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TRANSCRIPT OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO THE NATIONAL WORKERS COMPENSATION AND OCCUPATIONAL HEALTH AND SAFETY FRAMEWORK

PROF M. WOODS, Presiding Commissioner
PROF J. SLOAN, Commissioner

TRANSCRIPT OF PROCEEDINGS

AT CANBERRA ON WEDNESDAY, 18 JUNE 2003, AT 9.11 AM

Continued from 16/6/03

PROF WOODS: Good morning. Welcome to the Canberra public hearings for the Productivity Commission inquiry into national workers compensation and occupational health and safety frameworks. I'm Mike Woods. I'm the presiding commissioner for this inquiry. I have with me Prof Judith Sloan, who is assisting in this inquiry.

As most of you will be aware, the commission released an issues paper in April setting out the terms of reference and some initial issues. The inquiry explores the opportunities to develop national frameworks for workers compensation and occupational health and safety. Our full terms of reference are available from our staff.

The commission has travelled to all states and territories, talking to a wide cross-section of people and organisations interested in workers compensation and occupational health and safety. We have talked to groups from a diversity of backgrounds and have met with government organisations, unions, employers, insurers, service providers and those who have been part of the process, listening to their experiences and their views on future directions.

We've now received over 70 submissions from interested parties. I'd like to express our thanks and those of the staff for the courtesy extended to us in our travels and deliberations so far and for the thoughtful contributions that so many have made already in the course of this inquiry. These hearings represent the next stage. A draft report will then be issued by the end of September and there will be an opportunity to present further submissions and attend a second round of hearings. The final report is to be concluded by March 2004.

I would like these hearings to be conducted in a reasonably informal manner and remind participants that a full transcript will be taken and made available to all interested parties. At the end of the scheduled hearings for the day, I'll provide an opportunity for any persons present to make an unscheduled oral presentation, should they wish to do so. I'd like to welcome to the hearings our first participant, Ms Terri Henderson. Can you please, for the record, state your name and any association that you are representing at this inquiry?

MS HENDERSON: My name is Terri Henderson. I'm just representing myself. I'm an injured worker, so part of this is my own experience and part talking to other people about their experiences too with the Comcare system, particularly for workers injured on part-time. I've brought along Graham Rodda, who's from the CPSU, as a support person.

PROF WOODS: Will you be speaking at this inquiry, in which case could you also please give your name and the organisation that you represent?

MR RODDA: I'm Graham Rodda. I am with the CPSU, but I'm here as Terri's support person, so I won't be speaking formally as representing the CPSU.

PROF WOODS: All right, but you may elaborate or clarify during the course of Ms Henderson's evidence?

MR RODDA: That's correct.

PROF WOODS: Yes, I understand that. Thank you very much. We have the benefit of a submission from you, and thank you for that. We have been through that. Would you like, for the record, to draw out the key points of this? If you could, in doing so, focus particular attention on our terms of reference, which is the development of national frameworks for workers compensation and occupational health and safety, that would be most helpful to us.

MS HENDERSON: Yes. I also have some notes that expand a lot further on the issues. Would I be able to go through those as well?

PROF WOODS: Yes. As long as you're bringing out the salient points, that would be helpful.

MS HENDERSON: Yes. A key goal of the new model of compensation - background point 7 - is to offer a more effective continuum of early intervention, rehabilitation and return-to-work assistance for those injured in the workplace. I think there are barriers in the public service Comcare model in meeting that goal. Initially, workers with an injury - such as an occupational overuse injury, which varies in intensity - can face lengthy waiting times before they're allowed to lodge a claim for permanent injury. This can create a lot of financial hardship and stress whilst they're waiting. They tend to want to wait until they're certain that the injury has stabilised to any degree.

Workers who decide not to submit a claim for permanent injury or who recover from their injury - which may be years down the track - may have suffered lengthy periods of non-economic loss, but unless they put in a claim for permanent injury they've got no way of making any claim for this. Even for years and years of non-economic loss they cannot put in a claim, as I understand it.

There are a lot of other problems with injuries such as occupational overuse, which may experience periods of quiescence. I understand that the premium levels that are put on the departments encourage closing of claims and starting a new claim for recurrence of an existing injury. They're penalised if they reopen that claim. If they open a new claim for an aggravation of the existing injury, you get another

45 weeks at full pay, which sounds very good, but it's also got implications for future employment prospects and who is responsible for the compensation payment, which I think I raised in the written submission. It makes it very difficult to move out of the public service or into another job if you have a period of, say, a year where your injury is basically in remission and then flares up again and they lodge a new claim and they say, "Well, we're no longer responsible for paying it. It's whoever you're employed by now."

If an injury improves, clients can be taken off compensation. They can then risk not being reinstated or reinstated as an existing claim. New claims do not really show statistically the continuation of the injuries. A woman with an accepted injury claim which is in remission risks a great deal by making any decision to go part-time for any reason, including if she has a child and wants to work part-time. Should her injury flare up, she risks being assessed not on her full-time hours but on her part-time hours by Comcare, who determine the aggravated injury as a new claim. Effectively, anyone with an unstable injury is restricted financially from going part-time.

The existing approach in Comcare prevents searching for further employment opportunities. A person with occupational overuse injuries has problems obtaining non-computing work within the public service. They're likely to be told that they can only do jobs at level, which further restricts the type of jobs that can be considered and may cause them to stay in a job which does not have the best outcome for their injury or aggravates it. There's little scope for working outside the public service for work, particularly for those on higher incomes, even if that job would assist their rehabilitation.

Whilst the cover is theoretically transferable between the public service and the private sector, you become aware that you may not be covered by Comcare if you leave - for example, taking a redundancy or resigning - and, as I've mentioned before, if you improve sufficiently to come off compensation for a year, your new employer is going to be responsible if you flare up and so you may not end up with any cover at all. I think the Comcare system generally doesn't deal with injuries such as occupational overuse, which go up and down and are not consistent.

Depending on your income, you may also incur further penalties if you move outside the public service to a lower paid job, even if you are covered by Comcare, finding that your normal weekly hours or entitlements may be reassessed at the lower level of income, which may mean a drop of thousands of dollars in income compared to staying on compensation and not working at all. There's also a small issue in that staff members in the public service who do manage to find work - for example, in another department in the public service - can't take special needs equipment that they have; furniture and things. It all has to be redone. There's a very good reason

for that with computer equipment. Departments have different networks, but some of the equipment - it would be economically viable to take it with them.

Clients have difficulty in managing their own health when short-term flare-ups occur. They either have to go into work with the injury or they have to pay the cost of the compensation consultation with their doctor out of a reduced income. They get the money back for the consultation, but in the meantime have to meet living expenses and they also have to try and get in to see a doctor that morning and, if the doctor is booked out, they have problems and they end up taking a day off sick leave without any record.

Additionally, because of the way the compensation payments are made - based on the percentage of hours worked - time taken off as compensation leave is not a true reflection of the actual injury situation. The situation of paying top-ups as a percentage of previous income has merit, but it makes many problems and there's a tendency for clients on the lowest level of the range - for example, who work 19 hours out of 36 and a half - to take sick leave rather than compensation because if they take one hour off they lose 5 per cent of salary. That's quite a big drop from 90 to 85 per cent or 85 to 80. I'm sure I'm one of many people who has either turned up to work when they shouldn't be there or taken a day off on sick leave without recognising it as a compensable injury day, because I couldn't afford to pay the medical bill or because I couldn't afford to lose the 5 per cent drop in salary.

There's little incentive for someone on compensation to increase their working hours if they get paid the same for working 10 hours or 17 hours. They both pay 85 per cent of salary or, in another case, 90 or 80 per cent. The only incentive is where they're working, for example, 17 hours and 18 would make a difference of 5 per cent increase. At the same time, some people may have to stay at work on the same hours, despite a worsening of their injury, because a drop of 5 per cent if they take their time off work any week can have such a big financial impact, yet staying at work, rather than reducing their hours, has a negative impact on recovery, leading to more stress, worsening injury and it's a vicious cycle.

Income replacement, as described in my written submission, is inadequate for what I'll call temporary part-timers, for example, those people who are normally full-time but working part-time for a period, such as after the birth of a child or whilst finishing off a degree and who intend returning to their full-time position. It may be that rather than be supported by the compensation system, as they should be, they end up being supported by the social security system.

For example, a woman on an average salary of $50,000 who works part-time for one or two years following the birth of a child and works 25 hours a week will receive compensation of between 25 and 32 thousand dollars if injured and assessed

on her part-time hours. The 32,000, which would be 95 per cent of her hours, would be just above the cut-off for Centrelink support such as disability support and additional family payment. She will, however, be paying around $2000 of superannuation, which will put her income below the cut-off, but it's not taken into account. There may be a very real financial reason in this case not to increase her hours, even though she can, because she would be worse off financially, moving above the social security cut-off rather than staying down below it, so hers is the opposite to the case discussed before. Even if she increases her hours above those at the time of injury - even if she's able to maintain that for years - her hours at the time of injury are always going to be the ones used for determining the rate of compensation. They will never change. If she's injured at 20 hours and manages to get up to 30 hours a week, she will always be assessed on the 20.

I'd like now to talk a little bit more about the graduated return-to-work system, which I raised in my written submission. A graduated return to work may work for some people and has some merit, but it causes a lot of stress and problems for other people, locking them into a never-ending loop of repetitive treatments and an increasing feeling that nothing really gets done. There's no end date ever specified for a return to work. You are not put on it for one to two years and then told, "Well, you've stabilised. All you're going to do is achieve 20 hours a week."

There's always, for the next 20 years of your working life, "Well, you're on return to work." You have no access to flexible leave. You have no access to things like unpaid maternity leave. Clients get sent to numerous different rehabilitation providers and it becomes a treadmill which impacts clients negatively rather than being something positive. I think only in the first 45 weeks is it really beneficial, or perhaps a couple of years down the track, but going to three or four people who say the same thing just ends up a waste of money and time and administration.

I think there's a determination by human resources and rehabilitation providers to look good, even when things don't work, and clients can be forced to stay in unsatisfactory work or to finalise claims prematurely. The HR areas tend to want to look as though they're doing something, so they tend to think, "Well, we'll engage a rehab provider and do another return-to-work program." The stress of compliance with the rigidity of a graduated return to work: for example, threats to deem a person noncompliant for breaches such as finishing five minutes late because a meeting ran over time, dealing with legal issues and administration, plus inadequate human resources systems which cannot cope with the complexity of compensation does not allow clients to concentrate on their injury, and it often feels like all they do is battle administrative issues.

HR units tend to make life difficult on a graduated return to work, for whatever reason. For example, in my department we're told that we will have our salary

reduced to 75 per cent, even if we have a medical certificate. Even though Comcare doesn't require us to put in an additional claim, our department administratively decides it does. Their payroll systems can't cope with the complexities, and it all leads to more stress, and I don't know whether that's because of the Comcare act or because of the way the support is given to the HR areas or changes in staff, but it's not very good.

There are no clear guidelines in the act for taking long service leave and rec leave. It tends to be devolved down to departments and at the discretion of the managers. There are differences in procedures as to how that can be applied, even within a department. There's no consistency. For example, some people are told they should be taken off compensation during their period of long service leave, and have to be fit for work completely. Other people are told, "You can take your leave at three hours a day." Other people are told, "You cannot take any long service leave because rather than be off for three weeks, you'll be off for six months if you take it at two or three hours a day." I think Comcare needs to give clear examples of how it should be administered, and be more specific in the act and give more support to departments rather than just devolving it.

Case managers in departments tend not to contact staff unless called by staff. In my experience I've met staff who haven't been followed up for years, and staff get reluctant to call because they feel it would do no good anyway, and I think that context seems more marked once 45 weeks is reached or a permanent injury claim lodged. Up until then, they tend to want to be seen to be doing something.

There are also problems for people on a graduated return to work in estimating income for child care benefit and family payment purposes. Clients are forced to estimate future income for a year. They can assume the best outcome for their injury and pay higher child care payments each week at an already reduced income. This way they pay no tax debt and may get a refund 15 months down the track, but they have less to live on each week. Alternatively, they can pay reduced fees and potentially incur a big tax debt at the end of the year if their injury happens to improve enough to allow an increase in hours, and that's a problem in estimating. It's not just restricted to compensation cases. It's a general problem with people with child care.

Some other points in relation to the current compensation system: the taxation of lump sum payouts and Department of Social Security rules make it very difficult for an employee to accept a lump sum payment, even where that's warranted. For example, $100,000 would pay about $50,000 tax, as it's taxed in the one year. A sole parent would then be excluded from accessing Centrelink income support for approximately one and a half years or 41 fortnights. Without adequate superannuation their lump sum is gone in two years in paying living expenses, and

I think taxation needs to be spread over the expected period that the lump sum payment should last, and not be paid on the basis of one financial year.

Paying superannuation whilst on a reduced income can be very difficult. The worst possible scenario is to actually drop your superannuation contributions in the public service when you're at risk of a job loss, yet the drop in income that you're experiencing, particularly as a part-timer, may force you into this, particularly if you're a woman working part-time who gets injured and you're paying child care. If superannuation is dropped, when she's been paying above 5 per cent and she's then invalided out, this can be a very big impact on any invalidity entitlement. The compensation system is very good in that if she's paying less than 5 per cent, it will be up to 5 per cent in calculating the invalidity.

In principle, I think the Comcare system is a reasonable system in that it guarantees a percentage of weekly income rather than a lump sum, but I think it's got a number of problems and difficulties. I don't think it addresses part-time at all, and I don't think it addresses the issue of things like occupational overuse. Everything about the system forces people into litigation whether they want it or not, just to survive. There are dispute resolutions before going to the AAT, but you can't initially sit down and talk. You have to formally put in place a request for reconsideration and appeal, but I think basically you end up being in litigation and you just end up accepting that. I think that's all that I have on that.

PROF WOODS: Thank you. That was a very comprehensive run through a whole range of issues. A couple of points that I'd like to just seek clarification on: in this particular field of injury you were discussing the lack of alternate duties. What sort of duties would be appropriate, particularly given the nature of the functions that most departments carry out? What's the solution in that process, given that most departments are heavily clerically oriented and requiring computing as part of the functions?

MS HENDERSON: I'm not sure what jobs are available. There are jobs outside the public service, for example, working in David Jones or somewhere like that that's not repetitive. I understand that Comcare have set up a pilot system with about four departments to try and find work for people. Certainly my department knew nothing about that.

PROF WOODS: But you were able to inform them of it?

MS HENDERSON: Seeing as my case manager doesn't even speak to me, no, I don't think she knows yet. I think it's generated by a couple of people - - -

PROF WOODS: Is there a particular reason for breakdown of communication?

MS HENDERSON: No idea. I've tried ringing a few times and so have some other people. Don't know. It gets very messy over there. No, I have no idea what sort of work because when we discuss it the HR managers also don't know exactly what's available, and even in a large department - I work in Health - where there are a lot of jobs available, they can't tell you what sorts of jobs you could work at. All they can say is, "Well, you can only look at level," and I think to do a non-repetitive job that's not on a computer and not clerical, you're going to have to look outside the level that you normally work at and you're restricted from doing that.

