

Chapter 5

Key issues:

Return to work and appropriate duties

5.1 Central to the unions' criticisms of Australia Post's injury management program is the claim that Australia Post employees are routinely returned to work before they are physically ready, and in inappropriate duties, following an injury.¹

5.2 The claim raises two distinct, but interrelated issues: whether injured employees are being forced to return to work before they are physically ready; and whether on their return to work, injured employees are being required to undertake duties that are both appropriate to their physical capacity and satisfying. The two issues are interrelated, with injured employees claiming that they are either being returned to work before they are physically capable and being given routine or unnecessary work to perform, or that they are being required to work at a level beyond their physical capacity. As they tend to arise together, the issues of return to work and appropriate duties are discussed together throughout this chapter.

5.3 For example, the committee heard evidence from Mr Trevor Crawford, a member of the CEPU, that he suffered an injury at work which resulted in a brain haemorrhage and a broken rib. Mr Crawford told the committee that:

Initially, they wanted me to go back [to work] for four hours a day. I was dizzy and I was quite ill...When I went back to work on the first day for two hours, I was extremely ill the next day. I was very sick and I could not come back to work.²

5.4 Mr Crawford told the committee that he returned to the FND:

...who then directed me to go back to work for 45 minutes a day. How useful can you be to an organisation when you get sent back to work for 45 minutes a day? I was not allowed to drive. I was supposed to take a 15-minute break in the middle of those 45 minutes. I was not allowed to stand while I was at work...

I was doing a duty which I was totally unfamiliar with. It was a duty that was of no use to anybody because I probably made so many mistakes that

1 See for example CEPU (Communications Division), *Submission 10*, p. 12 and CWU, *Submission 9*, case studies at attachments 1 to 26.

2 Mr Trevor Crawford, Member, Postal and Telecommunications Branch, Victoria, Communications Division, CEPU, *Committee Hansard*, 12 February 2010, p. 62.

someone else would have had to basically redo it anyway. They just wanted you to be seen to be at work...³

5.5 The unions, as well as a number of Australia Post employees, submitted that there is a range of reasons for the premature return of Australia Post workers to work. Mr Ed Husic, Secretary of the Communications Division, CEPU explained that:

The way that the system works is that it loads up all this pressure to go to an FND to be put back to work quickly, even if the restrictions are so great that in some cases, as we would have shown, you have weight restrictions where you cannot lift anything over a kilo. So I do not know what you can feasible lift through the day, especially if you are a driver, but the attitude is: 'You should just get back to work.'⁴

5.6 According to the unions and Australia Post workers, this pressure comes from a number of directions, principally:

- the system of bonuses paid to Australia Post managers to reduce Lost Time Injuries; and
- the relationship between Australia Post and InjuryNET.

5.7 However, Australia Post, as well as a number of Australian and international experts on workplace injury management, gave evidence that returning employees to work as early as possible on appropriate duties is in the best interests of injured workers.

Early return to work as best practice

5.8 Throughout the course of the inquiry, it became evident to the committee that the early return to work of injured employees is a key objective of the EIP. The committee heard evidence from a range of experienced medical practitioners, with expertise in workplace injury rehabilitation, about the differing views amongst doctors and current research regarding best practice in workplace injury management.

5.9 The committee heard that many doctors simply issue medical certificates stating that an injured employee requires time off work, when it is not medically necessary for the employee to take leave. For example, Dr Wyatt told the committee that:

[General practitioners] are unfamiliar with what happens in the workplace, and writing a certificate is something that often gets done without much thought to the longer-term consequences.⁵

3 Mr Trevor Crawford, Member, Postal and Telecommunications Branch, Victoria, Communications Division, CEPU, *Committee Hansard*, 12 February 2010, p. 62.

4 Mr Ed Husic, Secretary, Communications Division, CEPU, *Committee Hansard*, 12 February 2010, p. 63.

5 Dr Mary Wyatt, Chair, Policy and Advocacy Committee, Australasian Faculty of Occupational and Environmental Physicians, *Committee Hansard*, 12 February 2010, p. 71.

