Submission to House of Representatives Inquiry into Aspects of Australian Workers Compensation Schemes

AUSTRALIAN INDUSTRY GROUP SUBMISSION – INQUIRY INTO ASPECTS OF AUSTRALIAN WORKERS COMPENSATION

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Section 1 – Introduction and Executive Summary

1.1 Introduction

Australian Industry Group (Ai Group) welcomes the opportunity the comment on aspects of the respective workers compensation schemes that operate in Australia.

1.2 About Ai Group

Australian Industry Group is a national employer association with 10000 members concentrated in the manufacturing, construction, telecommunication, IT, call center and related sectors. Nationally, our members employ over a million Australians, turnover over $100 billion per year and export $25 billion. Ai Group has been an active participant in public debate on workers compensation across the country. Workers Compensation is a key cost in all sectors Ai Group represents. It is particularly important in the exporting sectors that Ai Group represents. The manufacturing sector in particular is exposed to the competitive forces of a global market where competitors are often not subject to similar regulatory requirements. This makes management of workers compensation costs a key issue for companies who are exporting.

1.3 Executive Summary

Ai Group is supportive of Workers Compensation schemes that fairly compensate employee who are injured at work. We are however concerned about the incidence of claims across all States that are either fraudulent or potentially dubious but due to systemic weakness in the relevant schemes are not challenged or investigated thoroughly. It is difficult to quantify the size or the cost of employee fraud across the respective systems. The anecdotal evidence we receive from our members does however underline a significant problem in this area. At the very least, employer concerns reflect the poor credibility of workers compensation systems among employers. We are concerned that

this disillusionment does not undermine employer efforts to meet occupational health and safety responsibilities.

We are of the view any inquiry into the incidence of fraud requires:

- A thorough consideration of the different types of fraud;
- An examination of the behavior of claimants in fraudulent claims;
- An examination of system design elements that allow fraud to go undetected;
- An examination of the role both professional providers and insurers in the various workers compensation systems play, consciously or otherwise, in facilitating fraud.

To illustrate our concerns we have utilised case studies from our members, which demonstrate potential problems with the operation of workers compensation systems across Australia. The failure of the respective systems to deal with this issue is a constant source of growing cynicism regarding Workers Compensation in our membership.

Ai Group is particularly concerned that remuneration structures, particularly where they include Accident Pay do not provide adequate incentive for claimants to actively participate in programs that facilitate a return to work. This disincentive is at the genesis of many fraudulent claims with claimants seeking the pot of gold remedy while having little inconvenience to their income while they go through the processes to pursue the lump sum. We have made a number of recommendations regarding these issues in Section 2 of this submission

We have no submission on the second term of reference.

Ai Group contends that the nature and size of the industry, inherent risk of the industry, the availability of alternative employment and the education level of employees are all factors in explaining different claims profiles across industry. Importantly Ai Group is aware of varying claims profiles within industries we represent. These differences can usually be

attributed to management technique, size of the business and the quality of the employment relationships in the workplace.

Rehabilitation provides an integral role in improving workers compensation outcomes both for injured workers and employers. While we are concerned with over-servicing the rehabilitation programs remain key to improving outcomes. Effective rehabilitation with focused programs aimed at achieving clear goals in clear time frames are important in this process. We are also of the view that participation in the workplace is an important part of rehabilitation and should be encouraged.

Ai Group does not at this stage have a policy position in support for a unified national workers compensation system. However, many of Ai Group's members do business in more than one state. Greater consistency between systems and simplification is a clearly desired outcome. If we were to be supportive of such a move any new scheme would need to be benchmarked appropriately to ensure that, as a national monopoly, it meets appropriate standards in terms of premium levels and benefit levels. Details of our proposals are contained in Section 5 of the submission.

