House of Representatives Standing Committee on Employment and Workplace Relations

Inquiry into Aspects of Workers' Compensation

Supplementary Submission by the National Meat Association of Australia

October 2002

Opening

The National Meat Association ('NMAA') filed a submission with the Committee in August.

In that submission the NMAA highlighted, in its view, some of the major catastrophic deficiencies in most of the workers' compensation systems operating around Australia. Those deficiencies spread into the operations of the various OH&S legislative schemes.

Concerning workers' compensation there is real evidence, amongst NMAA membership, that fraudulent and doubtful claims exist on a large scale. There is evidence that the majority of these cases are not investigated, when requested by the employer, for any number of reasons. There is evidence that rehabilitation programs are not working in many cases. There is evidence that many employees do not adhere to the OH&S programs.

We undertook a limited random survey of members of the NMAA concerning, inter alia, fraudulent behaviour which was defined as "*dishonest claims based on a false representation to gain unjust advantage*". Such behaviour could begin right from the start of the claim or arise during the processing of the claim. It could involve claiming the injury was work related or it could involve exaggerating the claim. It could involve delaying the rehabilitation program for financial gain or lying to the treating doctor.

Simple examples of case situations are found throughout the NMAA's submission. They are not isolated instances and are consistent with case study examples submitted by others to the Committee.

This supplementary submission.

The NMAA seeks to comment on:

(i) Some of the programs involving the NMAA and its membership in risk management and OH&S.
(ii) Some further general observations
(iii) Some of the submissions that have been filed, and
(iv) What needs, generally, to be done and possible outcomes before the Committee.

Events since the NMAA filed its submission

Since the NMAA filed its original submission, a number of relevant events have occurred.

First, the relevant Minister in the South Australian Government has released an Issues Paper, as the final step, in a review of that State's complex workers' compensation and occupational health, safety and welfare systems. The Issues Paper was released in late August 2002 for comment by 30 September 2002 on countless items. No extension for the filing of comments was permitted. To a great extent, this Issues Paper is an example of what FDEWR submitted in its paper concerning the state approach to problems. There is little room for discussion of the fundamental problems or the proper operation of the scheme. Having regard to the Terms of Reference we can only conclude this was deliberate.

Second, it is significant that the insurance industry itself has called for major and drastic reforms to the state-based workers' compensation schemes.

Third, the New South Wales Government has appointed a major consultancy group to investigate the disastrous financial position of WorkCover in that state namely, a deficit of $2.8 billion.

Workers' Compensation and OH&S programs involving the NMAA

The NMAA and its membership has, for many years, been pro-active in the areas of making workplaces safer in the meat industry, developing better OH&S practices and developing better risk management programs. The industry has spent and allocated millions of dollars researching and implementing these matters.

We list some of the national programs below so members of the Committee might understand how pro-active is the industry.

- National Guidelines for health and safety in the meat industry - 1995
- Meat Industry safety and health continuous improvement framework - 1998
- OH&S Australian meat industry reference guide - 2002
- Ergonomic best practice case studies - 1998
- Reduction in sprain/strain injuries using ergonomic task analysis and process improvement teams - 1998
- Assessment of muscular strain during performance of tasks - 1999
- Noise control for abattoirs - 1995
- Noise reduction on hook/rail, air knives and impact noise - 1998
- FM radio equipped hearing protection devices - 1997
- Injury management resource kit - 1997
- Q Fever information kit - 1997
- Q Fever register
- Literature summary for OH&S research - 2001
- National Meat Industry OH&S Conference - 2002

- Determinants of protracted recovery after Q Fever injection - in progress
- Reducing manual handling injury through enhanced medical services - in progress
- The persistence of Coxiella burnetii in human beings - in progress.

There is a National OH&S Committee and there are state OH&S Committees. There are state programs such as the NSW meat processing injury management project, the NSW OH&S management systems project, Queensland OH&S project, Victorian Meat Industry Ideas to innovation, Safety Culture survey in SA, Guidelines for selection and use of cut resistant gloves in SA, Top 5 causes of work injury in the SA meat industry, Ergonomic hazard management kit in SA, OH&S programs for Victorian Retail butchers.

We mentioned other matters on pages 10-11 of our submissions.