5.10 Similarly, Dr Milecki stated that:

General Practitioners are very good at making diagnoses and providing treatment to patients but, unfortunately, they have not been trained fully—or adequately, as far as I am concerned—in managing the return to work. The real challenge in workers compensation is assisting people back to work, because, without that, the recovery is hampered and the disability—especially unnecessary disability—is lengthened.⁶

5.11 This view was highlighted in the report of the American College of Occupational & Environmental Medicine, discussed in the submission by Dr Jennifer Christian from the 60 Summits Project, entitled *Preventing Needless Work Disability by Helping People Stay Employed*. The report found that:

[A] large fraction of today's absence from work attributed to medical conditions (work disability) is not actually medically-required in industrialized countries such as Australia, Canada and the U.S. Rather, it is the result of the poor functioning of the process that determines whether an injured, ill, or aging person will stay at work or return to work. Importantly, the likelihood of an optimal eventual outcome is falling steadily with every additional day away from work.⁷

5.12 The argument that medically unnecessary time off work can have detrimental impacts on a patient's physical and mental health was raised by a number of medical practitioners with specialisations in the injury management area. For example, Dr Wyatt, stated that:

...being out of work in the long term is actually more dangerous to your health than working in any dangerous industry like working on an oil rig or working in forestry.⁸

5.13 Dr Wyatt further explained that:

Rehabilitation involves getting people back into the work and re-integrating them and really getting them active. Sitting at home in front of the telly is not productive in terms of the person's rehabilitation...⁹

5.14 Dr Milecki told the committee that his experience corroborates that evidence:

In my 25 years of operating as a doctor and seeing a lot of occupational patients I may have seen the very occasional case, and I am talking vanishingly rare, where by keeping somebody at work their condition has worsened, that they are harmed.¹⁰

6 Dr David Milecki, Director, InjuryNET, *Committee Hansard*, 12 February 2010, p. 26.

7 60 Summits Project, *Submission 1*, p. 1.

8 Dr Mary Wyatt, Chair, Policy and Advocacy Committee, Australasian Faculty of Occupational and Environmental Physicians, *Committee Hansard*, 12 February 2010, p. 70.

9 Dr Mary Wyatt, Chair, Policy and Advocacy Committee, Australasian Faculty of Occupational and Environmental Physicians, *Committee Hansard*, 12 February 2010, p. 71.

10 Dr David Milecki, Director, InjuryNET, *Committee Hansard*, 12 February 2010, p. 29.

5.15 InjuryNET Program Manager, Mr Papagoras, explained that InjuryNET's approach is designed to put into practice the evidence that reducing time off work benefits an injured worker's recovery. He stated that:

The systems designed by InjuryNET aim to minimise time off work that is not medically necessary and to encourage employer support.¹¹

5.16 In its evidence to the committee, Australia Post also highlighted that one of the key features of its EIP is to assist injured workers to return to work 'at the earliest possibility'¹² in order to put medical evidence of best-practice into effect. Dr Barbour, the Manager of the Corporate Injury Prevention and Management Unit at Australia Post told the committee that:

[Australia Post] commenced [the EIP] in the mid-1990s, solely for the purpose of knowing that the employer needs to work with its employees to make sure that, if there is a reported injury, that the employee is assisted to get the earliest medical treatment and, if at all feasible, to return to work at the earliest opportunity.¹³

5.17 Comcare's publication entitled *Rehabilitation: Managing Return to Work*¹⁴ notes the medical evidence suggesting the benefits of early return to work, but also highlights the importance of appropriate duties being available for injured workers:

The provision of suitable duties emerges as a significant factor in successful return to work outcomes. Comcare/Campbell's research found that injured employees, who considered they were given suitable duties upon return to work, were more likely to report a durable return to work. Suitable duties were perceived as tasks that respected the limits of their incapacity and were compatible with their chosen work environment and skill level. Injured employees who were given considerably different duties, or a position below their former position, upon return to work did not believe they had been given suitable duties.¹⁵

11 Mr Harry Papagoras, Program Manager, InjuryNET, *Committee Hansard*, 12 February 2010, p. 24.

12 Dr Michael Barbour, Manager, Corporate Injury Prevention and Management Unit, Australia Post, *Committee Hansard*, 12 February 2010, p. 11.

13 Dr Michael Barbour, Manager, Corporate Injury Prevention and Management Unit, Australia Post, *Committee Hansard*, 12 February 2010, p. 11.

