different management of claims.²⁹

8.23 The NMAA believes that there should be greater consistency:

There has to be consistency across the schemes operating in the states and the territories. This involves consistently defining employees/deemed employees, work related injury definitions, ordinary weekly earnings (excluding overtime and incentive rates), levels of compensation, no access or limited access to the common law courts, insurance arrangements, mandatory rehabilitation/return to work schemes and consistent regulation of management of claims.³⁰

8.24 The Australian Industry Group would also like to see greater consistency between the jurisdictions and simplification.³¹ If a national scheme were to be introduced, the Group believes the scheme would need to be benchmarked appropriately to meet appropriate standards in terms of premiums and benefit levels.³²

8.25 Mr Kim Mettam also cautioned that previously the solutions implemented in workers' compensation reform in Australia have lacked proper analysis of the underlying problems and their appropriateness to solve the problems.³³ He suggested that this approach can add complexity without major change or improvement.³⁴

8.26 The Committee supports the concept of reform with the goal of improvement, greater consistency and simplification. The Committee

The NMAA argued that every change to state law is taken up in these instruments whether or not the employees and employers agree with the change.

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

29 National Meat Association of Australia, Submission No. 41a, p. 10.

30 National Meat Association of Australia, Submission No. 41a, p. 11; See also Mr Garry Johnston, NMAA, Transcript of Evidence, 13 November 2002, p. 148.

31 Australian Industry Group, Submission No. 53, p. 5.

32 Australian Industry Group, Submission No. 53, p. 5.

33 Mr Kim Mettam, Submission No. 54, p. 1.

34 Mr Kim Mettam, Submission No. 54, p. 1.

believes that if all jurisdictions work cooperatively, there is the potential to develop best practice initiatives and greater consistency in scheme design and administration. This would provide opportunities for benchmarking of scheme performance if appropriate and comparable data collection facilitated greater analysis.

- 8.27 The Master Cleaners Guild of Western Australia commented on the duplication in the system at both the Commonwealth and State levels:

We notice at a state level, even when industry initiatives are initiated for development of occupational health and safety and workers compensation systems and supportive procedures and manuals, there is gross duplication of expenditure, manpower and the rest of it ... This industry in Western Australia has developed an OHS management workers compensation risk management manual and procedure which has been uniformly implemented to members of the guild. Within a matter of months of that, South Australia effectively released an identical kit.³⁵

WorkCover Industry Code system

- 8.28 The Recruitment and Consulting Services Association suggested the creation of a national WorkCover Industry Code system.³⁶ Currently there are different WIC codes in the states, which regularly change, and it is difficult to make cross border comparisons.³⁷ The Master Cleaners Guild of Western Australia would also like uniform, tighter and specific industry classifications nationally.³⁸ The Guild commented that:

The fact that an industry such as the cleaning and asset maintenance industry cannot access data specific to its own area of employment, given that it is one of the largest employers in Australia, is in itself, we believe, evidence of a failure of the system. Therefore, when we make our effort to adopt best practice, to research performance, compare benchmarks and revise our overall health and safety management systems within the industry, we are to some extent—not totally because we believe that we are making very good headway—hamstrung by the fact that we cannot make reliable comparisons. We would advocate for a review of the current coding system. Having said that, we also accept, at the end of the day, that

35 Mr Kerry Jones, Master Cleaners Guild of Western Australia Inc, Transcript of Evidence, 20 November 2002, p. 216.

36 Recruitment and Consulting Services Association, Submission No. 20, p. 3.

37 Recruitment and Consulting Services Association, Submission No. 20, p. 6.

38 Master Cleaners Guild of Western Australia Inc, Submission No. 59, p. 5.

the issues that you refer to under these terms of reference essentially centre on the issue of management performance.³⁹

- 8.29 WorkCover NSW hopes the use of the Australian and New Zealand Standard Industry Classification as the basis of their WorkCover industry codes will allow a closer link between an industry sector's occupational health and safety and injury management performance and its premium rate.⁴⁰

Recommendation 2

The Committee recommends that the Commonwealth Government, in collaboration with the State and Territory workers' compensation authorities, and with other stakeholders, look at the need to amend the Australian and New Zealand Standard Industrial Classification in relation to its applicability to workers' compensation systems and interjurisdictional consistency.

Inter-jurisdictional issues

- 8.30 Some states have Memoranda of Understanding to ensure that employees injured in another jurisdiction are not left without cover. For example, a cross border agreement between Queensland and New South Wales was introduced into the Parliaments in November 2002 and one between NSW and Victoria is awaiting introduction to the Victorian Parliament.⁴¹ A comprehensive web of agreements across all states could address most of the inter-jurisdictional issues.
- 8.31 The Department of Employment and Workplace Relations, however, believes that there is still the potential for an employee injured in another jurisdiction to fall between the two jurisdictions.⁴² Also, employers may have to pay premiums for the same worker in one or more jurisdiction.⁴³ DEWR added that while there is a commitment from the States on this

39 Mr Kerry Jones, Master Cleaners Guild of Western Australia Inc, Transcript of Evidence, 20 November 2002, p. 216.

40 Workplace Relations Ministers' Council, *Comparative Performance Monitoring*, August 2002, Comparison of Occupational Health and Safety in Australia and New Zealand, p. 2.

41 Mr Paul Goldsbrough, Queensland Department of Industrial Relations, Transcript of Evidence, 22 November 2002, p. 328.

42 Mr Rex Hoy, Department of Employment and Workplace Relations, Transcript of Evidence, 25 September 2002, p. 20.

43 Department of Employment and Workplace Relations, Submission No. 48, p. 19.

simple but important issue, it has not been resolved because of the nature of Australia's Constitution and the various regulatory systems.⁴⁴

8.32 Workers' compensation schemes must resolve the issue of full protection for employees who are required to work in other jurisdictions. The National Farmers' Federation raised the issue of farmers whose properties straddle more than one jurisdiction, and farm employees who need to travel across borders to work.⁴⁵

8.33 The Media Entertainment and Arts Alliance found that the extraterritorial provisions are creating black holes which mean that employers are unable to provide employees with workers' compensation cover. This is of considerable concern to employees such as those touring with live theatre or concerts.⁴⁶

All persons working in Australia are entitled to protection in the event of work related illness or injury, regardless of where the work is undertaken, their usual residence and that of their employer.⁴⁷

8.34 The Alliance made the point that it is simply unjust that someone injured in another jurisdiction is left with no means of sustaining themselves other than through the public purse and sickness benefits.⁴⁸

8.35 The Superannuated Commonwealth Officers Association provided the example of 100 New South Wales firefighters who were transferred to the ACT on the basis that they would retain their workers' compensation and superannuation rights. The Association outlined a number of situations where these changes have led to the underpayment of significant amounts of money, and commented on the implications in terms of tax issues and interest foregone.⁴⁹

44 Mr Rex Hoy, DEWR, Transcript of Evidence, 25 September 2002, p. 20.

45 National Farmers' Federation, Submission No. 19, p. 6.

46 Media Entertainment and Arts Alliance, Submission No. 43, p. 5.

47 Media Entertainment and Arts Alliance, Submission No. 43, p. 5.

48 Media Entertainment and Arts Alliance, Submission No. 43, p. 5.

49 Superannuated Commonwealth Officers' Association Inc, Submission No. 73, pp. 1-4.

Recommendation 3

The Committee recommends that the Minister for Employment and Workplace Relations request that the Workplace Relations Ministers' Council continue to work towards the introduction of nationally consistent Memoranda of Understanding between the jurisdictions to ensure that employees have equivalent workers' compensation cover when working in other jurisdictions .

National database

Data collection

- 8.36 The need for better data collection was an important issue raised in a number of submissions.⁵⁰ Currently there is little consistency in the format or the data collected, some jurisdictions have poor databases and these differences in data recording and reporting make interstate comparisons difficult. Better data about actual claims experience would enable a proper analysis of the instances that give rise to claims. It is extremely difficult to establish meaningful national benchmarks, to identify performance standards or to monitor emerging trends on a national basis, although the National Data Set for Compensation-based Statistics is a positive step in this direction.⁵¹ Improved data recording would enable industry trends in terms of health and safety and workers' compensation management to be tracked.⁵²
- 8.37 The Media Entertainment and Arts Alliance believes that a single notification scheme may improve data collection as the data currently collected around the country is processed in different ways, and self-employed people often do not report their injuries and employees often do not lodge claims.⁵³

50 Labor Council of NSW, Submission No. 52, p. 4; Mr Douglas Pearce, Insurance Australia Group, Transcript of Evidence, 18 October 2002, p. 71; Insurance Australia Group, Submission No. 47, p. 8; Recruitment and Consulting Services Association, Submission No. 20, p. 3.

