

General Purpose Standing Committee No.1

NSW Workers Compensation Scheme

First Interim Report

Ordered to be printed 17 October 2001

New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Council. General Purpose Standing Committee No.1

NSW Workers Compensation Scheme: First Interim Report / General Purpose Standing Committee No. 1. [Sydney, NSW]: The Committee, 2001. – 216 p.; 30 cm. (Parliamentary paper; no. 897)

Chair: The Revd the Hon Fred Nile MLC
"Ordered to be printed 17 October 2001".

ISBN 0-7347-6456-1

1. Workers compensation—New South Wales.
- I. Title
- II. Nile, Fred.
- III. Series: Parliamentary paper (New South Wales. Parliament) ; 897

368.41 (DDC21)

How to contact the committee

Members of the General Purpose Standing Committee No.1 can be contacted through the Committee Secretariat. Written correspondence and enquiries should be directed to:

The Director

General Purpose Standing Committee No.1

Legislative Council

Parliament House, Macquarie Street

Sydney New South Wales 2000

Internet www.parliament.nsw.gov.au

Email gpscno1@parliament.nsw.gov.au

Telephone 02 9230 3544

Facsimile 02 9230 3416

Terms of Reference

1. That General Purpose Standing Committee No. 1, have the following functions:
 - (a) to monitor the financial position of the workers compensation scheme under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*, and
 - (b) to monitor and review the implementation and operation of the *Workers Compensation Legislation Amendment Bill 2001 (No. 2)*, as finally passed by the Parliament,
 - (c) to investigate and report on the efficiency of the operation of the workers compensation system and the administration of the WorkCover Authority,
 - (d) to monitor the impact on premiums of the Bill.
2. That the Committee be authorised to engage the services of:
 - (a) an actuary, who is a member of the Institute of Actuaries of Australia, and
 - (b) an accountant, who is a member of the Institute of Chartered Accountants in Australia or the Australian Society of Certified Practising Accountants,for the purpose of advising and assisting the Committee, as the Committee thinks fit, in relation to the Committee's functions.
3. That the Committee:
 - (a) provide interim reports to the House each 3 months, and
 - (b) finally report to the House by 30 June 2002.
4. Nothing in this resolution authorises the Committee to investigate a particular compensation claim—put and passed.

(Minutes of Proceedings No. 111, 28 June 2001, Item No. 21)

These terms of reference were referred to the Committee by the House.

Committee Membership

The Revd the Hon Fred Nile MLC Christian Democratic Party (Chairman)

The Hon Tony Kelly MLC Australian Labor Party (Deputy Chairman)

The Hon Richard Colless MLC National Party

The Hon Greg Pearce MLC Liberal Party

The Hon Janelle Saffin MLC Australian Labor Party

The Hon Henry Tsang MLC Australian Labor Party

The Hon Dr Peter Wong MLC Unity

Participating Members

The Hon Amanda Fazio MLC Australian Labor Party

The Hon Mike Gallacher MLC Liberal Party

The Hon Duncan Gay MLC National Party

The Hon John Jobling Liberal Party

Table of Contents

	Table of Contents	vi
	Chairman's Foreword	viii
	Glossary & Abbreviations	x
Chapter 1	Introduction	1
	Referral of inquiry	1
	Conduct of this inquiry	1
	Advertising terms of reference	2
	Stakeholder questions and questions on notice to WorkCover	2
	Engagement of actuarial and accounting services	2
	Submissions	3
	Public hearings	3
	Minutes of the proceedings of the Committee	3
	Further reports	3
	Structure of this report	3
	Relevant reference material	4
Chapter 2	Overview of the workers compensation system in New South Wales	5
	Common law damages	6
	History	6
	Damages	6
	Statutory scheme	7
	Structure	7
	Dispute resolution	8
	Eligibility for benefits	8
	Benefits	9
	Claims procedure	9
	Insurance and premiums	10
	Financial position of the scheme	11
	Recent legislative reforms	14
Chapter 3	Stakeholder perspectives	21
	Workers compensation models	21
	Insurers incentives	22
	Scheme management	22
	Early intervention	24
	Dispute resolution	25
	Commutations	26
	Injured workers' interests	26
	Premium levels	27
	Rehabilitation	27
	WorkCover efficiency	27
	Compliance	28
	Premium avoidance	29
	Other comments	29
Chapter 4	Inquiry strategy	31
	Second interim report	32
	Third interim report	32
	Fourth / final report	32

Appendix 1	Publications, position and date of advertising of committee's terms of reference	34
Appendix 2	Initial Questions on Notice from Stakeholders	36
Appendix 3	Questions on notice - public hearing 24 September 2001	68
Appendix 4	Consultant's report	94
Appendix 5	Submission	108
Appendix 6	Witnesses	110
Appendix 7	Minutes of the Proceedings	112
Appendix 8	Tillinghast-Towers Perrin valuation of the WorkCover Scheme	132

Chairman's Foreword

I am pleased to be able to present the first of four reports to be completed by the Committee into the NSW Workers Compensation Scheme. This inquiry came about as a consequence of significant debate in the community concerning reforms to workers compensation legislation including introduction of the *Workers Compensation Amendment Bill 2001 (No 2)*. Part of this debate spilled over into demonstration on 19 June this year when Parliament House was blockaded by representatives from many different workplaces wishing to express their views and serve a reminder that workers compensation is a passionate issue in the community.

To date the environment in which this inquiry has been conducted has been consultative and constructive with all stakeholders understanding the gravity of the financial position of the NSW Workers Compensation Scheme. I particular I wish to thank the Hon John Della Bosca MLC, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations and WorkCover for making information available to the Committee, on occasions at short notice.

For the first interim report the Committee's primary objective has been to involve the broadest number of stakeholders to ascertain their views on areas important to the Committee's terms of reference. As a result of this process the Committee has identified areas of key importance with which it will pursue during the coming months and areas of limitation where considerations will be restricted.

During preparation of this report the Committee became aware of the deteriorating financial position of the NSW Workers Compensation Scheme. As at 30 June 2001 the Scheme was operating at a deficit of \$2,756 million, an increase of \$1,167 million or 73% from the previous year. This figure is forecast to deteriorate further to \$3,228 million by June 2002 and \$5,468 million by June 2006. The Committee's consultant actuaries Ernst and Young ABC have indicated that the Scheme may now be considered "somewhat unstable" with a heightened level of uncertainty in estimating the Scheme liabilities. The Committee received differing views concerning the extent and cost of non-compliance and identified commutations, common law and legal costs as major contributors to the Scheme deficit. Evidence was also heard on the importance of dispute resolution and an efficient WorkCover authority.

The Committee has identified that there may be insufficient time for it to effectively review and monitor the implementation and operation of the *Workers Compensation Legislation Amendment Bill 2001 (No2)* and its impact on premiums under parts (b) and (d) of the terms of reference. The Committee will give further consideration to these terms of reference once the legislation commences.

The Committee's second interim report will focus on the Scheme, its design and delivery mechanisms and compare other jurisdictional models. Claims of a Scheme deficit, including actuarial reports and methodologies used to calculate this deficit, will also be investigated. The third interim report will consider scheme management including the role of WorkCover, commutations and system leakage. Options for improving the scheme will also be flagged in the third report. The final report will evaluate and assess the options identified in previous reports and combine the Committee's findings into what is anticipated to be successful recommendations and initiatives.

As part of the Committee's commitment to ongoing community participation I welcome stakeholders to comment on any aspect of this report and in particular seek views on the Committee's inquiry strategy (Chapter 4) and possible witnesses or evidence that may be useful to its investigations.

Finally I would like to take the opportunity to thank my fellow committee members for their constructive views and participation. I would also like to thank the Committee secretariat for providing research and administrative support to the Committee. In particular the Committee Director, Mr Steven Carr and Senior Project Officer, Ms Rachel Simpson who drafted this report, and Committee Officers Ms Ashley Nguyen and Ms Natasha O'Connor, who formatted the report and assisted in administering all aspects of the inquiry. Special mention should also go to Mr David Blunt, Acting Clerk Assistant-Committees for his assistance in engaging consultant actuarial and accounting services and general counsel.

The Revd the Hon Fred Nile MLC
Chairman

Glossary & Abbreviations

Glossary

The following definitions of key terms and concepts was provided to the Committee by the Committee's consultant actuaries, Ernst & Young ABC.

Actuarial report	Is simply a report by an actuary. The scope of the actuarial report can cover many aspects. WorkCover obtain actuarial reports on a regular basis for the actuarial estimate of the outstanding claims liabilities and the estimated premium rate to fund the cost of claims and related expenses in a year. Less regular reports are obtained on such matters as costings of changes to the scheme (e.g. common law), remuneration for insurers, review of the premium rating system and industry premium rate relativities.
Claims management	The effective co-ordination of all tasks (e.g. medical management, legal management, rehabilitation management, payment of entitlements, claim strategy, co-ordination of claim management with the employer, injury management, etc) associated with the just and economic resolution of a claimant's rights pursuant to the <i>Workers Compensation Act</i> .
Commutations	Workers compensation pays ongoing weekly, medical and related benefits. Under the Act an insurer, with the consent of the worker and approval of the court, can commute all future weekly and other regular payments and receive the lump sum equivalent. After the commutation all ongoing payments cease. In theory the worker still retains the right to sue at common law but normally when negotiating the level of the commutation the worker signs a common law deed of release and gives up the right to common law action. The S66/67 lump sums are usually settled at the same time as the commutation. In many ways commutations could be viewed as an out of court settlement of a common law action.
Deficit	The deficit of the scheme is the difference between the value of its assets and liabilities. If the value of assets exceeds the value of liabilities the scheme is in surplus and if the value of liabilities exceed the value of assets the scheme is in deficit. The funding ratio is the value of assets divided by the value of liabilities. The largest asset are investments including cash and the next largest item are unpaid premiums. The largest liability item is the estimate of the value of outstanding claims liabilities as estimated by the actuary including the value of the claims handling expenses.
Injury management	Restoration of workers pre-injury physical condition, or alternatively to provide assistance to attain optimal recovery (i.e. return to work). Also to co-ordinate and support workers' attempts to mitigate secondary economic loss through effective rehabilitation.
Premium leakage	Is a subset of system leakage
Recoveries	Under workers compensation in NSW an insurer is entitled to seek recovery from another party where the other party contributed to the injury of the worker. Examples include recoveries from a CTP insurer where the worker was

involved in a car accident while working, recovers from a product liability insurance policy where a product the worker was faulty and caused an injury to the worker (a good example is asbestos) and recovers off other workers compensation insurers which insured the employer over different periods over which the injury occurred (a good example is deafness which may have arisen over a period of 30 years from 1971 to 2001 and the employer was insured by 5 different insurers over that period).