There are other tasks undertaken internally by the NMAA such as conferring and attempting to persuade authorities to change and/or alter legislation, regulations and administrative arrangements in the various schemes.

Further general observations by the NMAA.

The NMAA makes the following further general observations to the Committee.

1. This is a nation of less than twenty million people with a working population of some 9 million. Yet we have 10 differing Workers' Compensation schemes and 10 OH&S schemes.

2. Many members of the NMAA operate across state borders. The NMAA itself has operations across these borders.

3. We do not have 10 different Company codes operating. The political will and common sense prevailed, some years back, to have a national operation of the Corporations Law mirrored in uniform legislation in each State.

4. It is not an answer to the problems to say that workers' compensation and OH&S schemes are enshrined as matters for the states.

5. It appears, because of the number of interested groups involved, that the political will and common sense does not appear to exist in the area of workers' compensation and OH&S systems throughout the country.

6. There is, more often than not, an interaction between federal industrial awards of the AIRC and the various state schemes. This factor alone leads to confusion and maneuvers by vested interests.

7. If any person or organisation or interest group submits to this Inquiry, as some have, that fraud or fraudulent behaviour is not a problem throughout the workers' compensation schemes those persons or organisations or groups do not want to acknowledge the extent of the problem or do not understand the operation of the systems.

8. If any person or organisation submits that fraud is continually being investigated and within control then this, in the opinion of the NMAA, is incorrect. "You might as well settle and pay up" is the normal instruction faced by NMAA members in a conciliation process concerning a doubtful claim.

9. The South Australian, New South Wales and Tasmanian Labor Governments saw fit not to file submissions with the Committee. Relevant statutory bodies saw fit not to file submissions.

10. Submissions filed by the Victorian, Queensland Governments and West Australian Government Minister responsible for the schemes are a cause for great concern. They all see little problem existing in respect of fraudulent claims. This is plainly incorrect and we make further mention of this below.

Submissions to the Committee

We do wish to comment on some, not all, of the submissions. We realise any person or group in entitled to file a submission to the Committee. We are entitled to strenuously disagree or agree with what is filed.

Some submissions conclude that employee fraud is not a problem throughout the scheme(s).

Either these groups or associations do not understand the problems or do not want to understand the problems or are just plainly biased because of the interests they represent.

The Labor Council of New South Wales puts forward the proposition that fraud is low because it is easily detectable. In most jurisdictions, employers are told or persuaded to settle the lower claims by either the statutory body or the insurer hence, the fraudulent or doubtful claims are not fully investigated. In other words, it's a circular argument and convenient for these interest groups to claim there is no evidence when the very nature of the systems themselves lend themselves to such behaviour. HR and OH&S staff at NMAA member plants and shops deal with claims on a daily basis. We believe they know how genuine or exaggerated are the claims.

The NMAA disagrees with the submission of the Victorian Trades Hall Council that, as a matter of principle, workers compensation systems are best dealt with in

the jurisdiction in which they are founded. In the meat industry there has always been an interaction between state systems and federal industrial instruments. The reason why the systems are in such disarray at the moment is that, as FDEWR submitted, the response of the states "has been to increase the regulatory complexity regarding coverage of the schemes" which "only compounds the problem".

The submission of the APA is legalistic and predictable. As the submission of the NMAA noted, lawyers are a major reason for deficiencies in the operations of the spirit of the schemes, especially in escalating and inhibiting rehabilitation. The APA has a vested interest in submitting that the incidence of fraud is low as its members participate in the settlement of most of the lower to middle order of claims where employers are pushed to settle. In most jurisdictions, the lawyers are involved in the system of 'just pay up' and 'don't rock the boat'. The figures, conveniently referred to by the APA, simply reflect the low detection rate.

Concerning the Queensland Government submission, the NMAA's comments are as follows:

(i) The low premium rates, mentioned in the Queensland submission, are misleading. The experience based rating scheme can double the industry rates or the employer's actual rate, and can be as high as 18 per cent.

(ii) Employers pushed into settling doubtful claims have them reflected in later premiums.

(iii) Meat workers are in one of 3 occupational groups with the highest industry premium rates. NMAA membership does understand that this is a reflection of the industry injury rates and have been working to improve risk management systems. However, the case with which the system allows claims to be accepted creates difficulties in reducing claims where there exists in the workforce an attitude that "compo" is another entitlement to leave.