51 Insurance Australia Group, Submission No. 47, p. 9.

52 Mr Charles Cameron, Recruitment and Consulting Services Association, Transcript of Evidence, 4 December 2002, p. 428.

53 Ms Lynn Gailey, Media Entertainment and Arts Alliance, Transcript of Evidence, 18 October 2002, p. 123.

Repeat offenders

- 8.38 There was some support for a centralised database on fraud.⁵⁴ Concern was expressed that there is no way of identifying repeat offenders.⁵⁵ The ACT Government would be prepared to contribute to a database in relation to proven cases of fraud if other jurisdictions believed that the incidence of fraud warranted further investigation.⁵⁶ WorkCover Queensland believes that a national database would be helpful and that this should include New Zealand.⁵⁷
- 8.39 Another advantage of an effective reporting process would be to identify a claimant who has seen a large number of medical practitioners in a short time in an attempt to find one who would confirm the work-relatedness of an injury or illness. Mr Kim Mettam commented on the value of access to Health Insurance Commission records in looking at the work relatedness of an illness based condition.⁵⁸
- 8.40 The Committee has a number of concerns about the implementation of a national database on fraudulent activities. Although there are significant potential benefits in terms of the capacity to analyse trends and issues, there are a number of potential dangers. For example, the Committee received a number of allegations about inappropriate activities by service providers and investigators, which raises concerns about injured workers being unjustly included on the database.
- 8.41 The Committee is concerned that a national database would create a subclass of untouchable injured employees who would not be able to find employment again. The Recruitment and Consulting Services Association commented on the difficulty in convincing alternative clients that an injured employee would not pose a risk to their business.⁵⁹ Mr Graham Stewart commented in his attempts to gain employment after his compensation claim:

The crux of the matter – and the hard bit for me – is that when I go and apply for a job, even one that I can cope with, I have to fill out an application form that asks. "Have you had a WorkCover claim"

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

55 Ms Annette Bellamy, Chamber of Commerce and Industry of Western Australia, Transcript of Evidence, 20 November 2002, p. 205.

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

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

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

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

‘Yes.’ “We’ll ring you later.” That is the truth of the matter. People can deny that, but that is the bottom line.⁶⁰

- 8.42 In applying for jobs in Western Australia, applicants have to disclose whether they have had a workers’ compensation claim. The injured worker has to carry the stigma for the rest of their life.⁶¹ If you lie on the form to get a job, the injured worker knows that they will never be able to claim workers’ compensation if they are injured again.⁶²
- 8.43 The Recruitment and Consulting Services Association argued that while they do not want that person untouchable or disadvantaged, they would also not want to put them into a position where another level of problems occurs. A national database would enable this to be recognised and ensure that workers are placed in the best role for them, and would assist with the redeployment of injured workers to assist rehabilitation.⁶³
- 8.44 A database could also include information on non-compliant employers, service providers and insurance agents or companies who have been prosecuted or penalised for inappropriate activities or practices.

Data sharing

- 8.45 In some jurisdictions the workers’ compensation schemes have in place legislative powers to disclose information to other statutory bodies within that jurisdiction. A number of submissions commented on the benefits of being able to data match, particularly with the Australian Taxation Office. The Department of Employment and Workplace Relations commented that:

Data matching however raises considerable privacy issues which would need to be addressed, notwithstanding the capacity of using data matching resources to assist in detecting fraud and facilitating improved workers’ compensation compliance arrangements.⁶⁴

- 8.46 Comcare currently has the legal authority to obtain information from an employer or the Australian Taxation Office when fraudulent activity is suspected, and believes that data matching could be used to advantage by

60 Mr Graham Stewart, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, p. 97.

61 Mr Arthur Heedes, Transcript of Evidence, 12 February 2003, p. 457.

62 Mrs Margaret Pursey, Injured Persons Action and Support Association, Transcript of Evidence, 12 February 2003, p. 458.

63 Ms Julie Mills, Recruitment and Consulting Services Association, Transcript of Evidence, 4 December 2002, p. 439; Recruitment and Consulting Services Association, Submission No. 20, p. 3.

64 Department of Employment and Workplace Relations, Submission No. 48, p. 27.

State and Commonwealth organisations, although it must be subject to appropriate controls.⁶⁵

- 8.47 It was suggested that data on the cost and incidence of fraud is lacking because of the onerous privacy laws and the lack of a subclassification system which would separate out the fraud that related to workers' compensation.⁶⁶ Dr William Marchione suggested the implementation of a 'data acquisition tool' to identify fraud before it occurs. He stressed that the system does not label or judge patient behaviour, it merely documents features of behaviour consistent with undesirable behaviour patterns which can be used to qualify and quantify medical claims. He suggested that access to the register be restricted to magistrates and police investigators.⁶⁷

Recommendation 4

The Committee recommends that the Commonwealth Government:

- **examine the need to extend the National Data Set for Compensation-based Statistics, to provide nationally relevant workers' compensation data that assists meaningful interjurisdictional comparisons for policy analysis and contributes to the development of a national framework.**
- **further investigate the implications and appropriateness of a national database on workers' compensation claims which identifies injured workers, employers, service providers and insurance companies.**
- **further investigate the implications and appropriateness of additional data matching capacity between Commonwealth agencies and the State and Territory workers' compensation authorities.**

The Committee strongly believes that confidentiality should be exercised in relation to the use of these databases.

- 8.48 Currently the Commonwealth does not collect information on the compensation history of Centrelink clients unless it impacts on the

65 Comcare, Submission No. 32, p. 23.

66 Dr William Marchione, Transcript of Evidence, 18 October 2002, p. 125.

67 Dr William Marchione, Fair Go Mate, Submission No. 58, p. 7.

individual's income support entitlements.⁶⁸ The Committee believes that this information should form part of the national database to assist in the analysis of emerging trends and the identification of best practice initiatives in workers' compensation management.

- 8.49 The Committee is concerned that injured workers who have received a lump sum payment or who have not had access to appropriate rehabilitation and retraining, or who have experienced other significant difficulties as a result of a failure of a compensation system, may be left with no alternative other than to access the Commonwealth social security system.

Recommendation 5

The Committee recommends that the Commonwealth, with the States and Territories, conduct a qualitative study of injured workers who have received a lump sum or who have been in receipt of workers' compensation benefits for twelve or more continuous months, to identify if they have subsequently accessed income support entitlements and to determine the extent to which this system is subsidising the workers' compensation industry.

Commonwealth social security benefits

- 8.50 A number of submissions refer to the transfer of costs to the taxpayer in situations where employees are willing to work but denied the opportunity. These injured workers often become the responsibility of the Commonwealth's social security system, which is seen as a de facto workers' compensation system.
- 8.51 It was strongly argued that this is very stressful for people who find themselves in this situation, and is a very unsatisfactory outcome for people who wish to lead a meaningful life through their work.

It is a wearing down process. Along with that, they have the stigma and everything else attached with having a WorkCover claim.⁶⁹

68 Letter from Senator the Hon Amanda Vanstone, Minister for Family and Community Services, 18 February 2003, p. 2.

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

- 8.52 In relation to the number of injured workers receiving social security payments from the Commonwealth, Injuries Australia made the point that social security was not established to subsidise insurance companies.⁷⁰

The compensation provisions of the Social Security Law reflect the view that the primary responsibility for assisting people suffering compensable injuries rests with compensation authorities, and not with taxpayer funded social security programs. Also, that the social security system provides a safety net for those with no adequate means of support. Social Security Law incorporates provisions that seek to limit recipients' of workers' compensation access to Commonwealth income support.⁷¹

- 8.53 Cutting services to injured workers means that the necessary services are funded by the Commonwealth Government through the social welfare system.⁷² Injuries Australia stated that the Commonwealth Government subsidised insurance companies and state governments when:

Tens of thousands of ill and injured N.S.W.'s workers were unceremoniously dumped onto the federal government's health and social security systems without one minute of vocational rehabilitation and with their medical treatments cut off mid-stream.⁷³

- 8.54 It would be a major concern to Centrelink to be picking up the shortfalls in the compensation systems but Mr Guthrie argued that it may not have been of the magnitude first thought.⁷⁴ The state compensation schemes retain information on injury types and industry breakdowns:

As the Commonwealth does not hold this information it is difficult to quantify the extent of cost shifting to the Commonwealth income support system from workers' compensation authorities. Centrelink only tracks the compensation history of a client to the extent that it is needed to determine any impact on an individual's income support entitlements.⁷⁵

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

71 Letter from Senator the Hon Amanda Vanstone, Minister for Family and Community Services, 18 February 2003, p. 1.

72 Injuries Australia Ltd, Submission No. 27a, p. 1. See also Mr Richard Gilley, The RiskNet Group, Transcript of Evidence, 18 October 2002, p. 136; Mr Kazimir Kowalski, Transcript of Evidence, 21 November 2002, p. 305; Mr Markham Moore-McQuillan, Transcript of Evidence, 21 November 2002, p. 290.

