



FINANCE AND ADMINISTRATION COMMITTEE

Members present:

Mr MJ Crandon MP (Chair)
Dr B Flegg MP
Mr R Gulley MP
Mrs FK Ostapovitch MP
Mr CW Pitt MP
Mr EJ Sorensen MP
Mr MA Stewart MP

Staff present:

Ms D Jeffrey (Research Director)
Dr M Lilith (Principal Research Officer)
Ms M Freeman (Executive Assistant)

PUBLIC DEPARTMENTAL HEARING—QUEENSLAND WORKERS COMPENSATION SCHEME

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 28 NOVEMBER 2012

Brisbane

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The Committee met at 9.00 am

HAWKINS, Mr Tony, Chief Executive Officer, WorkCover

HELEY, Mr David, Chief Financial Officer, WorkCover

STRATFORD, Ms Sharon, General Manager, Customer Services, WorkCover

VIOLET, Ms Irene, General Manager, Corporate Services, WorkCover

**BLACKWOOD, Dr Simon, Deputy Director-General, Office of Fair and Safe Work
Queensland, Department of Justice and Attorney-General**

**GOLDSBROUGH, Mr Paul, Senior Director Policy, Workplace Health and Safety
Queensland, Department of Justice and Attorney-General**

CORDINER, Mr Robert, Executive Manager, Review and Appeals, Q-Comp

FRANCIS, Mr Michael, Executive Manager, Finance and Insurer Services, Q-Comp

WOODS, Ms Elizabeth, Chief Executive Officer, Q-Comp

CHAIR: Good morning, ladies and gentlemen. I declare open this public departmental briefing for the Finance and Administration Committee's inquiry into the operation of the Queensland workers compensation scheme. I am Michael Crandon, the chair of the committee and member for Coomera. The other members of the committee here today are: Mr Curtis Pitt, deputy chair and member for Mulgrave; Dr Bruce Flegg, member for Moggill; Mr Reg Gulley, member for Murrumba; Mrs Freya Ostapovitch, member for Stretton; Mr Ted Sorensen is not here but is due back at any time; Mr Mark Stewart, the member for Sunnybank; and the member of the committee who is unavailable to attend the hearing today is Mr Tim Mulherin, the member for Mackay. As I just noted, Mr Ted Sorensen, the member for Hervey Bay, will be joining us shortly.

The purpose of this hearing is to receive further information from the departments about the motion that was referred to the committee on 7 June 2012. This hearing is a formal proceeding of the parliament and is subject to the Legislative Assembly's standing rules and orders. The committee will not require evidence to be given under oath, but I remind you that intentionally misleading the committee is a serious offence. Thank you for your attendance here today.

You have previously been provided with a copy of instructions for witnesses, so we will take those as read. Hansard will record the proceedings and you will be provided with a transcript. I remind all those in attendance at the hearing today that these proceedings are similar to parliament to the extent that the public cannot participate in the proceedings. In this regard, I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee. I also request that mobile phones be turned off or switched to silent mode. I remind you that no calls are to be taken inside the hearing room.

I would like to give each of you an opportunity to make an opening statement, if you wish. The Department of Justice and Attorney-General?

Dr Blackwood: We have no opening submissions, chair. We have provided a response.

CHAIR: Q-Comp?

Ms Woods: We have also provided our submission.

CHAIR: Thank you, that is fine. WorkCover?

Mr Hawkins: Similar.

CHAIR: That is great. I will turn to the deputy chair, the member for Mulgrave, to open the questioning.

Mr PITT: Good morning, everybody. Thank you very much for your time here today. I apologise in advance for my very large moustache. I have met some of you before, but you may not realise it! We have been covering a range of issues across the inquiry into workers compensation and how the scheme is operating in the state. We are very interested in where things are working well and where they are not
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working so well. Certainly the committee very much has an open mind about this inquiry process. The more we have spoken to people, the more we realised that we have a very robust system here in this state. I am certainly focusing on how we can improve that system. That may involve some changes, but that is to be determined. One of the things that has been talked about is the definition of 'worker' as part of this inquiry. I am very interested to hear if there are any moves that may align the definition with any other jurisdictions or federally, and what those things might mean. What will the implications be of a change such as that? It is a general question to whomever may be best placed to answer.

Mr Goldsbrough: Back in the 1990s and then the early 2000s, we endeavoured to look at some harmonisation of the definition of 'worker' around Australia. At that stage we looked at it through the heads of workers compensation authorities. Because of the scheme design, differences in jurisdictions and also the industry base and mix, we have never been able to progress that at a national level, because of the differences in the schemes.

CHAIR: I note the member for Hervey Bay has joined the meeting. Are there any other comments?

Mr Hawkins: To follow Paul's point, we have been looking at those sorts of things, relatively unsuccessfully, with other states and jurisdictions. I have to say that from one of our aspects of compliance that we are doing currently with data matching, we data match with the Australian Tax Office. So there is some potential for synergy of doing it based on some similar definition to what may occur with the Australian Tax Office definition of 'worker'. That is a possibility.

Mrs OSTAPOVITCH: At present, the scheme operates a no-fault system, but there are calls for a test of fault for claims to be considered. Could you please explain how this process would change if a test of fault was introduced? That is open to anybody who would like to answer.

Ms Woods: The scheme is divided into two sections at the moment. There is the no-fault statutory scheme and there is the fault based common law scheme. If you introduced a fault based statutory scheme, you would change the absolute structure of the scheme completely. In order to determine a claim and get a claim accepted, you would have to go through the rigours that you currently have to do in the common law system, and that takes quite a long time. Other than changing the scheme design completely, you would then elongate and enlarge time frames in a system that is known as a short-tail system.

Mr Hawkins: Queensland is not unique in that regard; no-fault is across every state as well, for statutory.

Mrs OSTAPOVITCH: I am just wondering about a scenario where somebody is a diesel mechanic or something like that. It is expected that they have a good knowledge of what they are doing. Where does personal responsibility come into it? How would you get around that? With the system that we have now, the no-fault system, some employers basically are asking us to consider making employees somewhat responsible for negligence, if that be the case.