Redemptions

Under the *NSW 1926 Workers Compensation Act* commutations were known as redemptions. Redemptions became known as commutations under the 1987 Act.

Risk free rate of return

In the actuarial valuation of the scheme's outstanding claims liabilities the future liability cash flow (i.e. future claims payments) are discounted using an appropriate interest rate. The interest rate normally used is the risk free rate of return being the market interest rate on Government bonds for the length of the liability cash flows. APRA (Australian Prudential Regulation Authority) in the amendments recently pasted to the *Insurance Act* require the use of the risk free rate of return for discounting all insurers claims liabilities (note APRA does not apply to the NSW workers compensation scheme liabilities under the managed fund).

Section 66 benefit

Is compensation for permanent injury (e.g. loss of an eye, loss of an ear) and is sometimes referred to as a Table of Maims. The benefit paid is calculated as a percent of the maximum amount of \$100,000 with the percent depending on the nature and extent of the injury.

Section 67 benefit

Is compensation for Pain and Suffering and is equivalent to the non-economic loss benefits paid under common law. Like Section 66 the loss is based on a table and is a percent of the maximum amount of \$50,000 with the percent depending on the extent of the pain and suffering. Claimants can only gain access to Section 67 compensation if they pass a threshold being the ability to receive compensation of at least 10% of the maximum amount under Section 66.

Section 66 and Section 67 benefits are referred to as Statutory lump sum payments.

System leakage

Leakage is a vague term and can refer to a variety of different matters and have different interpretations. In its simplest form it can refer to employees receiving compensation that they strictly should not have received and to employers that strictly have under paid premiums. Both situations adversely impact the financial status of the scheme and there are many, many examples. Leakage occurs from the actions of many stakeholders in the scheme including employers, employees, WorkCover, insurers, doctors, lawyers, and all others. Leakage can refer to direct fraud or to avoidance or to malingering and other views. Employer and employee fraud is one form of leakage. Examples of direct fraud include a worker claiming compensation for an injury that did not occur and an employer under declaring wages or not insuring for workers compensation or an employer deliberately using the wrong industry classification for premium calculation. Other examples of leakage include workers staying on compensation when they are strictly well enough to return to work using doctors medical certificates to substantiate the injury, employer splitting the company into smaller legal entities to reduce premiums paid, putting pressure on insurers to reduce case estimates to reduce the employers

premium, incorrect classification of employer industry classification by insurers. Insurer's poor management is the cause of leakage and can include poor claims management, not undertaking wage audits of employers, not following WorkCover guidelines on case estimating. WorkCover poor management of insurers and stakeholders is a form of leakage. An example is not taking action to improve insurer management of claims.

Abbreviations

1987 Act	<i>Workers Compensation Act 1987</i>
1998 Act	<i>Workplace Injury Management and Workers Compensation Act 1998</i>
2001 Act	<i>Workers Compensation Amendment Act 2001</i>
APLA	Australian Plaintiff Lawyers Association
APRA	Australian Prudential Regulation Authority
CFMEU	Construction, Forestry, Mining and Energy Union
IRG	Industry Reference Group
OH&S	Occupational health and safety
Scheme	NSW Statutory Workers Compensation Scheme
Sheahan Report	Report of the Commission of Inquiry into Workers Compensation Common Law Matters, August 2001
WCRS	Worker Compensation Resolution Service
WorkCover	WorkCover Authority of NSW

Chapter 1 Introduction

Referral of inquiry

1.1 On 28 June 2001 during debate in the Legislative Council on the *Workers Compensation Legislation Amendment Bill 2001 (No 2)*, the House passed a resolution referring the following terms of reference to General Purpose Standing Committee No 1:

1. That General Purpose Standing Committee No. 1, have the following functions:
 - (a) to monitor the financial position of the workers compensation scheme under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*, and
 - (b) to monitor and review the implementation and operation of the *Worker's Compensation Legislation Amendment Bill 2001 (No. 2)*, as finally passed by the Parliament,
 - (c) to investigate and report on the efficiency of the operation of the workers compensation system and the administration of the WorkCover Authority,
 - (d) to monitor the impact on premiums of the Bill.
2. That the Committee be authorised to engage the services of:
 - (a) an actuary, who is a member of the Institute of Actuaries of Australia, and
 - (b) an accountant, who is a member of the Institute of Chartered Accountants in Australia or the Australian Society of Certified Practising Accountants,
 for the purpose of advising and assisting the Committee, as the Committee thinks fit, in relation to the Committee's functions.
3. That the Committee:
 - (a) provide interim reports to the House each 3 months, and
 - (b) finally report to the House by 30 June 2002.
4. Nothing in this resolution authorises the Committee to investigate a particular compensation claim¹

Conduct of this inquiry

1.2 Reporting requirements stipulated in the Committee's terms of reference require provision of interim reports every three months (three in total) and a final report by 30 June 2002.

1.3 The Committee identified the date of assent by the Governor of New South Wales to the *Workers Compensation Amendment Legislation Bill 2001 (No 2)* as the date at which the Committee commenced its review and monitoring functions with respect to this legislation and other parts of the terms of reference.² The Committee has agreed to the following timetable for completion of its interim and final reports based on the original assent date of 17 July 2001.

Table 1.1 – Inquiry reporting timetable

Report	To be completed on or before
--------	------------------------------

¹ *Minutes of the Proceedings of the Legislative Council*, No 111, 28 June 2001, Item No 21. Resolution passed by the Legislative Council based original motion of Mr Gallacher MLC as amended by the motion of Rev Nile MLC.

² *Minutes of the Proceedings of General Purpose Standing Committee No 1*, No 57, 6 July 2001, Item No 4.

First interim report	17 October 2001
Second interim report	17 January 2002
Third interim report	17 April 2002
Final report	28 June 2002 (as 30 June 2002 is a Sunday)

- 1.4** The Committee has endeavoured to facilitate broad community and stakeholder involvement in the inquiry process through three avenues: advertising in print media calling for public submissions; writing to stakeholders inviting them to formulate questions that may be asked of WorkCover and inviting witness to appear at public hearings.

Advertising terms of reference

- 1.5** The Committee agreed to advertise its terms of reference in diverse range of print media at national, state and regional levels to encompass the broadest range of readership. A list of the publications and advertising details are presented as Appendix 1.

Stakeholder questions and questions on notice to WorkCover

- 1.6** The Committee identified and wrote to 32 individuals, organisations and interest groups inviting them to formulate questions that may be directed to WorkCover prior to the Committee's initial public hearing. The benefits of this process were threefold, firstly to provide stakeholders with an opportunity to direct questions to WorkCover through the Committee inquiry process, secondly for the Committee to develop a better understanding of stakeholder's key concerns and WorkCover's responses to them and thirdly to enable the Committee and WorkCover to have a more informed discussion at its first public hearing. The Committee directed 41 questions (a number of which had sub parts) from stakeholders to WorkCover, with the Authority providing detailed responses well within the standard 35 day time frame for answers to parliamentary questions.
- 1.7** The Committee has incorporated various parts of WorkCover's responses to stakeholder questions in discussion within later chapters of this report. Details of the Committee's questions and WorkCover's responses to questions are presented as Appendix 2.
- 1.8** Questions on notice arising out of the first hearing on 24 September 2001, and responses received to date are presented as Appendix 3.

Engagement of actuarial and accounting services

- 1.9** Part 1 (a) of the Committee's terms of reference requires the Committee to monitor the financial position of the WorkCover Scheme Statutory Funds. The nature of this task is technically complex involving review of current and previous actuarial assessments undertaken by actuaries employed by WorkCover. The Committee recognised the importance of actuarial and accounting advice in undertaking its review and monitoring functions for the inquiry and in developing sound recommendations that are envisaged to improve the financial position of the WorkCover Scheme Statutory Funds.
- 1.10** In accordance with part 2 of the Committee's terms of reference the Committee investigated opportunities to engage actuarial and accounting services. The Committee prepared specifications outlining the work required and invited the following seven experienced actuarial and accounting organisations to submit work proposals: Andersen; Deloitte Touche Tohmatsu (incorporating Trowbridge Consulting); Ernst and Young ABC; KPMG; PriceWaterhouse Coopers; Taylor Fry, and Tillinghast-Towers Perrin.

- 1.11** As a result of a merit based selection process based on criteria identified in the bid specifications the Committee engaged Ernst and Young ABC (Ernst & Young) to provide actuarial and accounting assistance for the first three interim reports with an option to assist in preparation of the fourth and final report. A copy of Ernst & Young's first report to the Committee appears as Appendix 4.
- 1.12** The Tillinghast-Towers Perrin (WorkCover's actuaries) valuation of the WorkCover Scheme as at 30 June 2001, provided to the Committee by the Minister, the Hon John Della Bosca MLC, appears as Appendix 8.

Submissions

- 1.13** The Committee received 17 submissions to the inquiry, four of which were from private citizens. The remaining 13 were received from private organisations/interest groups. A list of the submissions is presented as Appendix 5.

Public hearings

- 1.14** The Committee conducted two public hearings in preparation for its first interim report. The first hearing conducted on 24 September 2001, involved a presentation by the Hon John Della Bosca MLC, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations and officers of WorkCover and subsequent examination by the Committee. The second hearing undertaken on 10 October 2001 included representatives of various stakeholder groups including the Labour Council of New South Wales, Australian Plaintiff Lawyers Association, Injuries Australia and QBE Insurance. A full list of witnesses appears as Appendix 6.
- 1.15** Witnesses at the Committee's hearings agreed to take a number of questions on notice providing further information to the Committee than what was possible at the time of their appearance. The Committee found this process useful in obtaining additional and more technical information that may not normally be presentable orally.

