House of Representatives Standing Committee on Employment and Workplace Relations

Inquiry into Aspects of Workers' Compensation

Some brief final comments by the National Meat Association of Australia

The National Meat Association of Australia ('NMAA') filed submissions and supplementary submissions with the Committee of 16/8/02 and 7/11/02 respectively.

The purpose of this brief document is to answer and/or expand on matters raised during the giving of evidence before the Committee on 13 November last.

How much money has been lost on fraudulent claims?

We can only speak for the meat industry.

As requested by certain members of the Committee on 13 November, the NMAA supplied a pro-forma of the internal survey conducted when the Committee's Terms were announced. One of the questions in the survey was for those replying to estimate how much fraudulent claims may have cost the enterprise over the last 5 years.

Concerning the processing and smallgoods sectors of the industry, a majority of those surveyed estimated that fraudulent claims had cost the enterprises between $200,000 and 1 million dollars. A number said in excess of a million dollars. Very few said under $200,000.

The reason why one is not able to be absolutely definitive is because of the lack of surveys and data and the often referred to 'hidden costs of fraud'.. When you have Governments making submissions to the Committee that fraud is not a problem, is it any wonder.

The cost, in our opinion, runs into millions per year in the meat industry alone.

Is fraud a problem?

We think the figures presented to the Committee are indicative as to what occurs in certain sectors of the meat industry.

In the processing sector of the meat industry the plants sampled accounted for approximately 10-15 per cent of the workforce across the various jurisdictions. In the four largest states - Queensland, New South Wales, Victoria and South Australia - the number of claims over the last 5 years in these plants were over 6000.

The NMAA members were of the opinion that an approximate average of nearly 20 per cent fell into the fraudulent category.

The medical and legal professions

The NMAA is deeply conscious of the failings in the operation of the schemes. Such failings start and end with the medical and legal professions.

Some members of the Committee might not like what is being said but the evidence is overwhelming.

Sit in the rooms of any doctors when the first Certificate is about to be issued. Or stand on the steps of the common law courts when the claim is about to be settled by the plaintiff and the insurer.

We do not think it is too much to ask that the medical profession - or those sections of it that are involved with workers' compensation and rehabilitation programs - be trained and accredited and fully conversant with the operation of the systems. The doctor issuing the certificate is, in most cases, not familiar with the workplace, has never visited the workplace and yet is involved in the process.

Nor is it novel for systems to limit the avenues for lawyers being involved.

Recovery of fraudulent money

This is, as the NMAA pointed out, a problem in certain jurisdictions. Is should be made compulsory for this to occur.

Genuineness in South Australia

It was put to the NMAA that in South Australia genuineness has to be verified rather than simply a Medical Certificate being issued.

We have sought advice from members and the main NMAA insurer and are not sure it is as rigid as suggested.

The experience of NMAA members (and the insurer) in SA is that:

(i) if it is thought that the claim is not one which would or should attract compensation, then

(ii) it is up to the claims management insurer - with assistance from the employer - to question and ascertain whether the claim is genuine and work-related.

It becomes a question of contrary medical evidence.

The shopping centre/supermarket injury.

This has been a recurring issue/question in evidence before the Committee. The question put to the NMAA appears on page 166 of the transcript - the distinction between the consumer injured in the supermarket on a slippery floor and the employee of the company being injured in the same manner.

The question put to the NMAA was, in that example, why should the employee not have access to the common law just like the consumer.

With respect, the more relevant question is why should the employee be treated different and in a more beneficial manner?

The NMAA, during evidence, made the point that the major difference lies in the nature of the process. You must compare apples with apples and to compare the system of common law with the statutory system of workers' compensation is to distort the picture.

For example, one is a no fault system. The person under this system obtains a workers' compensation medical certificate and goes through the statutory process - conciliation, mediation, arbitration etc. In the end, this same person may have access to the common law. As we also pointed out in submissions, there is no access to the common law in the present system in South Australia and access under that system was denied for the very reasons that the NMAA puts to the Committee.

The workers' compensation employee has the choice to opt out of the statutory system into the common law system where verdicts are spiraling for whatever reason.

The everyday shopper in a shopping centre is in a very different position. That person has to head down the common law path, contributory negligence and other issues included.

As the NMAA pointed out in earlier submissions, one possibility is to devise a cut-off point for the employee's access to common law based on definitive impairment. There are numerous examples in other forms of legislation that deny claims at a cut-off point based on equity and fairness.

Another alternative is that if an employee wishes to go down the common law then the person should not first have the benefit of the 'no fault' statutory scheme.

Employer fraud

The NMAA's position is much the same as AIG when they presented evidence to the Committee on page 65 of the transcript on 18 October last.

The incidence of claims falling

We pointed out that:

(i) all sectors of the industry had substantially rationalised during the 1990's and that

(ii) certain premiums in the industry were amongst the highest in the land.

The number of claims may have fallen but we are dealing with a contracting industry where the system itself extends the duration of the claims.

The redundancy syndrome

Over a long period, this has been a symptom of the systems.

We were asked what can this Committee do about the issue?

In the short term, very little. It remains in the hands of the agents and insurers to properly investigate situations where claims are made after employment has been terminated. If a claim is submitted following the point where a person is made redundant the question should be obviously raised as to why the claim did not eventuate during the period of employment.

Employer evidence

One final matter and it concerns evidentiary issues. Employers should have the unfettered right before tribunals and the courts to introduce evidence, including video evidence, of that denies the claim.