

Chapter 2

Background to the inquiry

2.1 This chapter sets out the background to the inquiry, including:

- the history of concerns being raised in the Senate about Australia Post's injury management program; and
- the various laws, regulations, contracts and policies governing the treatment of ill and injured Australia Post workers.

Concerns about Australia Post's injury management program

2.2 Concerns regarding Australia Post's treatment of ill and injured workers have been raised in the Senate on a number of occasions since 2000.¹ In June 2000, Senator Conroy drew the Senate's attention to the relationship between the manager of Australia Post's Injury Prevention Unit, Mr Anton Grodeck, and the Director of InjuryNET, Dr David Milecki, stating that '...Mr Anton Grodeck has placed a close business colleague and friend in charge of maintaining the network of facility nominated doctors'.²

2.3 In June 2001 Senator Conroy raised further concerns about the protection of patient privacy by facility nominated doctors (FNDs), engaged by InjuryNET under its contract with Australia Post.³

2.4 In a speech on 28 August 2002, Senator Steve Hutchins voiced concerns about elements of Australia Post's management of ill and injured employees, including requiring employees to attend FNDs. Senator Hutchins expressed particular concern about the provision of employee records, including medical records, by Australia Post to FNDs.⁴

2.5 The issue has also been raised at Senate Estimates on a number of occasions since May 2005, with Australia Post having provided the Senate with a range of

1 Senator Stephen Conroy, *Senate Hansard*, 6 June 2000, p. 14704.

2 Senator Stephen Conroy, *Senate Hansard*, 6 June 2000, p. 14704.

3 Senator Stephen Conroy, *Senate Hansard*, 26 June 2001, pp 25151–25152.

4 Senator Steve Hutchins, *Senate Hansard*, 28 August 2002, pp 3882–3883.

information about FNDs and their injury management program.⁵ For example, over the past two years, Senator Wortley has pursued the issue on a number of occasions, in particular, questioning Australia Post at estimates about its FND policies.⁶

2.6 The ongoing nature of these concerns with Australia Post's treatment of ill and injured workers has resulted in the referral of the issue to this committee for inquiry and report. The inquiry examined a range of matters related to Australia Post's injury management programs and arrangements, and received over forty submissions from individuals either currently or previously employed by Australia Post with complaints about Australia Post's injury management programs.⁷

Regulatory framework governing Australia Post's workplace safety

2.7 Australia Post is a government business enterprise, wholly owned by the Commonwealth Government. Australia Post is a body corporate established initially by the *Postal Services Act 1975*, and now under section 12 of the *Australian Postal Corporation Act 1989*.⁸

2.8 Australia Post is one of the largest employers in Australia, currently employing approximately 35 000 people in 1700 facilities across Australia.⁹

5 Budget Estimates, May 2005, answers to questions on notice, available: www.aph.gov.au/Senate/committee/ecita_ctte/estimates/bud_0506/cita/index.htm; Additional Estimates, February 2006, answers to questions on notice, available: www.aph.gov.au/Senate/committee/ecita_ctte/estimates/add_0506/cita/index.htm; Budget Estimates, May 2006, answers to questions on notice, available: www.aph.gov.au/Senate/committee/ecita_ctte/estimates/bud_0607/cita/index.htm; Supplementary Estimates, October 2006, answers to questions on notice, available: www.aph.gov.au/Senate/committee/ecita_ctte/estimates/sup_0607/cita/index.htm; Additional Estimates, February 2007, answers to questions on notice, available: www.aph.gov.au/Senate/committee/ecita_ctte/estimates/add_0607/cita/index.htm; Additional Estimates, February 2008, answers to questions on notice, available: www.aph.gov.au/Senate/committee/eca_ctte/estimates/add_0708/bcde/index.htm; Budget Estimates, May 2008, answers to questions on notice, available: www.aph.gov.au/Senate/committee/eca_ctte/estimates/bud_0809/bcde/index.htm; Budget Estimates, May 2009, answers to questions on notice, available: www.aph.gov.au/Senate/committee/eca_ctte/estimates/bud_0910/bcde/index.htm; Supplementary Estimates, October 2009, answer to questions on notice, available: www.aph.gov.au/Senate/committee/eca_ctte/estimates/supp_0910/bcde/index.htm.

6 Senator Wortley, *Budget Estimates Hansard*, Senate Environment, Communications and the Arts Legislation Committee, 25 May 2009, p. 46; Senator Wortley, *Supplementary Budget Estimates Hansard*, Senate Environment Communications and the Arts Legislation Committee, 19 October 2009, p. 29.

7 Including those attached to the submission of the Communications Workers Union Postal and Telecommunications Victorian Branch.