Minutes of the proceedings of the Committee

- 1.16** The Committee considered the Chairman's draft first interim report at its meeting on 15 October 2001. The Minutes of the Proceedings of the Committee, presented as Appendix 7, detail relevant resolutions and activities of the Committee over the course of the inquiry from inquiry establishment to completion of its first interim report.

Further reports

- 1.17** The Committee's inquiry process for the second and third interim reports will be similar to that of its first, involving research, assessment of stakeholder views, inviting witnesses to appear at public hearings and Committee analysis. Whereas the first interim report is general in nature so as not to limit discussion, Committee investigations for its second and third interim reports will be focussed on specific themes. For example, in the second interim report the Committee proposes to include a detailed investigation of the Scheme's actuarial reports. Evidence and witnesses with particular areas of expertise will be invited to assist the Committee in its inquiry. Proposed contents of the second and third interim reports and final reports are outlined in Chapter 4 of this report.

Structure of this report

- 1.18** As with many industry fields there are a number of key terms and concepts within workers compensation that have specific meaning and relevance. The Committee has undertaken to present a number of these in a Glossary at the front of this report to assist readers.
- 1.19** The body of the report consists of four chapters. Chapter 2 provides an overview of the workers compensation system in New South Wales including the current financial position of the WorkCover Scheme Statutory Funds and briefly outlines recent legislative reforms to the workers compensation system in New South Wales.
- 1.20** Chapter 3 provides an insight into the key issues that stakeholders have identified as being of particular importance to the inquiry. Part of the Committee's strategy of seeking these views in the early stages was to assist the Committee in developing priority areas of examination in its subsequent interim reports and final report.
- 1.21** Chapter 4 depicts the Committee's key areas of interest and intended areas of focus for the second and third interim reports and final report.

Relevant reference material

- 1.22** The Committee recognises the significant investigative and reform work undertaken in respect to the NSW Workers Compensation Scheme and WorkCover. In particular the Committee draws attention to the following reports that have been instrumental in reforms of the industry in recent years:
- *Review of the WorkCover Authority of New South Wales*, Council on the Cost of Government, 1996.
 - *Inquiry into Workers' Compensation System in NSW, Final Report*, KPMG, 15 September 1997, R. J. Grellman
 - *The Future of the New South Wales Workers' Compensation Scheme*, NSW Parliamentary Library Research Service, briefing paper 8/2001, R Callinan, June 2001.
 - *Analysis of trends in NSW workers' compensation common law claims*, PriceWaterhouse Coopers, 2001.
 - *Commission of Inquiry into Workers Compensation Common Law Matters*, Justice T Sheahan, 31 August 2001.

Chapter 2 Overview of the workers compensation system in New South Wales ³

- 2.1** The discussion in this Chapter reflects the law at October 2001. It does not take into account changes that were contained in the *Workers Compensation Amendment Act 2001* which commence on 1 January 2002 (the 2001 Act). The Committee's terms of reference include monitoring the 2001 Act. For this reason the main reforms are outlined at the end of this Chapter at para 2.34.
- 2.2** Compensation for an injury sustained at work in New South Wales is available as either common law damages or under the statutory workers compensation scheme. The employment situation is unique in having a statutory system of benefits which are payable to an injured worker regardless of fault (a "no-fault scheme").⁴ Anyone who operates a business that employs workers or engages contactors must obtain a workers compensation insurance policy. While financial compensation is an important part of the workers compensation system, the Committee agrees with submissions and evidence received that the primary aim of the system is rehabilitation of the injured worker for return to work.
- 2.3** The NSW statutory workers compensation scheme (the Scheme) is governed by two principle Acts – the *Workers Compensation Act 1987* (the 1987 Act) and the *Workplace Injury Management & Workers Compensation Act 1998* (the 1998 Act), and regulations and other statutory instruments made under those Acts. The Acts cover different parts of the system and therefore need to be read together.
- 2.4** The 1987 Act provides that an injured worker is required to elect whether to claim common law damages or make a claim for permanent loss (non-economic) damages under the Act.⁵ Once made, an election can not generally be revoked. A common law action cannot be commenced within six months of giving notice of the injury (unless an employer admits liability), and must be commenced within three years from the date of the injury, except by leave of the court.⁶

³ This Chapter relies heavily on NSW Parliamentary Library Research Service Briefing Paper No 8/2001, *The Future of the New South Wales Workers' Compensation Scheme* by Rachel Callinan.

⁴ Such no-fault statutory schemes were established because very few injured workers could establish that their injuries resulted from the fault of others (for example employers). No other area of personal injury – motor car, health care, product liability or occupier, pay damages in the absence of proof of fault: Commission of Inquiry into Workers Compensation Common Law Matters, *Report* (the Sheahan Report), August 2001, page 6.

⁵ Under Division 4 Part 3 of the 1987 Act. An election in favour of the common law is made by commencing proceedings in a court to recover damages, or by accepting payment of those damages, in which case the person ceases to be entitled to permanent loss compensation in respect of the injury (1987 Act, section 151A(3)(a)). An election in favour of permanent loss compensation is made by commencing proceedings in the Compensation Court to recover permanent loss compensation, or by accepting payment of permanent loss compensation, in which case the person ceases to be entitled to recover damages in respect of that injury (1987 Act, section 151A(3)(b)).

⁶ 1987 Act, sections 151C; 151D & 151W.

Common law damages

History

- 2.5** The right of an injured worker to make common law damages claims against his or her employer was abolished under the 1987 Act.⁷ However, there was strong opposition to this reform, and common law damages were reinstated, albeit in a much restricted form in 1990.⁸ While there have been some minor amendments since 1990, the modified right to common law damages remains essentially the same today as introduced in legislation in 1989.

Damages

- 2.6** At common law there are two main types of damages available – those for economic loss and those for non-economic loss. In certain circumstances damages for domestic and nursing services, interest on damages, damages for psychological or psychiatric injuries and aggravated damages may also be payable. Exemplary or punitive damages, designed to punish defendants in specific circumstances, have been abolished in relation to workplace injuries compensable under workers compensation legislation.
- 2.7** An injured worker can only make a claim for damages for economic loss if the worker has suffered a serious injury, or died as a result of the injury.⁹ The amount that may be awarded may be limited in a number of ways: if the worker was earning a weekly amount higher than the weekly amount prescribed by the Act, the court must treat the worker's earnings as being the same as this amount, and when assessing future loss of earning capacity, a discount rate of five per cent is applied to counter the benefit of receiving a lump-sum payment.
- 2.8** To be eligible for non-economic loss damages, the amount of non-economic loss suffered by the injured worker must exceed \$44,600. If an injured worker meets this threshold and negligence is established, the amount of damages to be awarded is a proportion of the maximum amount payable, determined by the severity of the injury. The 1987 Act contains a formula to reduce the amount of damages payable if the amount of non-economic loss falls between \$44,600 and \$59,700. The maximum amount payable must not exceed \$252,550.¹⁰

⁷ Statutory benefits were increased to include a 'pain and suffering' component, to compensate for damages no longer available under the common law.

⁸ The whole of Part 5 of the 1987 Act was repealed and substituted. The new provisions contained significant restrictions on the right to seek common law damages. A common law claim could be brought, but only where certain economic and non-economic loss thresholds had been met. The effect of these restrictions was to shut out smaller claims and to limit the amount of non-economic loss payable.

⁹ 1987 Act, section 151H(2A). A 'serious injury' is one for which compensation is payable under section 66 of the 1987 Act, for loss or losses resulting from the injury, in the opinion of the court, of not less than 25% of the maximum amount payable under the Table of Disabilities, or an injury for which common law damages for non-economic loss are not less than \$59,450. Where a death occurs a representative of the worker may make a claim.

¹⁰ These amounts are adjusted to take into account rises in the CPI on 1 April and 1 October each year. The amounts which apply in an individual case are the amounts payable at the date of the injury.

Statutory scheme

2.9 New South Wales has had workers compensation legislation since 1910 when the *Workmen's Compensation Act 1910* was enacted. This Act was replaced by the *Workers Compensation Act 1926*, which introduced compulsory workers compensation insurance, licensing and regulation of insurers. This scheme remained virtually unchanged until the mid-1980s. The *Workers Compensation Act 1987* repealed and replaced the 1926 Act and put in place a radically different workers compensation scheme which forms the basis of the current scheme. In 1998, the *Workplace Injury Management and Workers Compensation Act 1998* (the 1998 Act) was passed. The two Acts are to be read in conjunction as they cover different aspects of the workers compensation system.

Structure

2.10 Workers compensation insurance is compulsory for all employers who employ workers in New South Wales. The workers compensation scheme in New South Wales is a managed fund administered by the WorkCover Authority of New South Wales (WorkCover). Under the scheme, licensed insurers are responsible for calculating insurance premiums, issuing policies, collecting premiums and administering claims. There are currently nine insurers licensed by WorkCover to undertake these functions.¹¹ There is also an increasing number of self-insurers who do not pay premiums to WorkCover but manage their own fund, although they are regulated by WorkCover in the sense that the rules that apply to the scheme apply to these funds. There are currently 16 self-insurers that make up approximately 30% of the scheme. There are also specialised insurer funds including the bush fire fighters fund and the emergency and rescue workers fund, and the Treasury Managed Fund which is the main fund that looks after public sector employees.¹²

2.11 The Committee notes that the term 'insurer' is often used to refer to these licensed insurance companies, yet these companies are not in fact insurers insofar as they do not underwrite any workers compensation insurance policies.¹³ However, for the purposes of this and subsequent reports, the Committee will continue to use the term 'insurers' to refer to these nine licensed insurance companies.

2.12 WorkCover is a statutory corporation with responsibility for managing the state's workplace safety, injury management and workers compensation systems and administering relevant legislation.¹⁴ WorkCover is also responsible for ensuring compliance with workers compensation and occupational health and safety legislation. It is governed by a Board of Directors consisting of the General Manager and six part-time Directors. The Workplace Occupational Health and Safety Council and several Industry Reference Groups are located within WorkCover.

¹¹ The nine (9) licensed insurers are: Allianz Australia Workers Compensation NSW Ltd; CGU Workers Compensation (NSW) Ltd; Employers' Mutual Indemnity (Workers Compensation) Ltd; GIO Workers Compensation (NSW) Ltd; NRMA Workers Compensation (NSW) Pty Ltd; NRMA Workers Compensation (NSW) (No 2) Pty Ltd (formerly HIIH Workers Compensation (NSW) Pty Ltd); QBE Workers Compensation (NSW) Ltd; Royal & Sun Alliance Workers Compensation (NSW) Ltd, and Zurich Australian Workers Compensation Ltd.