(iv) The submission appears to be silent on effectiveness of WorkCover's role in ensuring compliance with the scheme.

(v) Submission is silent on fraudulent activities and detection strategies, investigation and prevention techniques.

(vi) The submission is silent on the prohibitive costs of common law claims.

(vii) There exists a conflict of interest with the regulatory body itself between administering claims and investigating them.

(viii) The submission is silent on how many claims are settled against the advice of the employer.

Overall the submission is silent on all the matters mentioned on pp. 16-19 and 44-45 of the NMAA's submission.

Then there is the Victorian Government submission. Our comments are as follows:

(i) This submission says that the average WorkCover premium rate is to remain at 2.2 per cent. This is a meaningless figure as, for example, premiums in the meat industry have blown out by 8 per cent.

(ii) To give an example, the NMAA has run effective OH&S programs for retail butchers resulting in significant improvements across the sector yet, this is not reflected in premiums.

(iii) It is just incorrect to suggest that fraud is not a problem and we absolutely disagree that "the incidence and associated cost of fraud in the scheme is relatively low." We refer the Committee to what the NMAA stated in its submission concerning Victoria.

(iv) The reason why the VWA and/or the Victorian Government say fraud is not a major problem is that both the Government and agents are not sufficiently policing the scheme.

(v) Impediments to return to work usually involve the doctors and doctor shopping.

Concerning the 3 page submission of the WA Minister, it is stated that the issue of fraudulent claims is outside the Act and submits that there are measures in place to reduce the incidence of fraud and that assessors investigate suspect claims.

Having regard to what the NMAA submitted in its original paper, we disagree with these last two points as a matter of practice.

The NMAA agrees with the thrust of the submissions of FDEWR and AIG.

Fraud is a real problem. We agree that the various state-based schemes are complex and inconsistent. There are varying levels of compensation, overlays by a number of States with common law systems, different definitions of worker and injury, varying deeming provisions, varying insurance arrangements, different rehabilitation provisions, different management of claims. We agree that the States themselves increase the complexity of the schemes and have done so for years and so on.

We agree, like AIG, that some radical steps are necessary to reform the schemes. At the moment we cannot see where this will come from.

Rehabilitation and OH&S.

The NMAA agrees that all employees are entitled to work in healthy and safe workplaces, free of accidents or hazards in the workplace. We agree that there has to be proper, consistent and efficient rehabilitation systems in place, no matter where the workplace is situated.

The NMAA does not expect Governments to create the safe workplace for employers, But we do expect Governments, of all political persuasion, to create

the proper framework. We expect Governments to address the issues raised by the NMAA membership.

As members of the Committee may see from the involvement of NMAA and its members in research programs and implementation of those programs, the NMAA and its members are deeply committed to controlling risk management and committed to work safety.

Future outcomes.

We put forward the following wish list for consideration by the Committee.

(i) The feasibility of a national scheme has not been fully discussed internally by NMAA. Nevertheless, there should be a commitment, in principle, to developing a national codified framework. This does not mean taking the greatest benefit from each of the present unsatisfactory schemes.

(ii) There has to be consistency across the schemes operating in the states and the territories. This involves consistently defining employees/deemed employees, work related injury definitions, ordinary weekly earnings (excluding overtime and incentive rates), levels of compensation, no access or limited access to the common law courts, insurance arrangements, mandatory rehabilitation/return to work schemes and consistent regulation of management of claims.

(iii) We refer members of the Committee to section 170LZ(2) and 170VR(3) of the Workplace Relations Act 1996 (Cth.). Those sections state that Certified Agreements and Australian Workplace Agreements operate subject to the provisions of State Law dealing with workers' compensation and occupational health and safety. Every change to state law is taken up

in the workplace where these instruments apply whether employees or employer desire the change or not. This matter is related to point (i) above.

(iv) There has to be a national approach to limit access to the common law courts. One compromising suggestion might be to limit access to cases of significant impairment that is carefully defined.

(v) Following on from the previous point, the role of lawyers needs to be curtailed. Lawyers prolong cases and, in many cases on the lower end of the scale, as little as 40 per cent of settlements end up with claimants.