PROF WOODS: And that's not acceptable?

MS HENDERSON: That's not acceptable, and I remember reading something, that the departments would actually be penalised by the Comcare system if they put you at a different level and it didn't work out, so I think there may be some reasons why they say you can't do it, even if you're willing. I also believe some people wouldn't be willing to change and do duties that are not at a senior level that other people are willing to.

PROF WOODS: That then compounding their problems?

MS HENDERSON: Yes.

PROF WOODS: I don't understand the solution through that process if they're not moving to a job that's suitable but can't work at the job that they feel is appropriate to their situation. I don't understand the way through that.

MS HENDERSON: I don't know what the solution is. There definitely needs to be some listed duties within departments or within the public service generally that are deemed suitable. Even if you offer to push the mail trolley round, you're told, "No, you have to go and log all the mail on the computer," so even jobs that you can think of that might be suitable are not allowed. So without a list of jobs held within the HR area, I think they're stuck.

PROF SLOAN: I suppose one of the themes that I get out of your submission, both written and oral, is that it doesn't really matter what the system looks like on paper - in fact you're not necessarily particularly critical of Comcare in theory - but it's the sort of practical application of aspects of the scheme that you're drawing to our attention.

MS HENDERSON: Yes.

PROF SLOAN: Take, for example, the graduated return-to-work process. It's not

that you're opposed to that idea; it's just in your experience and in the experience of others - - -

MS HENDERSON: Yes.

PROF SLOAN: - - - there seem to be some flaws in that process.

MS HENDERSON: Yes, that you tend to get put on them numerous times and if it hasn't worked after one or two times, there's not really a lot of point, if your injury hasn't changed, in doing something that's very similar each time. Unless it's completely different, there's no point in it.

PROF SLOAN: But is it a matter of the regulations being changed or is it a matter of the appropriate staff and resources being applied to the return-to-work process, and management of injured workers more generally?

MS HENDERSON: In the case of occupational overuse, I think it's more a case of the fact that you're stuck in that job and nothing is really going to happen unless you can get away from a job that is aggravating your injury, and whilst you stay in that you're going to keep getting put on those return-to-work plans, you're not going to increase your hours - in fact, you're probably going to go downhill - and I think that's a lot of it with the occupational overuse.

PROF WOODS: There was some mention in your oral presentation about therefore changing to a career that was more appropriate and wasn't going to aggravate your skill which, in a lot of cases, would require moving to the private sector, but I detected some concern on your part with such an approach.

MS HENDERSON: Sorry, a concern with what?

PROF WOODS: That you had some concerns about a transition into an occupation that was more suitable, given the injuries that you were suffering.

MS HENDERSON: Yes, because, as I understand it, if Comcare decide that they're going to put in a new claim, the new employer would be responsible, and basically, let's face it, few employers would take you on knowing that if you have a flare-up, they're going to have to pay the costs when you've had an injury for the last 10 or 20 years caused by the previous workplace. Even if Comcare cover you, I understand that they reassess your entitlement, so for example somebody on $50,000 would suddenly get reassessed on, for example - I don't know what a shop assistant earns - say 25, 30 thousand dollars, and they would get a percentage of that, so under the Comcare system, if they weren't working they'd get paid 43,000. Even if they worked a hundred per cent of time as a shop assistant, they would probably only get

25 to 30 thousand, so there's a big financial disincentive. I may be wrong about how the Comcare system works in that, but that's the understanding I have of it, and that is a real disincentive.

PROF WOODS: You brought together occupational overuse and stress a number of times.

MS HENDERSON: Yes.

PROF WOODS: And in fact on one occasion you were saying that the aggravation of occupational overuse led to stress, which led to greater incidence of occupational overuse - injury.

MS HENDERSON: Yes.

PROF WOODS: Could you elaborate a little on that because they are two separate compensable items but you seem to be linking the two together.

MS HENDERSON: From the medical information I've been given about occupational overuse, it tends to be aggravated by stress, and it can equally be aggravated by something like the thunderstorm last week, which could suddenly flare it up. Just the tension can cause an increase in symptoms. It may or may not. That's the evidence that I've been given by doctors, that it's good to reduce the stress, and so increased stress is going to make things worse.

PROF SLOAN: I got the impression - I don't want to put words into your mouth - that in a sense you feel abandoned - abandoned by the system - and at one point you mentioned your view that longer-term claimants become effectively abandoned, and your experience with your case manager doesn't sound too favourable.

MS HENDERSON: Yes. I happened to meet a few people through my job who are on special needs, so I do hear a little bit, and I'll have to try and keep two hats on to do my job and to also, perhaps as a union person, also hearing what's happening. I don't feel abandoned. I think I do feel frustrated by the whole system, that I'm locked into a situation where I've gone down from being told, "Well, you can go back full-time tomorrow if you're not near a computer" - I was previously a computer programmer - to being on 12 hours a week, and I don't think that's a particularly good situation.

I hear the same frustration from the people I meet doing my job, and they do feel abandoned, and I have met people who have said - and you say, "Well, who is your case manager?" "I don't know. I talked to them three years ago and they've never rung me up." Even if you go off a couple of weeks on leave, you don't get a

phone call to say, you know, "How are you recovering?" So I don't think it's as much abandonment as much as frustration, but other people feel the abandonment.

PROF WOODS: Again, picking up Prof Sloan's earlier point, some of that is to do with implementation as distinct from scheme design as such.

MS HENDERSON: Yes. One aspect of the scheme that I think is missing is, for example, if you are injured on a part-time - or even full- time - there's no economic loss. You have an income support of at least 75 per cent, but unless you are invalided out, I understand you don't get any compensation for the fact that you can't go full-time for the rest of your working life, that you may not get promotions because of your injury. I don't know that that's built into the Comcare system.

PROF WOODS: Okay. You've elaborated on some of that in your written submission as well, so we will pursue that. Are you aware of any other schemes? For instance, in the ACT we have running parallel both Comcare and a private sector worker's compensation scheme. Are you aware of any other schemes that have features that more readily address your issues, or are you not aware of such schemes?

MS HENDERSON: I'm not aware of any schemes. I don't know if Graham is.

MR RODDA: I'm not aware of any schemes that do better with the return to work. I think, just touching on why - I mean, Terri talks about the difficulties in the system, and Comcare runs a complaint mechanism so claimants can ring. They certainly ring the union a lot, and we certainly have a lot of dealings with the case managers. It does worry me that that often helps because you think the system shouldn't require - - -

PROF WOODS: Shouldn't need that back street intervention.

MR RODDA: - - - the call from the union to say, "Well, what's happening? Can we have things working a bit more smoothly?" Part of the issue is that the legislation would say, for example, that the employer is obliged to return someone to work and to redeploy them and retrain them, but if they don't do that there's not a great deal of accountability on that. Certainly people can complain - certainly the union can point out that that's inconsistent with the legislation and often that helps, but there's not a lot of accountability. Comcare would argue that the premium system provides the accountability to the employer in terms of increased premiums if they're not doing the right thing, but that doesn't really translate back to the experience for the individual who doesn't really want to wait two or three years for the premiums to go up, so then you get a cultural change in the organisation. So it's certainly those sorts of checks and balances or the ways in which individual frustrations are dealt with.

I think arguably you could have some sort of compensation ombudsman who could come in with a bit of clout to try and deal with these sorts of individual issues, or some sort of mechanism, but certainly I don't think any other compensation system deals with it particularly well.

PROF WOODS: There is a whole variety of dispute resolution models in the various state legislations. We have before us a participant who is focused on your particular experiences but perhaps if the CPSU were able to separately bring to our attention some views on dispute resolution from your broader experience that would be most helpful. But to return to your particular situation, you seemed fairly resigned that dispute resolution ultimately ended up in litigation or before the AAT. Are there steps that could usefully be included in the Comcare model of workers compensation that might assist in mediation resolution on the way through?

MS HENDERSON: I think being allowed to sit down with Comcare before lodging an appeal. I would like to just say something about my own particular case which has been settled. I have been through the whole legal system up to the appeal, and solicitors and everything. It was a fairly technical issue which is quite complicated, and the financial stress was one of the biggest things in the last two years. My own experience with Comcare is, apart from that, I haven't actually had a huge number of problems. I have a very supportive work area individually.

Since lodging the appeal process I think things got into strife with my HR area and frustration that things like, you know, wrong leave, wrong pay every week - things like that, but it has gone fairly smoothly compared to most of the stories I've heard. I've been able to talk to Comcare easily by phone or by letter. I've heard a lot of stories where that hasn't occurred, where the work area has been in conflict as well and has caused a lot more problems. I'm talking from the experience of somebody who, apart from that technical legal issue, has actually gone through fairly smoothly, and I've still got that frustration and problems.

PROF WOODS: Very good. Anything you wish to add?

PROF SLOAN: No, thanks. I think it is very interesting to have a kind of coalface example.

PROF WOODS: Are there any other points that you particularly want to draw to our attention at this point? I mean, you're free to submit further material at any stage, as is the union, if you are so minded.

MS HENDERSON: Thank you. I don't know how you resolve the problems except that the Comcare Act does not allow for injuries that are variable, and I think addressing that - and as I raised in here, for example - assessing your entitlement to

income based on an average of your years of service rather than the hours at the time of injury would go a long way to resolving a lot of the stress that I found. It would solve the problem of people taking five years off after the birth of a child, or one year; people putting in short term part-time applications just in case they got injured, and I think it would be fair to both sides.

PROF WOODS: Yes, you have laid out a model with a solution there that we will take note of. Thank you for that. Thank you both very much for attending.

MS HENDERSON: Thank you.

PROF WOODS: Can I call forth the next participant, please - Ms Geraldine Spencer. Ms Spencer, could you come forward, please. Thank you very much for coming. Could you please, for the record, give your name and any position that you are holding? Could you tell us your name?

MS SPENCER: Do you want me to speak at all?

PROF WOODS: Could you give us your name?

MS SPENCER: Yes. Geraldine Spencer - - -

PROF WOODS: And any organisation?

MS SPENCER: - - - on occasion.

PROF WOODS: Do you belong to an organisation?

MS SPENCER: I'm here on my own account.

PROF WOODS: Thank you very much. Do you have a statement you wish to make? Is there a statement you wish to make?

MS SPENCER: Yes. Well, I have lodged - - -

PROF WOODS: Thank you, we have those. Yes. We have them.

MS SPENCER: Yes. My thesis is that there should be absolutely no smoking at any time in any workplace, whether it's during working hours or at any other time.

PROF WOODS: Thank you. Is there anything further that you would like to say to this inquiry?

MS SPENCER: More information?

MR .....: Yes.

MS SPENCER: I don't think there's - unless you have questions I don't think there is anything. Considerable progress has been made over the past few years, after years of getting worse and worse and worse. In earlier times people were not, as a rule, allowed to smoke in the place of work; that was something they did in the smoke break. Then it got worse and worse and it was, you know, their right to smoke. Well, it has been realised that right to smoke imposes terrible hazards on everybody else, including themselves; they suffer also. Now, both by change of

behaviour many organisations - before there was any legal requirement - became smoke-free. They saw it as advantageous. Many others wanted to but they realised it was difficult - the small shops - very difficult to impose, and they were delighted when legislation required shops and restaurants to be smoke-free.

There are inconsistencies in the legislation itself as between the various states and internally, and there are inconsistencies in the imposition of the legislation. People are allowed to get away with smoking when nobody is looking. The worst thing in Canberra is the granting of exemptions to licensed premises. The sort of theory is that people can smoke in a certain area - well, it goes through the air-conditioning. And if it's a multiple use building, it affects not only the case with the exemption but all other occupants of that building. They have no choice but to leave, and many have. There is one particular example in Civic where other occupants of that building found - the staff left; they left. It was just impossible. So it played a serious - smoking should never be regarded as a right. It's an injury.

By making places smoke-free smokers are encouraged to quit and they are enabled to quit. When the federal public service went smoke-free, many on the staff were delighted, you know, "Bring it on, bring it on. I won't be allowed to smoke and I will be enabled not to smoke." Smoking is very "cue-ish". You would have people in a room, nobody smoking. And then somebody lights up and everybody else lights up. The best cure - well, a very good cure for smoking is not to be allowed to smoke, and if people are not allowed to smoke at the place of work, even if they don't quit totally, they smoke less inevitably. And many, many, you know, after a little while, find they can do without it.

Smoking at work also has terrible hazards. It's quite extraordinary to see an electrician climbing a pole, tools in one hand and a cigarette in the other - an enormous risk. I don't think any proper examination has been made of that sort of thing, but it's inattention for a start. A burn - cigarette and - yes, I've been in an office where the entire building had to be evacuated because a cigarette butt went in a waste-paper basket. Nothing burnt down but there was very considerable inconvenience all round. Fires do happen, yes. I think it should be unequivocal that the various jurisdictions in Australia should seek to tighten up their legislation to remove anomalies and to ensure that these are enforced.

PROF SLOAN: I suppose it might help, Terri, if you speak to Geraldine. Is that the best way?

MS HENDERSON: No, it's okay. I'm actually sitting with my Canberra Action on Smoking and Health hat on at the moment. I know Geraldine through the anti-smoking and health movement.

PROF SLOAN: I don't know who wants to answer this, but it's a bit problematic in the sense that smoking is legal, of course, but should an employer have the right to employ only non-smokers?

MS SPENCER: Yes, there's absolutely no right to smoke. There's no right to shoot up or do anything - - -

PROF SLOAN: No, but it is legal.

MS SPENCER: - - - else that is harmful.

PROF SLOAN: But it is legal to smoke.

MS SPENCER: Yes. The kindest thing we can do for smokers is to encourage them and enable them to quit. Smokers being allowed to - apart from cancer and all that sort of thing - the person who smokes is at serious risk; for one thing, accidents, road traffic accidents. This has been argued New Zealand, and one solicitors' company said most emphatically they would not employ anyone who smoked; that they have a right to choose. I think it would be pretty terrible to discriminate universally against smokers, but certain activities where they're in personal contact with other people - for instance, hairdressers.

MS HENDERSON: I think Canberra ASH would probably say that we wouldn't encourage only the employment of non-smokers, except in instances, for example, where you're running a non-smoking program, there should be some flexibility there. We have had stories of government programs run by people who are avid smokers.

PROF WOODS: Not a good look.

PROF SLOAN: That's true with drug programs.

MS HENDERSON: There should be some availability of exemptions.

MS SPENCER: I believe inside every smoker there is a non-smoker struggling to get out and without naming - - -

PROF SLOAN: They say that about fat people, too.

MS SPENCER: Without naming any particular people. I can think of some who were debilitated by smoking, who don't smoke any more and those people are quite, quite different. You'd trust them anywhere.

PROF WOODS: Is the rate of exemption, the withdrawal of exemptions, quick

enough for your needs or do you think they should withdraw the exemptions much more quickly?

MS HENDERSON: Withdraw the exemptions much more quickly.

PROF WOODS: Any particular sectors of the industry you would target first?