¹² Evidence of Ms Kate McKenzie, General Manager WorkCover, 24 September 2001, pages 7-8 (proof).

¹³ Private underwriting of the scheme was due to commence on 1 October 1999. It was deferred, initially to 1 October 2000 and then to a date to be proclaimed by the Governor. If and when private underwriting of workers compensation insurance comes into affect it means that the risk will be transferred from the current managed fund to the private sector. Insurers will no longer be fund managers for WorkCover but will be responsible for the financial underwriting of the scheme. WorkCover will continue to license insurers, self-insurers and specialised insurers and will still be funded by contributions from the insurers.

¹⁴ The list of legislation administered by WorkCover is long. For a full list see WorkCover's *Annual Report 1999/2000*, Appendix 4. This is available on WorkCover's website at: www.workcover.nsw.gov.au.

2.13 The purpose of the Workplace Occupational Health and Safety Council is to facilitate the participation of stakeholders in the workers compensation scheme.¹⁵ It comprises worker and employer representatives, medical and legal practitioners and insurance, injury management and occupational health and safety experts. The Council's key function is to provide advice to the Minister on occupational health and safety issues, workers compensation and injury management. The purpose of the Industry Reference Groups (IRGs) is to develop industry specific solutions for significant workplace occupational health and safety issues, so as to reduce the frequency and severity of workplace accidents and reduce the cost of workers compensation.¹⁶ The functions of the Workers Compensation Premiums Rating Bureau are to submit to WorkCover a proposed methodology to be used for the calculating of risk premiums, to provide advice, statistical and actuarial information on scheme performance and costings, and provide costing estimates in relation to any proposals for change, and to provide advice in the development of workers compensation insurance industry standards.

Dispute resolution

2.14 There are two dispute resolution forums in the scheme. The Workers Compensation Resolution Service (WCRS) was established in 1997 to provide workers, employers and insurers with a fast and inexpensive service that facilitates dispute resolution by bringing together all parties in an informal process to achieve a fair agreement. It does not have the authority to settle disputes. Sixty per cent of all disputes are resolved by the WCRS. The Compensation Court of NSW has jurisdiction under the 1987 Act to resolve workers compensation disputes arising from a work related injury suffered by a worker in New South Wales or in some circumstances outside the State. The Court administers medical panels constituted under the 1987 Act and also has a review or appellate jurisdiction. Proceedings for compensation are commenced by way of an Application for Determination. The Court deals with an average of 20,000 matters each year.

Eligibility for benefits

2.15 To be eligible for benefits under the Scheme, a person must be a worker and must have suffered an injury as defined in the legislation.

2.16 Under section 4 and Schedule 1 of the 1998 Act, a person is a worker who enters into or works under a contract of service or apprenticeship with an employer, or a deemed worker as described by the Act. Examples of a deemed workers are outworkers, taxi drivers, contractors, sales representatives and casual or part time workers.

2.17 "Injury" is defined in section 4 of the 1998 Act to be a personal injury arising out of or in the course of employment and includes a disease contracted by a worker where the employment was a contributive factor to the disease or the aggravation, acceleration, exacerbation or deterioration of any disease, where the employment was a contributing factor.

2.18 The worker must establish that the injury arose out of the employment or in the course of employment. This means that, generally, all injuries suffered at work are covered. Some injuries caused

¹⁵ The Committee acknowledges that the 'stakeholders' in the workers compensation scheme is strictly limited to employers and employees. Other participants in the scheme, including insurers, medical and legal practitioners, injury managers and occupational health and safety experts are often referred to as 'service providers'. However, the term 'stakeholder' is given a wider definition in this and subsequent reports to refer to all participants in the scheme and the organisations that represent them.

¹⁶ There are 13 IRGs: rural; retail; mining; utilities; wholesale; construction; business services; transport & storage; consumer services; industrial manufacturing; consumer manufacturing; health & community services and government administration & education.

by activities undertaken for mixed purposes or sustained outside normal working hours may also be covered. Benefits are also payable for injuries received on a normal journey to or from work or during an authorised recess as long as the worker did not expose him or herself to an abnormal risk of injury.

Benefits

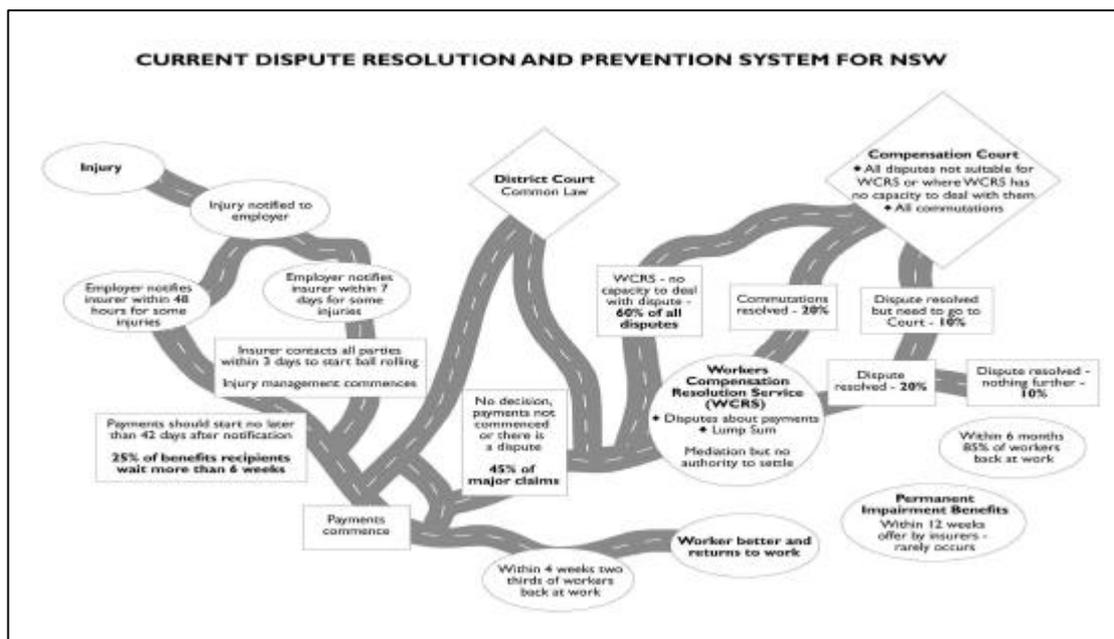
- 2.19** The main benefit payable under the 1987 Act is a weekly payment during the period that the injured worker is incapacitated for work. This amounts to the worker's award rate for the first 26 weeks, not including overtime, shift allowances or penalty rates. After 26 weeks the amount is the statutory amount per week. The total weekly payment is not to exceed the worker's actual weekly rate (ie the award rate paid for the first 26 weeks).
- 2.20** Costs for reasonably necessary medical or related treatment, hospital treatment, ambulance service or occupational rehabilitation and related travel are to be paid for by the injured worker's employer and recoverable from the scheme.
- 2.21** An injured worker who suffers permanent incapacity of part of the body or faculties as a result of a work related injury is entitled to receive compensation for the loss. This compensation is payable in addition to any other compensation under the 1987 Act. The benefit payable is determined by reference to the Table of Disabilities, which accords each loss (for example loss of a finger or thumb, loss of a foot or loss of hearing or sight) a percentage of the maximum loss that can be received. For example, loss of the thumb of the right hand entitles the injured worker to 30% of the maximum, set at \$100,000 since 1997 for a single loss and \$121,000 for a multiple loss. These payments are known as 'Section 66 benefits'.
- 2.22** An injured worker who suffers a loss mentioned in the Table of Disabilities is also entitled to additional lump sum compensation for pain and suffering resulting from the loss, not exceeding \$102,000 (this maximum amount is payable only in the most extreme cases). Compensation is only payable if the amount payable for permanent loss or impairment of a body part is at least 10% of the maximum amount payable under the Table of Disabilities.¹⁷ These payments are known as 'Section 67 benefits'.¹⁸
- 2.23** Other benefits include death claims, specific benefits for industrial deafness and compensation for personal items damaged in a work related accident (an example is an injured worker's sunglasses).

Claims procedure

- 2.24** The following flowchart illustrating the current claims procedure, dispute resolution and prevention systems for New South Wales was provided to the Committee by WorkCover:

¹⁷ Pain and suffering is defined in the 1987 Act as actual pain or distress or anxiety suffered or likely to be suffered by the worker, resulting from the loss concerned or from any necessary treatment. The Act makes the distinction between an injury and a loss resulting from the injury. It is only the pain and suffering as a consequence of a loss resulting from the injury which is compensable, not the pain and suffering consequent on the injury itself.

¹⁸ Section 66 and Section 67 payments are defined in the Glossary at the front of this Report.



- 2.25** With respect to compensation for permanent impairment, the injured worker must write to the insurance company handling the claim and enclose a medical report which gives an assessment of permanent loss or loss of use, expressed as a percentage (for example 10% of the left little finger). The insurance company may accept the worker's doctor's assessment and pay the appropriate benefit, or it may refer the worker to a doctor of their choice for an opinion, or a medical panel or mutually agreed independent medical practitioner for an independent assessment of the worker's percentage disability.¹⁹

Insurance and premiums

- 2.26** Anybody who operates a trade or business and employs workers and/or engages contractors who are or may be deemed workers, is obliged to possess a current workers compensation policy from a licensed workers compensation insurer.²⁰ The penalty for non-insurance is a fine of up to \$55,000 and/or six months imprisonment. There is also the possibility of an additional penalty of double premiums as well as the cost of any claims paid on the employer's behalf. If an employer is not insured, an injured worker can make a claim under the Uninsured Liability and Indemnity Scheme, in which case WorkCover pays out claims and recovers money from the employer.
- 2.27** Insurers calculate the premiums payable by employers.²¹ The basic premium is a percentage of an employer's payroll. All employers are assigned with an industry classification based on the description of their trade or business provided on their insurance proposal. The insurers use official classifications that are published by WorkCover in the Insurance Premiums Order. The percentage paid differs depending on the employer's business classification. Examples of the basic premium rates are:

- sheep farming 12.10%;

¹⁹ WorkCover website:

http://www.workcover.nsw.gov.au/faq/faq_wcim.html?wob_id=1736&wob_pnt_code=&action=display, downloaded 5 October 2001 (copy with Committee Secretariat).