Section 2 - The incidence and costs of fraudulent claims and fraudulent conduct by employees and employers, any structural factors that may encourage such behavior;

2.1 Types of Fraud

This submission focuses on the experience of Ai Group's members with employee fraud. Employee fraud is complex but can largely broken down into the following categories

2.1.1 Circumstances where a claim is made where there is no injury;

Case Study

A small manufacturing employer in regional NSW with 45 employees employed a new employee on a probationary period for his first 3 months. Two and half months into the new employee's employment, on a Friday, the supervisor reported the employee had complained to him about being treated badly by another employee. The supervisor counselled the other employee and stopped the behavior. The new employee did not turn up for work on the Monday and has not attended for work since. The employer was not notified of a workers compensation claim until they contacted the insurer on another matter some two weeks later. The employer at this point stopped its plans to terminate the employee for abandonment of employment. The claim is based on "acute stress and anxiety". The company has subsequently designed a return to work program that provides no contact between the employee and the other employee who is alleged to have harassed the employee. The employee has refused to participate in the return to work program.

The employee is currently completing a distance learning university degree while he recovers.

2.1.2 Claims made where an injury is sustained but not at the workplace;

Case Study

A weightlifter was employed by a small manufacturing company on a casual basis. The employee put in the claim for tendonitis after just four weeks. The employee was sent to a number of doctors all of who were asked to report on whether the weightlifting could have caused the tendonitis. All of the doctors reported that it was his employment that caused the injury – part of his job was to hit a mould with copper headed mallet.

The company terminated the employee as he had been employed for short-term work. The employee continued to provide certificates indicating he was totally unfit for work. After six months the company the company requested that his weekly benefits be reduced to the statutory rate, which was approximately half on what he had been receiving. The employee responded by immediately requesting his treating doctor to certify him as only partially unfit which entitled to 80% of his former weekly rate. One month before the case was due to go to court the employer checked the local gyms to see if the claimant was registered. Video footage was taken showing the claimant lifting 200lb weights. Despite this footage the insurer recommended due to the reputation of the judge the matter was scheduled to appear before that a settlement be offered. The claim appears on the company claims record for the purposes of future premium calculation.

2.1.3 Claims where a workplace injury does occur but its effect and symptoms are grossly exaggerated;

Case Study

An employee in a small manufacturing firm alleges he fell whilst at work. He initially refused to see a doctor but under pressure from the employer, eventually relented. Following treatment he returned on suitable duties but complained that they were "too difficult". The employee was moved to the office area to work. The employee was observed to limp frequently – sometimes appearing to forget which leg was affected and protecting the other leg. The employee was observed by another employee "walking briskly, almost jogging" when he believed he was not being observed. A private investigator hired by the company later observed the employee running to his car.

Despite protestations by the company, the insurer accepted the claim. The case has cost the employer $125000 in premium increases.

2.1.4 Circumstances where an employer is found to be liable for an injury that has occurred either with a previous employer or on a second job;

Case Study

A small manufacturing employer in regional New South Wales had an employee who takes long service leave. While on long service leave the employee works illegally for another employer but is not registered as an employee in the wages book of the employer. The employee injures his back two days before is due to return from long service leave. The employee returns to work with the doctor certificate stating his back injury "has come back on him". The injury the employee was referring to had occurred five months previously. Following his return to normal duties at that time the employee had stated in a signed sworn statement to the insurance investigator and he had had no further problems with his back.

The employer requests the employee to complete a form, which specifies how and where the current injury occurred. The employer indicates to the employee and it cannot start work until he completes the form. The employee refuses. The employer receives a phone call from a solicitor representing the employee informing him that if he did not start immediately been wrongful dismissal proceedings would be commenced. The employer complies with the request.

The employee returns to work on alternative duties with a 12 kg weightlifting restriction advised by his treating Doctor. The employee visits a specialist gets a further medical certificate that recommends restricted duties for a further six months. The doctor when approached by the employer was unable to specify when nor how serious injury was or where it had happened. Following further consultation with the employee, the insurer, the treating Doctor and the rehabilitation provider a return to work program was set up. The program was set up for four weeks and was designed to assist the employee to be capable of normal work without restriction at the end of the four weeks. Two weeks into the return to work plan the employee abandoned his employment. The employee took a holiday overseas and did not inform the rehabilitation provider all the employer prior to leaving.

