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## 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.<sup>1</sup>

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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup> 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

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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.<sup>5</sup>

- 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’.<sup>6</sup>
- 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.<sup>7</sup> The National Meat Association of Australia believes that fraud should be clearly defined in any workers’ compensation legislative scheme.<sup>8</sup>

## 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.<sup>9</sup>
- 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.<sup>10</sup> 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.<sup>11</sup>

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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.<sup>12</sup>
- 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.<sup>13</sup>

## 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.<sup>14</sup>
- 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.<sup>15</sup>

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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.<sup>16</sup> 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.<sup>17</sup>

2.19 WorkCover Queensland commented that some employers do attempt to employ workers who are outside the definition of worker.<sup>18</sup> The Queensland Government has broadened the definition of worker so that persons under a contract of service including labour-only workers are included.<sup>19</sup> 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.<sup>20</sup> 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

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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.<sup>21</sup>

- 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.<sup>22</sup>
- 2.22 The manufacturing sector has a high level of casual and labour hire employees.<sup>23</sup> 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.<sup>24</sup> The AMWU pointed out that casuals are less likely to have workers' compensation cover or to have had formal training.<sup>25</sup>
- 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.<sup>26</sup>
- 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.<sup>27</sup> In

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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.<sup>28</sup>

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.<sup>29</sup>

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.<sup>30</sup>

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;<sup>31</sup>

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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;<sup>32</sup>
- 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;<sup>33</sup>
- 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;<sup>34</sup>
- supplementing their income with 'cash in hand' work, prolonging their recovery and limiting their return to employment, or exaggerating their level of disability;<sup>35</sup>
- 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;<sup>36</sup>
- overstatement of level of impairment and disability;<sup>37</sup>
- 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;<sup>38</sup>
- 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;<sup>39</sup>

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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;<sup>40</sup> or
- workers assuming two identities and opening two claims with two different employers at the same time.<sup>41</sup>

2.29 MAXNetworks Pty Ltd believes that while few injured workers deliberately set out to commit fraud, many participate in fraudulent activities.<sup>42</sup> 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.<sup>43</sup>

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.<sup>44</sup>

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.<sup>45</sup>

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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;<sup>46</sup>
- 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;<sup>47</sup>
- underinsurance and employer premium avoidance;<sup>48</sup>
- 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;<sup>49</sup>
- 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;<sup>50</sup>

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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;<sup>51</sup>
- using duress to prevent employee's lodging claims, employers not paying on an accepted claim,<sup>52</sup>
- 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;<sup>53</sup>
- 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;<sup>54</sup>
- failure to enter into appropriate insurance arrangements, falsifying claim or payment records to adjust insurance premiums, or falsifying records to exhort money from insurers;<sup>55</sup>
- 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;<sup>56</sup>
- 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;<sup>57</sup>
- 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;<sup>58</sup>

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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;<sup>59</sup>
- not paying a premium or percentage;<sup>60</sup>
- coverup of company negligence;<sup>61</sup>
- 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;<sup>62</sup> 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.<sup>63</sup>

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.<sup>64</sup> 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.<sup>65</sup>

## 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

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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.<sup>66</sup>

- 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.<sup>67</sup>

## 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;<sup>68</sup>
- submitting false invoices for services not provided;<sup>69</sup>
- medical incompetence and unprofessional behaviour of general practitioners;<sup>70</sup>
- allowing the claim to drag on for years before settlement, possibly meaning more money for lawyers;<sup>71</sup>
- 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;<sup>72</sup>
- 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;<sup>73</sup>

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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;<sup>74</sup> or
- lawyers allowed case to drag on for years.<sup>75</sup>

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.<sup>76</sup> 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.<sup>77</sup>

## 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;<sup>78</sup>
- 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’;<sup>79</sup>
- 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;<sup>80</sup>
- 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;<sup>81</sup>
- endemic systematic collusion or failure to provide natural justice;<sup>82</sup>

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;<sup>83</sup>
- failure of insurers to assist injured worker when employer does not report injury accurately;<sup>84</sup>
- cancellation of payments without warning;<sup>85</sup>
- 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;<sup>86</sup> 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.<sup>87</sup>

## 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.

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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.