²⁰ Although these companies are often referred to as 'insurers', the Committee notes that they are in fact licensed insurance collection/claims management agents. The insurer in the scheme is WorkCover.

²¹ The information on premiums is based on information contained on the WorkCover website, www.workcover.nsw.gov.au and WorkCover's publication *Outline of the NSW Workers Compensation Premiums Scheme – 2001/2002*, also available on the WorkCover website.

- pet boarding and kennels 1.17%;
- ice cream manufacturing 7.2%;
- newspaper printing 2.54%;
- hardwood and other timber logging 15%
- non residential building construction 9.86%
- tiling and carpeting services 9.86%;
- scaffolding services 12.1%
- watch and jewellery retailing 1.20%, and
- real estate agents 0.71%

2.28 The average collected premium rate as a percentage of wages for 2000/2001 was 2.76% (including NTS/GST).²²

2.29 At the beginning of each insurance period, an employer must provide the insurer with an estimate of the wages that the insurer will pay in the next 12 months. This forms the basis for the calculation of premium. At the end of the period, the employer must provide its insurer with a declaration of the actual wages paid during the year. The insurer will calculate a final or actual premium based on this information. If it is different to the estimated premium already paid, there will be an adjustment payment or refund. Premiums may be adjusted to take into account the employer's past claims experience. There are also schemes under which employers can have their workers compensation premiums discounted for verified implementation of specific workplace safety and injury management systems and procedures, and which reduce premiums for employers who employ workers who have incurred a workplace injury with a previous employer. In addition to their premium, all employers pay a separate dust diseases levy which is used to fund compensation to people who contract a dust disease, including asbestosis and silicosis, and to their dependants. Specific work activities with a higher dust diseases risk attract a higher levy rate.

Financial position of the scheme

2.30 The financial position of the Scheme has been reported to be \$2.76 billion deficit at 30 June 2001.²³ With respect to the level of deficit, the Committee has received submissions and heard evidence questioning the reported \$2.76 billion deficit and the actuarial methodologies and assumptions that formed the basis of the calculation.²⁴ The following analysis of the financial position of the scheme was prepared for the Committee by the Committee's consultant actuaries, Ernst & Young. The report in its entirety is presented as Appendix 4. This report is the opinion of Ernst & Young only and does not represent the opinions of the Committee. The Committee intends to investigate the size of the deficit and actuarial methodologies employed by the WorkCover actuaries in calculating their projections in its forthcoming reports.

²² Tillinghast –Towers Perrin, *Actuarial Review of the Outstanding Liabilities of the WorkCover Scheme Statutory Funds as at 30 June 2001*, Volume 1, 26 September 2001, page 66.

²³ R Wainwright, 'Compo debt heading for \$3bn-plus', *The Sydney Morning Herald*, 26 September 2001.

²⁴ Submission No 7, NSW Law Society, 14 August 2001, page 2; Submission No 8, Australian Plaintiff Lawyers Association, 15 August 2001, page 1; Submission No 10, Housing Industry Association, 17 August 2001, page 7; Submission No 17, NSW Bar Association, 28 August 2001, page 1; Evidence of Mr John Wynyard, Chairman, Workers Compensation Group, APLA, 10 October 2001, pages 52-55 (proof); Evidence of Ms Allison Robertson, Member, Workers Compensation Group, APLA, 10 October 2001, pages 53-55 (proof).

FINANCIAL POSITION OF SCHEME**Scheme Deficit**

2.1 *Having reviewed the scheme actuarial reports to December 2000, a very brief review of the scheme actuarial reports at June 2001 and additional information presented at the first hearing by WorkCover (excluding questions on notice) we have the following comments:*

- *The Scheme's financial position has deteriorated substantially during the year to June 2001 with the deficit increasing from \$1,589m at June 2000 to \$2,756m at June 2001 an increase of \$1,167m (73%). The deficit increased by an average of \$3.2m per day over the year.*
- *The main reasons for the increase in the deficit in the year to June 2001 according to the scheme actuary are:*
 - *growth in common law claims in excess of expectations*
 - *adverse claims experience for commutations*
 - *adverse claims experience for legal expenses*
 - *inadequate premium collections.*

2.2 *The Scheme deficit will continue to grow significantly, even if there is no further deterioration in Scheme's claims experience in excess of the actuary's assumption. The Scheme's actuary has projected the deficit will increase by about \$500m per year as shown in the following table:*

Scheme Actuary's Projected Scheme Deficit		
Balance Date	Deficit \$m	Funding Ratio* %
June 2001	2,756	70
June 2002	3,228	67
June 2003	3,747	65
June 2004	4,293	63
June 2005	4,866	60
June 2006	5,468	68

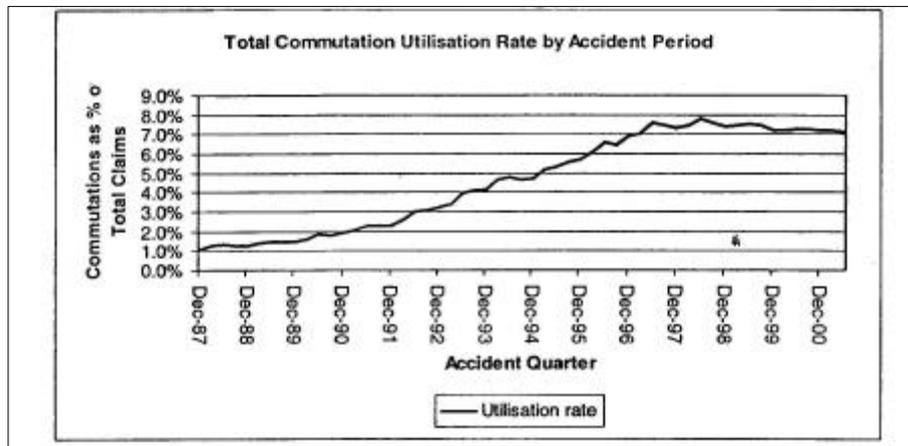
The funding ratio is the ratio of the Scheme's assets to its liabilities and it is projected to fall from 70% at June 2001 to 58% at June 2006.

This forecast is the result of continuing inadequate premium collections and lost investment income on the amount of the deficit.

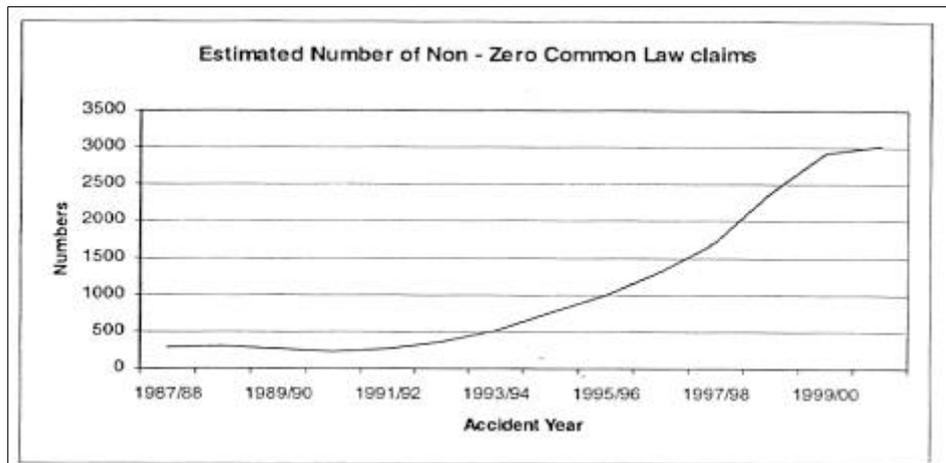
2.3 *Since June 2001 there have been significant changes to the economic environment with bond yields decreasing by about 1.5% a significant fall in the sharemarket and a poorer unemployment situation and outlook. These factors combined with an inadequate premium rate have probably resulted in an increase in the Scheme deficit at 30 September 2001 beyond Tillinghast's projections.*

Common Law and Commutations

- 2.4 *The Scheme's claims experience during the last year has demonstrated significant adverse trends compared to previous years and consequently could perhaps be described as somewhat unstable. The Scheme's actuary has found claims experience deteriorating in excess of his projections. This instability combined with many Scheme changes over the last few years, increases the uncertainty in estimating the Scheme's liabilities.*
- 2.5 *The Scheme actuary highlights the considerable uncertainty in estimating the outstanding claims liabilities for common law and commutations. They have assumed the ultimate proportion of claims with commutations will stabilise at a little over 7% in accident periods 1997 to 2001. This has become an important assumption as it is now acknowledged that commutations have a negative financial impact on the Scheme's funding position. Hence, if actual commutations exceed the actuary's expectations the growth in the scheme deficit will increase. The Scheme actuary's assumptions taken from their latest report are replicated below.*



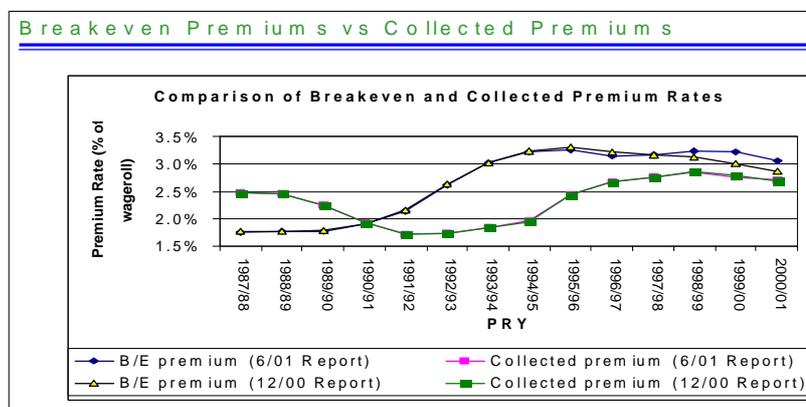
- 2.6 *For common law the Scheme actuary is assuming the number of ultimate common law claims will stabilise in accident year 2000/2001 after very substantial deterioration during the last six years of about 35% per annum. Again, this is an important assumption as common law claims have a significantly higher average claim size than non-common law claims. Actual common law claims exceed the actuary's expectations the growth in the Scheme deficit will increase. The Scheme actuary's assumptions taken from their latest report are replicated below*



- 2.7 *If the rate of deterioration experienced in the past continues into the future for both common law and commutation then the Scheme actuary's estimate of outstanding claims liabilities will probably require a significant increase with a consequent increase in the Scheme deficit.*

Breakeven Premiums vs Collected Premiums

2.8 The following graph provided by the Scheme actuary compares the breakeven ("B/E") and collected premium rates over the history of the Scheme based on the actuary's assumptions at December 2000 and June 2001.