On return from the holiday employee came back to the workplace to give his job back but was informed that he had been replaced. The employee commenced similar work for another local employer. The new employer informed the company that he had claimed no injury while working for him and no previous back injury had ever been mentioned.

The disputed liability was settled on the courtroom steps on the basis of legal advice from the insurer. The claim was accounted for in calculating the company's premium for the two years it took to settle.

2.2 The Effect and Costs of Fraudulent Claims

2.2.1 Increased Premium Cost

Case Study

A small employer's insurer denied liability on a claim, which was clearly spurious. The employee appealed to the Workers Compensation Resolution Service who supported the insurers decision. The employee then appealed to the Workers Compensation Court and the Judge found no basis for the claim. However due to the estimate on the claim, the small employer was forced to pay an additional $14,000 in premium the following year.

2.2.2 "Copy Cat" Claims

Case Study

A manufacturing employer in a competitive market with 30 employees has had its workers compensation premiums increased 140% in the last 12 months.

The company, which had not had a lost time injury in the previous 9 years, had 3 workers compensation claims in the last 12 months.

The first claim was originally for respiratory condition that has been subsequently shown by independent medical evidence to be false. The claim evolved into a soft tissue injury. The employer has not been provided with any details of the subsequent claim and cannot assess if it is work related. The company's insurer has not provided the company with basis of the soft tissue claim at this stage despite numerous requests. The employee has refused to participate in four return to work plans and has refused light duties offered by the employer.

The second claim is stems from an employee who had cut their thumb at work. The company assisted the employee with treatment and rehabilitation and the injury healed. The employee has made subsequent workers compensation claim on the basis of stress and anxiety.

The third claim is claim for repetitive strain injury to the elbow from another employee. The employee is known in the workplace to be a competition table tennis player.

All three employees work together closely.

2.2.3 Malicious Claims

Case Study

The company director of a small manufacturing company claimed workers compensation for adjustment disorder anxiety and depression. The insurer denied the claim. The company is in possession of medical certificate stating that the director was totally unfit for work from 20 March 2001 until 21 September 2001. The company has been paying sick pay to the amount of $1578 per week until the 22 August 2001 when by a stroke of luck the company discovered he was working as the state manager for a competitor. The employer has been unable to find out how long had been employed by them but suspected that he had been there from about mid July.

2.3 The role of insurers, medical practitioners and other professional advisers in facilitating fraudulent claims.

2.3.1 Insurers

Unfortunately it has been the experience of Ai Group's members that insurer inaction contributes to fraudulent claims.

Case Study

A small company with 50 employees has had no significant injuries for the past 13 years but after a single successful back injury has had no less than seven copycat claims within 12 months. All the claims have been accepted by the insurer on the basis they could have occurred at work with no investigation launched into the reason for such an unlikely claims pattern.

2.3.2 Medical Practitioners

The basic model of private practice medicine is based on a two-way relationship with no real external stakeholders. As such medical practitioners will invariably pursue the objective of meeting the patients medical needs. This is done on the basis that firstly the patient has no incentive to misinform the practitioner on the nature and extent of the injury and, secondly that no third party is affected by the quality of the diagnosis or cost of the treatment.

It appears to Ai Group that this same model is assumed to apply when the patient is being treated for a work related injury. This flaw is never more apparent than when an employee is attempting to manufacture an injury, exaggerate an injury or try and pass off an injury as work related that is not. The medical practitioner will invariably accept the word of the 'patient' in the normal way and will often not verify or be required by the system to verify the accuracy or otherwise of the employee's claims.

We have made some further comments and recommendations regarding the role of medical practitioners in the conclusions and recommendations to this section.

2.3.3 Rehabilitation Providers

Rehabilitation providers usually play a constructive role in the return to work programs of injured workers and Ai Group strongly supports their role in the process.