14 Comcare, *Rehabilitation: Managing Return to Work*, 2001, available: www.comcare.gov.au/forms_and_publications/publications/injury_management/?a=42680 (accessed 9 February 2010).

15 Comcare, *Rehabilitation: Managing Return to Work*, 2001, available: www.comcare.gov.au/forms_and_publications/publications/injury_management/?a=42680 (accessed 9 February 2010).

5.18 With respect to appropriate duties being available on an injured worker's return, Australia Post submitted that it 'has processes in place to determine the appropriateness of duties assigned to injured workers',¹⁶ including that:

all activity relating to return to work is based on medical evidence. Where an employee's capacity to work is affected by an injury, medical evidence is required to ensure the duties performed in a return to work will not exacerbate that injury...¹⁷

5.19 Furthermore, Australia Post submitted:

Australia Post's rehabilitation processes (including return to work processes for injured workers on modified duties) are audited in accordance with Australia Post's licence requirements – such audits have established that Australia Post's systems are fundamentally sound and accord with Comcare's best practice recommendations on injury management.¹⁸

5.20 While Australia Post claims that its EIP is designed to implement a best practice approach to injury management, it is clear that in some instances injured workers are not receiving a best practice approach. This is evidenced by Mr Crawford's story of being forced to return to work to do a job that was of no benefit, and the many other similar stories submitted to the committee.

5.21 Dr Wyatt explained that, in her opinion, the gap between Australia Post's intentions and the experiences of injured workers arises from the lack of involvement of injured workers in their rehabilitation process. Dr Wyatt commented that:

Without knowing the details of Mr Crawford's case, it really sounded like a perfect example. It is not what happens so often; it is how it is done...If Mr Crawford felt part of the decision-making process and was coming back to work doing something out of his normal territory, something he could cope with, and he felt he could talk to his supervisor if there were a problem, who said, 'Hey Joe, how are you going?' and his workmates were happy to see him, one could see it as a very important and productive part of his rehabilitation. If, as he describes, he has the sense 'I have to, I'm unproductive, this is part of statistics and it's not me,' then the context changes completely.¹⁹

16 Australia Post, *Submission 6*, p. 24.

17 Australia Post, *Submission 6*, p. 24.

18 Australia Post, *Submission 6*, p. 24.

19 Dr Mary Wyatt, Chair, Policy and Advocacy Committee, Australasian Faculty of Occupational and Environmental Physicians, *Committee Hansard*, 12 February 2010, p. 71.

5.22 Dr Wyatt emphasised that:

A person should feel some sense of control and trust, that they have a voice and there is a sensible ambience in the workplace.²⁰

5.23 Dr Milecki agreed with Dr Wyatt's assessment and surmised that the issues raised during this inquiry are not a result of Australia Post's EIP being faulty, but are a result of a poor relationship between the various parties involved: Australia Post; employees; and unions. Dr Milecki said:

There seems to be quite a lot of union involvement and that has more to do with Australia Post's relationships rather than the program itself.²¹

Lost Time Injury management bonuses

5.24 The unions argued that one of Australia Post's main reasons for returning injured employees to work in inappropriate duties is to reduce the lost time injury (LTI) frequency rate,²² which Australia Post has acknowledged can be linked to a manager's performance appraisal and bonus.²³

5.25 Mr Ed Husic, the Secretary of the Communications Division of the CEPU explained:

Put simply, Australia Post wants to cut its lost time injury stats. It gives its managers an incentive to cut these stats through financial reward. It gives a lucrative, secret contract to InjuryNET, a company that, with almost a nod and a wink, says it possesses 'an awareness of the financial impact of medical decisions on organisations and injured employees'.

In return InjuryNET gives Post a network of company doctors referred to as facility nominated doctors that more than nine times out of 10 send workers back to work.²⁴

5.26 Similarly, the Victorian Postal and Telecommunications branch of the CWU submitted that:

These company doctors are under pressure to return injured workers to the workplace straight away even if it is not safe to do so. The union has many case-studies of employees with serious injuries including broken bones being returned to work the next day.²⁵

20 Dr Mary Wyatt, Chair, Policy and Advocacy Committee, Australasian Faculty of Occupational and Environmental Physicians, *Committee Hansard*, 12 February 2010, p. 70.