2.9 Our main observations on the graph are:

- The difference between the B/E premium at December 2000 and June 2001 clearly shows the deterioration in the Scheme's expectations in 1998/99 to 2000/01.
- Despite numerous changes to the Scheme since the mid 1990's there appears to have been no significant reduction in the Scheme claims costs.
- The difference between premiums collected and the Scheme costs have been fairly constant during the last four years.

Recent legislative reforms

2.31 Acknowledging the financial state of the scheme, the Minister for Industrial Relations, the Hon Della Bosca MLC, outlined a 10-point plan to reform and/or restructure the scheme in a Ministerial Statement to Parliament on 8 June 2000.²⁵ The Minister identified ten broad goals of his reform programme:

1. To market incentives to reduce the incidence of workplace injury.
2. To encourage insurers and employers to actively participate in injury management, and early return to work programmes.
3. To reduce the level of disputes, and resolve legitimate benefits disputes as quickly as possible and at minimum cost.
4. To develop and implement medical treatment models.
5. To provide accurate and timely information to scheme participants to meet their needs and enable them to fulfil their obligations.
6. To control professional fees and ensure that the workers compensation scheme and its participants get best value for money.
7. To develop mechanisms for the gradual removal of existing cross-subsidies.

²⁵ Hon Della Bosca MLC, Minister for Industrial Relations, *NSW Parliamentary Debates*, 8 June 2000, page 6879. The statement is reproduced in full in the Sheahan Report at Appendix M.

8. To develop strategies to retire scheme deficit.
9. To assess the use of industry-based schemes and self-insurance as a means of achieving better outcomes.
10. To develop strategies to target employer compliance.²⁶

2.32 The first phase of reform in 2000 centred on corporate governance reforms and reforms of claims handling procedures. It also included provision for the premium discount scheme and a new industry classification system. The first phase also provided for the merger of the Occupational Health and Safety Council and the Workers Compensation Advisory Council to form the Workers Compensation and Workplace Occupational Health and Safety Council.

2.33 Legislation to implement the second phase of reform, aimed at saving the scheme up to \$300 million a year and therefore reducing the deficit, received assent on 17 July 2001. The *Workers Compensation Legislation Amendment Act 2001* makes extensive reforms to commutation procedures, assistance for injured workers, lump sum compensation, claims procedures and dispute resolution mechanisms. It was as part of this Act's passage through the Legislative Council that the Sheahan Inquiry into common law matters was established and this Inquiry was constituted, to review and monitor the New South Wales workers compensation scheme.²⁷

2.34 WorkCover has provided the Committee with the following overview of the recent reforms to the NSW workers compensation scheme. The overview is provided for information purposes only and may not reflect the considered opinion of the Committee which is still to investigate these matters.

Reform of the New South Wales Workers Compensation Scheme

The New South Wales Workers Compensation Scheme is designed to provide immediate assistance to injured workers without having to prove that someone is at fault. However, even though the number of workers compensation claims is decreasing, and the severity of injuries is decreasing, the costs are rising at an unsustainable rate.

The management of claims is poor, injured workers are staying off work longer and the level of disputed claims is much higher in NSW than in other States. All this leads to the cost of claims continuing to rise.

In 1998 the Government introduced reforms to address the deteriorating financial position of the WorkCover Scheme. There have been positive results from the 1998 reforms. The numbers of new claims are trending down and the deteriorating trend in return to work rates has halted.

While the 1998 reforms have delivered some savings, the level of these savings has not been sufficient to bring costs below the current average premium rate and thus impact on the accumulated deficit.

The scheme is failing injured workers by imposing lengthy delays and costly disputes. There is significant uncertainty over the payment of medical bills and insufficient attention to injury management.

In June 2000 the Minister, the Hon John Della Bosca MLC, announced a package of major reforms to the NSW workers compensation scheme to ensure it is fair and affordable for the State's workers and employers:

²⁶ Sheahan Report, page 11.

²⁷ The reforms as introduced in the *Workers Compensation Legislation Amendment Bill 2001 (No 2)* are examined in detail in Parliamentary Library Research Service Briefing Paper No 8/2001, *The Future of the New South Wales Workers' Compensation Scheme* by Rachel Callinan, pages 25 - 49.

The package included:

1. Identification of further measures to increase the focus on injury management and early return to work
2. Review of dispute resolution processes and structures, and improved dispute prevention measures
3. Development and implementation of medical treatment protocols
4. Development of market incentives to reduce workplace injuries and encourage insurer and employer participation in injury management and early return to work programs
5. Development of strategies to meet scheme participants' needs for accurate and timely information enabling them to fulfil their obligations.
6. Additional measures to control professional fees and ensure the scheme and its participants get good value for money
7. Development of mechanisms to gradually remove existing cross-subsidies within the premium rates
8. Development of strategies to retire scheme deficit
9. Assessment of the use of industry-based schemes and self-insurance to achieve better outcomes
10. Development of strategies to target compliance

In addition, the Minister signalled the need to have new corporate governance arrangements for the NSW workers compensation scheme.

In line with the Minister's announcement, the Government has implemented the following changes to the WorkCover Scheme:

Legislation

In accordance with the recommendations of the Legislative Council Standing Committee on Law and Justice, the NSW Government enacted the *Occupational Health and Safety Act 2000*.

The OHS Regulation 2001 supports the new OHS Act. It sets out requirements for all workplaces for putting into place systems to identify, assess, control and/or eliminate health or safety risks.

It also defines the obligations of employers and others such as manufacturers, suppliers, designers, principal contractors and controllers of workplaces (including owners).

The new laws have been written in plain English and include a blueprint for putting into place systems to identify, assess, control and/or eliminate health or safety risks.

WorkCover understands that some employers are not well equipped to manage risk and prevent workplace injuries and has therefore implemented a number of initiatives to help them manage their risk:

Transitional arrangements

While the new Act and Regulation take effect from 1 September 2001, there will be a transitional period of 12 months to implement the key new provisions. Small employers (with fewer than 20 employees) have a two-year period to implement the risk management requirements of the Regulation.

Public Seminar program

During the past year, WorkCover NSW conducted a State-wide program of information seminars on the Draft OHS Regulation. Evaluation of this program showed a high level of satisfaction by industry with its format and content.

In December 2000, the *Workers Compensation Legislation Amendment Act* amended compliance and fraud provisions. The Act also targeted dispute resolution with the aim of reducing the number of disputed workers compensation claims by, for example, requiring information about a claim to be exchanged before conciliation begins.

In June 2001, the *Workers Compensation Legislation Amendment Act 2001* made significant changes to dispute resolution and compliance measures. The Act establishes an integrated dispute resolution service (the Workers Compensation Commission).

The Commission will be headed by an independent Judge (President) and will provide:

- expedited assessment of disputes about medical expenses, suitable duties & return to work plans and weekly benefits;
- assessment of disputed medical issues by approved medical specialists;
- arbitration of disputes before legally qualified arbitrators; and
- determination of appeals by the President.

The Act will also reduce the likelihood of unnecessary disputes by providing for the acceptance of provisional liability, with safeguards that it will not prejudice the insurer's ability to cease payments if it is later found that the worker was not entitled to compensation.

The Act establishes a Claims Advisory Service to help injured workers and employers "navigate the system", and a Claims Assistance Service (WorkCover Assist) to help workers and employers understand their rights and responsibilities, and to help resolve and conciliate disputes at the workplace (WorkCover will also fund the provision of these services through unions and industry groups).

Injury Management Pilots

This initiative is aimed at identifying and achieving best practice in claims and injury management. Four injury management pilots began in January 2001, covering industry (private hospitals and nursing homes – Warrakanji Care Integration), Regional (Central West NSW – Central West Injury Management Service); and two licensed insurers (QBE and EML). Steering Committees were formed which consisted of stakeholder representatives for all groups, and pilot initiatives advised via employer information sessions.

Medical Management Pilots

WorkCover has begun a program aimed at working closely with medical practitioners to ensure they have the best and most up-to-date information on managing work injuries, and can integrate the medical management of injury with return to work activity.

The practical assistance given to general practitioners will mean better outcomes for injured workers, with more returning to their original employment.

Premium Discount Scheme

On 30 June 2001 WorkCover introduced a Premium Discount Scheme (PDS) to encourage employers to improve occupational health and safety (OHS) and injury management (IM).

The PDS offers discounts on workers compensation premiums (for a maximum of three years) for employers who meet WorkCover's OHS and IM benchmarks. In the first year an employer may receive a discount of up to 15% (to a maximum of \$75,000), in the second a discount of up to 10% (maximum \$50,000) and in the third year a discount of up to 5% (maximum \$25,000). WorkCover-approved Premium Discount Advisers (PDAs) will audit employers' OHS and IM systems to verify they are entitled to a discount.

By 30 June 2001, WorkCover had approved 81 Premium Discount Advisers (PDAs). More than 50% were approved to offer discounts of 15% with the rest offering discounts of 10% and 5%. In addition, over half of the PDAs are based outside the Sydney metropolitan area.

Compliance policies for the Premium Discount Scheme were developed and will be undertaken by WorkCover's Inspectorate staff.

Consultation with employers, unions, insurers and occupational health and safety and injury management specialists led to the conclusion that the PDS was not suited to all small businesses.

A small business strategy was developed for small employers -- maximum 20 full-time (or equivalent) employees, where sponsor organisations replace PDAs to verify whether employers have met benchmarks and are entitled to receive a discount (a maximum of 10% in the first two years and 5% in the third year).