MS HENDERSON: I will just write this for Geraldine first. Pubs and clubs - - -

MS SPENCER: They should never have been granted in the first place. In the ACT this is extraordinary - they are now starting to assess the quality of air; nothing done at all to check whether or not the air was polluted, or whether it was spreading into other areas, but with the issue now arising, they're actually looking at it. To me there is no question, they should never have been granted in the first place and they should immediately be withdrawn. Any claim that, "Ah, but we spent a lot of money on the airconditioning system" - well, that was ineffective. They were told that, in fact, when they did it. But it never was designed as a system to extract. Airconditioning originally - my memory goes back a long way - in London was not conditioning the indoor air, but getting the dirt and soot out of the incoming air. They would get bags out of it.

In any building - I was in quite a large one - every now and again I could smell ceiling wax. I never discovered where it came from, but just one ceiling wax and it went right through the building and, of course, if there is a kitchen there you can smell that. All that airconditioning does is warm or cool the air, and kind of circulate it around, but it doesn't clean air. It might get some dust out of it, but it's quite impossible to clean anything toxic. The people who chose to go on smoking - they were kind of warned what they were doing. It's appalling with the RSL now - there's one celebrated case - she was awarded - this was in Wollongong, she'd developed cancer. She's in remission now, and they still - RSLs don't seem to have any sense of guilt for what they did to that woman. Certainly she's now financial, but nothing can give her back all that she went through, or eliminate the risk. As I said, she's in remission but for how long? Yet they're doing it to other people coming up the line. It's immoral.

PROF WOODS: Is there a final point that you wish to make there?

MS HENDERSON: I'm just writing down your questions for Geraldine mostly, because of her hearing issue. One of the issues from Canberra ASH's perspective, that I don't think Geraldine has raised, is that we actually have WorkCover regulations in the ACT that require businesses to lodge smoke-free plans. It's impossible for an individual to get hold of that or to find out any information about that. Employers are basically covered by some existing legislation that's got no

teeth, and should be providing a smoke-free workplace.

But, for example, if you go down to the Southern Cross, which is actually not too bad smoke-free in some ways, even after that legislation they moved one of their tellers from an area that was half in the smoking, half non-smoking into an area where they have to sit in the middle of the pokies for their eight-hour shift, in the middle of the smoking area. That was after legislation came through that if that employee happened to take them to court they would say, "You're not complying with these guidelines," but it's got no teeth and you can't find any information about who has lodged plans, who is doing stuff.

MS SPENCER: I've been around many of these places, the clubs and casino and all that. You know, an imaginary dividing line and so many metres from the bar absolutely not observed. If people have a cigarette in their hand they'll move around - any lit cigarette - so there's been no attempt to enforce such regulations as exist. All of these places could be done over. There's one very famous one in - it didn't even have an exemption permit when it opened up with great flourish only because advice was given - that was remedied. Doors left open so that it spreads - this particular one, yes, doors left open so that it would spread into the general area of the building and you could smell it.

PROF WOODS: Thank you very much. That's been quite helpful. We do have your submissions and now we have your additional evidence, so we're grateful for that and we will take that into account when we are analysing the evidence for our inquiry report. So thank you very much for coming and being able to share that with us today. Thank you.

MS SPENCER: Thank you.

PROF WOODS: I'll adjourn at this point and reconvene for our next scheduled participant at 2.15. Thank you.

PROF WOODS: Resuming the Canberra hearings into the inquiry into national workers compensation and occupational health and safety frameworks. Our first participant for this afternoon's session is Ms Ann Thompson. Could you please, for the record, give your name and any organisation that you are presenting?

MS THOMPSON: Yes. My name is Ann Thompson and I'm representing the RSI and Overuse Injury Association of the ACT.

PROF WOODS: Very good. Do you have a statement or position that you wish to make available?

MS THOMPSON: No, I don't have a written statement. I'm just going to make an oral one.

PROF WOODS: Okay, fine. Thank you.

MS THOMPSON: First of all, I just want to point out the limitations of an organisation such as ours, which is limited to just one jurisdiction. We can't comment on the disadvantages and advantages of various schemes nationally, but what we do want to comment on from the experience of our more than 250 members - which actually is a very large membership for a health based organisation - is the characteristics of a good scheme, which would maximise the health of the worker and the worker's ability to take part in society and also maximise prevention.

First of all, we see a pressing need for research and innovation in the whole area of workers compensation, including small-scale pilot projects that are thoroughly evaluated, so that there's some opportunity to try things out and see what works and what doesn't. The characteristics of a good scheme, in our opinion, are that there should be incentives for prevention. Possible incentives might include, for example - - -

PROF WOODS: At the moment are you drawing this on Comcare only?

MS THOMPSON: No.

PROF WOODS: So this is a generic set of principles - - -

MS THOMPSON: Yes.

PROF WOODS: - - - but the experience of your membership would be a combination of both Comcare and the ACT private sector scheme?

MS THOMPSON: Yes.

PROF WOODS: But still just within the ACT jurisdiction?

MS THOMPSON: No, because we have a few members in all states, because we're actually the only RSI support organisation in Australia.

PROF WOODS: Right.

MS THOMPSON: We have, obviously, quite a few members in Queanbeyan, let's say, and - - -

PROF WOODS: True, but they would - - -

MS THOMPSON: But generally it's based on Comcare and the private health insurance scheme in the ACT.

PROF WOODS: Thanks. Sorry, just to clarify.

MS THOMPSON: Possible incentives might include reduced premiums for workplaces that meet all OH and S guidelines. For example, in the UK there are compulsory requirements for users of screen based equipment, so all workplaces have to comply with those requirements, including training, as an effort to prevent injury. It's not enough to just take what might be called a microergonomic approach - in other words, that you have the correct equipment and that it's set up for the user - but also that there be a macroergonomic approach, including management, working hours and so on, and the need for training of the worker in the use of the equipment.

Another characteristic of a good scheme, we think, is that it would not discourage employers from employing injured workers. There's absolutely no doubt that a worker who's been injured once has a higher likelihood of reinjury, and this is a very real disincentive for employers to take on a worker who has been injured. In fact, some employers will screen them out.

To encourage early intervention and reporting, we think it's very important to have a workers compensation scheme that is less adversarial or, as far as possible, non-adversarial. If we look at the OOS Stressors and the Workplace Project, research carried out for Comcare - I don't know whether you're familiar with that - we had percentages of reasons for not lodging a claim for non-workers compensation claimants with OOS. In that workplace, about eight out of 10 workers who were not workers compensation claimants had symptoms of occupational overuse syndrome, including two out of 10 who were working in constant pain.

People said, for example, that they would lose the respect of their supervisor;

they did not want a court case; they might lose their job or they had started a new job and therefore felt insecure in their current position; that they would lose the respect of their colleagues; that they lose money. Many of these are reflections of an adversarial system which is discouraging people from reporting early when intervention can be successful and result in successful treatment.

Another problem is the easy availability of adaptive equipment. We find, for example, that it's very difficult and it takes a long time for people who are injured at work to get equipment that will enable them to continue at work. That might be something as cheap as a telephone headset for a person who's spending a good deal of time on the telephone or voice-operated computing, which, again, isn't very expensive, but when it is supplied it's often supplied too late. It is often not properly networked to the rest of the organisation, so that the person cannot operate effectively. We see that as an important factor.

Then there are the costs to the workplace of supporting an injured worker, which make the injured worker very unpopular. What it often means is that in, say, a section of the workplace where a worker is injured - and that person isn't on return to work - other workers have to take on an extra workload. That, of course, is very guilt-inducing for the person who's injured. It tends to make them unpopular. It tends to put a lot of pressure on them to return to full performance as soon as possible, so there needs to be flexibility to replace or supplement the worker. All of the above is going to cost money, but money spent early will prevent lifelong injury and be much more cost effective.

Another really important need is for evidence based guidelines for the rehabilitation and treatment of injury. For example, in New Zealand there's the Accident Compensation Commission OOS Treatment Guide, and we find it eminently sensible and consistent with the experiences of our members. I'll just read a couple of the notes here. For example, "People returning to work must not work through pain," and, "Pain levels must have fallen to about one-quarter of what they were." I think one of the most consistent characteristics of people who are injured long-term with OOS is that they return to work too early and that they are told to work through pain, and that's very very damaging.

The length of time in an adversarial system is very destructive to the worker and to their recovery, and we need a reduced emphasis of detecting fraud, on the assumption that every person who puts in a claim is making a fraudulent claim. The outcomes of the current system, as we see them, are that injured workers are financially disadvantaged. Just to quote a long-term study of women who had RSI in the 1980s at ANU, which was carried out by a PhD student at the National Centre for Epidemiology and Public Health at ANU - what she found was, for example, that 20 years later 35 per cent were worse off than they had been 20 years before,

whereas the normal progression for most people would be that they would be much better off; that only 60 per cent were working and 30 per cent were retired because of their RSI.

Even though quite a few people - more than half - said that they had recovered somewhat, "47 per cent had mild to moderate pain last week and 23 per cent severe pain." There needs to be much more research like this to see what the long-term outcomes of workers compensation regimes are. "They're financially disadvantaged, they're disempowered and lose control of many aspects of their life, including at home." The injury itself is disempowering and then to be in the compensation system is even more disempowering. "They're negatively characterised and stigmatised by society and seen as a burden on the workplace and they're intimidated by an excessively medico-legal system," where you have the worker on the one hand and a very well-resourced system on the other.

When it comes to dispute resolution, we see that it's currently expensive, legalistic, disempowering and very stressful, and some disputes could be easily and cheaply solved - for example, the lack of appropriate work or the lack of proper equipment - and what we would like to see is an injured workers' advocate, who could actually advocate on behalf of people with injury, particularly those workers who had language difficulties, who were highly traumatised or who came from another culture and found it particularly difficult to deal with the system. That could mean just coming into a workplace and saying - a person with a bit of power saying, "Can we find you in this huge workplace" - often they are quite huge - "some work that will not injure you?" because often I talk to workers who really want to return to work, but they are struggling with a workplace that will not find them work that is not injurious to them. Also I think it would be very good to have professional independent mediation. In short, people feel very powerless and confused by the system. They need someone on their side who can advocate for them.

Discouraging cost shifting - I think it's acknowledged that there's a huge amount of cost shifting, not only onto the disability pension but also onto unemployment and the single parent benefit. Again, I think a less adversarial system would work to get people back to work - to find work for them - so that there would not be cost shifting into the pension system - incentives to workplaces to take on injured workers.

A national scheme to provide adaptive equipment, for example, such as there is, again, in the United Kingdom, where people who've been injured by RSI can get government assistance to get voice-operated computing and training, just as an example, and maybe set up a small business or they can get it for a job that they are taking on. People need retraining into work that they possibly can do, and we try to help people identify work that they can do once they have injured arms. People need

to be enabled to work part-time and still keep benefits, so people may only be able to work part-time, and that at least means that they're integrated in society, making some sort of contribution. I think we need to encourage volunteering and involvement in the community, just for the sake of better health outcomes. I have heard some people who have a work injury - their perception is that they are not allowed to do any kind of volunteer work.

On the question of long-term benefits versus a lump sum, what we see with Comcare is that Comcare tends to keep people for the long-term. Essentially, what it does is it tends, on the whole, to subject them to repeated medico-legal examinations, with a view to invalidating their claim and getting them out of the system. Our feeling is that that is very damaging. To be involved in an adversarial medico-legal system for a long time is very damaging to a person. It's simply extending the trauma. While we can see the advantages of offering some kind of long-term income support as a disincentive to people perhaps exaggerating a disability in order to get a lump sum, our experience with Comcare is that it's very damaging.

As far as the medico-legal system generally, as it operates now, we feel that it is disempowering, expensive and adversarial, and there needs to be a system to establish medical independence. One idea would be a pool of doctors so that, for example, an insurer simply could not, as they do now, choose a doctor whom they know will give an adverse medico-legal report. These doctors should be qualified, trained and updated regularly, have ethical guidelines which they follow, and there should be some sort of complaint mechanism. There needs to be research to feed into the doctors' knowledge. At the moment, for example, we have got an epidemic of overuse injuries in Australia, which is completely concealed and hidden and not dealt with. There is absolutely no evidence-based knowledge to feed into treatments.

So there are some established treatments, but there is no research that can tell us whether those established treatments in fact work. Our feedback from our members is that some of them are very deleterious indeed. I would mention, for example, traction, which is quite often carried out. So there needs to be some sort of system for research to feed into the whole system of rehabilitation, medical treatment, and how workers comp is designed. My feeling is that some of the money that goes into workers compensation, some percentage of the premiums, should be used to pay for research into occupational disease and rehabilitation of occupational disease.

PROF WOODS: That's a fairly comprehensive run through the issues.

MS THOMSON: Thanks.

PROF WOODS: Thank you very much. You have identified what you would like to see in some schemes. It would be helpful if, in the course of our discussion, you could draw on schemes where you can see such attributes working, to the extent you're aware of them. I mean, for instance, your very first one: premiums incentive-based. Premiums are, in part, in most schemes, based on experience of the workplace. Is that not - - -

MS THOMSON: But that gives people an incentive to depress claims, so to - - -

PROF WOODS: Only? Is that the only incentive they have?

MS THOMSON: Well, what if you based premiums on a workplace, having in place - inspecting a workplace, and proper record-keeping, to make sure that it was as safe as a workplace could possibly be. Then the company would feel okay, for example, about taking on an injured worker, because that would not be likely to depress their premiums in the future. I mean, in the House of Representatives report there were cases where employers were encouraging employees to take pensions from sort of disability or income protection insurance instead of the compensation system. We can see in this Comcare report that there is this absolutely huge number of people who have an overuse injury who are not applying for workers compensation, and some of those people are not applying out of sheer fear of what will happen to them. So those incentives are just not working. We repeatedly come across people who are injured, because they do not have the proper equipment. So I think the incentive there is simply an incentive to depress claims. It's not a clear incentive to have a safe workplace.

PROF WOODS: I'm just not quite sure it's as absolute as you're pointing to - - -

MS THOMSON: Well, it may well not be.

PROF WOODS: Thank you. You talk next about ways to encourage employers to take on previously injured workers.

MS THOMSON: Yes.

PROF WOODS: Some schemes - South Australia comes to mind amongst others - have arrangements whereby the second employer is protected against some flare-up of previously established compensable injury. Are those the sorts of things that you are referring to?

MS THOMSON: Yes.

PROF WOODS: And are there particular schemes that you have in mind that are

best practice in this area, or is it just the general principle?

MS THOMSON: That's the general principle that I think is a really good one, and also I think there is far too much emphasis on returning an injured worker to the same job. So in the case of an overuse injury that's almost certain to exacerbate their condition.

PROF SLOAN: You place quite a lot of emphasis, in your oral submission, about the need to move the system away from an adversarial - - -

MS THOMSON: Yes.

PROF SLOAN: I mean, that obviously sounds attractive, but I wonder whether - I mean, there must be some element of interrogation at some point, it seems to me. I mean, I don't know how you remove that element entirely.