73 Injuries Australia Ltd, Submission No. 27a, p. 1.

74 Mr Robert Guthrie, School of Business Law, Curtin University, Transcript of Evidence, 20 November 2002, p. 192.

75 Letter from Senator the Hon Amanda Vanstone, Minister for Family and Community Services, 18 February 2003, p. 2.

8.55 The Minister for Family and Community Services told the Committee that 45 000 Centrelink customers per year have their social security payments affected by compensation, of which 80 per cent are workers' compensation related.⁷⁶

Of the 2.9 million working age people on income support in 2001, 214,000 have, at some stage, indicated that they have claimed compensation. These include 83,000 Disability Support Pensioners (of which 27,000 had previously been on Newstart Allowance), 64,000 Newstart Allowees and 22,000 Parenting Payment Single customers. This indicator does not necessarily mean that these people received a compensation payment.⁷⁷

8.56 Mr Robert Guthrie from Curtin University stated that there are limits on the cost shifting. In claims that are settled with a lump sum there is a preclusion period which prevents people from accessing disability support sickness benefit for the lifetime of their lump sum.⁷⁸

8.57 The Minister for Family and Community Services explained that:

People who get lump sum compensation are subject to a social security preclusion period during which time they are unable to access income support. As a rule of thumb, currently each \$31,000 of assessable compensation⁷⁹ incurs a 12 month preclusion period.⁸⁰

8.58 In 2001-02 there were 33 025 people who completed their preclusion period. Income support payments commenced for 8058 people within four

76 Letter from Senator the Hon Amanda Vanstone, Minister for Family and Community Services, 18 February 2003, p. 1.

77 Letter from Senator the Hon Amanda Vanstone, Minister for Family and Community Services, 18 February 2003, p. 2.

78 Mr Robert Guthrie, School of Business Law, Curtin University, Transcript of Evidence, 20 November 2002, p. 192.

79 Compensation is defined in the Social Security Act as a payment that is made wholly or partly in respect of lost earnings or lost capacity to earn, resulting from personal injury, whether paid as a lump sum or periodic payments either within or outside Australia.

In cases where a person receives a lump sum payment of compensation that contains a component for lost earnings or lost capacity to earn, the Department uses a formula to calculate the 'preclusion period' during which the person is not entitled to social security income support payments. When a matter settles by consent, the formula takes half of the gross settlement amount in determining the length of the preclusion period. The remaining half of the settlement is ignored in this calculation in recognition that a compensation recipient has other costs resulting from their injury, such as medical and legal expenses.

In cases where compensation does not include any component for lost earnings or lost capacity to earn, they are not treated as "compensation", but more generally, as ordinary income.

80 Letter from Senator the Hon Amanda Vanstone, Minister for Family and Community Services, 18 February 2003, p. 1.

months of the preclusion period ending.⁸¹ Many more may have commenced income support after that four months.

Of the 8,058 people who accessed income support within four months of their preclusion period ending in 2001/02, a total of 1,596 commenced on Disability Support Pension while 3,937 commenced on Newstart Allowance. The remaining 2,525 were split among a range of payment types in much smaller numbers.⁸²

- 8.59 In some circumstances injured workers may be able to access assistance from the Commonwealth when they are awaiting the settlement of a claim, or who mismanage a settlement under common law or if the scheme caps the time and amount of compensation.⁸³ The claimants may be required to repay a large amount of settlement to Centrelink when the claim is settled.⁸⁴

The Compensation recovery provisions in Social Security Law which enable Centrelink to recover social security benefits paid to injured workers from any subsequent compensation payment are very effective. As at 31 December 2002, Centrelink had recovered 92.2% of the compensation debts raised in 2001-2002.⁸⁵

- 8.60 Centrelink clients seeking assistance are not required to declare whether the injury or disease is work related:⁸⁶

workers compensation systems over the last decade have cut down in terms of how long people are able to access workers compensation payments, ceasing payment in many cases at the end of two years, there are people who, despite the fact that they may not be able to work full time, actually go out of the workers compensation system and often go onto sickness benefit, so there is actually a cost transfer of people from the insurance system onto a Commonwealth benefits system.⁸⁷

81 Letter from Senator the Hon Amanda Vanstone, Minister for Family and Community Services, 18 February 2003, p. 1.

82 Letter from Senator the Hon Amanda Vanstone, Minister for Family and Community Services, 18 February 2003, p. 2.

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

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

85 Letter from Senator the Hon Amanda Vanstone, Minister for Family and Community Services, 18 February 2003, p. 2.

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

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

- 8.61 The Insurance Australia Group believes that there needs to be national uniformity in relation to the interfaces between workers' compensation and health and social welfare, so that these are clearly known, understood and designed. The extent to which states rely on the social security and public health systems must be defined in the benefit structure of each of the States and Territories.⁸⁸
- 8.62 The Risknet Group suggested that one of the factors that should be considered in determining the cost of workers' compensation systems is the cost shifting to the Commonwealth Social Security scheme.⁸⁹
- These workers ultimately get thrown on the social security scrap heap, and the federal government foots the bill.⁹⁰
- 8.63 The Insurance Australia Group believes that there needs to be national uniformity in relation to the interfaces between workers' compensation and health and social welfare so that these are clearly understood and appropriately designed.⁹¹ One of the issues the Productivity Commission is expected to consider is the extent to which the Commonwealth social security system has become a de facto workers' compensation scheme.⁹²

Recommendation 6

The Committee recommends that the Minister for Employment and Workplace Relations work with the Workplace Relations Ministers' Council to develop a set of benchmarks and best practice for all aspects of workers' compensation, to ensure that the responsibility for assisting people suffering compensable injuries rests with the compensation authorities and not with taxpayer funded social security programs or the burden placed on the injured worker.

88 Mr Douglas Pearce, Insurance Australia Group, Transcript of Evidence, 18 October 2002, pp. 79-80.

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

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

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

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

Taxation legislation

- 8.64 There are issues that need to be resolved in relation to the relationship between Commonwealth and state systems. For example, Queensland has introduced structured settlements so that injured workers can take up an annuity by agreement when they receive a common law payout. However, the Committee was told that:

The difficulty at the moment is that, under the federal tax laws, there is no capacity for that to be treated in the same way as I understand other sorts of payouts are - in terms of public liability and so on. So people do have to pay tax in that instance.⁹³

- 8.65 The Heads of Workplace Safety and Compensation Authorities is currently examining the implications of the Commonwealth's taxation reforms on aspects of workers' compensation schemes. One particular aspect that the Committee believes requires urgent attention is the impact on structured settlements for injured workers.

Recommendation 7

The Committee recommends that the Commonwealth Government urgently investigate the extent to which current taxation legislation is inhibiting initiatives of workers' compensation schemes which may benefit the injured workers, such as structured settlements.

Health services

- 8.66 If there were a national system, the Council of Small Business Organisations of Australia would like to see minor injuries treated by the employee's doctor or local hospital, without processing this as a workers' compensation claim which would increase the cost. It was suggested that the insurer would be notified to protect the employee in case later complications of a more serious nature developed.⁹⁴
- 8.67 There is a widely held view that the majority of medical support is professional and appropriate. However, at the margins there is evidence that some doctors feel pressured into signing workers' compensation

93 Mr Paul Goldsbrough, Queensland Department of Industrial Relations, Transcript of Evidence, 22 November 2002, p. 322.

94 Council of Small Business Organisations of Australia Ltd, Submission No. 49, p. 3.

certificates while at the other extreme some medical panels can be unduly harsh and confusing for claimants, effectively delaying rehabilitation and return to work and contributing to “acquired disability”.