The problems our members experience with rehabilitation providers, though generally not as often, are usually similar to those they face with medical

practitioners in the type of patient-provider relationship that is developed. There are two additional problems that commonly arise when utilising rehabilitation providers:

- There is no check or balance on over-servicing. A third party is funding the patient. There is no financial incentive for the patient to rehabilitate to a point where they either reduce or cease treatment.

- Our members have observed tendencies from employees to begin to believe that rehabilitation treatment is a substitute for an actual return to work to strategy. The attendance at physio becomes an end in itself rather than the return to work.

2.3.4 Legal Practitioners

Ai Group has argued continuously for reform of workers compensation across the country and central to this reform is the role of the legal practitioner. We have consistently argued for restrictions on advertising for workers compensation purposes and the limiting of the role of legal representatives in workers compensation matters.

Ai Group has argued this for one very fundamental reason. The nature of proof that is required in a legal forum requires an injured worker to make the best case they can about the nature and the extent of the injury. This is done to maximise compensation. This goal is often inconsistent with good injury management in which the ultimate aim is always to return the worker to their pre-injury duties. In the legal forums that exist in the different schemes across Australia there are inadequate checks and balances between these two conflicting principles. Whilst this situation continues there will always be an incentive for legal practitioners to, actively or passively, encourage their clients to enhance, exaggerate and in the worst of cases fabricate the nature of their claims.

We have made some recommendations about limiting the ability for commencing legal action in the conclusion and recommendations part of this section.

2.4 Conclusions and Recommendations

Fraud is the deliberate gaining of compensation monies by deception. It is imperative that all scheme have controls and penalties for fraud that are not ineffectual. In the NSW system it has not been uncommon for employees to openly brag about the ease of the duplicity in which they have engaged.

We believe that spurious, non-genuine and grossly exaggerated claims must be dealt with more assertively. We believe this can be done in a way that does not materially reduce the fairness of the system for genuinely injured employees. The most common characteristics giving rise to the suspicion of fraud are claims that:

- Involve non work-related injuries which have occurred on the weekend and are then reported within hours of starting on the Monday morning shift;
- Are often reported either immediately after notice of redundancy, a disciplinary issue or some other unrelated event in the employment relationship or many months after the supposed event hence precluding proper investigation; Involve claims which are submitted well after the employee has been terminated but which were not reported prior to leaving;
- Involve an initial minor injury, the recovery from which is marked by gross exaggeration, protracted disputes about suitable duties and frequent legal correspondence.
- Relate to musculo skeletal conditions which rely on subjective descriptions of pain by the patient for diagnosis;
- Have no witnesses;
- Often involve difficult employees with a history of absenteeism, interpersonal conflict and resistance to change;

! The return to work process is marked by defiance, inconsistency and escalating symptoms, which baffle treatment practitioners.

The most common response from insurers to protests by employers is that if the alleged injury **could** have happened at work then we have to accept liability. The claim then proceeds as if it were genuine with the final insult often being a premium increase for the employer.

Eventually after all rehabilitation efforts have failed, all parties return defeated to their corner whilst highly remunerated legal counsel discuss how large a financial settlement is necessary to end the stalemate.

The fact is that workplaces are not unlike families - some work better than others. There will always be strategic differences, degrees of interpersonal conflict and differing responses to the workplace change demanded by global economic trends.

Most employers work hard to create an harmonious environment for their employees but there are many variables impacting on their ability to do so, for example the severe personal stress of employees arising from marital discord, custody battles, bereavement, gambling, mental illness, health problems, children's learning disorders and behavioral problems domestic violence, financial losses, personality disorders and substance abuse.

Schemes must recognise that:

- In some circumstances a workers compensation claim springs from an employees need to exit a difficult personal or work situation; and
- Of all the relationships a person has, the employment relationship is probably the only one with no fault insurance.

In short, in shaping workers compensation schemes regulators must recognise the reality that a proportion of claimants may be trying to gain benefits, which they are not, or should

not, be entitled. Failure to take these claims into account in system design threatens the level of benefits available to genuine claimants.