MS THOMSON: No. I mean, I agree that it's a difficult one, but I would have thought that a worker who is outrightly fraudulent in making a claim would most likely have some very clear indicators. You know, such as being in trouble at work, being very unpopular with their workmates, the injury would most likely be very sudden. I mean, I'm not an expert on this, but one would imagine that there could, early on, be a screening process. For example, workers who have an injury and go to a doctor who is well known for certifying work injuries, instead of to their GP, that would be an obvious alert, one would think, for an insurer.

Again, in the House of Representatives report I think what they recommended there was that there be more emphasis on sort of closely taking care of the injured worker, which for a person who wasn't injured I should think could be rather a bore. So given that there is absolutely no reliable statistics on the incidence of fraud in the workers compensation system, we have people asserting without a shred of evidence, there are sort of various figures which are just simply pulled out of the air of fraud. In fact we know that at least some sorts of injuries are extremely underreported in the workers compensation system rather than overreported. I think we have to ask ourselves really where does the problem lie. The experience of being in the workers compensation system is one of such powerlessness, intimidation and confusion. All the evidence for people's long-term health is that, for example, the greater control people have over their lives, and over their work lives, the likelier they are to be healthy. This is a system which simply promotes ill health.

PROF SLOAN: So what you're saying is that because the schemes are designed, at least in part, with detection of fraud in mind, that creates a kind of broader adversarial atmosphere.

MS THOMSON: Exactly.

PROF SLOAN: Which is undesirable.

MS THOMSON: That's why I said initially that I think it's really important to have some well-evaluated pilot schemes, so that we can try out in a workplace - let us accept all the injuries that are reported and really look after those workers. Sit down with them and say, "What can we do to help you through this?" Let us see what the outcomes are, whether they are good or whether they are bad, and let's particularly assess outcomes in terms of workers' health and not just in terms of short-term costs.

PROF SLOAN: Kill them with kindness. I'm not being ironic. I mean, it would be quite interesting to see where that - - -

MS THOMSON: Yes, I mean there is definitely a need for experimentation, evaluation and research here.

PROF WOODS: Can I ask how long your association has been running for?

MS THOMSON: Since the early 1980s.

PROF WOODS: Which sort of roughly coincides with the first sort of wave of reported RSIs and things. Over that time have you been able to develop a menu of suitable work such that when somebody is injured through occupational overuse, particularly computer-based, you have this sort of menu that says, "All right, we can now go into management and say, 'Over the last 20 years we have found from experience that these are the sorts of jobs that people should move into for a graduation return to work,' or whatever"?

MS THOMSON: I should point out that we are a very poorly-resourced organisation, and at one stage in the late 1990s our annual funding was 2 and a half thousand dollars a year. So what we do is, we have a treatment survey to try and find out what treatments people find effective. I'm going slightly sideways here, but the evidence is that most doctors treat overuse injuries totally ineffectively. That is good scientific evidence. Most of them use anti-inflammatories, which are just simply irrelevant to the condition and are based on a misunderstanding of what it is.

Okay, we have got a list of careers that we give to people. I guess what we find, talking to people, is that very often people are forced to return to work before the acute stage of the injury has stabilised, so they are still in a lot of pain. They are given the same work when they come back, or sometimes they are given work which is equally repetitive, lower in status and just as damaging to them. For example, someone who works on a computer might be given a job filing. So I would say on

the whole the treatment and rehabilitation of people with overuse injury is very poorly handled.

PROF WOODS: I'm just wondering why the feedback loops aren't working. Where is the failure in the system? I mean, it's presumably not the intention of doctors to misdiagnose or - - -

MS THOMSON: No.

PROF WOODS: - - - for rehab managers to give inappropriate duties or the like. I mean, I'm sure you're not saying there is sort of an intention to - - -

MS THOMSON: No, there's not.

PROF WOODS: So where is the system failing?

MS THOMSON: There is a reluctance to bear costs, and an uncertainty about where costs should lie, so that somebody has returned to work and both the employer and the rehab organisation are reluctant to bear the costs of adaptive equipment. It's not clear to them who should pay for it and they are both hoping to get out of paying for it. That's one situation, and the fact that neither the employer nor the rehab organisation is going to bear the long-term costs of this injury. So essentially there is just a huge amount of cost shifting onto disability benefits, onto partners of spouses with overuse injuries who have to retire, for example.

PROF SLOAN: That's quite an important point you're making. You're saying that there is adaptive equipment, which is available.

MS THOMSON: Yes.

PROF SLOAN: Okay, and you're also suggesting that it's not necessarily wildly expensive.

MS THOMSON: No.

PROF SLOAN: But the incentives are very poor within the system.

MS THOMSON: Yes. I mean, I'll just give you a quick example: someone who had a back injury and was given a job after a period of rehabilitation. Somebody I'm working with at the moment got a job in a motel where she had to work at a high counter greeting people as they came into the motel, and she was given a stool. Now, even a person who doesn't have a back injury should not be working on a stool all day with no back to it. So she is simply reinjured. Meanwhile, the rehab provider

and the employer are fighting about who is going to pay the cost of a stool with a back on it. I mean, it is just an absolutely ridiculous situation. This is something that happened more or less three weeks ago. In the meantime this woman is injured again, takes more time off work and has more treatment.

PROF WOODS: You are drawing on cases at an end of the spectrum.

MS THOMSON: Yes.

PROF WOODS: Is there a spectrum though - or do the majority of employers and rehab providers all sit at the particular end that you're describing? I mean, is there also a range of reasonable to good employers who understand the needs and is there some way of capturing whatever their incentives or management approaches, or something, are, and have those helped bring up the behaviour of others?

MS THOMSON: Okay, well, I'm just sort of looking through this sheet, this research, here, which I think has some really good - - -

PROF WOODS: Would you make sure you make the reference known to us?

MS THOMSON: Yes. This is the OOS Stressors in the Workplace project, which was research by - the Occupational Overuse Syndrome Stressors in the Workplace project, which was carried out by Comcare. Workplace factors were most important, particularly high demands for physically repetitive work, computer use, reportedly poor ergonomic equipment and adversarial workplace culture, as indicated by reported low supervisor support, low OHS support, job insecurity, ambiguity and job boredom. Again, the incidence of OOS was increased if the workplace was seen as rewarding competitive hard-driving work behaviour, where employees are expected to meet deadlines they find hard to keep and to work extra or long hours.

Those are characteristics of a workplace, and it could be just a section in a larger workplace, that is going to not only produce OOS but is also going to find it very hard to rehabilitate someone after injury. I would say that we come across quite a few rehab providers who are very well intentioned. In fact, some of them refer people to us. We have a kit for people with overuse injuries and they hand that out to people, because they see it as being extremely useful and very well informed. But essentially, the sad thing is that they're working in an environment where, as I said before, there are no evidence based guidelines for treatment. That is just ridiculous.

Somebody rang me up last week and said he had been told by a rheumatologist that what he should do is to ignore this pain; he should just work right through it and then the pain would go away. In my experience, that is the profile of people who are long-term injured. That is what they have done. One way or another they have taken

pain-killers or they have just ignored the pain and kept working, and then they are injured forever. That is what produces a chronic long-term injury. That sort of advice has no evidence base whatsoever.

This condition did not first occur in Australia in the 1980s. There was a big wave of it in the 1980s with the introduction of computers into a large number of workplaces, but it's been known for a very long time and was first described in the 1700s. It's a very sad thing that we are still in the dark, essentially, as to what treatments work and what don't.

PROF SLOAN: You mentioned the idea of having a - perhaps let's call it an injured workers advocate.

MS THOMSON: Yes.

PROF SLOAN: So this isn't a kind of ombudsman idea. This is someone who basically acts on the part of the worker.

MS THOMSON: Yes.

PROF SLOAN: Not as an arbitrator.

MS THOMSON: No. I'm putting forward two ideas: one that there be independent professional mediators, and another that there actually be an advocate. That advocate could be a person who is quite creative, because a lot of the problems that injured workers have could be solved by somebody who is a bit of a lateral thinker, who is able to sit down with an employer calmly - not like the worker, who feels under attack and who's coping with an injury, often a very severe and painful injury at the time - and say, "Let's work together and see if we can find in this organisation somewhere that this person will be able to flourish and to work," and often there is somewhere.

PROF SLOAN: So this is kind of acknowledging the potential power imbalance that can emerge - - -

MS THOMSON: Absolutely, yes.

PROF SLOAN: - - - because of the fact that you've got a rather unsophisticated player in the form of the injured worker - who's injured, apart from anything else - who might feel sort of flummoxed by the system and the details of their entitlements and the expectations and the like.

MS THOMSON: People describe to me, for example, situations where they are

told there will be a meeting at their doctor's. So they go along to their doctor, and they're in extreme pain and uncertainty about the fact that they have OOS, all the disability that entails, what will their future be, and they find, without warning, that there are five people there and that none of them are on their side, as they said, except perhaps the doctor. It's a very disempowering situation. And people are sometimes confronted at work by those situations. They're called into a meeting, let's say, about their poor job performance or the fact that they're not getting off a graduated return to work, and it's just them. Being disempowered is not good for people. There's lot of evidence that lack of control is a major factor in human health; bigger even than, for example, smoking or cholesterol. That's very well established research. And that's the one thing that the workers compensation system is really good at producing: disempowerment.

PROF WOODS: You referred to what can otherwise be known as the long-tail nature of the Comcare system that people are on; long-term benefits unless they slip across into "disability, other".

MS THOMSON: Yes.

PROF WOODS: Then the alternative of lump sum: I detected some cautionary note in your words there, which is the obvious alternative.

MS THOMSON: Yes. Again, there's all the potential for cost-shifting in lump sum.

PROF WOODS: Not only cost-shifting, but the adversarial nature of achieving the lump sum may have prolonged their injury.

MS THOMSON: But a long-term relationship with the insurer prolongs people's injuries as well, because people who are injured are very aware of some of the worst or most difficult aspects of the workers compensation system. They are aware, and maybe they're overly aware, of the fact that they might be videoed at home, so on a day that they can hang out the clothes or they can dig in the garden, many of them won't because they don't regard it as being prudent to do so. I would imagine that hanging out the clothes and doing a bit of digging would actually be very useful and helpful for them in a whole range of ways. The longer you prolong that relationship, the more immobilised people are by being part of that system.

PROF WOODS: In those schemes that have common law, if that's not resolved for four or five years and there's a very adversarial stance taken by parties, then rehab is also problematic in some cases.

MS THOMSON: Yes.

PROF WOODS: What's the way through all of that?

MS THOMSON: I don't know. I just acknowledge it as really difficult. I talk to people who have been in the Comcare system for 20 years. They have been sent off to a particular medico-legal professional who, so far as I know, just says that every single person who is sent to him never had the condition; there is no such condition; they're basically frauds; they should go back to work. In some cases people say to me, "I'd love to go back to work, but I've been out of the workforce for 20 years. I used to work on a typewriter. Nobody has typewriters now. I'm 55. What do I do?"

PROF WOODS: What's the advice you give them?

MS THOMSON: "Go and see a lawyer." That's the advice I give them. I think that's honestly the best advice I can give them.

PROF WOODS: And there are particular lawyers who specialise in that area.

MS THOMSON: Yes.

PROF WOODS: Indeed there are. Quite true.

PROF SLOAN: I think it's very interesting.

PROF WOODS: Yes. Medical independence is another area you raised. You have described the inappropriate treatments. The independence question: how important is that? We have been looking at a range of schemes that might form some fabric of a national framework, which could include self-insurers. Now, a number of self-insurers, particularly where they have remote facilities, have on-the-site doctors who are employed by them but workers obviously retain the right to visit any GP that's appropriate. To some extent, medicos who understand the workplace might be better placed to assist, but then there can be concerns by workers of, "Whose side are they on?"

MS THOMSON: Yes.

PROF WOODS: So what's the degree of concern? Is this a side issue or is this a central issue?

MS THOMSON: I think it's a central issue, and I think the amount of money that goes to medico-legal doctors in the system is just absolutely disproportionate. They charge extremely high fees for a one-hour appointment and a report, often in the thousands of dollars. They're often working within very fixed paradigms. With

overuse injury you might have a rheumatologist who's working within one paradigm of what the injury is; a neurologist who is working within a completely different paradigm; a sports physician, who has a totally different idea of what the whole injury is - in my opinion a much more correct one.

PROF WOODS: You're not the first person who's made that point to us.

MS THOMSON: Yes. Just to give an example, the National Institute of Occupational Health and Safety in the USA did a huge report, a 500-page report, at the request of Congress into upper body musculoskeletal conditions. They got the best experts that they could possibly get, internationally, and they've got sections on various injuries, the evidence of work-relatedness, what aspects of the work have been shown to contribute to the injury, and the quality of the research evidence. In many cases there's very high-quality research evidence that shows quite unequivocally the relationship between the work and the injury. But you can go to plenty of medico-legal doctors in Australia who are totally unaware of that research and will just maintain that an injury is totally in a person's head, and it's in their interests to do so, because they're frequently called upon by insurance companies to provide adverse medico-legal reports.

PROF SLOAN: It is a bit surprising, in a way, when you think of all the treatment protocols for so many conditions that doctors use, that they haven't developed treatment protocols in this case.

MS THOMSON: Yes. For example, the British Medical Journal very recently published a paper looking at so-called conservative treatments for overuse injuries, so that would be a range of physiotherapy; non-surgical treatments. These are very well-established and often tried treatments, they're quite expensive treatments, they often go on for a very long period of time, and there is no good research evidence for the effectiveness of any of them. It's really a laughable situation.

PROF SLOAN: Depressing.

PROF WOODS: Are there any points that we haven't explored that you would like to reinforce to this inquiry?

MS THOMSON: I wouldn't mind telling you briefly about my own injury.

PROF WOODS: Please.

MS THOMSON: I was working as a teacher at CIT. I'd completed a master's degree in linguistics at my own expense, which I think shows my interest in and dedication to my profession, and the year previous to my injury I had been working

as a lecturer at the University of Canberra in TESOL. I was working on a computer, which was a completely ergonomically incorrect situation, I had no training whatsoever in how to use it, and under a very tight time deadline. So I was injured, and I just put in a workers compensation claim to ask that my treatment be paid for. It was accepted, and I then embarked on a series of completely useless, and probably in some cases deleterious, treatments.

I didn't get better, because I didn't take any time off work, and in fact have never taken any time off work because of my injury. But Comcare, who is the insurer, have just repeatedly subjected me to adverse medico-legal examinations with doctors who have claimed that I am a fraud, which I find insulting, an attack on my integrity. All I did was simply to continue to work and to ask that treatment be paid for. What is the likelihood of fraud in a situation like that? I think it's very low. And yet they have been willing to pay up to $3000 to medico-legal doctors so that they can get rid of my case.

I eventually found my work situation so unpleasant and I was so marginalised at work, working part-time and just being paid as a part-timer, working as a part-timer on my own choice, that I took a voluntary redundancy. I'm currently embroiled in a legal action with Comcare. The whole thing has just been so pointless, so insulting.

PROF SLOAN: Disempowering?

MS THOMSON: Disempowering, exactly - even for a person who's reasonably assertive and has a good education behind them. I just think the system is not working.