Mr Goldsbrough: One of the things that happened with the introduction of the nationally harmonised Work Health and Safety Act was that we changed the duties of workers, so now a worker has a specific obligation in the workplace to take care for their own health and safety and that of the other people around them. In some ways, as the workplace health and safety regulator, it changes the dynamics about how we look at incidents going forward. I accept that is unrelated to the statutory scheme, but it does change the emphasis somewhat.

Mr PITT: Can I add something, Chair?

CHAIR: Absolutely.

Mr PITT: We were talking about the no-fault scheme. Of course, when you look at what we have in terms of our motor vehicle insurance, it is a fault based scheme and there are discussions around that moving to no-fault universally as part of the National Injury Insurance Scheme. It is a fairly broad and open question. I would like to hear your thoughts on how that sort of no-fault arrangement could work as regards journey claims. Journey claims are something that are coming up here as well. I wonder what the intertwining of those things will be. Obviously, it would be a fairly significant move for Queensland to go to a no-fault scheme in the motor vehicle side of things as well, given that it would be a large leap. It is a very broad question, but I have always been interested in how these things are marrying up. We have such a good workers comp scheme and a very big opportunity with the National Disability Insurance Scheme, and the national injury stuff is sort of slotted into the side. Again, it is an open ended question.

Ms Woods: Currently, as you know, with journey claims in the workers comp field it is a no-fault system. However, in the recuperation by WorkCover from a CTP insurer—so you are talking about that—obviously, the injured worker has to be not at fault. I guess the difference, just in a very broad sense, would be that potentially WorkCover would be able to reclaim both fault and no-fault accidents on the way to work. That is the only link I can see.

CHAIR: While we are on that, I might ask a supplementary question. Talking about recovery, Elizabeth, you brought up recovery from CTP and what have you. Is there a link between the recovery of claims money from a compulsory third party insurer, yes, but not necessarily just compulsory third party. It could be some other type of claim back. Is there a link between that and the change in premium, a reduction in premium, for employers or for the scheme in total?

Ms Woods: I would have to hand over to Tony.

Mr Hawkins: Obviously you are referring there to motor vehicle, but you are talking more, say, public liability where there could be a slip or a trip or a fall on their way to work, which may not involve a motor vehicle, so yes. Clearly at the moment the premium is predicated on the basis that there is a recovery from those CTP insurers, as allowed. Clearly, if there was no recovery, the cost to the scheme would be increased in gross terms and the cost to the scheme in gross terms increase would mean a commensurate increase in premium, solely on that basis.

CHAIR: Just to be clear on that then, the assumption is that there will be a potential to claim back? If you are doing your numbers into the future, when you are doing next year's premiums and what have you, your projections, the assumption is that you are going to be able to claim a certain percentage back?

Mr Hawkins: That is correct, yes, from both motor vehicle and public liability.

CHAIR: Thank you.

Mr Francis: I want to respond, in part, to the deputy chair's question about the impacts of potentially having a no-fault motor accident scheme. One of the other issues that we have at present is if, for example, when we are talking about recovery if a person is injured in a journey to or from work, in our scheme journeys are covered, and there are those for whom there is no-one else to put at fault, I guess, because the motor accident insurance scheme is a fault based scheme. It relies upon being able to establish someone else's negligence or fault. If we were to, for example, lose journey claims from the workers comp scheme, those who potentially miss out from a social perspective, in terms of who covers their injury and who looks after them in those particular instances, if the workers comp scheme is not picking it up and there is no fault to establish anywhere else, that is one of the things for the committee to consider, I guess, in terms of future policy out workings of this particular inquiry. If you were to have a no-fault motor accident scheme, what you have is a situation where those people still have a degree of coverage. I thought it was worth making the point that one of the other things that came into the equation, if that was part of the committee's thoughts, it is worth bearing that in mind, that one of the potential disadvantages of removing journey claims could be addressed through that type of action with motor accident.

CHAIR: Sure.

Mr PITT: Or even if you kept journey claims in, it would allow potentially, from a revenue side of things, for the Queensland government to use workers compensation to help boost an aspect of an NIIS.

Mr Francis: Exactly. It helps resolve that gap.

Mr Goldsbrough: The critical factor there would be how aligned your benefit structures are, because if there is quite a difference in the benefit structures, then WorkCover may not be able to recover the full quantum of money owed.

CHAIR: Thank you. Dr Flegg, do you have any questions that you would like to ask at this stage?

Dr FLEGG: No, I am happy to sit and listen at this point in time.

CHAIR: That is fine. Member for Murrumba?

Mr GULLEY: Continuing with the no-fault test questioning, concerns have been raised by some groups that the scheme allows the opportunity for fraudulent or serial claims to be lodged. As such, some have suggested that WorkCover history similar to that of a criminal background check can be or should be implemented. I am inviting comments. Can anyone outline some of the advantages and disadvantages of implementing that?

Mr Goldsbrough: At different stages we have had access to information on people's claims histories. Historically, these were done in specific industry sectors. From memory, labour hire was one area that was a big user of it. The information provided generally would not benefit an employer. All it will indicate is whether there has been a claim and it is left at that. I think the resources that it then takes the insurers to administer the scheme can add significant cost as well. That was part of the decision behind why that process was stopped some years ago.

Mr GULLEY: I suppose there is an upfront disclosure of prior claims. After a claim has been lodged, is there a process that confirms, 'The lady has now done three similar claims in three years. Is there a trend here?' Is there that sort of review done before payments are made?

Mr Hawkins: Sorry, you said 'advantages and disadvantages'. There are a couple of sides to that, if I can extend on that. Clearly, the question that you are asking is more about someone who may have a pre-existing condition or an aggravation or something. Each workers compensation claim is treated in its own right, but it takes into account any prior correction or any prior—

Ms Stratford: As part of the claim determination process, that is one of the first steps you do—you check to see if there are any prior claims that that person has had. As well, we ask questions around any pre-existing matters and talk to their doctor about those sorts of things as part of the claims investigation process.