8 Australia Post, *Submission 6*, p. 7.

9 Australia Post, *Submission 6*, p. 7.

2.9 Commonwealth employers, including government business enterprises such as Australia Post, must provide a safe workplace for employees as well as a compensation and rehabilitation scheme for employees who sustain work-related injury or illness. The *Occupational Health and Safety Act 1991* (OHS Act) regulates safety in the workplace whilst the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act) provides the legislative basis for the Commonwealth workers' compensation scheme (Comcare scheme).¹⁰

Role of Comcare

2.10 Comcare is a Commonwealth government agency 'that works in partnership with employees and employers to reduce the human and financial costs of workplace injuries and disease in the Commonwealth jurisdiction'.¹¹ Comcare also assists the Safety, Rehabilitation and Compensation Commission (SRCC) 'in the proper performance of its functions and regulatory powers'.¹² The Comcare scheme provides workers' compensation and occupational health and safety arrangements for Australian Government employees and for the employees of certain private corporations.¹³

2.11 In conjunction with the SRCC, Comcare regulates occupational health and safety under the OHS Act, and rehabilitation and compensation under the SRC Act.¹⁴

2.12 Part VIII of the SRC Act gives the Commonwealth the power to grant licences to Commonwealth authorities or eligible corporations to accept liability for and/or manage certain claims under the Act.¹⁵ Authorities and companies that are granted such licences are referred to as 'self-insurers'. Each licensee is both a 'determining authority' and a 'rehabilitation authority' for the purposes of the SRC Act.¹⁶ A determining authority is responsible for processing and managing workers' compensation claims under the Act. A rehabilitation authority has the authority to

10 J. Tomaras, Safety, Rehabilitation and Compensation Amendment Bill 2009, Bills Digest No. 67, Parliamentary Library, Canberra, 2009–10 and Comcare, *Introduction to the OHS regulatory framework in the Commonwealth jurisdiction*, available: www.comcare.gov.au/safety_and_prevention/managing_OHS/ohs_regulatory_framework/introduction_to_the_ohs_regulatory_framework_in_the_commonwealth_jurisdiction (accessed 4 January 2010).

11 Comcare, *About us*, available: www.comcare.gov.au/about_us (accessed 3 December 2009).

12 Comcare, *Submission 13*, p. 3.

13 Department of Education, Employment and Workplace Relations, *Comcare Review*, available: www.deewr.gov.au/WorkplaceRelations/ComcareReview/Pages/default.aspx (accessed 4 December 2009).

14 Comcare, *About us*, available: www.comcare.gov.au/about_us (accessed 3 December 2009).

15 *Safety, Rehabilitation and Compensation Act 1988*, s. 98A.

16 Comcare, *Submission 13*, p. 3.

make decisions under the rehabilitation provisions of the Act.¹⁷ Self-insurers thereby manage their own workers' compensation and rehabilitation responsibilities.

2.13 Self-insurers may appoint a third party (identified in their licence) to manage claims on their behalf, however, self-insurers must demonstrate that claims, including those managed by third parties, 'will be managed in accordance with standards set by the SRCC for the management of claims'.¹⁸

2.14 Australia Post holds a self-insurance licence granted on 30 June 1992,¹⁹ its current licence commenced on 1 July 2006 and expires on 30 June 2010.²⁰ Australia Post has applied for a renewal of its licence and the committee understands that this licence extension is likely to be considered at the June 2010 meeting of the SRCC.

Monitoring compliance with workplace safety laws

2.15 Licensees' compliance with the conditions of their licence and with the SRC Act is monitored by the SRCC.²¹ The SRCC also measures licensees' performance against statutory functions including the payment of compensation accurately and quickly; determining claims accurately and quickly; and ensuring there is equity of outcomes resulting from administrative practices and procedures.²² The SRCC evaluates licence compliance through its annual Licensee Improvement Program (LIP). The LIP involves evaluation of a licensee with respect to:

- compliance with prudential and financial conditions of licence;
- reporting against SRCC key performance indicators ('Commission Indicators') such as number of death claims; new claims processing time, and number of claims with return to work plans;
- audit outcomes in prevention, rehabilitation, claims management and data integrity;
- results of OHS investigations, and
- provision of an annual performance report by each licensee which provides an overview of key activities undertaken and outcomes achieved by the licensee during the preceding 12 months, and objectives for the upcoming 12 month period.²³

17 Comcare, *Submission 13*, p. 3.

18 *Safety, Rehabilitation and Compensation Act 1988*, s. 104(b).

19 Safety, Rehabilitation and Compensation Commission, *Current licensees*, available: www.srcc.gov.au/self_insurance/current_licensees (accessed 3 December 2009).

20 Australia Post, *Submission 6*, p. 7.

21 Comcare, *Submission 13*, p. 3.

22 Comcare, *Submission 13*, p. 3; *Safety, Rehabilitation and Compensation Act 1988*, s. 108E.

23 Comcare, *Submission 13*, p. 4 and Attachment A.

2.16 The SRCC uses a 'tier model' to assess licence compliance results and performance outcomes.²⁴ The tier model is used to identify the level of regulatory oversight to be applied to a licensee in the following year via assignment to a tier status in each of three areas: prevention, rehabilitation and claims management.²⁵ A licensee is assigned a tier status in each area based on their ability to meet the SRCC's requirements in each area and effectively self-manage that function.²⁶