21 Dr David Milecki, Director, InjuryNET, *Committee Hansard*, 12 February 2010, p. 38.

22 CEPU (Communications Division), *Submission 10*, pp 14–17; CWU, *Submission 9*, p. 2.

23 Australia Post, *Submission 6*, p. 26.

24 Mr Ed Husic, Secretary, Communications Division, CEPU, *Committee Hansard*, 12 February 2010, p. 56.

25 CWU, *Submission 9*, p. 2.

5.27 The case study of Australia Post worker, Mr Sean O'Keefe, is an example of the alleged behaviour of a number of Australia Post managers.²⁶ Mr O'Keefe was bitten by a dog on his postal delivery round, and was accompanied to an FND appointment that day by his manager. In learning that the FND considered Mr O'Keefe unfit to return to work immediately, the manager told the FND that there were suitable duties for Mr O'Keefe to perform, and that he should be required to work the next day.

5.28 The committee also received evidence about supervisors being so reluctant to accept LTIs that they insist an employee appear at work simply to sign in, despite the fact that the supervisor acknowledges that the employee cannot do any meaningful work. For example, the submission of Mr Noel Rea attached to the CWU's submission states that:

I felt in so much pain that I couldn't come to work. My manager...insisted that I come to work, he told me that all I had to do was 'to come in, sign on and have a cup of coffee and then I would be allowed to go home.'²⁷

5.29 The unions argued that this evidence indicates that managers' first concern is with avoiding LTIs rather than rehabilitating employees. The CWU also contended that the incentives for managers to avoid their staff suffering LTIs have resulted in managers finding 'loopholes' to avoid liability for workplace injuries.²⁸

5.30 A number of medical professionals submitted that they disagree with this general sentiment amongst Australia Post employees, and stated that their experiences of Australia Post's early intervention program had been positive.²⁹

5.31 Mr McDonald, the Group Manager for Corporate Human Resources at Australia Post, defended the use of LTIs as a performance measure for managers stating that it 'is an established key performance indicator on safety performance'.³⁰ Mr McDonald added:

It generally becomes a very small part of the [manager's] overall bonus. In most cases it would be around five percent of the total bonus payable.³¹

5.32 Dr Barbour, the Manager of the Corporate Injury Prevention and Management Unit at Australia Post quantified this as a maximum of around \$375 per annum for a

26 CWU, *Submission 9*, attachment 18.

27 See for example CWU, *Submission 9*, attachment 23.

28 CWU, *Submission 9*, p. 3.

29 Name Withheld, *Submission 2*, p. 1; Dr David Allen, *Submission 3*, p. 1.

30 Mr Rodney McDonald, Group Manager, Corporate Human Resources, Australia Post, *Committee Hansard*, 12 February 2010, p. 17.

31 Mr Rodney McDonald, Group Manager, Corporate Human Resources, Australia Post, *Committee Hansard*, 12 February 2010, p. 17.

manager on a salary of \$70 000.³² Dr Barbour also expressed the view that it is entirely appropriate for managers to be 'held accountable for their safety performance'.³³

5.33 Dr Mary Wyatt, Chair of the Policy and Advocacy Committee, Australasian Faculty of Occupational and Environmental Physicians to some extent agreed with this position, arguing that it is not inherently negative for employers to be concerned about reducing the cost of injury management. As discussed above, Dr Wyatt explained that it is actually beneficial to return employees to work as early as possible for their own rehabilitation, and so an employer's interest in returning a person to work is not a negative motivation.³⁴

5.34 The Director of InjuryNET, Dr David Milecki commented that while he does not consider Australia Post is overly focussed on reducing LTIs, LTIs are not the most modern way of measuring an injury management program. He stated:

People focus on LTIs, but clinically the modern way to go about it is no longer to talk about return to work but to talk about staying at work. If a person stays at work, that is going to be far better for them, their recovery, their injury and their future, so focussing on keeping people at work is a good thing.³⁵

