

# Migrant Workers and Workers' Compensation in New South Wales

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## MIGRANT WORKERS AND WORKERS' COMPENSATION IN NEW SOUTH WALES

by

Caroline Alcorso



### Social Welfare Research Centre

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## FOREWORD

Workers' compensation has been the subject of an on-going debate in Australia for some years. Employers' complaints about high cost of compensation premiums on one side and workers' complaints about inadequacy of compensation payments on the other have led to comprehensive changes in legislation in some States and to steps towards changes in legislation in others.

In common perceptions workers' compensation is an industrial issue. However, the issue extends well beyond the industrial arena because many people who suffer from temporary or permanent incapacity due to injury at work have to rely on social security provisions for income support, either by claiming sickness benefit or invalid pension. The issue of workers' compensation is thus closely related to social welfare policy in general and to social security policy in particular.

The report presented here records the experiences of non-English speaking immigrants in the workers' compensation system in New South Wales. This has been a particularly 'sensitive' area, as myths and stereotypes of a 'malingering migrant' have abounded, leading to hostile attitudes and mutual antagonisms and even to legal proceedings against suspected fraud. The research for the report was commissioned by the Social Welfare Research Centre to the Centre for Multicultural Studies at the University of Wollongong, and has been conducted by Caroline Alcorso. Drawing on evidence from a wide range of sources - employers' and hospital records, and interviews with doctors, lawyers, social workers and people who had compensation claims - the report provides an informative insight into the operation of the workers' compensation system and the effect the system produces on the people involved.

The author concludes from her research that the findings are 'clearly at odds with the common-sense view of the malingering migrant'. Far from exploiting the system, the non-English speaking immigrant encounters great difficulty in coping with the intricacies of the system, and in addition often has to face up to the antagonistic attitudes of employers, insurance companies and the doctors and lawyers who act as their agents.

Workers' compensation raises important and fundamental questions for social welfare policy, and I am pleased that the Social Welfare Research Centre has been able to assist with this project. Its release should facilitate a more informed public debate on a topic of considerable contemporary relevance in New South Wales and throughout Australia.

Peter Saunders  
Director  
Social Welfare Research Centre

### ACKNOWLEDGEMENTS

This report presents the findings of a research project conducted at the Centre for Multicultural Studies, University of Wollongong, from July 1986 to July 1987.

The research was carried out by Caroline Alcorso and James D. Black; however, many people contributed to it and to the arguments developed in the final report.

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Finally, we would like to thank the workers' compensation claimants themselves, for their willingness to be interviewed and for the effort they put into helping us understand their experiences.

Caroline Alcorso  
James D. Black  
Centre for Multicultural Studies

**ABSTRACT**

Considerable mythology surrounds the issues of workers' compensation and much of it focuses on migrant workers from non-English speaking backgrounds. In the context of massive employer pressure to reduce the costs of workers' compensation (to employers), and recent legislative changes aimed at achieving this in most States, it is important to explore the nature of migrant workers' experiences of workers' compensation and the effects of so called 'reforms' on them.

This report presents the findings of a year long study of migrant workers' and workers' compensation in New South Wales recently undertaken by the Centre for Multicultural Studies at the University of Wollongong. The study utilised quantitative and qualitative data to explore the incidence of compensation claims among migrant and Australian-born workers and the experiences of those whose claims are contested and/or who are awarded a lumpsum settlement. Data from existing employer, union and government accident records were analysed and in-depth interviews were conducted with 91 migrant and Australian-born workers to provide a comprehensive picture of their compensation experiences. The report is written from a sociological perspective and empirical findings are explained in terms of the social relations underlying workers' compensation as well as by reference to the bureaucratic and legal arrangements in place at the time of the study.

The study was funded by the Social Welfare Research Centre at the University of New South Wales and forms part of a larger project to examine workers' compensation systems and their relationship to the social security system.



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## CHAPTER 1

### INTRODUCTION

The aim of this research project was to produce information about the experiences of non-English speaking migrants in the New South Wales compensation system. Its specific objectives were:

- \* firstly, to establish whether or not there are systematic differences in the compensation experiences of migrant and Anglo-Australian workers in New South Wales;
- \* secondly, to identify the nature of such differences where they exist;
- \* thirdly, to explain the reasons for such differences.

A subsidiary aim of the project was to identify possible problems related to access to, or use of, compensation and rehabilitation services. We did not focus in detail on the specific arrangements of the NSW compensation system, partly because these have now changed, but also because we felt that it was more fruitful to examine the social relations underlying the system and to focus on the informal processes involved for a worker in obtaining compensation rather than simply on the formal legislative and bureaucratic arrangements. Most of our empirical findings are explained by reference to social structures and processes beyond the compensation system. They are therefore likely to apply to other States where the social context of compensation is similar.

Much of the research focuses on the experiences of workers whose claims are contested and who therefore have to fight for their compensation in the courts. Although only approximately 10 per cent of all compensation claims per year are contested, this nevertheless amounts to a large total number: in 1985 c.11,500 cases. The disruption to an injured worker's life is far more severe and has a qualitatively different form in these cases, particularly since the settlement time for contested claims at the time of study was up to two years from the time when the case was filed in court. It seems that a large proportion of claims for injuries which result in long term incapacity are contested; as these cases are relatively costly to insurers it is on such claims that much of the public debate is focused.

#### 1.1 'Migrants', 'Ethnics', or ... ?

When examining the relationship between ethnicity or migrant status and social experience it is necessary to define exactly about whom one is talking. Like other demographic variables such as age and sex, the categories of 'ethnic' or 'overseas-born' are often used as surrogates for a series of social characteristics. They are not usually causal factors in their own right. For example, in the case of immigrants from the non-English speaking countries of Southern and Eastern Europe, the factors which are



significant to their experiences as a group are their roles in the development of Australia's post-war manufacturing industry, their origin in underdeveloped areas of unevenly developing countries, and their settlement in Australia during a period when post-arrival services for immigrants were minimal. These factors are reflected in social characteristics such as poor proficiency in English, low levels of formal education and non-possession of recognised tertiary qualifications, residential and occupational concentration and low relative levels of income and wealth.

Clearly, the fact of being 'Macedonian' or being an 'immigrant' in itself does not produce these outcomes. The diversity of experiences among the immigrant population and within any specific ethnic group reflect this fact. As Michael Morrissey commented in a study on migrants and employment-related injury: '... an Italian lawyer and an Italian coal-miner have no more occupational health problems in common than their Anglo-Australian counterparts' (Morrissey and Jakubowicz 1980:1).

Nonetheless, because of the specific nature of Australia's immigration program and because of the social context of immigration to this country, the category of 'non-English speaking migrant' has proved a useful one in social science in referring to a section of Australian society which shares many social characteristics and problems. This group has been the focus of our study; the term 'migrant' is used as a shorthand in the rest of the report.

## 1.2 The Current Debate

Debates over compensation systems in Australia have been raging during the last fifteen years. In the early 1970s there was a large-scale mobilisation by insurance companies and unions to prevent the implementation of the Woodhouse Committee's proposals to replace existing accident compensation schemes with a National Compensation and Rehabilitation Scheme. This scheme would have covered all people suffering disability by reason of accident and illness. It would have removed the resort to common law and operated on a national basis and was a radical proposal in the Australian context.

During the mid-1970s, the debate in New South Wales intensified against a background of rising insurance costs to employers and the threat by insurance companies to withdraw from the system. Debate peaked in 1980-2 when the Law Reform Commission began to examine the issue, and again during 1986-7 in the lead-up to the Labor Government's introduction of a new workers' compensation scheme (finally passed on 28 May 1987). These periods of debate have led to a sharpening and clarification of preferred positions by employer groups, trade unions and other interested parties. There is by now a substantial literature of newspaper and journal articles, addresses, position papers and propaganda/education material which expresses the views of different interest groups regarding the compensation process and how the current system should be changed.

The position argued by workers, unions and community-based welfare groups on the one hand, and the employer bodies and insurers on the other, are opposed

on most points. The former attribute the rising costs of workers' compensation to unreasonable legal and medical fees, employers' refusal to improve workplace health and safety, premium avoidance by employers, the cost of lengthy contestation of claims and the mismanagement of funds by the insurance industry. They focus on the failings of compensation systems from the point of view of injured workers, emphasising such things as the inadequacy of compensation payments, the obstructive tactics of insurance companies, the delays, frustration and inequities associated with the legal aspects of the system, the arbitrariness of its results and the difficulties posed for particular groups in the workforce.

Employer and insurance industry representatives, on the other hand, stress the size of payments workers receive, the generosity of the common law system, fraudulent behaviour on the part of workers, the litigious nature of the system, and 'new' occupational diseases such as repetitive strain injury (RSI) as causes of rising compensation insurance costs. Their recipe for reform usually involves reductions in the size or duration of payments to injured workers, limitations on legal representation in the system and a more restricted definition of what constitutes a 'compensable injury' (see for example, BHP Steel 1986).

Arguments about workers' compensation also rage within associated professions. In the legal profession there has been extensive debate over the role of common law in accident compensation and the respective merits of lumpsum redemptions and the weekly award forms of compensation (see, for example, NSW Bar Association 1986).

In the medical profession, debates have focused on the epidemiology of certain occupational illnesses and the objective and subjective causes of 'illness behaviour' following work-related injury. A recent review article on repetitive strain injury by a well-known Sydney psychiatrist, for example, is entitled 'Neurosis in the workplace' (Lucire 1986). In her view, 'this functional disorder has long been recognised to signal conflict about endeavour in the workplace and can be classed as a neurosis ...' She argues that it is caused by one of two factors: 'epidemic hysteria on the part of the patients' and 'psycho-social' factors - that is, the 'altered medical perception of endemic symptoms in the community'. She claims that task-relatedness is being induced 'artificially' in the case of RSI 'by the false belief that movements can be the cause of an injury' (Lucire 1986:323). Indeed, the alleged psychological causes of and reactions to work injury have been discussed repeatedly in medical circles. So commonly used are the concepts of 'malingering', 'compensation neurosis' and 'functional overlay' in connection with work-related injury, that one Professor of Psychiatry has recently warned the medical profession against the too-ready resort to these explanations (Pilowsky 1985). Indeed, Professor Pilowsky, a prominent exponent of 'abnormal illness behaviour' has discussed what he sees as being a new phenomenon among doctors: 'abnormal treatment behaviour' or 'malingeringophobia' - 'an irrational and maladaptive fear of being tricked into providing health care to individuals who masquerade as sick, but either have no illness at all or have a much less severe one than they claim' (Pilowsky 1985:571).

## Migrant Workers

One strand of the general debate on workers' compensation has focused attention on migrant workers. On the one hand, migrants have been identified by sections of the legal and medical professions as being more prone than Australian-born workers to malingering and psychosomatic complications of back and other injuries. Similar views are often publicly articulated and reported in the media. Addressing a recent conference, Victorian RSL President Bruce Ruxton recently repeated aspects of the common stereotype, saying:

You've only got to look at what's going on in the tribunals in Melbourne and just ask the bosses ... about workers' compensation and how it's being worked to death. ... People who can't even speak English know the Workers' Compensation Act backwards and forwards and I believe they know it before they come to Australia ... They are able to work the Act for payments that are incredible, yet offer nothing to Australia. (Reported in Daily Telegraph 2nd July 1987)

On the other hand, the ethnic communities and those involved in welfare have pointed to the specific problems of migrants and the alleged discrimination by professionals in the compensation system. An article in a Croatian language newspaper at the time of the NSW Law Reform Commission Inquiry, for example, expressed the view of an interpreter working with injured Yugoslav workers:

... I soon realised that a certain level of maltreatment was the 'norm' among specialists at large - maltreatment in this context being condescension, impatience, rough physical examinations. It seems to me that ... specialists have taken it upon themselves to treat each migrant patient as fraudulent until proven genuine. ... Time and time again patients have said to me that they find the whole experience of workers' compensation claims so humiliating and time-consuming, and that if they were healthy they would not put themselves through such an unpleasant process. ... It seems that what's operating is the supposition that lack of education suggests inferiority as a human-being. (Jovich 1981)

It seems that altering the system does not necessarily change these debates. Resolutions passed by the Victorian Trades Hall Council (VTHC) in the context of the government review of Victoria's recently reformed workers' compensation system reflect the continued existence (or re-emergence) of the traditional contradictory views about migrant workers and workers' compensation. While employer submissions to the review allege 'extensive abuse' of the system, especially by migrant workers, the Trades Hall Council 'strongly condemns' these allegations and the Secretary of the VTHC commented that 'the VTHC believes that rather than these workers ripping off the system the likelihood of them being discriminated against is a far greater problem' (VTHC 1987:1).

### 1.3 The Compensation Process

Although the ostensible subject of these debates is the workings of Australian compensation systems, they need also to be understood as arguments over the nature and role of compensation itself. Indeed, it is not surprising to find similar arguments being used in quite different contexts. Whether, to what extent and through what system workers should be compensated for industrial injury and disease have been highly contentious issues and the subject of much conflict both between workers (and their organisations) and employers, and between different employer groups, in most western industrial countries. In Britain, the passing of the first Workmen's Compensation Act (1897) was the result of nearly thirty years of battles inside and outside Parliament (Hanes 1968). In a process not dissimilar to that surrounding recent reforms to the NSW legislation, the British law was passed only after the establishment of a series of parliamentary committees and commissions and the defeat of several previous bills. Each of these was, in turn, accompanied by extensive political activity by workers and employers and their respective organisations.

As in other areas of occupational health and safety, Australian systems of workers' compensation are closely modelled on those of Britain (Gunningham and Creighton 1980); and indeed many of the 19th century British debates (for example about the role of civil actions in the workers' compensation system) are continuing in Australia today. Closer to home, the passing of the Accident Compensation Act in New Zealand in 1972 provides another example of the profound differences of opinion surrounding the workers' compensation question - differences of opinion which, as in the debate over flat vs earnings-related benefits, frequently reflect more basic underlying ideological differences (Shannon 1980).

Such conflicts are hardly surprising in economic systems where workers and employers have interests which are, to a significant extent, structurally opposed. At a fundamental level, the employer's primary concern in a competitive environment must be to maximise the return on the capital invested in the enterprise; this requires systems of work organisation and management control to ensure both the greatest possible degree of control over the various factors of production and the maximum productivity from the workers employed. While profit maximisation depends on a number of factors, it is usually not compatible with increases in workers' wages, which represent a cost to the employer. Hence workers' interests in maximising their income and easing the physical and mental demands made of them at work are structurally antagonistic to those of the employer (and to those of the management which represents and performs the employer's function within an enterprise). For example, there is evidence that, to the extent that many accidents happen because of management pressure on employees to maintain a certain rate of production, the risk of occupational injury could be reduced by allowing workers greater control over their work environment and the work process. But, as two historians of occupational health and safety law point out, while there are some instances where the interests of employers and those of workers in having safe work environment coincide, in general, safety precautions cost money and impair productive efficiency (Gunningham and Creighton 1980:150). Historically, many proposals relating to occupational health and safety have attracted substantial criticism precisely because, in

refusing to treat it as an industrial relations issue, they fail to address this basic conflict of interest and are not workable (Woolf 1973).

An analysis of what compensation payments represent reveals clearly the uneven relationship they have to employers and employees' interests respectively. Underlying every public debate about whether or not injured workers should receive compensation from their employer, how much they receive and in what circumstances they receive it, are different views about the appropriate cost of labour in the production process and about the supply and control of the labour force. When an employer is obliged to pay a worker compensation for a work-related injury, he or she is in fact being forced to pay for unproductive time; thus diminishing the proportion of the enterprise's profit available for distribution or investment. Secondly, the compensation payment is in one sense a subsidy to the worker for doing 'nothing' - that is, for not working. The provision of income in this form is contrary to the principles generally followed in industrial societies whereby work (or dependence on a worker's income within the family) is the main legitimate source of income, and one's duty and obligation to 'work for a living' is taught to members of the society from childhood. The wage system has been and is still the dominant means by which people are supposed to sustain their livelihood. Systems of public welfare have, historically, secured only a minimum subsistence level, been strictly supplementary to the market/wage system as a source of income, and have generally been a community or state responsibility. It has not been the employer's role to provide 'welfare' to people who cannot work.

The legal and administrative requirements and arrangements of the NSW workers' compensation system have been well summarised in other reports, and it is not intended to repeat this background here (in particular, see Stewart 1986, and NSW Law Reform Commission 1982). What are some of the characteristics of the compensation process from a sociological perspective?

The compensation process can be considered as a commercial/legal system in which the insurance industry provides, within a heavily regulated framework, partial compensation for people who have suffered a work-related injury. Formally, the system operates according to State legislation: In New South Wales at the time of this study, the Workers' Compensation Act, 1926, other, more specific acts and a system of common law whereby damages can be recovered from the employer.\* The legislation and related judicial processes provide statutory benefits to workers suffering work-related injuries or to the families of workers who are killed in work-related accidents. The system is determined formally by extensive legislative provisions which cover some of the activities of private insurers, the operation of public administrative and judicial bodies and workers' rights in relation to other legislation and common law. Practically, an injured worker's access to compensation occurs via a series of legal, medical, investigative and administrative procedures,

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\* It should be noted that since the completion of this study new State legislation has been enacted (the Workers' Compensation Act, 1987) and resort to common law abolished.

and a variety of informal processes play a crucial role in determining the post-injury outcome.

The formal system in New South Wales, as in other States, is structured around and reflects the conflicts inherent in the employee-employer relationship discussed above. In this sense it is similar to other legal and administrative systems in Australian society which institutionalise and regulate industrial conflict; for example, the arbitration and conciliation system or the various industry-level tripartite policy committees. It is precisely because the operation of the workers' compensation system reproduces existing conflict, as well as producing solutions to it, that it is frequently criticised for being too 'adversarial'. This charge implies that it is the system itself that causes conflict. As is clear from the above discussion, we feel this to be a misplaced accusation, since it is rather the conflict between employers and employees, endemic to industrial society, which is reflected in the compensation system.

Conflict is played out through the process of employers and insurance companies contesting a worker's claim. A number of specific social roles are created in the system established to deal with this contestation: in addition to the claimant and the respondent, there are doctors and lawyers for each side, judges and various middlemen. Many others, such as social workers and trade union officials, are often drawn into the process from the sidelines. What is the nature of these different parties' involvement in the system?

### **The material impact**

Firstly, at a material level, involvement in the workers' compensation process has a different meaning for the various parties. For the companies who sell workers' compensation insurance, their involvement represents a commercial activity and a potential source of profit, like any other commercial activity. Their interest lies in maximising their potential profit. For the employer, workers' compensation obligations represent a direct financial loss, via the payment of insurance premiums and a portion of the statutory compensation payments when workers are injured. For professionals administering the system, involvement in workers' compensation matters is a source of income. In the case of some medical specialists and lawyers, it can be a particularly reliable and lucrative source; while each individual case brings limited remuneration, it is participation in the system over time that is economically rewarding.

Lastly, for the worker, being on workers' compensation has twin material effects. A significant occupational injury immediately and almost universally means loss of income. Even where an injured worker receives the correct amount of compensation at the correct time s/he will usually experience financial loss due to loss of allowances and overtime; whilst at the same time being faced with extra expenses (for travel, medical care, etc.). In contested cases, and in all cases after the first six months of injury, the income loss to the worker is substantial. This point is important since it explains why, although from the perspective of governments

or employers a compensation payment appears as a **'benefit'**, workers experience 'being on compensation' (for any substantial period of time) as a **loss**. Secondly, the outcome of a major claim is of enormous consequence to an injured worker whose capacity to earn money has been totally or partially destroyed. While, as mentioned above, any single case is of little material importance to the other parties involved in workers' compensation, for the injured worker the end result has crucial material consequences for his or her life and future.

The reason is simply that the capacity to sell his/her labour power remains the major source of income for most people in the western industrial societies. During the last half century, systems of income support for those not earning a wage have been established and provide an alternative source of income for workers who can no longer work. Indeed, the social welfare system is sometimes criticised on the grounds that, by providing this alternative, it creates a disincentive to engage in productive work. However, on closer examination this 'alternative' is more apparent than real. Few people in an affluent, mass consumption society such as Australia, can afford to see their income reduced from a normal wage (for example) \$300/week to a social security benefit amounting approximately one-third of this. Such a reduction usually means that it becomes impossible to finance even the basic aspects of people's lives: house mortgage repayments, hire-purchase or loan repayments for furniture or a car, health costs or the costs of children's schooling. Thus, while an alternative source of income **exists** for people living in western industrial societies like Australia, it is the alternative of poverty.

### **New social relations**

A second difference is the sense in which a worker involved in a compensation case must enter into a whole range of 'new' social relations. Of course, these relations are not really 'new' - in a social and historical sense their existence clearly predates the experience of any individual case. However, at the everyday life level of the individual they are 'new', since they have not usually been part of his or her experience before.

Moreover, as a recent anthropological study of workers' compensation emphasises, most of the various parties involved in a case have a repeated or permanent involvement in the compensation system and build up a general perspective on it that is derived from and integrated into their individual and collective historical experience (Watson 1986:80). For the individual injured worker, however, the claim **and** the compensation system represent new experiences embarked upon without previous knowledge or experience.

Even where the particular social actor (for example, a doctor or solicitor) is known to the claimant, the relationship he or she will now have with that person will be new. For example, most people in Australian society will have had knowledge of and personal experience with doctors prior to their claim. However, the role that the insurance company's doctor plays in the workers' compensation process - i.e. that of evaluator and judge, rather than provider of treatment - is quite different from that experienced in people's everyday

life. The patient-doctor relationship takes on a new form. Similarly, while the worker may have had years of daily contact with an employer where the relationship was one of worker-employer, the process of being injured at work and claiming compensation **against** the employer may lead to the ending of the employment relationship and the establishment of an openly conflictual relationship between the two: that of opponents contesting a compensation case. These changing social relations mean that the worker has to negotiate what are effectively new relationships; this may be experienced at a personal level as confusion and disorientation.

In addition, the claimant will have to relate to a series of **completely** unfamiliar parties ranging from a trade union compensation officer to barrister or ethnic agent. By contrast, for professionals, employers, insurance company officers and everyone other than the worker, the social relations are familiar and have been experienced before - even though new individuals will be involved at any particular time. The result may again be confusion, ignorance and non-comprehension on the part of the worker (at least until s/he has undergone a resocialisation and 'learnt the ropes'). However, no parallel, disorienting experience confronts other parties in the workers' compensation system.

#### **Entering the workers' compensation system**

Thirdly, the reasons motivating involvement in the system are different for the different parties involved. The important contrast here is that between the situations of the employer and the injured worker. For the employer, participation in the compensation system is formally compulsory. Since 1926, the payment of workers' compensation insurance has been compulsory for all employers; once a work-related injury occurs an employer is legally obliged to report the accident, provide the victim with a claim form and forward the form to the insurance company for payment. Although in practice this course of action may be avoided, from the point of view of the employer, the government is compelling his/her involvement in the system - s/he has no formal choice.

For the worker there are, formally, other possible courses of action: s/he is not legally obliged to seek compensation; as we shall see, in many cases an industrial injury does not result in a claim. And the compulsion to enter the compensation system is not legal but primarily economic.

As noted above, compensation is the major means of obtaining adequate material support once a worker's capacity to work is destroyed and therefore the worker may feel forced to claim compensation because of material need. However, from the employer's point of view the worker is making a choice - a choice that s/he, as employer, does not have. This may explain why employers sometimes appear to consider the making of a claim as a wilful, hostile act on the part of the employee and adopt punitive or retaliatory measures against the claimant.



#### 1.4 This Study

This study investigates the experiences of non-English speaking background migrants in New South Wales by collecting and analysing a number of different types of quantitative and qualitative data. We have attempted to compare their experiences with those of English speaking background workers and in the process examine evidence for the various views about the issue that are articulated in the literature and in public debate.

Although the study was hampered by the lack of quantitative data on ethnicity and compensation, the health and accident records that we analyse do show a significant disparity of experience between migrant and English speaking background workers and, in particular, a higher incidence of compensation claims among the former group. Other evidence suggests that this is related to patterns of segmentation in the Australian labour market (specifically to the concentration of migrant workers in highly dangerous jobs) rather than to fraud or to a disproportionate propensity to claim compensation among non-English speaking ethnicity groups.

Our quantitative analysis did not show clear patterns of discrimination in the monetary outcomes of compensation claims for migrant workers, as some previous research has suggested. However, the qualitative component of our study did reveal a widespread perception of discrimination among migrants, manifest in the tasks they are given to do at work and the treatment they receive from employers, doctors and insurance companies after an injury occurs. Further, it seems that a number of factors, including migrants' economic vulnerability, lack of English skills, poor labour market position and unfamiliarity with the system, combine to lessen migrant workers' power to resist unfair treatment and stand up for their rights. Interviews with community-based workers who come into contact with migrant compensation claimants and a study of the pattern of cases dealt with by a government advisory and conciliation service for non-English speakers confirmed the widespread existence of the problems encountered by the sample of claimants interviewed in our survey.

Both the qualitative and the quantitative data indicated the migrant workers experience particular problems in attempting to re-enter the labour force after an injury. Although our study does not treat the issue of rehabilitation in any depth, two clear points emerged from our survey. Firstly, because of the history and nature of post-war labour migration to Australia, injured workers from non-English speaking countries are a group who are not able to move easily into a new career or an alternative lifestyle following a serious work injury without substantial rehabilitative support that is tailored to their specific needs. Secondly, currently this support does not seem to be available and major work injuries have more damaging and disruptive effects on migrant workers' lives than on those of others in the population.

Many of the legal professionals and indeed, some of the compensation claimants interviewed in the course of our research, echoed the commonplace derogatory beliefs about migrant workers and their manipulation of the

workers' compensation system. However, we found no empirical support for this picture and found instead that migrant workers face particular problems during and after their compensation case and are not currently receiving the help they need to defend their rights against powerful adversaries. Consequently, it seems that for many migrants the compensation process is experienced as a drawn-out nightmare of impoverishment, victimisation and injustice.



## **CHAPTER 2**

### **LITERATURE REVIEW**

The striking feature of much of what has been written on workers' compensation in Australia is the lack, in most cases, of scientifically valid evidence for the various views expressed. Debates are marked by claims made, contested and refuted on the basis of scanty or no empirical evidence: reference is frequently made instead to the personal experiences of the person expressing the view. As one medical commentator noted in relation to the debate about 'malingering': 'I don't think that there's ever a shortage of emotive comment in public debate. What we're short of is rational discussion based on reasonable facts' (Pilowsky 1986:11).

Several pieces of research focusing on migrant workers and workers' compensation have been carried out in recent years. Many of these have produced provocative findings with implications for legal reform and government social service provision. Nevertheless, partly due to the lack of ethnicity-related data, few of the studies have been able to obtain conclusive results.

This literature review comprises two sections covering:

- (1) research which focuses on migrant workers in the NSW compensation system;
- (2) relevant research from elsewhere in Australia.

#### **2.1 Research on Migrant Workers in the NSW Workers' Compensation System**

##### **Encel and Johnston 1978: Compensation and Rehabilitation**

One of the earliest pieces of research on workers' compensation which asked questions about the specific experiences of migrant workers was a survey carried out by Encel and Johnston in 1971. Undertaken with the assistance of the Workers' Compensation Commission, its survey population was the NSW workers with work-related back injuries who redeemed their compensation claims between 1964-1968. The research looked at the effects of the redemption system, the workers' post-redemption lives, and in particular at their experiences (if any) of rehabilitation. A random sample of 'redeemers' was made from Commission lists and 233 people from it were interviewed about their 'economic and medical history, cultural background, social adjustments, attitudes to compensation and litigation and rehabilitation history; (ibid:13).

The following differences between migrants and Australian-born workers emerged from the survey:

### **Suggesting migrant disadvantage**

- \* an overrepresentation of migrants in the survey group (38% of the sample c.f. 17% in the NSW population);
- \* at the time of the survey the migrant sub-group had a slightly higher unemployment rate (44% c.f. 40% of non-migrants) and a higher proportion of migrants had suffered income loss compared with their pre-injury income;
- \* fewer migrants than non-migrants described their health as 'average' or 'good' - the rest claimed to be in 'poor' health;
- \* more migrants than non-migrants expressed dissatisfaction with their treatment by lawyers, in the courts and in the compensation system generally;
- \* more migrants were dissatisfied with their settlement.

### **Suggesting migrant advantage**

- \* more Australian-born people than migrants had complaints about the difficulty of finding post-injury employment;
- \* a greater proportion of non-migrants had received compensation for a previous injury, suggesting that members of the non-migrant group had a higher frequency of work injury;
- \* more non-migrants claimed to still suffer pain (97% c.f. 88%);
- \* more Australian-born workers felt they had made a mistake in accepting a lumpsum rather than a weekly award.

The researchers commented that 'for migrants, no less than for Australians, the end of litigation does not mean the end of employment or health problems' (ibid:58). No research findings were reported comparing Australian-born and migrant workers in the area of rehabilitation.

### **Methodological considerations**

Encel and Johnston's survey suggests that migrants were overrepresented in the compensation system and had more complaints about it than Australian-born workers. However, at some points migrants seemed to do slightly better than non-migrants; in many areas there did not appear to be significant differences, but Australian-born people seemed to be more ready to complain. Encel and Johnston concluded: 'There does not appear to have been any racial discrimination against migrants by employers ...' (idem).

There are, however, major methodological problems with this study - problems which substantially undermine the validity of its findings. The first is the nature of the survey group. Of the original randomly selected sample of 646

respondents, only an unrepresentative one-third could be found for an interview, so that any possibility of drawing statistically significant conclusions was ruled out from the start. The finding of overrepresentation of migrants in the group is therefore meaningless.

Secondly, the category 'migrant' is used to refer to all immigrants and no distinction is made between those from non-English speaking backgrounds and those from Britain or the United States. Most sociological research indicates that the latter group have quite different experiences than the former so that Encel and Johnston's categories are misleading. Moreover, their classification of respondents makes it difficult to draw any conclusions about language or communication difficulties from the survey (although they do report impressionistic findings).

Thirdly, it is hard to accept the reliability of the interview process used in the study since apparently interpreters were not used during interviews. The authors of the report note that 'language difficulties' were a major problem for the interviewers. One interviewer commented 'some of them had to use their teenage children as interpreters because their English was so poor' (ibid:16).

Lastly, there is no mention of the sex of the respondents, although the fact that there are substantial differences between the work experiences of women and men is well-established. Because the sample consists of workers with back injuries, it is likely that there were more men than women in the survey group. Not knowing the relative proportions is an added difficulty in interpreting the results. Thus, while Encel and Johnston's research asked some interesting questions of its survey group, methodological problems mean that its potential to provide comparative information about non-English speaking background immigrants in the workers' compensation system was not realised.

### **Nye 1978: Some Aspects of Workers' Compensation**

This major quantitative study of non-English speaking background migrant workers in the NSW workers' compensation system was commissioned by the NSW Ethnic Affairs Commission in 1977. It is significant not only on its own terms but because it was part of a comprehensive investigation into the social situation and problems of NSW's ethnic minority population undertaken by the newly elected Labor Government (NSW EAC 1978). The findings of the inquiry led to the report entitled **Participation** of which Nye's study is an appendix. Through **Participation** it attracted significant public attention and was subsequently used by the Ethnic Affairs Commission to promote reforms in the administration of the compensation system.

Like Encel and Johnston's study, Nye's research focused on the experiences of workers who had accepted a lumpsum settlement of their compensation claim. However, files and not personal interviews were used for the survey. This method became standard in later quantitative research on compensation, partly because of the severe problems involved in physically locating a random

sample of claimants (for Encel and Johnston's discussion of this, see Encel and Johnston 1978:15-16).

Nye's sample was 586 completed redemption cases heard by the Workers' Compensation Commission over a random eight-week period. It thus included both refused and approved redemptions. Claimants' birthplaces were identified by court officers and were grouped by Nye into broad global regions (Australia/UK, Eastern Europe, Southern Europe, Middle East and other). Because the Commission's files contain a large amount of medical, legal and demographic information, Nye was able to make a wide range of comparisons between the Australian/UK-born control group and various non-English speaking migrant groups.

### **Occupational concentration**

Nye found that 'immigrants' (meaning here non-English speaking immigrants) were substantially overrepresented in the sample group compared to Australian/UK-born workers. They formed 38.9 per cent of the sample compared to 16.3 per cent of the NSW labour force (in 1971). Most - 190 or 82.7 per cent - of the immigrant claimants were employed in the census category of 'tradesmen, production process workers and labourers', while the figure for the workforce generally was 49.2 per cent. There was further concentration of specific regional groups. For example, only two out of sixty-nine of Middle Eastern claimants were doing jobs not in the category 'tradesmen, production process workers etc'. All workers were more narrowly concentrated than in the workforce generally; however, as Nye remarks, 'the native-born Australian/UK sample population showed a much wider variety of occupations' (Nye 1978:440).

### **Patterns of injuries**

Nye used medical reports to compare the type and severity of the injuries sustained by immigrant and non-immigrant workers. No significantly different patterns emerge, although the 'other' group (mainly Northern and Eastern Europeans) were overrepresented among those with back problems. The Australian/UK group had a higher proportion of 'multiple injuries', frequently the result of journey-work accidents (ibid:441).

### **Redemption payments**

The similarity in the nature and severity of injuries between the two groups should have resulted in a similar pattern of payments. However, in examining outcomes of the court cases, the survey showed:

- \* that immigrant workers received less redemption money than Australian/UK workers. In Nye's words: 'the bigger the compensation payment, the greater the proportion of Australians receiving it' (ibid:444);
- \* certain groups (Middle Eastern workers) received substantially less than all other groups;

- levels of compensation did not correlate with number of dependants (although the insurance company is supposedly buying out its liability to pay a higher weekly rate when redeeming the rights of workers with dependants). For example, Middle Eastern workers, who received the lowest levels of redemption, were also the group who had the largest number of dependants. Neither did the levels of payments correlate with age;
- Middle Eastern and Southern European workers were disproportionately highly represented among those workers who had their weekly payments cut off by insurance companies.

### **The compensation process**

Because of this, immigrants applied for a determination of their claim more quickly after their injury occurred; but Nye found that it took slightly longer for their claims to be finalised by the Commission (ibid:450). Half of the Australian/UK group received their redemption within one year of having their weekly compensation payments stopped compared with a slightly lower proportion of other groups (ibid:451). However, the cell sizes which Nye quoted are too small to allow any conclusions to be drawn on this point.

### **Patterns of re-employment and rehabilitation**

- the rate of return to work after an injury was three times higher for the Australian and UK workers than for the overseas-born workers; although for all claimants the rate was extremely low:  
percentage unemployed at time of settlement:  
259/358 (72%) Australian/UK group  
200/228 (87%) immigrant group (ibid:449)
- specific rehabilitation at a rehabilitation unit (as opposed to physiotherapy) was received by only 17/586 (3%) of workers (mostly those from Southern Europe).

### **Women and workers' compensation**

Approximately one-fifth of the cases surveyed by Nye were women. Nye's analysis focused mainly on comparisons between immigrant and Australian/UK women; little information was provided on differences between female and male workers generally.

- 44 per cent of the women seeking redemptions were immigrants - nearly double their representation in the female workforce at that time;
- the types of injuries suffered by the two groups were quite different: while nearly half the Australian/UK group suffered back injuries, the immigrant women had few and instead suffered more repetition-caused arm injuries and more contusions and crushings (ibid:458);



- \* very few (c. 5%) immigrant or Australian-born women had returned to the workforce at the time of settlement - apparently, for women workers even more than for men, severe work-injury meant the end of a career in paid employment.

### Medical professionals

In addition to the quantitative analysis of the survey, the Nye report also provides what is described as 'impressionistic information about doctors' attitudes towards workers' compensation patients ... 'human interest' and anecdotal material' (ibid:437). Nye found that the ethnic origin of a worker was irrelevantly mentioned in many medical reports, and suggests that it was often used in a derogatory manner reflecting the doctor's or psychiatrist's own prejudices. Several examples are quoted, such as that of a doctor referring to an injured worker as 'this totally illiterate Maltese ... a small ugly man, still well-muscled from his years as a steel-fixer' (ibid:446). Nye found that frequently, in dealing with immigrant workers, doctors expressed doubts about the genuineness of their patients' statements and suggested 'functional overlay' as the possible cause of incapacity. One of Nye's most provocative conclusions was that there was a link between apparent prejudice on the part of doctors and the disproportionately low levels of redemptions received by the immigrant groups:

The group which receives the lowest levels of redemption (i.e. the Middle Eastern group) is also the group which attracts the most adverse comments ... While Australian/UK workers also attract adverse comments, these comments do not appear to stigmatise that group as a whole, whereas it does appear that Middle Eastern workers ... are often seen as a group all of whose members were suspect. (ibid:447)

The Nye report is an important, rigorous and meticulous piece of research. While there are some technical problems in the recording of claimants' place of birth, it is unlikely that they significantly affect the validity of its findings (see Nye:436). It contains a vast amount of comparative information about the experiences of migrant workers and most of Nye's conclusions seem to be well-corroborated by the empirical evidence. It represents the single most important work on this topic in Australia so far.