Mr Hawkins: Just to follow on, the other side of that—and this was the reason that there has been an introduction—it goes through Q-COMP for people to ask for that history; we do not provide that history. It can be asked by the individual person themselves. They are the only ones who can ask, not their employer. Clearly, one of the issues that was put in several years ago, the reasoning behind that, was the

issue of discrimination—that people could, in applying for a job, if they are found that they have had two or three WorkCover claims they might say, ‘We are not going to put them on’ and discriminate against them for possibly the wrong reasons.

Mr GULLEY: I suppose there are comments from employers that retrospectively they find out that it is a vexatious claim and that there is a history there. How do you respond to those employer claims?

Mr Hawkins: You are saying that when they lodge the claim with the current employer they then find that they previously had a vexatious claim? The answer is that I would hope that that vexatious claim had been thrown out so that the new claim was treated on its merits as its own claim. Would that be fair?

Ms Woods: If I could also respond? With respect to what they call the injury payment profiles, we administer that but insurers have access to our system. So they can do all the checking. All claims, once put in, if they are rejected it is all noted. So there is a full understanding of what the history was once the claim is lodged. One of issues that I think Tony has just raised is that you often have an aggravation of a pre-existing and in order to determine the extent of the liability of the insurer you must be quite clear about what is a work related injury and what is pre-existing.

CHAIR: Thank you. As a supplementary question, I think the member’s question also revolved around the concept of fraudulent claims and serial fraudulent claims. If a fraudulent claim occurs and is obviously discovered and has been paid out—say the payment has been made, there is no potential for recovery from the person, because they have no money; they have spent it, or whatever—this comes from the perspective that in the process that we have been going through employers have complained that they know something is wrong with a particular claim. It goes on. They get hit with these higher premiums and so forth. If a claim were to be proven to be fraudulent at a later time and there is no potential for a recovery of the money because of the particular circumstances of the individual, is there any adjustment in the premium paid by the employer?

Mr Hawkins: Yes. In most of those cases, or a fair majority of those cases, we probably would not recover that money—it has gone—whether the person is charged or not. However, those costs which would have previously been attributed to that particular policy are then reversed out of that policy. That is correct?

Ms Stratford: Yes, we have the ability to do that, but it is the proof of the fraud as well. We have a number of claims that we prosecute for fraud. Certainly, in those places it is very clear cut. There are some grey areas as well. You get a lot of complaints from employers and we do the necessary surveillance and checking—those sorts of things. But sometimes it is a matter of maybe not outright fraud but maybe an exaggeration of symptoms. That is where the whole grey area can be. So while we may not be able to prosecute for fraud in those circumstances, we can certainly use a lot of the information that we get to have influence over the person’s treating doctor, show them the information and then we can work with them to try to close claims down if there is enough grey area.

CHAIR: Okay. So where does that leave the employer, because this question is coming from the employer perspective. The constant complaint right around the state is that they are being hit with these incredibly high premiums and they just know that this guy is pulling the wool over somebody’s eyes. You have just made the point that there are some grey areas. So would part of the weigh-up as to whether you are going to try to prove that to be a fraud the potential for recovery? Would you be weighing that up and saying ‘Okay, we could probably go down the road and spend the money proving this to be a fraud, but at the end of the day we are not going to get the money back. So we are not going to spend.’ Where does that leave the employer? Do you see where I am coming from?

Mr Hawkins: That is a very good question. The question is that there becomes some commercial reality in there. We might find that, you are quite right, we could spend \$2,000 or \$3,000 with surveillance and you might find that the surveillance does not change the medical opinion in terms of the nature of the injury. I would have to defer to Sharon, as I am not quite sure where the cost of that surveillance would go. I do not think that goes against the policy, but I am not sure.

Ms Stratford: I do not think it does. I would have to—

Mr Hawkins: I do not think that would go against the policy, because we would make the election to say, ‘We will pursue this.’ We do not do that lightly because, with due respect to some of those employers who you are talking about, some of them believe that every person is exaggerating their injury. One of the benefits of the Queensland WorkCover scheme is that people get paid quickly to go back to work. One of our great successes across the scheme is good return-to-work outcomes. To get good return-to-work outcomes, you really need to get very quickly to the injured worker. It is probably not dissimilar to the fault scheme that you are talking about for statutory. If you start to bog it down with lots of investigation at the front end, and particularly if you then find that the person was genuinely hurt with no fraud at all, just the view of the employer who said that this person is doing it, the employer ends up spending all of that time with that person being off on the claim before you even get moving to the return-to-work outcome. So there are some cost benefits in doing that.

I think the other thing, too, is that clearly the word ‘fraud’ is a very strong word. I think there is a difference between fraud and exaggeration or something. Clearly, to answer your question, in terms of prosecution, if we prosecuted for fraud it would clearly come back off the policy. If it is an exaggeration, then it becomes a question of someone’s opinion versus ours on that.

CHAIR: Okay. Thanks for that. Just an aside, from my previous life I think one of the statistics was that in insurance claims something like three-quarters of insurance claims have an element of exaggeration or beyond in them, because it was a particularly nice TV or—

Mr Hawkins: Or only just been bought.

CHAIR: Yes, that is right—that type of thing.

Dr FLEGG: I take on board your point that a lot of these cases are grey. I have spent most of my life dealing medically with these cases. I agree with your statement that outright fraud is probably quite rare, but grey or exaggerated claims are very common. Of course, if you read any medical book the cure for somebody with a compensation claim is to pay their compensation claim and their condition gets better. That should not be interpreted to mean that the claim is fraudulent; it is just the way psychology works. It seems to me that the two things that you would want to look at for the health of the system, given that I do not think that you can do it by looking at individual cases—‘Is this fraud or is this exaggerated?’ because you cannot sort that out—is the extent to which new claims originate from people with significant claims histories. The other one is whether there is a disproportionate number of medical certifications coming from a small number of practitioners who become well known as somebody who will issue a certificate on request for whatever you want it for. We know that those people exist as well. Does that claims history give you more of an indication as to the health of the system? Would someone like to comment on that?

