15 August 2002

The Secretary
House of Representatives 'Standing Committee
on Employment and Workplace Relations.
Parliament House
Canberra ACT 2600

Dear sir/madam

Inquiry into aspects of Australian Workers' Compensation/submissions of the National Meat Association of Austrlaia ('NMAA').

I write concerning the above matter and attach the general submissions of the NMAA.

The NMAA believes that fraudulent or doubtful workers' compensation claims along with the inefficiency associated with the rehabilitation schemes are out of hand.

The NMAA strongly states that it does wish to be heard during the public hearings. Specifically, we wish members of the Committee to hear evidence:

(i) from a limited number of employers around Australia who operate plants (the nature of the evidence will be first hand knowledge of extent of the problems which are the subject matter of the inquiry.
(ii) Steps needed to arrest the problems Australia wide.

I would be coordinating the evidence and the NMAA is flexible as to where that evidence could be taken by the Committee.

I may be contacted through the phone and facsimile numbers appearing below or by e-mail.

Yours sincerely

Garry Johnston
(In-house lawyer)

NMAA - PO Box 1208, Crows Nest, NSW 1585
Tel: (02) 9906 7767
Fax: (02) 9906 8022
e-mail: gjohnston@nmma.org.au

INQUIRY INTO ASPECTS OF AUSTRALIAN WORKERS' COMPENSATION SCHEMES

SUBMISSIONS OF THE NATIONAL MEAT ASSOCIATION ('NMAA)

SUMMARY

Workers' compensation schemes have been enacted in legislation in all the states for many decades. They are, in a sense, part of the social fabric that exists in the workplace.

From those early days:

(i) The width and height of the schemes has continually expanded. They now cover injuries, far beyond mere physical disabilities.

(ii) Over time, this has meant complex evidentiary questions in dealing with claims.

(iii) The earnings gap between a person working and a person on compensation has substantially narrowed, both by legislation and through industrial instruments such as awards or agreements.

(iv) In all states, more and more lawyers and doctors have become involved in the operation of the schemes.

There is little doubt, in the view of the NMAA, that the schemes are substantially biased in favour of the worker as against the insured. Some of the bias is intentional, some is unintentional, and some is because of the way the schemes operate in practice. The schemes, after all, involve an interaction between employees, employers, insurers, doctors, lawyers, conciliators and arbitrators and appeal tribunals or courts.

For a large section of NMAA members claims for workers compensation have, in many instances, become a nightmare.

In the opinion of a large number of NMAA members, fraudulent claims are a major problem and a primary issue. Whether schemes are operated with premiums payable to statutory bodies or private insurers, this conclusion is the same.

Fraudulent claims are generally situations where there is a dishonest claim that is based on a false representation to gain unjust advantage.

They also include situations where there are:

(i) Claims for accidents or injuries that did not occur at the workplace.
(ii) Situations where workers are able to work elsewhere when they have submitted 'total incapacity' claims.
(iii) Workers who claim 'total incapacity' and yet play competitive physical sport at the weekend.
(iv) Altered Certificates of incapacity.
(v) An overnight exaggeration of the extent of the accident or injury.
(vi) Employees falsely representing the nature, extent or source of an injury to the doctor in order to obtain medical certification.

These simple examples, and many more, do regularly occur.

Fraudulent or doubtful claims will, eventually, threaten the very existence of more enterprises. We say 'more' because already, there are plants and places that have closed doors in recent times, primarily because of compensation premiums and claims. Enterprises cannot afford the quadrupling of premiums over a four-year period, which is what has occurred in some instances.

Workers' compensation insurance premiums for certain sectors of the meat industry are the highest in the land. They are a major overhead expense that is spiraling out of control. Annually, in some states, the premiums in certain sectors of the meat industry continually rise and substantially.

Workers' compensation claims, in many respects, are simply regarded as another form of paid leave for workers.

When receiving weekly payments for lengthy periods, in some states, workers receive full weekly wage and in some circumstances additional payments based on average earnings. Most continue to accrue public holidays, sick leave and annual leave. Some continue to accrue rostered days off or RDO's at the workplace even though they do not work. In some instances, they receive the bonus or incentive payments linked to a day's production by the person's at work.

The system is just too easy.

There are hundreds of examples that the NMAA can give and will give in evidence if the Committee agrees to our request to provide oral evidence.

Examples, not in any particular order, such as:

- the number of claims commenced following a redundancy payout;
- claims being commenced after plants or places close down;
- claims being processed even though the employer seriously questions the genuineness;
- a genuine belief of employers that many workers simply milk the system;
- employers complaining about particular claims and either insurers or the statutory bodies not having the resources or being unwilling to investigate;
- claims being granted with money amounts far outweighing the injury;
- the volume of claims at the lower end of the scale which are growing annually;
- claims being granted and settled and employees then resuming normal work and duties with other employers;
- lawyers chasing speculative actions and fuelling the fire;
- doctors providing certificates on the flimsiest of evidence;
- doctors showing complete partiality to workers.
- insurers and statutory body officers' advising employers to 'just pay up';
- employee trade unions pushing any compensation claims of members with ferocity and in consultation with affinity law firms.

The list is nearly endless.

If, as the NMAA believes, the schemes in practice are generally deficient in varying degrees and many fraudulent claims exist then:

(i) it adversely affects the base premium rate for the industry or sector.
(ii) it adversely affects an employer concerning the specific level of premiums.
(iii) the schemes, each and everyone of them, have failed in varying degrees.
(iv) the insurers and the statutory bodies have failed to fulfill their duties.
(v) the rehabilitation process has failed because a fraudulent worker is not concerned with this process of quickly returning to the workforce.
(vi) the only winners are the claimant workers and those who feed off them.

Across the country, a proven fraudulent compensation claim should be a criminal offence or punishable by a substantial fine or imprisonment. It is stealing from the employer and adversely affecting every employer in the industry. It ends up costing employees jobs and work.

The NMAA believes, from the point of view of its membership, that most of the fraudulent or doubtful claims involve employers that are Constitutional Corporations rather than individuals or partnerships. The larger the Corporation the more infectious becomes the problem.

In certain geographical areas and in many particular workplaces, there has developed a culture that 'milking the system' is acceptable. This still occurs irrespective of the training schemes implemented designed to provide a safer workplace and irrespective of a massive emphasis on OH&S systems and irrespective of injury management programs.

The NMAA believes that most of the problems occur at the lower end of the claims spectrum. In other words, hundreds and hundreds of payments of $20,000 - $50,000 add up to an enormous industry burden.

All sections of society seem concerned at the moment, quite rightly, with public liability insurance and the substantial payouts and the level of premiums. Some states are even concerned at court payouts in defamation cases with calls for national uniform code like Corporations law.

Yet, not many seem overly and urgently concerned in compensation schemes and that cost industry millions of dollars each year.

We venture to say that, though we are not suggesting it will or should happen, if every employee was a contractor responsible for their own workers' compensation then we would have a different story to tell.

Our summary and the comments below do not relate to every employer. Nor do we suggest that there are not employers in the meat industry struggling with proper injury management systems.