Recommendation 8

The Committee recommends that the Minister for Employment and Workplace Relations work with the Workplace Relations Ministers’ Council to develop a process for identification and national implementation of best practice to consider initiatives such as the Queensland Government’s approach of educating and maintaining a close relationship with doctors and requiring them to fill out a form declaring that the injury is work related.

- 8.68 Under the *Health and Other Services (Compensation) Act 1995* Medicare benefits and residential aged care subsidies are recoverable where the expenses are related to compensation arrangements. In settlements under \$5000, Medicare does not require notification as these are not cost efficient to recover.⁹⁵

The extent to which the Medicare system is utilised for workplace injuries by persons that do not enter the workers’ compensation system is unknown.⁹⁶

- 8.69 The establishment of a national database would facilitate the identification of those on workers’ compensation and enable the monitoring of Medicare for the treatment of workplace injuries.

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

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

Recommendation 9

The Committee recommends that the Commonwealth Government determine the extent to which the medical expenses of injured workers are being met by Medicare and the extent to which this system is subsidising the workers' compensation industry.

Plaintiff lawyers

8.70 The advice offered by lawyers may not always be in the best interests of the client in terms of the goal of achieving a timely return to work. It was alleged that lawyers allowed claims to drag on for years, and that there was systematic collusion.⁹⁷ The National Meat Association of Australia alleged that:

lawyers are the major reason for deficiencies in the operations of the spirit of the schemes, especially in escalating and inhibiting rehabilitation.⁹⁸

8.71 It was suggested that legal action is encouraged even if a claim is unlikely to succeed, on the presumption that the matter will be settled out of court.⁹⁹ It was also suggested that some solicitors encourage their clients to keep their options open by not returning to work and maintaining a level of disability.¹⁰⁰ The Australian Industry Group commented that there are inadequate checks and balances between those two conflicting principles.¹⁰¹

8.72 The APLA argued that lawyers filter claims and that in the no-win no-fee policy lawyers will not risk their fees if cases are not likely to win.¹⁰² The NMAA believes that lawyers know that WorkCover will settle out of court and that therefore a lawyer may be prepared to proceed with a fraudulent

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

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

99 The Australian Plaintiff Lawyers Association stated that they settled about 98 per cent of cases out of court. See Mr Peter Burt, Australian Plaintiff Lawyers Association, Transcript of Evidence, 26 November 2002, pp. 406-407.

100 Mrs Leonie Green, MAXNetwork Pty Ltd, Transcript of Evidence, 22 November 2002, p. 335; Mr Kerry Jones, Master Cleaners Guild of Western Australia, Transcript of Evidence, 20 November 2002, p. 214.

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

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

- claim.¹⁰³ Mr Robert Guthrie believes that a lawyer acting ethically would be able to detect employee fraud and would advise against proceeding and that fraud is usually detected at trial.¹⁰⁴
- 8.73 The Committee received arguments for and against access to common law for injured workers. It was suggested that one of the benefits of common law is that in its absence there is no incentive to provide a safe working environment if the employee cannot sue for negligence.¹⁰⁵
- 8.74 It was argued that common law has been the greatest barrier to successful injury management or return to work. When legal advice is sought there can be a change in the injury management program from a return to work to being unfit for work.¹⁰⁶ Workers may be encouraged to act in a manner which would maximise a possible lump sum payment because of access to common law but creates an atmosphere of poor employment relations.¹⁰⁷
- 8.75 The National Meat Association of Australia would like to see some limitation on the common law approach.¹⁰⁸ Another concern is that the insurer rather than the employer is the respondent in proceedings in the court system and the employer's wishes are often overridden.¹⁰⁹
- 8.76 The Committee is concerned that in some situations injured workers come to believe that there is no advantage in returning to work as they believe that the lump sum will set them up for the rest of their life. Injuries Australia pointed out that in some cases settlements may be the appropriate option, particularly in very severe cases where people need to be looked after.¹¹⁰
- 8.77 It was argued that money compensation is about compensating people for their loss and not about fixing the problem, while compensation schemes are moving towards early intervention and return to work and a normal

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

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

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

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

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

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

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

110 Mr George Cooper, Injuries Australia Ltd, Transcript of Evidence, 18 October 2002, p. 98.

life.¹¹¹ Workers' compensation schemes are about looking after the health of people and the money is just another tool for getting the job done.¹¹²

- 8.78 The Committee is concerned that injured workers continue to focus on lump sum payments and do not appreciate that this may result in them being on the disability support pension, if they are eligible, for the rest of their life. Injured workers are motivated by the lump sum in the absence of an alternative as they cannot access other options until they get into the Commonwealth system.¹¹³ More longitudinal monitoring of return to work outcomes is needed.

Recommendation 10

The Committee recommends that the Minister for Employment and Workplace Relations work with the Workplace Relations Ministers' Council to implement a process whereby the relevant agencies or authorities in each jurisdiction forward educational material to the injured worker on the various options available and the possible associated pitfalls, and offer financial counselling and support through Centrelink with the view to ensuring a timely return to work where possible.

Cost shifting to others

- 8.79 Mr Guthrie stated that in relation to costshifting, employers are paying wages outside the compensation system because of agreements with unions, or they decide to continue paying full rates which are subsidising the compensation system.¹¹⁴

That suggests that, firstly, the compensation system is not doing it properly or, secondly, there is some other better employment practice that makes employers do it.¹¹⁵

- 8.80 Journey insurance cover, which used to be covered by the employer, has now been shifted to the individual worker in some situations.¹¹⁶

111 Mr Douglas Pearce, Insurance Australia Group, Transcript of Evidence, 18 October 2002, p. 77.

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

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

114 Mr Robert Guthrie, School of Business Law, Curtin University, Transcript of Evidence, 20 November 2002, p. 192.

115 Mr Robert Guthrie, School of Business Law, Curtin University, Transcript of Evidence, 20 November 2002, p. 192.

Occupational health and safety

- 8.81 DEWR pointed out that the legislative provisions covering rehabilitation and return to work vary, and that there is a fragmented approach to the management of occupational health and safety in different jurisdictions.¹¹⁷ The Department has been seeking national consistency in workers' compensation and OHS, as they are linked.¹¹⁸
- 8.82 Employers find compliance with the range of OHS legislation confusing and costly. This issue is compounded for employers and employees who work in more than one jurisdiction.¹¹⁹ In 1995 the Industry Commission found over 150 statutes which regulate health and safety at work across Australia. Efforts have been made to reduce the complexity but there is still significant work to be completed.¹²⁰
- 8.83 The Master Cleaners Guild of Western Australia believes that the real issue in employer compliance is one of successful management systems, and has developed an industry wide approach to OHS:
- The Guild therefore advocates the broader adoption of this approach, that is, industry focused developments avoiding the duplication in resource allocation that is evident within and between States, that all too frequently appear to want to reinvent the wheel. It is apparent therefore that industry lead initiatives need to be facilitated through some central control point to produce generic system guidelines that can then be customised to individual user requirements.¹²¹
- 8.84 On a national level these concerns have been identified, and commitments by all jurisdictions have been made to reduce workplace injury and illness. As the National Occupational Health and Safety Strategy for 2002 – 2012 highlights, there is an unacceptable level of workplace injury and fatality. In response the Workplace Relations Ministers' Council has committed to five national priorities of:
- reducing high incidence/severity risks;

116 Mr Robert Guthrie, School of Business Law, Curtin University, Transcript of Evidence, 20 November 2002, p. 192.

117 Department of Employment and Workplace Relations, Submission No. 48, p. 6.

118 Mr Rex Hoy, Department of Employment and Workplace Relations, Transcript of Evidence, 25 September 2002, pp. 17-18.

119 Mr Rex Hoy, DEWR, Transcript of Evidence, 25 September 2002, pp. 14-15.

120 Industry Commission, *Work, Health and Safety*, 1995, p. xxiv; Mr Tom Kenna, Department of Employment and Workplace Relations, paper presented at Workerscomp 2003, National Workers' Compensation Summit, 17 February 2003, p. 12.

121 Master Cleaners Guild of Western Australia Inc, Submission No. 59, p. 5.

- developing the capacity of business operators and workers to manage OHS effectively;
 - preventing occupational disease more effectively;
 - eliminating hazards at the design stage; and
 - strengthening the capacity of government to influence OHS outcomes.
- 8.85 In addition, there are nine areas of national action to reduce the incidence of workplace injury and fatalities. The nine areas are:
- comprehensive OHS data collection;
 - a coordinated research effort;
 - a nationally consistent regulatory framework;
 - strategic enforcement;
 - effective incentives;
 - compliance support;
 - practical guidance;
 - OHS awareness; and
 - development of OHS skill.¹²²
- 8.86 The Committee commends these initiatives and looks forward to seeing the results of this cooperative approach.