Recommended Strategies to Control Spurious, Exaggerated and Fraudulent Claims:

We favour a multi faceted approach including:

- **Publicity/Education of Professional Providers:**

  Development of appropriate publicity/education campaigns to alert workers and doctors, lawyers and health professionals to the penalties for fraud;

- **Fraud Detection Systems:**

  Develop fraud detection systems similar to those used in the NSW motor vehicle property insurance, whereby all claims are allocated a point for each potentially suspicious characteristic. Once a certain number of points are recorded the claim is referred for special investigation;

- **Musculo Skeletal Claims:**

  Require all musculo skeletal claims with total incapacity of over 4 weeks to be transferred to an independent medical practitioner for management. This is necessary to overcome the pressure family doctors would be under when confronted by a long-term patient claiming work related claim for which they can find no basis.

- **Claim Procedures:**

  Require claimants to attach a photograph to a claim. This photograph would then

be made available to independent doctors conducting assessments on the claimant and prevent a different person presenting for examination on the day.

! **Statute of Limitations on Claims**

Have a consistent Statute of Limitations of 2 years governing claims across the States;

- **Restriction of estimates in cases of suspected fraud**

Restricted estimates should also apply when there are grounds to suspect fraud - for example where an employee leaves the company fully fit but months later makes a claim for permanent impairment arising from a musculoskeletal injury.

Despite committing large amounts of time and effort to risk management and allocating considerable resources to staff training, committee training, staff supervision, protective equipment and regular audits, a diligent large employer can be hit by a single spurious claim from a disaffected worker which can cause the employers premium to rise by anything up to $150,000.

This is the area of workers compensation that causes employers intense frustration, as they have absolutely no control over these types of claims.

- **Changes to the structure of weekly benefits**

Ai Group believes the following principles of weekly benefits should be adopted across the various State systems:

- Weekly benefits should be based on ordinary time earnings. Overtime and shift rates are compensation for a disadvantage, which is not being incurred whilst a worker is not engaged in employment which gives rise to that

disadvantage.

- To provide an incentive to return to work after injury it is imperative that weekly compensation be set at a rate less than ordinary time earnings. This also recognises that there are some savings from not attending work (transport, meal costs etc).

- Most injury research suggests that for all but the most serious injuries, return to work is usually completed within 9-12 weeks from the injury date. It would be logical to develop a benefit structure which provides incentives for workers to return in this time.

- When a worker participates in a return to work program or alternate duties program, weekly benefits should stepped up from the prescribed injury rate closer to that of the pre injury income. In this way the worker has the opportunity to increase their income by participating in the program or upgrading their hours.

- **Sanctions for Failure to Cooperate**

At the moment most systems have the ability for worker to be penalised where they fail to cooperate with injury management plan by suspending weekly benefits. Insurers are understandably reluctant to impose this penalty and in many cases the workers behavior continues unabated and effectively undermines the whole injury management process.

An additional remedy would be to require workers to participate constructively and cooperatively in their own return to work process as a precondition to commencing legal proceedings. Further if they are judged by an independent party such as an Injury Management Consultant or rehabilitation provider to have failed to cooperate,

their final settlement will be reduced by a fixed percentage for refusing to take up opportunities (such as retraining) to mitigate their loss.

This concept is in use in the NSW Compulsory Third Party Motor Accidents Scheme where the settlements of claimants who failed to wear a seat belt are automatically reduced by fifteen percent

- **Treating Doctors**

In NSW when the 3-page medical certificate was introduced, doctors were awarded substantial fee increases to compensate for the additional time required to complete the documentation. Regrettably many certificates are being completed in a most cursory fashion with little response to the opportunity for the doctor to contact the employer and take a more active role in injury management.

The traditional relationship between doctors and their patients is a close and trusting one. The doctor trusts the patient to provide accurate information and the patient trusts the doctor to arrange appropriate treatment.

In exaggerated and spurious claims this relationship is abused. The worker fails to provide a full and accurate version of events and the doctor is therefore treating the patient without knowledge of all relevant issues, which gave the employee the impetus to claim compensation in the first place.