Many employers have switched focus from perceiving themselves to be victims of poor legislation, unhelpful doctors and insurers and deceitful employees to a recognition that they should introduce systems for first aid, management responsibilities, induction and clear accountabilities and roles for return-to-work co-ordinators and external service providers. The NMAA is involved with such programs.

Irrespective of the overall change in focus, problems concerning fraudulent and doubtful claims exist under each particular scheme.

A. Terms of Reference

The Committee's terms involve:

1. The incidence and costs of fraudulent workers' compensation claims;

2. Structural factors that may cause fraudulent behaviour in the system of workers' compensation;

3. Methods used to detect fraudulent claims.

4. Costs incurred to detect fraudulent claims.

5. Factors that lead to different safety records from industry to industry and factors that lead to different safety records from sector to sector.

6. Factors that lead to different claims profiles from industry to industry and factors that lead to different claims profiles from sector to sector.

7. Adequacy of rehabilitation programs; appropriateness of rehabilitation programs and practicability of rehabilitation programs.

8. Benefits of rehabilitation programs.

The NMAA does not intend to deal with each item in order. Rather, we will adopt headings for convenience so as to emphasise the different state schemes and their inherent problems.

B. The National Meat Association of Australia ('NMAA')

The NMAA is an organisation registered pursuant to the provisions of the Workplace Relations Act 1996 (Cth.).

Since 1928, the NMAA has been representing the interests of employers engaged 'in or in connection with the meat industry'. Related entities are registered with the State jurisdictions in much the same interests.

Membership of the NMAA primarily covers meat processors, value added meat manufacturers, wholesalers, smallgoods manufacturers and retailers. There is no other employer organisation registered, either in the Federal or State areas, with this coverage and membership in the meat industry.

The NMAA effectively represents the industrial interests of members in both federal and state arenas. This includes the area of workers' compensation.

However, it is not only in the area of industrial relations, workplace relations and human resource management that services are delivered to members by the NMAA.

There is a wide variety of federal and state legislation that governs and regulates meat entities 'from gate to plate'. We need not detail that legislation here as it is extensive and detailed. This myriad of legislation impacts on the manner in which plants, manufacturing operations and retailers operate on a day-to-day basis.

The NMAA is involved is representing, lobbying, conferring and advising members on all the aforementioned matters.

The NMAA is also heavily involved, predominantly in the state arenas, in the area of workers' compensation. The NMAA has made numerous submissions to state Ministers and bodies. It is a never-ending process.

Consistent with the representation of members, the NMAA sits on numerous committees and bodies that deal directly and indirectly with workers' compensation and OH & S issues.

Members of the NMAA have implemented and continuously updated training programs in connection with OH&S and injury management programs in the workplace.

Some sectors of the meat industry, represented by the NMAA, are the subject of the highest premiums in all of the states when compared to the average for all industries. The state figures can be transported on a national basis and the same conclusion will result.

The NMAA is in no doubt that the systems are failing these sector employers.

C. The Meat Industry.

The meat industry, as covered and represented by the NMAA throughout Australia, is wide and varied.

The processing sector comprises employers in every state and the number of employees could be as low as 20/30 or as high as many hundreds. Smallgoods manufacturing is characterised by the same features. Retail outlets tend to employ 5/20 persons (depending on the size) with the chains employing a number in the hundreds. There are other sectors namely, wholesale or pet foods or particular contracting operations to the retail sector.

In all the sectors, there are some common themes. Firstly, large number of employees use knives or similar sharp instruments. Secondly, large numbers of employees have been employed in the meat industry for substantial periods of time. Thirdly, many employers have operated businesses for lengthy periods ie decades rather than years. Fourthly, by far the largest number of workers' compensation claims are for alleged strains and sprains not lacerations which appears to be surprising given the nature of the industry.

For meat processing the 1998 Productivity Commission Report into 'Work Arrangements in the Meat Processing Industry' estimated 27,500 worked in this sector. We think that figure did not account for many of the smaller operations. The sector is one of some importance, both from a domestic and export view.

We recommend that Productivity Commission Report to the Committee even though it deals with 'work arrangements'. In our view, the historical work arrangements represent one of the reasons for the 'workers' compensation culture' in the sector. The culture theme is repeated at various points throughout this submission. Thankfully, against trade union opposition, the NMAA has been able to assist in pushing through the various tribunals and agencies more efficient work practices and arrangements. These have filtered into workplace agreements.

The sector is labour intensive and has a large component of repetitive tasks. Due to the nature of the industry, various zoonotic diseases may be prevalent. The industry operators understand these features and significant steps are in place and have been taken to protect people from the inherent risks of injury and illness and to improve health and safety at work generally.

These steps and improvements have been taken up right across the sector. They include:

- Increased use of mechanisation where possible.
- Better process and equipment design.
- Improved design, manufacture and use of personal protective equipment.
- Better education of safety and hygiene standards.
- Increased understanding of ergonomics and application of techniques of work practices.
- Increased research into injury management strategies including adoption of early intervention methods.

The smallgoods sector has consolidated over recent years through mergers and acquisitions. The changes and improvements that have been taken up by meat processing have not escaped smallgoods. It too is labour intensive and has a large component of repetitive tasks.

Likewise meat retail has had to adapt to changes over the last decade. Most changes have involved education, food safety, hygiene, application of techniques and training.

We have only touched the surface on the changes in the industry that have taken place and continue to occur.

Irrespective of these improvements and changes to the workplace, workers' compensation claims remain an enormous problem and burden. In many plants and workplaces, it is a burden that cannot be carried for much longer by some employers.

D. The Workers' Compensation Schemes.

Workers' Compensation Schemes have been the subject of State legislative enactment for, in some cases, over 100 years. In all states, compensation insurance is compulsory by employers for workers. The concept is simple but the methodology is complex and difficult.

In many cases where employees have their conditions set by awards or Certified Agreements there are additional monetary obligations on employers for compensation leave contained in those instruments.

While insurance cover is compulsory overall, there are specific differences in the way the systems operate and are managed in each of the States. These differences obviously are important in any discussion about 'doubtful or fraudulent claims' as they provide the framework within which deception may occur.

One can have the most perfect legislative scheme on paper with, arguably, a perfect balance between the various parties. How schemes operate in practice is the issue.

We may ask why can't you simply change what happens in practice? Because what we have in practice are not perfect systems and because there are underlying defects in the framework. These defects can only be remedied by overall substantial changes.

The NMAA does not intend to undertake a complete detailed analysis of all aspects of the state legislation in each state and the meaning of the sections in the statute at this point. Suffice for our purpose to simply highlight particular aspects of the schemes that are relevant to the terms of reference.

Having said that, one does need to understand the various statutory schemes that operate in the states and a description follows in the headings below.

For convenience, each description is followed by a table outlining, what the NMAA perceives, to be the main and primary problems of each scheme in relation to possible fraudulent or doubtful claims and getting employees back to work on proper rehabilitation.

Queensland

The WorkCover Queensland Act 1996 ('the 1996 Act') revamped the scheme in this state.

It created 'WorkCover Queensland', a statutory corporation. The functions of the Corporation are to regulate, manage and administer workers' compensation in Queensland. The Corporation has a Board of Directors and it reports directly to the relevant Minister.