Rehabilitation and return to work

- 8.87 Similarly, there would be advantages to the implementation of nationally consistent rehabilitation and return to work practices. The decreasing return to work rate needs to be addressed and strategies to reverse this decline need to be identified.
- 8.88 The Victorian Council of Occupational Rehabilitation Providers advocated a nationally consistent measurement of occupational rehabilitation outcomes to identify where best practice is occurring. This would spread the learning across all schemes and provide a challenge to improve against benchmarks. In addition, a set of national occupational rehabilitation standards would ensure that quality occupational rehabilitation services are being delivered nationally. This would also assist in reducing barriers to state participation by successful companies adopting a consistent standard.¹²³ As one example, the National Meat Association of Australia

122 National Occupational Health & Safety Commission, *National OHS Strategy 2002 – 2012*, 2002, pp. 10-12.

123 Ms Jane Barnett, Victorian Council of Occupational Rehabilitation Providers, Transcript of Evidence, 26 November 2002, p. 393.

supports mandatory rehabilitation and return to work schemes that are consistent throughout Australia.¹²⁴

- 8.89 The NOHSC has developed guidance notes for best practice rehabilitation management of occupational injuries and disease.¹²⁵ However, no evidence was received by the Committee to determine the extent to which these have been adopted or their effectiveness in industry.
- 8.90 Similarly, the national approach that has been taken to address OHS concerns needs to drive change in rehabilitation and return to work as part of the overall workers' compensation system.

Recommendation 11

The Committee recommends that the Commonwealth Government, in collaboration with the States and Territories, develop a program to implement the National Occupational Health and Safety Commission *Guidance notes for best practice rehabilitation management of occupational injuries and disease* nationally.

- 8.91 Another issue of concern was the extent to which there is vertical integration in situations where insurance companies own and operate rehabilitation and return to work providers. MAXNetwork commented that some companies are committed to delivering the best services and reducing the costs of claims, and are concerned about retribution from WorkCover if their performance is inadequate.¹²⁶
- 8.92 Mr Stokes added that a close relationship needed to be developed between the stakeholders even if these services were not provided in house.¹²⁷
- 8.93 There is frequently a dilemma between expediently processing the worker's compensation claim in financial terms for the insurer and ensuring the best possible long-term outcome for the injured worker.¹²⁸ It was also suggested that claims staff at insurers are often inexperienced and have enormous case loads. In Victoria they are supposed to have about

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

125 National Occupational Health & Safety Commission, *Guidance notes for best practice rehabilitation management of occupational injuries and disease*, (NOHSC: 3021 (1995)).

126 Mrs Leonie Green, MAXNetwork Pty Ltd, Transcript of Evidence, 22 November 2003, p. 334.

127 Mr Paul Stokes, MAXNetwork Pty Ltd, Transcript of Evidence, 22 November 2003, p. 334.

128 Dr Christine Roberts-Yates, *The dilemma of the case manager in workers' compensation*, *Exhibit No. 80*; See also Queensland Government, Submission No. 30, p. 9.

eighty cases but average about 120. They are lucky to get through the processing let alone manage the claim. The Australian Rehabilitation Providers Association suggested that insurers should be encouraged to increase their in-house occupational rehabilitation expertise to better manage claims.¹²⁹

- 8.94 The Committee is therefore concerned that in situations where insurance companies operate rehabilitation services that there is inadequate accountability.

Recommendation 12

The Committee recommends that the Minister for Employment and Workplace Relations work through the Workplace Relations Ministers' Council to eliminate vertical integration whereby insurance companies own and operate rehabilitation and return to work providers.

- 8.95 The Recruitment and Consulting Services Association suggested that returning injured people to work could be better managed through a larger plan, and that the Commonwealth has available the Job Network program and Jobsearch database.¹³⁰ The Australian Rehabilitation Providers Association advocates the development of a national scheme to assist redeployment of injured workers with limited premium protection for the new employer.¹³¹

129 Australia Rehabilitation Providers Association, Submission No. 17, p. 7.

130 Ms Julie Mills and Mr Charles Cameron, Recruitment and Consulting Services Association, Transcript of Evidence, 4 December 2002, p. 429.

131 Australian Rehabilitation Providers Association, Submission No. 17, p. 7. See also Ms Julie Mills, Recruitment and Consulting Services Association, Transcript of Evidence, 4 December 2002, p. 428.

Recommendation 13

The Committee recommends that the Commonwealth Government, in collaboration with the States and Territories, investigate the potential interface of Commonwealth employment schemes with State re-employment programs to develop more effective ways to assist injured workers to return to work, including communication of this information to providers who are responsible for return to work programs, without additional cost to the Commonwealth.

Concluding comments

- 8.96 There are a number of current and previous reviews which overlap the issues outlined in the terms of reference for this inquiry. The Industry Commission conducted major reviews in 1994 and 1995. Each of the jurisdictions has recently conducted or is currently undertaking reviews of various aspects of workers' compensation and/or occupational health and safety. The Insurance Australia Group referred to the thirty different reviews of the insurance industry or insurance schemes currently being undertaken in Australia.¹³² The Productivity Commission will be looking at streamlining various aspects of workers' compensation arrangements.
- 8.97 Accordingly, the Committee believes that it may be timely for the States, Territories and the Commonwealth to jointly consider the feasibility, benefits and disadvantages of greater national consistency in workers' compensation arrangements.
- 8.98 While the Committee believes that the primary responsibility for workers' compensation and occupational health and safety should stay within the respective Commonwealth, State and Territory jurisdictions, there is significant capacity for increased national consistency and cooperation.
- 8.99 There is a need to ensure that injured workers are not falling through the gaps when they are working in more than one jurisdiction or that the employer should not have to obtain cover for a particular worker in a number of jurisdictions. There would be considerable benefit in greater harmonisation and administrative and operational consistency for employers operating in more than one jurisdiction.
- 8.100 There is also a need to develop an agreed position on a number of definitions, particularly that of employee, as there are a number of

132 Mr Douglas Pearce, Insurance Australia Group, Transcript of Evidence, 18 October 2002, p. 70.

'workers' not covered by a workers' compensation scheme, who may not have taken out an alternative forms of insurance. There is the potential for the cost relating to an injury to fall on the Commonwealth social security system or the state's secondary funds.

Recommendation 14

The Committee recommends that the Commonwealth Government support and facilitate where possible the development of a national framework to achieve greater national consistency in all aspects of the operation of workers' compensation schemes.

- 8.101 The Committee believes that streamlining the workers' compensation system has the potential to have a much greater financial impact than allocating significant additional resources to the detection of fraud. Much of the perceived fraud is related to incompetence and inefficiencies within the existing schemes and participants in the process. If the system operated more effectively and efficiently, with greater accountabilities, then this would also largely eliminate any fraudulent behaviour.
- 8.102 It is generally accepted that in most situations the level of employee fraud is minimal. The Committee believes that caution should be exercised and that the money spent attempting to detect and eliminate fraud must have some relevance to the level of fraud and the impact on premium levels for employers. With the current system in place, in many instances, resources would be better allocated to preventive activities.
- 8.103 An important aspect of workers' compensation is that culture and custom and practice can have a significant impact on the economic and non-economic costs of claims. While there needs to be greater consistency in legislative outcomes for the workers' compensation schemes nationally, many of the problems arise from the administration, practices and the attitudes of some employers, service providers, insurers and workers' compensation schemes. The accountability of each of the sectors of the workers' compensation system needs to be enhanced to address the inefficiencies and lack of appropriateness and effectiveness of the practices.
- 8.104 The qualitative aspects as well as the quantitative aspects must be appropriately dealt with in achieving an equitable balance.