Mr Hawkins: That is a good question, too. With respect to the medical provision, they are our gatekeepers as to who comes into the system. The only way we will accept a claim is through a medical certificate provided by a general practitioner. At this stage we do not allow—or the legislation does not allow—for chiropractors or physiotherapists or whatever to do that. So it does have to come through a GP. Clearly, on the basis of their professional judgement, this person is either injured or not and we make that call. Yes, we are concerned about some of those particular GPs where it does come through more frequently. It comes through in motor vehicle accidents, it comes through in Centrelink; it comes through in all of those things. So how do you overcome that—

Dr FLEGG: Is it possible to get data on that without personalising it, such as five practitioners have issued ‘X’ number of certificates and so on? Quite frankly, I am sure it is an issue. The other data—again depersonalised—that would be of interest is the extent to which claims coming in are from people who have a history of previous claims. I think it would be very interesting data and probably would give you a good impression of the health and integrity of the system.

Mr Hawkins: I will ask Sharon to talk about the GPs, because we are conducting a GP scorecard. Would you mind answering, Sharon?

Ms Stratford: With the doctors—and I guess it is not a situation that is unique to Queensland and certainly we have been talking to a number of other jurisdictions and learning from some of their experiences and what they have been doing with data and analysing that with doctors—what we have done over the last year or two is look at a lot of our medical data, particularly from GPs, who are invariably the ones who sign the medical certificates. We talk about fraud or not fraud. We just look at the range. When we have looked at the range—looking at things like the number of times that doctors certify, how they certify, whether they certify people fit for work, to go back to work, or whether they certify them for always being unfit for work, or people have to have time off, or looking at the return-to-work outcomes for their worker—there is a whole range of parameters we have been looking at with these doctors. The first time that we did it, we came up with about 100 or so doctors who were just on the other end. If you look at standard deviations, these were on the other end of the spectrum on a lot of those things. We went around to talk to them. We took some occupational physicians with us as well when we did that. Out of the 100, I would say that there were probably two who fell into the category of we would like to work with them a little bit more on things. But for the rest of them, it was more just an education process. They really did not know—‘Okay, so how am I supposed to do it when I fill in the certification form?’ So it was a good process to go through. So we can use the data and use it proactively to help as well on individual claims.

That was like a once-off. We are currently working on a process where we will have that information available online regularly so that we can use it and we can share it with the doctors as well. We are starting with the doctors and then we will look at other service providers, like physiotherapists and occupational therapists et cetera. With regard to the other question you asked about multiple claims, like I said earlier, on an individual claim basis obviously we look at that and probably in our fraud area we look a little bit more. I do not have those stats, but I agree that it is probably worthwhile having a look just globally to see if there are any multiple claims.

Dr FLEGG: I would very much like to have a look at that actually if possible.

Mr Hawkins: Could I just answer that with a war story, and it concerns my own son who is a 28-year-old carpenter and builder with a large construction company. He has had three WorkCover claims. For those claims he has not had one minute off work. He put a steel rod through his shin and got 18 stitches and was back at work that afternoon. He had a foreign body lodge in his eye and on the Saturday went to the doctor to get it removed, and I forget what the other one was. He did something stupid but three things where—

CHAIR: Do you want to retract that last statement?

Mr Hawkins: I cannot remember, but clearly they were three WorkCover claims. He got the stitching and the removal. He lost not one day at work. Is he a bad worker for looking forward? That is just coming from me personally, but there are lots of stories like that, particularly in hazardous industries like the construction industry. I understand the questions that members are asking with regard to the people who are probably less likely to do that and far more likely to do something silly, but there are people who do have claims who are genuinely hurt in each and every one of those. I really think we have to be careful that we do not lump those people into a category of those people who are trying to defraud the system.

CHAIR: I suppose, just as an observation, there would be certain doctors in certain areas—blue-collar areas perhaps—who would more likely have people coming to them with injury than someone in a white-collar area or another area of a town or city. So I suppose that sort of observation needs to be taken on board.

Mr Hawkins: Could I also pass the comment—and Dr Flegg may have a view on this—that in South-East Queensland where there are lots of doctors and people moving around that is fine. But in a local, small community and you are the only GP in the town and you happen to be treating that person and you know the family—you have delivered the baby and all of those sorts of things—it is very difficult to then come to that person who you have known for many years and say, 'Sorry, mate. This is not a WorkCover claim.' So there does tend to be that element in there as well. Would that be a fair comment?

Dr FLEGG: Yes, been there. It is worse if you are doing their driver's licence medical and then you tell them they cannot drive anymore.

Mrs OSTAPOVITCH: I have a quick question, and I apologise if you have already answered this in another way. Is there currently a deterrent to doctors to be generous to somebody who is wanting to put in a claim?

Ms Stratford: I might answer by saying what I was going to add before. In a claim obviously the treating doctor signs the first medical certificate. They are the ones directing the treatment and we work closely with them, but we also have the ability to seek other medical opinions as well. This probably does not directly answer your question, but we also have the ability to get independent advice. Some doctors have said that they have to treat this person for their workers comp claim and they treat their whole family and they become quite close. Often they look to us to make the tough decisions for them almost, so a lot of them are supportive in many cases of getting independent medical advice so it kind of takes it away from them a little bit.

Dr FLEGG: That is a critical power to have. They took that away in South Australia and the system nearly collapsed. It is a critically important power to have.

Mr SORENSEN: The committee has heard that there is a high rejection rate—around about 60 per cent—for psychological claims and that these claims are not being given due and urgent consideration as proactive case management. Could you please explain some of the reasons for the high rate of rejection for psychological claims and what processes are being put in place to address this rate?