The new scheme has been running for over 5 years and clear conclusions about its effectiveness are possible.

There is no general private underwriting possible in Queensland and 'WorkCover' is, effectively, a government monopoly. There is a limited right to self-insure.

Some of the aims of the 1996 Act were:

- to streamline and improve the capacity to manage statutory and common law claims;
- to strengthen employer and worker obligations;
- to establish a fiscal responsible statutory body in WorkCover Queensland;
- to strengthen the powers of investigating fraudulent claims.

For reasons given below, it is the view of the NMAA that the last mentioned object has not been achieved in practice.

Key stated objects of the 1996 Act included:

- maintaining a balance between providing fair and appropriate benefits for injured workers and ensuring reasonable premium levels for employers.
- provision of injury management with an emphasis on rehabilitation and to provide for employers and injured workers to participate in effective return to work programs.
- Not imposing too heavy a burden on employers and the community.

The scheme, operated by WorkCover Queensland sits side by side with the common law system meaning that employees have the right and the option to proceed to the common law courts to pursue claims.

At any given time the meat industry experiences numerous outstanding common law claims. Such claims are often seen by the claimant as a natural step to be taken in getting as much out of "compo" as possible.

Insurance premiums payable by employers, under the scheme, are calculated and based on a combination of the employer's predominant industry rate and an employer's previous claims history. The legislation provides for WorkCover fixing the method of and varying premiums, rates of premiums, bonuses, and demerit charges including providing for an increase in the charge to reflect the risk to a particular employer.

Injury - the subject of compensation - is defined as "personal injury arising out of, or in the course of, employment, if the employment is a significant contributing factor to the injury".

Payments for compensation are based on total or partial incapacity or if the person died, amounts made payable to dependants.

The weekly rates of payment for compensation are divided into periods as follows:

(i) up to 26 weeks;
(ii) after 26 weeks up to 2 years; and
(iii) after 2 years up to 5 years.

In the first 26 weeks the compensation payable for total incapacity is the greater of 85 per cent of the worker's normal weekly earnings, or the ordinary amount payable under the worker's industrial instrument. Lesser amounts of compensation are payable for periods in excess of 26 weeks.

Other payments, provided for under the scheme, are:

(i) medical, hospitalisation and associated travelling expenses/caring allowance/funeral expenses; and

(ii) lump sum payments based on redeeming weekly payments or compensation for permanent impairment or on death.

Section 482 of the 1996 Act states that "*a person must not in any way defraud or attempt to defraud WorkCover or a self insurer*".

An employer commits an offence if relevant information is not given to WorkCover by an employer believing that a person is defrauding or attempting to defraud WorkCover. There is, of course, an obligation on the employer to report an injury.

As will be shown below, NMAA members report what they think amounts to fraudulent or doubtful claims with little or no response from those responsible to administer the scheme under the statutory body.

The procedure concerning claims is as follows:

- the worker has generally six months to make a claim though this can be waived;
- the entitlement arises from the day the worker is assessed by a doctor or dentist;
- The worker lodges a claim for compensation with WorkCover accompanied by a certificate from the doctor or dentist;
- WorkCover then decides and assesses the claim;
- A supposedly independent Review Unit, within WorkCover, may review the decision;
- An appeal may be undertaken before an Industrial Magistrate;
- If still unsatisfied an appeal by way of a rehearing can be instituted to the Industrial Court.

The legislative scheme, as noted above, emphasises rehabilitation and injury management. A large number of NMAA members believe the system is not working.

We now turn to the specific practical difficulties within the scheme.

ISSUES UNDER THE QUEENSLAND SCHEME

It is the view of the NMAA that:

(i) *There is a significant incidence of fraudulent claims and either the legislation is inadequate in dealing with this, or WorkCover lacks resources or the inclination to seriously address the problem. Some examples of this are:-*

- *Employer reports are ignored.*
- *Lack of challenges to questionable medical decisions.*
- *Notified suspect claims not investigated.*
- *False claims by ex-employees not investigated.*
- *Excessive time taken to assess claims.*
- *Multiple WorkCover staff involved, leading to confusion and delay.*
- *Investigating officers ill prepared resulting in wasting of both WorkCover and the employer's time.*

(ii) *This system of inefficiency and inadequacy is driving the cost of workers' compensation insurance, borne completely by the employer, to such extreme levels that it represents a very real threat to the viability of the business.*

(iii) *Often when WorkCover disallows a claim, it is subsequently overruled by the internal WorkCover review unit and the original claim is reinstated.*

(iv) *Employees and representatives are aware of this fact and use it to their advantage.*

(v) *There appears to be a culture, especially within the meat industry, that workers' compensation is simply another form of paid leave.*

(vi) *The inefficiency and inadequacy of the system is driving the cost of workers' compensation to prohibitive levels and threatening the very existence of enterprises.*

(vii) *Access to common law has to be limited to prevent the cost of claims from being artificially inflated through the involvement of legal processes. In some cases the earnings rate while on compensation is so attractive that there is little incentive to return to work.*

(viii) *In one case there was an order for $40,000 in respect of a minor cut to a finger with very minimal time off work. The employer questioned the claim.*

(ix) *In another similar minor injury case, the employee went to a local doctor who gave the worker the afternoon off. The worker went to another doctor the next day and received a week off. The worker resigned his employment and received $50,000 for the injury, negotiations starting at $110,000.*

(x) *In another case there was a claim for Q fever after the worker left the employment. The worker had been tested and found to be immune. The claim was then altered to leptospirosis. WorkCover forced the employer to settle for over $40,000.*

(xi) *There are hundreds of examples similar to these.*

(xii) *It has been estimated that as much as 60 per cent of all damages claims end up in costs and in the hands of lawyers, medical practitioners and expert witnesses. Access to litigation must be limited.*

(xiii) *The medical profession has to review its position ie the AMA. Medical certification should be reviewable by accredited doctors so that no compensation should be payable until genuineness is verified.*

(xiv) *In some cases the Act is not being enforced in relation to rehabilitation thereby resulting in no incentive to workers to return to work in the knowledge that the claim can be settled or litigated on the roulette table.*

(xv) *WorkCover appears reluctant to take any action against a worker not co-operating in the rehabilitation plan or program.*

(xvi) *Medical costs have got out of hand because of loopholes in the legislation. Doctors are known to charge a much higher treatment room fee as soon as they become aware they are dealing with a WorkCover case.*

(xvii) *Doctors seem, in practice, to certify that almost any illness or injury that appears to be work related with little or no inquiry. The patient's word is simply accepted. Employment seems to be regarded as the "default" cause of any illness or injury. As seen above, the major example is the monumental problem of 'Q Fever' that can be caused by any number of factors, past and present, according to medical studies.*

(xviii) *Q Fever is the subject of numerous common law claims in the meat processing industry.*

(xix) *WorkCover is the body that collects the premiums from the employer. It is also the body that processes the claims of the workers. There is a substantial conflict.*

(xx)	*As an aside, the premium system is wrong. Over successive years, some employers have had their premiums double, and double then again, resulting in increases of hundreds of thousands of dollars. These far exceed the actual cost of claims made against some employers. Further, the high incidence of fraudulent claims adds to the cost of not only the particular employer, but also the industry base premium estimate.*
(xxi)	*WorkCover gives the impression of simply being a money machine. In the case of one NMAA member premiums have gone from nearly $85,000 in 1997 to over $400,000 for 2003.*
(xxii)	*The points raised in this table are evident and irrespective of the fact that most employers are actively and continually addressing injury management systems.*

New South Wales

The New South Wales scheme is overseen by a statutory body called the WorkCover Authority of New South Wales, responsible to the relevant Government Minister.