However, the study also reveals the enormous complexity of the workers' compensation issue and some of the confusion and difficulties of interpretation that surround quantitative research on this topic. One problem relates to the question of frequencies of compensation claims. Nye tends to imply in the report that workers from an immigrant background have more compensation claims than workers from Australian/UK backgrounds. At one point, for example, she says: 'It is obvious that far more young Middle Eastern workers are applying for workers' compensation than workers from any other group' (ibid:443). However, the question of frequencies cannot simply be read off from numbers seeking redemptions since the latter course of action usually results from a workers' weekly payments having been stopped by the insurance company - that is, from a denial of liability for the claim. Thus, it is impossible to know if an overrepresentation of Middle Eastern

workers in the group reflects an overrepresentation of compensation-claiming Middle Easterners in the workforce at large, or simply the fact that more Middle Easterners have their claims contested than workers from other groups.

This problem is common in the workers' compensation debate. As we shall see, solicitors frequently refer to the disproportionate representation of migrants among their workers' compensation clients. However, it is always difficult to assess if this is because more migrant claims are **contested** (thus forcing them to seek legal advice) or if it is because proportionately more migrant workers than English speaking background workers **make** claims.

#### **Samardzic 1982: Profile of Awards Made to Yugoslav Women in the Workers' Compensation Commission**

Partly as a result of the findings of the Nye Report and subsequent pressure from the Ethnic Affairs Commission, the NSW Government established a small Ethnic Liaison Unit in the Workers' Compensation Commission (see Chapter 8). One of the concerns of workers in the Unit was the apparently high rate of redemptions (as opposed to weekly awards) that migrants were receiving from the Workers' Compensation Commission.

In 1982 one of the Unit's bilingual officers undertook a small survey of Commission awards made to Yugoslav women during a random five-month period (July-December 1981). Eighty such cases were heard during that time. The vast majority of the claimants had been employed as process workers, machine operators, cleaners or caterers. The study contains two findings of interest.

#### **The Court's decisions**

In 95 per cent of the cases surveyed an award for the applicant was made. However, in three-quarters of the cases the result was a redemption, compared to only 15 per cent of cases where the claimant received a weekly award. Moreover, of the judgements for weekly awards only eight were of a continuing nature - four were retrospective or for a closed period only. Most of the sixty-three women who obtained redemptions received between \$5,000-\$30,000 and the highest award was for \$55,000. Samardzic concluded that the astoundingly high number of redemptions for relatively small sums showed that 'despite the primary function of the Workers' Compensation Act to provide income maintenance for injured workers, it is not being fulfilled ...' (ibid:6).

#### **Medical reports**

The survey also showed that a large number of medical reports were tendered by the solicitors on both sides. The average number of reports tendered in cases where other than oral evidence was given was eleven. In one case, nineteen separate reports were tendered in court. This suggests that considerable time was spent by most claimants visiting non-treating doctors simply for the purposes of litigation.

### **Compensation Reform Action Group (CRAG) 1982: Green Community Project**

The focus of the Encel and Johnston, Nye and Samardzic studies discussed above is on claimants whose cases were settled in the Workers' Compensation Commission (in other words, contested cases). This focus is standard in the literature on workers' compensation, since court, solicitor and Commission files are the obvious way of obtaining sample populations for the purposes of research. However, as noted above in the case of Nye, the use of such specific populations places limits on the conclusions the researcher may validly draw about compensation claimants in general.

Two projects which draw on a broader population of injured migrants were carried out in the Greek community. The first was an action research project undertaken in 1982 by a group preparing a submission to the Law Reform Commission's proposed inquiry into accident compensation in New South Wales. The project also aimed to 'educate the community in the law reform process' and 'to assist the community in participating in the law reform process in relation to this issue' (CRAG 1981a).

Over a three-month period the researchers made contact with injured Greek workers by using community networks, welfare workers and publicity in the Greek media. Sixty-eight interviews were conducted with injured Greek-speaking workers and further information was obtained through questionnaires. The research did not use a structured interview format and did not produce quantitative findings. Rather, it documented common problems that respondents were experiencing and reported typical comments and criticisms that they made of the system.

It is difficult to summarise the findings of this type of qualitative research. Generally, people expressed feelings of bewilderment, powerlessness, ignorance, anger, frustration, suspicion, resentment and desperation at their experiences of workers' compensation.

### **Medical dealings**

People were confused about why they had to see so many doctors and were upset by the apparent hostility and cruelty of many doctors. Many complained that specialists demanded high cash payments which caused them additional stress. Many people reported having been referred to psychiatrists and resented this - one commented 'my hands are sick, not my head'. Criticisms were made of the racism of those doctors who related either the symptoms and/or the illness itself to ethnicity. Fears were expressed about the long term effects of the medications they had been prescribed - many were taking from between five to twenty different drugs at the time of the study (CRAG 1982:4-5).

### **Insurance companies**

The researchers commented 'criticisms were made repeatedly in relation to the seemingly uncontrollable power of insurance companies who appear to have their own rules and decision making structures which are not governed or controlled by state laws' (ibid:6). Workers saw many of the companies' actions as obstruction (for example, when ringing to find out about their case, being told that their file has been lost). There were many complaints of the claimants being harassed by insurance company investigators; people complained about receiving threatening phone calls and about their neighbours being offered money to spy on them.

### **Legal dealings**

People were worried about whether or not their solicitors were 'good'; they were unsure about whether or not they could be trusted. Many felt that the solicitors did not care about their case and did not explain what was going on. There was much expressed need for alternative sources of legal advice. 'Many inferred that solicitors, doctors and insurance companies did "deals" with each other which culminate in victims receiving "handouts" rather than "justice" ...' (ibid:9). The role of barristers and the operation of the Commission were also criticised.

### **Interpreters**

On the whole, people appreciated the role of government interpreters. Criticisms related to the scarcity of interpreters, and 'a few people did not trust the interpreters and suggested that there were rackets in process whereby interpreters did not truly translate given conversations' (ibid:10).

### **Employers**

Criticisms centred on employers' refusal to provide healthy and safe workplaces and their preference for sacking workers or putting them 'on compo' rather than undertake preventive measures. Other complaints were the threat of dismissal, actually being sacked, obstruction in making a claim and the claimant's powerlessness vis employers. The study noted that often the first comment claimants made was 'I wish I could just get better and go back to work' (ibid:13).

### **Finances**

According to the researchers, 'nearly all the people interviewed were suffering severe financial hardship. All have experienced a drastic fall in income and are having difficulties surviving, many living below the poverty line. These financial burdens combine with physical pain, adding to the general stress of being compensation victims' (ibid:12).

Crag's survey group was biased to the extent that it was comprised of workers who had responded to an invitation to be involved in a submission to the Law

Reform Commission. Nevertheless, the range and frequency of serious problems they reported encountering in the compensation system was significant. Several of the problems appeared in the claimant's eyes to have been caused by being a migrant (or a Greek) worker. Racist responses by professionals, lack of knowledge about and understanding of the system, and problems associated with the use of interpreters were specifically mentioned.

### **Stavropoulos 1986: A study from the Greek Welfare Centre**

A later piece of community-based qualitative research on workers' experiences in the workers' compensation system also focused on Greek workers. This study sought to document the experiences of the Greek Welfare Centre's injured worker clients, and in particular drew on information exchanged in a workers' compensation support group which the Centre established in Sydney in 1985.

The group comprised 50 Greek workers, most of whom had back or repetitive strain injuries. Two-thirds of the group were male; most spoke little English (ibid:7). The report summarised the experiences of group members in the following terms: 'The three main problem areas can be identified under the categories of medical, legal and personal. In all these areas, most clients express dissatisfaction, frustration and resentment regarding their situation' (idem).

Many of the problems reported by workers in CRAG's study re-emerged in the experiences of participants in the Greek Welfare Centre's group. In particular, the confusion and insecurity caused by long delays in finalising cases was emphasised, and Stavropoulos suggests that inability to communicate adequately with professionals and the latter's unwillingness to explain matters carefully to non-English speaking claimants magnified the problems of migrant workers.

In relation to medical treatment, one of the main problems experienced by the Greek workers in the group was the rudeness of insurance company doctors. One of the frequently reported complaints - insurance company doctors refusing to allow clients to take a family member to the medical examination as interpreter - suggests that there may have been a deliberately obstructive attitude to migrant workers by these doctors.

In her discussion, Stavropoulos provides a thoughtful analysis of which aspects of the group members' situation were specifically related to their being migrants. She suggests that migrants were more powerless than other workers in the workplace in relation to employers and also that they had an added psychological stake in being fit for physical work; '... most migrants in Australia have always relied on their physical strength. ...When this is threatened, then everything they have built around them may collapse' (ibid:10).

She also suggests that cultural factors can make the consequences of being on compensation particularly damaging psychologically: '... through the injury the client has become dependent both on society and the family. This, for Greeks, is very difficult to deal with because the Greek man is the proud breadwinner and the Greek woman is the proud wife and mother. An injury destroys their pride in their abilities - their identities' (ibid:11).

She also argues that Greeks have particular difficulty in accepting that they may have to live with pain and find appropriate work: 'the concept of rehabilitation ... is foreign to Greeks' (ibid:12). In addition, the report notes that the lack of English and lack of skills prevented migrants from obtaining new employment.

#### **Petruchenia 1984: Workers' Compensation and Immigrants**

The last piece of NSW research we discuss here is a small-scale study of service use by migrant workers' compensation recipients. The research, which involved just sixteen case studies, is an extreme example of the 'qualitative' approach. Clearly, the group was not representative, or large enough to provide a variety of experience. (In fact Petruchenia does not explain how the survey group was selected and does not provide any other methodological details.) Nevertheless, because of the intensiveness of the interview process, some useful explanatory information about the claimants' attitudes towards and use of services was obtained.

Petruchenia found that: 'welfare, educational, financial and employment services were used minimally by the injured workers. They claimed that services were not accessible ... even if they were able to use them, such use was often only perfunctory - the migrant worker expected little and receives little' (ibid:29).

The only service which claimants reported using extensively were medical services (the respondents had seen, on average, six doctors each). Petruchenia discusses a variety of factors affecting use of services by her respondents. These range from ignorance of a service's existence, to dissatisfaction with the service outcome (in the case of some rehabilitation services), to being turned away by the service providers themselves who felt they were not in a position to respond to the worker's need. 'The groups of workers who were perceived as the most helpful were the bilingual welfare workers, many of whom had no welfare training. This "helpful" attitude was partly the product of similarity of background and language but also occurred because of these workers' spontaneous way of relating to their clients' (ibid:30).

Petruchenia concludes that drastic reform of all services is necessary if they are to become relevant to the needs of injured migrant workers.

## 2.2 Relevant Research from Elsewhere in Australia

There are some workers' compensation issues (such as the workings of S.11(2) of the Workers' Compensation Act 1926 or the problem of ethnic 'middlemen') which appear to be primarily 'NSW issues'. However, much of the relevance to the subject of migrant workers and the workers' compensation system can be learnt from research from other parts of Australia. Experiences in Victoria are particularly relevant since its industrial structure and the ethnic composition of its population are very similar to those of New South Wales.

A rich research tradition focusing on issues affecting industrial, and particularly migrant, workers has developed in the last fifteen years in Victoria. Much of this type of research has been prompted by community action and has taken the form of action research based at community organisations such as the Centre for Urban Research and Action and the Ecumenical Migration Centre (see for example, Storer 1979, Mesaritis 1984). Partly in response to the Victorian Government's inquiry into workers' compensation (1983-84) several pieces of research examining work-related injury and workers' compensation issues were undertaken in the early 1980s.

We will review four of the most important of these, and also the findings of a large-scale research project undertaken by the Victorian Ethnic Affairs Commission. Finally, we will look at the findings of some recent unpublished Australia-wide research on the rehabilitation system.

### Casey and Charlesworth 1984: Like it or Lump it

This study focused on the compensation outcomes of workers in a particular industry: the hotel, restaurant and catering industry. Researchers from the Victorian Branch of the Liquor Trades Union used union files to examine the results of the claims dealt with by the union solicitors and finalised during a three-year period (January 1980 - December 1983). The aim of the study was 'to document the experiences of a group of union members who were "successful" in terms of the workers' compensation system and to examine this success' (ibid:7).

The union's survey involved ninety-four redeemed cases covering a wide range of injuries (excluding deafness claims). It revealed discrimination in the system - the average amount awarded to women was \$5,000 - \$10,000 less than the average amount for men for injuries of equivalent severity (ibid:22). This disparity was also evident when the settlements of migrant men and women were compared (ibid:23).

In terms of the situation of the claimants generally, the survey found:

- substantial delays in obtaining settlements, although these were probably lessened slightly by union intervention;

- \* insurers initially denied liability for nearly two-thirds of claims although most of the claims were eventually settled out of court;
- \* settlement were relatively low in relation to workers' expected future income losses; two-thirds were less than \$20,000 and the union concluded that 'the settlements received were often arbitrary and inadequate' (ibid:3).

### **Migrant workers**

The study's major findings relating to migrant workers were: firstly, that the migrants were more likely to be dismissed by their employers while off work with an industrial injury; and secondly, that they were less likely to have returned to work following an injury. While only one-fifth of the injured Australian-born men had been dismissed following their injury, nearly half of the injured migrant men had been (ibid:24).

The following table illustrates the differential rates of return to work by place of birth and sex.

**Had Not Returned to Work at Time of Study**

Sex/birthplace group	Number	Percentage
Australian-born male	5/21	24%
Australian-born female	14/30	46%
Migrant male	10/21	47%
Migrant female	15/22	75%
All workers	44/94	47%

### **The researchers comment:**

The common practice of dismissing workers during their absence on workers' compensation makes returning to work considerably more difficult as does the general inability or unwillingness of employers to provide 'light duties'. In our study no migrant women had been provided with light duties by their employer. Most of the jobs in the industries covered by our union require the worker to stand for long hours, lift heavy weights, perform repetitious tasks and work at a fast pace.

It is also the case that many employers discriminate against those who have had a workers' compensation claim in the past.



Migrant workers face additional problems in that those jobs which could be classified as 'light duties' often require higher educational qualifications and complete fluency in English, thus limiting migrant workers' job opportunities to the unskilled, manual heavy sectors of industry where there are also high unemployment levels. (ibid:24)

**Rubinstein 1983: Survey of Rejection Rates; and Blackett-Smith and Rubinstein 1985: Unlucky Dip**

Unlucky Dip developed out of an earlier, unpublished, though much-quoted, survey of rejection rates carried out at a large Regional Health Centre in Melbourne's western suburbs (Rubinstein 1983). In this study, accounts were used to assess whether liability for the compensation claims of the 685 patients who had attended the centre during a seven-month period had been accepted or denied by insurance companies.

Although the survey dealt with only one aspect of the compensation process, its findings were striking. The overall rejection rate for the group was 17.8 per cent but there was significant variation between different groups of patients on the basis of sex and birthplace. Migrant women were almost six times as likely as Australian and UK-born men to have their claims rejected; migrant men and women were both more likely to have claims rejected than English speaking background claimants.

Because most of the workers in the survey group had musculo-skeletal injuries of similar severity, the researchers argue that the difference in rejection rates cannot be explained by different health problems in the survey group. Rubinstein concludes: 'It does not seem possible to explain these large variations in rejection rates except as the result of discriminatory practices by insurance companies. In particular it appears likely that the doctors employed (by them) to assess claims are more sceptical about the injuries of migrants and women than of Anglo-Saxon men' (ibid:2)

These findings led to the subsequent research undertaken by the Women's Health Resource Collective. Like Nye's earlier NSW research, **Unlucky Dip** was a sample survey of compensation claimants whose cases have been redeemed during a set period of time (1983). Rubinstein (a doctor) and Blackett-Smith (a solicitor) examined the legal files of a randomly chosen group of 157 workers whose cases have been handled by three large applicants' solicitors' firms with the aim of '(examining) whether discrimination on the basis of nationality and sex occurs in the operation of the workers' compensation system' (Blackett-Smith and Rubinstein 1985:5). Further selection of cases was made to locate similar types of injuries (again back or repetition injuries) and claimants who had been off work for more than twelve months.

The study was methodologically rigorous. Firstly, the 'ethnic' variable seems to have been measured accurately since the researchers used solicitors' firms which kept records of their clients' birthplaces or were able to ascertain it in other ways (Rubinstein 1986). Secondly, solicitors' files

are usually extremely comprehensive sources of information about a compensation case. In addition to legal information and the workers' own statement, they typically contain a variety of medical reports, X-ray and other radiological reports, reports from psychiatrists, rehabilitation counsellors and so on. Their analysis was facilitated by the fact that the researchers were experienced professionals in the workers' compensation field. **Unlucky Dip** is an important piece of research because it is one of the few compensation studies which has produced reliable quantitative data.

### Findings

The findings relating specifically to migrants were:

- an overrepresentation of migrants from non-English speaking countries compared to their participation in the Victorian labour force (more than half the sample was of non-English speaking migrant origin compared to 17 per cent in the labour force). The greatest overrepresentation was of migrant women (ibid:9);
- migrants were as likely as Australian-born workers to have objective evidence of injury and confirming evidence that it was work-related;
- migrants received somewhat lower levels of lumpsum compensation than Australian-born workers: the median figures for the two groups were \$16,500 and \$19,500 respectively. In addition, the data suggested that migrants were more likely than Australian-born workers to receive less than \$20,000 and much less likely to receive more than \$40,000 (ibid:24);
- workers with RSI received much lower levels of compensation for severely incapacitating injuries than workers with other severely incapacitating injuries.

However, the study showed statistically more valid differences in the patterns of compensation experience on the basis of sex than of birthplace, and the authors' main conclusion was that women were substantially discriminated against in the compensation system. With migrants the differences were less marked and the results had less statistical validity. Nevertheless, as the authors note:

the difference (in settlement amounts) is still suggestive; there is an 80 per cent probability that migrants generally receive less compensation than Australian-born workers, and this remains a cause for concern. (ibid:24)

An interesting pattern emerged when examining the situation of migrant women. Among workers with RSI, the effects of sex and country of birth had little effect on amounts received - 'it seems likely that prejudice against claimants with RSI is so great that it swamps other factors'. However, when the compensation received by workers with back injuries was examined

separately it became apparent that migrant women were doubly disadvantaged, as the following table indicates:

### Back Injuries Sample

Sex and birthplace	Median lump sum received
Australian-born men	\$27,500
Migrant men	\$25,000
Australian-born women	\$20,000
Migrant women	\$17,000

### Western Region Centre for Working Women: They used to call it 'process worker's arm'

The next study from Victoria with which we deal here is an action research project on repetition strain injury among migrant women (Dawson et al 1983). Although the study does not focus specifically on workers' compensation, it provides us with insights which are relevant to our inquiry. The study is also important because it sheds light on the specific problems of migrant women, identified in the research discussed above as a particularly disadvantaged group.

A team of bilingual workers from the Western Region Centre visited a number of factories over the course of a year to discuss the prevention and management of repetition injury with the workers, union officials and, in some cases, employers. At the time repetition strain injury seemed to be reaching epidemic proportions among industrial and clerical workers, probably due to both increased incidence and due to an upsurge of publicity about it in the late 1970s. In most of the factories contacted there were many women with experience of repetition injury and of workers' compensation. The report documents the situation of women in four factories and that of a group of women outworkers. Almost all the women involved were migrant women from Southern Europe, Latin America, Asia or the Middle East. The research by the Western Region Centre provides information about the experiences of migrant women workers which typically remains 'hidden' from public consciousness and is inaccessible by normal research methods.

In terms of workers' compensation, the following points emerged:

- \* many women lacked information about workers' compensation, were ignorant of their legal rights in the area and were confused about the operation of the system;

- several women who had been on compensation were angry at the way they had been treated by insurance companies, by doctors, and by their employers. One woman said, for example: 'While you're healthy, then they want you to work like dogs, but when you're sick they won't look after you' (ibid:1983:6);
- many women complained of the inadequacy of the workers' compensation payments. The maximum received at that time in Victoria was \$127 per week, and for many there had been long delays before any payments were received. Several women said that financial hardship forced them to return to work while still injured or not to claim compensation in the first place. Most worrying was the finding that several women who were receiving compensation for repetition injury were forced, through economic necessity, to take on outwork. Not only did this affect the women's legal entitlement to compensation but it aggravated their injuries. Several women said that (often because a husband had been retrenched or had also sustained a work injury) they had no choice;
- many migrant women were employed in work situations where they were being denied the legal and industrial rights available to most workers in Australia. Both the casual workers and the outworkers the researchers spoke with were not covered (or had been told that they were not covered) by workers' compensation legislation (ibid:7-10);
- victimisation by their employers (in particular the threat of dismissal) was the major reason that many women gave for not claiming compensation.

One case which illustrates some of these issues was that of a middle-aged Yugoslav woman who had developed a severely incapacitating case of tenosynovitis after years of process work in the metal industry:

She had been on workers' compensation for six years but it was inadequate to live on. Her husband had gone to Yugoslavia some years ago and her two kids had gone to America to live. She got outwork from another older woman ... when the job was transferred the rate dropped and her injury was aggravated. Her own doctor said it was all in her head and sent her to a psychiatrist who said 'what she really needed was a good sex life'. Because of her isolation as an outworker her doctor, psychiatrist and solicitor were the only people she had contact with. She was being paid 20c a shirt. (ibid:10)

The researchers made a number of observations about the organisation of work and the work relations the women were involved in which are relevant to the workers' compensation question:

- (i) Firstly, it was found that many of the women were structurally isolated both at work and in the community. The nature of the work process - high pressure work on a production line in a noisy workplace - frequently hindered communication among the women. The situation was exacerbated by the lack of a common language in many workplaces, a fact which management exploited to reinforce the isolation of individual workers. For example, women were prevented from going to the toilets where they could talk, and women who spoke different languages were deliberately placed next to each other on the production line.
- (ii) Divisions among the workforce, again sometimes deliberately promoted, hindered the development of the type of solidarity that would have been necessary to avert victimisation or discrimination by the management. For example, in one factory, where there had been attempts to intensify work, the supervisor was playing off two women who were doing the same job in order to make them work harder. The Italian woman, who was very fast, was doing 360 items per day but was developing severe RSI. Management told her that the Turkish woman was doing 540 per day; in fact, she was doing less than the Italian worker. Animosity was developing between the two women; both, competing with each other, were developing repetition injury (ibid:8).
- (iii) There was considerable explicit employer opposition to the women being informed about their rights or about repetition injury, although in most cases the researchers were entering situations where many workers had already developed severe injuries.
- (iv) The women's predicament at work was closely related to their situation at home. Many women not only supported injured or unemployed husbands and their children by their paid work, but also performed substantial amounts of domestic work at home. This affected their recovery; at the same time, the fact that they could not do all the tasks associated with childcare, looking after their husbands and their houses, added to the women's anxiety and stress.
- (v) Public opinion, reflected in the reactions and attitudes of others around them, emerged from the study as being an important influence on the women's own response to their situation. The unsympathetic attitudes of relatives, neighbours and fellow workers to repetition injury added to the pressure women were under not to report injuries and not to stop working. The researchers found that repetition injury was often a 'hidden injury' because women felt unable to talk about it.

#### **Victorian Ethnic Affairs Commission 1985: Migrant workers survey**

The final Victorian study of interest is a study of migrant workers undertaken by the Victorian Ethnic Affairs Commission in 1984-85. It was a

large-scale survey of a random sample of migrants drawn from the telephone book. The sample was stratified to represent eleven language groups: 1,429 male and female immigrants from non-English speaking countries were interviewed about aspects of their workforce experience. The topics covered included: problems in the workforce, job satisfaction, barriers to employment, effects of technological change and attitudes to assimilation (VEAC 1985:9).

Almost all the workers in the survey group had been in the workforce at some time in their lives and the workforce participation rate at the time of the survey was 73.4 per cent. Thirty per cent of those currently in the labour force had sustained a work-related injury at some time during their work career (VEAC 1986a). In most cases the injuries seemed to be relatively severe - around two-thirds of the injured workers had been off work for one month or more.

Of the 324 workers with work-related injuries in the sample, 112 (34.5%) had never applied for workers' compensation. The interviewers reported that the main reason workers gave for not claiming workers' compensation was ignorance of its existence and/or of their rights in the area (VEAC 1986b).

Three-quarters of those who did claim compensation reported 'success' with their claim. It was unclear from the questionnaire what 'success' entailed - it was possible that workers who had received some payments which later ceased may have reported 'success'. Many claims were still pending. Nevertheless, it was significant that in only twenty-two cases (6.7%) was a worker's claim rejected.

#### **Meekosha 1986: Women and Commonwealth Government Rehabilitation Services**

A study on women's access to and experiences of Commonwealth Government rehabilitation services (CRS) has recently been commissioned by the Department of Community Services. The Department will not be publishing the report in full, although one copy is available at the National Library in Canberra. Although the study is not specifically about migrant workers, some of its findings are extremely relevant to our topic.

Meekosha's research involved consultation with CRS managers, rehabilitation workers, users and community-based officers and professionals working with disabled people and responsible for referring them to rehabilitation. Her findings indicate that there are:

- \* barriers discouraging access to CRS services'
- \* factors which prevent migrant workers obtaining maximum benefit from CRS;
- \* particular problems in both these areas for migrant women.

Meekosha suggests that the NSW CRS had shown less creativity and/or willingness to overcome problems in these areas than some of the other States (Meekosha 1987).

### **Migrants' access to rehabilitation services**

Figures for New South Wales indicate that migrants from non-English speaking countries use CRS services in numbers roughly proportional to their representation in the population (although it should be noted that the total number of clients is small). Of 4,048 CRS clients in New South Wales in the 1984-85 financial year, 20.8 per cent were from non-English speaking countries. The vast majority of these users were men; Australian-born and particularly migrant women were dramatically underrepresented making up only 28.2 per cent of the total users (Meekosha 1986:106).

However, Meekosha claims that the figures indicating service use may be misleading since there are many different tiers of CRS which clients can potentially use and access to each is regulated by different criteria. For example, the most valuable form of support provided by CRS is sponsorship for vocational retraining through a tertiary institution. However, Meekosha found that since the client's 'potential to benefit' is a major criterion by which such sponsorship is awarded, non-English speaking migrants are extremely unlikely to obtain this form of support (ibid). Their chances of doing so are further reduced if they had had little previous formal education. Evidence of disproportionately high rejection rates for migrant women lends support to this argument. A recent review of Queen Elizabeth II, Sydney's major rehabilitation centre (since closed), found that 44 per cent of those rejected from Queen Elizabeth II were non-English speaking migrants even though only 29 per cent of the clients accepted were migrants (Meekosha 1986:142).

An assessment of the likelihood that a client will 'benefit' from a particular program is commonly used to regulate entry. Frequently, obtaining 'benefit' is understood only in relation to vocational goals: will the client be better fitted for and more likely to return to the workforce as a result of the program? Because injured migrant workers often lack marketable skills or qualifications that will allow them to obtain work outside the industries which cause their injuries, and because of the added disadvantage of language, Meekosha found that the answer given by assessing officers was frequently negative.

Secondly, Meekosha found that knowledge about CRS among the population generally was extremely low. She describes CRS as 'one of Australia's best kept secrets' (Meekosha 1987), since it undertake little publicity (in English or other languages) about its activities and in some cities is not even listed in the telephone book. The low level of public knowledge about rehabilitation and the fact that CRS publicity does not target non-English speaking ethnic groups combines, in Meekosha's view, to ensure that most migrants remain ignorant of CRS and the services it offers.

### Obstacles for migrant workers in obtaining benefit from CRS

Meekosha found a widespread perception among CRS staff that migrant clients are 'difficult' clients and that attempts to rehabilitate migrants frequently had little success. The reasons given often referred to:

- \* the fact that migrants often present too long after an injury has occurred;
- \* the fact that the concept of rehabilitation is unfamiliar to many migrants and that rehabilitation, as it was offered in Australia, is culturally inappropriate to people from different ethnic backgrounds (comments such as 'Greeks don't understand work therapy' and 'ethnic women don't have a concept of exercise in their culture' were often made);
- \* a belief that some migrant workers are not genuinely committed to rehabilitation, but instead attended rehabilitation only because it will help them win their court case for workers' compensation.

According to Meekosha, such explanations are often excuses for the service's inability to meet the need of migrants.

'Cultural barriers' are put forward time and time again as explanations for the low numbers of migrant women using CRS; although there appears not to be a clear understanding of what might constitute a cultural barrier. (ibid:214)

Meekosha found the following aspects of CRS to be inappropriate for migrants:

- \* its lack of bilingual staff and the inadequate use made of interpreters;
- \* CRS's centralised structure and the relative inaccessibility of its centres to people living in certain high migrant density areas of Sydney, the Illawarra and the Hunter regions; (N.B. a plan for greater provision of community-based services through regionalisation was outlined by the Federal Government in 1986);
- \* the fact that until recently clients at Queen Elizabeth II and Mt Wilga centres were often required to attend for forty hours per week, often as in-patients; many migrant women found it a particularly hard to comply with requirement and the consequent disruption to their family's life;
- \* the difficulties of implementing a successful vocational rehabilitation for migrant workers in part because of the nature of the labour market, high unemployment, the scarcity of light work and because migrants often lack the basic skills considered necessary to either obtain a physically non-demanding job or to retrain for one;



- \* the related confusion on the part of CRS managers and staff about the goals of rehabilitation in the case of migrant workers. One officer noted: 'The attitude runs through some of the staff of what is the point of giving certain people, and particularly say, migrant women, rehabilitation when they are not going to get a job anyway' (ibid:232).

Yet, Meekosha also found that rehabilitation for 'leisure' - one of CRS's treatment goals, was not what many injured migrant workers, desperate to return to the workforce, were seeking.

**Two problem areas for migrant workers: work therapy and private rehabilitation services**

Meekosha's study highlights 'work therapy' as a major problem area within the rehabilitation services. As part of a policy of encouraging disabled workers to attempt to return to the workforce and to create vocational options for them, CRS places injured workers in workplaces under this program. However, it seems that many of the jobs to which CRS clients are 'reintegrated' are inappropriate and even dangerous. Meekosha mentions, for example, migrant women workers being given process work in factories, industrial sewing and cleaning as 'work therapy' - jobs which are among the most common sites of industrial injury for migrant women.

A second area of concern, according to Meekosha, is the treatment provided in the expanding private rehabilitation industry (Meekosha 1987). She argues that migrant clients often require additional and special rehabilitative attention, including language teaching and lengthy retraining; this makes rehabilitation frequently more costly than that needed by English speaking background clients. There is a considerable risk that private centres, oriented to profit rather than public welfare goals, will limit their intake of migrant clients and/or implement rehabilitation programs that 'cut corners' and are not tailored to their specific needs.

## CHAPTER 3

### METHODOLOGY IN THIS STUDY

As we have noted above, the debate about workers' compensation has frequently been characterised by opinion based mainly on anecdotal evidence. One reason is that there is at present a lack of representative empirical data, particularly in respect to migrant workers' situations. Relatively little is known about migrants' occupational health in Australia since little injury data provides information about birth. (This situation may improve in the future as a result of the National Occupational Health and Safety commission's recent efforts to systematise the collection of work-injury statistics at a national level).

Our aim in this study was to focus on the social relations in which migrant workers become involved when they make a compensation claim as well as the end results of that process for migrant and non-migrant injured workers. We therefore decided to utilise both quantitative and qualitative research methods. In this respect our research strategy differs from most of those reviewed so far, and our study is unique in having produced new material in both of these areas.

#### 3.1 Qualitative Data: the Views of Participants

One characteristic of the social scientific method stems from the nature of its object of inquiry - that is, human beings and the social relations in which they are involved. In the social sciences it is possible to see the objects of inquiry themselves as 'researchers' in a way that is not possible in investigating the natural world. A rich source of information about social actors. Not only do human beings develop ideas about the world, but human consciousness is reflexive in the sense that people constantly reformulate, reflect upon and modify their ideas in the light of their experiences. Thus people's views are always firmly linked to social reality, although, as we shall see, this reality may sometimes present itself in a way that is open to competing interpretations.

For this aspect of the research, two sources of data were used:

- (i) a series of interviews with key informants' - people who deal extensively with migrant compensation claimants;
- (ii) interviews with compensation claimants themselves.

#### 3.2 Quantitative Data

Because of the lack of representative empirical data, it was necessary to explore a variety of less-than-ideal possibilities. In order to discover which sources of data would be most suitable for our purposes, we examined the various options in some detail. In the hope that this will be useful to

future researchers, the advantages and disadvantages of each potential sources from our perspective are listed below. (Further details of the methods used in each part of the study will be found in the relevant chapters.)

**(i) Insurance company files**

- \* consist of claim forms and other records with considerable information on the injury or disease, the amount of compensation paid and other aspects of the compensation process;
- \* they cover all cases dealt with by an insurance company (both contested and uncontested claims) and are therefore not usually biased towards a particular type of client;
- \* usually lack information about the ethnicity of claimants. Our survey of claim forms from the major insurers found that data related to birthplace and/or language were collected in only two cases;
- \* in many cases are not readily accessible or computerised. (The two companies which collected ethnicity-related data denied us access, apparently for the latter reason.)

**(ii) State Compensation Board files**

- \* three types of information about claimants exist within the Board's ambit: Board, Court and Ethnic Affairs Unit files. **Court** files contain all contested workers' compensation cases dealt with by the Workers' Compensation Commission before July 1985 and all cases where more than \$40,000 was claimed (i.e. those heard by the Court) since July 1985. **Board** files contain all contested workers' compensation cases where less than \$40,000 was claimed since July 1985 (i.e. those heard by the Board Commissioners). In addition, employers in New South Wales are requested to report all work-related injuries resulting in three or more days' incapacity to the Board. **Ethnic Affairs Unit** files are those of claimants or prospective claimants who have approached the unit for assistance over the last three to four years;
- \* only the Ethnic Affairs Unit files contain systematic information about people's ethnic origin; the data collected by the Board on all work-related injuries of three or more days' incapacity do not include birthplace or language;
- \* Court and Board files comprise only contested cases and/or cases where a redemption payment has been made; they are not, therefore representative of all compensation claimants;
- \* requests to the Board and the Court for access to their files were refused.

**(iii) Civil court files**

- \* Claims for damages under common law are heard in the District and Supreme Courts of New South Wales (cases where the claim is estimated to be over \$100,000 in the Supreme Court, less than \$100,000 in the District Court). Files on these cases exist at Courts; however, they contain less information than those kept at the State Compensation Board, and do not have a systematic record of birthplace.

**(iv) Hospital records**

- \* a large-scale data source. since information is collected on every private and hospital patient in New South Wales; this includes information on type of health cover (including whether or not the patient is a workers' compensation claimant), source of injury and place of birth;
- \* they cover only claimants who are admitted to hospital as in-patients; again the information they provide is not representative of all compensation claimants;
- \* the records have little information about the experiences of patients in the workers' compensation system.

**(v) NSW Department of Industrial Relations and Employment Records**

- \* accident notification forms required from employers by the Department under various Acts ask questions about the birthplace and language ability of injured workers;
- \* however, the quality of the data is poor, as answers are frequently not given or given inaccurately. The Department estimates that it under-records industrial accidents by as much as 50 per cent.

**(vi) Solicitors' files**

- \* these have been used by some researchers (e.g. **Unlucky Dip**);
- \* none of the solicitors that we contacted systematically collected ethnicity-related information; the only such variable noted on files occurs where interpreters have been booked by the solicitor for interviews, or where it appears on a medical report;
- \* the solicitors approached typically considered their files strictly confidential; access for research purposes seemed unlikely.

**(vii) Trade Union files**

- \* files of members workers' compensation claims are usually kept; information from their solicitors about the outcome of their members' workers' compensation cases is also received;
- \* in several major unions there are large concentrations of migrant workers, making it easy to locate populations relevant to our study;
- \* the trade unions approached seemed willing to co-operate with the project;
- \* however, most union compensation files contain little information and none had data indicating the claimant's ethnic background;
- \* most had files only of cases where a union officer had become involved in helping a member who had approached him or her with a specific problem, and did not keep information about the compensation cases of all union members;
- \* information relayed to unions from solicitor's firms was, on the whole, too slight for our purposes.

**(viii) Employer records**

- \* many employers have records of accidents and compensation claims in their enterprises, and also have more or less detailed information about the characteristics of their workforce;
- \* however, few employers have a workforce large enough to make any quantitative research on their accident records meaningful;
- \* access to enterprise records is likely to be a problem in the case of most employers;
- \* approaches were made to the two major employers of migrant workers in New South Wales - BHP and Telecom Australia. While Telecom did not reply to our request, BHP agreed to allow us to carry out research on data contained in their accident records and on their redemption records (see Chapter 5).

It can be seen from this outline that the quality of the potential sources of quantitative data on the comparative experiences of compensation claimants from different ethnic backgrounds imposes considerable limitations on the conclusions that can be reached in this area. Data collections which contain a large amount of useful data (such as that held by insurance companies) frequently do not contain information indicating ethnic background.