Ms Woods: I will take the first part of the question. With psychological claims, unlike physical claims in the statutory scheme, there is a fault based system. There are a couple of tests that the claim has to go through. Firstly, has the person suffered a psychological injury that can be identified through actions at work? There is a defence to the claim, and that is if there has been reasonable management action taken then that would defeat a claim. A person may have a psychological illness, but if there has been reasonable management action then that would defeat the claim. In order to determine all of those factors, it takes time and, because the doctor does certify them as having a psychological illness, they put their claim in and they are not really aware of this second step of reasonable management action. It does take time and there is a high rate of rejection and it takes a lot of the whole scheme time, because we also provide the dispute resolution mechanism, and a large number of our disputes relate to psychological claims.

CHAIR: Thank you. Is there any further comment on that?

Mr Hawkins: Sharon, please cut in here, but just following on from Elizabeth's point, it will be the GP who makes that initial diagnosis, but generally then for further work we need to get into the more specialised psychologists and psychiatrists and there are a lot less of those around to be able to get in as regularly.

Mr PITT: I have a quick follow-up on that. We heard yesterday the Minister for Health introduce the Queensland Mental Health Commission Bill into the House. I was the previous mental health minister and we did a lot of the groundwork on that and I am really pleased to see that that has come in. I wonder whether there may be some opportunity to give some work to the Mental Health Commission once it is established to look at this, because I see that this is a very difficult issue. It is probably not one that may be solved within the scheme itself—it is actually a broader community issue—but the idea of having adequate resources provided to employers and perhaps through Q-COMP through the workers comp scheme itself might be something that that commission needs to look at. I make that probably as a comment more than anything, but I think it is worth drawing those two things together because to me it is quite concerning when you hear about schoolteachers for example—and we heard this from the QTU when they gave evidence at a hearing—who experience a traumatic incident in the classroom with a child might mean that they are unable to ever go back into a classroom again. Their whole stock and trade is being able to stand up in Brisbane

front of a class, but they can be impacted in ways sometimes that I do not think have been recognised under the scheme. I am just interested to see how our current robust workers comp scheme is doing and how our Mental Health Commission could tie in together.

CHAIR: Are there any comments? If not, did you answer your own question then?

Mr PITT: I did preface it by saying it was more of a statement, Mr Chair. I am interested to hear if there are any counterinterviews or ideas.

Mr Hawkins: If I could, and, again, please correct me if I am wrong because I am not doing all of the assessing, I think a critical incident—for example, a bank teller with a bank robbery—would go straight through for an accepted claim because it is a critical incident. Possibly an assault on a teacher in a school would go through as a critical incident. Sharon?

Ms Stratford: Yes, and so it does not come under the reasonable management action test that Elizabeth mentioned earlier. They are not easy claims at all to decide. We tried to get through that process as quickly as possible. Obviously we have some issues with employers particularly in trying to balance the worker's needs to get them treatment as soon as possible, but you need to go through those tests of assessing and any issues the employer has as well. We certainly try to make those decisions as quickly as possible. I know in one of the hearings one of the self-insurers was saying that they find it difficult to make quick decisions with those claims because they send awful lots of investigations. That is a process we used to use years ago, certainly working with a lot of the parties and the unions and employer groups as well. We have tried to truncate that process as quickly as possible, because the longer people are already traumatised and the more you take them through a big process the more traumatised they are going to be. So it makes it even harder if you accept that claim then to work with them. There is a whole range of things. If we can work together to do more improvements around that process, that would be good.

CHAIR: Just a quick supplementary on that. I take your point about a bank robbery, an assault in a classroom or whatever it might be. Do you still then go back through their mental health history to establish whether or not there was some pre-existing condition?

Ms Stratford: If it has impacts. But given they are pretty clear-cut cases, we get that one determined as soon as possible.

CHAIR: You get it determined as soon as possible but then—

Ms Stratford: But then working through things like that, a lot of the past will come up because it will be no doubt impacting potentially on the current situation as well. It is a case-by-case basis.

Mr Hawkins: A lot of those are around police and ambulance. They go to quite traumatic circumstances and they may have seen many of those in the past, and it could be a possible culmination of things that have caused that.

Ms Woods: As part of the scheme, if you have a permanent impairment at the end of your claim you mandatorily have to come to Q-COMP to the psychiatric tribunal and get it assessed. So if there was some other history floating around that had an impact on your reaction to a critical incident, it would be picked up there.

CHAIR: Okay, and that could potentially adversely affect the claim?

Ms Woods: It will reduce the PI if there is something else that is going on in there.

Mr STEWART: I have a few questions here. I think you have sort of addressed elements of the questions, but I seek a little bit more elaboration on them. With regard to the no-fault system of psychological claims, can you please explain the impact of section 32(5) of the act?

Ms Woods: That is in fact that reasonable management action section. So your claim goes in if you have a psychological diagnosis and then the next step if it is not a critical incident is to determine whether or not there has been reasonable management action. If there has, it will defeat the claim.

Mr STEWART: How is the actual reasonable management part of it assessed by Q-COMP?

Ms Woods: It is initially assessed by the insurers and they collect statements from relevant parties. As Sharon alluded to before, certainly the insurers and WorkCover try to get that process done pretty quickly. In more complicated cases invariably if they are rejected or they are contested they will come to review, and one-third of our review claims relate to psychological injuries. The parties then have more time—both the employer and the injured worker—to collect information about what has gone on, and so that is where we come into the determination of that. If that is not good enough, you can still go to appeal. You can appeal our decision and about half of the appeals made to the Industrial Relations Commission relate to psychological injury and people have more time again to collect information.

Mr Hawkins: If I could just follow up Elizabeth's point on that—and we can provide the figures for you—I do not think too many of WorkCover's initial either rejections or acceptance of psychological go to appeal, but very few of them are being changed or contested, so between both parties—WorkCover and Q-COMP—the decision is generally, in the majority of cases, correct. It would be rare for someone to go to the industrial magistrate on that and win it after having gone through that, but that can happen.

Ms Woods: So it would be about 4,000 or 5,000 psychological claims a year. If we add in the insurers, the number that potentially would go to hearing at the end of the day would be around 20.

CHAIR: One of the private hearings that we had related to a circumstance where there were in fact I think five employees with a particular employer who went through the psychological claims process which rejected each of them. Do you look at an employer history when you are looking at these claims? One of the things that has been festering in another area of inquiry is bullying and that type of thing. Do you look at employer history on these things?