We must state that there have been substantial changes to the scheme in the last 4/5 years. Some changes, in the view of the NMAA, have been beneficial and some have not been beneficial.

Employers must obtain a policy of insurance for the full amount of their liability under the Act and an unlimited amount for their liability independently of the Act in respect of all workers employed by them.

The policies are obtained from a licensed insurer. Self-insurance is possible though it attracts conditions.

Under the Act, 'worker' is defined as any person who has entered into or works under a contract of service with some limited exceptions. Certain persons are deemed to be workers.

'Injury' is defined as personal injury arising out of or in the course of employment and includes a disease which is contracted by a worker in the course of employment and to which such employment was a contributing factor.

There are special provisions for psychological and other injuries.

A Workers Compensation Commission replaced the former Compensation Court from 1 January 2002.

This Commission hears disputes and attempts to resolve them. Determination of the claim requires the making of a reasonable offer of settlement.

A Claim must be made within 6 months after the injury happened or within 3 years if for some reasonable cause.

The Commission also has the power to deal with the dispute by conciliating and directing that an injury management consultant or other qualified person conduct a workplace assessment in connection with the dispute. If conciliation by this method fails, the Commission can refer the dispute to the Authority with a recommendation.

Appeal provisions lie to a Presidential member of the Commission.

There remains a right of a claimant to seek damages from the common law courts for an injury.

A worker therefore submits a claim with a doctor's certificate. There may even be, under the scheme, extenuating circumstances where the worker might forget to notify the employer. The claim goes through the dispute resolution process or is arbitrated by the Commission.

Alternatively, the worker proceeds through the common law courts.

<u>Currently for NMAA members there are approximately 300 common law claims sitting in the court system. We do not believe that the re-vamped system will substantially reduce common law claims.</u>

There are 3 types of payments under the scheme namely weekly, special payments and lump sums.

Weekly payments for are divided into a number of categories:

(i) total incapacity payments for an early period (current weekly wage rate for the first 26 weeks);

(ii) total incapacity payments for a later period after 26 weeks (90 per cent of average weekly earnings);

(iii) partial incapacity payments based on the worker performing light duties (difference between what the worker would have earned but for the injury and average the worker is earning); and

(iv) payments to dependants in the case of death of the worker.

Special payments are made for medical, hospital costs and payments ancillary to these.

Lump sums are payable for the redemption of weekly payments for total, partial incapacity, death of the worker or for specific injury compensation under the scheme.

An employee accrues public holidays, annual leave and long service leave while on compensation. The worker may even receive a double payment if leave is taken during the absence.

Dismissal of the worker within six months of incapacity is an offence unless it can be proved by the employer that it was not for incapacity.

The court will disallow compensation claimed through fraud but the question is who investigates the matter. Even if the employer reports a possible fraudulent claim little action is undertaken in practice even though the present statutory scheme has strengthened this aspect.

We realise there was recently a conviction in a fraud case where the person was imprisoned. But how many escape through the system?

<u>We believe fraudulent claims will remain a major problem under the revamped scheme. It appears there is no obligation on the worker to repay compensation already received prior to a claim being proven fraudulent.</u>

The objective and procedure of the WorkCover scheme regarding premium is as follows:

- (i) To generate sufficient premium income to cover all costs;
- (ii) Premiums scheme is reviewed annually by the authority and the Minister;
- (iii) The review covers industry groups;
- (iv) Premiums rates and formulas are set out in the Insurance Premiums Order;
- (iv) There is no availability to employers to vary or reduce the premium industry division or group rates;
- (v) The rates are set, for industry groups or groupings, on an annual basis and are based on a percentage of the wages paid;
- (vi) If an employer's base premium exceeds $2000 it is adjusted to reflect the history of claims going back 5 years;
- (vii) The premium for an individual entity is set according to past claims history and a proper risk management system in place.

There is cross-subsidization in industry groupings which affects both the poor performers and the positive performers.

For the past number of years, there is a greater emphasis under the statutory scheme on workplace injury management and rehabilitation programs. There are still many weaknesses inherent in the scheme. And the sector is still beset with the problem of workplace culture towards workers' compensation.

The NMAA, on behalf of processing members over the last 5 years, has actively been involved in funding and developing best practice claims management for key sectors of the meat industry. We have been involved in the production of written guides and training programs. This has also included the creation of a Q Fever register website which is in the process of becoming a national register.

We turn to the issues under this scheme.

ISSUES UNDER THE NEW SOUTH WALES SCHEME

It is the view of the NMAA that:

(i) Fraudulent and doubtful claims, within the scheme, remain a key issue.

(ii) They are costing sections of the meat industry many many dollars. The employer's claims history should be adjusted to show that fraudulent claims would not be counted in its claims history.

(iii) An effective rehabilitation scheme still does not exist because of flaws within the system.

(iv) Doctors accredited with the right to sign workers' compensation medical certificates should be subject to a mandatory code of practice. Fully incapacitated certificates should be of the last resort. Overriding other doctor's return to work decisions should be the subject of a review panel.

(v) Doctors should be made more accountable for statements and certificates. A strict set of standard guidelines should be issued which provide an assessment tool and can only be varied by an assessment from an independent panel.

(vi) The nominated treating doctor should be required to directly consult with the employer (following initial contact from the employer and/or rehabilitation provider), injured employee and accredited rehabilitation providers during the period of the injured employee's rehabilitation.

(vii) There is no enforcement upon nominated treating doctors to actively assist, and directly talk to, employers in the return to work process.

(viii) *In many instances, given certain circumstances, a person on workers' compensation is financially better off than a person working. This is ludicrous because there is no incentive for them to comply positively with the return-to-work program if the worker continues to receive the same wage and have to perform lower paid/light duties .*

(ix) *Particular sectors of the meat industry are dominated by incentive schemes. The weekly or daily wages under those schemes varies according to production. A person on workers' compensation receives those incentive payments and yet they are not working. There is no incentive for a worker to return to work. There is an incentive for a worker to simply milk the system.*

(x) *An insurer presently calculates estimation costs on the 'worst case scenario' and requires strong supporting evidence to detract from this. The irony is that insurers make the commercial decision not to recover monies or support doubtful claims even though they are continually raised by the employer members of the NMAA.*

(xi) *It is the employer who is paying solely for the claim although the employer has less control than the doctor or the insurer.*

(xii) *Insurers need to be compelled to investigate possible fraudulent claims. All relevant claims should be acted upon by the insurer. Evidence of fraud should be placed in front of the treating doctor. All compensation payments made in such circumstances should be re-paid and strictly enforced with a provision for penalties.*