- 8.105 The Committee is particularly concerned with the level of suicides among injured workers. This aspect is worthy of attention in all workers' compensation schemes.
- 8.106 In relation to injured workers, of particular concern are the return to meaningful employment, the support required for those who need major changes to their careers, and the need for explanation of the benefits of appropriate alternative options to a lump sum payment for those unable to return to work.
- 8.107 The need for early rehabilitation and for encouraging early return to work cannot be underestimated in terms of personal and financial costs. There are opportunities for greater accountability of service providers. A move to evidence based medicine and exception based reporting will address many of these issues. As the focus moves more to outcomes and a quicker return to work for the injured worker, these costs will be reduced.
- 8.108 The extent to which workers' compensation schemes are able to simplify their procedures and provide an adequate explanation of these to the injured employees and their employers will determine the extent to which the perceptions of fraud on their part can be reduced. Greater national consistency may also assist this process.
- 8.109 This in turn should ensure a significant reduction in the involvement of 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.
- 8.110 Of concern to the Committee were the reports of inefficient, unethical and inappropriate actions by investigators who are engaged to monitor an injured worker's behaviour. This is one area that should be relatively easily addressed and the Committee urges all jurisdictions to look at activities in this area.

Recommendation 15

The Committee recommends that the Minister for Employment and Workplace Relations work with the Workplace Relations Ministers' Council to develop, in consultation with other relevant Ministers in each jurisdiction, a national code of practice for those engaged as investigators in pursuing potentially fraudulent claims.

- 8.111 Greater communication and cooperation between the participants is essential. A greater focus on partnerships involving all participants will result in a better alignment of expectations. Without this cooperation there is a significant cost to the community through injured workers not attaining their maximum potential rehabilitation and not receiving optimum management of their disability, and through employers paying higher levies, penalties and premiums, and coping with workplace disruptions.
- 8.112 What is also evident to the Committee is that there is a great deal of knowledge and expertise in relation to what is best practice in every aspect of the workers' compensation industry. The Committee believes that greater cooperation and liaison between the various partners would enable a number of improvements to workers' compensation, which could result in a simpler, more efficient and effective rehabilitation of injured workers, and at the same time reduce or eliminate fraudulent activities and the associated costs.

De-Anne Kelly
Committee Chair

A

Appendix A

Conduct of the inquiry

Advertising the inquiry

The inquiry was advertised in the *Australian* newspaper on 3 and 17 July, 7 August, 4 September, 2 and 16 October and 13 November 2002 and in regional newspapers on 29 June or 5 July 2002. The Committee wrote to the relevant Commonwealth Ministers and to State and Territory Governments. In addition, the Committee wrote to unions, injured workers associations, insurance companies and relevant industry associations inviting them to make a submission.

Evidence to the inquiry

The Committee received 86 submissions from 73 parties. These submissions are listed in Appendix B.

The Committee received 81 exhibits to the inquiry, which were provided as attachments to written submissions, offered during public hearings or sent to the Committee by other parties. These are listed in Appendix C.

Public hearings

The Committee held public hearings across Australia in Canberra, Perth, Adelaide, Melbourne, Brisbane and Sydney and by videoconference to Hobart.

The Committee called 82 witnesses. Details of the hearings and witnesses who appeared are in Appendix D.

Transcript of hearings

At the public hearings 460 pages of evidence were recorded by Hansard. The transcripts and the submissions which have been published are available for inspection from the Committee Office of the House of Representatives, the National Library of Australia or on the inquiry website at:
<http://www.aph.gov.au/house/committee/ewr/index.htm>

B**Appendix B
List of submissions**

No.	Individual/Organisation
1	Name not for publication, VIC
2	A & B Industries, SA
3	Dr Peter Shannon, WA
4	MAXNetwork Pty Ltd(Formerly LGA Group), QLD
5	Workers' Compensation Support Network, QLD
6	Mr Danny & Mrs Jeanette Garvey, QLD
7	Confidential, SA
8	Ms Leah Palazzalo, WA
9	Mr Peter Reynolds, SA
9a	Mr Peter Reynolds, SA
10	The RiskNet Group, NSW
11	Association of Risk Insurance Managers of Australasia Ltd, VIC
12	Ms Julia Mourant, SA
13	Andys Group, VIC
14	Workers' Medical Centre/ Queensland Workers' Health Centre, QLD
14a	Workers' Medical Centre/ Queensland Workers' Health Centre, QLD
14b	Workers' Medical Centre/ Queensland Workers' Health Centre, QLD
15	Ms Heather McLean, QLD
16	Mr Markham Moore-McQuillan, SA

No.	Individual/Organisation
17	The Australian Rehabilitation Providers Association Inc, NSW
18	Mr Kazimir Kowalski, SA
19	National Farmers' Federation, ACT
20	Recruitment & Consulting Services Association, VIC
21	Chamber of Commerce and Industry of Western Australia, WA
22	Old Boyanup Bakery Café / Boyanup Woodfired Bakery, WA
23	Ms Vicky Behrakis, TAS
24	The RSI & Overuse Injury Association of the ACT
25	Withdrawn
26	Victorian Trades Hall Council, VIC
27	Injuries Australia Ltd, NSW
27a	Injuries Australia Ltd, NSW
28	HEMSEM, TAS (Workplace Training, Injury Management & Compensation Training, Consultancy & Publications)
29	Injured Workers Association, SA
30	Queensland Government, QLD
30 a	Queensland Government, QLD
31	Confidential, NSW
32	Comcare, ACT
32a	Comcare, ACT
32b	Comcare, ACT
32c	Comcare, ACT
33	Mr Stig Hellsing, NSW
34	Hotel, Motel & Accommodation Association of Australia, NSW
35	Australian Manufacturing Workers Union, NSW
36	Western Australian Government, WA
37	Victorian Government, VIC

No.	Individual/Organisation
38	Confidential, QLD
39	Australian Plaintiff Lawyers Association, NSW
40	Rehabilitation Providers Association, WA
41	National Meat Association of Australia, NSW
41a	National Meat Association of Australia, NSW
41b	National Meat Association of Australia, NSW
42	Community and Public Sector Union (CPSU)
42a	Community and Public Sector Union (CPSU)
43	Media Entertainment and Arts Alliance, NSW
44	Mr B C Glover, NSW
45	ACT Government, ACT
46	Victorian Council of Occupational Rehabilitation Providers, VIC
47	Insurance Australia Group, NSW
48	Department of Employment and Workplace Relations, ACT
49	Council of Small Business Organisations of Australia Ltd, ACT
50	Tasmanian Association of Vocational Rehabilitation Providers Inc, TAS
51	Mr Max Tomlinson, NT
51a	Mr Max Tomlinson, NT
52	Labor Council of New South Wales, NSW
53	Australian Industry Group, NSW
54	Mr Kim Mettam, WA
55	Confidential, SA
56	Dr Christine Roberts-Yates, SA
57	Ms Muriel Dekker, Qld
58	Dr William Marchione, NSW
59	Master Cleaners Guild of Western Australia Inc, WA
60	Ms Anita Grindlay & Dr Paul Pers, VIC

No.	Individual/Organisation
61	Mr George Smit, QLD
62	Mr Paul O'Halloran, WA
63	Moreton Exhibitions and Events, QLD
64	Confidential, NSW
65	Victorian Automobile Chamber of Commerce, VIC
66	Confidential, NSW
67	Australian Nursing Federation
68	Confidential, SA
69	Insurance Council of Australia Ltd, WA & NT
70	SGIO Insurance, WA
71	Injured Persons Action and Support Association, WA
72	Work Cover, WA
73	Superannuated Commonwealth Officers' Association Inc



Appendix C

List of exhibits

No.	From	Exhibit Title
1	Dr Christine Roberts-Yates	Claims/injury management and rehabilitation for injured workers: Initial results of a partnership approach
2	The RSI and Overuse Injury Association of the ACT	Summary Report – Occupational Overuse Syndrome/Stressors and the workplace project, Safety Rehabilitation and Compensation Commission
3	The RSI and Overuse Injury Association of the ACT	Dr K D Rosenman <i>et al</i> 'Why most workers with occupational repetitive trauma do not file for workers compensation' <i>Journal of Occupational Environmental Medicine</i> Vol 42 (1) January 2000, pp. 25-34
4	The RSI and Overuse Injury Association of the ACT	Dr P M Bongers, 'The cost of shoulder pain at work' Editorials <i>British Medical Journal</i> Vol 322 (7278), 13 January 2001, pp. 64-6
5	The RSI and Overuse Injury Association of the ACT	Prof K M Khan <i>et al</i> , 'Time to abandon the "tendinitis" myth', <i>British Medical Journal</i> Vol 324, 16 March 2002, pp. 626-7