PROF WOODS: Over what period of time did this injury develop? Was it a short burst or did it - - -

MS THOMSON: I think the reason why it is such a long-term injury is because it was so difficult to take time off from work, because I was working with an extremely needy clientele in an understaffed situation. So I had a low-level injury which I was able to manage at work by saying, "Well, look, I can't fold 400 bits of paper and put them in envelopes." But, for example, a year after I was injured, and I was still having treatment, my employer decided to cut the staff in the section where I was working by half, to just me. Now, that workplace currently employs about four people full-time for approximately the same amount of work, so they expected an injured worker to cover double the amount of work, the same huge clientele of very disadvantaged people that I was working with which I felt a very strong sense of responsibility for. When I look back I'm just kind of flummoxed.

PROF SLOAN: Do you think there were opportunities lost in terms of early intervention?

MS THOMSON: Yes.

PROF SLOAN: A different human resource management approach?

MS THOMSON: Yes, absolutely.

PROF SLOAN: Which would have produced an entirely different outcome for you.

MS THOMSON: Exactly, yes. In the meantime, I've had a baby at the age of 45, and that was just such a terrible experience to be at home looking after a baby with an overuse injury, compared to my previous experience of being able to push a pusher or pick up a child who's crying. You really have to think about all those things: how am I going to manage every aspect of my day-to-day life? That's been part of the reason by the RSI Association has produced a booklet and materials for women who are parenting with RSI. It's such a huge problem. But, yes, just swimming in a sea of ignorance and apathy and a workplace that appears simply not to care, to want you to carry on and pretend it's not all happening.

PROF SLOAN: Did you get the impression that when you took the voluntary redundancy that they were kind of relieved?

MS THOMSON: Well, they were offering voluntary redundancies to anyone who wanted one. When I went back to work part-time, I just had the experience, as a very experienced and knowledgeable worker, of being very marginalised because I wasn't full-time and because I wasn't able to do everything. That's a very unpleasant experience, and I would think that it's an experience that many people have who are on a graduated return to work or who are long-term part-time because of an injury.

PROF WOODS: Have you subsequently identified a career path that you'd like to pursue that would be consistent with your level of injury?

MS THOMSON: I think I've resigned myself to - it's very hard to find a career where you don't use computers. I'm currently going to spend some of my own money buying a computer that's capable of having a fairly high-level, voice-operated system, and then again I'll spend some of my own money on paying for some training for that, and I'm currently doing a masters in health promotion at the University of Canberra. But I really find it very difficult to study with an overuse injury.

PROF WOODS: Thank you very much. I appreciate the time you've given the inquiry.

MS THOMSON: Thank you.

PROF SLOAN: Thank you, Ann. That's very useful.

PROF WOODS: We will proceed directly to our next participant. Mr Trevor Oddy, would you like to come forward.

MRS ODDY: I also want to be included, because I also have been injured.

PROF WOODS: Thank you. If you could both give your names and any representation of any organisation.

MR ODDY: Trevor Oddy representing himself.

MRS ODDY: And Maree Oddy representing myself, too.

MR ODDY: And operating as my full-time carer.

PROF WOODS: Thank you very much. You have our terms of reference. We have a submission that you have made to a different inquiry being conducted at the same time by the Productivity Commission into the Disability Discrimination Act, so we're aware of that material which is relevant to that inquiry. Our terms of reference are different, in that we're looking at the potential models for a national framework for workers compensation and occupational health and safety, but if you have some material that you wish to address to us that relates to our inquiry, that would be helpful.

MR ODDY: There are two small sections in that that relate to Comcare and to OH and S, and I'd like to refer to those.

PROF WOODS: Thank you.

MR ODDY: Just so that you have a bit of background on me personally, I was 32 years in the Commonwealth public service. It was a good job all the way through, and I've come down with multiple sclerosis and continued on at work quite well until work changed dramatically very recently, and that's what this was all about. So I had to go through the Comcare process in that, and be assured that anybody who approaches me in the future I'd recommend they wouldn't do it. I've actually pulled out and not gone on with it myself because the solicitor that was representing me fully came back to us and said he had been approached and told there was a very strong chance I would win but they would appeal at every opportunity and drag me on as long as they possibly could.

We've seen the paperwork from other people registered in these things - like, six to 12 years to get $12,000 and things like this. I thought I'm going to continue with my life, please. I don't wish to have it destroyed further than the offer already has done. So I'd be recommending that people not even go near Comcare. It's just

terrible in that sense. So we actually pulled out of the Comcare part of it, totally, and went into a disability discrimination one, which I've discussed further at the other inquiry.

Then the OH and S part of it, I did the course with the OH and S people through the years. I went to work, got voted to be on the OH and S committee.

PROF WOODS: I noticed that.

MR ODDY: Took a very active role in it for two purposes, which is the whole idea of making this presentation: one is because I had a genuine interest in OH and S for myself, plus for everybody else, and that's why we're doing this sort of thing. It's not just for me. It's so that no-one else gets treated the way I got treated in this one. So a lot of the thing said by the previous presenter nearly rates mine hardly worth it in a sense, because mine is a straight injury. They're saying it's a pretty straight injury, but the same things apply. You don't get any Comcare and the OH and S things - just from the bosses trying to - I actually got invited into my boss's office, the door shut, when I was the OH and S representative, and he said, "You're not interested in a golden handshake, are you?" with the door shut, and this sort of thing. I basically loved my work, I wanted to continue with it.

MRS ODDY: Could I just interrupt. Trevor has a memory loss.

MR ODDY: A short-term memory loss.

MRS ODDY: Do you want to explain to them why he offered it to you? What happened in the meeting?

MR ODDY: Yes. There were several issues that you come across in the OH and S role when you're trying to help and fix these things up. I was called to have a meeting in this manager of business resources, I think he's called - in his office - because I was having a lot of difficulty with my immediate supervisor and the union came into support me. So we went in for a meeting with the boss. He has his table pulled apart - a great section out of it; a big hole and his computer and everything all shifted and just about to fall off the edge - and I said to him, "You've got a very serious OH and S problem in here. You know, someone could be injured in here - like any of us or anything like that." It was just a few days later he called me in to tell me he was wanting to offer me a golden handshake, sort of thing. The treatment was terrible in that sense.

But always through being the OH and S rep, I was trying to fix up things like the kitchen area, where people were getting burnt. There was no sick room, so we eventually got a sick room. The person who went out and organised it bought a bed

that had no legs. You can imagine me trying to get into it and get out of it. I had to get somebody come in to try and help me get in - down and help. And so you'd go back and complain again and we got that all fixed, those sorts of things. Then there was no disabled carparking in the building. This was a fairly new building. There's stairs up the back you were expected to climb - all these sorts of things. There were just so many issues. They had a major airconditioning problem which all led to exacerbation of my condition.

Then the bosses all decided to give my immediate support officer an involuntary redundancy so I was left with a major increase in workload, a loss of all sorts of things, and it just exacerbated my condition to the point that short-term memory is a problem now - really bad - and my life's totally changed overnight. I cannot drive a motor car any more, I can't do any of these sorts of things. But my aim is not to fight for myself personally any more; it's just a waste of time because the National Capital Authority, they weren't going to do anything, except you must know - I don't know whether you've heard about it, if someone has told you or not, but I actually got a phone call last night, at 6.30 last night, asking me to modify my submission to you.

PROF WOODS: To the other inquiry.

MRS ODDY: Yes. The pressure is - - -

MR ODDY: To the other inquiry - to take out their names in this. Give me a break. They wouldn't give me any assistance before, they wouldn't even ask how I was. No-one came out to even see me. They then lied and challenged me at Comcare and all these things, and they want me to change the submission to suit them. No, go away. It's a real problem. People who put in a Comcare claim, forget it at work; you're a goner. They'll do everything they can to (indistinct)

PROF SLOAN: The issue that Ann raised before about the seeming reluctance to invest in what she called "adaptive" equipment, that seems to have been part of your story, too, doesn't it?

MR ODDY: They slowly would. I had to fight for it and I had advice from the Commonwealth medical officer, from my neurological specialist. We had one from the Commonwealth Rehabilitation Services, all saying this, this and this. The authority eventually got around to it. We even had to force them to undertake an access audit on the building.

PROF SLOAN: Yes, that didn't sound good that the building - - -

MR ODDY: Eventually they got around to doing disabled carparking which I

designed, because they said it couldn't be built. My wife and I designed it. It just got to the point that you were having to push, push, push all the time. You were put under so much stress. When you put the pressure on, they did go to a bit of trouble. I got a telephone that I could press the button and talk and not pick it up and this sort of thing. They had a little bit of RSI and then I got into a voice-activated computer. They were going to get one of those for me.

Everybody recommended - "Get one of those for you" - and the IT bloke couldn't get it to work. He said, "We'll employ someone. We'll get someone to come in and do it." I spoke to him three times and still no-one came, and then he got shifted to another position; someone else under contract came in and they kept changing the person; kept asking and asking. Then when I stated that in one of my written submissions, he wrote back and said I didn't even try. I've got it written in my diaries and everything exactly what happened. I can back everything up in written - - -

MRS ODDY: Can I just add: what happened there, too, Trevor was assessed for this voice-activated computer and, from what we can tell - we didn't find this out until after he had retired when we received some more documents - what had happened was, he had been assessed for the voice-activated computer and, as he said, it even took months to actually get one. They kept saying it hadn't arrived. It turns out what happened was Trevor was assessed for the voice-activated computer. One was ordered. His director, as you can see by the submission - the problems he's had - was going overseas for three months' private holiday; took the voice-activated computer.

Obviously this is what the hold-up was - because he took it - and they had to get a replacement one, and he had no need for it. He was going on a private holiday, and this is of concern. This goes on a lot, that adaptive - and I have had in my workplace - equipment that is there for someone with an injury or whatever - an illness or an injury - is being taken on a regular basis by others who find, "This is great." Well, that's fine, but the organisations - if it's good for other people - need to go and buy more, but not take it, and the conflict that then arises with that.

MR ODDY: See, what we find is you've got to fight hard to get things done, and you fight and you get them done eventually, and then you are labelled - that's a serious problems. Yes, not one person has come near me and I've been off work now for two years; no-one even asked whether I was well or not.

PROF SLOAN: What was the basis of the legal action that you were undertaking against Comcare, the one that you've now pulled out of? Is that right?

MR ODDY: Just the authority - - -

MRS ODDY: Do you want me to - - -

MR ODDY: Yes, Marie would be the best one to - - -

MRS ODDY: He's getting tired. What happened was, when Trevor had his exacerbation - well, Trevor has had a history. He's had, as you see, 32 years in the public service. He has had - in this multiple sclerosis we figure out he's had it for 22 years but he wasn't diagnosed for 10 years. His workplace knew he had it for 12 years, including - when the moved to the new building shortly after that, he was diagnosed with it. There was a case in 1995 where he was on and off work for about six months, and it was found he was getting exhausted, and when they looked into it, it was actually the airconditioning, the faulty airconditioning, very similar along the lines to what's happened at the National Gallery - that scenario.

Trevor reported it. He was not given any of his sick leave or anything back then. He has forgotten with his memory loss - Trevor has actually got RSI as well because of - with his MS he was obviously trying to do his computing work. Trevor is another who has gone into the system under a lot of constraints, and particularly with MS, or anyone who is pressured to work. He had an extremely - as his wife I know he had a very busy workload, and a lot of people, even though he worked for the Australian government, the federal government, even ACT government people - in other words, because Trevor was well-known for his expertise, if they didn't have an answer they would contact him. So not only was he doing his own work, he was also giving out assistance in a cooperative manner.

When he had his exacerbation, on the day that that happened - the details of that are there - he was actually brought home from work and this is, I think, with what happened - I had actually just started going back to uni and I was at uni so I wasn't contactable; not that they even tried because the answering machine was on at home and our three children, none of them were contacted. He was driven home in his car which was against the advice - he'd had one other episode like this, and I had told the first-aid officer, who worked on a daily basis with him there - as you can see, the first-aid officer went off to another meeting, "I'm too busy, I've got to get to another meeting."

MR ODDY: He couldn't attend to me.

MRS ODDY: Everyone was having this - you know, they were doing their performance things, and it was more important for everyone at NCA those two weeks to get these things in. Personally I'd had arguments with Trevor that week at home - we don't argue a lot - but I felt - he was working until 11 or 12 at night. Normally he would come home at half past 5 exhausted and sleep for a couple of

hours, and he was going into the computer and trying to do his achievement agreement at home; he shouldn't have been doing it at home but this was how pressured he was at work. They brought him home. I rang Helene, their personnel officer, and told her that I was concerned. I found him at home when I came home at quarter to 2. He was dropped off about 10 o'clock. At quarter to 2 I got home and he was lying there, and he said, "I've had chest pain." I'm a registered nurse, and I checked him out and he was okay then. But I think of what could have happened. He should have been taken in an ambulance from work. He wasn't. So I spoke to Helene and the first thing she said was, "Is this going to be a workers compensation case?" Yes.

MR ODDY: I hadn't even thought about it before. We were worried about my health.

MRS ODDY: And I probably might have just said, "I don't know, I suppose" or anything, just - but we were just advising her. Trevor put in a claim for his exacerbation of his injury, but what has come out in the process - they held off doing anything about it until - the only cooperative thing we got was when he - you know, he went to the CMO and when we decided he would retire which we knew - he can't drive, his memory has gone. He hasn't deteriorated at all since that day - right. It was with a short period of three weeks: with what happened, he deteriorated. He hasn't actually deteriorated. As a matter of fact I think the stress of coming - in getting away from the work thing he has improved a little bit with his memory because at that time he was very stressed and that.

PROF SLOAN: Have you ever received Comcare payments? No?

MR ODDY: No, not a cent.

MRS ODDY: Because what happened was, we put - and this is what is happening to a lot of people. In this case - I mean, Trevor now with his MS, there would be a time - eventually he would retire on invalidity. So he didn't have to worry about redundancies or thinking about retirement. We knew the day he decided he couldn't cope he would automatically qualify for invalidity. So he didn't have to worry about those things. We put in the claim.

MR ODDY: Then the department, the NCA the staff (indistinct)

PROF SLOAN: Sorry, you put in the claim on the basis that the condition was exacerbated.

MRS ODDY: Exacerbated, yes.

PROF SLOAN: Okay, and in a sense mishandled.

MRS ODDY: But what happened was, they were rushing through the invalidity retirement and then we discovered they went and put in an adverse - particularly his supervisor wrote a report that is painting Trevor - who worked for 32 years for the public service with not a mark against his name - as suddenly this inefficient - you know, inefficient officer and even his immediate supervisor, the director, said, "Oh, he claims to have some sort of degree." Well, Trevor did; he had a degree, and he's working as a town planner. Why does he have to be put down? He's actually got a higher degree than his director. But it's the way it was put, and he put in a lot of personal things.

MR ODDY: He also complained about how much leave I'd taken the year before. It was the most leave I'd ever taken off. And his every answer to it was far more approved than agreed to. It was the year my father was diagnosed with cancer. I'd been to visit him several times and then he passed away and all that, and my wife came down ill in the middle of it, and then I came down - with a slight exaggeration - with my condition. So I ended up having a little bit of leave that year more than - and he had a go at me about it. Then he took four months' leave off and went to England. We've got a problem.