Mr Hawkins: Sharon, would you answer that one please?

Ms Stratford: Certainly. At WorkCover we are structured on an industry basis, on an employer basis. So the same team, the same person in many cases or the same team of people deal with all the claims that come from one person. On one hand we get to see a lot of those things. Anecdotally, we see patterns occurring. It is not uncommon to see a few claims potentially come from one event or one manager. It is not our place to decide whether that is bullying or not. We go through our steps in terms of reasonable management action. Where we see things happen we work with the employer, just like we have the score cards that I talked about for doctors. We have forms and information for employers that can give them an idea of how they are performing generally. Then we can also talk to them about those sorts of things to try to identify it, but not identifying bullying because it is not our position. Obviously we work with employers on those things.

CHAIR: If there was a pattern in an employer history, how would you deal with that for the fifth person who came to you with a psychological injury?

Mr Hawkins: You have specifically raised a psychological injury, but that could happen with a physical injury. For example, we have a case that has been around for a long while called the F111s which are up at the Amberley air base. Of course, clearly the same people were all going into the same hold getting the same things. So there would have been a consistency in the way we approached the assessment. You would not go in and assess every single one individually on its own—you would do it on its own basis but you would build in the fact that they were all in the same hold, they were all subject to the same chemical spray.

To take Sharon's point about the psychological, if there is a manager that is doing something, they are probably going to be the same in relation to all of the people underneath them. It will probably come back to the reasonable management action—did that person's manager know that that person was doing it—and take it from there.

Mr PITT: I do not want to suggest that I know what you are getting at with your question entirely. I guess you are wondering what the referral process is. If it seems to be a pattern of behaviour, surely it does not just stop with, 'That's not our responsibility.' Where is the mechanism of follow up? It could be a workplace environment that is not a healthy place for people to be in.

Ms Woods: I think the system does have a result. If you have a poor claims history, it is going to reflect very severely on your premium. At the end of the day if the head of a large organisation agrees and acquiesces to what has gone on and is prepared to pay skyrocketing premiums—

CHAIR: Sorry, if I can just stop you there, this is a case where each claim has been rejected. So there is no increasing premium.

Mr PITT: Even away from the premiums or otherwise, if there is actually a workplace environment that is not a healthy environment, what is the onus on the scheme to actually report that on information?

Mr Hawkins: Going back to your comment about five rejections from the same employer, I guess there would have to be something to be said that the employer clearly had taken reasonable management actions because by inference none of those claims were accepted. It may be they just did not like the way the guy parted his hair or something. Seriously, it is not just one sided. I think there are elements, as we all know, of different acts and legislation, although not necessarily our act but the Industrial Relations Act and also workplace health and safety—and Simon Blackwood may care to comment on this—have a psychological unit from memory. Is that right?

Dr Blackwood: Yes, we do. Obviously it is separate to the process of claims management that WorkCover and Q-Comp are dealing with. Several years ago we set up a psychological unit to deal with these sorts of claims. We do follow up with them and people ring into our system. We look at the nature of them. If we did pick up a pattern with a particular employer, then we would go in and talk to people and make an assessment with our psychosocial people about what might be happening in that workplace.

The other thing from our point of view—and obviously there is quite a lot of discussion about how you deal with bullying at the moment—we have put a lot of effort both in the public sector and working with private sector employers on the development of our diagnostic tools, People At Work, to try to provide employers with the capacity to pick up on what their environment is like. We acknowledge that this is probably a very difficult area in which to take decisive action. As Tony says, there might be one manager that a lot of people are not particularly happy with, but nonetheless they are doing the right thing from a management point of view. I think that is a challenge. What we are trying to do is to get people to take a much more proactive approach to the management of the managers within their organisation and employees. That is why we have had a number of inquiries into workplace bullying.

Mr PITT: Thank you, you have answered my question.

CHAIR: Can I go to the member for Sunnybank? We have some fairly critical questions that we need to ask in a couple of areas.

Mr STEWART: When we first started our hearing into workers compensation WorkCover came out and gave us some examples and ran us through how things were going. We were given an example of a poor employer and adviser that was actually a government department. From that we then requested from the department the differences between the gazetted rate and premium rate of all government departments. The question I have is that there are inconsistencies in those two figures we have received. I am wondering is there any particular reason for that or is there any way you could explain the differences and why these figures are not shown in that?

Ms Stratford: I am trying to work out which pieces of paper you have in front of you. That one there—it is being recorded, so I will not talk about individual departmental names. These are the grouped up. In this document here, we have them grouped up by departmental level. Within each group there are multipolicies. So the one you have that has the graph with the pictures is one policy within a department. Other areas in that department are probably performing better than that one area. So when you group it up and look at the one line, overall they do not seem to be doing too bad; but when you look at individual policies within that, there are big variations.

Mr STEWART: Would it be possible to get a break-up of each of the policies within each of the departments—

Ms Stratford: That might highlight it better for you. We can do that.

Mr STEWART: —to see where we are performing better than others?

Mr GULLEY: In Queensland injured workers are required to lodge an application for compensation with the insurer to receive compensation regardless of whether they are minor in nature and insurers need to administer the assessment and compensation process. Can the floor suggest any improvements to that?

Ms Woods: It certainly formed part of our submission and we have refined some figures recently. Queensland is most unusual in that it has around 100,000 claims a year when you compare us to New South Wales and Victoria that are around about the 40,000 mark. One of the big reasons is the way in which the excess is managed in Queensland. In other states—and I can get specific details—the employer takes the initial responsibility for minor injuries up until a certain point. Those criteria vary in each state. After that point is reached the claim is then submitted into the workers compensation scheme. In Queensland the system is that you should put in every single claim that happens and all medical expenses are paid by the insurers no matter how minor. If compensation for lost wages is paid, once that reaches about \$1,200, or Queensland ordinary time earnings, that is the amount that the insurer has to recoup from the employer.