A common scenario is the treating doctor accepting the disaffected patients advice about the work undertaken, the circumstances of the injury and the availability of suitable duties at the workplace. Without workplace contact the doctor will remain unaware for example that the employee has submitted their claim immediately after being counseled for unsatisfactory performance.

To prevent this, medical certificates should require contact between the treating doctor and the workplace to establish the nature of the work, whether suitable duties are in fact available and any other facts relevant to the accurate diagnosis of injury.

In view of the very substantial premium increases, which flow from a failure to return to work and the well-documented decrease in the probability of return to work over time, Ai Group submits that claims should not be allowed to proceed without this workplace contact taking place.

- **Employee education**

Workers must be made more aware of the parameters of the legislation and of the penalties, which apply for fraudulent claims. Examples involving the prosecution of workers, doctors, lawyers and employers who defraud the scheme should be regularly publicised to extinguish the prevailing beliefs about the lack of an effective gatekeeper to the fund**.**

Ai Group believes that in order to prevent the current leakage of scheme funds and credibility, a more streamlined approach to the management of ambiguous claims must be introduced. Ultimately genuinely injured workers can only gain from measures to preserve funds for those most in need.

Section 3 - The methods used and costs incurred by workers compensation schemes to detect and eliminate:

(a) Fraudulent claims; and

(b) The failure of employers to pay the required workers compensation premiums or otherwise fail to comply with their obligations

3.1 Ai Group has no submission on this term.

Section 4 - Factors that lead to different safety records and claims profiles from industry to industry, and the adequacy, appropriateness and practicability of rehabilitation programs and their benefits.

4.1 Different Records/ Claim Profile

4.1.1 Industry to Industry

The workers compensation schemes that operate across the country make two assumptions. Firstly that premiums are a function of safety profile of the industry and secondly the duration of claims are a function of injury severity and the availability or otherwise of suitable duties. These factors are not however exclusive. In NSW the percentage of serious claims has decreased 20% in the last 6 years. Average premiums however have increased from 1.8% in the early 1990's to 2.8% and have been subsidised at this level for the last two years. The trend shows there are other significant forces at work influencing scheme outcomes.

Ai Group's experience of different claims profiles from industry identify the following additional characteristics as key in determining different outcomes:

- The Nature and Size of the Business;

  This has an impact particularly when considered with the ability for a company to provide an injured worker with suitable duties. Small business in particular often struggles to provide injured workers with suitable duties. Ai Group's manufacturing members also often report difficulties with providing suitable duties outside the manufacturing function of the operation. The cost of providing suitable duties, as a proportion of payroll costs, is much greater for smaller business than medium or large business.

- Inherent risks in the operation

  Some occupations are more inherently riskier than others. Statistics showing greater concentration of claims in industries such as mining and construction demonstrate this.

- Alternative job prospects

  Ai Group's members have observed a concentration of claims for long-term injuries in occupations where the injured worker has few other alternatives for employment. An employee who is dissatisfied with there job and has no real options for other employment will be attracted to workers compensation as a way of removing themselves from the workplace and continue to be remunerated.

- Education Level of Employees

  This point is linked to the point above. Employees who are highly skilled and educated are less likely to see workers compensation as a way out of an unfulfilling job. The claims that Ai Group members face are more likely to be concentrated at the less skilled sectors of the labour market.

4.1.2 Within Industries

Ai Group does notice significant differences in the claims profiles within the industries we represent. The nature and size of the business, the inherent risk, alternate job prospects and education level of employees all play a role.

There is however another factor which play a significant role:

Some employers are better managers in this area than others. Ai Group has observed a real difference in companies where there is clear concern for injured workers that comes from high levels in the organisation. This is characterised by many family run companies who have very good claims profiles or larger companies with high levels of specialised management expertise in claims and injury management. Of course, this comes at a cost that must be added to premiums in order to evaluate the total cost of workers compensation in any company. A strange irony of some systems is often because of these good claims records, these employers are often the most penalised when claims do occur. They come off a low base; have always had very few claims and when one does occur it inflates their premium exorbitantly.

