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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.