(vi) It must be obligatory for employee's to participate in rehabilitation or lose benefits or to have the case immediately reviewed.

(vii) A code for medical practitioners must be established and followed. Doctors need to be more accountable for statements and certificates. Employers need to be consulted along with injured employee and rehabilitation providers and doctors must not be allowed to refuse to co-operate with employers.

(viii) Annual leave, rostered days off and other forms of leave should not be allowed to accrue during worker's compensation periods of leave. We have the ludicrous situation in some jurisdictions where employees, off for a year, return to work and are paid cash for the 'RDO's lost'.

(ix) Fraud should be clearly defined and enshrined as part of any legislative scheme and if found to have occurred the employees should be made to re-pay benefits falsely obtained including commonwealth benefits.

(x) Concerning premiums, we will simply say that all state systems need to be overhauled.

(xi) Insurer action or inaction creates great problems. The matter has to be clearly resolved because employers are the ones paying the premiums in what are essentially 'no fault' schemes.

(ix) There is a drastic need in most jurisdictions for a fully resourced independent audit unit for employee fraud, as well as reviews of the insurers' decisions in respect of claims processing.

(x) There is a need to address the problem of claims after the employment relationship has been completed and especially the 'redundancy syndrome'. We actually have had instances of employees boasting that they can take it easy after settlement of the claims. Implementing a limitation period after termination is not the answer. With employees away from the workplace and management at a loss to know the circumstances of the problem, such claims need to be fully investigated.

Some more little neat examples

Lawyers

Case one

An employee employed by an abattoir on light duties was about to return to work on full duties and was offered a small lump sum by insurer. Solicitor becomes involved and the claim escalates and now includes a previously closed neck injury.

Note: escalation is frequent and the norm.

Case two

On an abattoir, sub-contractor to maintenance contractor sues maintenance contractor under common law and public liability grounds. At this point it involves lawyers for both insurance companies and contractor. Contractor sued

the abattoir operator. The plaintiff had an ongoing back injury before working at the abattoir and did not notify the contractor or the abattoir operator of this. Matter ended up in court. After two days of evidence, a joint offer from all four representatives of the defendants was accepted which was $150,000 inclusive of costs. Defendant received less than $50,000 after lawyers and medicos.
NOTE: this is common in terms of percentage.

Case three

An employee on an abattoir was suspended for disciplinary reasons and produces a medical certificate for stress. Claim was denied but he pursued the matter. Lawyers become involved and matter was settled two years later for $10,000 and employee received next to nothing. Company's claim performance increased by $35,000.
Note: claims, involving lawyers are common in disciplinary, redundancy, termination occasions.

Fraud

Case one

Abattoir had to pay own legal and court costs in a matter before the court where fraud was proven.

Case two

Employee in the retail sector submitted claim for a neck strain injury. In court, evidence submitted that injury could not have been work related and claim was withdrawn. Employer informed that WorkCover did not usually go about claiming wages and medicals back because of the expense. Cost in this instance = $25,000 wages plus medicals plus legals.

Doctors

Case one

Casual employee lacerated his finger in second week of employment. Obtains workcover certificate for 2 months off work. Doctor would not return employer's telephone calls about the matter. After investigation, discovered that the employee was obtaining certificates from two doctors. Returned to work after 4 months.
Note: doctor shopping is prevalent in all jurisdictions.

Case two

Employee comes to work on a Monday morning and there is a supervisor conducting a full shop audit. After the audit the supervisor talks to the employee about unsatisfactory performance and there is disagreement. Employee leaves work, without notifying anyone, and returns an hour later with a workcover certificate claiming arm and shoulder injury. Employer attempted to speak to doctor the next day who was not co-operative. Employee still on workers' compensation after 6 months which has affected the employer's premium.
Note: doctor's refusing to discuss anything is a common problem.

Case three

In an abattoir, three hours drive from a Capitol city, an employee commences to learn to 'bone' and after one full day goes to a GP who diagnoses Carpel Tunnel and the employee is given 3 weeks off work on total incapacity. No prior difficulties or pain were ever reported. Surgery is arranged and the doctor and the employee refuse any light duties. By the time WorkCover intervenes, the surgery has been performed. The employee's mother worked full-time at the GP's practice.