5.35 Dr Wyatt agreed with Dr Milecki on this point:

I sit in the camp of thinking that lost time injury frequency is a disaster. There are obviously reasonable measures: lost time helps in terms of safety statistics. But like so many things—key performance indicators—it is now gaming. I think the best value of LTIs is a day down the pub listening to lost time injury stories about how they are prevented. You can try to reduce LTIs by working with people but often what happens is pressure, so it does not become about the worker, it becomes about the statistic. Workers get that; they know what is happening.³⁶

5.36 Instead of LTIs, Dr Wyatt suggested that a better practice would be one where:

Supervisors were accountable for return to work and they actually had to keep a file. On that file were notes et cetera and there was a survey done for the workers—day 1, day 7, day 28. It was one page, four questions—are you happy; are you satisfied with your medical care; are you satisfied with

32 Dr Michael Barbour, Manager, Corporate Injury Prevention and Management Unit, Australia Post, *Committee Hansard*, 12 February 2010, p. 17.

33 Dr Michael Barbour, Manager, Corporate Injury Prevention and Management Unit, Australia Post, *Committee Hansard*, 12 February 2010, p. 17.

34 Dr Mary Wyatt, Chair, Policy and Advocacy Committee, Australasian Faculty of Occupational and Environmental Physicians, *Committee Hansard*, 12 February 2010, p. 76.

35 Dr David Milecki, Director, InjuryNET, *Committee Hansard*, 12 February 2010, p. 41.

36 Dr Mary Wyatt, Chair, Policy and Advocacy Committee, Australasian Faculty of Occupational and Environmental Physicians, *Committee Hansard*, 12 February 2010, p. 75.

the return to work?—et cetera, and supervisors filled out a similar questionnaire.³⁷

5.37 Dr Wyatt explained that this type of survey would be a much more comprehensive measure of whether return to work and injury management programs were successful.³⁸

5.38 While the committee was convinced by the evidence of Dr Wyatt and Dr Milecki on this issue—that it is not inherently negative to ensure that managers' have an incentive to encourage employees back to work as soon as practicable—the issue has ultimately been resolved by the interested parties. In their joint submission to the committee, Australia Post and the CEPU advised that on 19 March 2010, Australia Post signed a Memorandum of Understanding (MOU) with the CEPU and the Community and Public Sector Union in which Australia Post agreed that it:

...will not include Lost Time Injury Frequency Rate targets as a component of bonus payments for Managers. Managers will continue to have obligations under their performance management agreements that require them to observe and apply occupational health and safety policies and procedures. LTIFR targets will, however continue to be a Corporate KPI.³⁹

5.39 The committee commends the CEPU, the Community and Public Sector Union and Australia Post for reaching this, and other agreements in the MOU, and considers it a positive step towards achieving an injury management process that meets the needs of both employees and managers.

The relationship between Australia Post and InjuryNET

5.40 A key question raised during the inquiry was whether Australia Post was influencing the content of FND assessments in order to obtain medical evidence which suited its purposes of returning employees to work prematurely and ultimately denying compensation.

5.41 The unions and many of the Australia Post employees who gave evidence argued that Australia Post routinely prefers the opinions of InjuryNet FNDs over those of other doctors, both in determining compensation claims, as well as in the injury management process.⁴⁰

5.42 The CEPU's submission contains evidence of Australia Post's preference for the opinions of FNDs over non-FNDs in the form of letters from Australia Post to

37 Dr Mary Wyatt, Chair, Policy and Advocacy Committee, Australasian Faculty of Occupational and Environmental Physicians, *Committee Hansard*, 12 February 2010, p. 75.

38 Dr Mary Wyatt, Chair, Policy and Advocacy Committee, Australasian Faculty of Occupational and Environmental Physicians, *Committee Hansard*, 12 February 2010, p. 75.