### 3.3 The Research Plan

Below we outline the investigative model adopted in the project, showing how the different types of data fitted into our plan.

**Research Question 1:** Are there systematic differences in the experiences of non-English speaking migrant and Anglo-Australian workers in the New South Wales compensation system?

**Question 1(a) - What are they?**

Sources	Content
(i) 1984 NSW Hospital Separation Records of patients admitted under w.c. cover/c.f. 1984 Labour force NSW data	Frequencies of people born in Australia and in countries other than Australia among the total number of workers' compensation cases admitted to NSW hospitals in 1984; compared to their proportion in the labour force; other information about claimants.
(ii) Random sample of BHP Port Kembla compensation accident files and 'B Forms'/employee birthplace records.	Frequencies of people born in Australia and overseas in sample of accident cases; compared to their occupational distribution in BHP workforce.
Records of redemptions of compensation claims made by BHP redemptions of BHP compensation claimants.	Similarities and differences in aspects of compensation experience between injured migrant BHP workers and injured Australian-born BHP Workers.
(iii) Previous studies of workers' experiences.	Answers given by other researchers to this question.

**Research Question 2:** What explains different patterns of compensation experience between migrant and Anglo-Australian workers where these differences exist? And, more generally, what is the nature of migrant workers' experiences of the compensation system in New South Wales?

Sources	Content
(i) Records of issues and problems dealt with by Ethnic Affairs Unit, State Compensation Board.	Information from the point of view of those administering the workers' compensation system about injured workers' experiences in the system; their explanations for workers, and specifically migrant workers' compensation outcomes.
(ii) Interviews with 'key informants' - (legal and medical professionals, insurance company and government officers, union officials and community workers):	

also published material giving their point of view (newspapers, reports, bulletins etc).

- (iii) Unpublished data from ABS Handicapped Persons Survey, 1981.

Information such as type and severity of injury suffered, where the injury occurred, occupation of the injured worker, amount paid, settlement and so on can be correlated with ethnicity to help identify factors affecting differential compensation outcomes for different groups.

BHP accident and redemptions survey.

Building Workers' Industrial Union: compensation records.

- (iv) Interviews with migrant and Australian-born injured workers.

Information from the worker's point of view about what happens during his/her involvement in the compensation system on an everyday level; how injured workers experience their involvement in the system; the claimant's own explanation for his/her compensation experiences.

- (v) Previous studies of workers' compensation experiences.

Answers given by other researchers to these questions.

## CHAPTER 4

### QUANTITATIVE HEALTH DATA

#### 4.1 Handicapped Persons Survey, 1981

The first source of large-scale quantitative findings which we discuss here is the Handicapped Persons Survey conducted by the Australian Bureau of Statistics in 1981 (ABS 1982). The survey covered two distinct groups: people living in (private and non-private) households, and those resident in institutions such as hospitals and homes for the aged. One adult and sometimes other members of households were interviewed to identify household members with disabilities and to assess the extent of handicap resulting from the disability. In addition, handicapped people were asked questions about the causes of their disabling condition, services, aids, accommodation, employment, education, income, transport, recreation and institutional care. Approximately 33,000 randomly selected households comprised the first part of the sample; 723 institutions made up the second part.

An examination of previously unpublished data from the survey revealed that in many instances the numbers of people involved in a particular cell were too small for the data to be considered statistically valid. In these cases the ABS has suppressed the figures. Nevertheless, some of the findings are both valid and valuable for our purposes.

#### Findings

The survey distinguishes between disabled and handicapped people. A person with a particular disabling condition (such as loss of sight or an incomplete use of legs) is considered to be handicapped when s/he is limited to some degree in his or her ability to perform certain tasks related to one or more of the following areas:

self-care    mobility    communication    schooling    employment    (ibid:xvi)

Furthermore, for a condition to be considered disabling, it was necessary for it to have lasted, or be likely to last, for six months or more.

#### Handicapped people from different birthplace groups

On the basis of the 1981 survey, the ABS estimated 1,264,600 Australians (8.6% of the population) to be handicapped, and a further 677,400 to be disabled but with no subsequent handicap. Thus, in total, 13.2 per cent of the population in 1981 were considered to be disabled to some degree.

The survey found that the numbers of handicapped migrants resident in households corresponded closely to the proportion of migrants in the population at large. Overseas-born people made up 21.8 per cent of the Australian population in 1981 and 21 per cent of handicapped people living in



households. Migrants from non-English speaking backgrounds appeared to be underrepresented among the handicapped living in institutions and slightly overrepresented among those resident in households.

### **Causes of handicapped persons' conditions**

However, the cause of the handicapped condition of people from different birthplace groups varied considerably. Respondents were asked whether their main condition was the result of an accident or something that they were born with. Those who gave the first answer were asked where the accident happened (that is, at work, school, home, on the road or playing sport).

As can be seen from Table 4.1, a greater proportion of people born in Italy, Greece and Yugoslavia were involved in an accident **at work** compared to those born in Australia or the UK (see Table 4.2). While around 34 per cent of the accidents in the total sample occurred at work, nearly double that percentage of Italians, Greeks and Yugoslavs were handicapped as a result of work accidents. For the Australian-born population, the most frequent place where the accidents occurred was on the roads (37.4%), followed by the workplace and the home (16%).

The 'accident occurring at work' category is not the only one which provides information on handicap from work-related injury. In some cases the handicap was reported to be due to 'working conditions, work or overwork'. Six per cent of the Australian-born population said that this caused their handicap, so that, in all, 10.6 per cent (96,500 out of 911,000) of the total group of Australian-born handicapped people had a work-related injury. The comparative figure for Italians was 31.6 per cent (7,600 out of 24,000); no estimates were possible in the case of the other birthplace groups.

The ABS survey suggests that while handicapped migrants are not overrepresented in the handicapped population in Australia, their conditions have significantly different causes from those of the Anglo-Australian population. Substantially greater proportions of people from the non-English speaking countries for which figures are available are handicapped as a result of accidents, compared to the Anglo-Australian groups whose conditions are more often caused by disease or old age. While handicap-causing accidents of the Australian-born population occur mainly on the roads, those of the migrant groups occur mainly at work.

### **4.2 NSW Hospital Separation Records, 1984**

Information collected by governments about people admitted to hospitals is also a useful source of quantitative data about the workers' compensation experiences of different ethnic groups. The State Government requires all hospitals in New South Wales to collect certain information about their patients. This information is centralised and makes up the annual so-called hospital separation records. The records cover people who are admitted to a public or private hospital for more than four hours (that is, in-patients) and include information on the following areas:

**ABS Survey of Handicapped Persons, 1981**

**TABLE 4.1 Handicapped Persons in Households Whose Primary Condition was Result of Accident by Birthplace**  
( ' 000)

Birthplace	Australia N=911.0	UK & Ireland N=108.1	Italy N=24.0	Greece N=14.6	Yugoslavia N=11.9	Total N=1,153.6
Handicapped persons in household whose primary condition was result of accident (16.9%) <sup>a</sup>	141.6 (16.1%) <sup>b</sup>	18.9 (17.5%) <sup>b</sup>	5.7 (23.0%) <sup>b</sup>	5.1 (35.0%) <sup>b</sup>	5.2 (43.0%) <sup>b</sup>	194.5

a. percentage of total cases where handicap resulted from accident

b. percentage of total handicapped persons from that country (N)

**TABLE 4.2 Handicapped Persons in Households Whose Primary Condition Resulted from Accident Where Accident Occurred at Work by Birthplace**  
( ' 000)

Birthplace	Australia N=141.6	UK & Ireland N=18.9	Italy N=5.7	Greece N=5.1	Yugoslavia N=5.2	Total N=194.5
Handicapped persons whose primary condition resulted from accident where accident occurred at work. (34.4%) <sup>a</sup>	41.3 (29.0%) <sup>b</sup>	7.4 (39.0%) <sup>b</sup>	5.7 (63.0%) <sup>b</sup>	3.3 (64.0%) <sup>b</sup>	3.5 (67.0%) <sup>b</sup>	67.0

a. percentage of total cases where handicap resulted from accident

b. percentage of total handicapped persons from that country (N)

- \* demographic information such as the patient's age, sex, place of birth, marital status, place of residence and whether or not the patient is an Aboriginal;
- \* medical diagnoses of the patient's condition;
- \* the source of payment for the patient's treatment (for example, private insurance, Medicare, workers' compensation).

The information is recorded on a standard form by hospital admission clerks who have received detailed instructions from the NSW Department of Health. This results in a high level of accuracy of recording: if certain parts of the form have not been filled out, the Health Department sends the forms back to the hospital for completion. (The only item of information which appeared not to have been collected successfully by the hospitals was that relating to the place where the injury occurred. Since these data were not recorded in nearly 75 per cent of cases we did not use them in our study.)

The hospital separation data produced by the Health Department are estimates based on a 70 per cent sample of the actual hospital records. There are approximately 1.1 million patients admissions annually to public and private hospitals in New South Wales: around 57 per cent are women and 43 per cent men (reflecting women's hospitalisation for childbirth). Approximately three-quarters are Australian-born: the same proportion as in the NSW population generally.

#### **Patients admitted under workers' compensation cover, 1984**

In order to examine the representation of Australian-born and overseas-born patients, we analysed the data on all patients admitted under workers' compensation cover during a one-year period. On advice from the Health Department, 1984 records were used because of their accuracy and completeness. Multiple admissions of the same person at the same hospital were eliminated, although we could not eliminate these where they occurred at different hospitals. Our sample finally consisted of nearly 14,000 admissions under workers' compensation cover. Most of these (approximately 70%) were treated in private hospitals.

Before we discuss the results of our analysis of these cases, two points should be made:

- (i) Firstly, it is important to remember that hospital separation records cover only **in-patients**: that is, those with relatively serious injuries which require treatment in hospital. Every hospital is likely to have a slightly different 'hospital threshold'; that is, the degree of seriousness for a condition to be considered in need of in-patient, rather than out-patient, treatment. Generally, conditions which are the results of an initial acute trauma will more frequently come into this category than those which are more minor or which are the result of gradual onset injuries such as deafness, repetition injury or dermatitis. It follows that some categories of work-related injuries or diseases will be underrepresented in the hospital separation records.
- (ii) Secondly, the Health Department considers that the hospital separation records are likely to under-estimate, rather than over-estimate, the numbers of patients who are workers' compensation claimants. This is because hospitals records a patient as being on workers' compensation only if they are certain that payment from this source is assured; where there is doubt, a different classification (indicating the levying of a fee) is used. This means that claimants whose claims are contested are unlikely to appear in our sample, possible biasing the sample against migrants.

### **Findings**

Analysis of the hospital records revealed significant differences between migrants and Australian-born people in the following areas:

- the frequency of admission under workers' compensation;
- the patterns of age and sex in different birthplace groups;
- the injury-patterns among different birthplace groups;
- the length of time spent in hospital by workers' compensation in-patients from different birthplace groups.

#### **(i) Workers' compensation admissions and birthplace**

Clearly, the likelihood of a person being admitted to hospital as a workers' compensation case is directly related to whether or not the person is part of the workforce and is therefore at risk of suffering a work-injury. Other things being equal, we would expect the proportion of in-patients from different birthplaces to have been roughly the same as their proportion in the employed labour force. It is often claimed that, in the case of non-English speaking background migrants, 'other things' are not equal and these migrant workers make more compensation claims than Australian-born workers relative to their numbers in the workforce. Do the hospital records provide evidence for this claim?

### NSW Hospital Records, 1984

**TABLE 4.3 Persons Admitted to Hospitals under Workers' Compensation Cover by Birthplace by Sex**

Birthplace	Men (77.9%)*	Women (22.1%)*	Total (100.0%)*
<b>English speaking countries**</b>	<b>7874 (73.1%)</b>	<b>2120 (69.6%)</b>	<b>9994 (72.4%)</b>
<b>Non-English speaking countries</b>	<b>2326 (21.6%)</b>	<b>772 (25.3%)</b>	<b>3098 (22.4%)</b>
Northern Europe	215 (2.0%)	71 (2.3%)	286 (2.1%)
Southern Europe	1132 (10.5%)	378 (12.4%)	1510 (10.9%)
Eastern Europe	175 (1.6%)	43 (1.4%)	218 (1.6%)
Other Asia	83 (0.8%)	28 (0.9%)	111 (0.8%)
Indochina	31 (0.3%)	7 (0.2%)	38 (0.3%)
Middle East	592 (5.5%)	201 (6.6%)	793 (5.7%)
Latin America	98 (0.9%)	44 (1.4%)	142 (1.0%)
<b>Unknown</b>	<b>566 (5.3%)</b>	<b>154 (5.1%)</b>	<b>720 (5.2%)</b>
<b>TOTAL</b>	<b>10766 (100.0%)</b>	<b>3046 (100.0%)</b>	<b>13812 (100.0%)</b>

\* Sex group as percentage of total cases admitted under workers' compensation cover.

\*\* Includes Australia, New Zealand, UK, Canada, USA, South Africa.

### NSW Labourforce, 1984

**TABLE 4.4 Percentage of N.S.W. Employed Labourforce, 1984, by Birthplace by Sex**

Birthplace	Men N=1,386,600	Women N=861,500	Total N=2,248,100
<b>English speaking countries**</b>	<b>84.4%</b>	<b>86.6%</b>	<b>85.2%</b>
<b>Non-English speaking countries</b>	<b>15.6%</b>	<b>13.3%</b>	<b>14.8%</b>
Northern Europe	1.8%	*	2.2%
Southern Europe	5.8%	*	6.0%
Eastern Europe	1.3%	*	0.9%
Other Asia	*	*	2.7%
Indochina	0.5%	*	0.6%
Middle East	1.3%	*	1.6%
Latin America	*	*	0.8%
<b>TOTAL</b>	<b>61.6%</b>	<b>38.4%</b>	<b>100.0%</b>

\* Figures considered too small to be reliable.

\*\* Includes Australia, New Zealand, UK, Canada, USA, South Africa.

**N.S.W. Hospital Records, 1984****TABLE 4.5 Persons Admitted to Hospitals under Workers' Compensation Cover by Birthplace - compared to Participation in N.S.W. Labourforce.**

Birthplace**	Number of persons admitted under workers' compensation cover	Percentage of total persons admitted under workers' compensation cover (N=13,812)	Percentage in N.S.W. labourforce (1984) (N=2,248,100)
Australia N=835,000*	8816	63.8%	75.2%
Cyprus N=1470*	51	0.4%	0.2%
Egypt N=2940*	63	0.5%	0.3%
Germany N=5900*	121	0.9%	0.9%
Greece N=7400*	192	1.4%	1.1%
Hungary N=3200*	53	0.4%	0.2%
Italy N=14900*	397	2.9%	1.9%
Lebanon N=8400*	305	2.2%	0.7%
Malta N=4100*	102	0.7%	0.6%
Netherlands N=4250*	63	0.5%	0.6%
Poland N=4570*	74	0.5%	0.3%
Portugal N=1140*	72	0.5%	0.4%
Spain N=1150*	56	0.4%	0.2%
Turkey N=2890*	281	2.0%	0.2%
U.K. and Ireland N=68,530*	978	7.0%	7.7%
Yugoslavia N=10,150*	691	5.0%	1.4%
Others or unknown N=113,010*	1497	8.9%	8.1%
<b>TOTAL</b>	<b>13812</b>	<b>100.0%</b>	<b>100.0%</b>

\* Total inpatients admitted to Hospitals in 1984 from each birthplace group.

\*\* Birthplaces listed separately are those which account for 0.4% or more of total cases admitted to hospitals under workers' compensation cover.

**N.S.W. Hospital Records, 1984****TABLE 4.6 Men Admitted to Hospitals under Workers' Compensation Cover by Birthplace - compared to Men as Percentage of N.S.W. Employed Labourforce.**

Birthplace **	Number of men on workers' compensation	Percentage of total men admitted under workers' compensation cover	Percentage of N.S.W. employed male labourforce (1984) (N=1,386,600)
Australia	6977	64.8%	74.3%
Cyprus	45	0.4%	*
Egypt	40	0.4%	0.4%
Germany	80	0.7%	1.0%
Greece	140	1.3%	1.1%
Hungary	38	0.4%	*
Italy	329	3.1%	2.2%
Lebanon	241	2.2%	0.9%
Malta	77	0.7%	0.7%
Netherlands	50	0.5%	0.8%
Poland	66	0.6%	0.3%
Portugal	63	0.6%	0.4%
Spain	51	0.5%	*
Turkey	198	1.8%	0.3%
U.K. and Ireland	740	6.9%	7.9%
Yugoslavia	472	4.4%	1.4%
Others or unknown	1159	10.8%	8.3%
<b>TOTAL</b>	<b>10766</b>	<b>77.9%</b>	<b>100.0%</b>

\* Figures considered too small to be reliable.

\*\* Birthplaces listed separately are those which account for 0.4% or more of total cases admitted to hospitals under workers' compensation cover.

**N.S.W. Hospital Records, 1984****TABLE 4.7 Women Admitted to Hospitals under Workers' Compensation Cover by Birthplace - compared to Women as Percentage of N.S.W. Employed Labourforce.**

Birthplace **	Number of women admitted under workers' compensation cover	Percentage of total women admitted under workers' compensation cover	Percentage of N.S.W. employed female labourforce (1984) (N=861,500)
Australia	1839	60.4%	76.6%
Cyprus	6	0.2%	*
Egypt	23	0.8%	*
Germany	41	1.3%	0.7%
Greece	52	1.7%	1.1%
Hungary	15	0.5%	*
Italy	68	2.2%	1.5%
Lebanon	64	2.1%	*
Malta	25	0.8%	*
Netherlands	13	0.4%	*
Poland	8	0.3%	*
Portugal	9	0.3%	*
Spain	5	0.2%	*
Turkey	83	2.7%	*
U.K. and Ireland	238	7.8%	7.3%
Yugoslavia	219	7.2%	1.3%
Others or unknown	338	11.1%	11.6%
<b>TOTAL</b>	<b>3046</b>	<b>22.1%</b>	<b>100.0%</b>

\* Figures considered too small to be reliable.

\*\* Birthplaces listed separately are those which account for 0.4% or more of total cases admitted to hospitals under workers' compensation cover.



**N.S.W. Hospital Records, 1984****TABLE 4.8 Persons Admitted to Hospitals under Workers' Compensation Cover by Birthplace - and Compensation Cases as Proportion of Total Inpatients from Birthplace Group**

Birthplace **	Number of persons admitted under workers' compensation cover (N=13,812)	Workers' compensation patients as %age of inpatients from birthplace group
Australia N=835,000*	8816	1.1%
Cyprus N=1470*	51	3.5%
Egypt N=2940*	63	2.1%
Germany N=5900*	121	2.0%
Greece N=7400*	192	2.6%
Hungary N=3200*	53	0.7%
Italy N=14900*	397	2.7%
Lebanon N=8400*	305	3.6%
Malta N=4100*	102	1.5%
Netherlands N=4250*	63	2.5%
Poland N=4570*	74	1.6%
Portugal N=1140*	72	6.3%
Spain N=1150*	56	4.9%
Turkey N=2890*	281	9.7%
U.K. and Ireland N=68,530*	978	1.4%
Yugoslavia N=10,150*	691	6.8%
Others or unknown N=113,010*	1497	10.3%
<b>TOTAL</b>	<b>13812</b>	

\* Total inpatients admitted to Hospitals in 1984 from each birthplace group.

\*\* Birthplaces listed separately are those which account for 0.4% or more of total cases admitted to hospitals under workers' compensation cover.

**NSW Hospital Records, 1984****TABLE 4.9 Persons Admitted to Hospitals under Workers' Compensation Cover by Birthplace by Age**

Birthplace	15-35	36-55	56 and over	TOTAL
<b>English speaking countries*</b>	<b>4887 (48.9%)</b>	<b>4193 (42.0%)</b>	<b>914 (9.1%)</b>	<b>9994 (100.0%)</b>
<b>Non-English speaking countries</b>	<b>964 (31.1%)</b>	<b>1845 (59.6%)</b>	<b>289 (9.3%)</b>	<b>3089 (100.0%)</b>
Northern Europe	72 (25.2%)	179 (62.6%)	35 (12.2%)	286 (100.0%)
Southern Europe	356 (23.6%)	1003 (66.4%)	151 (10.0%)	1510 (100.0%)
Eastern Europe	53 (24.3%)	100 (45.9%)	65 (29.8%)	218 (100.0%)
Other Asia	58 (52.3%)	44 (39.6%)	9 (8.1%)	111 (100.0%)
Indochina	28 (73.7%)	10 (26.3%)	0 (0.0%)	38 (100.0%)
Middle East	349 (44.0%)	420 (53.0%)	24 (3.0%)	793 (100.0%)
Latin America	48 (33.8%)	89 (62.7%)	5 (3.5%)	142 (100.0%)
<b>Unknown</b>	<b>282 (39.2%)</b>	<b>365 (50.7%)</b>	<b>73 (10.1%)</b>	<b>720 (100.0%)</b>
<b>TOTAL</b>	<b>6133 (44.4%)</b>	<b>6403 (46.4%)</b>	<b>1276 (9.3%)</b>	<b>13812 (100.0%)</b>

\* Includes Australia, New Zealand, UK, Canada, USA, South Africa.

**NSW Hospital Records, 1984**

**TABLE 4.10 Persons Admitted to Hospitals Under Workers' Compensation Cover by Birthplace by Primary Diagnosis**

Birthplace	Trunk	Limbs	Back	Medical	Other Injuries	TOTAL
<b>English speaking countries*</b>	<b>1085 (10.9%)</b>	<b>2092 (20.9%)</b>	<b>2237 (22.4%)</b>	<b>2273 (22.7%)</b>	<b>2307 (23.1%)</b>	<b>9994 (100.0%)</b>
<b>Non-English speaking countries</b>	<b>357 (10.7%)</b>	<b>367 (11.8%)</b>	<b>1254 (40.5%)</b>	<b>613 (19.8%)</b>	<b>533 (17.2%)</b>	<b>3098 (100.0%)</b>
Northern Europe	28 (9.8%)	58 (20.3%)	87 (30.4%)	58 (20.3%)	55 (19.2%)	286 (100.0%)
Southern Europe	149 (9.9%)	176 (11.7%)	623 (41.3%)	298 (19.7%)	264 (17.5%)	1510 (100.0%)
Eastern Europe	29 (13.3%)	32 (14.7%)	68 (31.2%)	46 (21.1%)	43 (19.7%)	218 (100.0%)
Other Asia	11 (9.9%)	24 (21.6%)	24 (21.6%)	24 (21.6%)	28 (25.2%)	111 (100.0%)
Indochina	1 (2.6%)	10 (26.3%)	10 (26.3%)	3 (7.9%)	14 (36.8%)	38 (100.0%)
Middle East	97 (12.2%)	48 (6.1%)	401 (50.6%)	146 (18.4%)	101 (12.7%)	793 (100.0%)
Latin America	16 (11.3%)	19 (13.4%)	41 (28.9%)	38 (26.8%)	28 (19.7%)	142 (100.0%)
<b>Unknown</b>	<b>71 (9.9%)</b>	<b>142 (19.7%)</b>	<b>197 (27.4%)</b>	<b>128 (17.8%)</b>	<b>182 (25.3%)</b>	<b>720 (100.0%)</b>
<b>TOTAL</b>	<b>1487 (10.8%)</b>	<b>2601 (18.8%)</b>	<b>3688 (26.7%)</b>	<b>3014 (21.8%)</b>	<b>3022 (21.9%)</b>	<b>13812 (100.0%)</b>

\* Includes Australia, New Zealand, UK, Canada, USA, South Africa.

Tables 4.3 and 4.4 indicate that in 1984 people from English speaking countries were underrepresented in the population of hospitalised workers' compensation patients and non-English speaking migrants were significantly overrepresented. The latter accounted for 22.4 per cent of workers' compensation cases compared to only 14.8 per cent of the workforce. Migrant women were most overrepresented - they made up nearly one-quarter of the women admitted as workers' compensation cases, while accounting for just over one-eighth of the female workforce at that time.

Among non-English speaking background migrants, however, there was substantial variation in their patterns of admission. Some - those from Northern Europe, Indochina and South Asia - were represented among the workers' compensation population at a level lower than or the same as their proportion in the workforce. The Southern European, Eastern European and Middle Eastern groups, instead, were substantially overrepresented among those in-patients admitted as workers' compensation claimants. The Southern Europeans, for example, made up 6 per cent of the NSW labour force in 1984 but accounted for nearly 12 per cent of workers' compensation admissions. The same patterns emerged when we look just at the men (the workforce figures for migrant women from specific countries were too small to allow a comparison in their case).

Comparing the proportions of admissions from individual countries with their representation in the employed labour force, we also find dramatic patterns of overrepresentation among some groups (see Table 4.5). While there were one-and-a-half times as many Italians in this category in the hospitals (2.9% workers' compensation admissions compared with 1.9% of the employed labour force) there were three times as many Lebanese and ten times as many Turks (2.2% and 2.0% when compensation admissions compared with 0.7% and 0.2% of the employed labour force respectively). Yugoslavs were also overrepresented by a factor of three; Poles, Hungarians, Cypriots, Greeks, Portugese, Maltese and Egyptians were slightly overrepresented amongst workers' compensation admissions.

On the other hand, Australian-born people were underrepresented amongst workers' compensation admissions (there were 85% as many Australians in the sample as would be expected from their representation in the employed workforce). There were approximately the same proportion of compensation admissions from the UK and Ireland, Germany and the Netherlands as there were workers from those countries in the employed labour force.

Thus, it seems that workers from many of the main countries of Southern and Eastern Europe and the Middle East were significantly more likely to enter hospital as a workers' compensation claimant than those from English speaking countries, including Australia, or Northern Europe.

#### **(ii) The birthplace and sex of workers' compensation in-patients**

Taken together, Tables 4.6 and 4.7 suggest that rates of over- and under-representation varied between sexes. While both male and female migrants

from the countries listed above were overrepresented, migrant women from these countries were **more** overrepresented than migrant men. 1.7 per cent of female compensation admissions, for example, were Greek, compared to 1.1 per cent Greek women in the female workforce. The respective figures for Greek men were 1.3 per cent compared to 1.1 per cent in the workforce. Although the numbers are small and ABS estimates of labour force participation were not available for some birthplace groups, it seems that this pattern was repeated across all groups from Southern and Eastern Europe. Men from:

Egypt      Italy      Lebanon      Malta      Portugal      Turkey      and      Yugoslavia

were less overrepresented among compensation cases than women from those countries. Turkish women appear to have been particularly likely to enter hospital as a workers' compensation case; 2.7 per cent of female admissions were Turkish women, although their numbers in the total female workforce were too small even to appear in the ABS estimates.

Looking at the Australian-born, UK and Northern European cases, we find a varied picture. Australian women are clearly the group least likely of any in the workforce to be admitted to hospital under workers' compensation. Although they comprised more than three-quarters of the female labour force in 1984, only 60 per cent of the workers' compensation admissions were Australian-born women. They were more underrepresented than Australian-born men.

The reverse was the case with groups born in the UK and Ireland, the Netherlands and Germany. The women from these countries were slightly **overrepresented** among compensation admissions compared to their numbers in the labour force; while the men from these countries were **underrepresented**. While there were fewer (87% as many) men from the UK and Ireland in the hospital cases as would be expected from their workforce participation, there were more (107% as many) British women.

### **(iii) Workers' compensation admissions and total hospital admissions from different birthplace groups**

One possible explanation for the variation in rates of representation of different groups in comparison to their workforce representation could be differential patterns of usage of hospital services by different groups. That is, people from Lebanon, Poland or Yugoslavia may have been more likely to enter hospitals than Australians. In order to explore this possibility, we compared the number of compensation admissions with the total number of hospital admissions for various birthplace groups.

The data provides no support for the above hypothesis. People from different countries were admitted to hospitals in New South Wales in numbers roughly equivalent to their proportion in the population; it was the proportion of them entering under workers' compensation cover which varied (see Table 4.8).

#### **(iv) The birthplace and age of workers' compensation in-patients**

Table 4.9 shows that the workers' compensation admissions from non-English speaking countries were, on average, older than those from English speaking countries. While nearly half the latter group were under 36 years, less than one-third of non-English speaking migrants were (48.9% and 31.1% respectively).

The age differences between the two groups were due mainly to the older average ages of Southern and Eastern Europeans. Less than one-quarter of in-patients in each group were under 36 years, and nearly 30 per cent of the latter were 56 years and over, compared to only 9.3 per cent in the sample as a whole.

#### **(v) Birthplace and types of injury**

The primary diagnosis of an in-patient's condition which is given by the hospital is a detailed classification referring to two dimensions of the condition: the medical event involved (such as 'bruise' or 'cancer') and the part of the body system injured (such as 'trunk', 'skull' or 'upper limb'). Because the range of conditions diagnosed is extremely large, a classification which compresses categories has been adopted in order to identify statistically significant patterns of difference across birthplace groups. A more detailed classification of injury and disease by birthplace group can be found in Appendix 1, Tables 4.11 and 4.12.

As Table 4.10 shows, migrant compensation admissions showed a much higher proportion of back injuries than English speaking background admissions. While roughly one-quarter (26.7%) of the total sample were diagnosed as suffering back injuries, around two-fifths (40.5%) of those from non-English speaking countries did. Within the latter group, those from Southern Europe and the Middle East suffered markedly more back injuries than other groups, while less than one-third of Northern and Eastern Europeans, Latin Americans and Indochinese had diagnosed back injuries:

■50.6 per cent of Middle Easterners and ■41.3 per cent of Southern Europeans had back injuries. While the former account for 1.6 per cent of the workforce, they accounted for nearly 11 per cent of those admitted to hospitals with back injuries.

On the other hand, Southern and Western Europeans, Middle Easterners and Latin Americans had considerably few injuries to their limbs than those from English speaking countries or Northern Europe. Table 4.12 in Appendix 1 indicates that more Southern Europeans were admitted with Repetition Strain Injury than among the population generally (2.4% c.f. 1.8% of the total sample). The numbers involved are small (36/244 RSI cases were Southern Europeans) and reliable comparisons with other birthplace groups cannot be made.

#### (vi) Birthplace and duration of stay in hospital

The data indicates little patterned variation in the time spent in hospital by workers' compensation admissions from different birthplace groups. Slightly more than half from each regional group stayed in hospital for less than one week; around 93 per cent stayed less than three weeks. Middle Easterners stayed in hospital for less time, on average, than those from other countries (97.3% were in for less than three weeks) and those from Eastern Europe stayed slightly longer; however, on the whole, it does not seem that periods of stay in hospital varied significantly by birthplace (see Table 4.13, Appendix 1).

#### 4.3 Conclusion

Our analysis of the NSW hospital records indicates that within the population of people admitted to hospital in 1984 under workers' compensation cover there were clear differences in the experiences of people from different birthplace groups. The areas of variation were:

- \* the frequency of workers' compensation admission compared to representation in the employed labour force;
- \* the age of compensation admissions from different countries;
- \* the type of injuries for which compensation claimants from different birthplace groups were admitted.

While patterns of difference could be observed between the English speaking background (mainly Australian-born) population and migrants from non-English background countries, this was mainly due to the markedly different experiences of migrants from **certain** non-English speaking countries; that is:

- \* Southern Europe;
- \* Eastern Europe
- \* the Middle East

Men and women from these groups, and in particular, Turks, Lebanese and Yugoslavs, were significantly overrepresented among the population of workers' compensation admissions compared to other Australians.

Greater discrepancies between the experiences of Australian-born women and other women existed than between Australian-born men and other men. Migrant women (particularly those from Southern and Eastern Europe and the Middle East) were more overrepresented among workers' compensation claimants than any other group in the labour force.

The variation in the ages of compensation cases by birthplace group was similar to that in the general population (see AIMA 1986) and reflects the age structures of the various immigrant populations. Significantly more of the non-English background migrants were 36 years or over, compared to the Australian-born group, more of whom were between the ages of 15 and 35 years.

Not only were certain non-English speaking migrants more likely to be admitted to hospital as compensation cases; they were admitted with different types of injuries from the rest of the population. The most marked variation here was the significant overrepresentation of those from the Middle East and Southern Europe amongst in-patients with back injuries. More than half of the former group had suffered back injuries; compared to only one-quarter of the total sample.

Because we were unable to eliminate multiple admissions of the same person to different hospitals, our findings could be partially attributable to a greater degree of over-servicing of migrants compared to the English speaking background population. There is some, mainly anecdotal, information to suggest that this indeed may occur (see, e.g. Greacen 1984), and this is an area which requires further investigation. Nevertheless, we doubt that the degree of overrepresentation identified in our analysis can all be explained in this way, particularly since the data from the 1981 ABS Handicapped Persons Survey corroborate our findings. Rather, it seems that the common public perception that more 'migrants' claim compensation and that certain groups suffer disproportionately from back injuries have at least some basis in reality. While the hospital data only tell us about those with more serious injuries which require hospitalisation, such injuries, frequently the result of a traumatic incident and often more obvious, are also likely to be those which give rise to such common stereotypes as 'Lebanese back' and 'Mediterranean back'. Clearly, the key question is how to explain such different patterns among the workforce. The popular ideologies look for causes in the ethnic identities of those involved (i.e. it is believed that it is because of certain negative characteristics related to being Greek or Lebanese that these people make more compensation claims for back injuries).

In Chapter 9 we will show that the falseness of such popular stereotypes is precisely the type of explanations that they give, rather than the descriptions of reality they offer. Alternative explanations in terms of the structure of the Australian economy and the social relations in which migrants are involved will be advanced. In particular, the marked concentration of Australia's post-war migrants from parts of Europe and the Middle East in industries and occupations which have higher than average rates of industrial accidents will be examined.





## CHAPTER 5

## ACCIDENT RECORDS FROM BHP PORT KEMBLA

The BHP Steelworks at Port Kembla is Australia's largest steelworks and part of Australia's biggest group of companies. The Port Kembla works produce the bulk of Australia's flat steel products, and its various mills turn the steel produced there into a number of products for local consumption and export. It was one of the major beneficiaries of Australia's post-war mass immigration program and since the 1950s overseas-born workers and their children have made up the majority of BHP's blue-collar workforce. At the time of our study, BHP employed approximately 9,500 steelworkers (in a total workforce of 13,000), more than half of whom were immigrants from non-English speaking countries. A further 11 per cent of the blue-collar workforce were immigrants from English speaking countries (mainly the United Kingdom). Nearly seventy nationalities are represented at BHP. The overwhelming majority of blue-collar workers at BHP are men; in 1986 only 4 per cent (369/9,347) were women. Of these, however, the majority are migrant women born in non-English speaking countries.

The Port Kembla steelworks is also NSW's largest self-insurer for workers' compensation. Its compensation department invests a proportion of BHP earnings and compensates workers who sustain work-related injuries in accordance with the provisions of NSW statutory and common law and with industrial agreements negotiated between BHP and the trade unions which represent its workers.

Compared to other organisations which deal with large numbers of compensation cases, BHP was useful for our research for a number of reasons:

- \* its files on accidents and compensation cases appeared to have been compiled in a systematic matter;
- \* BHP, unlike many employers, kept records of the birthplace of its employees;
- \* its workforce is large enough for a survey of accident records to produce statistically significant results.

BHP agreed to co-operate with our request to undertake research on their files. Strict confidentiality of individuals' cases was maintained, since we had no access to the names of the workers involved; data collection that would have led to the observation of claimants' names and addresses was carried out by BHP. We greatly appreciate their assistance, and in particular the work of staff in the compensation and industrial departments who collected the data we used.

### 5.1 Survey of Accident Records

Procedures exist at BHP to record all accidents which result in a loss of work time. In the case of minor injuries, the details of the accident and the worker involved are recorded, and in the case of compensable injuries resulting in three or more days lost time, the accident files contain the case report required by the government under the Workers' Compensation Act, 1926 (the so-called 'B-Form').

Our first study, designed to compare the compensation experiences of migrant and Anglo-Australian workers at BHP, consisted of three stages:

- (i) A survey of a random sample of 941 accident records from the period 1974-1986. Deafness claims are made usually by a specific group of workers (that is, older workers) and are subject to different assessment procedures from other compensation claims. They usually result in small lumpsum payments under a specific section of the Workers' Compensation Act and not in weekly awards. Because of these differences, deafness claims (comprising the largest proportion of BHP's total accident claims) were excluded from our sample. Death claims and journey to work accidents were excluded for the same reason (although traffic accidents within the plant were retained). 'B-Forms' (compensation reports) relating to the accident were obtained where available; in other cases, details of the accident and the worker involved were collected.
- (ii) The cross-referencing of the registration number of each selected case with BHP's employment records to identify the injured worker's place of birth.
- (iii) The collection and analysis of information about the total BHP workforce from BHP employment records to provide a base against which to compare the results of the survey.