MRS ODDY: But what happened too in this - all the incidents, reports of what happened to him on that date was all either not dealt with or denied, and even the CEO, Annabelle Pegram, went and wrote across one, "I saw the other person helping Trevor into the car." Now, that is not the truth. It was put in a method, to write it across, so that when it went to Comcare, that officer would say, "Trevor Oddy is not telling the truth", and this comes into this adversarial system where a manager - and this is a big problem with compensation claims, that the claimant does not get to see what's written about them until after the claim has been denied, and at that time it's very difficult because you're being seen as being, you know, this person who is just aggrieved because someone wrote an adverse report, where as it is with Trevor's report, we've been through it and we've rebutted things and we've got evidence.

There has been no apology, but as Trevor said, we decided not to pursue the compensation issue because it's just too hard, and for someone with MS we have to go through that system - you know, this adversarial system and being subject to specialists. Trevor's specialist who has been dealing with him now for 20 years, when we asked him for his report, he didn't want to - as he said - and I know him professionally because I'm a registered nurses and in the areas I've worked in I've known him, and he indicated, "Well, what I do is, if I don't comment I don't have to waste my time going to court." But then several - after Trevor had taken his claim, we decided not to proceed any further with the compensation claim because we knew he just wouldn't give us the support, even though he agrees. He'll say that to us

privately but he wouldn't put it on paper and we found that would be too hard. Then he admitted to us on a subsequent visit, that he's now got a contract. He's investigating multiple claims with the insurance industry.

MR ODDY: He's working for the Commonwealth government.

MRS ODDY: And that too, so he's got a conflict of interest. I think this came out in the last submission that - - -

MR ODDY: Go for an independent (indistinct) there was just so much. So much was said in the previous submission which was - just change the words repetitive strain injury to just about any Comcare claim, "You're a goner, your name is just" - and they'll challenge you and challenge you and challenge you right up to the last minute. Even my own department challenged me over the phone. Last night I've had to top up my medication to recover from that. It's just too much.

MRS ODDY: I think it comes down to - I can remember when the Comcare legislation came in, it was to be no fault - you know, it was promoted as being no fault. This was for the worker, to protect the worker, to stop these people having to go to the court and - as it is claimed - lump sums and whatever. But what it has done - and I think what was said in the previous submission - is it's really showing that it is adversarial, and really from what we've seen - and we network with a lot of people and I've actually been a member myself, I've been injured myself 10 years ago quite seriously, and I've been through this process as well. What happened to Trevor is identical, and I just can't believe - neither of us are frauds.

I know after being put through the ringer myself for five years by Comcare, finally when I decided I'd had enough of them, I didn't want to be owned by them as this other lady said. I wasn't worried about surveillance, but I just got sick of every time I went to the letter box wondering, "Is there a letter from Comcare? What are they going to say today?" I got sick of that, so I asked my solicitor to ask for a settlement and I got a settlement. But once I agreed to the settlement, the Comcare solicitor got up and said, "Mrs Oddy, I would just like to say I'm very sorry but we've never disbelieved you." And I had been put through all this business. I was an injured as a nurse by someone who left the scene of an accident, came into a local health centre that I worked at, and was covered - the staff there knew him and covered up because he didn't want to go to hospital, obviously to be breathalysed.

He's walking around with a job and a home and everything. I've lost all mine too and I'm Trevor's carer. As you can see, I have to still cope with a back injury for nothing - I'm not getting paid anything. I'm his carer and the cost to the community - we're not costing the community much because Trevor has got a ComSuper pension and that's good.

MR ODDY: So I get no financial relief - - -

MRS ODDY: But we don't get - - -

MR ODDY: We have to pay for (indistinct) everything.

MRS ODDY: We have to fund our own. Luckily we have actually been very secure and very careful with what we've done with our money so we can support ourselves, but a lot of people don't have that. I think at the end of the day it's unfair, when people who have injuries and illness are not properly supported by the system, and I think too my concern is, as a nurse, there are a lot of people who - as was said by the other lady - won't report their injuries. What is going to happen is it's cost-shifting because then a lot of these people go onto disability pensions at age 45 or whatever for the rest of their life, and it's costing the community a lot of money, and also this learned helplessness that some people get involved in - as she says, they then feel they won't put their washing on the line. If I have to put my washing on the line, I put it on the line; there's no-one else to put it on the line. But a lot of people won't do that for fear of doing - being seen or videoed which some people are.

MR ODDY: So the whole aim is trying to improve the system for everybody, not just for us personally, but I hope I'm not speaking to the wrong people here, but I do believe that the only people who win by this Comcare arrangement are solicitors and lawyers. They all work with each other. It takes forever to get through things and they make a lot of money, and we've had a lot of insults, lost medical, health and all these sorts of things. This poor lady - six years or something to get $12,000. It's just not worth the effort. I'm not going to put myself through that. I just want to you know, I'm one of the ones who said - Comcare - - -

MRS ODDY: The other thing, particularly with Comcare, that needs to be pointed out regarding reporting of injuries - whether what happens is because of the Comcare system - and I think it's very much that people are required - well, under the act they should report any injury or incident. So in any well-organised workplace, these things are reported, but what happens then, it goes on someone's record - on their work record. As it is, the adversarial system gets rid of them, particularly out of the public service - or anywhere - particularly if they're not full-time employees. Then what happens is they go to another workplace and I know - I have done some consultancy work regarding people getting their OH and S things together - documents - and a lot of them, I can't believe how many - particularly the community agencies in this town, have on their employer information form, "Have you ever had a workers compensation claim?"

I want to make the point that what is the difference between someone who is -

all right, I believe we need to have legislation there that if someone does have a workers compensation claim they can either put down details to a new employer and they're not going to be discriminated against or not denied employment, or that unless it's - you know, under the Disability Discrimination Act it has to be that you can't do the inherent requirements of the job. You shouldn't have to and you should be protected too when you say that it came up - about the lady, the person working who wasn't given the correct stool - the arguments that go on; they should be provided.

Because what is happening, particularly in Canberra here, is it's rife. People who are injured are forced to put those details down yet if they go - and that same person went and broke their arm at netball in their own private time, they're not obliged to report it. They're getting treated differently and that injury could be the same injury. I mean, sure, if you broke your arm at work, Comcare will probably pay that and it's a quick-fix situation. But for someone with any other illness, exacerbation of illness or just, you know, a lot of musculoskeletal injuries like RSI, neck and back pain and things like that, they're hidden injuries and it's very difficult to do that.

The other thing that is coming out - I know the other lady mentioned insurance. A lot of people are being asked to actually claim on their total - you know, their disability insurance. Because people, particularly in the private sector, are paying the compulsory super, what comes with that is a small element of, you know - a lot of employers make it compulsory for them to pay it. That locks them then into a scheme. People, even public servants, can claim private disability insurance. What happens is now, because people have had - particularly with Comcare or anywhere else - to put in a claim - they may not have been paid - they can no longer get any insurance because the private insurers are refusing to give them any insurance, even though it has got nothing to do with their current position. There is evidence that the previous employer has not come back for it, so why?

We have got thousands of people who are now trying to work, particularly in the private sector, with no insurance; whereas the worker next to them, who may have injured themselves at netball, can go and get insurance for the rest of the time.

MR ODDY: So the word is, keep your mouth shut and survive.

MRS ODDY: Yes.

PROF WOODS: Do you have any other final points that you wish to bring to the inquiry?

MRS ODDY: Yes. I will just go through this. There are just a few things I want to

comment on: that public servants should be required to act according to Australian laws and the Public Service Code of Conduct. I believe, from our experience, that there should be some form of disciplinary mechanism for public servants who make false reports to - this is, I think why we need some sort of an advocate for people who are injured in the workplace. That advocate also could be someone who has been injured who also has been there and understands; not someone who has never been injured.

You need some form of mechanism where you found if someone writes a false report about you, like we have proven with Trevor, we have just got nowhere that we can go with that. They just get away with it. "We've done this. He's retired - - -"

MR ODDY: A lot of these staff feel as though they have to, right, because they've got to try and hold their job, so they've got to do the right thing by the boss to hold their job; not the right thing by the poor bugger that just got injured, but the right thing by the boss. You've got to please the boss so you write whatever the boss wants, not what really happened. I have got so many examples of that. You see, because of my short-term memory loss - I was keeping good records and I've still got them all. Everything that anybody wants to question, I have it written down: the day, where it happened, what happened - and they've got nothing. If I want to take them all to court, I could, but I've got a life to get on with.

MRS ODDY: I just want to make some other comments. I have been involved also, myself, with the Comcare Action Group years ago when I was injured myself and I have also done some work with an insurance company so I will just comment on those. The other thing is, just to go back to this one here - I've just got a list here - OHS workplace committees. You're looking at the framework. What actually happened there, I was chairperson of an ACT one 10 years ago and Trevor has been a member and that, so we can speak.

What happens is there are often people in the workplace, mostly union members, who are prepared to nominate and take positions on the committee. What often happens is someone else who may be a union member but who is upwardly mobile, who works either in procurement or personnel or something, is approached by management and they end up taking the nomination. There's pressure put on and I know just before Trevor left there were problems over the nominations. They were suddenly lost because they wanted a particular person to go in and that was questioned.

What happened is that they are then - these OH and S committees that are being set up that are really part of the requirements don't work properly and another reason is people often nominate - they get either elected or just nominate. They're meant to take up training. What happens is a lot of people are acting on OH and S

committees without being trained so they really don't have any idea of what it is. You really need a five-day training or whatever to understand the act and what you're meant to do, the processes. This is the same with management. In my work time, none of the managers ever went to their training. They just ran over everyone else on the committee and as a trained workplace rep on that committee. You know, if you said, "This is in the legislation." "Oh, you're trouble." In other words you get - so that makes it difficult, when management does not do the training because then they intimidate people who are trained. That's that.

I also want to comment on the medical specialists. I have had some personal experience that a medical specialist who did some reports on me - and I think I'm quite aware of the medical specialists that the other lady referred to - has this system. He gets employed by - or there are two or three of them in Canberra I know that they use for Canberra clients - who nearly every report comes back, "This person doesn't have an injury," and this, this, this.

What happened was, I was doing some work for an insurance company, doing assessments for people. The interesting thing was this same specialist did two of the reports I was asked to interview these people for. I was absolutely amazed at the change in his attitude in his reporting; the way one thing he reports to - if he's paid by Comcare he reports in one mechanism. If he's paid - as it was - by the solicitor of this person wanting to put in this claim - and as a matter of fact the work I was doing - and I just want to also, in part - that question asked about fraudulent claims. You can pick out people who are fraudulent but the only way to do it is to look at their whole life.

Unfortunately what happens with the Comcare system and the private insurance system - usually what happens is the only way a person gets assessed is at work. They don't look at the factors in their life, whether they be negative or positive factors. When you go in, the work I was doing, I was required to visit the client at home which meant that I rang up the insurance company, notified them that I would be coming. I went to their home. The skills I have as a community health nurse, I looked out for all the factors that were going on in the home. So you can pick up fraud. You can pick up whether the floor is meticulously clean - say if someone has been a cleaner and if their place has not got fluff everywhere you know that they're home mopping the floor every day and things like that. So it can be found.

Also there's the advantage in that if the system allows it to look at the injured worker or the person who makes the claim and looks at it in that holistic approach, that will also help determine claims much better because, as I found, people who are injured still may have - and luckily we're still together with all the stresses and strains that go on because it really stresses your relationship - but it's amazing. People who are not injured can either have marriage breakdowns, their kids can be

into drugs. They can have all the dramas in the world. The workplace tolerates that. They take time off. An injured worker, because all of a sudden they're meant to be lily white, that if anything happens to their family, this is causing the injury, you know what I mean? It could be a compounding factor because the person is injured, but all of a sudden the injured person's private life becomes a major factor for everyone in the workplace to make judgment as to whether that person has got injured or just malingering or whatever.

It makes it very difficult and I think with the rehab process and whatever, the people - and I think we need education to educate people who are going particularly into the return-to-work rehab process to look at these factors; that people do have stresses in their lives and it's a normal part of life to have these things going on. That, I think, will help if people realise that people will have dramas in their life, regardless of whether they're injured or not.

Just the cost - I also must emphasise the terrible cost shifting that's going on. I think it's just appalling that the costs we're paying, when the money could be paid - and even if I believe there probably are a proportion of workers who may be fraudulent or whatever - but I really think, by having a system where workers compensation payments are paid right from the start - and what is happening, particularly in the public sector probably more than the private sector - the private sector more than the public sector - is that employers are actually holding off paying claims. For some reason they're holding them up. Insurance companies - you know, they're getting lost. Paperwork gets lost so, "We can't determine your claim." They wait until people run out of money.

As you know, if someone has got a mortgage to pay or whatever, they're either going to leave their claim, drop their claim, or go and get a job elsewhere. So what happens, the claim is denied for those reasons. I think we have to work very carefully to make sure that people are paid. People should be paid within that time. They shouldn't have to rely on their sick leave. They should be paid compensation. Then if it's found to be fraudulent they pay it back or if it's found to be a pre-existing condition or something, then it's taken out of their sick leave and that's adjusted, but not this system of leaving people for months without money. They've got to go to Centrelink, some of them, because they've not got assets. They use up all their assets and then they don't have any money to buy the equipment they may need.

A lot of people, if they're given a fair run, will actually take the responsibility of rehabilitating themselves and won't be asking. There will be a proportion of people who want everything free but the great majority of injured workers are too proud to do that and will go and buy their own medications, their own aids for daily living and not ask for reimbursement.

PROF WOODS: Thank you very much. That concludes your evidence?

MRS ODDY: I think so, yes.

PROF WOODS: That has been very helpful. Thank you for also addressing our questions as you've gone through it. That being the case, we will adjourn briefly till 4 o'clock, at which time we have some evidence being presented by Optus by way of a telephone hookup from the UK. Thank you very much.

PROF WOODS: Thank you. We will reconvene this session. The participant from this morning, Ms Terri Henderson, has asked to provide some supplementary information to the inquiry. Ms Henderson?

MS HENDERSON: Thank you. The RSI Association use the term "disempowerment" a lot. Even when things go smoothly in the Comcare system, you still feel disempowered. Even when best practice is used, if things don't work out, you still feel disempowered. In my own experience I have not had to battle to prove my injury. I almost felt disbelief when I went to a Comcare specialist and didn't find an adverse report - I found it was completely supported - because I'd had heard of so many bad experiences from other people. So I didn't have to fight that. I was sent to an injury management centre on my third bout of RSI, when I had a major flare-up. I think that's a very good model.

It didn't work physically for me. I've met some people it has worked for and I'm not critical of the actual injury management centre scheme, I think having a psychologist and a physiotherapist and a medical practitioner is quite a good way. What I did get out of it was a lot of understanding about my injury and I think that's probably helped me a great deal, even though it hasn't worked. It has been later on, when you've gone and repeated programs that you've already done, you know what's wrong, you know how to cure it - by getting off a computer - and it doesn't work, that you feel that sense of disempowerment.