39 Australia Post and CEPU, *Submission 37*, attachment 1.

40 CWU, *Submission 9*, see for example attachment 15.

injured workers⁴¹ which is corroborated by evidence the committee received from employees and other union branches.⁴²

5.43 Similarly, the CWU submitted that, although some FNDs are professional and supportive, others 'are notorious for doing whatever Australia Post management request'.⁴³

5.44 Dr Con Costa, who appeared in a private capacity, argued that the preference of an FND over a treating doctor is inappropriate because:

[Patients] will be more open with the treating doctor. I can imagine a situation where someone whose English is not very good is sent to the company doctor. In my experience, sometimes they do not mind—that is, it is convenient; it is not a major thing—but other times, when there is a significant injury and when they do not perceive that they are receiving the right treatment, the situation breaks down and it is not a therapeutic relationship. The doctor's role becomes that of a policeman, if you like, it is not the ideal way to handle people's health situations.⁴⁴

5.45 Similarly, the CEPU submitted that:

We contend that treating GPs have a far better understanding of their patient's medical history and capabilities. These GPs have equal and requisite qualifications to their FND counterparts. We further contend that no reasonable person could accept that a one hour training/familiarisation course better equips FNDs to understand Post's systems and processes than compared with a "non-FND trained" GP.⁴⁵

5.46 However, Dr Wyatt argued that there are advantages to the experience of both family doctors and FNDs:

A family doctor often has a better sense of the person. Somebody who works in work health problems often have a better sense of the workplace. I do not think one can say one is better in principle than the other; it is how it is managed and it is how the doctor deals with it. I do not think one can generalise.⁴⁶

5.47 Australia Post denied that the opinion of FNDs is routinely preferred over that of other doctors. Ms Walsh, Australia Post's Manager of Employee Relations told the committee that:

41 CEPU (Communications Division), *Submission 10*, p. 20.

42 See for example CWU, *Submission 9*, attachments 2, 4, 10, 12, 14, 15 and 20; and Name Withheld, *Submission 17*.

43 CWU, *Submission 9*, p. 5.

44 Dr Con Costa, private capacity, *Committee Hansard*, 12 February 2010, p. 53.

45 CEPU (Communications Division), *Submission 10*, p. 8.

46 Dr Mary Wyatt, Chair, Policy and Advocacy Committee, Australasian Faculty of Occupational and Environmental Physicians, *Committee Hansard*, 12 February 2010, p. 74.

There is no policy that says an FND's diagnosis or position in relation to a worker's injury will be preferred over a GP.⁴⁷

5.48 However, Australia Post and InjuryNET also emphasised in their submissions, that it is the training that FNDs receive which makes them familiar with 'Australia Post's operations'.⁴⁸ Mr McDonald, the Group Manager of Corporate Human Services at Australia Post stated:

The difference [between FNDs and other doctors] is that [FNDs] are given an awareness of the Australia Post working areas, so they are able to make judgments when they do an assessment of what that person can or cannot do or of whether there might be an opportunity for the person to do work which is safe and helps the person's rehabilitation.⁴⁹

5.49 According to the CEPU and the case studies provided in its submission, this special knowledge of FNDs about Australia Post's operations forms the justification for Australia Post preferring the opinions of FNDs over treating doctors. For example, in a letter quoted in the CEPU's submission, to Ms Ann Lewis in August 2008, the Australia Post compensation delegate wrote that:

Given [the FND's] knowledge of the availability of suitable duties at your workplace, and Australia Post's capacity to provide suitable duties, [FND's] opinion is preferred and you are therefore considered to have been fit for suitable duties...⁵⁰

5.50 The committee received evidence of similar statements having made by Australia Post in a number of other cases presented to the committee.⁵¹ Thus while there may not be an official 'policy' of preferring FND's opinions over treating doctors, it is clear that Australia Post delegates consider the specialised knowledge that FNDs have of Australia Post's operations an important factor in deciding whether or not to award compensation and in making decisions about an employee's fitness for duty.

5.51 It was also alleged that FNDs tend to give medical opinions and diagnoses favourable to Australia Post as they are not independent from Australia Post. Figures discussed by the committee in the context of Senate Estimates in February 2006, are that 95 per cent of injured workers who attend a family doctor are found unfit for

47 Ms Catherine Walsh, Manager, Employee Relations, Australia Post, *Committee Hansard*, 12 February 2010, p. 9.

48 Australia Post, *Submission 6*, p. 15.

49 Mr Rodney McDonald, Group Manager, Corporate Human Services, Australia Post, *Committee Hansard*, 12 February 2010, p. 7.