(xiii) *There is no incentive on an employee to strictly adhere to an injury management program or otherwise lose his employment. The employer should have the right to determine the appropriate arrangements for appointments for treatment during the program. Non-compliance by the employee should lead to cancellation of benefits in much more specific terms.*

(xiv) *Legal representation should be denied in certain circumstances for certain monetary claims. If a claimant has refused an offer from the insurer and if the compensation awarded is less than 25 per cent above the offer, costs should not be awarded. The legal profession has to be held accountable. There is little incentive to mediate.*

(xv) *In the opinion of NMAA members, many of the insurers are responsive to WorkCover rather than the employer. After all, they are licensed by WorkCover and paid by WorkCover.*

(xvi) *WorkCover is simply the banker in the system.*

(xvii) *The NMAA believes that over the nest few years premiums will substantially rise above the present levels for certain sectors of the meat industry thereby placing an even greater burden upon these employers.*

Victoria

Under this scheme the Victorian WorkCover Authority no longer insures employers, with the exception of a handful of businesses with extraordinarily high remuneration. Employers are insured with a number of insurers authorised by the Authority.

Most employers are thrust into the arms of the insurers to manage their claims and combat possible fraudulent or doubtful claims. There is little incentive for the insurer to assist employers in reducing their claims costs.

<u>In the opinion of NMAA members many claims are paid as a matter of 'rubber stamping' rather than following the true course.</u>

The Authority is responsible for setting the method used to calculate the premium rates. This is a complicated formula involving the employer's prior history, claims costs and the total claims cost of their industry. This is further complicated by the use of 'pegging' and 'capping' movements in a single year.

Provision is made for large employers to self-insure although the procedures involved in doing this almost exclusively prohibit all but the very largest of employers. It is largely out of reach of the meat industry and is not encouraged by the Authority.

Statutory emphasis is on conciliating the claim although proceedings can be commenced in the County or Magistrates Court and, in the experience of the NMAA, many are handled in this manner thereby incurring costs in the process.

<u>NMAA members have many claims sitting in the court system awaiting hearing.</u>

<u>When claims are taken through the court system the insurer, rather than the employer, is the respondent in the proceedings. There are countless cases where the insurer overrode the wish of the employer. In some instances, the employer was not even notified of the court hearing date.</u>

Common law rights for seriously injured workers have been restored from 1999. Prior to this date, they had been abolished. This adversely affects the industry premium rate.

Definition of worker is much the same as in other jurisdictions, extending well beyond the usual definition of an employee.

The injury must arise out of or in the course of any employment. For diseases or pre-existing injury it must be a significant contributing factor.

Weekly payments for compensation are based on the following:

(i) First 13 weeks - weekly payments of 95 % of pre-injury weekly base pay to a maximum of over $900 a week.

(ii) After 13 weeks, if a worker cannot work, they receive 75 per cent of the pre-injury weekly base pay up to approximately the $900 a week.

(iii) If, after 2 years of payments the worker still can't work, they continue to receive the 75 per cent rate until they can work or they reach retirement.

(iv) For the first 26 weeks, pre-injury average weekly earnings include regular overtime and shift allowances.

(v) If after 13 weeks a worker can work but is not yet back at work, they get 60 per cent of the pre-injury base pay to a maximum of around $600 until 2 years has expired.

(vi) If a worker is able to do some limited work up to a limited number of hours and earn a limited amount, the weekly payments continue for over two years.

Special payments include medical and hospital costs.

Lump sums for specific injuries are payable where set sum is specified or where is redemption of weekly payments.

On the death of a worker from an injury as defined the spouse and dependants receive an amount according to a formula.

ISSUES UNDER THE VICTORIAN SCHEME

It is the view of the NMAA that:

(i) *Fraudulent and doubtful claims, within the scheme, remain a key issue for many members.*

(ii) *Victorian WorkCover Authority does not have the resources or, it appears, the willingness to investigate the numerous calls and complaints that it receives from NMAA members questioning claims.*

(iii) *NMAA members report matters to the insuring agents who pass, we presume, pass them onto to the Authority and nothing happens.*

(iv) *There is a clear perception that it is easier for the agencies to pay a claim than to investigate it.*

(v) *Consider some examples:*

- *a driver who supposedly could not work submits a claim. He is convicted of stealing a truck. He continues to receive payments while in prison.*
- *a claim submitted for an alleged injured right wrist is altered to the left wrist.*
- *a claim for a proven self-inflicted injury being paid.*
- *claims being submitted when employees learn of a possible stand down or redundancy arising.*
- *Claimants claiming total incapacity being able to play physical combat sport on time-off.*

(vi) *There are countless examples raised directly with the Authority and no action is taken. The Authority seems to place priority on issues other than fraudulent or doubtful claims.*

(vii) *Where claims are made in redundancy or stand-down situations there are extra costs placed on those businesses remaining.*

(viii) *Redundancies and stand-downs appear to be old favorites.*

(ix) *The medical profession does not appear to be accountable for actions in issuing certificates, extending certificates and doctors claiming employees are unfit for work when a reasonable return to work program has been developed. There are doctors, well known to employees, who perform such actions.*

(x) *It is extremely difficult for employers to liaise with treating doctors in many situations and workers do shop for doctors that will certify a certificate 'unfit for work'..*

(xi) *There is little incentive for the insurers to create a working relationship with the employers and insisting and assisting in claims management. Agents claim it is easier to pay the claim and an employer may deal with multiple personnel on a single claim.*

(xii) *Claims for minor impairments often extend for months with the insurer making little effort to assist the employer.*

(xiii) *There is a perception to many in the industry that insurers have no incentive to minimise claims costs. As such, it appears easier for insurers to pay claims.*

(xiv) *In many instances, a person on workers' compensation is better off financially than a person working. Payments may be taken on the average over the whole year, including any overtime and incentive payments. Many industrial instruments have make-up pay to 100 per cent. This hardly encourages workers to want to return to work quickly. It then becomes extremely difficult to motivate workers in these financial circumstances. In many cases, employees continue to accrue all benefits while on leave.*

(xv) *Much of the costs in litigating claims ends up in the pockets of lawyers who advertise 'no win, no fee' under the scheme.*

(xvi) *Any contested claims are so predictable in backs or sprains or strains - pain, unable to sleep, irritable, depression anxiety, lack of sex life.*

(xvii) *Prosecutions seem to target employers and forgetting the many fraudulent or doubtful claims.*

(xviii) *There appears to be the perception that it is 'no fault' system of insurance.*

South Australia

Under this scheme an employer pays a levy to the Workers Rehabilitation and Compensation Corporation. The corporation is liable to make all payments of compensation to which any person becomes entitled.

There is a limited provision for self-insurance.

The definition of worker is similar to other schemes and payments are for injuries or diseases arising from employment.

Secondary disability or diseases arising attract compensation though there must be a causal connection.

Weekly payments for total incapacity are based on the following;

(i) In the first year - notional weekly earnings/average weekly earnings;
(ii) After first year = 80per cent

Payments are made to dependants if the injury resulted in death.