Our final sample consisted of 378 B-Form injuries and 563 non-B-Form injuries (to be referred to as 'major' and 'minor' injuries in the following pages). The following data were collected from each:

#### Major injuries

- birthplace, sex and age of claimant
- employment classification and department at time of injury
- date and type of accident
- outcome of injury (permanent or temporary, partial or total incapacity)
- period off work

- amount of compensation paid under different parts of the Workers' Compensation Act, 1926
- whether or not a common law claim was made and the amount received under common law (if applicable)
- the status of the case (closed/open)
- whether the worker was still employed at BHP and employment classification if still employed.

### **Minor injuries**

- birthplace of claimant
- employment classification and department at time of injury
- date and type of accident
- number of days off work
- whether the worker was still employed at BHP and the employment classification if still employed.

## **5.2 Survey of Redemptions**

Until 1982 most successful compensation claimants at BHP received their compensation in the form of continuing weekly payments. From 1982, however, as part of a general policy to streamline its operations, BHP began to offer redemptions to workers with long term disabilities. The redemption (a lumpsum payment) absolves the insurer from further financial or other obligations to the insured worker under Section 15 of Workers' Compensation Act, 1926.

Since some previous research suggests that migrant compensation claimants received lower lumpsum settlements than English speaking background workers for similar injuries (see Chapter 2), we undertook a survey of the redemptions since 1982, amount to 211 in total. The age, sex, birthplace, occupation, industrial location, type of injury and amounts paid were compared in each case.

All except one of the claims in our sample were redeemed between 1984 and 1986. Most were of workers who had been off work for one to two years; the longest period off work was two years and seven months. The sample was, on the whole, a sample of relatively old workers - 86.7 per cent of the workers were over 35 years, and nearly half (101/211) were over 51 years in age at the time of the redemption.

A large amount of valuable data was collected and we appreciate having had the opportunity to carry out this work. Because of the volume of the data

and because of the complexity of the relationship between the variables affecting compensation outcomes, we have not undertaken a complete analysis of the data for this report. In future months it may be possible to carry out further data analysis and to identify patterns among the sample of BHP claimants in a more detailed manner. The discussion below summarises the significant findings to have emerged from our analysis so far.

### **5.3 Findings: Accident Records**

#### **The birthplace of accident victims**

The limitation on the reliability of the data here was the availability of control data. In particular, it was difficult, without substantial extra work, to compare findings about the survey cases with BHP workforce data. While the steelworkers in our survey were employed at BHP over different years from 1974 to 1986, the information we had as a comparative base related to the BHP blue-collar workforce in 1986. It was therefore impossible to calculate indicators such as injury-rate per department, since the number of people employed in different areas of the steel-making process at BHP has altered significantly over the last ten years. (The major change, of course, was the large-scale restructuring process in the early 1980s which reduced the size of the workforce by more than 8,000 between 1982-84). Similarly, it is likely that the proportion of employees from different countries altered to some degree during that period. Findings based on the 1986 comparison will, however, be described below.

The proportion of migrants from non-English speaking countries in our accident survey was roughly the same as their proportion in the BHP workforce at large (just over 50% in each case) (see Table 5.1). However, certain groups within this category (in particular the Northern Europeans) were slightly overrepresented.

#### **Absence from work following an accident**

While the majority of the workers (nearly three-quarters) were off work for less than ten months, in a sizeable proportion (75/378 or 20% of cases) the worker was absent for more than eighteen months. Although there was some variation in the time off by birthplace group, no significant patterns emerged from the data, suggesting that there were no major differences in the severity of the injuries experienced by migrant and English speaking background workers. Similarly, the data indicating the time taken off by workers with minor injuries revealed no significantly different patterns based on birthplace.

#### **Frequency of accidents**

As Table 5.2 indicates, approximately the same proportions of migrant and English speaking background workers in our sample had had more than one major injury. Roughly one-third of each group had had two or more; twenty-two (or 6%) had had between four to seven. (NB for our analysis, only the first

major accident incurred by a worker was incorporated into the sample, even though the total number incurred was counted.)

### **BHP Sample of Reported Accidents**

**TABLE 5.1 Number of Reported Injuries by Birthplace  
Compared with Proportion of BHP Workforce, 1986**

Birthplace	Major injuries		Minor injuries		Number and % of BHP Workforce	
<b>English speaking countries</b>	<b>160</b>	<b>(42.3%)</b>	<b>263</b>	<b>(46.7%)</b>	<b>4216</b>	<b>(45.1%)</b>
Australia	103	(27.2%)	168	(29.8%)	3179	(34.0%)
Other English speaking countries	57	(15.1%)	95	(16.9%)	1037	(11.1%)
<b>Non-English speaking countries</b>	<b>199</b>	<b>(52.6%)</b>	<b>299</b>	<b>(53.1%)</b>	<b>5100</b>	<b>(54.5%)</b>
Northern Europe	23	(6.1%)	33	(5.9%)	349	(3.7%)
Southern Europe	136	(36.0%)	194	(34.5%)	3997	(42.8%)
Eastern Europe	0	(0.0%)	3	(0.5%)	264	(2.8%)
Middle East	4	(1.1%)	12	(2.1%)	70	(0.7%)
Other Asia	3	(0.8%)	5	(0.9%)	35	(0.4%)
Indochina	0	(0.0%)	2	(0.4%)	203	(2.2%)
Latin America	33	(8.7%)	50	(8.9%)	182	(1.9%)
<b>Unknown</b>	<b>19</b>	<b>(5.0%)</b>	<b>1</b>	<b>(0.2%)</b>	<b>33</b>	<b>(0.4%)</b>
<b>TOTAL</b>	<b>378</b>	<b>(100.0%)</b>	<b>563</b>	<b>(100.0%)</b>	<b>9347</b>	<b>(100.0%)</b>

**BHP Sample of Reported Accidents (Major)**

**TABLE 5.2 Birthplace  
by  
Frequency of Reported Major Injuries**

Birthplace	Number of major injuries				TOTAL
	1	2	3	4 - 7	
<b>English speaking countries</b>	<b>103 (64.4%)</b>	<b>36 (22.5%)</b>	<b>6 (3.8%)</b>	<b>15 (9.4%)</b>	<b>160 (100.0%)</b>
Australia	69 (67.0%)	20 (19.4%)	3 (2.9%)	11 (10.7%)	103 (100.0%)
Other English speaking countries	34 (59.6%)	16 (28.1%)	3 (5.3%)	4 (7.0%)	57 (100.0%)
<b>Non-English speaking countries</b>	<b>130 (65.3%)</b>	<b>52 (26.1%)</b>	<b>10 (5.0%)</b>	<b>7 (3.5%)</b>	<b>199 (100.0%)</b>
Northern Europe	14 (60.9%)	6 (26.1%)	3 (13.0%)	0 (0.0%)	23 (100.0%)
Southern Europe	89 (65.4%)	36 (26.5%)	4 (2.9%)	7 (5.1%)	136 (100.0%)
Eastern Europe	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (100.0%)
Middle East	4 (100.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	4 (100.0%)
Other Asia	3 (100.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	3 (100.0%)
Latin America	20 (60.6%)	10 (30.3%)	3 (9.1%)	0 (0.0%)	33 (100.0%)
<b>Unknown</b>	<b>14 (73.7%)</b>	<b>2 (10.5%)</b>	<b>3 (15.8%)</b>	<b>0 (0.0%)</b>	<b>19 (100.0%)</b>
<b>TOTAL</b>	<b>247 (65.3%)</b>	<b>90 (23.8%)</b>	<b>19 (5.0%)</b>	<b>22 (5.9%)</b>	<b>378 (100.0%)</b>

# **BHP Sample of Reported Accidents (Major)**

**Table 5.3 Type of Accident by Birthplace**

Birthplace	Crush (26.2%)*	Back (20.1%)*	Slip (19.0%)*	Strain (12.2%)*	Splash (7.1%)*	Burn (2.6%)*	Journey (12.7%)*	TOTAL (100.0%)
<b>English speaking countries</b>	<b>37 (22.4%)</b>	<b>37 (22.4%)</b>	<b>34 (20.6%)</b>	<b>16 (9.7%)</b>	<b>6 (3.6%)</b>	<b>5 (3.0%)</b>	<b>30 (18.2%)</b>	<b>165 (100.0%)</b>
Australia	26 (24.3%)	23 (21.5%)	21 (19.6%)	13 (12.1%)	4 (3.7%)	3 (2.8%)	17 (15.9%)	107 (100.0%)
Other English speaking countries	11 (19.0%)	14 (24.1%)	13 (22.4%)	3 (5.2%)	2 (3.4%)	2 (3.4%)	13 (22.4%)	58 (100.0%)
<b>Non-English speaking countries</b>	<b>56 (27.5%)</b>	<b>37 (18.1%)</b>	<b>38 (18.6%)</b>	<b>30 (14.7%)</b>	<b>20 (9.8%)</b>	<b>5 (2.5%)</b>	<b>18 (8.8%)</b>	<b>204 (100.0%)</b>
Northern Europe	2 (8.7%)	3 (13.0%)	7 (30.4%)	7 (30.4%)	1 (4.3%)	0 (0.0%)	3 (13.0%)	23 (100.0%)
Southern Europe	43 (30.5%)	28 (19.9%)	23 (16.3%)	18 (12.8%)	13 (9.2%)	3 (2.1%)	13 (9.2%)	141 (100.0%)
Eastern Europe	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (100.0%)
Middle East	1 (25.0%)	1 (25.0%)	2 (50.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	4 (100.0%)
Other Asia	1 (33.3%)	0 (0.0%)	1 (33.3%)	0 (0.0%)	1 (33.3%)	0 (0.0%)	0 (0.0%)	3 (100.0%)
Indochina	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (100.0%)
Latin America	9 (27.3%)	5 (15.2%)	5 (15.2%)	5 (15.2%)	5 (15.2%)	2 (6.1%)	2 (6.1%)	33 (100.0%)
Unknown**	6 (66.7%)	2 (22.2%)	0 (0.0)	0 (0.0)	1 (11.1)	0	0	9 (100.0%)
<b>TOTAL</b>	<b>99</b>	<b>76</b>	<b>72</b>	<b>46</b>	<b>27</b>	<b>10</b>	<b>48</b>	<b>378</b>

\* percentage of accident-types proportion of total accidents.

\*\* Due to the location of additional birthplace information the number of 'unknowns' in this table differs from those in other tables.



**BHP Sample of Reported Accidents (Minor)**

**Table 5.4 Type of Accident by Birthplace**

Birthplace	Crush (35.0%)*	Slip (17.9%)*	Splash (16.7%)*	Strain (11.0%)*	Back (10.7%)*	Burn (2.7%)*	Journey (6.0%)*	TOTAL (100.0%)
<b>English speaking countries</b>	<b>86 (32.7%)</b>	<b>53 (20.2%)</b>	<b>41 (15.6%)</b>	<b>26 (9.9%)</b>	<b>28 (10.6%)</b>	<b>7 (2.7%)</b>	<b>22 (8.4%)</b>	<b>263 (100.0%)</b>
Australia	56 (33.3%)	35 (20.8%)	23 (13.7%)	18 (10.7%)	17 (10.1%)	4 (2.4%)	15 (8.9%)	168 (100.0%)
Other English speaking countries	30 (31.6%)	18 (18.9%)	18 (18.9%)	8 (8.4%)	11 (11.6%)	3 (3.2%)	7 (7.4%)	95 (100.0%)
<b>Non-English speaking countries</b>	<b>110 (36.7%)</b>	<b>48 (16.0%)</b>	<b>53 (17.7%)</b>	<b>36 (12.0%)</b>	<b>32 (10.7%)</b>	<b>8 (2.7%)</b>	<b>12 (4.0%)</b>	<b>300 (100.0%)</b>
Northern Europe	14 (42.4%)	4 (12.1%)	11 (33.3%)	2 (6.1%)	0 (0.0%)	1 (3.0%)	1 (3.0%)	33 (100.0%)
Southern Europe	73 (37.6%)	34 (17.5%)	31 (16.0%)	20 (10.3%)	22 (11.3%)	5 (2.6%)	9 (4.6%)	194 (100.0%)
Eastern Europe	1 (33.3%)	0 (0.0%)	1 (33.3%)	1 (33.3%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	3 (100.0%)
Middle East	5 (41.7%)	2 (16.7%)	2 (16.7%)	2 (16.7%)	0 (0.0%)	0 (0.0%)	1 (8.3%)	12 (100.0%)
Other Asia	2 (40.0%)	0 (0.0%)	1 (20.0%)	2 (40.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	5 (100.0%)
Indochina	1 (50.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (50.0%)	0 (0.0%)	2 (100.0%)
Latin America	14 (28.0%)	8 (16.0%)	7 (14.0%)	9 (18.0%)	10 (20.0%)	1 (2.0%)	1 (2.0%)	50 (100.0%)
Unknown	1 (100.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (100.0%)
<b>TOTAL</b>	<b>197 (100.0%)</b>	<b>101 (100.0%)</b>	<b>94 (100.0%)</b>	<b>62 (100.0%)</b>	<b>60 (100.0%)</b>	<b>15 (100.0%)</b>	<b>34 (100.0%)</b>	<b>563 (100.0%)</b>

\* percentage of accident-types as proportion of total accidents.

**BHP Sample of Reported Accidents**

**TABLE 5.5 Numbers of Major and Minor Injuries by Department**

Department	Major Injuries	Minor Injuries
Mills P/C/T N=1537	56 (14.8%)	78 (13.9%)
Coke Ovens N=527	36 (9.5%)	71 (12.6%)
Sinter Plant N=228	28 (7.4%)	44 (7.8%)
Machine Shop N=525	28 (7.4%)	32 (5.7%)
Traffic N=177	25 (6.6%)	31 (5.5%)
Blast Furnace N=274	23 (6.1%)	25 (4.4%)
Open Hearth N=49	18 (4.8%)	28 (5.0%)
Coil/Hot Strip N=423	15 (4.0%)	20 (3.6%)
B.O.S. N=499	13 (3.4%)	9 (1.6%)
Foundry N=100	13 (3.4%)	21 (3.7%)
Pipe/Fab Shops N=395	10 (2.6%)	22 (3.9%)
Rail Bank N=1	9 (2.4%)	17 (3.0%)
Refactories N=166	9 (2.4%)	25 (4.4%)
Carpentry/Electrical N=298	8 (2.1%)	20 (3.6%)
Slab Yard N=276	5 (1.3%)	19 (3.4%)
Merchant Mills N=234	3 (0.8%)	21 (3.7%)
Other N=3638	79 (20.9%)	80 (14.2%)
<b>TOTAL N=9347</b>	<b>378 (100.0%)</b>	<b>563 (100.0%)</b>

N= number of employees per department in 1986.

**BHP Sample of Reported Accidents**

**Table 5.6 Redemption Amount By Birthplace**

Birthplace	\$25,000 or less	\$26,000-\$45,000	\$46,000 or over	TOTAL
<b>English speaking countries</b>	<b>17 (30.3%)</b>	<b>30 (53.6%)</b>	<b>9 (16.1%)</b>	<b>56 (100.0%)</b>
Australia	2 (12.5%)	11 (68.8%)	3 (18.8%)	16 (100.0%)
Other English speaking countries	15 (37.5%)	19 (47.5%)	6 (15.0%)	40 (100.0%)
<b>Non-English speaking countries</b>	<b>45 (29.0%)</b>	<b>74 (47.7%)</b>	<b>36 (23.2%)</b>	<b>155 (100.0%)</b>
Northern Europe	3 (33.3%)	4 (44.4%)	2 (22.2%)	9 (100.0%)
Southern Europe	24 (26.1%)	49 (53.3%)	19 (20.6%)	92 (100.0%)
Eastern Europe	4 (50.0%)	4 (50.0%)	0 (0.0%)	8 (100.0%)
Middle East	12 (32.4%)	13 (35.1%)	12 (32.4%)	37 (100.0%)
Other Asia	1 (33.3%)	1 (33.3%)	1 (33.3%)	3 (100.0%)
Latin America	1 (16.7%)	3 (50.0%)	2 (33.4%)	6 (100.0%)
<b>TOTAL</b>	<b>62 (29.3%)</b>	<b>104 (49.3%)</b>	<b>45 (21.4%)</b>	<b>211 (100.0%)</b>

**BHP Sample of Reported Accidents**

**Table 5.7 Number of Redemptions by Birthplace  
Compared with Proportion of BHP Workforce, 1986**

Birthplace	Number of Redemptions		Number and % of BHP Workforce	
<b>English speaking countries</b>	<b>56</b>	<b>(26.6%)</b>	<b>4216</b>	<b>(45.1%)</b>
Australia	16	(7.6%)	3179	(34.0%)
Other English speaking	40	(19.0%)	1037	(11.1%)
<b>Non-English speaking countries</b>	<b>155</b>	<b>(73.4%)</b>	<b>5100</b>	<b>(54.5%)</b>
Northern Europe	9	(4.3%)	349	(3.7%)
Southern Europe	92	(43.6%)	3997	(42.8%)
Eastern Europe	8	(3.8%)	264	(2.8%)
Middle East	37	(17.5%)	70	(0.7%)
Other Asia	3	(1.4%)	35	(0.4%)
Indochina	0	(0.0%)	203	(2.2%)
Latin America	6	(2.8%)	182	(1.9%)
<b>Unknown</b>	<b>0</b>	<b>(0.0%)</b>	<b>33</b>	<b>(0.4%)</b>
<b>TOTAL</b>	<b>211</b>	<b>(100.0%)</b>	<b>9347</b>	<b>(100.0%)</b>

### **Type of accident**

Our typology of accidents was based on a classification used in the steel industry which defines injuries in terms of how they occurred (through 'crush', 'slip', or 'splash' accident), and identifies 'back' injuries separately. The additional categories are 'burn' and 'journey'; a journey accident refers to a traffic accident in the course of employment and not to a road traffic accident on the way to or returning from work.

The 'crush' category, which 'includes accidents involving machinery and mobile equipment or which occur while handling objects such as plate, rails, pipes and coils, resulting in fractures, lacerations and contusions to fingers, thumbs and hands' (BHP-FIA document on industrial injuries) was the most common in our survey, accounting for 296/941 or 31.5 per cent of all injuries. Journey accidents accounted for 6.0 per cent of minor injuries, and a greater proportion (12.7%) of the major injury group.

Tables 5.3 and 5.4 indicate some differences in the type of accidents sustained by workers from different birthplace groups. English speaking background workers suffered more journey accidents than migrant workers. While 18.2 per cent of the former in the major injuries group suffered a journey-caused accident only 9.0 per cent of migrant workers did. The same pattern emerges in the minor injury sample, although the numbers are too small to be highly significant.

### **The departments where the accidents occurred**

Table 5.5 indicates the departments where most of the injuries in our sample occurred. Nearly ninety BHP departments were represented by the cases in our survey, and different numbers of workers worked in each. Thus, total accident figures per department have little meaning unless compared with the number of workers in each department at the time when the accident occurred, a difficulty in calculating accurate accident rates that was noted above. Nevertheless, it can be seen from the figures provided, that certain departments accounted for the vast majority of accidents. These departments (in 1986) accounted for 61 per cent of the workforce but 77 per cent of the accident rates estimated on the basis of 1986 figures showed particularly high rates in the traffic department, sinter plant, foundry, blast furnace, open hearth furnace and coke ovens.

An examination of where migrants worked showed that various groups of migrants are overrepresented in certain departments and underrepresented in others. Southern European migrants, for example, made up 42.5 per cent of the BHP workforce in 1986. However, they made up 54 per cent or more of workers in the coke ovens, sinter plant, blast furnace, open hearth furnace and slab yard. Nearly 80 per cent of workers in the open hearth furnace (39/49) were Southern European migrants.

Correspondingly, Australian-born and other English speaking background workers were disproportionately represented in certain departments.

Australian-born workers made up 60.5 per cent (107/177) of all workers in the traffic department although they accounted for only 34.0 per cent of the BHP workforce. Workers from other English speaking countries made up 18.6 per cent (33/177) compared to 11.3 per cent in the workforce generally. This correlates with the finding noted above that English speaking background workers were found to have higher levels of 'journey' accidents than migrant workers. The full table is reproduced in Appendix 2 (Table 5.8).

Without further analysis these patterns can at best be suggestive. However, it does seem that while both migrant and Australian-born workers were concentrated in some dangerous departments, and thus may have had similar levels of injury, the departments within which they worked and the causes of their accidents were different. The main 'dangerous' department where English speaking background workers appear to have been concentrated was traffic. This department, responsible for ensuring the movement of raw materials and products around BHP by rail, is particularly large in the case of BHP which has a workplace covering a large geographic area.

### **Occupation**

Clearly, the risk of injury involved in a worker's job will be affected not only by the type of department s/he works in but by his or her occupation. A preliminary analysis of the estimated danger level of an occupation (based on its job description) by birthplace was undertaken, and a comparison between the estimated danger levels of those in our accident survey and those in the plant workforce as a whole carried out. Table 5.9 in Appendix 2 shows the difference between the job danger levels of men and women. While 96.5 per cent of women employees at BHP worked in low or low to medium danger jobs, only 83 per cent of men did. No significant patterns based on birthplace emerged in our preliminary work.

### **Compensation experiences**

Only 1.3 per cent (5/378) of the claimants in our major injuries group had had their claim for compensation redeemed, so that no comparison of amounts received was possible from this sample. Similarly, very few workers (10/378) received a S.16 lumpsum payment for total or partial loss of function. 13.8 per cent of workers in our survey (52/378) received compensation under common law claim in addition to their statutory claim. Twice the proportion of migrant workers to English speaking background workers were in the group of successful claimants under common law (35/99 or 17.6% of migrants compared to 14/160 or 8.7% English speaking background workers). This may be related to the greater proportion of journey accidents, where employer negligence is a less common issue, in the latter group. More of the migrants' injuries were related to unsafe systems of work and workplaces and this could explain the higher rate of common law claims among this group.

### **Other findings**

As in the hospital data, different age patterns among ethnic groups in Australia were reflected in the different ages of claimants in our survey

from various birthplace groups. Cross-tabulations between age and a number of dependent variables such as frequency and type of injury were carried out to establish the independent impact of age. No systematic effects were found.

#### **5.4 Findings: Redemptions**

##### **The amount received**

Unlike earlier research, our survey showed no patterned variations in the amounts received by the two groups (see Table 5.6).

##### **The likelihood of a claim being redeemed**

Although, as our interviews with compensation claimants showed, claimants are often in favour of obtaining a lumpsum settlement, the initiative for redeeming a claim usually comes from the insurer (in this case the BHP compensation department) which makes an offer to the claimant. Our survey appeared to indicate that BHP sought to redeem the claims of certain groups in the workforce more than others. Nine per cent of the claims redeemed were of women workers (19/211), although women made up less than 4 per cent of the BHP blue-collar workforce in 1986 and a smaller percentage of workers' compensation claimants in our survey of accident records.

Secondly, it seems that the compensation claims of migrant workers were redeemed more frequently than those of English speaking background workers. While the latter workers made up 45.1 per cent of the claimants in our accident survey, they made up only 26.6 per cent of the redemptions sample (see Table 5.7). Migrant workers were substantially overrepresented; this was due mainly to the overrepresentation of Middle Easterners. These workers accounted for 17.5 per cent of the redemptions in the sample, while they made up less than 1 per cent of the BHP steelworker labour force in 1986. Our survey of BHP accident records did not find over- or under-representation of workers from different birthplaces among the population of compensation claimants, so it is unlikely that this explains their different redemption rates. Furthermore, the data did not indicate significant differences among birthplace groups in either the type of injury sustained, the age of the claimants, or the time elapsed since the injury occurred. Rather, it seems that birthplace was the factor which affected the likelihood of a case being redeemed independently of these other variables. A possible explanation is that BHP considered there to be less prospect of migrant workers from non-English speaking backgrounds returning to productive capacity than in the case of English speaking background (and particularly Australian-born workers) and therefore sought to redeem the migrants' claims more frequently.

#### **5.5 Injured Migrant Workers and Light Duties Jobs**

This conclusion receives confirmation from a small study carried out by a trade union covering steel industry employees at BHP Steel, Port Kembla. In the course of negotiations between BHP managements and the Federated Ironworkers' Association officials over a rehabilitation program at the Port

Kembla steelworks, the union investigated the situation of injured workers who had been absent from work for long periods of time. They found that in late 1985, BHP employed 302 workers who had been absent from work for more than six months, most receiving workers' compensation.

Of these, the union estimated that 244, or 80 per cent, were migrant workers from non-English speaking countries. Of those who had been absent for two years or more, 91 per cent (100/111) were non-English speaking migrants. By contrast, around half of the steelworks workforce at that time were migrants.

The placement of workers with disabilities at the steelworks occurs within the structure of the department in which the worker was formerly employed. Each department is responsible for indicating whether or not a worker who has been off work on compensation can be given a 'restricted duties' (or light) job. However, a FIA submission to BHP noted: 'Some departments reach "saturation" point in regard to the availability of what are seen as suitable jobs for workers with restrictions' and went on to discuss the reasons for this in terms of technological change, the lack of centralised planning of rehabilitation within the company and so on (FIA 1985). The figures collected by the union appeared to indicate that while light duties jobs were being found for English speaking background workers, injured migrant workers were missing out, and were not being given an opportunity to return to the workforce after suffering a work-related injury.

The situation at the steelworks can be seen as a 'micro' example of the inadequacy of current vocational rehabilitation practices in meeting migrant workers' needs. In the absence of clearly planned and co-ordinated rehabilitation systems that involve extensive retraining, more problems are likely to be encountered by injured migrant workers in attempting to re-enter the workforce than by Australian-born workers. Lack of qualifications, skills and proficiency in English are likely to place migrants at a disadvantage in competing for the few light duties jobs which exist; this is reflected in both Meekosha's findings of the inappropriateness of CRS work therapy programs for migrant women (see Chapter 2) and in the fact that the vast majority of injured workers at the steelworks who had not returned to work were migrants.





## CHAPTER 6

### BUILDING WORKERS' INDUSTRIAL UNION SURVEY

Most major trade unions in New South Wales have considerable involvement with union members who have claimed or are in the process of claiming workers' compensation, and most offer some form of assistance or referral service to such members. Approaches were made to several large unions who had a high proportion of members from non-English speaking countries about the possibility of using their compensation files as a source of data for our study.

Although most unions were willing to co-operate with the project and saw it as useful, very few kept the sort of information that would be necessary to compare the compensation experiences of migrant and Australian-born workers. Often the information recorded on the compensation files was minimal and referred only to the reason for the member's inquiry and the course of action taken - usually referral to a solicitor. No union approached recorded any information related to ethnicity on their files, although the Clothing and Allied Trades Union (NSW Branch) is starting to do this and the Building Workers' Industrial Union has changed their recording practice as a result of our study.

#### 6.1 BWIU Files

The compensation files kept by the BWIU (NSW Branch) were the most comprehensive and systematic of those we examined, and we therefore requested permission to use their data. We greatly appreciate the assistance of the BWIU in allowing us access to their files and for help in carrying a survey of their 1984 files. In particular, we are grateful for the time and valuable advice of the union compensation officer, Ms Pat Carr.

The compensation cases dealt with by the compensation officer at the BWIU are those of injured workers who have a contested claim or another type of compensation problem. The files typically contain:

- \* a BWIU fact-sheet listing the particulars of the case (usually filled in by the compensation officer);
- \* medical reports from treating doctors, specialists and in some cases insurance company doctors; medical and legal bills and receipts;
- \* correspondence between the worker's solicitor, the worker and the union compensation officer;
- \* the worker's statement, given to his solicitor;
- \* a Commission or other court order;

- \* occasionally transcripts of court proceedings, statements from witnesses, Department of Industrial Relations accident inspection reports and other miscellaneous documents.

### **Identifying Birthplace**

As with most compensation files, birthplace was not recorded so that English speaking origin and non-English speaking origin workers could not be distinguished on the basis of file information. (In some cases the fact that the worker was born overseas was mentioned in doctors' reports or in the worker's own statement). While the identification of birthplace on the basis of name is a less than satisfactory method, it seemed to be the only one available. The unreliability of this approach was lessened by the fact that we were interested only in differentiating English speaking origin people from non-English speaking origin people and not in identifying specific birthplaces (since the sample was too small). We felt that the main possible source of inaccuracy was in ascertaining the birthplace of workers whose father was born overseas but who themselves were born in Australia. In order to avoid this problem we undertook an exercise which allowed us to ascertain the country of birth of such people and to check the accuracy of our guesswork. Through the union a letter was sent to 131 potential non-English speaking origin workers selected in this way from the files. It asked them to complete an enclosed form which indicated their country of birth and return it to the union (see Appendix 3). Forty-eight replies were received, and our initial assessment of these workers as being of English speaking origin or non-English speaking origin was shown to be correct in all but one case. This result legitimated our method of identifying English speaking background and non-English speaking background workers.

### **6.2 The Survey**

Approximately four hundred compensation cases had been dealt with by the union and finalised in 1984. We eliminated those with incomplete information, industrial deafness claims and journey to work claims since the latter deal with quite different compensation processes and work issues. Our sample finally consisted of 144 cases, eighty-one cases of English speaking origin and sixty-three of non-English speaking origin. It is important to stress that we did not consider this to be a random or representative sample in any statistical sense. It simply constituted most of the major cases of work-related injury (excluding industrial deafness) among BWIU members where the claimant sought the union's help with a compensation problem and the case had been finalised during 1984. Thus, it illustrates some aspects of the experiences and outcomes obtained by a group of injured building workers, many of whom were migrants.

The variables which we identified as being of interest to our study, and about which there was information available in the files, were:

**Claimants' characteristics**

- \* ethnic background (English speaking origin or non-English speaking origin);,
- \* age at time of settlement;
- \* occupation;
- \* type of injury.

**Post-injury compensation characteristics**

- \* claim time - time elapsed between the accident and the date of settlement;
- \* litigation time - time elapsed between the time when the case was taken up by the union and date of settlement;
- \* whether or not the claimant received any compensation payments prior to the settlement of his claim;
- \* types of legal actions initially pursued by the solicitors on behalf of the claimant and the legal provision under which settlement was ultimately obtained;
- \* whether or not the claimant was fit for his usual occupation at time of settlement;
- \* amount of settlement (in cases where a lumpsum settlement was awarded).

These variables reflect some of the aspects of people's compensation experience that are important either in terms of how adequately people are compensated or how difficult or easy the process of obtaining compensation is for the claimant.

**Findings****Characteristics of the sample****(a) Ethnicity**

	Number	Percentage
English speaking origin	81	56.3
Non-English speaking origin	63	43.8
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Total	144	100.0

**(b) Age**

	Number	Percentage
Not given	8	5.6
20 to 30 years	20	13.9
31 to 35 years	10	6.9
36 to 40 years	17	11.8
41 to 45 years	22	15.3
46 to 50 years	17	11.8
51 to 55 years	19	13.2
56 to 60 years	11	7.6
Over 60 years	20	13.9
<hr/>		
Total	144	100.0

While the group comprises a fair distribution of ages from fairly young to fairly old workers, it has two notable characteristics. Firstly, there were no workers under 20 years although a sizeable proportion of BWIU members were apprentices. Secondly, it is a fairly old group - nearly half (67/144) were older than 46 years and around one-seventh (20/144) were over 60 years.

**(c) Occupation**

	Number	Percentage
Carpenter*	94	65.3
Other trades (i.e. painter, cabinet-maker, plaster, tiler, stone-mason, floor-layer, brick-layer)	45	31.5
Labourer	5	3.5
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Total	144	100.0

\* The carpenters were mainly formwork carpenters - an occupation that does not involve an apprenticeship training or require a trade certificate.

**(d) Type of injury**

The amount of medical detail about the injury in each file varied considerably. While the part of the body injured was almost always clearly specified, it was more difficult to assess exactly what the medical diagnosis was, especially since the descriptions varied. While it was possible to group people into general categories such as 'low back injuries' grouping people into groups according to an exact medical diagnosis such as 'generalised lumbar disc degeneration and facet joint osteoarthritic changes' was impossible since almost every diagnosis was different. For these reasons we adopted a grouping method basically referring to the party of the body injured.

	Number	Percentage
Upper limb	31	21.5
Trunk	72	50.0
Lower limb	21	14.6
Skull	8	8.6
Medical	11	7.6
Unspecified	1	0.7
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Total	144	100.0

The majority of injuries were fractures, sprains, strains and torn muscles and ligaments. Roughly one-third of the total were back injuries and, as can be seen above, one half were injuries to the trunk. The category of medical injuries included hernias, dermatitis, lung diseases, strokes and gradual on-set injuries such as 'tennis elbow'.

**Aspects of the compensation experience****(a) Claim time (time elapsed between accident and finalisation of claim)**

	Number	Percentage
1 to 2 years	18	12.5
2 to 3 years	41	28.5
3 to 4 years	27	18.8
4 to 5 years	21	14.6
5 to 6 years	9	6.3
6 to 7 years	7	4.9
7 to 8 years	6	4.2
8 to 9 years	8	5.6
More than 9 years	6	4.2
Unspecified	1	0.7
<hr/>		
Total	144	100.0

These results indicated that, for most of the workers in the sample, a long time elapsed from the date of their initial accident until the time when their case was finalised. For a large proportion (87%) this took more than two years; for nearly two-fifths (58/144) it took more than four years. Of course for part of this time the claimants may have received weekly payments.

- (b) **Litigation time** (the number of years between the time when the claimant initially made contact with the union and the date of settlement)

	Number	Percentage
Less than one year	44	30.6
1 to 2 years	46	31.6
2 to 3 years	26	18.1
3 to 4 years	10	6.9
4 to 5 years	13	9.0
5 to 6 years	2	1.4
More than 6 years	3	2.1
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Total	144	100.0

These results indicate the greater speed with which cases were settled once the union had taken up the case and (as happened in almost all cases) litigation was commenced. However, it was also clear that for this group of claimants litigation itself took a considerable amount of time. Only just over three-fifths of the cases (90/144) were finalised in less than two years and 12.5 per cent (18/144) of the claimants were tied up in litigation for more than four years.

- (c) **Received payments** (whether or not the worker received any compensation payments prior to the settlement of the claim)

	Number	Percentage
Yes	93	64.6
No	48	33.3
Unspecified	3	2.1
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Total	144	100.0

In the majority of cases (nearly two-thirds) the workers claims for compensation were initially accepted and payments were made, though the period for which payments continued varied.

(d) **Litigation pursued** (types of legal action initially pursued by the claimant's solicitor)

	Number	Percentage
Common law	12	8.3
Workers' Compensation Act only (excluding S.16)*	76	52.1
S.16 only	21	14.6
Workers' Compensation Act for income loss and S.16	7	4.9
Workers' Compensation Act and Common law	21	14.6
Common law and S.16	7	4.9
<hr/>		
Total	144	100.0

\* S.16 claims (lumpsum payments for loss of function) were identified separately here since they involved a specific form of lumpsum compensation for certain injuries in addition to any other compensation for income loss that the worker obtained.

In a sizeable proportion (around one-fifth) of cases legal actions were commenced in more than one jurisdiction. This was probably part of the bargaining process - since double compensation was specifically excluded by statute. It seems from discussions with workers that there was considerable confusion on their part about the legal process, despite union solicitors insistence that such matters were carefully explained to their clients.

In nearly a third of cases in our group solicitors pursued a common law claim on behalf of the injured worker. There are no statewide data on the number of common law claims annually - the State Compensation Board publishes only figures on the amounts paid in respect of settlements at common law. Estimates by practitioners in the field of the proportion of statutory claimants who also claim under common law vary from between 10 and 25 per cent. Hence the number of common law actions commenced in the BWIU group seemed fairly high.

(e) **Type of settlement**

	Number	Percentage
Common law	24	16.6
Redemption - S.16 of Workers' Compensation Act	75	52.1
Weekly Award	20	13.9
S.16 of Workers' Compensation Act	22	15.3
Lost	1	0.7
S.8 - death	1	0.7
Unspecified	1	0.7
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Total	144	100.0



There were a few cases included above under 'weekly award' where the claimant was receiving weekly payments and the litigation actually related to medical expenses under S.10 of the Workers' Compensation Act.

While common law proceedings were commenced in forty cases (see Table (d) above) common law settlements were finalised in only twenty-four cases, confirming the comments made above.

**(f) Work capacity at time of settlement**

	Number	Percentage
Fit	68	47.2
Unfit	73	50.7
Retired	2	1.4
Unspecified	1	0.7
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Total	144	100.0

The claimant's work capacity was usually one of the matters in dispute, so that the different legal parties often gave different opinions. When a worker seemed clearly unfit for either his old job or for any work at all he appears in the category 'unfit'. When we could not clearly establish a worker's physical condition from the file he appears in the category 'fit'. Therefore the number of workers 'unfit' in the table above - around half the total sample - is almost certainly an underestimation and should be read as a minimum figure only.