50 CEPU (Communications Division), *Submission 10*, p. 20.

51 see for example, CWU, *Submission 9*, attachment 4; CWU, *Submission 9*, attachment 10; CWU, *Submission 9*, attachment 15; CWU, *Submission 9*, attachment 20; CWU, *Submission 9*, attachment 22; CEPU (NSW Postal and Telecommunications Branch), *Submission 11*, p. 5; and Name withheld, *Submission 19*.

work, whereas only six per cent of injured workers who visit an Australia Post FND are deemed to be unfit for work.⁵²

5.52 Dr Con Costa, who appeared in a private capacity, argued that FNDs are not providing an unbiased second opinion:

If that doctor is being paid quite a high fee and is contracted to InjuryNET it is not what we really call a second opinion. It is a paid-for opinion...The importance of any doctor opinion should not be based on who is paying that doctor; it should be an independent opinion by someone who has no interest—is not employed by that third party.⁵³

5.53 In his submission Dr Costa estimated the fees paid to FNDs:

I understand that the average fee [for an InjuryNET doctor for a consultation with an Australia Post worker] per patient contact is around a \$177 per episode. This is a very high fee and would contrast to the standard medical fee in Australia of around \$35 bulk billed and the standard consultation under Worker's Compensation payments under New South Wales WorkCover which is around \$65.⁵⁴

5.54 Australia Post disputed the figures Dr Costa used to argue that FNDs are being well paid to give medical opinions favourable to Australia Post, and stated that FNDs are paid 'a standard AMA-cum-WorkCover rate, which is in the order of about \$30 to \$35'.⁵⁵

5.55 With respect to the payment of FNDs, Mr McDonald from Australia Post stated that:

Facility nominated doctors are paid the standard rate regardless of whether they provide an employee with leave as a result of injury or illness or deem the employees to be fit to work on suitable duties.⁵⁶

5.56 The Director of InjuryNET, Dr Milecki, supported Australia Post position, stating:

When managing work related injuries all doctors are paid by the employer or insurer. The same is the case for the doctors working in the Australia Post injury management program. The fees paid to practitioners are based on standard industry rates—most commonly, the Australian Medical

52 Senator Conroy, *Estimates Hansard*, 13 February 2006, p. 19, available at www.aph.gov.au/hansard/senate/commtee/S9089.pdf.

53 Dr Con Costa, private capacity, *Committee Hansard*, Friday 12 February 2010, p. 49.

54 Dr Con Costa, *Submission 23*, p. 9.

55 Dr Michael Barbour, Manager, Corporate Injury Prevention and Management Unit, Australia Post, *Committee Hansard*, 12 February 2010, p. 8.

56 Mr Rodney McDonald, Group Manager, Corporate Human Resources, Australia Post, *Committee Hansard*, 12 February 2010, p. 2.

Association schedule of recommended fees. There are no performance fees paid to doctors by either Australia Post or InjuryNET.⁵⁷

5.57 The unions also gave evidence of instances in which Australia Post managers had attended an FND appointment with an employee, and suggested that this practice was evidence of managers having influence over the medical opinions of FNDs. On this issue, Dr Milecki, the Director of InjuryNET stated:

I think it is a great level of support, if you are injured, if your manager takes you to the doctor.⁵⁸

5.58 However with regard to managers participating in the consultation itself, Dr Milecki stated:

We specifically instruct that that is not to happen, although sometimes, from my personal experience, the employees really want the supervisor there—perhaps they are a very young person, or they may not speak the language well and the supervisor speaks their language, or something like that.⁵⁹

5.59 On this issue, Dr Wyatt agreed with Dr Milecki, stating:

I think it is fabulous that a supervisor goes [to an FND appointment], though not necessarily into the consultation but—and I am beginning to sound like a broken record—it depends on the context...If it is seen as support, great; if it is seen as Big Brother, not so great...⁶⁰

5.60 With respect to the allegation that InjuryNET doctors are not independent, Dr Milecki argued:

One thing I have learned about doctors over the years—is that medical practitioners in Australia will not be bullied. They will give their opinion and they will do so in a way that is in the best interests of the patient.⁶¹

5.61 The committee is inclined to agree with Dr Milecki that the vast majority of Australian doctors are unlikely to be influenced or bullied into providing a medical opinion that does not reflect what they consider to be in the patient's best medical interests.