So if you are looking for an opportunity to reduce red tape, that is a real opportunity, I would submit to you, that is cost neutral from an employer perspective. We have done some calculations and some figures. I think at the moment around \$32 million a year is paid by employers in excess. As I said, it only relates to compensation, not to medical expenses. If you just made it a lot easier and said, 'Righto, what is the threshold that you need to have in order for the employers to expend \$32 million?', the answer is about half of QOTE. That means that all minor injuries would be out of the system, and we have recalculated that that would be about \$48,000 of the \$100,000. Of course, if a claim is disputed even though it is minor you would submit that to the insurer. If you knew a claim was going to be serious—so it was definitely going to pass that \$600 figure—you would submit that immediately. But it would be a cost neutral thing for the scheme. In fact, it would have to reduce some administration costs of the insurers.

Mr Hawkins: I must admit I have a slightly differing view on that. In terms of red tape, it will actually go back the other way; the employer still has to keep a record then of those people that they have not put in for claim. One of the dilemmas of this process—and I understand Elizabeth's comments—is that the employer could clearly say, 'I don't think this is going to go to the \$600', and find out five or six days later that the injury is far worse than what they anticipated: they are not doctors. The person may not have even been to the doctor necessarily in some cases such as with back strains or whatever. It then becomes a WorkCover claim and we are getting that claim 10, 12 or 15 days later to try to start the return-to-work process, which becomes more expensive because it will go back to the employer. Sharon, I might ask you to comment on Elizabeth's comment about the neutrality of the dollars up front.

Ms Stratford: We have looked into it a bit, too. On the surface it sounds very good. It sounds very good for WorkCover as well. I guess the concern would be more around the employers; it might cut our red tape down but potentially adds more to them, even though it is cost neutral on that basis. I have actually spoken to a couple of people from interstate—because that is how it works like Elizabeth said. What invariably happens in the other states is that the employers ask their insurer there to handle that process for them, anyway, because it is too difficult and complex for them. You get a lot of part payment of bills: someone pays half of them and the other one has to pay the other half. It actually adds a bit of administration whereas on the surface it does sound like it should be ideal. There are a lot of complexities and additional red tape that sits underneath it.

CHAIR: But looking at the figures that have been put to us, you are talking about halving the number of claims that go through. If you are halving the number of claims and of those half that did not go through, Brisbane

eventually a percentage of them would have to have some involvement by WorkCover but it would not be all of them. Therefore, you are reducing the administrative burden anyway for both the employer—are you factoring in the cost to the employer of having to do the paperwork and go through the system, or are you just looking at your own circumstance on individual claims?

Ms Stratford: I guess it is a couple of areas. The first area for us is that it cuts down our initial claims. So there are a lot less claims we have to administer, albeit those early on ones are pretty straightforward and easy. We have a streamlined process that they go through, but still there would be administrative savings for us up front. The concern is potentially, as Tony said, because we are not getting all the claims up front and are not able to triage them and treat them appropriately, if the employer has them and hangs on to them and we get them eventually, maybe things have happened—and we have talked a little bit about the health benefits of work: the sooner you can get on to claims, keep them at work and do all the right things, the better it is for the claim all up. I guess we have some concerns around what we might end up with and more difficult claims that should have been halted in a quick period of time end up dragging on and becoming more complex and difficult potentially as common law is involved if they have not been handled up front. Because we do not have that system in place it is hard to know what might happen. On the surface it sounds really good, but there might be some issues around it.

CHAIR: Playing the devil's advocate somewhat, the trigger point is, say, \$600. It would not take long for \$600 to be absorbed. You are talking about two or three days of lost wages and you are at the \$600 level, particularly if there are doctors involved. You are talking about not 10 or 15 days of delay, but a few days of delay at worst. Would it not be helpful to have that couple of days to ascertain—it is a cost-benefit analysis—whether that smashed thumb, in fact, caused the person to be off for a longer period and therefore have a greater claim?

Ms Stratford: If you are copying the system that Victoria has, it is \$600 of medical and it is the first two weeks of weekly comp so I guess that is where Tania is talking about the 10, 15 days

Ms Woods: No, I was not talking about that. Just \$600.

Ms Stratford: Oh, okay.

CHAIR: There is your sensitivity analysis, I suppose. You have sort of lumped in Victoria, you have used that as the model. The numbers that we have got have taken that two weeks out as far as a sensitivity analysis and to see what the difference is and all of a sudden we are still talking about a fairly significant reduction in numbers. It might mean, perhaps, and I will put this to you, that your administrative costs would plummet. Tony?

Mr Hawkins: Clearly if you lose 45,000 out of 90,000 claims they will not be assessed upfront. That is clearly an assessment situation that would not be required. I must admit I am a little unclear as to the potential saving. The employer pays the first five days anyway now so I am not quite sure how the employer will save any money by not putting it in.

CHAIR: Are you familiar with the term red tape? Filling out the paperwork?

Mr Hawkins: Filling in the claim, I understand that.

CHAIR: That was one of the terms that was used, that there is a huge saving in red tape. They do not have to fill out the one, two, three, four—however many pages—that they have to fill out. Someone has to sit down and do that. 'Oh, you have stubbed your toe, mate. Come over here, let's sit down, and go through it.'

Mr Hawkins: Are we suggesting they will not fill out an incident report or anything within their own system?

CHAIR: No, not suggesting that at all. Once again I am playing the devil's advocate. What I am saying is that the requirements of Workers' Comp are more complex than perhaps an incident report particularly given if somebody is being sent off to a doctor—and I am using this, once again, as an example, I do not want you to hone in on what I am saying and knock that one out and we come up with another one—and, guess what, the doctor takes a record of what happened, 'Oh, what did you do? How did you do it?' That is being recorded by the doctor anyway in that incident process. I am throwing it back to you.

Mr Hawkins: To answer your question about the costs associated with doing that, the answer would be yes,

CHAIR: Thank you. Is there any other comment on those matters?

Dr FLEGG: Could I ask what the average cost of processing a claim when it is received is, just to get some guidance as to what the saving for your organisations would be if the number of claims were able to be reduced in some way?