No.	From	Exhibit Title
6	The RSI and Overuse Injury Association of the ACT	G Reardon, 'The impact of workplace culture on injured workers return to work' International Congress on Work Injuries Prevention, Rehabilitation and Compensation, Adelaide 18-21 March 2001
7	The RSI and Overuse Injury Association of the ACT	Dr H R Barthel, 'Presentation and Response of Patients with Upper Extremity Repetitive Use Syndrome to a multidisciplinary Rehabilitation Program A retrospective review of 24 cases' <i>Journal of Hand Therapy</i> July-Sept 1998, pp. 191-9
8	Injuries Australia Limited	Workers Occupational Health Centre
9	Injuries Australia Limited	'Della Cooks the books WorkCover Reform package is a recipe for injustice all around', Allison Robertson
10	Injuries Australia Limited	<i>Workers Compensation Report</i> , Issue 428, 13 August 2002
11	Ms Matilda Bawden	Bawden Vs The WorkCover Corporation: A Whistleblowers Perspective
12	Ms Matilda Bawden	SBS Insight Program June 15, 2000 - Bullies at Work Transcript
13	Victorian Government	The return to work guide for Victorian employers Helping injured workers get back to work, Victorian WorkCover Authority
14	Victorian Government	Victorian WorkCover Authority Annual Report 2001
15	Victorian Government	Victorian WorkCover Authority Annual Report 1999/2000

No.	From	Exhibit Title
16	Victorian Government	Strategy 2000 Victorian WorkCover Authority
17	Labor Council of New South Wales	P Le Couteur and N Warren, <i>Review of Employers' Compliance with Workers Compensation Premiums and Pay-roll Tax in NSW</i> , Commissioned by WorkCover NSW
18	Labor Council of New South Wales	The Labor Council's submission in response to the Report by WorkCover of NSW and the Office of State Revenue, July 2002
19	Dr Bill Marchione	Fair Go Mate: A monitoring System
20	Department of Employment and Workplace Relations	<i>Comparison of Workers Compensation Arrangements in Australian Jurisdictions</i> Heads of Workers Compensation Authorities, July 2000
21	Department of Employment and Workplace Relations	<i>Comparative Performance Monitoring Comparison of Occupational Health and Safety Arrangements in Australia and New Zealand</i> , August 2002 Workplace Relations Ministers' Council, 2 nd Edition
22	Department of Employment and Workplace Relations	<i>Comparative Performance Monitoring Third Report</i> Workplace Relations Ministers' Council, Australian & New Zealand Occupational Health and Safety and Workers' Compensation Schemes, August 2001
23	Department of Employment and Workplace Relations	<i>Comparative Performance Monitoring Case Study on Performance Outcomes in the Aged Care Sector, Second Report on the Health and Community Services Industry</i> , August 2002 Workplace Relations Ministers' Council

No.	From	Exhibit Title
24	Department of Employment and Workplace Relations	<i>Comparative Performance Monitoring Fourth Report Workplace Relations Ministers' Council, Australian & New Zealand Occupational Health and Safety and Workers' Compensation schemes, August 2002</i>
25	Mr Kim Mettam	<i>Mr C Ansell et al Report to the Minister for Labour Relations on the Review of Workers' Compensation Insurance Arrangements in Western Australia, June 2000, The Government of Western Australia</i>
26	Dr Christine Roberts-Yates	The concerns and issues of injured workers in relation to claims/injury management and rehabilitation: The need for new operational frameworks
27	Dr Christine Roberts-Yates	A partnership approach to claims/injury management and rehabilitation
28	Comcare	Investigation Services and Code of Conduct
29	Comcare	Covert Surveillance in Commonwealth Administration: Guidelines - February 1992, Human Rights and Equal Opportunity Commission
30	Comcare	Comcare Australia - Consultancy Contract between Comcare and ... in relation to the provision of Investigation and Surveillance services, Contract 1

No.	From	Exhibit Title
31	Queensland Department of Industrial Relations	<i>Health and Safety of Workers in All Industries Queensland Employee Injury Database Summary Report No. 8 2000-2001</i> , Queensland Government
32	Insurance Australia Group	ICA Response to Review of Employers' Compliance with Workers' Compensation Premiums and Pay-roll Tax in NSW
33	Injuries Australia Limited	Dr D Kenny, <i>Barriers to Rehabilitation: a exploratory study of long-term injured workers</i> ,
34	Injuries Australia Limited	<i>Fraud in the Texas Workers' Compensation System</i> , Research and Oversight Council on Workers' Compensation, January 1998
35	Injuries Australia Limited	<i>WorkCover has never worked and it sure doesn't cover</i> Presentation by Injuries Australia
36	Injuries Australia Limited	Summary of payments from the NSW workers' compensation scheme, June 1987-31/12/97
37	Injuries Australia Limited	'Scheme to catch compo cheats', <i>Newcastle Herald</i> , 19/10/02, p. 10
38	Injuries Australia Limited	<i>WorkCover Authority of New South Wales Code of Conduct</i>
39	Injuries Australia Limited	D Stewart, <i>Workers Compensation and Social Security: Personal and Social Costs</i> , Social Policy Research Centre, The University of New South Wales, July 1991
40	Injuries Australia Limited	Sample Services Incident Report Form

No.	From	Exhibit Title
41	Injuries Australia Limited	Correspondence from Ms M Hawkins to Injuries Australia Limited Independent Medical Examinations Guidance material for all parties dated 4/10/02
42	Injuries Australia Limited	Dr D Kenny <i>A report to the WorkCover Authority of NSW on the practice of occupational rehabilitation in the Newcastle/Hunter and Upper Hunter Regions, Executive Summary</i>
43	Injuries Australia Limited	<i>A brief introduction to WorkCover, WorkCover Authority NSW</i>
44	Injuries Australia Limited	'Money isn't everything', <i>The Sydney Morning Herald</i> , 31 August 2001, p. 14
45	Injuries Australia Limited	Correspondence from M Hawkins Independent Medical Examinations and Reports dated 30/7/02
46	Injuries Australia Limited	Correspondence from Mr G Cooper to Ms M Hawkins Independent Medical Examinations and Reports dated 13/8/02
47	Injuries Australia Limited	Promoting Excellence: National Consistency in Australian Workers Compensation - Workers Compensations System Overview
48	Injuries Australia Limited	Workers Compensation Insurance NSW - Correspondence
49	The Australian Rehabilitation Providers Association	'Early Intervention of Skilled Rehabilitation Professionals (data)'
50	The RiskNet Group	People's attitude to fraud
51	The RiskNet Group	Fraud Losses & Costs
52	The RiskNet Group	Anti-Fraud Efforts in USA

No.	From	Exhibit Title
53	Injuries Australia Limited	WorkCover Employer Claim Report Victorian WorkCover safety
54	Injuries Australia Limited	WorkCover Worker's Claim Form Victorian WorkCover
55	Dr Bill Marchione	Inquiry into Aspects of Workers' Compensation
56	The Australian Rehabilitation Providers Association Inc	WorkCover New South Wales Accredited Rehabilitation Providers Performance Report, 25/9/02
57	The Australian Rehabilitation Providers Association Inc.	Where do workers compensation premiums go, Source WorkCover NSW Statistical Bulletin 1999/2000
58	Injuries Australia Limited	The Research and Oversight Council on Workers Compensation
59	Mr Kaz Kowalski	Correspondence and data related to workers compensation file
60	Queensland Department of Industrial Relations	WorkCover Queensland Amendment Bill 2002 and explanatory notes
61	Victorian Council of Occupational Rehabilitation Providers	Various graphs and data by Work Solutions Group (presentation slides)
62	National Meat Association of Australia	'Questionnaire on incidence of fraud for NMAA Members'
63	Queensland Department of Industrial Relations	<i>Restoring the Balance: Delivering a fair and equitable system of Workers' Compensation in Queensland</i> (report, March 1999)
64	Mr Paul O'Halloran	Table of Worker's compensation surplus made by the insurance industry and self-insurers and table of public liability estimates
65	O'Halloran & Associates, Barristers and Solicitors	'Brendan McCarthy's Report to the Standing Committee on Legislation 14 July 1998', IPASA Issue 53, pp. 10-16