Committee comments

5.62 Having considered the range of evidence presented to it, the committee's view is that the principal reason why FNDs routinely advise the early return to work of

57 Dr David Milecki, Director, InjuryNET, *Committee Hansard*, 12 February 2010, p. 24.

58 Dr David Milecki, Director, InjuryNET, *Committee Hansard*, 12 February 2010, p. 33.

59 Dr David Milecki, Director, InjuryNET, *Committee Hansard*, 12 February 2010, p. 33.

60 Dr Mary Wyatt, Chair, Policy and Advocacy Committee, Australasian Faculty of Occupational and Environmental Physicians, *Committee Hansard*, 12 February 2010, p. 74.

61 Dr David Milecki, Director, InjuryNET, *Committee Hansard*, 12 February 2010, p. 26.

injured workers is because of medical evidence which indicates that this provides numerous benefits to injured patients. The committee is not convinced that the reason Australia Post FNDs routinely recommend early return to work is to assist the management and organisational imperatives of Australia Post as the unions contend. Rather the committee believes that this is often a matter of differing medical opinions between GPs and doctors with specialised knowledge of workplace injury management rehabilitation research.

5.63 While the committee commends Australia Post for adopting an approach which is centred on the best interests of injured workers if implemented properly, the committee highlights the need for appropriate and meaningful work to be available to employees returning to work at less than full capacity. The allegations of employees being required to return to work for short periods to watch TV or undertake tasks that they don't feel are valuable indicate that, in certain circumstances, the objectives of a best practice approach to injury management are not being met.

5.64 The committee emphasises the comments of Dr Wyatt that in order for an injured employee to recover properly, they must feel supported and valued in the work environment.⁶² Employees need to be consulted on, and agree to, the work they are required to perform on their return to work, and that work must respect the limits of their capacity and be 'compatible with their chosen work environment and skill level'.⁶³ The committee urges Australia Post to ensure that the duties assigned to injured employees are appropriate, and that employees have substantial input in deciding what those duties are.

Recommendation 3

5.65 The committee recommends that Australia Post develop processes through which injured workers have buy-in to their return to work program, and which ensure that all injured workers are given appropriate work to undertake on their return. Specifically, the committee advises that in each instance, a manager should discuss with an injured employee what duties they are physically capable of, would find satisfying, and would be happy to perform.

5.66 The committee also has concerns about the routine practice of Australia Post managers attending FNDs with employees. The committee highlights the comments of Dr Wyatt and Dr Milecki that while, in certain circumstances, it can demonstrate support for a manager to accompany an injured employee to a doctor, it is generally inappropriate for a manager to attend the consultation itself. The committee has concerns with the high level of involvement by Australia Post managers in FND

62 Dr Mary Wyatt, Chair, Policy and Advocacy Committee, Australasian Faculty of Occupational and Environmental Physicians, *Committee Hansard*, 12 February 2010, p. 71.

63 Comcare, *Rehabilitation: Managing Return to Work*, 2001, available: www.comcare.gov.au/forms_and_publications/publications/injury_management/?a=42680 (accessed 9 February 2010).

consultations, which appears to be endorsed within the EIP principles. Specifically, as summarised in chapter 3, the EIP principles include that:

...a Supervisor may accompany an employee to a doctor's surgery or hospital to support the employee and to ensure that the doctor is aware of Australia Post's commitment to assisting employees to remain at work or return to work quickly and, to provide information on the range of tasks available to the employee.⁶⁴

5.67 And that:

...any discussions regarding work restrictions which occur between the Supervisor and Australia Post nominated doctor whether treating or assessing the employee must where possible be carried out in the presence of the employee⁶⁵

5.68 The committee has serious reservations regarding whether these principles encourage an inappropriate level of involvement by Australia Post managers in the medical treatment of injured workers, and urges Australia Post to reconsider these aspects of the EIP.

Recommendation 4

5.69 The committee recommends in the strongest terms that Australia Post consider directing managers that they are not to be present in employee medical consultations unless their presence is specifically requested by the employee. The Injury Management (Early Intervention) Policy ought to be revised accordingly.

64 Australia Post, *Submission 6*, Appendix 2 – Injury Management (Early Intervention) Program, p. 5.

65 Australia Post, *Submission 6*, Appendix 2 – Injury Management (Early Intervention) Program, p. 5.