They mentioned being videotaped. I think that's a really big issue and you can have it for the rest of your life and I guess I've just ended up saying, "Well, there's nobody else," as they said, "hanging up the washing." I'm a single parent. I go out and do it and nobody knows how I feel when I do it and I just have to do it. But it was a big worry for a year or two and then I just said, "Well, there's nothing I can do and the injury is there and I just have to do it." But it is scary.

They mentioned eight out of 10 people have symptoms but don't lodge a claim. I think that's supported in what I've seen at work. Even on my third bout of RSI I was still really reluctant to lodge a further claim and I partly did it to try and force the department to recognise they have a bad computer system that they'd installed, when I heard everybody around me complaining. After two earlier bouts with no time off I still was reluctant to do it.

An advocate for injured workers was mentioned. I think, with the feeling of powerlessness, that would be very important to have. A lot of my friends said to me, "Why can't you get an ombudsman in to help you with your legal issues, because that would probably resolve them and get things sorted out without going to court?" But it was not possible. I like the idea that was mentioned about the South Australian

scheme, the protection of a second employer, if you have a flare-up. That would make it easier in the Comcare system to find other jobs, if that was covered.

The issue of special needs equipment was mentioned and I mentioned that briefly in my submission this morning. I actually work in an area that has voice-activated software and special needs equipment and one of the reasons that people do have problems is the way the departments are funded and set up. For example, somebody can't put in a request for software unless they go either through their line area or a human resources area. To go through a human resources area they have to have lodged a claim or get it approved to have a workplace injury. So they can't do it until they've got that. We have no funding ourselves, so we have to be paid to install it. We have to go through an outsourcer. We can't just go and buy something locally in Canberra, which we could possibly get next day. We may have to wait up to six or eight weeks whilst people get things in from overseas, because the departments are outsourcing their suppliers.

This morning there was mention about stress and RSI: are they separate issues? People don't want to lodge claims. I think they try and avoid it, as several people have mentioned, and I think apart from the stress making the RSI worse, it would be more difficult proving a stress claim, from everything I've heard, and people don't want to go into a litigation issue. That's about it.

PROF WOODS: That's very helpful, thank you. Have you been a member of the association?

MS HENDERSON: No, I haven't. I went along to one of their meetings but I'm not a member of the association.

PROF WOODS: It's just that I can see some benefit in sharing experiences and understandings. I mean, you articulate yours very clearly, as did the association. There are some strong parallels that could benefit from that synergy of cooperation.

MS HENDERSON: Yes. Perhaps one last thing: I think I did the figures once that said it would probably be cheaper to invalid someone out with a partial injury - but you can't do it - but it can be financially more effective for both people, and you just can't; you end up stuck at work. That was an interesting financial aspect.

PROF WOODS: Thank you very much. If there is further material that you do wish to put before the inquiry, written submissions in whatever form of glossiness or unglossiness that suits your needs, we'd be very happy to receive them. Thank you very much.

MS HENDERSON: Thank you.

PROF WOODS: At this point we'll just wait for the connection. Who have we got, Gary Johns? Gary Johns, are you present?

MR JOHNS: Yes, can you hear me?

PROF WOODS: Very good, we can indeed. We've got you on a loudspeaker that's quite loud.

MR JOHNS: (indistinct)

MR BERENTS: I am here as well, Mike.

PROF WOODS: Yes, Peter, I was going to get around to you. Peter Berents, you'll be providing evidence on behalf of Optus via phone from the UK. Could you please state your name and title and organisation you are representing?

MR BERENTS: Peter Michael Berents from SingTel Optus Services. I'm the risk manager with SingTel Optus.

PROF WOODS: Thank you very much. We have received a submission from Optus, and thank you for it. It is quite comprehensive. It comes in two parts: one is a public submission which is already on our web site, one assumes. Yes, it is. You have also provided on a confidential basis a submission you have made to the federal government and certain other papers relating to that. If we could deal with all questions such that they can be answered in a public forum, that would be helpful. I'd prefer not to have to close the meeting to deal with the matters in the confidential submission. It's something that the commission much prefers to keep everything in the public forum as to the extent possible. So in answering your questions, if you could keep that in mind.

If you feel that it's in the commission's interests to be aware of other matters that are confidential, perhaps they could be followed through in written submission or in some other form. But to the extent possible, we'd prefer to deal with the public material. Is that okay with you, Mr Berents?

MR BERENTS: Yes, and I understand that and we will (indistinct) as far as we are possible, we will provide you with information on the public record which then you can (indistinct)

PROF WOODS: Thank you very much. I notice several of your colleagues are here as well. Do you intend to be making supplementary comment? If so, would you like - - -

MR BERENTS: To an extent you should have Liz Wetherspoon, who is our OS manager there.

PROF WOODS: We do indeed.

MR BERENTS: And Judy Anderson.

PROF WOODS: Thank you.

MR BERENTS: And I'm not sure if David McCulloch was going to be there as well.

PROF WOODS: We're here, you aren't - so we know the answers.

MR McCULLOCH: Yes, we're all here.

PROF WOODS: Could each of you give your name and position for the record, please?

MR McCULLOCH: David McCulloch, general manager, government affairs, Optus.

MS ANDERSON: Judy Anderson, manager of regulatory policy for Optus.

MS WETHERSPOON: Elizabeth Wetherspoon, occupational health and safety manager for Optus.

PROF WOODS: Thank you very much. As I say, we've had the benefit of and have read through your submission and have a number of questions on it, but do you have a brief opening statement that draws out some of the pertinent points?

MR McCULLOCH: Yes, we would like to make a brief opening statement.

MR BERENTS: Just a very brief comment.

MR McCULLOCH: Excuse me, Peter - - -

MR BERENTS: That Optus believes that a national workers compensation system is very much in the interests of our organisation as well as the general community and industry generally. I believe that our submission details reasonable support of that and we are happy to answer any questions that you may have, to try and expand on the comments we have made, to assist you in your reporting on this.

PROF WOODS: Thank you. Do you wish to supplement that?

MR McCULLOCH: Yes, we did have a brief opening statement that Judy Anderson will make. It's very brief and then we'll leave it open for questions.

PROF WOODS: Thank you.

MS ANDERSON: I understand Peter can't hear me, so can you let him know - can he hear me? No.

PROF WOODS: Peter, we're just going to adjust a couple of the microphones for a minute. Gary, are you able to hear everything?

MR JOHNS: I didn't hear the other people then.

PROF WOODS: We're just about to correct that other matter. Technology will not defeat us in that process.

PROF SLOAN: I don't know about that. Machine beats man yet again.

PROF WOODS: What about woman, though, Judith?

PROF SLOAN: No.

PROF WOODS: Is that better? Okay. Yes, if you'd like to present the additional opening comment.

MS ANDERSON: Optus believes that this current inquiry is quite timely. We've been in operation for about 10 years and since our inception we've endeavoured to introduce the best occupational health and workers compensation arrangements for our employees as we can. We've had an advantage. Given we're a new entrant to the industry and a new operator in Australia we've had the advantage of being able to design arrangements which best meet the needs of our employees and the company as a whole. We haven't had to rely on incumbent arrangements and had historical arrangements in place that we've had to change and so forth.

I think we've been quite fortunate because our occ health and safety arrangements and workers compensation arrangements have made Optus an attractive place to work. However, we have found that operating under the eight states and territory workers comp and occ health and safety arrangements have reduced the amount of efficiencies and also operational improvements and benefits for employees that we'd like to see, and they've particularly made administration quite cumbersome.

It means also that we're not on a level playing field with our competitor Telstra, who doesn't have to comply with the eight state and territory regimes but merely comply with the national arrangements, and so our aim is to move towards complying with a single set of national arrangements and accordingly using a scheme of self-insurance. We have our own insurance body and we'd like to use our own insurance body to look after our workers compensation insurance so that we can independently manage it to the benefit of our employees and the company as a whole. We've estimated that the savings of moving to a national scheme are about $2 million a year, which is quite substantial, and Optus has recently reapplied to the Commonwealth to apply for a class B licence under the Safety, Rehabilitation and Compensation Act at the national level. We made an application sometime last year which has been refused by the minister for employment relations, and we we've recently reapplied, basically refining our application.

The two key reasons for refusal of our application were the perceived risk to the Commonwealth if Optus were unable to meet its workers compensation liabilities. There was a perception that there would be an expectation that the Commonwealth would meet any of those liabilities if Optus was unable to, and they thought that that would lead to a slight increase in risk to the Commonwealth scheme.

However, we don't feel that those concerns are warranted, for two reasons. The size of Optus: we are also owned by a large parent company which would - if you equate us to Telstra - SingTel is a large national operator in Singapore, and we don't expect that Telstra is going to fall over, so you wouldn't expect SingTel would - and we are also prepared to face fairly strict prudential requirements under the licence arrangement.

The other reason given for refusal of our application was that there is a perception that the state schemes would lose a large contributor, and we have argued that that's not the case, that we're a relatively small contributor, only contribute less than 0.2 per cent to the state schemes, and we think the state and territory schemes would benefit from seeing an employer move to the national scheme and it would encourage those state schemes to become more efficient and effective in the way they operate.

On the issue of occupational health and safety, we would prefer to move to national consistent arrangements, where we didn't have to juggle all the various different state and territory schemes. We find that this would benefit our employees. Despite the fact that we comply with all the state and territory regimes, we endeavour to comply at the highest level so that our employees get consistent standards across Australia, and so whichever state has the most stringent arrangements, we comply

with those. So from a moving-forward perspective, we don't really mind if the states unify their arrangements or they join some sort of national arrangements to affect occupational health and safety. This would remove a lot of administrative burdens.

So we're confident that reforms that introduce nationally consistent workers comp and occ health and safety employee arrangements would enable employers to have choice, particularly on the workers comp arrangements, and nationally consistent occupational health and safety would particularly improve efficiencies for workplaces, and it will improve Australian workplace productivity and employment conditions. That concludes my opening comments.

PROF WOODS: Thank you very much. If I can proceed with some questions and then invite my colleagues to pick up as well: you drew our attention to the Commonwealth's refusal of your previous application, and on two grounds, one of increase of slight risk to the Commonwealth, but also impact on state and territory schemes.

MR JOHNS: I'm sorry, Mike, I'm not hearing that much.

PROF WOODS: Okay. Is that any clearer for you, Gary?

MR JOHNS: That's a bit better, yes.

PROF WOODS: Okay. And please keep us informed. My voice is giving way. I've got a cold, so it's not helping.

MR JOHNS: That's true. I can hear that it is.

PROF WOODS: Nonetheless, just drawing on the evidence about the Commonwealth's refusal of their earlier application, one being a slight risk to the Commonwealth, are you aware of the Commonwealth having any views as to whether Optus would pose a risk to the states or would the Commonwealth have a view that Optus being a good employer would provide a negligible risk to state schemes? Could it be classified as a good, safe employer, perhaps?

MR McCULLOCH: Can I answer that. I think from our knowledge it's not an issue that we have any sense as to the Commonwealth's view in terms of how it would view our relationship with the states, and I think its interest is the liability that it perceives it would suffer as a result of us joining the Commonwealth scheme.

PROF WOODS: You mentioned a $2 million savings if Optus were able to join Comcare on the same basis as Telstra and you've put that in your public documentation. Is that savings related solely to equivalents of premium savings in

workers comp or does it also pick up savings that you would make by being able to internally rationalise a lot of activity that at the moment must cover all of the intricacies of the state schemes?

MR BERENTS: Mike, that is purely on a premium basis. We have not taken into account any organisational efficiencies which may flow through.

PROF SLOAN: So that's like an annual cash figure, in effect?

MR BERENTS: Yes, an annual cost. When you look at what our historical claims experience forecast costs are after insurance costs.

PROF SLOAN: And can I just get this right: you're in effect proposing to use what I would call your captive - - -

MR BERENTS: I'm not picking up the question there, I'm sorry.

PROF SLOAN: Okay. You would effective use your captive, your insurance captive, as the vehicle to run your - - -

MR BERENTS: That's one option to do that. We would arrange to get that licence under APRA and use that as the vehicle to provide the insurance as well as organising reinsurance to satisfy their registry requirements.

PROF WOODS: Just to understand some measure of important of such a saving, how would that compare with Optus's total cost structure? I mean, if you are saving $2 million, are you saving a large or a small part?

MR BERENTS: We have a revenue of five and a half billion dollars in round figures, so $2 million dollars in a revenue of five and a half billion is by itself a small percentage of our total revenue base, but $2 million is a substantial percentage of our costs associated with workers compensation.

MR McCULLOCH: And if you also look to our recent profits, for instance, they were a fairly modest $28 million in the last financial year, and the year before that we made a $400 million loss.

PROF WOODS: That was my next point, though if you translate it direct to bottom line as a proportion of bottom line change, it assumes much greater significance.

MR BERENTS: Exactly.

PROF SLOAN: And there is that issue of competitive neutrality vis-a-vis Telstra.

MR McCULLOCH: Absolutely. That's an absolutely crucial issue for us, and I guess was an essential motivation in our application to the federal scheme, particularly in an environment where 10 years after deregulation Telstra still holds 90 per cent plus of industry profits and 75 per cent of industry revenues, and the government itself has a very significant focus in improving the regulatory environment and, to that extent, it seems inconsistent to us that our application should be denied in this instance, and we think that Optus in particular is in a fairly special position, given that our major competitor is Australia's largest company, Telstra, and it operates under the federal scheme.

PROF WOODS: So you're drawing a distinction as to whether it would create precedents for other telcos, but you're saying you're not. This is a particular case. You compete across the range of functionality that Telstra engages in?

MR McCULLOCH: Exactly, and I think it's fair to say that we are the only telecommunications operator that operates across the whole level of telecommunications services.

PROF WOODS: Yes. I'm sure if other telcos want to give us evidence as to their position, they're fully free to do so.

MR McCULLOCH: Indeed, but I guess we would also say that perhaps the telecommunications industry as a whole could be considered somewhat exceptional, given the deregulatory environment.

PROF SLOAN: One of the things that must puzzle you is that the premium rates that you're currently faced with are really incredibly variable.

MR BERENTS: It is the most frustrating exercise trying to find where the logic is, because the logic is obviously not related to either our (indistinct) experience or industry-based experience. Obviously each state has its own rating arrangements and there's a high degree of inconsistency.

PROF WOODS: In the public material you've put to us, you note the range of 0.42 per cent of presumably remuneration - yes, of remuneration - - -

MR BERENTS: Yes.

PROF WOODS: - - - in Queensland, and 4.3 per cent in Tasmania. That's a fairly wide range.

PROF SLOAN: Yes.

MR BERENTS: Yes, it's very significant, and therefore a significant contributor to the decision making of where you in fact need to establish (indistinct) of your organisation.

PROF SLOAN: Some of the explanation might be that your workforces are not looking the same in all those different states and some of them presumably are quite small, but if I take Victoria and New South Wales where my guess is most of your workers are, and my guess is that there's a kind of similar occupational pattern, one gap is nearly double the other.

MR BERENTS: I didn't quite get the last part of the question, I'm sorry.

PROF SLOAN: I was just saying that one of the explanations for the variation - although I guess in Tasmania you've only got kind of clerical staff, really, and yet you're paying 4.3 per cent - - -

MR BERENTS: No, we do have a mixture of clerical, and there are some technical people at each location.