**(g) Amount of settlement \$**

	Number	Percentage
Less than 500	6	2.8
500 to 1,000	7	4.9
1,000 to 5,000	13	9.0
5,000 to 10,000	9	6.3
10,000 to 20,000	27	18.8
20,000 to 30,000	16	11.1
30,000 to 40,000	14	9.7
More than 40,000	32	22.2
Weekly award or nil	20	13.9
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Total	144	100.0

Most people received between \$10,000 and \$40,000 as a lumpsum settlement, representing previous as well as future income loss. Although it was difficult to assess a particular settlement without knowing the details of the injury, the settlements seemed quite low - particularly since at least

half of our sample were unfit for their old or any job. Nearly two-thirds (78/124) of those receiving lumpsums received less than \$30,000. For most of the workers in the sample this would be less than two years wages. Only one-quarter (32/124) of those who received a lumpsum settlement received more than \$40,000. Thirty-one of these settlements were between \$40,000 and \$87,000; one was for \$180,000 (an out-of-court settlement for a common law claim).

#### (h) Dismissals

We noted the number of cases where the fact that the claimant had been dismissed as a result of his accident was recorded on a file. This occurred in twenty-four cases (16.7%), about some of which the union attempted to take action. This should, of course, be read as a minimum figure only.

### 6.3 Differences Between the Cases of English Speaking Origin and Migrant Workers

In a survey of this type, birthplace is only one of a number of factors which may affect the course or outcome of the litigation. A further problem is the fact that only a relatively small number of cases are involved, so that once differences in the age of the claimant, occupation and the type of injury involved are taken into account, any comparison of similar cases involve very small numbers - meaning that any apparent differences could be merely the result of individual factors. Nevertheless, an examination of BWIU files provides a picture of the compensation experiences of an industry group of workers and should indicate any major or striking differences between the experiences of non-English speaking origin workers within the group.

#### Occupational differences

It seems that the differences that did emerge in this study were those relating to the characteristics of the workforce rather than to the workers' compensation experiences. First, there was a noticeable concentration of migrant workers in certain occupational categories. Approximately three-quarters of the non-English speaking origin group were classified as carpenters or labourers compared to 58 per cent of the English speaking origin group. While around 40 per cent (32/81) of the English background sample were in the other trades group (cabinetmaker, bricklayer, roofer, painter, plasterer, stonemason or floorlayer) only 25 per cent (16/63) of the non-English speaking claimants were in this category. Nearly one fifth (16) of the English speaking origin workers were bricklayers but only one-twentieth (3) of the migrant workers were. Although form-work carpenters perform a specific job on the construction site - constructing the form-work for concrete construction - in many ways their jobs have more in common with those of labourers than those of the other tradesmen who appeared in this sample. It is likely however that the different occupational distribution simply reflects the real occupational distribution in the building industry - and more generally the patterns of labour market segmentation typical of most Australian industry. (Another, less plausible, explanation for this pattern is that migrant carpenters are more likely to have severe injuries and/or

contested cases than English speaking background carpenters and that when it comes to tradespeople, the situation is reversed).

### **Age differences**

Second, analysis of the cases in our sample shows differences in the age distribution of English speaking origin and non-English speaking origin workers. On the whole the migrant group appears to be older than the English speaking origin group. Nearly two-thirds of the former are between the ages of 41 years to 60 years, compared to only two-fifths of the latter. However, another fifth of the English speaking origin group are over 60 years, while far fewer of the migrants are in the oldest category. Again this is probably a reflection of the age distribution in the construction workforce rather than an indicator of age-related differences in compensation among the groups.

On the whole the data show remarkably similar results for migrant and other groups; in other words, both claimants show similar patterns in terms of time taken for settlement of the case, whether they were recorded as being fit or unfit for work, the length of time taken for litigation, and whether or not they were sacked. Differences, but no discernible patterns were evident in the size of the lumpsum payments obtained by the two groups. Slightly more migrants than English speaking origin workers received a weekly award rather than a lumpsum settlement (ten out of the fifteen cases settled for a weekly award were migrants compared to 44% [63/144] of migrants in the total sample). Cross-tabulating ethnicity by age and injury, by age and occupation, and by injury and occupation produced no (statistically valid or significant) differences in the two group patterns.

## CHAPTER 7

### KEY INFORMANT INTERVIEWS

#### 7.1 The Survey Groups

Approximately forty interviews were conducted with people who had experience in the workers' compensation field in New South Wales. Because the compensation system operates on a commercial basis in New South Wales most of these were people whose experience resulted from their paid (or unpaid) work, rather than from their private relationships. Interviews were held with:

- \* community-based welfare and health workers
- \* legal professionals (from both applicants' and plaintiffs' firms)
- \* trade union officers

In addition, a small survey of the work of the Ethnic Affairs Unit in the State Compensation Board was undertaken. During the four years of the Unit's functioning, its officers were in continuous contact with migrant compensation claimants and their experiences are instructive.

Discussions with management representatives from BHP Steel, Port Kembla (a self-insurer, with a large migrant workforce) and from one major insurance company were held. Time and difficulties of access placed limitations on our ability to hold further discussions with employer or insurance company representatives. Several consultations occurred with other key participants in the compensation process during the early stages of the process. These involved administrators from the State Compensation Board, research officers working in related fields in other government departments and the Chief Judge of the Workers' Compensation Court. While we do not report specifically on each discussion here, they helped to provide the background information which influenced the direction of our research.

The key informant interviews usually lasted for between one and two hours. Their purpose was to ascertain the respondents' views about the specific experiences of migrant workers in the workers' compensation system. The interviews were loosely structured around the following topics:

- \* the extent of the respondents' interaction with non-English speaking background migrant clients;
- \* whether or not the respondents thought that there were differences between migrant and non-migrant compensation cases;
- \* where such differences appeared to exist, what were they and why did they exist;

- \* discussion of some of the dominant stereotypes about migrant compensation claimants (for example, the 'disadvantaged migrant', the 'malingerer' and so on);
- \* how did the respondent deal with his or her migrant clients (that is, were special arrangements made such as using interpreters; were different approaches adopted to deal with perceived cultural differences);
- \* in the respondent's view, what were the dominant attitudes towards migrant claimants among other workers in their field;
- \* what, in the respondent's view, were the key questions which a research project on migrant workers and workers' compensation should address?

## **7.2 Community-based Health and Welfare Workers**

Many community-based organisations and welfare centres have contact with compensation claimants. These include ethnic-specific organisations such as FILEF and the Greek Welfare Centre, generalist community-based organisations (for example, neighbourhood and migrant resource centres) and community-based health centres (such as workers' health centres and State Health Department centres). Despite the differences among them, all of these employ community workers from whom compensation claimants seek advice and assistance in negotiating the passage of their claim or other related matters. Typically, some practical help for those experiencing difficulties in the workers' compensation system is provided and referrals are made to other appropriate services. Some have also established support groups for compensation claimants which provide a forum for the exchange of information and where a claimant can draw on his or her own compensation experiences to help others understand and cope with theirs.

Fourteen community-based workers were interviewed (including an inner-suburban physiotherapist who has a long-established migrant clientele). All except one women were from non-English speaking backgrounds and spoke a community language which they used in their work. Eleven of the fourteen were women.

### **The reasons for contact**

A key feature of the interaction of community-based workers with injured workers is that it typically occurs after the latter have already had dealings with mainstream legal and medical professionals and insurance companies. Indeed, most officers interviewed said that injured workers usually approached them as a result of dissatisfaction with such professionals or for advice about which professionals to approach. The most common sources of dissatisfaction here were solicitors. Several community-based workers reported their clients' frequent unhappiness with the treatment and behaviour of solicitors. Complaints included:

- \* delays and hold-ups in the case;
- \* rude or impatient behaviour by the solicitor;
- \* the solicitor's refusal to explain what was happening in their case;
- \* inadequate attention being paid to the case;
- \* the solicitor being corrupt, doing deals with the insurance company;
- \* being charged legal fees prior to settlement.

It was reported that many migrants seemed particularly suspicious of lawyers and were anxious to learn from the community worker of a good solicitor 'who could be trusted'.

The second set of reasons which led migrants to seek the help of a community-based service appeared to relate to the actions of insurance companies. People often sought advice, it was reported, when:

- \* their payments had been cut off by the insurance company;
- \* they were being investigated by the insurance company;
- \* they were under pressure to redeem a claim and felt undecided about whether to accept or refuse the insurance company offer;
- \* a payment was late;
- \* the insurance company was threatening to cease compensation payments unless the claimant agreed to return to work.

The third set of factors motivating migrants to approach community-based agencies were of a less specific nature. Some simply wanted advice, or reassurance about their claim or the outcome of court case; some sought an interpreter; some wanted help with a specific task such as filling out a claim form or applying for mortgage repayment relief. Community workers also reported being presented with a more complex series of cases including people who had sustained an injury many years ago and now wanted to claim; people who wanted to re-open an old case; or people who were encountering social security problems related to their compensation history. Moreover, workers in fields such as family conciliation and personal counselling reported involvement with migrant clients where an initial cause of their problems was a compensation claim.

#### **Migrant workers' compensation experiences**

On the whole, the community workers interviewed felt that migrant workers encountered significantly greater problems in the workers' compensation system than English speaking background workers. They felt that the problems

began in the workplace and the labour market before any specific injury occurred and continued after a claim had been settled to the migrant's experiences of rehabilitation and their attempts to return to work. The respondents' views were fairly uniform and consistent, and people were unequivocal about what they saw as discrimination in the system and society.

The following were the major problems identified:

- the behaviour of insurance companies - arbitrarily delaying or stopping payments;
- poor service and unprofessional treatment by solicitors and doctors (for example, inaction by the former, misdiagnosis by the latter);
- difficulty in proving the work-related nature of certain injuries (such as repetition injury) and diseases and cancers which have had a long gestation period;
- use of interpreters;
- social security rights in the case of compensable injury;
- exploitation by 'middlemen';
- returning to the workforce and the psychological consequences of inability to return to work.

In all of the above it was felt that migrant claimants suffered more than Australian-born workers. While some community workers referred to the 'non-genuine' cases, they clearly felt that these accounted for a small proportion of claims. Others saw this issue as an irrelevant one and suggested that the appearance of insincerity may result simply from the fact the migrant claimants often sought to exaggerate and magnify their condition because of their fear of not being believed in court or not receiving compensation.

Some health workers said that it was often quite difficult to push people into making a compensation claim because they have heard from others how distressful the problem would be.

### **The causes of migrant workers' problems**

The community-based workers usually had clear views about the reasons for the difficulties which they believed migrant compensation claimants experienced. These main ones were the following:

#### **(i) Language**

All identified language difficulties as a major problem which resulted in migrants' not understanding what was going on in their case, not

understanding Court proceedings and not being able to communicate adequately with professionals. It was considered that lack of English resulted in ignorance and powerlessness. Most saw interpreters as being an inadequate substitute for the linguistic proficiency of workers from English speaking backgrounds.

#### **(ii) Information**

The community workers saw migrants as having less knowledge of their rights and less access to information about the compensation system than Australian-born workers. They felt that many work-injured migrants did not claim compensation or only claimed belatedly. They also felt that what migrant claimants lacked, and wanted, was reliable advice about the various aspects of their claim. Several emphasised that people came to them for help because they were perceived as one of the few trustworthy sources of advice. It was felt that many of the ideas migrants had about the compensation system were wrong or distorted as a result of their reliance on gossip and word-of-mouth information.

The reluctance of many doctors and lawyers to spend enough time with injured migrants to explain adequately the complexities of their sickness and their compensation case was criticised. 'Solicitors don't tell people what's going on' was a frequent comment.

#### **(iii) Ethnic middlemen**

The community workers frequently stressed what they saw as the adverse consequences on migrants' reliance on unscrupulous middlemen and agents for help during their case. This practice was considered to be extremely widespread particularly among the Lebanese and Turkish populations. A co-ordinator of a Lebanese welfare agency said that his agency was so concerned about the extent of reliance on middlemen in the Lebanese community that they had made a series of public announcements on ethnic radio to warn people of the dangers involved. Although the community workers admitted that middlemen, by interpreting for a claimant and arranging their case, could potentially be of some real assistance, it was generally considered that they had little of value to offer and effectively exploited migrants' vulnerability for their own economic gain. In particular, the community workers objected to the fact that the middlemen charged substantial fees for their services (as well as often taking a 'cut' from their client's settlement); our respondents felt strongly that compensation claimants should come to them, or other welfare agencies, free of charge, for assistance. Secondly, they felt that the middlemen played a negative role by raising migrants' expectations of the outcome of their case, reinforcing the 'lump-sum mentality' and channelling migrant claimants towards inferior doctors and solicitors who provide poor quality service and who were not respected by the courts.

The respondents saw migrant claimants' reliance on middlemen as a direct result of their language difficulties and the lack of information discussed above. Because migrants did not have enough knowledge of the system, and



because they had difficulty negotiating it in English, they were forced to turn to middlemen. The community workers believed that more extensive provision of information and advisory services by the government would significantly alleviate the situation, although some believed that some government-employed interpreters also played a 'middleman' role and were involved in unscrupulous practices.

#### **(iv) Migrants as workers**

Many community-based workers saw the migrant's role as worker and wage-earner as having a social and psychological meaning that exaggerated the effects of incapacity and the distress associated with a compensation case. One health worker explained: 'most migrants are very proud, you see; they really want to work and feel that taking social security handouts is dishonourable ...' Another commented: 'With Turks, they can't cope very well once they're not able to work; their first aim always when they come to Australia is to work - they don't want to live here permanently, or learn English - they want to make money and go back to Turkey'.

It should be noted here that implicit in most people's accounts of these issues were images of the male migrant breadwinner.

#### **Conclusion**

The community-based health and welfare workers interviewed had, on the whole, very negative views of the compensation system and its effects on people's lives. They saw its orientation towards the lumpsum settlement of contested cases as misguided and believed that the emphasis should be on the prevention of occupational injury and reducing the profits made from compensation business by the legal and medical professions.

The community workers were convinced that migrant workers were discriminated against in the system. They believed that they received far worse treatment because they lacked English skills and information about their rights and because many doctors, lawyers and judges were overtly racist. In addition, they saw migrants as being particularly powerless in the face of such treatment because of their economic and psychological vulnerability in Australia once their ability to work was destroyed. Migrants' frequent resort to so-called 'ethnic middlemen' was seen as a consequence of this situation in the context of inadequate public services, and was seen as the cause of additional problems.

#### **7.3 Legal Professionals**

Interviews were held with thirteen solicitors and one barrister. Three respondents were women; four were from a non-Anglo-Australian background. The majority, clearly, were men and of Australian or British origin. Only three spoke a community language that they used in the course of their work.

The striking feature of discussions held with solicitors and barristers was that these respondents tended to focus primarily on what they saw as the specific behaviour patterns of migrant clients. There seemed to be a widely held belief that there was a series of character traits common to migrants which were reflected in the way migrants reacted during the compensation process and which explained their experiences.

Moreover, there was a fair degree of agreement on what these traits were. Those which emerged in our interviews were of two types:

- psychological or personality characteristics, e.g.
  - suspicion (particularly about 'the system');
  - proneness to exaggerate;
  - being over-impressionable;
  - cynicism/expectations of corruption;
  - extreme emotionalism;
  - macho ego dependence on their ability to do manual work (in the case of men);
  - dishonesty and deceit (reported by some respondents)
- social characteristics, e.g.
  - relative ignorance and lack of education;
  - heavy and unrelenting domestic responsibilities (in the case of women)

Usually these characteristics were seen as being related to a migrant's specific ethnic or national background, and frequently certain ethnic groups were cited as strongly exhibiting these characteristics. Most commonly, Turks, Lebanese and people from the Middle East generally were used as examples, although different solicitors mentioned different groups in relation to specific forms of behaviour. For example, one solicitor suggested that for migrants it was simply 'human nature' to try to exploit the system; but that Russians and Yugoslavs exhibited this behaviour in the extreme. Many of the solicitors clearly viewed migrants as having a different approach to life than they and/or Australian-born people did.

Moreover, it seemed that even when nationalities were not explicitly mentioned in a discussion, a particular ethnic model of the 'migrant claimant' was **implicit** in what was said. The model could be described in a vague way as the 'Mediterranean/Arabic immigrant', implicitly an uneducated peasant. It was usually understood that the respondent **was not** referring to Asian or Northern European migrants, and, certainly not to 'us' (implicitly educated Australians).

Although our respondents spoke as if the behaviours and attitudes listed above were national characteristics, they also appeared to believe that there were social reasons why migrant claimants held such attitudes. The usual interpretation was that they were linked to the nature of the societies from

which the different groups emigrated. For example, one solicitor saw migrants as having 'a different concept of morality to us' and argued that this was probably because many come from countries where the government is corrupt, 'everything' operates on a patronage system, and the population has a cynical, unprincipled attitude to large organisations, the government and 'authorities' in general.

Similarly, it was felt that many migrants had different expectations of professionals which were derived from their pre-emigration experiences; for example, that they expected a 'Mr Big' role from solicitors - that the latter would be able to 'fix' their case and do something for them personally, rather than having to wait for the due process of law.

The solicitors and barristers were interviewed clearly saw the specific attitudes and behaviours of immigrants as being a major source of the latter's problems. They felt that such attitudes hindered communication between the solicitor and the client and in some cases (particularly among migrant women) made communication impossible. A frequent complaint was that 'the migrant client will never trust you'.

#### **Do migrants and Australian-born workers have different experiences in the compensation system?**

As on most topics discussed, the responses of our informants on this question were fairly uniform. The lawyers often considered that the main difference lay in the fact that migrants had **more** experiences in the system - that is, that they were over-represented among claimants and/or among those who contested cases led them to seek legal counsel. The comment of one solicitor was typical: that a few days of observation at the Compensation Court would be enough to demonstrate that at least 80-90 per cent of the claimants were migrants. People believed that this was either due to their concentration in more dangerous jobs or to the fact that they made more illegitimate claims which led to a greater number of migrant claimants in the system, and to a greater number whose claims were contested by the insurance companies. However, the lawyers were unable to provide empirical data in support of their claims; some were convinced that to collect such data (for example, about claimants' birthplaces) would itself be discriminatory.

#### **'The racket'**

Several respondents expressed views about the existence of fraud and the operation of 'compensation rackets' in some ethnic communities. Some believed that migrants from such communities (again, commonly the Turks and the Lebanese) exploited the compensation system by making fraudulent claims, by deliberately sustaining injuries in order to receive compensation and by exaggerating their condition in order to increase the size of their settlements. In addition, it was commonly felt that a network existed to facilitate such exploitation - involving ethnic 'middlemen' ('Mr X's' or 'the 10 percent men'), unscrupulous doctors and specialists and, in some cases, interpreters. It was also felt by some that migrants had information about the potential benefits of Australia's compensation system before emigrating

and that this influenced their decision to emigrate. (Unlike the community workers, the legal informants did not feel that their migrant clients lacked information relative to Australian-born workers - one commented, 'they know what's going on more than the Australians do'.) The informants expressing these views always claimed to have substantial evidence - mostly personal encounters or repeated anecdotes. Several also referred vaguely to 'all the research that's been done on it now'. When questioned, few could name specific reports although the inquiry into the so-called 'Greek Social Security Conspiracy' was mentioned.

While several informants were disapproving of the low ethical standards which they believed existed among some ethnic groups, others saw manipulation of the system as a rational response by migrants to their life conditions in Australia. Unpleasant, demanding jobs and their limited prospects for social mobility were seen as reasons why migrant workers would attempt to use illegitimate means to get ahead, and several solicitors showed sympathy for this behaviour. Several were fairly cynical about the operation of the system in general and saw dishonesty and fraud on the part of migrants simply as part of a 'rigged' system which was based on 'deals' rather than principles of justice.

The legal professionals identified two main consequences of the alleged exploitation of the system by migrant workers:

- (i) low settlement and poor compensation outcomes because the 'shonky' cases did not stand up in Court;
- (ii) the creation of suspicion on the part of insurers of an entire ethnic group because of the activities of individual members of it. (One solicitor commented that for many years insurance companies have looked with 'complete cynicism' at any claim by a Lebanese worker for a back injury.)

#### **Problems of migrant compensation claimants**

The views expressed by lawyers on this topic were less clear and more contradictory than on other topics discussed above. Most felt that at a general level injured migrant workers had a very hard time; our respondents mentioned in particular the problems in obtaining post-injury employment and financial difficulties. Several suggested that it would be useful to examine the post-lump sum financial situation of migrant claimants, since they felt that although migrants, more than Australian-born workers, wanted lumpsum settlements, these frequently proved to be financially inadequate in the long-run. (All solicitors interviewed, however, emphasised the advantages of redemptions over weekly awards settlements except in specific circumstances.)

Lack of information or communication difficulties were not considered by solicitors as the cause of problems for migrants. All solicitors interviewed saw their own arrangements for communicating with their clients as adequate. Most relied on the clients to bring a companion who could interpret, but also used private interpreters to attend interviews when needed; the use of

government interpreters seemed mainly restricted to the courts. It was believed generally that the use of interpreters adequately overcame the English language problems of migrant claimants. Indeed, solicitors frequently commented that interpreters 'protected' migrant clients and that English speaking claimants were at a relative disadvantage by having to face the Court 'alone'. Instead, the lawyers tended to see migrants' entire lives as 'a problem' referring to such factors as economic vulnerability, occupational segregation, lack of education, and peasant origins.

Many solicitors also felt that there was considerable prejudice against migrant (and women) claimants among judges, juries and insurance companies. A solicitor from a large trade union law firm said that his firm had decided no longer to call juries for common law hearings where the case of a migrant or a woman was being heard since the juries were typically extremely hostile to the claimant.

On the other hand, most respondents believed that migrants received fair treatment in the compensation system and that patterns of discrimination in terms of compensation outcomes could not be identified. One major reason for this apparently contradictory view appeared to be that solicitors felt that their migrant clients received identical treatment in their own legal practice as anyone else (many asserted strongly that 'we treat everyone the same here'). People seemed to generalise from this a view that migrants in the compensation system could not be seen as a disadvantaged group. All the legal professionals pointed out emphatically that 'every claim is different' and while many gave examples of special problems, misunderstandings in court or prejudice influencing the outcome of an individual migrant case, they did not feel that this experience could be generalised.

The exception to this view were those who felt that this result in worse experiences for them in the system. One solicitor criticised the large 'sausage-machine' firms on which he believed migrants depended; another believed that migrants relied disproportionately on small suburban solicitors (particularly those from their own ethnic group) and that this led to inadequate representation at the legal level. It was frequently commented that the cases of migrant claimants required more time than those of Australian-born claimants, and that lawyers may therefore finish a migrant case in unpaid time.

### Conclusion

In short, the legal professionals that we interviewed tended to see injured migrant workers as a 'problem group' with different behaviour patterns, attitudes and expectations from Australian-born workers. Non-English speaking unskilled migrant workers from Southern Europe and the Middle East were the main categories to which respondents referred implicitly or explicitly in presenting this argument. They believed both that certain ethnic groups were able to manipulate and exploit the compensation system to their own advantage; and that migrants generally received a 'hard time' in the system (one solicitor even claimed that 'it's always the most genuine clients who get ripped off the most'). In an almost contradictory manner the

legal professionals believed that discrimination existed within the compensation system; yet that on the whole migrants were treated the same as everyone else. Instances of unfair treatment were seen simply as individual incidents; and migrants' own 'emotional' reactions to their cases were seen as the expression of cultural factors or general social problems rather than as being caused by the compensation system itself.

#### **7.4 Trade Union Officers**

In New South Wales trade unions have substantial involvement in workers' compensation and frequent contact with injured members with compensation claims. In addition, unions made industrial and political interventions in debates about workers' compensation systems. Compensation-related matters are usually dealt with by the general union staff: organisers, industrial officers and clerical personnel. (Until 1985, the NSW Labor Council provided a specialist compensation officer for use by member unions.) Most of our discussions were with union organisers; in the case of two large 'blue collar' unions with specialist compensation officers, and in two other cases with health and safety officers. Ten officers were interviewed (some more than once), covering the following unions: the Amalgamated Metal Workers' Union (NSW Branch), the Clothing and Allied Trades Union of Australia (NSW Branch and Federal Office), Federated Iron Workers' Association (South Coast Branch), Federated Miscellaneous Workers' Union of Australia (NSW and South Coast Branches), Australian Telecommunications Employees Association (NSW Branch), and the Building Workers' Industrial Union of Australia. Four of the discussants were women; two male officers were from non-English speaking backgrounds and spoke a community language.

The main day-to-day work of unions in relation to workers' compensation appears to be answering inquiries, giving advice and dealing with problems that members have encountered in the process of making a claim. In most cases the latter function involves referring members to the union solicitor for legal resolution of the problem, and several union officers commented that lack of time, resources and specific expertise placed considerable limitations on the extent to which they could investigate any individual member's problem. Instead, a union will rely on a certain firm of solicitors with which it has a long-standing relationship and with which it works. While in some cases the relationship is clearly a close one (in one union, for example, the firm provided one of their solicitors to replace the union compensation officer during a temporary leave of absence); in others, officers commented that their union had little knowledge about or involvement in most of the cases with which their solicitors dealt.

In contrast to the lawyers, the trade union officers tended to emphasise the social situation of the migrant workforce and the institutions of the compensation system as much as psychological characteristics of migrants themselves as the factors of relevance in understanding migrant workers in the compensation system.

### **Migrant workers in industry**

Many union officers considered that the main problem for migrant workers related to the particular sections of industry and the particular jobs in which they were concentrated. It was considered that migrants were more at risk from industrial injury because they did more dirty, dangerous and physically demanding jobs than Australian-born workers. The concentration of migrants among those employed in demolition and excavation work was noted by a building workers' union organiser; the high proportion of migrant women working in telephone manufacture and repair workshops (also a high-risk area for industrial injury), was mentioned by a telecommunications trades union official.

In addition, some officers felt that migrants were overrepresented in less well-organised, less industrially powerful sections of the workforce so that their ability to pursue their rights in relation to compensation or safety at work was less than that of workers in other sections of industry where English speaking background workers predominated (an example was migrant women working as clothing outworkers). One union officer commented that where there was good organisation at a worksite, no-one was discriminated against.

### **The system**

Problems resulting from the working of institutions were seen to affect all claimants; but it was also felt that the problems recurred more frequently and had differential effects in the case of migrant workers. The main problem was identified as being the practices of the insurance companies. Officers believed that the insurance companies were unnecessarily obstructive in dealing with claims, and specifically complained about:

- \* the lengthy delays in processing claims and making payments;
- \* arbitrary decisions to deny liability for claims without valid reason (some saw this as simply a tactic for forcing the claimant to redeem a claim);
- \* insurance companies not informing claimants of their decisions;
- \* harassment of claimants by requiring unnecessarily frequent examination by hostile doctors and specialists (here the practice of one major insurer which sends RSI sufferers for psychiatric examinations was mentioned).

Union officers felt that because of widespread suspicion about migrant workers among insurers, the companies used these tactics and practices more frequently in the case of migrant claimants. While one union officer was sympathetic to what he saw as 'a healthy cynicism' on the part of the companies, others saw it as discrimination against migrants. The added vulnerability of many migrant workers to such treatment was also emphasised: it was considered that migrants were less financially secure, more in debt and less able to cope with having their income cut or payments stopped than

Australian-born workers. Several officers also commented that migrant workers may be more easily intimidated by insurance doctors and investigators while Australian-born workers may be better able to stand up for their rights and challenge the treatment they had received.

Other aspects of the system commonly identified by organisers as problematic were:

- \* the length of delays for cases to be heard in court;
- \* the 'catch twenty-two' involved in the choice between lumpsum settlements, which many saw as being inadequate for the future material welfare of claimants, and the equally unsatisfactory option of remaining in the system on a weekly award.

### Language

Within the system, migrants were seen to be disadvantaged by their lack of English language skills and lack of understanding about their rights and the operation of the system. Some felt that it was difficult to generalise; while many migrants did not have adequate knowledge about workers' compensation, it was felt that few Australian-born had either. It was also felt that migrants often obtained information from their own community (at a more general level, people's reliance on word-of-mouth exchanges of information and the consequent limitations of producing multilingual pamphlets was often mentioned). On the other hand, several officers commented that 'the ethnics are exploited most by other ethnics' - referring to 'ethnic' employers, solicitors and middlemen or interpreters.

English and communication were seen generally to be 'problems' for organisers as much as for the workers. Use of interpreters did not seem common; organisers seemed to rely on the member to bring a companion or used another union employee (such as a clerical worker) to interpret. Many clearly attempted to communicate in English and commented on the length of time and patience this process required.

Some organisers expressed sympathy with migrants' obvious inability to express themselves fully in English and their resulting frustration.

### Cultural traits

The role of cultural traits in producing differential experiences for migrant and non-migrant workers in the compensation system was mentioned only rarely by the trade union staff interviewed. Migrant workers' tendency to react in a more 'emotional' manner - 'to get more upset' than Australian-born workers - was mentioned occasionally. One male organiser spoke of the union's difficulties in relating to its migrant women members, many of whom were from the Middle East. He explained: 'we men have trouble understanding these ladies' problems' because of their 'customs' as well as the language barrier. He said that despite union encouragement, these women typically refused to



report injuries or confide in their supervisors when they began to develop symptoms of RSI, appearing to believe that they would be penalised. In addition, they did not like admitting to having RSI and were very 'guarded' generally. He clearly viewed this behaviour as overly suspicious and unreasonable.

### **Before and after entering the system**

A view put by several officers was that while migrant workers had some special problems within the legal system, the main difference between them and Australian-born workers lay in their experiences immediately after sustaining a work injury and then later when they attempt to return to the workforce.

It was felt that migrants substantially under-reported injuries for fear of dismissal and because of their commitment to working hard. Also, the first stage of any claim - the accident report and the completion of the claim form - were seen to be particularly troublesome moments for migrants with low English abilities. Two unions commented that migrants frequently had to rely on an employer or someone in their ethnic community fill out their form and that this produced unsatisfactory results which may later jeopardise the case.

Secondly, many officers commented on the problems injured migrant workers had in seeking to return to the workforce following a claim. This was seen to be due to their lack of marketable skills and qualifications, on the one hand, and to employers' reluctance to employ migrant workers on the other. It was felt that migrants and particularly migrant women were discriminated against by the way 'light duties jobs' were awarded, although in many workplaces these did not exist. The psychological trauma associated with long-term injury was seen to be worse for migrants because the possibility of their returning to work was so slim.

### **Conclusion**

There was no consensus among the trade union officers interviewed about the relative advantages or disadvantages of migrant workers in workers' compensation or about what their experiences were. Some officers felt unable to express a firm opinion, since they came in contact with only a small part of the total membership - and most union members claiming compensation did not deal through the union. Others felt that migrant claimants sought their help only when their problems had become particularly severe, and so represented abnormal cases. Nevertheless, all officers commented on several specific problems they believed migrant workers experienced in compensation and also on common negative attitudes towards migrants that they believed to be manifested among insurers and other parties to the compensation process.

## 7.5 The Work of the Ethnic Affairs Unit

Since 1982\* the Ethnic Affairs Unit in the State Compensation Board played an active part in disseminating information and advice to people from minority ethnic backgrounds. The Unit sought to implement the Workers' Compensation Commission's general advisory and conciliation functions with specific reference to people from non-English speaking communities.

The Unit also had a research and policy development role within the Commission, carried out community education and provided training and support for professionals in compensation-related fields. Clients approached the Unit with a specific problem or to obtain general advice, usually after referral from another agency, health worker or lawyer.

### Ethnic Affairs Unit Records, 1982-1983

A survey was undertaken of the 1,500 major cases dealt with by the Unit's four bilingual officers in a one-year period. These were mainly those of Yugoslavs, Greeks, Turks and South Americans, although the cases of some Australian-born workers were also dealt with.

The officers at the Ethnic Affairs Unit dealt with an extremely wide range of problems and general inquiries. These included general requests for information and advice about a case or an injured worker's rights, questions about the way a case was settled or the final sum received, mortgage relief, legal aid, taxation liabilities, payments overseas, social security, complaints about lawyers, interpreters and doctors, people wishing to reopen a case or simply make a claim, problems where an employer had refused to supply a claim form or forward it to the insurance company, and cases where liability had been denied by the insurance company or compensation payments had been cut off without explanation.

Type of Inquiry/Complaint		
<b>Insurance company:</b>	denial liability/payments stopped	106
	delays in processing claim	133
	delays in payment	106
	harassment by investigators	14
Total		359

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\* Until 1986 when the Ethnic Affairs Unit was dismantled and its staff redeployed elsewhere in the Board.

<b>Employer:</b>	dismissal	119
	refusal to provide light duties	107
	delays in payment	39
	Total	265
<b>Solicitor:</b>	delays in pursuing claim	136
	demanding costs prior to settlement	47
	lack of availability	76
	Total	259
<b>Court case:</b>	award of court	92
	amount of redemption	74
	treatment by lawyer	29
	interpreter	9
	Total	204
<b>Financial problems:</b>	weekly payments inadequate	81
	social security inadequate	41
	Total	122
<b>Doctor:</b>	demanding payments prior to treatment	30
	hostile/rude behaviour towards client	18
	poor medical treatment	17
	Total	65
<b>Interpreter:</b>	unreasonable costs	23
	unsatisfactory service	21
	Total	44
<b>General information and other:</b>		486
<b>Total inquiries:*</b>		1,765

\* N.B. A worker frequently may have had more than one problem or injury.

These data show, fairly graphically, the types of problems, frustrations and complications confronted by a large group of migrant workers. There is no reason to consider that this group's problems are untypical of those of migrant workers with major injuries generally. Statistics of cases dealt with by one ethnic officer during a five month period in 1984 were also examined for comparative purposes. They revealed a similar range and frequency of problems, although the size of the group was obviously much

smaller (92 clients). These data also imply that there is a fairly substantial perceived need for specialised information and advice among compensation claimants from non-English speaking ethnic groups.

#### **Examples of cases dealt with by officers of the Ethnic Affairs Unit**

Some files of cases dealt with by the Unit's advisory officers were examined in order to obtain a picture of the types of problems that people brought to the Unit in more detail. Two examples are given below:

##### **Case I**

A Turkish woman aged 28 years who contacted the Unit in July 1983 when she was working as a cutter at a Western suburbs plastic products factory. She developed repetition strain injury which gave her pain in the right arm, spreading to the cervical area of her neck. Her doctor stated that her injury occurred as a result of 'gradual onset from the nature of duties performed at work'. She eventually stopped work in October 1980 because of the pain from her injury. She received no compensation payments, and subsequently (in December) went to see a solicitor.

Three years later her case had not received even a preliminary hearing at Court. The woman was still unable to work. She was unhappy at the treatment she had received from her solicitor and in mid-1983 obtained another solicitor who discovered that in fact her case had been discontinued as of October 1981.

The advisory officer at the Ethnic Affairs Unit contacted her new solicitor, explained the current situation with her case to her and helped her make a complaint to the Law Society whose Discipline Department deals with such matters.

In a statement to the Law Society the woman wrote:

On 6 July 1983, I went to my solicitor, Mr X who said to me 'Today is your court case, but unfortunately Dr C cannot come to court, so I am going to make another appointment again ...

I was shocked when I found out later that my case had been discontinued. I have not had any indication from my solicitor that my case had been discontinued. He would always say to me: 'I will do my best for you as soon as possible' or 'it will be alright soon'.

During the three years that I have been waiting for ... a hearing, I have received only one letter from the solicitor, Mr X, and this was on the 9th January 1981. At other times, I have asked the solicitor by telephone to write to me and tell me when the hearing is coming up, but he always says that he will tell me in his office.

**Case II**

A Turkish woman whose solicitor contact the Unit in December 1982 had been retrenched by her employer and had wished to claim compensation for the repetition injury she was suffering. Her employer refused to give her a claim form saying that first she had to bring him her passport as he was helping the Department of Immigration in its attempts to deal with the 'racket of illegal immigrants'.

The Unit sent an officer to accompany her to her workplace and to talk to her former employer. At the workplace (an electrical products factory) the officer was immediately approached by another worker whom the employer had also refused a claim form. When questioned, the employer explained that 'Mrs A and the others couldn't have tenosynovitis because I make sure they are rotated in their duties'. The officer explained to him his duties under the Act, to supply claim forms to injured workers and to send the forms to the insurance company within seven days.

## CHAPTER 8

### SURVEY OF COMPENSATION CLAIMANTS

In any social science research it is important to understand the views and experiences of those most directly involved in the processes under study. In the workers' compensation area this seems particularly important since much of the debate about compensation is conducted in seeming isolation from people's everyday lives, focusing instead on monetary costs and legal procedures.

In this study, an in-depth survey method was selected and lengthy interviews were held with approximately 100 compensation claimants about their experiences in the compensation system.

The substantial methodological difficulties in obtaining a statistically representative survey group and the high cost of a large-scale multilingual survey were factors influencing our assessment of the respective merits of extensive and intensive survey methods. A further factor, however, was the quality of the data that each produces. Large-scale surveying using a multiple choice questionnaire can provide useful information from which it is possible to generalise about the population at large. However, there are qualitative advantages to be gained from using an in-depth interviewing technique and a smaller survey group. The greater time allowed in such an interview, the open-ended nature of the questions and specific techniques such as the use of the prompt can encourage the interviewees to express views that normally remain unstated or half-formed. Social processes are usually complex and any single action or event will typically have been caused by several interwoven factors operating at the 'macro' and 'micro' levels in a person's life. Qualitative research is a more appropriate tool for exploring people's behaviour and their experiences than the poll which reduces complexity to one-word or one-sentence responses on a pre-coded questionnaire.