Mr Hawkins: To be honest, I think we would have to do some assessment on that because if it is those sorts of relatively minor injuries, because that is the only ones where that would happen, they probably do not take us a lot of time to assess anyway. The things that take time for us are the more complex ones. So it is not directly proportionate. You would not say you would save half of your assessors, for example. We would have to be able to come back to you on that.

Ms Stratford: The other thing to keep in mind is it would be worthwhile doing some—

CHAIR: Sorry. Before you go on, Sharon, the question was a cost to process.

Mr Hawkins: That's correct.

CHAIR: You have got a cost to process. We are not talking about how many assessors you would lose. How much does it cost right now to process a claim upfront? Dr Flegg, is that what you are asking?

Dr FLEGG: Yes, that is what I was asking.

Mr Hawkins: I think we would have to come back to you on that.

CHAIR: That would be a fairly standard number though. You guys would be able to pick that up fairly quickly?

Mr Hawkins: On average, yes.

Mr SORENSEN: Can I be the devil's advocate on the other side? Wouldn't it be better to have those claims have to be notified because then you know when the claim is actually started? Especially in the case of back injuries, some of them happen on the weekend and through the week they get a backache. That would give the employer an indication of when it happened in the workplace and he puts in a claim for it. I have seen a couple in my area where a business person came to me and said his employee plays football on the weekend but he got injured at work on Wednesday or something, but he didn't say when he got hurt he just said, 'I lifted this and that.' Wouldn't it be better if you had to notify that claim when it actually happened, like back problems and that sort of thing—I am being the devil's advocate for the other side—because you know when it started and you know the time and all the rest of it?

Mr Francis: One of the things that a lot of employers, and I am working into workplace health and safety territory here, will have in place in their workplace is some sort of system of reporting workplace incidents in the first instance, which in itself, whilst related to the Workers' Comp scheme, is quite independent of it in its own right, I suppose. That is where I think there would be certainly a degree of emphasis upon those individual employers and a degree of trust in those individual employers' incident reporting processes which they would in most instances go through anyway I suggest.

Ms Stratford: If I could say one thing quickly to that: when you are considering our scheme, which is different to how it works in the other states, we do not rely on employers to put in the form and fill in the paperwork on every single claim. About a third of the claims come directly from the doctor to us. The employer does not have to do anything. About another third come directly from workers. So employers do not do it. It is only in a third that the employers put it in.

CHAIR: Then there is also the processing cost for WorkCover which still happens in every case?

Ms Stratford: Yes.

CHAIR: Any further comments on that aspect of things? I would like to go around the table to see if there are any further questions. There are going to be some questions, by the way, that we are going to have to write to you about. We are out of time. In fact, we are over time. It has been a wonderful hour and eight minutes with you. We thoroughly enjoyed it. There are some things that we do need to come back to you with. Member for Murrumba?

Mr GULLEY: Do I have time for that legal question?

CHAIR: Yes, absolutely.

Mr GULLEY: This is a question I believe for Tony Hawkins around enforceable actions. Can you describe how a decision would be arrived at to have an enforceable action against an employer?

Mr Hawkins: That would be Simon Blackwood.

Dr Blackwood: Do you mean where we are looking at a prosecution in relation to an injury?

Mr GULLEY: Correct. How is that decision arrived at and then how many are made a year? The final step would be the legal case; how many of those legal cases do you win and lose?

Dr Blackwood: We can give you the exact figures for that. We provide them in our annual report and on our website for enforceable undertakings and prosecutions, but essentially what we do is we investigate where there has been an incident and an injury. The policy that we have adopted is where we decide that there will be a prosecution and there is admittance of guilt on the part of the employer, we give them the option of entering into an enforceable undertaking. That process is then we liaise with the employer, they advise the sorts of changes that they are going to make in the workplace, we have a committee of employers and people that will look at each individual enforceable undertaking and then that is lodged.

CHAIR: Thank you.

Dr Blackwood: We can give you details.

CHAIR: If you can give us that detail. Is there something else that you want to ask?

Mr GULLEY: Where there is an admission of guilt from an employer, where there is an admission of fault from the employee—I did something silly and lost my finger—how is that considered in your workplace process?

Dr Blackwood: As Paul indicated, in terms of the act, the Work Health and Safety Act, and it has been updated this year with the new national laws to make clear that there is a responsibility on the part of Brisbane

the worker to comply with policies and procedures and take reasonable action to ensure their safety in the workplace, when we investigate any injury in the workplace we will consider the incident and the reasons why there was an injury in a particular case and make a decision about whether or not we will prosecute based upon who had primary responsibility and what failures there were.

CHAIR: Member for Sunnybank, any questions?

Mr STEWARD: Just quickly. It was noted in those figures that we received from the department that some of the departments themselves are on the higher end of the spectrum. Is anything being done to work specifically with those departments to help bring them back into line with industry standards?

Mr Hawkins: If I could answer that. Simon Blackwood and I, accompanied by Sharon Stratford, visited all directors-general of all of those department at a very high level and subsequent to that some of Simon's and Sharon's people have met individually with all departments, good and indifferent, to work on ways to improve their particular situation.

CHAIR: Any questions, member for Moggill?

Dr FLEGG: No.

CHAIR: Member for Mulgrave?

Mr PITT: No, thanks, Mr Chair.

CHAIR: Member for Hervey Bay?

Mr SORENSEN: No, I wouldn't want to bring up the travel issue.

CHAIR: We will write to the witnesses about that. Member for Stretton?

Mrs OSTAPOVITCH: I was going to ask about journey claims as well.

CHAIR: We might write to you on the journey claims issue as well as a number of other issues. The time allocated for this public hearing has expired. If members require any further information we will contact you, as I have just said. Thank you for your attendance today. The committee appreciates your assistance. I declare this hearing closed. Is it the wish of the committee that the evidence given here before it be authorised for publication pursuant to section 50(2)(a) of the Parliament of Queensland Act 2001? Thank you. So authorised. Thank you very much for your time.

Proceedings suspended from 10.11 am