Insurer Remuneration

PriceWaterhouse Coopers were competitively selected to conduct a fundamental review of the insurer remuneration package. They found that insurers are generally under-performing and their profitability is low and, to improve their performance, they need to invest significantly in staff resources and IT/infrastructure systems.

However, insurers will not invest unless they believe they will get a return on their investment. On the other hand, WorkCover will not increase remuneration if there is no improvement in performance.

PriceWaterhouse Coopers recommended a closer link between base fees and service standards, a substantial increase in the performance-based incentive fees available, and the use of insurer service standards as a basis for limiting the availability of base fees and performance fees for insurers.

A new insurer remuneration package incorporating these findings and recommendations was established. Its key focus is to provide insurers with stronger incentives for improved performance, as well as stronger penalties for continued poor performance.

The new insurer remuneration arrangements are being implemented and will apply to the 2001/02 financial year.

Timely Information

WorkCover has revamped its communication strategies to ensure that scheme participants receive accurate and timely information to enable them to meet their needs and fulfil their obligations.

Several advertising campaigns were conducted highlighting employer obligations on workers compensation insurance. Reader friendly information on the changes being made was also provided, including WorkCover website updates.

In addition, WorkCover released a web-based statistical database that enables users to research workers compensation claims by industry, sex, nature and mechanism of industry etc.

Control of Professional Fees

Regulations aimed at preventing touting for workers compensation claims that were introduced in May 2001 restrict legal advertising to the lawyer's name, contact details and area of speciality.

A new Physiotherapist Fee Schedule that took effect on 1 June 2001 establishes a physiotherapy fee schedule and review of visits after 10. This new schedule resulted from a pilot Physiotherapy Review Process that began on 1 January with the aim of improved monitoring and quality of physiotherapy services.

Premium Reform

One key reform is the gradual removal of cross-subsidies in the WorkCover Scheme premium rating system to ensure the premium rates for specific industrial and business sectors more closely reflect the cost of workers compensation claims from those sectors.

In January and February 2001, WorkCover consulted extensively with employers, unions and insurers regarding the introduction of the Australian and New Zealand Standard Industrial Classification (ANZSIC) system. Stakeholders generally supported the adoption of the ANZSIC system.

The phase-in of the new system commenced on 30 June 2001. It resulted in small premium rate increases for half the employers (in more dangerous industries), decreases for the other half (in safer industries), reflecting the pattern of cross-subsidisation under previous systems. The average premium rate of 2.8% (not including GST) or 3.15% (including GST and related costs) has been maintained.

The adoption of the new ANZSIC-based system provides a more realistic and appropriate system of industry classification, fairer premiums and clear incentives and rewards for improved occupational health and safety and injury management.

Industry-based Schemes and Self-insurance

Specialised insurers have restricted licences that allow them to underwrite specific classes of business, for example, coal mining. This category of licence was closed to new applicants under the legislation for many years. New legislation was enacted to allow industry schemes to operate if they satisfy WorkCover's licensing requirements.

This has the potential to provide greater incentives to employers to improve injury management and occupational health and safety. This will also ensure, in relevant cases, that the claim costs of that industry are borne directly by that industry.

The WorkCover Board approved new specialized insurer licensing policy for these schemes in April 2001. Following approval of the new policy, WorkCover granted StateCover Mutual Limited (a scheme for local government councils) a specialised licence to begin operations on 30 June 2001.

Inspectorate

On 28 June 2001, an additional 42 WorkCover trainee inspectors were presented with their authorities at Parliament House. WorkCover now has an inspectorate of 301, the largest of any agency in Australia. They also carry out 500-600 prosecutions each year, more than all the other States and Territories put together.

Compliance

Both premium evasion and false claims in the WorkCover scheme add to the cost of workers compensation premiums. In 2000-01 the Government introduced a number of significant amendments to enhance compliance within the workers compensation system. WorkCover's approach is even-handed, and its targeting is aimed at reducing the level of employer non-insurance and under-insurance, at the same time as decreasing fraud by claimants and service providers.

WorkCover is using a strategic approach to achieve the best outcomes for improving compliance

Targeted information and education campaigns aimed at enhancing employers' awareness of their obligations and increasing the level of voluntary compliance are being conducted.

Inspection activity of employers has been increased, including the doubling of employer wage audits.

Using a sophisticated data-matching approach, WorkCover has developed computer-based models for identifying claimants who, for example, may be illegitimately receiving benefits from several employers. Specialist fraud investigators are currently investigating suspect claimants who were identified through data matching.

WorkCover has a number of targeted compliance blitzes currently underway.

Following consultation with employers, workers and service providers, in September 2001 WorkCover released a Compliance Green Paper. The purpose of the Green paper is to discuss strategies for improving employer compliance with workers compensation insurance requirements, and to invite public comment on options for reducing non-insurance, under insurance and premium avoidance in the WorkCover Scheme. WorkCover is hopeful of receiving positive feedback from industry and other participants, and will continue to work closely with everyone concerned in order to address this important issue.

New Workers Compensation and Workplace Occupational Health and Safety Council

On 1 January 2001, The Occupational Health and Safety Council and the Workers Compensation Advisory Council merged to form the Workers Compensation and Workplace Occupational Health and Safety Council.

The Council's role is to advise the Minister on strategies for the prevention of workplace injury, injury management/return to work and compensation issue. Its members include a broad range of representatives with an interest in these matters.

WorkCover Scheme Deficit

The reforms that have been introduced by the Government will start to impact positively on the WorkCover Scheme over this year, but it will need time for these initiatives to have their full effect and for the Scheme to come back into balance.

Importantly, the reforms will see significant improvements to injury and claims management and a refocus back onto the needs of injured workers.

The Next Steps

Consultation is currently taking place with employers, workers and service providers concerning the recommendations of Justice Sheahan's common law inquiry. It is intended that legislation will be introduced to give effect to the outcome of consultation.

The Government's '3rd stage' of its reform program is intended to make the workers compensation legislation easier to understand and improve the Scheme's design.

Chapter 3 Stakeholder perspectives

The Committee has received submissions and evidence from stakeholders and the public which identify several key areas of concern:

Workers compensation models

- 3.1** Mr John Katsogiannis, private citizen, drawing on experience as current NSW workers Compensation Manager, QBE Insurance, made the following comments in relation to how a privately underwritten scheme would view current premium levels:

As you know, the scheme at the moment, the average rate is far too low for the cost of claims. The average rate, tariff rate, premium rate, which is 2.8 per cent, is too low for the claims costs. If we were to look at it purely on historical information, you would have to say that premiums would rise to a certain extent. I am not quite sure to what level. However, if legislation were to be introduced that could address and stop the flow of claims then that could be a different scenario.²⁸

- 3.2** Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, discussed his view of the role of WorkCover and insurers:

Anyone involved in the scheme would have to take some responsibility for the current situation. There needs to be an acknowledgment within the New South Wales system that there is one insurer. I hear people talking about insurers but the reality is that there is only one insurer, called WorkCover. From what I have seen in recent times WorkCover is starting to see itself needing to monitor the scheme the way an insurer would, because it is the insurer. Organisations referred to as insurers are agents that have a monopoly on being agents in New South Wales. They are not insurers in this scheme.²⁹

- 3.3** Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, made the following comments about private underwriting and its applications in other jurisdictions:

A number of the insurers privately—not stated publicly—when private underwriting went off the agenda would have breathed a sigh of relief. There is no evidence in Australia to suggest that there have been any real successes in relation to private underwriting of disability. Look at what happened in CTP in New South Wales recently. Neither of the major pushers for a privately underwritten scheme in New South Wales exists in this State today. They probably would if you had privatise the system because you would have given them a lifeline for the next few years. There are probably one or two insurers who could do it well at any given point in time but it is long tail business and it is very difficult to manage profitably.

It comes under pressure for cash flow in terms of setting a price today that gets the cash in the door. It is very difficult to understand what the claims costs might be in the future if the legislation changes and certain economic pressures change. We are perhaps heading into a recession in New South Wales. There will be a significant downturn for workers compensation during that time. On the other hand, I have a fairly strong view that the best people to go into business with are the ones who stand to lose as much as you do. In a perfect world I would have to say that private underwriting is probably the best solution. But it is not a perfect world and I do not think we have seen any clear examples of how it has worked successfully in Australia or, for that matter, the world.³⁰

²⁸ Evidence of Mr John Katsogiannis, private citizen, (NSW workers Compensation manager, QBE Insurance), 10 October 2001, p 28 (proof).

²⁹ Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 10 October 2001, p 38 (proof).

³⁰ Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 10 October 2001, p 39 (proof).

3.4 Ms Alison Robertson, Member, Workers Compensation Group, APLA, raised questions on the assumptions used to estimate the financial position of the Scheme:

I think it is important, if the Committee is employing its own actuary to look at the financial side of things, that the emphasis must be on looking at the assumptions that are fed into the calculations because that changes everything. If you feed in an assumption that every injured worker will be paid for 40 years with weekly payments, then you will get an enormous claims cost figure, but if you feed in an assumption that a worker would only be paid for five years, it dramatically changes the whole outcome. One of the things that needs to be looked at is what actually happens in the real world. It is all right to say that the legislation theoretically provides for someone to be on weekly compensation from the time that they are injured until the time they retire, but you have to look at how, in the real world, that operates. Is that really what is happening? Are people remaining on benefits for that length of time?³¹

3.5 Mrs Mary Yaaggar, OH&S and Workers Compensation Co-ordinator, Labour Council of NSW identified Wisconsin as model for the Committee to consider for workers compensation and the role of the advisory council:

It does not have a deficit. It has had an advisory council since 1911. It was enshrined in legislation in 1951. It has a workers compensation court with judges. I think it has 19 judges. It is a scheme pretty much the same size as New South Wales'. People will tell you there are cultural differences. But that scheme has been operating at around 3 per cent. When all of the other schemes in America blew out—New York, Texas, California—Wisconsin is the only one that remained stable and viable.³²

Insurers incentives

3.6 Mr John Katsogiannis, private citizen, (current NSW workers Compensation Manager, QBE Insurance), explained that the insurance industry is reasonably happy with the new remuneration package negotiated with WorkCover.³³ He later added:

The new remuneration package has a potential to earn more money. But most of our portfolios, you outlay capital and you get a return on equity on that capital. We are nowhere near those sorts of returns in the New South Wales managed fund. We do not outlay capital, but if you use our expenses as capital, a return on our expenses we do not come anywhere near the returns we get in our other portfolios. It is not lucrative.³⁴

Scheme management

3.7 The Hon John Della Bosca MLC, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations, highlight two important areas of consideration for managing the Scheme:

They are the two fundamental things that seemed to be wrong with the scheme, and fairly evidently so, back on 31 March 2000. Indeed, the assumption that I had made as Minister—the Government has proceeded along with that presumption—was that the adversarial nature of the scheme, the lack of a focus on the treatment of injured workers and the lack of focus on a return to work, the shifting of the adversarial emphasis through common law into the statutory scheme as well, and so the expansion, has rather exacerbated and complicated the dispute resolution process and has contributed

³¹ Evidence of Ms Alison Robertson, Member, Workers Compensation Group, APLA, 10 October 2001, p 48 (proof).