#### 8.1 The Sample

Because most immigrants from non-English speaking countries are concentrated in so-called blue-collar occupations in the manufacturing industry, construction and transport, we limited our respondents largely to these workers - process workers, tradespeople, labourers and other semi-skilled and unskilled occupations in the manufacturing industry. Within this parameter, however, we wanted to interview a variety of men and women of different ages, birthplaces, periods of arrival in Australia and places of residency.

The factor common to all respondents was that they had made a compensation claim in NSW under NSW legislation during their working life.

Several methods were used to locate respondents:

- (i) Access was obtained to the clientele of an inner-suburban Sydney physiotherapist who assisted us by asking some of her migrant patients to participate in interviews.
- (ii) A medical centre also facilitated our access to its patients, in this case by authorising letters from us to those patients who were on workers' compensation. The letters, written in the appropriate language, requested that the persons contact us if they were willing to be interviewed.
- (iii) Access to compensation claimants was obtained via community workers and officers from a number of ethnic community and welfare organisations and trade unions. In these cases, we were either invited to a meeting where potential respondents were present, or the community worker contacted potential respondents on our behalf and organised an interview with them.
- (iv) Several group discussions were also held with compensation claimants. These were: a women's compensation support group, a Turkish women's group a mixed-sex Vietnamese group of injured workers and a group of migrant trade union delegates.

In addition, the 'snow-ball' method was used to generate extra respondents from the contacts established through the methods described above.

### **The interviews**

We are extremely grateful to the numerous people in community-based organisations and trade unions who devoted considerable time and resources to organising respondents for us and assisting us in the conducting of interviews. The interviews took between one and two hours and were conducted in people's homes or, in approximately one-third of cases, at a community location. They took place between September 1986 and March 1987. Interpreters were used in almost all interviews with non-English speaking claimants. The confidentiality of the interview and the fact that our study could in no way affect the outcome of a case was stressed repeatedly and most respondents appeared to be reassured that this was true.

Interviews were organised around a questionnaire consisting mainly of open-ended questions about the nature of the claimant's injury, their experiences in making and pursuing a claim, the outcome of the claim, their experiences in the rehabilitation system and in returning to the workforce after the injury. In addition, people were invited to present their views about their dealings with legal and medical professionals, their main sources of help during the case, the effect of the case on their lives and the relative experiences of migrant and Australian-born workers in the compensation system. The questionnaire was modified after a series of pilot interviews; the final version is reproduced in Appendix 4.

### **The survey group**

Information about some of the characteristics of our survey group is provided in table form in Appendix 5. The group consisted mainly of non-English speaking background immigrants from Southern Europe, the Middle East, Latin America and Indochina. Twelve respondents were born in Australia or another English speaking country. Forty women and fifty-one men were interviewed; their ages ranged from 21 to 68 years. Most had been in Australia for more than five years; around 70 per cent of the immigrants had been here ten years or more.

Most people in the sample group had little formal education. Eighty-five per cent of respondents (77/91) had less than twelve years of schooling; more than half (49/91) had less than seven years. Fifteen of the non-English speaking immigrants had three years or less of formal education; many were not literate in their own languages or in English.

There were several differences between the occupations people had before and after emigrating to Australia. Around one-fifth had not been in the paid workforce in their country of origin; this group included people who migrated when they were young and several women. Fifteen respondents had worked as tradespeople in their own country, but in most cases they were not working in the same trade in Australia, either because their qualifications had not been recognised or the language barrier had made it impossible to obtain work as a tradesperson. The group working as tradespeople at the time of injury were mainly people from English speaking backgrounds, or migrants working in non-certificated trades such as formwork carpenters in the construction industry (see Chapter 6).

Only two of the migrant claimants said that the main language spoken in their home was English; sixty-one (more than three-quarters) spoke only their own language at home, while the rest (16/79) spoke both English and their own language.

### **Injuries**

Naturally, there was considerable variety in the specific injuries suffered by our respondents. Most could be described as strains, sprains and musculo-skeletal injuries, sometimes accompanied by fractures and lacerations. Approximately two-fifths of workers had back or other trunk injuries; a further two-fifths, mainly women, had repetition strain injury. Frequently, people did not name the specific medical diagnosis for the injury they were suffering and referred simply to the part of the body affected, e.g. 'a back problem'.

Although we had not specifically sought workers with long-term incapacities, most of our sample had been away from work for more than a year. Only ten had worked in paid employment in 1986; three-quarters (69/91) had been off work for three or more years.



Most people had sustained only one major work-related injury while a few had had two or three - experiences relating only to the most significant were investigated in the survey. Most people's injuries occurred during the early 1980s; the earliest occurred in 1962 and the most recent in mid-1986.

## 8.2 Findings

The findings of the survey are discussed below under the following headings:

- (i) Making a compensation claim
- (ii) Compensation payments
- (iii) Fighting a contested case
- (iv) Life following the compensation claim
- (v) The workers' compensation system and migrant workers

Although we give some numbers and percentages in the text, our survey group was not a random sample and therefore the amount of generalisable quantitative data obtained from it was limited.

### (i) Making a compensation claim

**When the claims are made:** Under NSW legislation, employers are obliged to record all work-related injuries and provide information to the worker about insurance and compensation. Employees are required to notify the employer of all work-related injuries immediately and to make a claim for compensation, if required, within six months of becoming aware of the injury. For any injury or incapacity, the worker has the right to claim compensation and to claim for medical and other associated expenses under the Workers' Compensation Act, 1926. The claim form must be forwarded to the insurance company within seven days of the employer receiving it.

Despite these provisions, only half (44/91) the respondents in our sample made a compensation claim immediately, or soon after, their injury. Two-fifths (38/91) lodged a claim form only months or years after their injury.

Ignorance was a major reason people gave for not claiming immediately after their injury. Many of the migrant workers were given a claim form by their doctors, and sometimes learnt of their compensation entitlements through them. One Greek woman, however, was extremely angry that she only learnt that her condition was work-related four years after first being treated by doctors. She said 'no-one told me the truth until after the operation'; she claimed compensation only at this time, and had previously been paying all medical costs herself. In other cases, the worker claimed compensation only when given a form by a lawyer, a union official or a community worker, some weeks or months after leaving work.

A second major reason why people did not make a claim for compensation until some time after their injury appeared to be that many respondents, especially migrant women with gradual onset injuries, saw the act of claiming compensation as a last resort: something to be done only when a condition became so bad that work was no longer physically possible. There was a definite pattern of such women making a claim years after the first symptoms of a repetition injury had appeared, after having taken substantial periods of unpaid, sick or recreational leave from work. One Turkish woman explained that although she had had pain in her arms for nine years, she did not claim compensation because 'no-one went out on "compo" in my factory; I was the first' and because she wanted to keep working. She finally claimed in August 1985 when 'my doctor told me I couldn't work any more'.

The third reason (also implied in the above quote) that people did not claim compensation at the correct time was discouragement, and in some cases overt obstruction and intimidation, of the potential claimant by employer. In five cases among the seventy-nine migrant workers in our group, the employer not only refused to provide a claim form but also threatened the worker with dismissal if s/he made a compensation claim. However, the threat of employer retaliation and the employer's disapproval was clearly more widespread than this. In other cases the respondent's requests for compensation were just ignored: one Spanish woman was eventually given a claim form by the company personnel department, but only after she had had RSI for four months, had been sacked and after her doctor had sent the company a medical report. She said 'I'd complained every day to the foreman, but he only wrote down my complaints in the complaints book and did not help me make a claim for compensation'.

In those cases (approximately half) where a claim was made within a week of the injury, the respondent had usually been given a claim form by the employer, factory nurse or supervisor. This seemed to occur more frequently in large workplaces (some of which were self-insurers), than in small ones. The other major means by which claim forms were distributed was by the hospital when a worker was admitted following an accident.

**Help in making a claim:** What is written on a claim form has major consequences for the acceptance or otherwise of a person's claim. Considering that most of our respondents could not read or write English, we felt that it was important to find out what assistance they received in making a claim. The main sources of help for people making a claim were:

- \* employer (or supervisor)
- \* family or friend
- \* community or welfare organisation
- \* doctor

Around one-sixth of the sample obtained help from each of these sources; others were assisted by a workmate, solicitor or union official. An eighth obtained no help from anyone.

There was substantial variation in the type of help which people received. Many of the migrant claimants were 'helped' by doctors, solicitors or company officials who simply completed the form on their behalf. A Vietnamese man described how the factory welfare officer filled in his form for him and told him to sign it. He commented 'I really don't know what he wrote because my English was not good'. Several respondents whose claim forms had been completed by their solicitors or doctors appeared to have had little understanding of what had been written on the forms. Indeed, some respondents who had received compensation were not sure if they had ever made a claim, and clearly did not understand the significance of that step of the process. In those cases where interpreters were used the respondents seemed more aware of what was going on.

It was also common for the English speaking background respondents to seek help in making a compensation claim - for example, from a solicitor or welfare organisation. However, this seemed to be more to check that their claim was 'in order' than for the more basic kind of assistance that the migrants required.

#### **(ii) Compensation payments**

One of the most striking features of our survey was the extreme difficulty that people appeared to have in obtaining their weekly compensation payments. Under the regulations of the Workers' Compensation Act, 1926, insurers have fourteen days in which to accept or deny liability for the claim. If liability is accepted, the claimant should receive the appropriate compensation payments so long as s/he is not fully fit for his or her previous occupation or some other appropriate employment. The prescribed payments are the normal award rate (minus special loadings, overtime or penalty rates) for up to a maximum of six months, and (at the time of the survey) \$155.00 per week plus dependants' allowances after this time. In some industries and companies, trade unions have negotiated agreements with employers for conditions better than those outlined above: at BHP Port Kembla, for example, workers receive their normal award rate of pay for the first twelve months off work.

On average in NSW, approximately 90 per cent of claims are accepted by insurers: only a small minority are contested and proceed to court. In our survey, over seventy per cent (66/91) of claims were contested; so that clearly the sample was not representative of the general population of injured workers. This is hardly surprising since, as noted above, most of the workers that we interviewed had suffered relatively severe injuries and many were totally or partially incapacitated. Moreover, because some of our respondents had been referred to us from community-based organisations that they had contacted because of a problem with their claim, we expected workers with contested claims to be over-represented in our sample.

Nevertheless, the nature and frequency of the difficulties encountered in claiming compensation was striking. The common pattern seemed to be: the worker stopped work immediately after or some time after an injury; after some delay s/he made a claim; three to six weeks later, the first payment was received; payments continued, frequently with delays, for five to six

months; after six months the worker was sacked and payments ceased. The worker applied for social security and years later the case was settled by, or just before, a court hearing.

Variations on this pattern were:

- (i) the claimant received payments for less or more time after the injury;
- (ii) payments were stopped following one or two unsuccessful attempts by the claimant to return to work (at the insurer's or employer's insistence).

While some of the English speaking background claimants also experienced problems with their payments, it seemed that their payments were cut off less quickly than those of the migrant claimants - all were paid for at least twelve months, whilst few migrant claimants received full payments for more than six months. In eleven cases the claimants received no payments at all.

Even among the twenty-five respondents who received their legitimate payments there were many complaints and it seemed that people had frequently been forced to go to considerable effort to ensure that their payments would continue to arrive. For example:

- \* wrangling with the insurer, their employer or an organisation such as a trade union when payments were late or over the payment of medical bills (although few respondents seemed to believe that there was much point in contacting the insurance company);
- \* arranging short-term loans from friends or families to cover the times when payments were late.

In several cases claimants were required to make a trip to their old workplace every week or fortnight in order to collect the payments; while for one man this appeared to provide occasion to socialise with old workmates, for most it was inconvenient and unpleasant; one woman believed its purpose was to allow the employer to intimidate her.

The effect of these recurrent problems was that many respondents, particularly migrants, viewed the receipt of any compensation at all as 'unusual' and as an unexpected phenomenon which needed to be explained. One elderly Greek woman with carpal tunnel's syndrome, for example, mentioned several times in the interview that although she had not had problems yet, she still may; she said that she knew others who had received nothing, and she considered herself 'lucky' simply because she was receiving her formal entitlements. A Spanish woman who had received the correct payments until she had resigned said that she believed this was simply because her boss considered her 'special' and a threat. She was in the process of taking a sexual harassment case against him to the Anti-Discrimination Board. Two

male migrant workers who had had no difficulties with payments felt that this was because they had been union delegates.

Moreover, the financial insecurity and uncertainty caused by the irregularity and unreliability of the claimants' weekly compensation payments was a major problem for most of our respondents, even when their claim had not been formally contested or their payments stopped.

**Make-up pay:** In some industries there is an agreement between the union and employers for the payment of a supplement to the weekly award to bring the workers' compensation payment up to their normal weekly earnings prior to the injury. In these cases, the insurance company sends the weekly award to the employer who then supplements it and pays the claimant. However, this is rare and most of our respondents received only the basic award entitlement minus allowances. For those who had been working overtime (many of the migrant respondents) the full amount of compensation also meant a substantial fall in their pay packet. It seemed, however, that even when there was no make-up pay arrangement insurers administered compensation payments through the employer for the first months of a claim. Hence, our respondents typically assumed that their employer was paying them, rather than the insurance company, although many received visits from insurance agents during this time.

Many were obviously not certain what their correct entitlements were and did not understand why the amount paid dropped after the first twenty-six weeks. In addition, people seemed often to assume that they were not entitled to payments once they had been sacked by their employer. As noted above, this often happened towards the end of the six-month period; the coincidence of being sacked by their employer. As noted above, this often happened towards the end of the six-month period; the coincidence of being sacked and payments ceasing seemed to lead people to assume that the former caused the latter, although being dismissed by an employer should not affect a claimant's legal entitlement to compensation.

The general confusion about where payments came from and what they were entitled to meant that people felt that they were in a weaker position to take direct action when the payments stopped or were late. It also meant that their dependence on expert intervention was exacerbated.

### **(iii) Fighting a contested case**

Approximately one-third of the sample (31/91) had had their claim settled at the time of interview and a further 40 per cent (36/91) were waiting to go to court. As noted above, many claimants assumed that the process of going to court to settle a claim was normal and inevitable and even in cases where their weekly payments had not been cut off, in almost all cases, they welcomed it.

**The economic attractions of redeeming a claim:** For all the migrant claimants interviewed, living on compensation payments meant major financial difficulties. Not only did the weekly award mean a drop in weekly income but there were usually extra costs as a result of their injury for which compensation was not obtained (the cost of taxis and medical costs were those most frequently mentioned). As noted above, claimants usually experienced considerable financial uncertainty as payments could not be relied on, and they were often forced into debt. Many claimants lived on a social security benefit whilst awaiting settlement of their claim.

The economic vulnerability of the migrants in our sample seemed greater for a number of reasons:

- \* as migrants to Australia they had often had substantial 'establishment' costs for their families and probably less chance for financial assistance from well-off relatives and friends. Several of the Turkish women, for example, explained that although they had never been in paid employment in Turkey, they had had to work in Australia in order to pay for a mortgage on the house, furniture, the car, everything their children needed for school and so on. For a migrant family arriving in Australia with small children, many of these costs occur simultaneously necessitating reliance on hire-purchases and high-interest loans. A regular weekly income becomes particularly vital and there is usually little surplus to cover an unexpected loss of income. When asked about their financial situation since the injury, almost all migrant respondents reported being in debt, having had to sell the house or car, no longer being able to pay for their children's schooling, and in many cases not having enough for food. The comments of one Chilean man were typical: 'It was very difficult for a long time (until my case was settled). I had to support six kids on \$150 per week from sickness benefits, we had to go to the charity. It was impossible to pay care payments, rent ...'. Another commented: '\$130 per week [the compensation payment] isn't even enough to go to the supermarket';
- \* frequently the migrants were also supporting family members in their country of origin; or saving to meet the costs of their relatives emigrating to Australia. Some had also given assurances of support for relatives who had emigrated to Australia and were not required to support them.

It seemed that the English speaking background respondents were better able to negotiate the system while awaiting settlement of their case. Many migrants reported having goods repossessed while on 'compo'. A New Zealand man, however, described how when a finance company tried to 'treat [him] badly' and 'repossess the house' he 'knew how to deal with them'. 'I threatened them and lied a bit and they didn't cause me any more problems'. In this context it is hardly surprising that almost all our respondents saw a lumpsum settlement as a solution, however partial, to their financial problems. They thought that a lumpsum would allow them to pay off debts and either make a deposit on a house or pay off a mortgage. As several people

asked, rhetorically, 'How do you live on \$130 a week?' Although our key informants frequently referred to the unrealistic expectations that migrants often had of obtaining a large settlement and becoming rich, none of our respondents manifested such an attitude. Few appeared to have many illusions about the size or value of a lumpsum - most thought they would get the 'going rate' which they estimated as being between \$30,000-\$60,000 for a seriously incapacitating injury. Many saw this as an unjustly small amount; however, they saw the possibility of being better off than if they continued in their current situation of living on the unemployment benefit or an unreliable weekly award.

**Escaping from the system:** The other main reason why claimants tended to favour a 'once-and-for-all' redemption over the weekly benefit was that they believed that the former would allow them to end their involvement in the compensation system. The amount of detailed argument with which people substantiated this view varied. One Greek woman simply stated: 'I just want a lump sum. Never thought of why really - I just want to finish it all'.

Others complained extensively about:

- \* frequent and extremely unpleasant encounters with insurance company doctors;
- \* being constantly asked to furnish proof of their incapacity by supplying medical reports or returning to their former workplace;
- \* being spied on by insurance company investigators (while few of our respondents had actually been investigated, many knew of the practice and feared that it would happen to them);
- \* the continual uncertainty of 'being on compensation'.

Almost all our respondents (except those with completely straightforward claims) held such views. One Vietnamese woman with RSI said that she had been sent to an insurance doctor four times in two years. 'He told me that the problem was I don't play enough sport. He made me very upset. He said this sort of disease always happens to poor people ..., and said my body wasn't strong enough for work ... The insurance doctor is very rich - he can't understand my problems.'

People saw their lack of English as being an extra problem in dealing with the complexities of the compensation system. A Vietnamese woman who had received \$20,000 after two years off work described her feelings in the period leading up to the court case: 'I just wanted it over and done with because my English is not good. I couldn't continue to deal with the insurance companies'. A few respondents mentioned being wary of being awarded a weekly payment as they believed that they would continue to be tied up in struggles to get their money. One Lebanese man commented that 'if I'd accepted weekly payments I'd be in court again anyway, because they would have stopped by now'.

Others were encouraged to accept a redemption offer by their solicitor and were warned that if they did not accept it less would be offered next time. However, pressure from their solicitors seemed to be less important than other factors influencing the claimants' decisions to accept or seek a redemption of their claims.

**Waiting for the court case:** Up till now, it has been implied that settling a case was perceived as a choice between obtaining a lump sum and weekly payment. However, while many claimants had strong views about the respective merits of each, others had little idea what was involved, or understood that there was a choice to be made. Around half of the sixty-one respondents whose cases were contested were vague about the details of what was happening with their case when questioned simply answered 'I don't know'.

Few reported receiving notification that liability for their claim had been denied or an explanation of the denial. A discussion held in an RSI support group for Vietnamese sheds some light on this situation. In the course of discussing the question of payments being stopped, the health worker leading the discussion warned people several times 'not to be lazy' in reply to correspondence from the insurance company or the employer. She said that often when someone had come to her because their payments had been stopped, she would have rung the insurance company and discovered that the claimant had not complied with a request to visit an insurance doctor or supply a medical report. Her clients, not having understood the insurance company's letter, felt they had been ruthlessly cut off for no reason at all. As noted above, such actions by the insurer came as no surprise to many people: they had expected payments to be cut off.

**The insurance company:** Most of our respondents appeared to have no doubt that the insurers were their major adversaries. Few had had direct contact with insurance company officers; in some cases people rang the company when payments were delayed or cut off, but more frequently this was done through an intermediary such as a trade union officer. Twice, migrants said that they had made contact with a person who spoke their language in the company, but on the whole, our respondents regarded the insurance companies as powerful, ruthless and unapproachable: contact between the two was typically initiated by the latter and considered unsatisfactory and futile by the former.

For most, the physical embodiment of the insurance company was the insurance company doctor, to whom all claimants made frequent obligatory visits. In some cases, contact with the insurance investigators also occurred. Almost all of this contact was experienced as negative, and several women described their dealings with the insurance companies as the worst part of their entire compensation experience. Only a few claimants did not have complaints about their treatment by the doctors to whom they were sent by the insurance company. When the topic was raised in group discussions it elicited general groans and vehement exclamations. Members of one RSI support group (mostly English speaking background women) arranged companions for anyone visiting an insurance doctor since they felt that support and protection from the doctor was always necessary.



The main complaints referred to:

- \* the fact that the insurance doctors offered no help but simply questioned them. Some said that they felt they were being cross-examined, and that many of the questions were irrelevant to their injury. The insurance doctors were seen as being 'sneaky' and as trying to trick people into saying things which would harm their case;
- \* the way people were handled by the doctors, who were described as 'rough', 'cruel' and 'brutal'. Inappropriate examinations also caused anger: one Spanish woman, for example, reported an occasion when an insurance doctor had stuck a needle deep into her finger; another had asked her to strip completely for the examination although she had an injury to her arm. Several other women complained of what they saw as sexual harassment - for example, doctors trying to touch their breasts, watching them as they undressed and asking questions about their sex life;
- \* the way insurance doctors tried to 'push people back to work' and the degree to which they appeared to act simply as agents for the insurance company. A Greek woman described how one insurance doctor had wanted to help her because he could see she was in pain. However (allegedly) he told her: 'I can't, because I have to do what the insurance company pays me for'. She believed that this doctor's hostile report had caused the insurance company to stop her payments on the grounds that she was fit for work.

Because of the apparent power of insurance doctors, and the perceived stereotypes about compensation claimants, people clearly felt under great pressure to prove the genuineness of their case to them. This was particularly noticeable in the case of the migrant claimants. Many reported feeling extremely nervous when visiting an insurance doctor and some worried that their interpreters had given a false or insufficiently detailed account of their pain and injury. X-rays were prized as empirical proof of an injury, and insurance doctors' refusal, on some occasions, to look at them was regarded as another hostile act. Claimants were also indignant that no weight seemed to be given to their years of hard work prior to the injury. One Turkish woman commented bitterly: 'Some specialists said that if I'd really wanted to work I could have ... It was as if I'd only ever been at work for two to three months not eleven and a half years'.

There appeared to be some differences between the experiences of the English speaking background and migrant groups. The former had fewer complaints about their treatment. One Australian-born man, for example, explained that he had not been physically examined by an insurance doctor since his union had negotiated an agreement with employers that claimants had the right to refuse a physical examination unless a claim was proceeding to court. The migrants often identified a component of the doctors' attitudes not mentioned by the other respondents: racism. While the English speaking women saw the doctors' behaviour as simply a result of their attitude to the injury - for example that the doctors did not believe in RSI - several of the migrant women suggested or implied that racial prejudice influenced the treatment

they received at the hands of the doctors. Several migrants said: 'the doctors think we're just animals. One woman said that the doctors 'just process us like we're pieces of plastic'.

Another difference was in the abilities of people from English and non-English speaking backgrounds to respond to their treatment. One young Australian woman described how the doctor intimidated her 'so much that I cried and cried ... he tried at every turn to make me contradict my story, and physically hurt me'. However, she also described how she 'was able to stand up to him'. In the face of the doctor's anger, she insisted on getting his secretary to sit in the consulting room during an examination where the doctor asked her to take off all her clothes. It is unlikely that many of the migrant women respondents would have felt able to take such immediate action, partly because of the restrictions imposed by language, and partly because they had less confidence in their power to resist in this way.

**Lawyers:** Whilst the compensation system in New South Wales at the time of the survey was constructed in such a way as to necessitate frequently legal intervention, it seemed from our survey that many people exhibited an almost excessive reliance on lawyers. In the absence of other sources of advice, in the context of the popular public identification of compensation with courts and the law and because many of the migrant claimants clearly felt anxious about their case and incapable of dealing successfully with the insurance companies, it was seen as important to get a 'good' (that is trustworthy and capable) solicitor as early as possible. The compensation process was consequently experienced by the majority of our respondents as a heavily legalistic one.

Three-quarters (69/91) had sought legal advice about their claim. Although nearly all of these had claims which were eventually contested, many had sought legal help prior to experiencing a problem with their weekly payments or other aspect of their claim. Many claimants employed a solicitor almost as a matter of course, for advice, or simply to check their legal position. One Italian carpenter who had a crushed hand received his correct compensation entitlements without delay and anticipated no 'trouble' with his employer. Nevertheless, on the advice of his doctor, he sought legal advice immediately after his injury. Not surprisingly, his solicitor told him that he could not do anything at this stage; in other similar cases, claimants reported being told that they had to wait 'until the payments stopped' (the solicitors too, apparently accepted that this would happen as a matter of course).

It appeared that the clients assessed their solicitors largely on the grounds of how interested they were in the case, and 'how much they appeared to care'. Only about half (38/79) of claimants who dealt with solicitors were satisfied with the service they received.

The others had complaints relating to one or more of the following:

- the solicitor did not provide sufficient explanation of what was going on in the case;

- \* there were long delays;
- \* the solicitor was hostile and/or unfriendly.

It was clear, however, that in this matter our respondents often had little objective basis for making judgements of any sort about the legal service they had received. Because the process of making a compensation claim was a new experience and because the system was, for many, an extremely difficult one to negotiate, it was hard for them to tell if their problems (such as the long delays in obtaining a settlement) were due to negligence on the part of the solicitor or not. Some who were convinced of their solicitor's shortcomings and changed to another solicitor; but most did not see this as a practical option.

Although clients often felt that they were 'being kept in the dark', it was difficult for them to question what was happening to their case in any detail, especially for migrants with few English language skills. It seemed that the provision of professional interpreters at legal consultations did not occur as frequently as at medical consultations; most of the migrants in our group either relied on a companion to interpret or went to a solicitor who spoke their own language.

**The court case:** The settlement of a case seemed for many to be almost an anti-climax. Settlements were usually preceded by a series of negotiations between the insurers' and claimants' lawyers and were finalised before a court hearing eventuated. The common sentiment appeared to be a desire to finish the case, almost regardless of the amount, although many of the migrant respondents felt that their own value as workers and people had been underestimated by their lawyers and were scathing about the smallness of the final redemption amount.

#### **(iv) Life following a compensation claim**

**Finances:** As noted above, the majority of our respondents had been injured in the early 1980s, and had been off work since that time - from between two to six years. At the time of the survey, more than eighty per cent (75/91) of the respondents were not working as a result of being either unemployed or physically unfit for any job. Most of these men were living on unemployment benefits or the invalid pension; but women who fell into the category of 'dependent spouses' were not eligible for a social security benefit. Of the twenty-six claimants whose claims had been settled by redemption, twenty-five received between \$15,000 and \$46,000 (the other received \$77,000). This amount usually disappeared quickly on debt repayments and house mortgages, and many of those who had received lump sums were on social security at the time of the survey. The case of a middle-aged South American steelworker was fairly typical. He had accepted a redemption of \$32,000 in 1980 for a claim made in 1976. After paying off his house, none of his settlement was left and at the time of the interview he said: 'I've got a house, but all the bills, no job and a family - one kid's at school and two are unemployed'. He was receiving unemployment benefits and was angry that he had been pressured into accepting a redemption, rather than a weekly award, by his barrister.

It was not surprising to find that the majority of respondents, including those whose cases had been settled, described themselves as financially 'worse off' since their injury. No-one said that they were 'better off', and only 12/91 claimants said that their positions before and after the injuries were roughly equivalent. One man commented 'I feel like I'm lucky to have a roof over my head'; a Vietnamese woman who had accepted a \$20,000 redemption but was incapable of working described her situation as 'terrible' and said that she could not even afford bus fares to attend the local Adult Migrant English classes. A greater proportion of the English speaking background group reported no deterioration in their financial position compared with before the accident. Half (6/12) said their situation was 'the same' compared to only one-twelfth (6/79) of the migrant respondents. Two of the Australian-born men said that although they did not have so much excess money now and had to live 'frugally', they did not feel 'deprived' and were considering the possibility of setting up small businesses.

**Rehabilitation experiences:** Of the ninety-one injured workers interviewed in our survey, only sixteen had had some experience of rehabilitation. Nine of these had attended a public rehabilitation centre; seven a private centre. (Other respondents had received physiotherapy - we did not include this as 'rehabilitation' unless it was part of a specific rehabilitative program aimed at returning the worker to productive functioning at work and/or in daily life). Five of the twelve English speaking background respondents had received rehabilitative treatment: a much higher proportion than of the migrant group (11/79).

A few other respondents had considered attending a rehabilitation centre or had had rehabilitation suggested to them by their doctor but had declined or had been unable to attend.

At the time of the survey, State Government legislation required insurers to report the particulars of all compensation claimants incapacitated for more than twelve weeks to the Rehabilitation Section of the State Compensation Board in order that these people could be contacted by a rehabilitation counsellor and an appropriate rehabilitation program be devised if necessary. Generally, the Board's counsellors did not contact those aged over 55 years of age; however, this accounted for only a few of our claimants, the vast majority of whom reported having no contact with the State Compensation Board. It seems that both the inadequate resources of the Board's rehabilitation section in relation to the caseload (ten counsellors in NSW at the time of the survey) and the apparently slow compliance with State government regulations by the insurers (only 6,103 cases were referred to the Board from insurers during the 1985-6 financial year, representing less than one-third of recorded long term injuries) are causes of many injured workers missing out on rehabilitative treatment (Manns 1986).

#### **(ii) The nature of the rehabilitation**

Most of those who had received rehabilitation had experienced one or more of the following:

- \* physiotherapy or other physical manipulation;
- \* guidance on exercises;
- \* occupational therapy;
- \* vocational counselling;
- \* psychological counselling;
- \* access to special facilities, such as a swimming pool;
- \* special aids, such as orthopaedic chairs.

The migrant clients seemed very unclear about what their treatments had consisted of and the rationale behind the various components of their treatment. Several seemed to have experienced their treatment as a series of tests or assessments; they described it as having been made to type or lift weights to see how much they could manage.

Of the sixteen respondents who had received some rehabilitation, few had persisted long after their initial session. The longest period of attendance by any claimant with an acute injury was two months; most attended only one to three sessions. The only respondent to have any continuing contact with a rehabilitation provider was an Australian woman being sponsored through university on a rehabilitation scholarship.

### **(iii) The effectiveness of rehabilitation**

Although a greater proportion of the Anglo-Australian respondents had received some form of rehabilitation either at a centre or simply as rehabilitation counselling from the Board, their assessments of the effectiveness of the rehabilitation they had received were similar to those of the migrant claimants. Neither group felt that rehabilitation had made any difference to their employment prospects or fitness for work; two reported a slight positive effect on their ability to live with their injury.

It seemed that for the English speaking claimants, counselling was considered to be the most beneficial aspect of the rehabilitation treatment; several reported being given helpful advice about employment and sources of income support. No migrants made these comments; two said that they had not been able to understand what was going on at the rehabilitation centre (in this case, private). However, those migrants who had been contacted by government counsellors seemed to have appreciated the contact, although they did not see it as having been of direct use to them in their efforts to return to the workforce.

The specifically work-oriented activities in which clients participated at rehabilitation centres were considered by all respondents to have been at best a waste of time and at worst physically harmful. One Lebanese man who had been required by the insurer to attend a private centre said that he had

felt like he was in a madhouse and that: 'they were all crazy there'. He complained that 'no-one ever explained anything', and that he had not been able to understand the 'rules'. Clearly, he had had several conflicts with officers at the centre. The main cause, it seemed, was his refusal to become an in-patient as the centre staff desired; he said that he had not wanted to leave his family.

Other migrants complained bitterly about having been forced to carry out tasks (such as lifting boxes or typing) that made their injuries worse. These claimants clearly felt that they had been unable to discuss their treatment with the service provider, and seemed to have experienced the rehabilitation process as mysterious, arbitrary, irrational and pointless.

It appeared that in most cases treatment had been terminated by the claimant after one or more bad encounters at the rehabilitation centre.

**Employment prospects:** Of the seventy-five respondents not employed at the time of the interview, nearly half (34/75) were convinced that they would never work again. The rest were unsure or hoped that they would be able to. In contrast to other sections of the interview, our respondents usually had extremely clear and definite views about their employment prospects and the causes of any difficulties they were facing. One or more of the following were the main reasons given:

- \* being physically incapable of doing any sustained work;
- \* being unfit for their former employment and for heavy manual work, but lacking the education, qualifications or opportunities to obtain other, lighter types of work;
- \* being discriminated against by employers because of their history as compensation claimants.

For those who felt they were physically capable of doing some work, getting a job was a major concern and a worry. Many emphasised the difficulties of getting a light job, since few were available; frequently people reported having been told by CES staff that the CES would not be able to find them work.

However, the migrant respondents believed that there were other factors which compounded their problems. These were:

- \* lack of English skills;
- \* employers' suspicion of and prejudice towards migrants, particularly migrants with a compensation history;
- \* employers' refusal to see migrants as being capable of other than heavy manual work.

The desperation of the situation many felt themselves to be in was reflected in the comments of a young Rumanian man who had injured his back working as a builder's labourer, who said: 'I just want to work. I'm trying to do everything possible - I've left Communism to work - the doctors are giving me everything - traction, manipulation, injections, massage, physiotherapy - I live with tablets. But who knows if I'll ever work again?'

Most of the migrant women respondents were equally anxious to re-enter the workforce, and stressed the need for two incomes when raising a family in Australia. The women tended to emphasise the emotional and psychological benefits of employment as well as the money; several said that their main problem was 'being stuck at home' and talked about the resulting depression and 'nervousness' that they suffered. On a couple of occasions, the women commented that their husbands were happy that they had stopped working and had more time for the home and family; the women in question had different views!

Not only did the migrant respondents believe that they had to face additional barriers to their re-entry to the workforce compared to 'Australians', but it also seemed that the need to return to the workforce was more central to the lives of the migrants than to the lives of the English speaking background group. Several of the latter group welcomed some of the changes that the injury had wrought in their lives; for example, one man who was doing an art course said that because his whole lifestyle was forcibly altered, he had learnt to relax and now had a wonderful hobby. He intended to set up a small business making art equipment in order to supplement the sickness benefit and said 'I'm happier now than I've ever been'. An Australian-born woman who had RSI had obtained a rehabilitation scholarship and at the time of the survey was completing a university degree. By contrast, for all the migrant respondents who had serious injuries, the injury and the period of compensation were experienced as enormously **limiting** factors in their lives and as the closing off of possibilities for their own and their families' futures.

#### **(v) The workers' compensation system and migrant workers**

At the end of the interview the respondents were asked for their general views about the NSW system and their case.

**A changed life:** For all the respondents (except those with minor injuries) the injury and its consequences had wrought dramatic changes in their lives. For most respondents these changes dominated their lives and it seemed that they saw their lives as having two periods; before and after the accidents. Above all, people resented being forced into a passive role; one man expressed this by saying: 'Before there was a six-foot fence and I jump it - now I just look - and do nothing'. As noted above, some of the English speaking background respondents felt that there were positive aspects to the changes; the migrant respondents, however, referred only to the adverse effects and stressed the physical and emotional suffering that they had experienced. The main problems discussed were:

- (i) Pain and the limitations this placed on what they could do - no longer being able to work far, sit, or travel by public transport, carry, play sport, do the housework, pick up their grandchildren, play a musical instrument or go out.
- (ii) 'Being always in a bad mood' as a result of the pain and anxiety about their case.
- (iii) The effects on family life - many male and female respondents made comments such as 'when you're in pain, you don't treat your family well. Although later you regret it'; some said that not having enough money caused many fights. Several migrant women said that their husbands could not cope with their complaints and did not provide them with much support; several of the migrant and non-migrant respondents believed that their marriage break-ups had been the result of their compensation case.
- (iv) Lack of money was mentioned as another cause of depression - one Lebanese man explained 'Before I enjoyed myself: I used to go out - now I can't afford to go anywhere'.
- (v) Not being able to work was also frequently described as a major cause of depression because of the boredom and missing the sociability of the workplace. Respondents also mentioned having put on weight. One respondent summed up the feeling, expressed by many when he said 'My whole life's been ruined.

**Problems in the compensation system:** Most of the migrants found it hard to make general comments about the system, and spoke only about their individual case. The English speaking background respondents frequently had well-developed views about the workers' compensation system and its faults. One Australian woman with RSI said that she felt that the system needed to be reformed for the benefit of the injured worker. She thought that workers should be protected against harassment by the insurance company and from being sacked by employers, and she blamed the insurance companies for pushing up the costs of compensation by forcing people into the courts. An older Australian tradesman believed that the compensation system was bad because it had become too costly and was threatening jobs in NSW. He thought that too many 'bludgers' were exploiting the system, that it was too easy to get a lump sum payment and commented sarcastically 'new diseases are being invented all the time'.