No.	From	Exhibit Title
66	Community and Public Sector Union	'Australian Taxation Office Occupational Health and Safety Agreement 2000'
67	Community and Public Sector Union	'Correspondence from Ms Margaret Gillespie of CPSU to Comcare enclosing an article from the May 2002 edition of Super Time dated 20/11/02'
68	Community and Public Sector Union	Correspondence from Mr John Coleman of Superannuated Commonwealth Officers' Association to Community and Public Sector Union dated 19/11/02
69	Dr Christine Roberts-Yates	The Perceptions of the Employer as a major stakeholder in claims/injury management and rehabilitation
70	Queensland Department of Industrial Relations	Ms S Venn-Brown, 'Workplace Health and Safety in the Meat Industry Ergonomics Risk Management' Queensland Department of Employment, Training and Industrial Relations
71	Queensland Department of Industrial Relations	'Cattle Feedlot Industry Audit, Report on the 2000-2001 Target Audit Program', Queensland Government, December 2001
72	Queensland Department of Industrial Relations	'Meat Processing Industry Audit Report' April - May 1999, A report on the design, implementation and outcomes of an industry audit program within the Meat Processing Industry (ANZSIC 2111), Workplace Health and Safety, Queensland Government

No.	From	Exhibit Title
73	Queensland Department of Industrial Relations	<i>Workplace Health and Safety - Beef & Small Stock Processing Guide</i> , Queensland Department of Employment, Training and Industrial Relations
74	Australian Manufacturing Workers Union	<i>Call for overhaul of return to work laws</i> , internal memorandum dated 16/1/03
75	Injuries Australia Limited	<i>Compensable Injuries and Health Outcomes</i> The Australasian Faculty of Occupational Medicine The Royal Australasian College of Physicians, Health Policy Unit, 2001
76	National Farmers' Federation	L Day <i>et al</i> , <i>Preventing Farm Injuries - Overcoming the Barriers</i> , 1999, Shaping the Future for Rural Australia, Rural Industries Research and Development Corporation
77	National Farmers' Federation	L Frager and R Franklin, <i>The health and safety of Australia's farming community</i> A report of the National Farm Injury Data Centre for the Farm Safety Joint Research Venture with New South Wales Health, May 2000
78	National Farmers' Federation	Child Safety on Farms, Farmsafe Australia Inc, funded by Commonwealth Department of Health and Ageing
79	National Farmers' Federation	The Launch of Summer Safety Campaign for Children on Farms
80	Dr Christine Roberts-Yates	The Dilemma of the Case Manager in Workers' Compensation: Decision-Maker, System Player, Para Legal/Medical Specialist, Mediator or Enemy?

No.	From	Exhibit Title
81	Australian Manufacturing Workers Union	E Underhill, <i>Extending Knowledge on Occupational Health & Safety and Labour Hire Employment: A Literature Review and Analysis of Victorian Worker's Compensation Claims</i> , WorkSafe Victoria, June 2002



Appendix D

List of hearings and witnesses

Wednesday, 18 September 2002 - Canberra

Comcare

Mr Gary King, Manager, Investigation Management Unit

Mr Barry Leahy, Chief Executive Officer

Dr Kathleen MacDermott, General Manager, Research and Strategy Group

Ms Leone Moyse, General Manager, Policy and Systems Improvement

Mr Noel Swails, Deputy Chief Executive Officer

Wednesday, 25 September 2002 - Canberra

Department of Employment and Workplace Relations

Mr Rex Hoy, Group Manager, Workplace Relations Policy and Legal Group

Mr Tom Kenna, Team Leader, Safety & Compensation Policy Branch, Workplace Relations Policy and Legal Group

Mr John Rowling, Assistant Secretary, Safety & Compensation Policy Branch, Workplace Relations and Legal Group

Wednesday, 16 October 2002 - Canberra

Mr Stig Hellsing

The RSI and Overuse Injury Association of the ACT

Ms Kate Beckett, Committee Member

Ms Ann Thomson, Co-ordinator

Friday, 18 October 2002 - Sydney

Individuals

Dr Robert Kaplan

Dr William Marchione

Australian Industry Group

Mr Mark Goodsell, Director - NSW

Mr David Russell, Senior Adviser

Australian Rehabilitation Providers Association

Mr Warwick Copeland, Treasurer

Mr Brendan Delaney, President

Mr Robert Gordon, Vice President

Hotel, Motel and Accommodation Association of Australia

Mr Garry Brack, Chief Executive, Employers First

Injuries Australia Limited

Mr George Cooper, Director

Mr Graham Stewart, Member

Insurance Australia Group

Ms Jennifer Davidson, National Manager, Fraud & Security Risk -
Commercial Operations

Ms Carolyn Ingram, NSW Product Manager - Workers Compensation

Mr Douglas Pearce, Group Executive, Personal Injury, Health &
Commercial Insurance

Labor Council of New South Wales

Ms Mary Yaager, OHS and Workers Compensation Coordinator

Ms Lynn Gailey, Representative

Media Entertainment and Arts Alliance

Ms Lynn Gailey, Federal Policy Officer

The RiskNet Group

Mr Richard Gilley, Managing Consultant

Wednesday, 23 October 2002 - Canberra

National Farmers' Federation

Mr Duncan Fraser, Chairman, Industrial Committee

Miss Denita Harris, Policy Manager & Industrial Relations Advocate

Wednesday, 13 November 2002 - Canberra

National Meat Association of Australia

Mr Garry Johnston, National Director, Human Resources/Legal

Mr Ken McKell, Manager, Human Resources (NSW Division)

Mr Terry Nolan, Chairperson, National Meat Processors Council

Mr Andrew Westlake, Company Member, National Export Meatworks Council

Mr Ross Wotherspoon, Manager, Human Resources (QLD Division)

HEMSEM

Mr Andrew Hemming, Principal

Wednesday, 20 November 2002 - Perth

Dr Peter Shannon

Association of Risk and Insurance Managers of Australasia

Mr Bruce Ferguson, National President

Ms Kate Tilley, Publicist

Chamber of Commerce and Industry of Western Australia Inc

Ms Annette Bellamy, Director, Health, Safety & Workers' Compensation

Charles Taylor Consulting

Mr Kim Mettam, Director, Western Australian Operations

Curtin University of Technology

Mr Robert Guthrie, Head of School of Business Law

Master Cleaners Guild of Western Australia

Mr Kerry Jones, Occupational Safety and Health Adviser

Mr Ian Westoby, Executive Director

O'Halloran & Associates, Barristers and Solicitors

Mr Paul O'Halloran, Principal

Rehabilitation Providers Association Western Australia

Mr Adrian Carmody, President

Mr Robert Gordon, Member, Executive Committee

Ms Jan Johnston, Member, Executive Committee

WorkCover Western Australia

Mr Harry Neesham, Executive Director

Thursday, 21 November 2002 - Adelaide**Individuals**

Mr Kaz Kowalski

Mr Markham Moore-McQuillan

Mr Peter Reynolds

Dr Christine Roberts-Yates

Injured Workers Association of South Australia

Mr Ian Trinne, President

Friday, 22 November 2002 - Brisbane

Ms Heather McLean

MAXNetwork Pty Ltd

Mrs Leonie Green, Managing Director

Mr Paul Stokes, National Manager - Rehabilitation Services

Queensland Government

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

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

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

Workers' Compensation Support Network

Ms Muriel Dekker, Founder

Workers' Medical Centre, Qld

Dr Sherryl Catchpole, Medical Officer

Ms Judith Kennedy, Practice Manager

Tuesday, 26 November 2002 - Melbourne

Individuals

Ms Anita Grindlay

Dr Paul Pers

Australian Manufacturing Workers' Union

Ms Gwyneth Regione, Industrial Officer

Dr Deborah Vallance, National Health & Safety Coordinator

Australian Plaintiff Lawyers Association

Mr Peter Burt, President, Victorian Branch

Mr Simon Garnett, Vice President, Victorian Branch

Community and Public Sector Union

Mr Graham Rodda, ACT Regional Secretary and National Executive Member

Mr Simon Cocker, Tasmanian Regional Secretary and National Executive Member

Victorian Council of Occupational Rehabilitation Providers

Ms Jane Barnett, President

Mr John Elrington, Treasurer

Ms Catherine Lindholm, Honorary Consultant

Wednesday, 4 December 2002 - Canberra

Council of Small Business Organisations of Australia Ltd

Mr Michael Potter, Chief Executive Officer

Recruitment & Consulting Services Association

Mr Charles Cameron, Member

Ms Julie Mills, Chief Executive Officer

Wednesday, 12 February 2003 - Canberra

Injured Persons Action and Support Association Inc

Mrs Lorraine Briggs, Vice-Secretary and Member

Mr Arthur Heedes, Friend

Mr Evald Orrman, Member

Mrs Margaret Pursey, Secretary

Mrs Carol Taylor, Member