Partial incapacity claims result in payments of the difference between what the person receives on light duties and what the person would be receiving had the injury not occurred.

Special payments are made for medical and hospital costs.

Payments of lump sums are made for redemption of weekly payments, permanent disability or death from the injury.

Fraud is recognised under the scheme. A person who obtains a payment or any benefit under the act by dishonest means is guilty of an offence and may be subject of a penalty or imprisonment for one year.

No common law rights against the employer for a compensable disability although there are limited common law rights over and above.

Claims for compensation are made to the Corporation. If there is a dispute there is a conciliation process. If it is still not settled arbitration takes place with the possibility of an appeal to the courts.

All employers must register with the Corporation which then imposes a levy based on a percentage of the aggregate remuneration in each class of industry in which the employer employs workers. The levy may vary depending on the claims history.

ISSUES UNDER THE SOUTH AUSTRALIAN SCHEME

It is the view of the NMAA that:

(i) There is a real perception of an unwillingness to investigate doubtful claims with only a desire to settle the claim.

(ii) There are many examples where initial claims may be genuine but are exaggerate to gain the greatest financial advantage.

(iii) There is a long-standing culture in the industry that workers' compensation is simply another method to obtain easy money.

(iv) The system is driving the cost of workers' compensation to the point where it threatens the very existence of the jobs of employees.

(v) The medical profession has to review its position and create a code of conduct. Genuineness has to be verified other than a mere certificate from a GP.

(vi) The scheme is not being enforced in relation to rehabilitation resulting in no real incentive to return to work.

(vii) The impression is gained and given that there is an endless supply of money in the workers' compensation rainbow.

(viii) One employee at a plant has been on a return-to-work program for nearly 7 years.

(ix) The system is so easy. In one case an employee was diagnosed with an infected finger and given 3 months off work. The employer complained to thė treating doctor and the 3 months became one month.

(x) To many employees, the return- to-work programs are the greatest concern. The companies are told to find light duties that do not exist.

Western Australia

Every employer is obliged to obtain from an approved insurance office a policy of insurance.

There is a limited provision for self-insurance.

A Premium Rates Committee recommends premium rates based on overall compensation risks and on comparative claims experience of different businesses.

The definition of worker is much the same as in other jurisdictions and the definition of injury the subject of compensation is wide.

Payments under the scheme are made up of weekly, special or lump sum payments.

Weekly payments for total incapacity are:

(i) for the first 4 weeks of the injury they are based on an average of total earnings to a maximum weekly payment of $927.40 up to 30 June 2002 which increased to $977.80 as at 1 July 2002.

(ii) after 4 weeks it is based on the Employees relevant Award rate of pay for meat industry workers.

Partial incapacity payments are based on the difference between payments on light duties and pre-injury earnings.

Special payments are made for medical, hospital and ancillary costs.

Lump sum payments are payable for specific injuries, redemption of weekly payments and to dependants on the death of the worker.

In 1993 and 1999 legislation was enacted that restricted a workers' access to common law. At the time a new dispute resolution system implemented.

Disputes go to Workers' Compensation and Rehabilitation Board which exercises and discharges functions under act including administering the scheme.

A Conciliation and Review Directorate, consisting of conciliation officers, attempts to resolve the matter. There is available a review process followed by the matter going to the Magistrate's Court.

Fraud is an offence under the statute.

ISSUES UNDER THE WEST AUSTRALIAN SCHEME

It is the view of the NMAA that:

(i) There is a large contingent of fraudulent and doubtful claims within the scheme. They remain a key issue.

(ii) There are many cases where insurers are reluctant to investigate the claims.

(iii) It is too easy for the employees to deceive the treating doctors.

(iv) There are cases where different doctors complete conflicting back-to-work certificates as employees shop for the right doctor.

(v) Compensation claims create an easy life style for many workers.

(vi) The rising premium costs in certain sectors are alarming.

(vii) Whilst there is a premium base level of 10.89 per cent for meat processing, as detailed later in this submission, very few premiums actually reflect this level. A number of NMAA members pay double this amount and fraudulent claims are a problem.

(viii) The rehabilitation process does not work without complete co-operation from all parties and many times this is not the situation.

(ix) There are only a limited number of insurance companies that are prepared to accept insurance.

Tasmania

An employer is to maintain a policy of insurance.

The Act provides for the licensing of workers' compensation insurers.

They set premiums which reflect the claims experience of the employer, the employers commitment to workplace health and safety and agreement to provide alternative duties.

Worker and Injury are defined in the widest sense.

Weekly payments for total incapacity under the scheme are as follows:

- (i) 100 per cent of pre-injury earnings for the first 6 weeks;
- (ii) 95 per cent for the period exceeding 6 weeks to 25 weeks;
- (iii) 90 per cent for the period over 25 weeks.

Where a worker partially incapacitated payment is the difference between the payments the employee is receiving and pre-injury earnings.

Special payments are made under the scheme for medical and hospital costs. Also special payments can be made for specific injuries, to dependants on the death of the worker and for redemption of weekly payments.

A worker is able to proceed to common law for damages and the employer is obliged to have common law insurance cover.

The scheme provides for a rehabilitation program.

ISSUES UNDER THE TASMANIAN SCHEME

Some of the problems for NMAA members involve:

(i) Doubtful claims.

(ii) In the case of the larger employers, this is a major problem.

(iii) Industry culture that claims are easy money.

(iv) The medical profession in handing out easy workers' compensation certificates and in their participation in the rehabilitation process..

(v) Unhelpful insurers in pursuing doubtful claims.

(vi) Little incentive for a worker to return-to-work.

E. Industry Insurance premiums

Premiums payable under the Schemes are expressed as a percentage of payroll/total wages.

The latest and premiums for the various sectors of the meat industry, as determined by the relevant state bodies, are as follows:

Sector	Meat Processing	Smallgoods	Meat Retail	Average for all Industries
Qld. **(1)**	$8.22	$4.806	$2.95	$2.021
NSW **(2)**	15 per cent	7.19 per cent	6.61 per cent	2.8 per cent
Victoria **(3)**	9.83 per cent	9.83 per cent	3.16 per cent	2.2 per cent
SA **(4)**	7.5 per cent	7.3 per cent	4.6 per cent	-
WA **(5)**	10.89 per cent	10.19 per cent	4.64 per cent	-
Tasmania **(6)**	Average around 8-12 per cent	Average around 6-9 per cent	Average around 2-4 per cent	3.4 per cent

(1) These figures represent the cost per $100 of wages and are the WorkCover Industry Base Rates. The actual rate is based on claims experience (both statutory and common law) and can be double this amount.
(2) These figures represent the percentage of payroll merely as base rates but the 15 per cent is capped at the moment.
(3) These figures represent only the base rates - actual figures for some processors and smallgoods plant go as high as 18.63 per cent and 16.52 per cent respectively.
(4) These figures represent only the base sector rates.
(5) These are the base rates, varying depending on claims experience etc.
(6) These are average figures for the sectors.

F. Some examples in meat processing that merely touch the surface.

As we have stated, this sector is highly labour intensive and has a large component of repetitive tasks. Due to the nature of the industry, various zoonotic diseases may also be prevalent and claims for these are on the rise. The industry operators understand these features and significant steps have been taken to protect people from the inherent risks of illness and injury and to improve health and safety at work generally.