A few of the migrant respondents gave an overall appraisal of the system - one Italian union delegate, for example, said 'The whole system stinks. It's run for the benefit of the insurance companies and the government, and the workers are victimised'. But on the whole it seemed that the migrant respondents did not feel comfortable making judgements about Australian institutions and did not view the workers' compensation process in which they had been involved as a coherent system, seeing it rather as a tangle of individuals and situations. Many also seemed unsure whether their own experiences were typical or whether they resulted from specific factors in their case such as the fact of being a migrant or having a bad lawyer. This



difference may reflect the migrants' relative unfamiliarity with Australian society and educational differences between the two groups. It seemed also to be partly due to the fact that many of the migrants seemed to feel that they were speaking from a more marginal position in that society and did not have as much of a right as 'Australians' to comment on it.

**Migrants and 'Australians' : vulnerability and resistance:** Most respondents, whatever their country of origin, believed that there were considerable differences between the compensation experiences of migrants to Australia and 'Australians'. The factors that the migrant respondents most frequently mentioned were:

- \* their greater vulnerability to unjust treatment;
- \* the type of work migrants did;
- \* language and communication problems;
- \* discrimination.

Many saw a distinguishing aspect of migrants' situations as being the fact they could not stand up for their rights. They felt that limited English, lack of knowledge of the system, and ignorance of their rights made it more difficult for migrants to assert themselves against an employer or other officials. Many respondents believed that this had resulted in their doing the worst jobs at their workplace, and said that they had carried out tasks they knew to be dangerous because it was difficult to refuse. This view was voiced most frequently in the comments of migrant women. One Turkish woman who had injured her back lifting heavy boxes in a biscuit factory said that what she had been doing was 'men's work'. She commented bitterly, 'I couldn't question anything - Australian women wouldn't do the job I was doing - they'd never accept it. They take advantage of people who don't know their rights and can't fight'. A Vietnamese woman referred to the different power relations at the workplace when she said that the problems for migrants were, 'Firstly, they do not speak English. And we fear, we accept, we permit things to happen to us ... we rather forget the problems'. Women also referred to the sexual power employers had over them at work. Some migrant women, for example, said that the employers knew that as Moslem women they could be easily intimidated by the threat of sexual advances, while they believed that Australian women would not care and were therefore less susceptible to this type of intimidation.

Their economic dependence on work and the awareness of high levels of unemployment in their communities clearly had the effect of making all respondents vulnerable to pressures exerted by their employers and insurance companies. As noted above, the immigration process plus life-cycle factors meant that migrants tended to be financially insecure; this made them reluctant to take action in a way that would constitute a risk to their job. Unemployment rates for many migrant groups are significantly higher than those of the Australian-born population; at the time of the survey the unemployment rate of non-English speaking migrants in NSW was 20 per cent (unpublished data, NSW Department of Industrial Relations and Employment).

Many of the migrant respondents mentioned, almost as a matter of course, the fact that migrants knew less about Australian institutions than people born here and that this made them more vulnerable to unfair treatment. In contrast, a view which emerged in discussions with the English speaking background respondents was that migrants were given more information than Australians and therefore could 'work the system' better. Not only was it suggested that migrants were given information about workers' compensation before emigrating, some respondents also suggested that the information advantage of migrants was due to their (allegedly widespread) ethnic organisations and large family networks. Australians, by comparison, were seen as being 'on their own'.

In the context of discussing the problem of ignorance of Australian institutions and the need for information, many migrant respondents made criticisms of the trade unions. While most had worked in unionised workplaces and many had approached a union official or delegate for help with their compensation case, few were satisfied either with the union's response or with the union's role in the system. Several said simply 'the union did nothing' and a common interpretation was that this was because the unions were on the side of the 'bosses'. Others commented that the unions were too weak and had not done enough on the occupational health and safety field generally. One man who had had three accidents while working at a metal foundry and then a timber yard believed that the main problem was bad safety at work, bad training and inadequate information at the workplace. He criticised unions in Australia for not enforcing health and safety practices and not doing more to prevent work injuries.

**The worst jobs:** In discussing the differences between 'migrants' and 'Australians', many migrant respondents began with the point that in Australia migrants did the worst jobs. A young Yugoslav commented, 'Lots of migrants are in this situation because they have the worst jobs ... they have to work and they do anything that's going. Australians have easier jobs'.

Other common comments were: 'we do the work that the Australians won't do'. 'Australia wanted us to come'; 'we're the ones who do the work'. Some also said that Australians got more money and did not work so hard as migrants. People remarked that they had worked much harder since coming to Australia - many of the male respondents had had two jobs at times in the past. One woman summed up these widespread views when she said: 'Australians just work for pocket money'.

The reasons were seen to be migrants' lack of marketable skills and their limited bargaining power. One Chilean man who, after his arrival in Australia in the mid-1970s, had begun working as a machine operator in the steelworks asked rhetorically 'What can I do? I can't get an office job - I can't read or write English - I have no profession'. The Vietnamese woman who had been told by an insurance doctor that she had 'poor people's disease' (RSI) commented later in the interview, '... he was right ... poor people get sick because they have to do the bad jobs ... Migrants come here with no money; therefore they take the hard jobs and get sick. They take bad jobs to get a future and they're scared of losing the job, so they work while

they're sick and only stop when it's very serious. Australians have no problems'.

While some of the English speaking background respondents thought that migrants had special difficulties, none related these to the type of work that migrants did. Instead, they saw them as being the result of their inability to communicate well in English.

**Language and communication:** A Scottish woman who had worked in a public hospital thought that 'English teaching should be compulsory in Australia' and that 'their own country should teach them to speak English before they come - otherwise the women never learn'. She remarked, 'It's so frustrating when the women can't communicate - I feel sorry for them - it must create many problems and be very difficult'. In fact, frustration about migrants' lack of fluency in English was expressed more by the 'Australian' group than the migrants themselves, several of whom commented that even when migrants spoke English they were given a hard time.

Nevertheless, many migrants did see language as a problem and gave the following reasons:

- \* lack of proficiency in English made it harder to stand up for their rights. One Turkish woman explained: 'I couldn't complain because I couldn't communicate - I couldn't tell anyone how bad the work was, and I couldn't get another job';
- \* employers and others took advantage of their lack of proficiency in English to treat migrants differently from Australian-born workers.
- \* lack of English skills meant that migrants had to rely on interpreters and this was believed to result in poor communication.

**Interpreters:** About three-quarters (22/79) of the migrant claimants had had the experience of using interpreters in one or more of the following situations:

- (i) in court
- (ii) examinations by the insurance company doctor or specialist
- (iii) examinations by their own doctor or specialist
- (iv) consultations with their lawyers

Use of interpreters occurred most commonly in the case of (i) and (ii) and was organised by the solicitor or insurance company respectively. Often in other situations, the migrant respondents relied on the help of a friend, family member or a community worker to interpret. In some cases, respondents

had requested an interpreter or had made attempts to arrange one and had been unsuccessful. One Vietnamese woman in this situation said 'I think that the services are terribly inadequate. It can be so difficult sometimes when you can't cross the language barrier and non-one is there to help you'. Few of our respondents had had experiences with private interpreters or the 'private agents' identified in the key informant interviews. The main complaint of those who had was having been required to pay their fees, often prior to the case being settled.

However, on the whole, respondents had fewer complaints about their interpreters than about their doctors or solicitors, and some praised the government interpreters. The most common problem was that of interpreters being late for appointments, forcing the claimant either to see the professional in question alone, or to go to the trouble of rearranging the appointment and the interpreter for another day.

**Discrimination:** The existence of discrimination against migrants was raised by approximately half of the respondents in both groups. Two different views emerged:

- (i) That employers and other Australians were prejudiced against migrants and that because of this they treated migrants badly and unfairly accused them of dishonesty.
- (ii) That **actual** compensation fraud within the migrant population had given migrants a 'bad name' and caused employers and others to be suspicious of all migrants.

Many migrant respondents believed that they had been consistently discriminated against in Australia simply because they were migrants, and often people were extremely distressed about their treatment, particularly after they had been injured. One Lebanese man who could speak English fluently said 'the employers have treated me very badly - they wouldn't give me long service leave or anything. They don't think you're a human being. They just told me to piss off'. A Greek man described how his boss made him, and not other workers, work during the lunch hour and called him 'a bloody Greek'. He said that his boss continually suspected him of not working properly and once asked him, 'When's the Greek Easter Friday? - because if you stay home that day you'll be sacked'. A Turkish woman commented, 'From the day I started at the factory the boss treated me like I wasn't a human being - the migrants were just Turks, Greeks or Yugoslavs'. Racism was not seen to be exclusive to Anglo-Australians and some migrants described the prejudiced attitudes of other migrants.

Some also believed that the delays in their case and the smallness of their redemptions were due to prejudice on the part of insurers and judges; they thought that if they had been 'Australians' they would have got a better deal. Several reported being accused of 'bludging' and were upset that compensation claimants, and particularly migrant ones, were seen as fraudulent (or at least suspect) figures in the community. Many migrants said that even their friends had not believed that they were injured.

Several clearly believed that it was necessary to stress to us that their case was genuine, expecting that we, too, would be cynical about their claims.

A minority of respondents saw the suspicion and public stereotyping of compensation claimants as 'bludgers' as a reaction to actual fraud. As in the key informant discussions, particular ethnic groups were mentioned - as by an Australian man who said that the problems were the 'Lebanese and Yugoslavs, who suffer with imagination'. Some migrants were critical of other migrants who, they believed, had made it more difficult for everyone. Usually the cases that people referred to were anonymous - only one respondent cited an example of someone he knew personally who had (apparently) 'recovered' as soon as his case had been settled for a large sum.

### 8.3 Conclusion

Contrary to a widespread public perception that claiming compensation brings considerable material rewards and an easy life, we found that the most common experience of the migrant claimants in our survey was the devastation of their and their family's lives. Apart from the effects of the injury itself, the process of claiming compensation was experienced by most as a protracted struggle against substantial odds - in particular against the massive and seemingly arbitrary power of the insurance companies.

Some of the main problem points that people experienced in the compensation process appeared to be:

- \* in obtaining weekly compensation payments and in receiving them on a regular basis;
- \* in being sacked while on 'compo', often at the same time as having their compensation payments terminated;
- \* their financial situation - in particular, the hardship of living on a social security benefit both whilst awaiting settlement of their case and after a redemption payment had been spent;
- \* in attempting to re-enter the workforce after having been on compensation.

Whilst both the Anglo-Australian respondents and the migrants referred to these problems, the experiences of the migrant respondents differed in some respects. Firstly, for all the migrants (except those with very minor injuries) being injured, losing their job and being involved in the compensation system meant major deterioration in all aspects of their lives and was experienced primarily in terms of the **limitations** imposed. Some of the English speaking background claimants, on the other hand, were in a position to see positive aspects to their situation and for them the injury and the 'compo case' opened new opportunities as well as closing off options.

Secondly, it seemed that the migrant respondents experienced particular difficulties in re-entering the workforce after their injury. Although most were anxious, even desperate, to return to work, the vast majority of the migrants in the survey had so far been unsuccessful in finding another job and most viewed their prospects as being very poor. Less than a third had had contact or even potential contact with any sort of rehabilitation service. Considering the seriousness and long term nature of the injuries of those in our survey group, this was a surprisingly small proportion. It seems that currently injured migrant workers are not receiving the type of assistance they need to re-establish their lives after a work injury.

Thirdly, there were indications that the Anglo-Australian claimants had greater power in their dealings with their employers, solicitors and insurance professionals than the migrant claimants. Many of the latter referred to the vulnerability of their situation as migrant workers with limited English and few marketable skills in an economy marked by high unemployment. Some migrants blamed direct discrimination as an additional cause of their problems; it was clear to most that the public stereotyping of migrants as fraudulent bludgers affected them adversely. Migrants felt that their lesser power to resist unfair or oppressive situations influenced their outcomes not only in the compensation system but also in the workplace.

These final comments by a Vietnamese woman who had worked for some years packing boxes at a plastic wrap factory sum up some of these perceptions and experiences:

It's very upsetting for me because I didn't want to go on compo ... I wanted to sponsor my parents to come to Australia - I said I'd support them for ten years but the government won't let them in now.

For us it's very hard - where I worked there were no Australians on the production line, only migrants - all the Australians who worked there had good jobs. The factory work is too hard, they push us all the time.

For us Asians, we don't know anything about our rights or what we should do - they put us in any job they want to, and then when we claim for compo they make it as difficult as possible - we have a disadvantage through lack of information and knowledge. Once, I know, an Australian man in the office got RSI - he got compensation immediately, no problems. But for us it's very hard. I never wanted 'compo' - I just wanted to work.



## CHAPTER 9

### CONCLUSION

In New South Wales, as in Victoria and South Australia, an extensive public debate about workers' compensation has been proceeding in recent years. In New South Wales the context has been the government's intention to reform the workers' compensation system (an intention realised in the form of new legislation which came into force in July 1987). During this debate, much emphasis was placed on the escalating costs of workers' compensation to employers and the need to reduce these costs. Employers, insurers and the government frequently claimed that benefits to workers were too generous; in particular that the lumpsum settlements received by workers in the case of redeemed claims or successful common law cases were too great. It was suggested that such generous pay-outs made workers over-eager to go on, or to remain on, compensation and that they constituted a disincentive to injured workers to return to the workforce. Indeed, this view virtually became part of agreed common-sense perception on the issue. The Government's 'Green Paper' on compensation reform, for example, saw no need to provide evidence in support of its assertion that:

The increasing emphasis on lumpsum compensation has led to the extension of the duration of claims, the encouragement of lesser claims, fraudulent and exaggerated claims and a lack of encouragement of rehabilitation. (NSW Government 1986:19)

Allegations about fraud and exploitation of the system often referred to migrant workers and specifically to certain groups of migrants such as those from Southern Europe and the Middle East. Popular images of the Greek or Lebanese worker pretending to contract the so-called 'Mediterranean back' or 'golden wrist' in order to claim compensation and live in affluence without having to work were widespread and as we were doing our research it became clear that these views were articulated not just by insurance companies, employers and professionals working in the area but also, to a lesser extent, by ethnic community representatives and some injured workers themselves.

The purpose of this study was not to adjudicate on the validity or falsity of the popular image. However, it seems from our research that, contrary to the popular view, for migrant workers from non-English speaking background claiming compensation and being reliant on the workers' compensation system is an extremely unpleasant and difficult experience that is more likely to result in poverty and depression than affluence and a life of ease.

In the rest of this chapter we review the findings of the research show that the popular assumptions and stereotypes should be seen as ideologies - that is, selective images of the world, which, though based partially in reality, serve to obscure the total picture and justify sectional interests.



### 9.1 Previous Research

The existing studies on migrant workers and workers' compensation reveal the considerable difficulties (which we also experienced) in undertaking quantitative empirical research in this area. The main problems relate to:

- \* obtaining a representative sample of claimants;
- \* finding sources which contain the data needed by the researcher;
- \* isolating the effects of ethnic or migrant status on compensation outcomes from the effects of other relevant variables such as sex and age;
- \* gaining access to and utilising sources of large-scale data.

Many researchers have instead undertaken qualitative studies based on the perceptions and experiences of small, and therefore not necessarily representative, groups. Nevertheless, the studies by Nye, Samardzic, Casey and Charlesworth, Blackett-Smith and Rubinstein, and the Victorian Ethnic Affairs Commission did produce relatively reliable findings (mainly about claimants with long-term claims and serious injuries). The most significant points to emerge from them are listed below:

- (i) A significant under-claiming of compensation by injured migrant workers (VEAC).
- (ii) An over-representation of migrants among applications for redemptions before the compensation court compared to their proportion in the workforce (Nye).
- (iii) Migrant claimants receiving lower settlements than English speaking background workers for similar injuries (Nye and Casey and Charlesworth).
- (iv) Migrant workers were more likely to have their claims rejected by the insurance companies than English speaking background workers despite having similar injuries (Nye and Rubinstein).
- (v) Several studies indicate that migrant workers had considerably more difficulty than Australian-born and other English speaking background workers in re-entering the workforce after suffering an injury and claiming compensation. The Liquor Trades Union also found that migrant claimants were more likely to be dismissed by their employers after making a claim and were less likely to be given light duty work.
- (vi) Certain groups of migrants - in particular Southern European and Middle Eastern workers - were found in some studies to fare worse in the compensation system than all other workers.

- (vii) Migrant women, as a group, were identified in several pieces of research as having worse experiences in the compensation system than other women or migrant men. Blackett-Smith and Rubinstein's survey found that the effects of sex on compensation outcomes outweighed other effects including that of ethnicity. The practice of redeeming the insurer's future liability through the provision of a lumpsum settlement seemed to occur very frequently in the case of migrant women (Samardzic).

## 9.2 Existing Data Collections

The severe inadequacies of existing data bases in the area of workers' compensation should be stressed. We found that in NSW there were no data collections relating to industrial injuries or workers' compensation that contained an ethnicity measure; none of the existing ones provided any information about the specific experiences of migrant workers. This situation directly contradicts the principles and requirements of the NSW government's ethnic affairs policy which specifies that all government departments and authorities should collect ethnicity-related data pertaining to both potential clientele and actual users of government services (NSW Ethnic Affairs Commission 1984:13). Neither the State Compensation Board nor the Government Insurance Office currently comply with this policy. As the National Occupational Health and Safety Commission has now endorsed a similar principle at the national level, the situation may change in the future. However, the aim of improving the health and safety of the working population and of providing an appropriate system of compensation for work-related injury would be enhanced by the early implementation of improvements to data collection in NSW. Reform could be easily achieved by a State Government stipulation that insurance claim forms and B-Forms contain appropriate questions on birthplace, period of residency in Australia and language spoken at home. This information could then be centrally collected and analysed by the State Compensation Board.

## 9.3 The Incidence of Workers' Compensation Claims Among Migrant Workers and the Type of Injury

Many of the key informants interviewed in the course of this project were convinced that migrant workers made more claims for workers' compensation than Australian-born and other English speaking background workers. Legal professionals, in particular, believed that this was the case, but were sometimes unclear about whether migrants were over-represented among **total** claimants or just those with **contested** claims whom they saw in their offices.

As we have seen above, some previous research suggested that migrants, and particularly migrants from certain countries, were over-represented among those whose cases end up in court. Is this because they have their claims rejected more frequently than English speaking background workers or because they have more claims relative to their numbers in the labour force?

The health data we examined in Chapter 4 provided some answers to these questions. The findings of the Handicapped Persons Survey clearly indicate that while the relative proportions of migrants and English speaking background workers in Australia's handicapped population were almost identical to those in the general population, the causes of the handicapping conditions suffered by migrants differed significantly from those of the non-migrant population. Migrants from certain countries (Italy, Greece and Yugoslavia) were substantially more likely to have become handicapped as the result of an accident than those born in Australia, the UK or Ireland. Of those whose handicap had been caused by an accident, proportionately many more migrants than English speaking background people suffered accidents at work. While around 34 per cent of the accidents in the total sample occurred at work, nearly double that percentage of Italians, Greeks and Yugoslavs experienced their accidents at work. Ten-point-six per cent of the Australian-born group said that a work accident or working conditions caused their condition. However, three times this proportion of Italians (31.6%) were handicapped as a result of work-related injury or disease.

The information about workers' compensation provided by the NSW hospital records point in the same direction. They show that migrants from certain non-English speaking countries were significantly over-represented among compensation-claiming in-patients compared to their proportion in the workforce. There was a much greater number of such patients from Southern Europe, Eastern Europe and the Middle East than would be expected from their numbers in the workforce. In particular, Turks, Lebanese and Yugoslavs were greatly over-represented; while Turks accounted for 2 per cent of persons admitted to hospitals under workers' compensation cover, they made up only 0.2 per cent of the employed NSW labour force in 1984. People born in Australia, other English speaking countries, Northern Europe and Asia, on the other hand, were all underrepresented among hospitalised compensation victims. While Australian-born people made up 75.2 per cent of the NSW employed workforce in 1984, they accounted for only 63.8 per cent of the hospitalised compensation in-patients. Non-English speaking immigrants accounted for 22.4 per cent of compensation in-patients but only 14.8 per cent of the employed labour force.

Significant differences emerged in the type of injuries suffered by migrant and non-migrant workers - many more Middle Eastern and Southern European workers were admitted as a result of a back injury than were other groups.

Differences between the sexes were also marked: non-English speaking background women were more likely to appear in hospitals as workers' compensation victims than any other section of the population. Although the total numbers were small, Turkish women seemed to be particularly disadvantaged in this respect. Australian-born women were the group least likely to enter hospital under compensation cover.

The average ages of different birthplace groups varied (the Southern and Eastern European and Middle Eastern groups were somewhat older than the English background groups) reflecting the age distribution in the population

and perhaps the high rates of unemployment among migrant youth from certain ethnic backgrounds.

However, these age differences are unlikely to explain the patterns of over- and underrepresentation of people from different birthplaces described above. Indeed, the compensation statistics for 1984-5 show that the majority of claims were made by younger workers.

Our analysis also shows that these differences were not due to general differences in the frequency of usage of general hospital services between the migrant and non-migrant population. People from different countries were admitted to hospitals in NSW in numbers roughly equivalent to their proportion in the population; it was the proportion of them entering under workers' compensation cover which varied.

The hospital records provide information on one significant group of compensation claimants: those with serious and traumatic cases. They account for 14.4 per cent of the total workers' compensation accident cases in 1984. Unlike many other data sources, it seems that the accuracy of the data-recording is fairly high. On the basis of these records and the ABS Handicapped Persons' Survey, it seems possible to conclude that migrant workers, and particularly migrant women, have more accidents for which they claim compensation than Australian-born and other English background workers.

#### **9.4 Explanations For Why There Are More Migrant Compensation Claimants**

These findings suggest that the popular beliefs that more migrants than 'Australians' claim compensation and that certain groups have more back injuries have at least some basis in reality.

Popular opinion asserts that more migrants are compensation claimants than Australian-born workers because more of the former than the latter make claims. The act of claiming compensation is considered independently of the event of the worker being injured; indeed, it is believed that migrants make claims where no injury, or no serious injury, has occurred. Another variation is the view of several of the community-based workers we interviewed: that, for 'cultural' reasons, such as a lower tolerance to pain, migrants place claims for compensation where English speaking background workers do not.

It may be true that there are isolated cases of workers exaggerating the symptoms of an injury in an attempt to extend the compensated period away from work, although we encountered few among either our key informants or compensation claimants who had had direct experience of this situation. However, it seems extremely improbable that such distortions could account for the evidence of disproportionate work-related injury we have found in our study. Firstly, as we have seen, the hospital records suggest that it is only certain groups of migrants who are over-represented, and the differences between migrant men and women are striking. If the ideologies were accurate,

it would imply that the propensity to claim fraudulently was somehow distributed unequally across humanity on the basis not only of birthplace but sex. Secondly, it seems improbable that medical staff in the public and private hospitals where the information about in-patients is recorded could be misled by fraudulent patients on such a large scale; particularly when it appears that many doctors do not appear to be overly sympathetic to injured workers. Thirdly, it is equally improbable that the ABS's 1981 survey of handicapped persons (a survey not focusing directly on compensation) should have produced evidence precisely confirming the hospital data if both were based on deceit.

A more fruitful source of explanation for the greater incidence of claims among certain groups of migrant workers can be found when the connection between an injury and the compensation claim is not denied but considered as part of the explanation. We will advance two alternative explanations for our findings:

- (i) The concentration of migrants in dangerous industries and occupations.
- (ii) Migrants' vulnerability to accidents as a result of their relatively powerless position in the workplace and in society generally.

Each of these is discussed briefly below.

#### **(i) Migrant workers in the labour force**

**Injury-rates and areas of employment:** Recent work by the ABS has allowed a comparison of NSW workers' compensation statistics and employment statistics to be calculated for the first time. The ABS found that:

During the period 1982-83 to 1984-85 the mining industry had the highest incidence of employment injuries. Coal mining had almost five times the average for all workers ... Other high risk industries were: 'other mining'; construction; manufacture of transport equipment; food, beverages and tobacco; and fabricated metal products. Industries with the lowest risk during the period were: community services; public administration and defence; and finance, property and business services. (Australian Bureau of Statistics, 1987)

National data show the distribution of migrant employment for Australia. At May 1986, male migrants were significantly concentrated in manufacturing, wholesale and retail and the construction industries - of which manufacturing and construction, at least, were high risk areas of employment. For example, male migrants made up more than 25 per cent of the metal products sub-sector within manufacturing while accounting for only 14.8 per cent of the total male workforce. Migrants were underrepresented in agriculture, mining and community services. Except for mining these are exactly the areas which have low rates of occupational injury; and mining, though a highly dangerous area, employed few people (2.3% of the workforce). The following figures

show clearly the concentration of male migrants in relatively dangerous areas of employment:

High-risk industry	Percentage of Birthplace Group Employed		
	Australia	Main English speaking countries	Other Countries
Mining	2.3%	2.9%	2.3%
Manufacturing	17.7%	22.6%	30.5%
Construction	9.2%	12.6%	12.6%
TOTAL	29.2%	38.1%	45.4%

(unpublished ABS data, May 1986)

The same patterns exist for migrant women. More than one-quarter (26.6%) of non-English background female migrants were employed in manufacturing whereas this sector accounted for only 11.0 per cent of total female employment and 8.3 per cent of the employment of Australian-born women. Their concentration in one of the most dangerous areas of manufacturing (food, beverages and tobacco) was marked - they made up 26.0 per cent of the total employment in that sector although they accounted for only 12.5 per cent of the female workforce at that time.

Within industries, migrants were particularly concentrated in certain occupations. In 1986, around half of male migrants were employed in the category 'tradesmen, production process workers and labourers' compared to 37.2 per cent of Australian-born workers. A recent national report notes:

The occupational category 'tradesmen, production/process workers and labourers' is, by a significant margin, the group which accounts for the most accidents (approximately 62% of the national total). No other occupational group is close in the number of accidents and diseases, costs of claims or total time lost. (Advisory Committee on Prices and Incomes 1986:16)

Recent research by the Centre for Multicultural Studies involved the calculation of segregation indices for migrant and non-migrant workers to examine how different the employment patterns for the two groups were (Castles et.al 1986). It was found that migrants from Greece, Italy, Lebanon, Malta, Poland and Yugoslavia differed most from that of native-born Australians. Fifty-two per cent of Yugoslav males, for example, and nearly 57 per cent of Yugoslav females would have to change occupations before their occupational distribution would be similar to their Australian-born counterparts (ibid:36). These are the birthplaces which form the largest

components of the 'Southern' and 'Eastern European' and 'Middle Eastern' groups which we found were so overrepresented among compensation claimants in NSW hospitals.

**Segmented labour force patterns in our study:** Our quantitative findings provide specific examples of patterns of occupational concentration of migrants in certain employment areas. The survey of Building Workers' Union compensation claimants revealed a noticeable concentration of workers in two occupational categories: those of labourer and formwork carpenter, both semi-skilled areas of work. The English speaking background workers, on the other hand, were distributed more widely across occupations and many more were tradespeople (in particular bricklayers). The survey of BHP accident and employment records indicated that migrant workers (and in particular Southern European workers) were heavily concentrated in certain areas and virtually absent from others. They were over-represented in the coke ovens, sinter plant, blast furnace, open hearth furnace and slab yard - all of which (except the slab yard) being departments responsible for disproportionately high levels of accidents in our survey. Of those responsible for large numbers of accidents in our survey, the only department with an over-representation of the Australian-born and other English speaking background workers was traffic - a department particularly large in a plant as extensive as BHP.

Historically, overseas-born workers have provided a major source of labour for the Australian economy. This is particularly the case in post-World War II period. Between 1947 and 1972 migrants provided 61.2 per cent of the increase in the Australian workforce (Collins 1984:5). Until the 1970s, much of the demand from business was for unskilled and semi-skilled labour to work in the manufacturing sector and although the emphasis has now shifted, the Australian labour force remains markedly segmented by gender and birthplace (as well as race). Moreover, the patterns of segmentation are being reproduced amongst newly arrived migrants as for those long resident in Australia. A recent study by the Bureau of Labour Market Research comments: 'in spite of the fact that blue-collar employment has grown very slowly during the past decade in comparison to white-collar employment, recently arrived migrants appear to be just as over-represented in blue collar occupations as earlier cohorts' (BMLR 1986:55). The high frequency of injury and of being on 'compo' among migrant workers should be understood as an effect of the function they have played in the Australian economy.

The more detailed analysis of the relationship between employment injuries and industry and occupational type, forthcoming from the NSW Department of Industrial Relations and Employment, will no doubt shed further light on the issue. However, it is clear at this stage that male and particularly female migrants from non-English backgrounds are concentrated in those industries and occupations which have particularly high rates of employment-related injury. It is hardly surprising, therefore, that the incidence of compensation claims among these workers is greater than among English speaking background workers.

**(ii) The vulnerability of migrant workers: language or power?**

For many migrant workers we interviewed, the foregoing discussion was taken for granted. They thought it was almost self-evident that migrants in Australia did the worst (hardest and most dangerous) jobs, that 'Australians' did the easy jobs and that this was a major reason why migrants suffered more work-related injuries. Some of our key informants (legal professionals and community-based workers) also commented on this point and, like the migrant compensation claimants, stressed that migrants worked longer hours than Australians, sometimes at two jobs, and that this made them more prone to occupational injury and disease.

However, another issue was raised by many migrants as well as some trade union officials: the greater vulnerability of migrants to unjust treatment at work and to being pressured to do unsafe tasks. The distinguishing feature of migrant workers' situation was seen as being the fact that they had less **power** than Australian and other English speaking background workers. People saw the problems of migrants as being partly a result of the fact that they could not 'stand up for their rights' to the same extent as other workers. One of the reasons for this was their limited English. But another equally important reason that claimants described was their general vulnerability as migrant workers; specifically, their heavy financial commitments, their poor labour market position and being victims of discrimination by employers and others in the community. Lack of knowledge of the 'system' in Australia and ignorance of their rights were also seen as factors which disadvantaged migrants by comparison with other workers. Several migrant women also felt that they were more vulnerable than 'Australian' women to threats of sexual intimidation from their bosses and that this fact was exploited by employers to 'keep them in line'.

Many migrant workers, particularly women, commented that they had been doing work that they had known was dangerous, and that other workers had refused to do, but which they had found it difficult to resist. The remarks of a Turkish woman, reflecting on her own experiences with hindsight, are worth repeating:

I couldn't question anything - Australian women wouldn't do the job I was doing; they'd never accept it. They take advantage of people who don't know their rights and can't fight.

It is important to stress issues of power in discussing industrial injury and compensation since frequently the main emphasis is placed simply on language barriers. The latter argument is frequently used as a rationale for establishing English courses in industry, the focus of which has traditionally been (at least partly) on job safety and 'industrial English' (see e.g. UEPG 1984:16-17). Migrant workers are taught to read safety notices in English and are taken through factory safety procedures, on the apparent assumption that lack of understanding written instructions and of potential dangers is a cause of industrial accidents. However, our research did not find that language, in itself, was perceived to be a major cause of migrants' problems in relation to either industrial injury or compensation. Rather, language difficulties were seen as one of a number of factors which



placed migrant workers in a particularly vulnerable situation at work. As our survey indicates, the possibility of being sacked is a very real one for migrant workers who do make a compensation claim.

Several union officers we interviewed also referred to these aspects of power relations at the workplace level. It was felt that fear of dismissal (in the context of a tight financial situation) was a major reason why many migrants did not claim compensation for an injury until forced to; and some union officials commented on the difficulties faced by migrant workers (especially women) in non-unionised or weakly-unionised workplaces. One official who had worked continuously with migrant members specifically identified the migrants' social isolation in the workplace as intensifying their vulnerability and placing them at risk of industrial injury. He argued that in order to resist carrying out unsafe tasks, an individual worker always needed the support of workmates - that is, resistance must be to some extent collective. He believed that because of communication problems and other reasons, migrant workers often were not able to rely on this collective support and similarly were often less confident of obtaining support from the union should they require it. The point was illustrated to us graphically by a female Macedonian steelworker who had been fighting over a compensation case and her right to a light duties job for eighteen months. Although she had been employed in the same place for twelve years, she said that she 'did not communicate with the other workers', most of whom were men. In this case, her source of support was the trade union; but as we have seen this was extremely atypical among the respondents in our survey. Most had received little support from their unions and were extremely critical of the union's role.

A recent article in an ethnic community magazine makes similar points:

Many migrant workers, despite often long periods of unionisation, experience enormous problems ... at their workplaces. ... As a consequence, many migrant workers may accept inadequate working conditions and rates of pay, resulting in a high incidence of compensable health problems, or injury and termination of employment. In many cases, migrant workers' problems have reached a stage where it has often been too late for unions to assist ... (Pnevmatikos, 1986:9)

### **9.5 Migrants' experiences within the compensation system**

We have said that within the issue of migrant workers and workers' compensation two key questions can be asked: firstly, what is the incidence of compensation claims among migrants compared to other workers and secondly, are there differences in the experiences of English speaking background and migrant workers once they have entered the compensation system?

One approach to the second question has been to examine some key quantifiable indicators such as rejection rates and compare the results across the two groups. We will discuss these findings and then explore our qualitative findings on the subject.

**Rejection rates:** The only large scale study on the rejection rates of compensation claims among migrant and other workers has been Rubinstein's study of 685 patients attending a Melbourne health centre. This study found that migrant women were almost six times as likely as Australian and UK-born men to have their claims rejected; and that migrant men and women were both more likely to have claims rejected than English speaking background claimants.

Migrants did not appear to be overrepresented among the claimants with contested claims in our survey of BWIU cases: slightly less than half of the claims finalised in 1984 were those of migrants, while the union has a migrant membership of slightly over 50 per cent. However, the survey is not representative since it involved only those workers who sought the union's assistance and therefore is highly likely to include fewer migrant than English speaking workers.

Many of the migrants we interviewed believed that they had their claims rejected by insurance companies for little reason and there was clearly an expectation that their payments would be stopped almost as a matter of course. During an interview with claims managers from one of NSW's largest workers' compensation insurers we were told that in their company a 'migrant-sounding', and particularly an Arabic, name was considered grounds for suspicion, and a valid basis for contesting a claim.

**Lumpsum settlements:** A second index of the relative experiences of migrants and Australian-born workers in the compensation system that has received some attention in public debate is the size of settlements each group receives. On the one hand, there is popular belief that compensation claimants, and in particular migrants, receive huge settlements that ensure a life of affluence for them and their family. On the other hand, two major studies (cited above) have found evidence of migrants receiving lower lump sum settlements than Australian-born workers for similar injuries.

Our quantitative research did not provide evidence for either of these claims. No strikingly different patterns emerged in either the survey of BWIU compensation cases or that of BHP redemptions. The number of variables potentially affecting the size of a redemption (for example, the age, sex and occupation of the claimant and the severity of the injury) made it difficult to isolate the factors responsible for observed variations without further complex analysis.

However, one important finding of our research related to the size of settlements for all claimants. In the survey of BWIU compensation files we found that most people received between \$10,000 and \$40,000 as a lumpsum settlement, representing past as well as future income loss. Nearly two-thirds of those receiving a lumpsum settlement (78/124) received less than \$30,000 (less than two-years wages) and only one obtained a sum that could be considered large even in 1984: \$180,000.

The BHP redemptions survey also indicates that sums received as settlements are in fact much lower than is popularly imagined. Nearly 80 per cent of cases (166/211) received \$45,000 or less although the recipients were relatively old workers who would be unlikely to work again (see Chapter 6). These findings certainly substantiate the claims by our key-informants as well as the arguments of Samardzic from the Ethnic Affairs Unit of the State Compensation Board that lumpsum settlements have not, in the past, been an adequate means of compensating severely injured workers.

**Redemption rates:** Our survey of BHP redemptions confirm the findings of Samardzic's study that migrant workers are more likely to have their claims redeemed than English speaking background workers. Middle Eastern workers, in particular, seemed to have a high incidence of redemptions: they accounted for 17.5 per cent of redemptions in the sample while making up less than 1 per cent of the BHP labour force.

Because of the perceived inadequacy of lumpsum settlements as a means of compensating injured workers, the high rate of such settlements among migrant workers has been a cause for concern. Recent changes to the NSW compensation system which prevent common law claims and severely limit the potential for insurers to redeem claims mean that this issue is now less important. However, we believe that in the case of BHP the variation in redemption rates reflects another issue which continues to be critical to any discussion of migrant workers in the compensation system. This is migrants' post-compensation employment and rehabilitation experiences. Before turning to this we will summarise the findings of our qualitative survey in relation to workers' experiences of the compensation system itself.

**Problems in obtaining workers' compensation:** The problems experienced by migrant workers in the compensation system have been extensively documented in the studies by CRAG, the Greek Welfare Centre and Petruchenia which were discussed in Chapter 2, and it is not proposed to describe these in detail here. Our survey of Ethnic Affairs Unit cases revealed a large range of problems experienced by migrant workers relating to: insurance companies, employers, solicitors, doctors, the court system, finances, interpreters.