2.17 Licensees with a function(s) in Tier 1 are subject to external audit by Comcare (on behalf of the SRCC). Second tier licensees are subject to a desktop review of their own audits by Comcare. Third tier licensees are required to provide executive summaries of their own audits to Comcare. All licensees are subject to an independent external audit in the final year of their licence irrespective of their tier status.²⁷

2.18 Australia Post currently holds Tier 3 status in prevention, and has done for the past three reporting periods.²⁸ With the exception of fatalities, Australia Post achieved or bettered all of its Commission Indicator target ranges for prevention in 2008–09.²⁹

2.19 Australia Post has had Tier 3 status for rehabilitation having moved from Tier 2 in 2006–07.³⁰ Similarly for claims management, Australia Post has had Tier 3 status since moving from Tier 2 in 2006–07.³¹

Australia Post's contract with InjuryNET

2.20 Australia Post has contracted InjuryNET to 'examine and treat Australia Post employees in Victoria, Tasmania New South Wales, the Australian Capital Territory, Queensland and Western Australia'.³² South Australia and the Northern Territory have specific local arrangements for medical consultancy services and are not part of the InjuryNET network.³³

2.21 The current arrangement between Australia Post and InjuryNET commenced on 18 May 2007 following a 'national competitive tender process'.³⁴ Both the Victoria

24 Comcare, *Submission 13*, p. 4.

25 Comcare, *Submission 13*, p. 4.

26 Comcare, *Submission 13*, p. 4.

27 Comcare, *Submission 13*, p. 4.

28 Comcare, *Submission 13*, p. 4.

29 Comcare, *Submission 13*, p. 4.

30 Comcare, *Submission 13*, p. 5.

31 Comcare, *Submission 13*, p. 5.

32 Australia Post, *Submission 6*, p. 28.

33 Australia Post, *Submission 6*, p. 28.

34 Australia Post, *Submission 6*, p. 28.

and NSW Australia Post administrations have been contracted with InjuryNET prior to May 2007.³⁵

2.22 InjuryNET is 'a practitioner network organisation' linking businesses with medical professionals, such as doctors, physiotherapists and psychologists, in the field of occupational injury management.³⁶ Its two directors are Dr David Milecki and Ms Anne Cherry.³⁷ InjuryNET was registered as a proprietary company limited by shares on 1 July 2003.³⁸

2.23 InjuryNET offers a number of services, including injury management for treatment of work-related injuries or illness; pre-placement medical assessments; fitness for duty assessments, and health maintenance assessments.³⁹ In addition, InjuryNET also provides assistance to clients 'to design injury management or absence management programs, using the Practitioner Network as a key "tool".⁴⁰

2.24 Australia Post pays InjuryNET a fixed consultancy fee valued at \$1.5 million over the three year term of the agreement for the provision of the following services:

- (a) Ad-hoc consultancy services including training of medical professionals (for example general practitioners and physiotherapists), and
- (b) Identification, development, implementation and monitoring of a treatment network of medical professionals who perform:
 - (i) Pre-placement medical examinations;
 - (ii) General fitness-for-duty examinations, and
 - (iii) Treatment to employees where appropriate.⁴¹

2.25 The fixed fee paid to InjuryNET by Australia Post is not linked to lost time injury frequency rates (LTIFRs).⁴²

35 See information provided by Australia Post, answer to question on notice (question 12), Additional estimates hearings 13 and 14 February 2006. That answer indicates that the Victorian administration of Australia Post engaged Dr Milecki in 1998, and NSW Australia Post entered into a contract along similar lines to the now national contract with InjuryNET in 2005.

36 InjuryNET, available: www.injurynet.com.au/html/home.cfm and www.injurynet.com.au/html/main.cfm (accessed 2 December 2009).

37 InjuryNET, *About us*, available: www.injurynet.com.au/html/main.cfm (accessed 3 December 2009).

38 ASIC, *Current and Historical Extract ABN 37105352501*, 13 January 2010, p. 1.

39 InjuryNET, *Services*, available: www.injurynet.com.au/html/services.cfm (accessed 3 December 2009).

40 InjuryNET, *Services*, available: www.injurynet.com.au/html/services.cfm (accessed 3 December 2009).

41 Australia Post, *Submission 6*, p. 28.

42 Australia Post, *Submission 6*, p. 28.

2.26 Medical professionals that undertake work for Australia Post through InjuryNET are provided with training comprising both theory and practical components, including:

- Australia Post's structure, statistics and best practice rehabilitation;
- Introduction to InjuryNET;
- Australia Post's injury management program;
- Treatment process, consultation, evidence base for early intervention and completion of medical certificates;
- Familiarisation with Australia Post work duties and facilities (commercial outlet, mail sorting / delivery centre and transport centre); and
- Workplace tours and discussions (equipment and processes, interaction between worker and work environment, and possible alternative duties for injured employees).⁴³

2.27 The current contract with InjuryNET expires on 17 May 2010.⁴⁴

43 Australia Post, answer to question on notice (question 56), Supplementary Budget Estimates hearings 19 and 20 October 2009.

44 Australia Post, *Submission 6*, p. 28.