Queensland

Let us present some figures under the Queensland scheme for some employers operating in the meat processing sector.

The figures and views provided are not, from the largest, nor from the smallest employers in the field though they are sizeable. We believe they are a representative cross-section of the sector.

The figures are meant to highlight the problems and the issues, not in an alarmist way, but simply to inform members of the Committee the extent of the problems.

QUESTION	ANSWERS
Sector in which companies operate	Meat processing
Number of years operating	Ranging from 5 years to over 40 years.
Number of total present employees involved in processing operations	Over 1700, ranging from 70 in one plant to over 300 in another.

Average number of employees using knives or similar instruments in the course of their work	Over 50 per cent
Number of total workers' compensation claims submitted (i) last 12 months (ii) last 2 years last 5 years	 838 1593 3069
Most common alleged injury	Strains and sprains
Most common length of time off work	1 day - 3 months
Number of claims employers have queried with WorkCover over the last 5 years	Approximately 550.
In the opinion of the employer how many of the queried claims of the last 5 years have been fully investigated	About 0.5 per cent.

Number of claims rejected over the last 5 years	For the majority of employers it was 'nil or one' in number. Where a greater number has been rejected, this only resulted from very active pursuit of WorkCover and where the organisation has the available resources.
Number of claimants' thought by the employer, at any point of time, to be milking the system by extending time-off work.	Average of 15-20 per cent
Percentage of claims thought to be fraudulent over last 5 years.	The average figure is nearly 20 per cent. The largest employer believes his figure to be substantially higher.
Do the employers have confidence that that the insurer has in place the mechanisms to detect fraudulent claims.	All but the one with the smallest number of employees said an emphatic 'no'.

Does the legislation in practice provide for a proper rehabilitation program	All employers say the system is deficient because of the medical profession, WorkCover Queensland and in many instances, the employees themselves.
Average premium for 2001/2002	As low as 2.5 per cent but mostly around 8.5 per cent.

These employers, better than anyone, know the system. They are powerless to change the workers' compensation momentum of 'easy target, easy money'. The most common faults, as they see them, are as follows:

(i) There is a common belief that a large percentage of claims are doubtful or fraudulent.

(ii) In the processing of the claims, there is little contact with any officer of WorkCover face to face.

(iii) The employers notifiy WorkCover if they had doubts about the claim and little is done.

(iv) WorkCover appears to favour the employee with a 'just pay up' attitude.

(v) There is a lack of enthusiasm in contesting claims, including long term claims.

(vi) WorkCover does not appear to question the opinion of the doctor signing the certificate and appears to regard it as completely factual.

(vii) The medical profession is, in many instances, a major cause of the problem by not fully co-operating, by being too influenced by the claimant, by not fully investigating the alleged injury, by freely handing out certificates with a room full of patients waiting, by not being willing to recommend light duties, by stifling and delaying the rehabilitation process.

(viii) There are unnecessary delays between WorkCover and the doctor that works in favour of the doubtful employee.

(ix) There is a belief that any claimant wins and this is built into the culture.

(x) Employees can and do deceive doctors on many occasions with sprains and backs and similar alleged injuries.

(xi) In many other cases where there are genuine injuries, they have been sustained at home or in the yard or paddock. We are mostly dealing with rural workers living in rural regions.

(xii) Common law claims are an easy targeted part of the scheme with the involvement of lawyers on a 'no win, no fee' basis.

(xiii) Rehabilitation is only effective with co-operation with the medical profession which, many times, is lacking. While it is compulsory to have a registered Rehabilitation Co-Ordinator. WorkCover appears to show scant respect for their views or roles. This plays into the hands of the doubtful claimant.

(xiv) Monitoring process in rehabilitation is difficult because of the doctors and WorkCover.

(xv) Casual workers arrange a week off on WorkCover. That way they get paid.

(xvi) Employees expecting stand-downs or layoffs due to seasonal factors will make fraudulent claims to ensure guaranteed 'ordinary time income' rather than eating into annual leave. Employees made redundant commence claims.

(xvii) There is a fairly common belief that doubtful or fraudulent claims are costing the sector millions of dollars.

These are the views of employers who deal with the problems daily. Multiply this by most of the meat processing employers in Queensland and the working of the scheme is a disaster.

In the opinion of the NMAA, it will get worse over the next 2/3 years unless remedial action is taken. Action that we have commented upon generally during this submission.

New South Wales

Information from some NSW meat processors is as follows. Again they are not the largest employers, nor the smallest. Most have participated in extensive risk management programs over the last few years. We believe the figures are an adequate cross-section.

QUESTION	ANSWERS
Sector in which companies operate	Meat processing
Number of years operating	Ranging from 4 years to over 70 years.
Number of total present employees involved in processing operations	Over 1300, ranging from 50 in one plant to over 500 in another.
Average number of employees using knives or similar instruments in the course of their work	Over 50 per cent
Number of total workers' compensation claims submitted	
(iii) last 12 months	323
(iv) last 2 years	673
(v) last 5 years	2116

Most common alleged injury	Strains and sprains
Most common length of time off work	1 day - 3 months
Number of claims employers have queried with WorkCover over the last 5 years	Approximately 150.
In the opinion of the employer how many of the queried claims of the last 5 years have been fully investigated	About 23.
Number of claims rejected over the last 5 years	For the majority of employers it was 'nil or one' in number around 1 per cent for the largest employer. In the case of this largest employer the reason was because they fought the system.
Number of claimants thought by the employer, at any point of time, to be milking the system by extending time-off work	Average of 10 per cent

Percentage of claims thought to be fraudulent over last 5 years.	The average figure is around 10 per cent with the largest employer believing the figure to be substantially higher.
Is the employer confident the insurer has in place the mechanisms to detect fraudulent claims.	Most said no.
Does the legislation in practice provide for a proper rehabilitation program	Employers say the system is average but better than some years back.
Average premium for 2001/2002	As low as 2.5 per cent but average around 10 per cent.

All the employer comments listed for the Queensland meat processors are relevant, in varying degrees, for the New South Wales processors.

Victoria

Information from a number of processors in Victoria. Again we think it is a cross-section

QUESTION	ANSWERS
Sector in which companies operate.	Meat processing
Number of years operating	Ranging from 15 years to over 50 years.
Number of total present employees involved in processing operations	Over 680.
Average number of employees using knives or similar instruments in the course of their work	Over 60 per cent
Number of total workers' compensation claims submitted (vi) last 12 months (vii) last 2 years (viii) last 5 years	 80 130 300
Most common alleged injury	Strains and sprains

Most common length of time off work	Majority 1 day - 3 months
Number of claims employers have queried with insurers over the last 5 years.	Approximately 100.
Do the employers have confidence that the insurer has the means in place to detect fraudulent claims	Majority said 'no'.
In the opinion of the employer how many of the queried claims of the last 5 years have been fully investigated.	About 40.
Number of claims rejected over the last 5 years	5 in total.
Number of claimants thought by the employer, at any point of time, to be milking the system by extending time-off work.	Average of 30 per cent

Percentage of claims thought to be fraudulent over last 5 years.	The average figure is around 20 per cent with the largest employer believing the figure to be substantially higher.
Does the legislation in practice provide for a proper rehabilitation program	Majority say the system is less than average.
Average premium for 2001/2002	Average is 11 per cent.