4.2 Rehabilitation Programs

4.2.1 Effective Rehabilitation

Ai Group supports the early rehabilitation of workplace injuries. Research in the area consistently shows early intervention reduces the cost of claims and produces better health rehabilitation outcomes for injured workers. In keeping with this principle Ai Group is supportive of incentives for rehabilitation to be effective.

One common misnomer that continues to permeate through many workers compensation claims is the notion that an employee is more likely to recover with a complete separation from work. There are two important points to this:

- Many injuries actually respond better to some form of managed exercise. A convenient analogy is sports injuries. Athletes who are highly motivated in the sport in which they participate take extremely proactive stances on injury management. They use training techniques and medical advice from specialist

medical practitioners that are designed to enhance their recovery so they can return to their peak performance level as soon as possible. Few of these techniques are based on complete rest from their chosen sport. In team sports the injured athlete is encouraged to remain part of the team, attending rehabilitation sessions while the rest of the team trains, or continuing to participate to the extent they are able in gym or pool sessions where other players are present. Their rehabilitation programs are directly constructed objectively measured and have specific time frames for the goals that are set down.

- The other point that is often missed is that having an injured worker at home they are effectively spending more time in an unregulated environment. Home can often have unseen pressures to perform work that is not suitable for an injured worker. Fixing the roof, clearing the gutters and mowing the lawn are not likely to be suitable for someone with a work related back injury. However, unlike suitable duties at work, there are no effective measures that prevent this type of activity being undertaken by an employee at home. Ai Group strongly supports any measures, which encourage, after a short period of rest as prescribed by the appropriate medical practitioner, that return the employee to activities at work that will assist in the rehabilitation of the injury.

4.2.2 Over Servicing

As mentioned to previously in this submission we are concerned there are not adequate checks and balances on over servicing. A third party is funding the patient. There is no financial incentive for the patient to rehabilitate to a point where they either reduce or no longer require treatment. More consideration is required over how this problem can be overcome.

4.3 Conclusions and Recommendations

It is clear in Ai Group there are multiple factors that affect claims profiles both from industry to industry and within industries and the role of rehabilitation providers in the system. Ai Group recommends the following items for consideration by the committee in this area:

- Increased Linkage to Work Based Outcomes Rather than General Patient Welfare

  Outcomes in workers compensation need to be linked to return to work outcomes rather than general improvements in the injured workers welfare.

- Recoverable Excess

  In order to prevent over-servicing and providing incentive for return to work employees could pay a proportion of the costs for medical treatment and rehabilitation services. This proportion would recoverable when the employee achieves a return to work on pre injury duties or on conclusion of the claim where the employee is accepted as permanently unfit for their pre injury duties.

- Increased Regulation and Training of Providers

  Ai Group has always been concerned over the futility of arguments over medical evidence in workers compensation matters. Increased regulation of both medical and rehabilitation providers needs to be considered. Put simply injured workers should be required to consult with appropriately trained and certified medical and rehabilitation providers as a condition of an employee receiving benefits from the system.

- Education/ Public Awareness

  Assistance with employer awareness. Education programs via the relevant employer and industry bodies are important in assisting companies regain some sense of control

of their workers compensation. Ai Group's participation in the NSW Premium Discount Scheme has been a positive example of how education combined with incentive can assist employers in getting better Workers Compensation outcomes. Assistance from government in education and awareness is greatly valued by industry in Workers Compensation.

Section 5 - A Unified Commonwealth System

5.1 Benchmarks

Ai Group currently does not have a policy to support a single unified workers compensation scheme. If such a scheme were to be considered we could only support it represents an improvement for the overwhelming majority of our members. Ai Group is wary of any new system that recreates the worst elements and costs of existing systems.

Elements any new system would have to consider would be:

- Benefit structures that reflect average injury recovery periods of 12 months and less;
- Assessment of injury recovery profile for service providers against benchmarks.