Our survey of compensation claimants confirm many of the findings of previous research and the pattern of enquiries to the Ethnic Affairs Unit and indicate some areas where differences between the experiences of English speaking background and migrant workers appeared to exist. The main points which emerged from our survey were the following:

- (1) Many migrants interviewed did not make a claim for compensation when the injury first occurred but, because of ignorance and fear of employer retaliation, claimed weeks, months or years afterwards. The means by which injured workers were informed about their rights under workers' compensation law and by which they obtained claim forms was arbitrary and often depended on a doctor or friend rather than the employer as stipulated in the Act.

- (ii) Most claimants experienced considerable difficulties in obtaining the weekly compensation benefit to which they were entitled. Unexplained delays were common and even those respondents who received their correct payments had frequently been forced to go to considerable effort to obtain them. Most migrant claimants in the survey had had their payments cut off by insurance companies after a certain period of time.
- (iii) Most respondents were unsure what their legitimate entitlements were and did not understand why the amounts paid varied. This uncertainty contributed towards a certain fatalism towards their treatment by employers; for example, many assumed that the common practice of dismissing compensation claimants after a six-month period off work was somehow legitimised by compensation law because the date coincided with a change in their weekly entitlement.
- (iv) Partly because the claimants in our survey were often confused and unsure about their rights and the workings of the system and partly because of the frequency with which insurers stopped or delayed their benefits, dependence on legal advice was extremely common. Even in cases where claimants were receiving regular payments it was expected that their case would eventually end in court. Indeed, because people frequently knew of nowhere else to go for help or advice, solicitors were commonly used for these purposes. There seemed to be an almost excessive reliance on lawyers and the compensation process was experienced by our respondents as a heavily legalistic one.
- (v) Most of the migrants in our survey experienced enormous economic difficulties both while they were on compensation and after the settlement of their case. The economic vulnerability of the migrant workers seemed to be greater than that of the English speaking background workers for a variety of life-cycle reasons and as a result of the immigration process. For many, being on compensation meant a life of poverty and debt. While some of the Anglo-Australian claimants referred to new life possibilities opened up by their compensation case, for the migrant workers being on compensation was experienced primarily in terms of the options closed off for them and their families.
- (vi) The inadequacy of the weekly benefit in relation to their daily expenses and the repeated unpleasant encounters with different parties within the compensation system meant that many claimants hoped for a lumpsum settlement of their case. However, this did not appear to be viewed by either migrant or English speaking background claimants in 'unrealistic' terms, as was suggested by many of our key informants. None believed that a settlement would make them rich or resolve their problems. Rather, it was seen as a way out of an impossible situation, particularly for migrants who felt that their lack of English prevented them from being able to deal adequately with the compensation system.

- (vii) Insurance companies, and in particular insurance company doctors, were seen by most claimants as their main adversaries and as powerful ones. The antagonistic manner in which insurance doctors treated people, their apparent distrust of claimants' statements, threats of sexual harassment, and what several migrants perceived as racist attitudes, were deeply resented by the respondents in our survey. Several commented 'the doctors think we're just animals'.
- (viii) The major problem experienced by most of the workers in our survey was obtaining employment after their compensation claim. Eighty per cent of claimants (75/91) were not working at the time of the interview, although three-quarters had been off work for three years or more. Of those not working, half felt they would never be able to work again, often for reasons other than physical incapacity. The main difficulty for the migrants in the survey was not having the education, qualifications or opportunities to obtain a job other than the heavy manual work which had caused their injury. Many of the migrant claimants also felt that employers discriminated against migrants, and particularly against migrants who had had a compensation case. The migrant claimants were convinced that injured migrant workers faced additional labour market difficulties to those faced by Australian and other English speaking background workers; they felt that their lack of English was often used by employers as a reason for not employing them.
- (ix) As discussed above, the general life-situation of the migrants in our survey, and in particular their social vulnerability, limited their ability to exert the same power as Anglo-Australian claimants in their dealings with the employers, solicitors and insurance professionals. Some blamed explicit racism on the part of these professionals as a cause of their problems; and most identified the public stereotyping of migrants as malingerers as an additional obstacle that migrants had to overcome.

For both the Anglo-Australian and the migrant claimants in our survey, obtaining compensation for their injury involved a protracted struggle against powerful adversaries. Being on compensation typically meant a drastic reduction in living standards and a greatly inferior quality of life. However, these features were more extreme in the case of migrant than Anglo-Australian workers; and, in addition, migrants appeared to face additional problems not faced by the latter group in the way they were treated by parties in the compensation system and in re-entering the workforce after having been a compensation claimant.

An important issue highlighted by our study was the severity and long-term nature of the conditions suffered by many claimants. The majority of migrant workers we interviewed had been off work for three years or more and, given their current almost total lack of access to appropriate rehabilitation and retraining, had little prospect of returning to the workforce. Similarly, at the time of our study at least a half of the claimants in the survey of BWIU

files were still unfit to return to the workforce, although their injuries had occurred up to nine years earlier. Clearly, most of these will never re-enter productive paid employment. Under the workers' compensation legislation operating at the time of this study, such people were eligible for a continuing small weekly award (although in practice, it seems that insurance companies frequently made this an untenable option for migrant workers who resorted to inadequate lumpsum payments instead). Under the new NSW legislation, however, the provision for workers with long-term or permanent incapacities are very limited; after an initial 34 week period, such workers will have to rely on a much smaller social security payment, presumably for the rest of their life. This seems a harsh sentence, particularly when the complexity and enormity of the financial, labour market and social problems faced by injured migrant workers are taken into account.

The new legislation operates on the assumption that its provisions relating to rehabilitation will result in many more injured workers quickly returning to paid work following an injury and one infers that the reduced amounts of compensation it awards have been justified on this basis. However, our primary research as well as other work reviewed in Chapter 2 suggests that much of the existing rehabilitation provided in the public and private spheres does not meet the specific needs of migrant workers and is not successful in facilitating their return to the workforce. Our survey of BHP records clearly show that even BHP, a particularly large employer with diversified production systems, considers migrants workers to be more difficult than Australian-born and other English speaking background workers to return to the workforce and consequently redeems their claims far more often. As our survey of compensation claimants indicates, at most smaller workplaces, the establishment of workplace-related rehabilitation programs or light duties jobs for workers recovering from an injury are not even considered as options. A radical change to current practice in this area could, of course, occur and would indeed be welcome. However, in view of the poor educational qualifications, low English language abilities and lack of recognised skills of many migrant workers, and in the context of economic recession, the establishment of extensive and effective rehabilitation and retraining programs would be an extremely expensive undertaking. Since the basic rationale of NSW's new workers' compensation system was to reduce the costs of compensation to employers and insurance companies, it seems unlikely that this type of significant improvement in the scope and content of rehabilitation will occur.

The findings of our research are clearly at odds with the common-sense view of the malingering migrant worker. It is not possible in this report to examine the origin of this ideology or to explore its effects in depth. However, even a preliminary analysis of our findings indicates something about the role it plays in society. In Chapter 1 we suggested that compensation systems, including the one operating in NSW at the time of this study, **reflect** and **reproduce** conflicts inherent in the employee-employer relationship as it is structured in western industrial societies. We argued that because conflicts of interests between employees and employers are endemic to such societies, issues such as workers' compensation will almost inevitably also be a source of debate and conflict.

One finding which emerged repeatedly in the course of our study was the negative effects which the publicly-articulated stereotype of and hostility towards 'the migrant compensation claimant' can have on actual injured migrant workers. Feeling of shame and victimisation often discourages injured workers from claiming compensation at the correct time and from pursuing their legitimate entitlements, and adds to the stress and anxiety associated with a compensation case. Further, the public ideology is often reflected in the treatment migrants experience at the hand of employers, insurance companies and insurance company doctors. Although the stereotype makes reference to aspects of reality (such as the fact that the incidence of compensation claims is higher among non-English speaking background migrant workers than those from Anglo-Australian backgrounds), it does this selectively and in a such a manner as to obscure a more adequate understanding of social processes. For these reasons, the ideology functions in favour of certain parties in the compensation process: employers and insurance companies, both of which have a direct interest in minimising workers' compensation costs and in minimising their responsibility for the work-related injuries suffered by their employees.

There are various measures which the government could take to ameliorate the current difficulties faced by injured migrant workers in the compensation system. One would be to establish independent sources of information and advice for non-English speakers so that injured migrants need not rely on the dubious services of private agents or the expensive advice of a solicitor when they need assistance with their claim. Secondly, there is clearly an urgent need to expand and reform work-centred rehabilitation services so that the incapacitating effects of serious work injuries on the lives of migrant workers and their families can be overcome. A third, equally important task for all those with an interest in compensation is to combat the myths about migrants and compensation so that workers from non-English speaking backgrounds who claim compensation in the future can pursue their legitimate rights from derogatory stereotyping and in a less antagonistic environment.

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**N.S.W. Hospital Records, 1984**  
**TABLE 4.11 Persons Admitted to Hospitals Under Workers' Compensation Cover**  
**by Primary Diagnosis (1)**

Birthplace	skull	trunk	upper limb	lower limb	back	RSI	medical	other injuries	other conditions	TOTAL
<b>English speaking countries*</b>	<b>511</b> <b>(5.1%)</b>	<b>1085</b> <b>(10.9%)</b>	<b>1280</b> <b>(12.8%)</b>	<b>812</b> <b>(8.1%)</b>	<b>2237</b> <b>(22.4%)</b>	<b>171</b> <b>(1.7%)</b>	<b>2273</b> <b>(22.7%)</b>	<b>406</b> <b>(4.1%)</b>	<b>1219</b> <b>(12.2%)</b>	<b>9994</b> <b>(72.4%)</b>
<b>Non-English speaking countries</b>	<b>80</b> <b>(2.6%)</b>	<b>331</b> <b>(10.7%)</b>	<b>267</b> <b>(8.6%)</b>	<b>100</b> <b>(3.2%)</b>	<b>1254</b> <b>(40.5%)</b>	<b>59</b> <b>(1.9%)</b>	<b>613</b> <b>(19.8%)</b>	<b>106</b> <b>(3.4%)</b>	<b>288</b> <b>(9.3%)</b>	<b>3098</b> <b>(100.0%)</b>
Northern Europe	9 (3.1%)	28 (9.8%)	43 (15.0%)	15 (5.2%)	87 (30.4%)	4 (1.4%)	58 (20.3%)	8 (2.8%)	34 (11.9%)	286 (2.1%)
Southern Europe	37 (2.5%)	149 (9.9%)	127 (8.4%)	49 (3.2%)	623 (41.3%)	36 (2.4%)	298 (19.7%)	52 (3.4%)	139 (9.2%)	1510 (10.9%)
Eastern Europe	8 (3.7%)	29 (13.3%)	24 (11.0%)	8 (3.7%)	68 (31.2%)	3 (1.4%)	46 (21.1%)	8 (3.7%)	24 (11.0%)	218 (1.6%)
Other Asia	8 (7.2%)	11 (9.9%)	16 (14.4%)	8 (7.2%)	24 (21.6%)	4 (3.6%)	24 (21.6%)	1 (0.9%)	15 (13.5%)	111 (0.8%)
Indochina	4 (10.5%)	1 (2.6%)	8 (21.1%)	2 (5.3%)	10 (26.3%)	1 (2.6%)	3 (7.9%)	2 (5.3%)	7 (18.4%)	38 (0.3%)
Middle East	12 (1.5%)	97 (12.2%)	38 (4.8%)	10 (1.3%)	401 (50.6%)	7 (0.9%)	146 (18.4%)	29 (3.7%)	53 (6.7%)	793 (5.7%)
Latin America	2 (1.4%)	16 (11.3%)	11 (7.7%)	8 (5.6%)	41 (28.9%)	4 (2.8%)	38 (26.8%)	6 (4.2%)	16 (11.3%)	142 (1.0%)
<b>Unknown</b>	<b>56</b> <b>(7.8%)</b>	<b>71</b> <b>(9.9%)</b>	<b>95</b> <b>(13.2%)</b>	<b>47</b> <b>(6.5%)</b>	<b>197</b> <b>(27.4%)</b>	<b>14</b> <b>(1.9%)</b>	<b>128</b> <b>(17.8%)</b>	<b>26</b> <b>(3.6%)</b>	<b>86</b> <b>(11.9%)</b>	<b>720</b> <b>(5.2%)</b>
<b>TOTAL</b>	<b>647</b> <b>(4.7%)</b>	<b>1487</b> <b>(10.8%)</b>	<b>1642</b> <b>(11.9%)</b>	<b>959</b> <b>(6.9%)</b>	<b>3688</b> <b>(26.7%)</b>	<b>244</b> <b>(1.8%)</b>	<b>3014</b> <b>(21.8%)</b>	<b>538</b> <b>(21.8%)</b>	<b>1593</b> <b>(11.5%)</b>	<b>13812</b> <b>(100.0%)</b>

\* Includes Australia, New Zealand, UK, Canada, USA, South Africa

**N.S.W. Hospital Records, 1984**

**TABLE 4.12 - Persons Admitted to Hospitals under Workers' Compensation Cover by Birthplace by Primary Diagnosis (2)**

(continued over page)

Birthplace	Dislocations, Sprains, Fractures	Concussion, Haemorrhage, Hernias	Open wounds, Injury to blood vessels	Bruises	Crushes	Burns	Back
<b>English speaking countries*</b>	<b>1744 (17.5%)</b>	<b>772 (7.7%)</b>	<b>797 (8.0%)</b>	<b>119 (1.2%)</b>	<b>102 (1.0%)</b>	<b>151 (1.5%)</b>	<b>2300 (23.0%)</b>
<b>Non-English speaking countries</b>	<b>352 (11.4%)</b>	<b>199 (6.4%)</b>	<b>168 (5.4%)</b>	<b>18 (0.6%)</b>	<b>14 (0.5%)</b>	<b>24 (0.8%)</b>	<b>1267 (40.9%)</b>
Northern Europe	47 (16.4%)	21 (7.3%)	24 (8.4%)	0 (0.0%)	1 (0.3%)	2 (0.7%)	88 (30.8%)
Southern Europe	152 (10.1%)	106 (7.0%)	78 (5.2%)	10 (0.7%)	9 (0.6%)	10 (0.7%)	628 (41.6%)
Eastern Europe	26 (11.9%)	22 (10.0%)	15 (6.9%)	2 (0.9%)	1 (0.5%)	2 (0.9%)	69 (31.7%)
Middle East	88 (11.1%)	36 (4.5%)	22 (2.8%)	1 (0.1%)	3 (0.4%)	5 (0.6%)	403 (50.8%)
Other Asia	18 (16.2%)	5 (4.5%)	14 (12.6%)	1 (0.9%)	0 (0.0%)	4 (3.6%)	25 (22.5%)
Indochina	5 (13.2%)	2 (5.3%)	6 (15.8%)	1 (2.6%)	0 (0.0%)	1 (2.6%)	10 (26.3%)
Latin America	16 (11.3%)	7 (4.9%)	9 (6.3%)	3 (2.1%)	0 (0.0%)	0 (0.0%)	44 (31.0%)
<b>Unknown</b>	<b>115 (16.0%)</b>	<b>62 (8.6%)</b>	<b>64 (8.9%)</b>	<b>5 (0.7%)</b>	<b>12 (1.7%)</b>	<b>11 (1.5%)</b>	<b>199 (27.6%)</b>
<b>TOTAL</b>	<b>2211 (16.0%)</b>	<b>1033 (7.5%)</b>	<b>1029 (7.5%)</b>	<b>142 (1.0%)</b>	<b>128 (0.9%)</b>	<b>186 (1.3%)</b>	<b>3766 (27.3%)</b>

\* Includes Australia, New Zealand, UK, Canada, USA, South Africa



**N.S.W. Hospital Records, 1964**

**TABLE 4.12 - Persons Admitted to Hospitals under Workers' Compensation Cover by Birthplace  
by Primary Diagnosis (continuation)**

Birthplace	Foreign bodies, Poisons	Heart, Hypertension	Cancers	Lung, Respiratory Diseases	R.S.I.	Other Injuries	Other conditions treated	TOTAL
<b>English speaking countries</b>	<b>74 (0.7%)</b>	<b>19 (0.2%)</b>	<b>11 (0.1%)</b>	<b>111 (1.1%)</b>	<b>171 (1.7%)</b>	<b>265 (2.7%)</b>	<b>3358 (33.6%)</b>	<b>9994 (100.0%)</b>
<b>Non-English speaking countries</b>	<b>5 (0.2%)</b>	<b>1 ???</b>	<b>1 ???</b>	<b>21 (0.7%)</b>	<b>59 (2.0%)</b>	<b>89 (2.9%)</b>	<b>880 (28.4%)</b>	<b>3098 (100.0%)</b>
Northern Europe	0 (0.0%)	1 (0.3%)	1 (0.3%)	2 (0.7%)	4 (1.4%)	6 (2.1%)	89 (31.1%)	286 (100.0%)
Southern Europe	4 (0.3%)	0 (0.0%)	0 (0.0%)	12 (0.8%)	36 (2.4%)	39 (2.6%)	426 (28.2%)	1510 (100.0%)
Eastern Europe	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	3 (1.4%)	8 (3.7%)	70 (32.1%)	218 (100.0%)
Middle East	0 (0.0%)	0 (0.0%)	0 (0.0%)	3 (0.4%)	7 (0.9%)	29 (3.7%)	196 (24.7%)	793 (100.0%)
Other Asia	0 (0.0%)	0 (0.0%)	0 (0.0%)	2 (1.8%)	4 (3.6%)	1 (0.9%)	37 (33.3%)	111 (100.0%)
Indochina	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (2.6%)	2 (5.3%)	10 (26.3%)	38 (100.0%)
Latin America	1 (0.7%)	0 (0.0%)	0 (0.0%)	2 (1.4%)	4 (2.8%)	4 (2.8%)	52 (36.6%)	142 (100.0%)
<b>Unknown</b>	<b>1 (0.1%)</b>	<b>0 (0.0%)</b>	<b>1 (0.1%)</b>	<b>2 (0.3%)</b>	<b>14 (1.9%)</b>	<b>22 (3.1%)</b>	<b>212 (29.4%)</b>	<b>720 (100.0%)</b>
<b>TOTAL</b>	<b>80 (0.6%)</b>	<b>20 (0.1%)</b>	<b>13 (0.1%)</b>	<b>134 (1.0%)</b>	<b>244 (1.8%)</b>	<b>376 (2.7%)</b>	<b>4450 (32.2%)</b>	<b>13812 (100.0%)</b>

\* Includes Australia, New Zealand, UK, Canada, USA, South Africa

**NSW Hospital Records, 1964****TABLE 4.13 Persons Admitted to Hospitals Under Workers' Compensation Cover by Birthplace by Duration of Stay**

Birthplace	less than 1 week	1 - 3 weeks	more than 3 weeks	TOTAL
<b>English speaking countries</b>	<b>5463 (54.7%)</b>	<b>3857 (38.6%)</b>	<b>674 (6.8%)</b>	<b>9994 (100.0%)</b>
<b>Non-English speaking countries</b>	<b>1715 (55.4%)</b>	<b>1215 (39.2%)</b>	<b>168 (5.4%)</b>	<b>3098 (100.0%)</b>
Northern Europe	152 (53.1%)	114 (39.9%)	20 (6.9%)	286 (100.0%)
Southern Europe	850 (56.3%)	568 (37.6%)	92 (6.1%)	1510 (100.0%)
Eastern Europe	105 (48.2%)	100 (45.9%)	13 (6.0%)	218 (100.0%)
Other Asia	59 (53.2%)	44 (39.6%)	8 (7.2%)	111 (100.0%)
Indochina	17 (44.7%)	18 (47.4%)	3 (7.9%)	38 (100.0%)
Middle East	454 (57.3%)	317 (40.0%)	22 (2.8%)	793 (100.0%)
Latin America	78 (54.9%)	54 (38.0%)	10 (7.0%)	142 (100.0%)
<b>Unknown</b>	<b>412 (57.2%)</b>	<b>236 (32.8%)</b>	<b>72 (10.0%)</b>	<b>720 (100.0%)</b>
<b>TOTAL</b>	<b>7590 (55.0%)</b>	<b>5308 (38.4%)</b>	<b>914 (6.6%)</b>	<b>13812 (100.0%)</b>

\* Includes Australia, New Zealand, UK, Canada, USA, South Africa.

**BHP Workforce, 1986**  
**TABLE 5.8 Birthplace by High Risk Department**

(continued over page)

Birthplace	Mills P/C/T (16.4%)*	Coke Ovens (5.6%)*	Sinter Plant (2.4%)*	Machine Shop (5.6%)*	Traffic (1.9%)*	Blast Furnace (2.9%)*	Open Hearth (0.5%)*	Coil/Hot Strip (4.5%)*	B.O.S (5.3%)*	Foundry (1.1%)*
Australia** (34.0%)	436 (28.4%)	94 (17.8%)	70 (30.7%)	243 (46.3%)	107 (60.5%)	57 (20.8%)	0 (0.0%)	103 (24.3%)	123 (24.6%)	35 (35.0%)
Other English speaking countries ** (11.3%)	173 (11.3%)	35 (6.6%)	14 (6.1%)	52 (9.9%)	33 (18.6%)	23 (8.4%)	2 (4.1%)	48 (11.3%)	64 (12.8%)	14 (14.0%)
Northern Europe** (3.7%)	71 (4.6%)	8 (1.5%)	5 (2.2%)	18 (3.4%)	10 (5.6%)	5 (1.8%)	4 (8.2%)	11 (2.6%)	18 (3.6%)	2 (2.0%)
Southern Europe** (42.5%)	698 (45.4%)	295 (56.0%)	125 (54.8%)	170 (32.4%)	15 (8.5%)	154 (56.2%)	39 (79.6%)	218 (51.5%)	251 (50.3%)	45 (45.0%)
Eastern Europe** (2.8%)	43 (2.8%)	24 (4.6%)	4 (1.8%)	11 (2.1%)	7 (4.0%)	8 (2.9%)	1 (2.0%)	15 (3.5%)	13 (2.6%)	3 (3.0%)
Middle East** (0.7%)	10 (0.7%)	3 (0.6%)	0 (0.0%)	2 (0.4%)	1 (0.6%)	5 (1.8%)	2 (4.1%)	1 (0.2%)	5 (1.0%)	0 (0.0%)
Other Asia** (0.4%)	9 (0.6%)	3 (0.6%)	0 (0.0%)	3 (0.6%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	3 (0.7%)	1 (0.2%)	0 (0.0%)
Indochina** (2.2%)	57 (3.7%)	43 (8.2%)	4 (1.8%)	10 (1.9%)	1 (0.6%)	5 (1.8%)	1 (2.0%)	16 (3.8%)	10 (2.0%)	0 (0.0%)
Latin America** (1.9%)	38 (2.5%)	19 (3.6%)	5 (2.2%)	15 (2.9%)	2 (1.1%)	10 (3.6%)	0 (0.0%)	7 (1.7%)	10 (2.0%)	1 (1.0%)
Other (0.4%)	2 (0.1%)	3 (0.6%)	1 (0.4%)	1 (0.2%)	1 (0.6%)	7 (2.6%)	0 (0.0%)	1 (0.2%)	4 (0.8%)	0 (0.0%)
TOTAL	1537 (100.0%)	527 (100.0%)	228 (100.0%)	525 (100.0%)	177 (100.0%)	274 (100.0%)	49 (100.0%)	423 (100.0%)	499 (100.0%)	100 (100.0%)

\* Department as percentage of total workforce.

\*\* Birthplace group as percentage of total workforce.

**BHP Workforce, 1986****(continuation) TABLE 5.8 Birthplace by High Risk Department**

Birthplace	Pipe/Fab Shops (4.2%)*	Rail Bank (0.0%)*	Refractories (1.8%)*	Carpentry/ Electrical (3.2%)*	Slab Yard (3.0%)*	Merchant Mills (2.5%)*
Australia** (34.0%)	199 (50.4%)	0 (0.0%)	58 (34.9%)	200 (67.1%)	62 (22.5%)	62 (26.5%)
Other English speaking countries ** (11.3%)	48 (12.2%)	0 (0.0%)	19 (11.4%)	9 (3.0%)	22 (8.0%)	29 (12.4%)
Northern Europe** (3.7%)	29 (7.3%)	0 (0.0%)	10 (6.0%)	45 (15.1%)	9 (3.3%)	11 (4.7%)
Southern Europe** (42.5%)	101 (25.6%)	1 (100.0%)	71 (42.8%)	28 (9.4%)	174 (63.0%)	110 (47.0%)
Eastern Europe** (2.8%)	14 (3.5%)	0 (0.0%)	5 (3.0%)	6 (2.0%)	5 (1.8%)	6 (2.6%)
Middle East** (0.7%)	1 (0.3%)	0 (0.0%)	1 (0.6%)	2 (0.7%)	0 (0.0%)	7 (3.0%)
Other Asia** (0.4%)	2 (0.5%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (0.4%)
Indochina** (2.2%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	2 (0.7%)	3 (1.1%)	2 (0.9%)
Latin America** (1.9%)	1 (0.3%)	0 (0.0%)	2 (1.2%)	5 (1.7%)	1 (0.4%)	3 (1.3%)
Other** (0.4%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (0.3%)	0 (0.0%)	3 (1.3%)
<b>TOTAL</b>	<b>395 (100.0%)</b>	<b>1 (100.0%)</b>	<b>166 (100.0%)</b>	<b>298 (100.0%)</b>	<b>276 (100.0%)</b>	<b>234 (100.0%)</b>

\* Department as percentage of total workforce.

\*\* Birthplace group as percentage of total workforce.

**BHP Workforce, 1986****TABLE 5.9 Sex by Danger of Occupation**

Sex	Low Danger	Low/Medium Danger	Medium Danger	Medium/High Danger	High Danger	TOTAL
Women	177 (48.0%)	179 (48.5%)	0.0 (0.0%)	4 (1.1%)	9 (2.4%)	369 (100.0%)
Men	3500 (39.0%)	3948 (44.0%)	503 (5.6%)	366 (4.1%)	661 (7.4%)	8978 (100.0%)
<b>TOTAL</b>	<b>3677 (39.3%)</b>	<b>4127 (44.2%)</b>	<b>503 (5.4%)</b>	<b>370 (4.0%)</b>	<b>670 (7.2%)</b>	<b>9347 (100.0%)</b>



APPENDIX THREE

158

# Building Workers' Industrial Union of Australia

NEW SOUTH WALES BRANCH

Incorporating the Amalgamated Society of Carpenters and Joiners and the  
United Operative Bricklayers' Trade Society of N.S.W.

A. MANSON  
President

S. SHARKEY,  
Secretary.

REGISTERED UNDER THE COMMONWEALTH CONCILIATION AND ARBITRATION ACT  
REGISTERED UNDER THE NEW SOUTH WALES INDUSTRIAL ARBITRATION ACT

Telephone: 264 6471

OFFICE HOURS:  
Mondays to Fridays 9 a.m. to 5 p.m.

361 Kent Street,  
SYDNEY. NSW.

In Your Reply Please Quote.

Dear Brother,

Our Union is supporting a study by the Centre for Multicultural Studies from the University of Wollongong. The study is looking at problem areas in the Workers' Compensation System in N.S.W., particularly as they have affected people born overseas.

For this study then, we would like to know your country of birth.

Please tick the right box:

ITALY

☐

GREECE

☐

YUGOSLAVIA

☐

SPAIN

☐

GERMANY

☐

AUSTRALIA

☐

OTHER

☐

WHICH COUNTRY? . . . . .

We hope this study will help improve the Workers' Compensation System in N.S.W.

Yours in Solidarity,

*Pat Carr*

Pat Carr  
B.W.I.U. Compensation Officer

\*\* PLEASE SEND US YOUR REPLY QUICKLY \*\*

## APPENDIX FOUR

## QUESTIONNAIRE FOR WORKERS' COMPENSATION CLAIMANTS

Interview number:

1. Sex
2. What is your country of birth?
3. What language(s) do you speak at home?
4. (If applicable) in what year did you arrive in Australia?
5. How many years of schooling did you complete:
  - (a) (if applicable) overseas
  - (b) in Australia
6. Do you have any of the following qualifications?
  - (a) University degree
  - (b) Trades Certificate
  - (c) Professional (e.g. nursing, accountant)
  - (d) Other
  - (e) No
7. Have these qualifications been recognised in Australia?
8. (If applicable) what was your occupation before you came to Australia?
9. What illness or injury led you to claim workers' compensation?
10. When did your injury or illness first occur?
11. How did the illness or injury occur?
12. Where were you working at this time?  
(Type of company/type of workplace)
13. Describe your specific job at the time of the injury.
14. How long after did you fill out a claim form for workers' compensation?  
(Explain why you made a claim at that time.)
15. What help did you get, if any, in obtaining or filling out the workers' compensation claim form?  
If no or don't know prompt:  
Workmate who spoke English  
Union official  
Agency  
Employer filled out form  
Doctor
16. How long after making the claim did you receive your first payment?

17. Have you had any problems with the weekly payments since then?
18. What action (if any) did your employer take after you had made the compensation claim? How did s/he respond?
19. Did your employer pay you the right amount of make-up pay?
20. Did you have any problems at work in relation to your compensation claim?  
    **If no or don't know prompt:**  
        Disapproval of other workers  
        Harassment by employer  
        Threatened by dismissal/sacking  
        Employer not providing/submitting form
21. Describe your treatment by the insurance company (or compensation unit if self insurer) during this time.
22. When did your injury force you to stop working?
23. Did you go back to work after you stopped the first time?  
    How many more times did you stop and go back?
24. When was the last time you went back to work?
25. Did your employer provide light duties for you after you were injured?  
    **If yes,**  
        For how long?  
        Were you paid the same, more, or less than when doing your usual work?
26. Did you have any problems with doctors or specialists:  
    (a) Your own doctor?  
    (b) Insurance doctors?
27. Is the insurance company still paying you the full amount of compensation?  
  
    **IF YES TO QUESTION 27**
28. Did you seek legal advice? Why?  
  
    **IF NO TO QUESTION 27, CONTINUE QUESTIONS 29-34**
29. When did the correct payments stop?
30. Did the insurance company inform you that it no longer accepted liability for your claim?
31. What reason did the insurance company give?
32. What action did you take on learning that your claim was contested?
33. Has your claim been settled yet?  
  
    **IF NO TO QUESTION 33**
34. What are you expecting to happen next? (e.g. date of court hearing)

**IF YES TO QUESTION 33**

35. What form did the settlement of your claim take?
- (a) Weekly payments
  - (b) Lump sum
  - (c) Weekly payment and lump sum
  - (d) Nothing

**If weekly payments:**

36. Have you had any problems with weekly payments since the settlement?  
(Explain)

**Prompt:**

Delays in payments  
Payments stopped  
Extra expenses challenged

**If lump sum:**

37. What type of lump sum was it?

**If don't know prompt:**

Redemption under workers' compensation law  
Section 16 payment  
Common law  
Other

38. How much of your settlement did you receive after costs had been paid?
39. Are you satisfied with your settlement?

**For all respondents:**

40. (If applicable) describe the way your own lawyers treated you and your case?

**Prompt:**

Helpful  
Hostile approach  
Didn't explain sufficiently  
Pressure to redeem  
Delays etc.

41. How would you describe your financial position since the accident?
- (a) financially better off
  - (b) financially worse off
  - (c) financially the same
  - (d) other

42. Are you currently employed?  
Where, in what job?

**IF NO TO QUESTION 42**

43. Do you think you will be able to work again/obtain another job?
44. Have you ever made use of a rehabilitation service?  
(Ascertain - was that simply physiotherapy?)  
Which one? (Public/Private)
45. What activities were you given to do when you attended the rehabilitation service?



46. For how long did you attend? (Explain)
47. How much difference has rehabilitation made?  
    (a) to your injury?  
    (b) to your employment prospects?
48. Did you obtain help from any of the following in dealing with your workers' compensation claim?  
    (a) Trade Union  
    (b) Ethnic community organisation (specify)  
    (c) Other community or welfare group (specify)  
    (d) Private agent/Interpreter  
    (e) Government  
    (f) Friend/colleague  
    (g) Other
49. Who would you say was the most helpful to you during the time you received workers' compensation? (Explain)
50. Did you have any difficulty communicating in English with officials connected with workers' compensation? (Explain)
51. (If applicable) Did you use interpreters in your dealing with workers' compensation?  
    If yes, in which situations?  
    If no, why not? (Explain)  
    Were they professional interpreters (paid for by the Government or insurance company?) (Explain)  
    If no, why not? (Explain)
52. How adequate do you think interpreting services are for people in your position?
53. Do you have any general comments about the workers' compensation system in NSW?  
    Prompt:  
        What do you think are the main problems?
54. What difference has the injury made to your life in general, apart from work?
55. Do you think migrants have special or different problems in workers' compensation compared to people born in Australia? (Explain)
56. How old are you?

THANK YOU.

(N.B. The spaces allowed on the questionnaire form for the recording of answers have been removed in this reproduction.)

## APPENDIX FIVE

## COUNTRIES OF BIRTH OF RESPONDENTS IN CMS SURVEY, AND NUMBERS FROM EACH COUNTRY

AUSTRALIA	(5)
NEW ZEALAND	(1)
ENGLAND	(3)
SCOTLAND	(3)
GERMANY	(1)
GREECE	(4)
ITALY	(11)
MALTA	(2)
PORTUGAL	(1)
ROMANIA	(2)
SPAIN	(3)
UKRAINE	(1)
YUGOSLAVIA	(8)
LEBANON	(8)
TURKEY	(12)
VIETNAM	(12)
CHILE	(4)
PERU	(1)
URUGUAY	(7)
OTHER SOUTH AMERICA	(2)
<hr/>	
TOTAL	91

**CMS Survey Group**

**TABLE 8.1 Birthplace  
by  
Numbers of People Interviewed**

Birthplace	Numbers of people
<b>English speaking countries</b> (including Australia)	<b>12 (13.2%)</b>
<b>Non-English speaking countries</b>	<b>79 (86.8%)</b>
Southern Europe	29 (31.9%)
Other Europe	4 (4.4%)
Middle East	20 (22.0%)
Indochina	12 (13.2%)
Latin America	14 (15.4%)
<b>Total</b>	<b>91 (100.0%)</b>

**CMS Survey Group**

**TABLE 8.2 Years Resident in Australia  
by  
Numbers of People**

Number of years	Number of people
Born in Australia	5
15 or more	15
10-15	47
5-10	20
5 or less	4
<b>Total</b>	<b>91</b>

**CMS Survey Group****TABLE 8.3 Sex  
by  
Numbers of People**

Sex	Number of people	
Female	40	(44.0%)
Male	51	(56.0%)
Total	91	(100.0%)

**CMS Survey Group****TABLE 8.4 Age  
by  
Numbers of People**

Age(years)	Number of people	
21-25	4	(4.4%)
26-35	22	(24.2%)
36-45	29	(31.9%)
46-55	25	(27.5%)
56-65	9	(9.9%)
66 +	2	(2.2%)
Total	91	(100.0%)

**CMS Survey Group****TABLE 8.5 Years of Schooling (overseas and in Australia)  
by  
Numbers of People**

Years of schooling	Numbers of people	
0	8	(8.8%)
1 - 7	41	(45.0%)
7 - 12	28	(30.8%)
12 or more	14	(15.4%)
Total	91	(100.0%)

**CMS Survey Group****TABLE 8.6 Qualifications  
by  
Numbers of People**

Qualifications	Numbers of people	
University degree and/or Professional Qualification	4	(4.4%)
Trade Certificate	21	(23.1%)
Other	3	(3.3%)
None	63	(69.2%)
Total	91	(100.0%)

**CMS Survey Group****TABLE 8.7 Occupation Overseas and in Australia at Time of Injury  
by  
Numbers of People**

Occupation	Overseas	At time of injury
No occupation	19 (20.9%)	0 (0.0%)
Tradesperson	15 (16.5%)	16 (17.6%)
Machine Operator	7 (7.7%)	21 (23.1%)
Process Worker	1 (1.1%)	22 (24.2%)
Labourer	18* (19.8%)	29** (31.9%)
Service Industry	25 (27.5%)	3 (3.3%)
Not applicable	6 (6.6%)	0 (0.0%)
Total	91 (100.0%)	91 (100.0%)

\* refers mainly to the construction workers, small farmers and farm employees.

\*\* refers to labourer in the construction industry or within manufacturing industry.

**CMS Survey Group****TABLE 8.8 Type of Injury  
by  
Numbers of People**

Type of Injury	Numbers of People
R.S.I.	36
Back	30
Othertrunk	9
Upperlimb	8
Lowerlimb	6
Medical(including deafness)	2
Total	91

**CMS Survey Group****TABLE 8.9 Cause of Injury  
by  
Numbers of People**

Cause of Injury	Numbers of People
Repetitivemovements	30
Lifting	28
Falling	16
Accidentinvolving machine	11
Journey to work	3
Other	2
Exposure to noise	1
Total	91

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