The NMAA believes the answers here to be common in Victoria. Workers' compensation claims have long been an infection in the meat processing sector in this state.

We should point out that the Authority has set up a Task Force that is visiting meat processing plants to gain knowledge of the sector. What comes of any recommendations remains to be seen.

South Australia, Western Australia and Tasmania

The fact that tables are not produced separately for these states does not mean that the schemes are severely deficient, in varying degrees, to those already mentioned.

Consider, in South Australia, the following for example:

(i) There is a meat processor in South Australia with over 300 processing employees. The number of claims over the last 5 years has been over 700. The number queried in that time has been over 60. The number of claims fully investigated is less than 5. The number of claims regarded as fraudulent is 15 -20 per cent. The number of claims 'milking the system' in extending the time-off is 30 per cent.

(ii) There are other processors with similar tales to tell.

(iii) The story in South Australia is a similar one to other states, for some employers, concerning investigation by the insurer and the role played by doctors. The worker can receive more money than if they work.

(iv) In many plants there are incentive schemes in operation meaning that wages vary according to production.

(v) In some geographical areas and in particular plants there is a culture that co-workers can beat the system and the disease becomes infectious.

(vi) Employers believe it is relatively easy to deceive the treating doctor especially when the majority of injuries are alleged to be strains and sprains.

It must be said that there are, obviously, fewer processors in South Australia than in the eastern states.

For Western Australia and Tasmania, please refer to the earlier comments.

G. Smallgoods manufacture/wholesale outlets.

These sectors of the industry are not immune from problems that exist under the various schemes.

Most of the problems listed for the meat processing sector apply, in varying degrees, to these manufacturers under the schemes.

As examples, please note the following common comments from smallgoods employers, members of the NMAA:

- Indifference of insurers to fraudulent or doubtful claims.
- Indifference of doctors to claims.
- Ease at which employees can gain certificates.
- Insufficient resources to investigate claims.
- The culture existing in the larger plant of an easy method to make money.
- Claims dragging on for years and employees holding back on substitute employment.
- Indifference of many employees to rehabilitation process.
- Efficiency of insurers in dealing with doubtful claims.
- The extent of the claims based on alleged soft tissue injuries which does not show any physical damage and which can be prolonged indefinitely.
- No financial incentive to return-to-work early.
- Inability to enforce return-to-work programs.
- Compensation seen as a 'paid' holiday.
- Many employees simply wanting a payout.
- The legal system and the involvement of lawyers.

As with meat processing employers, the majority of claims are for sprains and strains.

H. The retail butcher shops

Many retail butcher outlets throughout Australia, by their very nature, do not employ large numbers of employees.

However, they are still substantially affected by the schemes and the issue of doubtful claims and participation in the rehabilitation programs. Many retailers pick up employees from meat processing plants and the culture and ease of the system is transported.

There are a few retail chains that, individually, employ hundreds of employees. In many cases the number of employees are far more than the number employed in a majority of meat processing plants or plants involved in smallgoods manufacture.

Common problems in the operation of the schemes throughout the retail sector are as follows:

- Culture in certain places that easy money is gained by claiming workers' compensation.
- Problems within the medical profession and the ease of gaining certificates and lack of consistency.
- Lack of motivation of the insurers to enforce the rehabilitation process.
- Employees thinking they can milk the system.
- Legal system encourages dishonest employees and doubtful claims.
- Attitude of 'just pay up' by the insurers.
- Lack of motivation in 'return-to-work' programs.

As with the other sectors, many of the claims are for alleged strains and sprains.

I. The rehabilitation programs

Rehabilitation only works:

(i) If the employees want it to work and are willing to participate in the process.

(ii) If the claim is genuine and the claimant is not milking the system.

(i) If the medical profession and the insurer co-operate with the employer.

(ii) If the return-to-work program is speedy and efficient.

(iii) If it is properly managed and this includes 'the employer'.

(iv) If there are incentives to return-to-work.

Many times, the employees manage to find their way out of the programs and,under many of the schemes there is little that most employers can do about it.

Some of the rehabilitation schemes, while more efficient than others, still enable many of the employees to defeat the system and many do.

This paper is full of examples as to why problems arise and we refer members of the Committee to those comments. We should however, attempt to give brief summary.

Queensland

(i) Under the Queensland Act, the employer has an obligation to provide rehabilitation arrangements for injured employees, including an appointed and qualified co-ordinator, a documented procedure, and individual rehabilitation plans. There is a financial penalty imposed on the employer if it fails in this respect.

(ii) Workers also have an obligation to satisfactorily participate in rehabilitation. If a worker refuses to participate, the entitlement to compensation may be suspended - a decision by

WorkCover to suspend compensation is, of course reviewable by the internal review unit).

(iii) There are cases where WorkCover has indicated it is not prepared to take action against workers who refuse to participate in rehabilitation.

(iv) There are also cases where doctors (apparently at the request of the worker) have certified workers as unfit for work when there are individual rehabilitation plans already in place.

(v) There are other serious matters referred to in other parts of these submissions.

New South Wales

Still major problems - see earlier comments.

Victoria

Still major problems - see earlier comments.

South Australia

There appears to be a commonly held view that the system works reasonably for those employees who wish to participate in the return-to work program. For the worker who wishes to milk the system the employer's hands appear to be tied. In many cases, the rehabilitation process involves doctors who do not understand the meat industry and the return -to-work process is delayed and extended to resolve issues. The rehabilitation process has to be tailored to the needs of the workplace and this is not being achieved.

Western Australia

Still problems - see earlier comments.

Tasmania

Still problems - see earlier comments.

J. Costs

We think fraudulent or doubtful workers' compensation claims and mismanaged return-to work programs under the various schemes around Australia are costing millions.

When asked at any time many of the middle to larger employers believe that these 2 items have cost the company well in excess of one million dollars over the last 5 years.

If one in every 5 or 10 claims is fraudulent or doubtful or exaggerated or milks the system, you do not need much imagination to apply these figures on a national scale to understand that it has reached epidemic proportions.

And this is just the meat industry.

K. Conclusion

There is no doubt that fraudulent or doubtful claims and the resulting payouts have paid off many mortgages, enabled workers to purchase extra items and businesses and created a better lifestyle. We know of many examples.

There are sufficient points made and examples given in this paper for any reader to understand what are the major problems within the workers' compensation schemes operating around Australia. There are also sufficient points made as to how the schemes may be remedied to make them more efficient, reduce fraudulent or doubtful claims and to provide real incentives for workers to return to the workplace.

There are many genuine claims from injury occurring in the workplace. There are also many that are not genuine or that are exaggerated or that do not occur at the workplace.

The NMAA will continue to advise members on workers' compensation, will continue to be involved in the development of better injury management programs for employers and lobby the relevant Governments on how to improve the schemes.

We only hope that the points made herein will not fall on deaf ears.