PROF WOODS: Gary, are you there?

MR JOHNS: Yes.

PROF WOODS: You chime in as and when you see appropriate.

MR JOHNS: Can I chime in now?

PROF WOODS: Indeed. I thought you might like to.

MR JOHNS: Good. This is more a clarification. I'm conscious I'm getting a lot of feedback here but if I'm not too loud I'll just carry on.

PROF WOODS: Carry on.

MR JOHNS: In Optus's submission to us, you say Optus has a policy of managing injury prevention claims, a management arrangement itself, and in your second submission to the minister you talk about Optus wanting to self-insure and engage a specialised service provider to undertake workers compensation claims - management functions - on its behalf. Is there a difference there or am I reading it - - -

MR BERENTS: No, it's actually a consistent process and there are two parts of a claim which need to be administered in what is a process of injury management?

MR JOHNS: Yes.

MR BERENTS: And making sure that that is appropriately and competently dealt with in the interests of the employee. The second is the financial management of the claim.

MR JOHNS: Yes, which is what we normally call claims management.

MR BERENTS: Yes, which is the administrative processes associated with the compliance with all the regulations, reporting to state authorities on statistics, et cetera.

MR JOHNS: Thanks, you've clarified that.

PROF WOODS: Gary, can I just pick up on that point. We have heard various evidence in other jurisdictions about the impact of having a third party claims management entity, but they are usually principals in their own right, ie, they're a state workers comp organisation or insurers, either acting in their own right as private underwriters or on behalf of a workers comp body. I guess part of the difference here also is that in this case these bodies would be acting as agents for you as principal, so there's no third principal party intervening in the process, that you remain the one and the sole principal. Would that be a characterisation?

MR BERENTS: Correct. The issue is the claims administration administrative side requires in most cases fairly sophisticated software to be able to do all the reporting to meet all the various requirements, and we would hope we would never have enough claims to justify the cost of actually implementing the infrastructure to do that.

PROF WOODS: Okay. Gary?

MR JOHNS: Well, the second element is of course the minister's response to your earlier application of some potential risk to the Commonwealth if the company becomes insolvent and so on. Now, how does Optus or any other company, for that matter, make certain for the Commonwealth that it has such arrangements, can make such provisions, that the Commonwealth won't have to pick up any of its - you know, especially for long-tail claims? This is done by means of what, reinsurance or something?

MR BERENTS: Yes.

MR JOHNS: This is not about - - -

MR BERENTS: I think it's an unfortunate reality that even in today's environment if, say, another one of the major insurers in Australia who specialises in workers compensation - as HIH some years ago ended up going into liquidation - then the state and Commonwealth government end up with some liability because of the social obligations. I don't think anyone can guarantee that an insurer won't go - all we can do, by using an insurance company which is appropriately regulated by APRA, is to ensure that there are adequate financial reserves there to protect the worker and if something does go wrong with us there are still financial reserves there to ensure the Commonwealth doesn't have an exposure.

MR JOHNS: So if something happens to a corporation, the insurer can pick up the claims that they would otherwise pick up. If something happens to the insurer, you say the corporation can make provision.

MR BERENTS: And/or you get the full support mechanism which was implemented following the HIH failure.

MR JOHNS: Yes, which no-one wants to have happen again, of course.

MR BERENTS: Yes.

MR JOHNS: Okay.

PROF SLOAN: I suppose this is a - - -

MR BERENTS: The real liability to the Commonwealth I don't believe changes at all significantly whether or not we are self-insured or insured at the federal level.

PROF SLOAN: I was just going to say I think this is a path well trod with the self-insurance licence requirements in the state systems - that the companies have to meet prudential requirements.

PROF WOODS: And lay off long-tail catastrophic claims.

PROF SLOAN: Yes. There's no need to reinvent the wheel here. I was going to ask: this issue which has come up elsewhere in the inquiry, which relates to reporting and data and, of course, the need really to collect information about incidences and not just claims, it seems to me that we've had evidence really that in a premium arrangement there can be incentives for employers to try and - well, thwart reporting and, indeed, minimise accurate collection of data. Is there some comment

you'd like to make about - it seems to me that in a self-insurance arrangement the incentives are rather the reverse: that you're best to have very good data, including about incidences, as well as claims. Maybe that's your question, Elizabeth.

MS WETHERSPOON: Certainly under both systems we strive to have a very robust accident-incident reporting method across all employees. It's extremely important for us to have that - currently we do have that system - because we need to track all incidences that occur, near misses that occur, so we can develop appropriate preventative programs within OH and S.

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PROF WOODS: I think the key point is the appropriate OH and S procedures and systems that Optus practice, irrespective of the particular requirements in each state and territory. They aim for a common best practice.

PROF SLOAN: But you have absolutely no incentive under a self-insurance arrangement not to collect - - -

MS WETHERSPOON: That's right. No, we don't. We need full incentive to drive that, yes.

PROF SLOAN: Yes, as full an information as possible.

MS WETHERSPOON: Yes.

PROF SLOAN: Because, presumably, by collecting those near misses and the incidences you can then kind of create some loop back into you what you might do with prevention.

MS WETHERSPOON: Absolutely, and it becomes a full loop. If we are able to capture all of that information, we can have a closed loop in OH and S and injury prevention.

PROF SLOAN: Do you use your obvious IT capabilities - email and the like - as part of that?

MS WETHERSPOON: Absolutely.

PROF SLOAN: Yes, so you encourage the workers to - - -

MS WETHERSPOON: We currently use a manual system for accident/incident reporting, but we are looking at putting that online so that we can capture all around

the country. It is fairly cumbersome.

MR BERENTS: Sorry, I'm not picking up any discussion here.

MS WETHERSPOON: It is fairly cumbersome - that system - and our aim is to put that online so that we can track that fairly consistently across all states and also with our technical workforce as well.

PROF WOODS: Can I follow up on that, because you make a statement in your submission that, to date, Optus has enjoyed a highly effective injury management program. Have there been any more recent trends in terms of the type or level or financial and time impact of injuries in Optus? Is there a change in pattern from your original Greenfields organisational model into a maturing organisation?

MS WETHERSPOON: Yes, we are seeing a change. We've seen it particularly over the last 18 months to two years. Where in the past we had fairly standard physical injuries, from - - -

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MS WETHERSPOON: We certainly are trying to do that. In the past what we've done is that we've had fairly typically sprain/strain injuries - physical-type injuries that are occurring. Over the last 18 months we've seen a change in the type of injury or the mechanism in injury and we're starting to see an increase in psychological injuries occurring. That certainly has an impact on the duration of claims, on the complexities of claims and certainly the costs associated with those types of claims.

PROF WOODS: Thank you. Could I ask for an elaboration on another point, and that's where you say that Optus, under the current arrangements where you operate under the various jurisdictions, is reliant on the insurers to determine claims disputes that may not always be in Optus's or the employees' best interests. Is there somebody who can elaborate on what's intended by that statement?

MS WETHERSPOON: With different legislative requirements around the states, we find that in some cases - particularly within New South Wales - we are now handing over conciliation through to our insurer and legal people. We're not fully represented, we believe, through conciliation of those cases.

PROF WOODS: Do you think under the Comcare scheme that that's more satisfactory? I guess there's a more fundamental question, and that is do you see Comcare as the sort of "perfect" system or is your attraction to it that you'd be able to roll it out on a consistent basis across the nation?

MS WETHERSPOON: Our attraction to it is that we will be able to roll it out on a consistent basis across the nation.

PROF WOODS: Even though you might identify parts of its characteristics - like its common law or long tail or other features - that you may not see as the best practice model, but nonetheless the consistency outweighs any particular features.

MR BERENTS: Mike, that's the situation. Though there are weaknesses in the Comcare system - and some of the coverage they provide and some of the structures behind it seem at times to be overly generous and other times not necessarily consistent - by having one consistent scheme Australia-wide, the defects associated with the system, we believe, are far outweighed by the advantages.

PROF WOODS: In which case, if you could give us some supplementary information on what's the value of that consistency over and above the bottom line on workers comp premiums, maybe to the extent you can quantify it, but also if you could demonstrate its nature in terms of management, occupation, distraction, extra staffing and systems requirements, so that we can get some feel for that, that would be very helpful.

MR BERENTS: Okay.

PROF SLOAN: I'm about to tell you something that's good news for you, but Optus's - well, "opposition" is a strong word, but your preference for relatively generous benefits as opposed to access to common law - in fact, the access to common law is actually incredibly restricted under Comcare. That probably would be one of its advantages, as far as Optus is concerned, but if we just go back to, you know, the treatment of injured workers - the process of rehabilitation - I mean, there's something in the common law arrangements which creates unease for Optus. Your decision to run with, essentially, a national benefit structure which is generous suggests to me that you're not wanting to short-change the worker.

MS WETHERSPOON: No, absolutely not. We are looking at having consistency across our workers in terms of workers compensation and OH and S management. At the moment we don't have consistent benefits under the state jurisdictions in terms of workers compensation benefits.

MR BERENTS: I'm not hearing this, I'm sorry.

PROF SLOAN: The common law - does that create an environment where there's delays in return to work or, you know, makes the rehabilitation process more difficult as people hang out for large payments?

MS WETHERSPOON: Absolutely. Yes, it strings it out much much longer than we would want to have it strung out and makes it far more difficult in terms of a return-to-work program.

PROF SLOAN: Right. In your ideal world, you're happy to run with generous benefit structures?

MS WETHERSPOON: Yes. We would prefer to have generous benefits, with consistent benefits across the organisation.

PROF SLOAN: Yes, okay.

PROF WOODS: Just one final one on that point. You make mention that you offer employees total and permanent disability insurance. Is that out of their salary package or is that a cost to Optus over and above the cost of paying workers comp premiums?

MR BERENTS: It's actually just a type of superannuation arrangement.

PROF WOODS: Okay.

MR BERENTS: All of our staff have access to superannuation and part of that is - included within that package is total and permanent disability coverage.

PROF WOODS: Thanks very much. Gary?

MR JOHNS: I just wanted to clarify - Judith was mentioning that the access to common law under the Commonwealth system is restricted and Optus has said that the Commonwealth places a limit on common law claims. From memory, I thought you had an option up-front to go to common law or to accept the benefits.

PROF SLOAN: That's right.

MR JOHNS: Most people accept the benefits and then (indistinct) action at common law. Just to clarify it for me, is that the case?

PROF SLOAN: That's right. You're right.

MR JOHNS: Okay. Look, the other thing I thought was a very useful figure - and it's in your commercial in-confidence paper, so I'll ask the question and you may or may not want to make it explicit, but you're able to say that Optus expects to save so many dollars per employee by transferring workers into a Commonwealth system, but you make the point - in terms of competitive neutrality - if Telstra have to opt out

of the Commonwealth system and into all the various state systems, you would be paying an additional very large extra premium. Is that right and can you give us the figure? This is at your point at the very end.

PROF SLOAN: I was going to say I thought there might have been a figure in your other - - -

MR McCULLOCH: I think that it's based on the fact that we expect to save $230 per employee from transferring from the workers compensation arrangements in the states and territories to the Commonwealth system. If you extract that to Telstra's number of employees, then I think you get to a figure of about 8.5 million.

MR BERENTS: I don't think I would have any problems in terms of releasing those paragraphs into the public domain.

MR McCULLOCH: In total, I think it's a competitive advantage that Telstra gets of about 11.5 million.

MR BERENTS: Yes.

PROF WOODS: That assumes that you can actually add both components, whereas in fact presumably there are two alternatives. Either you move into Comcare and save 2 million to your bottom line or Telstra moves into each state and territory and saves - nine and a half, I think, is the figure you're about to release.

MR BERENTS: Yes. I'm not sure that you can actually add the two, but I - - -

PROF SLOAN: Not saves, has incurred.

MR BERENTS: I think the way it reads is this: we don't change - if we don't try to change the scope of the scheme and Telstra stays where they are, then we have a tentative advantage of we estimate about 11 and a half million dollars. I think that is correct.

PROF WOODS: Thank you, Peter.

MR JOHNS: Yes, thanks for that.

PROF WOODS: Anything else you want to get put into the public domain, Gary?

MR JOHNS: Not at this stage, sir.

PROF WOODS: I think that was probably the only key point in the whole of the

remainder of it anyway. That has sorted that one out. Other points that you want to raise, Gary?

MR JOHNS: No, thank you.

PROF WOODS: Step-downs. Does Optus have a view? You've had a view on common law. Do you have a view on whether step-downs are an appropriate incentive? In that respect I notice that irrespective of the various state or territory schemes, you offer a 52-week level of paid leave and then you do the top-up difference between what the workers comp scheme offers and what that would constitute. In that respect you're not seeing, at least within the first 12 months, that a step-down does anything in terms of the relationship between the employer and the employee.

MS ANDERSON: That's right.

PROF WOODS: Thank you, that's been confirmed.

PROF SLOAN: Just following on from that, that's because you try to have active management of these claims that you're seeking graduated return to work and the like - yes? So therefore the notion of the relative generosity of benefits becomes relatively irrelevant if you have that active management.

MS WETHERSPOON: Yes, that's right.

PROF SLOAN: Yes. I think it's a terrific submission. It's a great help to us.

PROF WOODS: Yes, we're certainly very grateful for the detail of the submission and the material that you've put to us. We've identified a couple of things where we'd like some supplementary information, if that's possible, to clarify a few points. Of course, we'd encourage you to keep following this inquiry. It's fairly relevant to your particular interests as a corporation.

MR BERENTS: Yes.

PROF WOODS: If you feel it appropriate to submit further material to us during this first phase, before we develop our draft report, we would welcome that input. Thank you very much.

MR JOHNS: Thank you.

PROF WOODS: Peter, do you have any concluding comment at your end that you want to draw to our attention?

MR BERENTS: No, other than I (indistinct) to see the report on the (indistinct) in the hands of the government so we can get a speedy resolution of where we go when we're talking through the workers compensation.

PROF WOODS: Our timetable is well known to you.

MR BERENTS: Yes.

PROF WOODS: Any final comment from your Optus colleagues here?

MR McCULLOCH: I'd certainly just make the comment that we'll keep you informed as to the progress of our current application before the minister and if we get an answer on it.

PROF WOODS: Yes, we would appreciate that.

MR McCULLOCH: It could possibly be relevant.

PROF WOODS: We would probably find out, but that would be helpful. No other final comment?

MS ANDERSON: No, just if we could get a copy of the transcript.

PROF WOODS: Yes, the transcript will be available.

MS ANDERSON: Will that be on the net?

PROF WOODS: Yes, indeed.

PROF SLOAN: It will be on our web page. We've very technologically savvy.

PROF WOODS: We're right into this. Thank you very much.

MR BERENTS: Thank you.

PROF WOODS: I will now invite any participants who are here, who are not scheduled, who may wish to come forward. That not being the case, I will adjourn these hearings and reconvene in Brisbane on Monday. Thank you.

AT 4.50 PM THE INQUIRY WAS ADJOURNED UNTIL
MONDAY, 23 JUNE 2003

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