³² Evidence of Mrs Mary Yaaggar, OH&S and Workers Compensation Co-ordinator, Labour Council, 10 October 2001, p 4 (proof).

³³ Evidence of Mr John Katsogiannis, private citizen, (NSW workers Compensation manager, QBE Insurance), 10 October 2001, p 28 (proof).

³⁴ Evidence of Mr John Katsogiannis, private citizen, (NSW workers Compensation manager, QBE Insurance), 10 October 2001, p 31 (proof).

to that fiscal deterioration. Rather than try to tackle fiscal deterioration in isolation, we wanted to again make the scheme serve injured workers, make the emphasis of the scheme the proper and appropriate return to work of injured workers, with proper and direct compensation for them and identification of impairment and their treatment. It was a rather bold assumption, but nonetheless I think an appropriate assumption, that the fiscal aspects of the scheme would start to right themselves as the essential objectives of the scheme came back into focus.³⁵

3.8 Ms Kate McKenzie, General Manager, WorkCover, identified to the Committee the role of WorkCover:

WorkCover's role, as spelled out in the *Workplace Injury Management and Workers Compensation Act* makes WorkCover responsible for promoting injury prevention in the workplace in the development of healthy and safe workplaces; the promotion of prompt, efficient and effective injury management to help workers to get back to work as safely and as quickly as possible; regulating insurance arrangements and monitoring and reviewing the financial performance of the scheme; regulating service providers to make professional standards and to deliver innovative, efficient and value-for-money services; monitoring the operation and effectiveness of the scheme; and providing the Minister with policy and technical advice.³⁶

I think it is important to set out those objectives at the commencement of my presentation because often WorkCover is criticised for not delivering on things for which is not WorkCover's role to deliver.

3.9 Mr George Cooper, Director, Injuries Australia, discussed issues in relation to claim form administration in other jurisdictions:

In Victoria the worker does not go to the boss and say, "Give me an insurance company claim form." The WorkCover makes it available. You can even get them in post offices in country towns and it is for the injured person to fill in, not the boss. The form is in triplicate—one for WorkCover, one for the boss, the other to keep. The employer has to complete a separate form to go to WorkCover. Immediately the first form from the injured person turns up, if there is no match on the screen of an employer who has the appropriate insurance, they act. The employers know this, so there is far less twisting going on in Victoria.

In Queensland you do not approach the insurance company and ask for a proposal to take out insurance; you get one from WorkCover and you nominate the insurance company you wish to use. It is immediately lodged with WorkCover and WorkCover knows about it all along. Their records are so much better than they are here. We believe there could be as many as 50,000 injuries a year not reported to WorkCover. That is because of this circumvented way of begging the boss for a form, completing it, giving it to him and he giving it to the insurance Company. Meanwhile people are not getting paid and have used up all their holiday pay. We know what is going on, but it does not happen in Queensland or Victoria. We believe that all the WorkCover Authority has to do is look at other jurisdictions, see the good points, pull them out and put them into use straight away. There should be action straight away.³⁷

3.10 Ms Kate McKenzie, General Manager, WorkCover, noted issues surrounding management of claim numbers:

At the end the day, the amount of premium that is collected is pre-determined. The number of claims that occur are the number of claims that occur. We can try to influence that by prevention initiatives, by fixing up the dispute resolution system and by all the other reform initiatives that we have under control. But in terms of individual claims, the insurers are managing the individual claims. We regulate the insurers, so indirectly we can have an impact on that. That is why we are looking at things like provisional liability and insurer remuneration. There are a lot of players in this scheme. At the end of

³⁵ Evidence of the Hon John Della Bosca, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations, 24 September 2001, p 2 (proof).

³⁶ Evidence of Ms Kate McKenzie, General Manager, WorkCover NSW, 24 September 2001, pp 5-6 (proof).

³⁷ Evidence of Mr George Cooper, Director, Injuries Australia, 10 October 2001, pp 42-43 (proof).

the day we are a regulator of the scheme. We give advice to the Government about the design of the scheme and we do the best we can. But, as you put it, there are some inevitabilities about what results we will get depending on the number of claims we ultimately get, how well they are managed and how much premium is collected.³⁸

3.11 Ms Kate McKenzie, General Manager, WorkCover, made the following comments in relation to self insurers:

Some people would argue—this is just a theory and there are probably many—that one of the reasons why self-insurance arrangements tend to be more efficient is that there is a more direct relationship. People who are self-insured normally have much smaller arrangements. A company that is self-insured and that knows every one of its workers is in a much better position. It does not have a third party insurer in the middle of it all. It has a direct relationship with its employees, it usually knows who they are and, therefore, it is in a much better position to manage those things more directly.

Similarly, with the Treasury managed fund, which effectively operates like a self-insurer, I am not sure whether it is any more or less efficient than the statutory fund, but it is one employer looking after its pool of employees without the intervening third party role of the insurers in the rest of the scheme. The rest of the scheme is much bigger; it is much more difficult to manage communications between players in the scheme. It is much more difficult to manage claims on an individual level than it is for smaller self-insured arrangements.

That is one of the reasons why we have recently liberalised the rules about self-insurance. But we have to be careful that they have adequate prudential requirements. One of the risks of self-insurance is that if a company goes into liquidation we must be sure that it has enough funds set aside to manage its ongoing book of claims. Once again, it is about getting that balance right. One of the explanations is that self-insurers have a much closer relationship with their work force.³⁹

Early intervention

3.12 The former Claims Operations Manager at WorkCover South Australia, Mr Fred Norris, drew attention to the importance of early intervention in his submission to the Inquiry:

Early intervention is the most important strategy in returning injured workers to work. Incentive schemes should reward employers for report injuries not by hiding injuries through various administrative and cultural practices in the workplace. A no-claim bonus approach will at the very least delay the lodgement of claims while the employer determines whether or not paying for the claim costs will be cheaper than lodging the claim. The delay in lodging claims dramatically impacts upon the duration of the incapacity and the potential to successfully return the injured worker to work successfully, because case managers will not be able to assess the need for intervention let alone appropriate intervention.⁴⁰

3.13 Mrs Mary Yaagger, OH&S and Workers Compensation Co-ordinator, Labour Council of NSW supported the importance of early intervention in keeping costs to the scheme down:

In terms of the future of the scheme, I do not believe that the path the Government is taking is the correct one. Probably my colleagues the employers on the advisory council will agree with me that in any workers compensation the focus has to be on early intervention. You have to get people back to work. You have to stop injuries occurring in the first place. It is not looking at the tail end, once somebody is injured and is compensated, how we can reduce that amount. It is getting the system right in the first place.⁴¹

³⁸ Evidence of Ms Kate McKenzie, General Manager, WorkCover NSW, 24 September 2001, p 18 (proof).

³⁹ Evidence of Ms Kate McKenzie, General Manager, WorkCover NSW, 24 September 2001, p 23 (proof).

⁴⁰ Submission No 11, Mr Fred Norris, 18 August 2001, p 3.

⁴¹ Evidence of Mrs Mary Yaagger, OH&S and Workers Compensation Co-ordinator, Labour Council, 10 October 2001, p 4 (proof).

Dispute resolution

3.14 The Hon John Della Bosca MLC, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations, made the following comments:

Since becoming Minister for WorkCover, the principal problems for employers, especially medium-size employers, that I have identified, are, first, that often many good ethical employers are frustrated by this process. They want to deal fairly with their employee and manage the injuries and claims much more effectively, but with claims management they are often isolated and alienated from the insurance company itself. A number of people who operate a small business have asked me "Why did they settle that claim? It was not an appropriate settlement", or "Why are they refusing the claim? I know that the worker was genuinely injured."

In that sense the employers are referring to their own insurance policies, given the way that the scheme operates. Therefore, there is an alienation from the insurance company, in effect, in dealing with claims against the premiums. The second principle problem faced by employers is that even when they do the right thing and seek to put in place better occupational health and safety measures, measures to control risk and identify hazards—or prevent hazards, which is what an excellent workers compensation scheme would have as a principle and guiding characteristic—they are frustrated and not given proper support by the system.⁴²

3.15 Mr John Katsogiannis, private citizen, (current NSW workers Compensation Manager), QBE Insurance, outlined the insurers' perspective on disputed claims:

But I can say that it does cost the scheme money when you dispute a claim. So, by accepting a claim up front you are saving a lot more money than disputing the claim.⁴³

3.16 Mr John Wynyard, Chairman, Workers Compensation Group, APLA, made the following comments in relation to new arbitration mechanisms schedule to be introduced under the new *Workers Compensation Legislation Amendment Act 2001*:

The other thing to bear in mind is that arbitrators are not necessarily legally qualified—that is section 369—and neither are medical assessors necessarily registered medical practitioners or doctors. That is section 324. That means that a lot of very complex issues are going to be decided by people who fit the Minister's criteria. They can be either a legally qualified medical practitioner or someone the Minister thinks fit, or a legally qualified person or someone the Minister thinks fit. There is no transparency. In a follow-up, if you want to see what an arbitrator has decided, there is no judgment and there is no record of what happened. You get a certificate, and a certificate can be accompanied by a short statement. That is all you get.

That in itself makes appellate rights that exist in this new system a bit of a quandary, because the appellate rights will be revealed on what happened below. If the only record you have of what happened below is a certificate, you will not be able to establish very much on appeal. They have not even thought about any system of recording whatever procedure occurs in the lower levels. That is to say, in the primary level where the arbitrator or the medical assessor deals with it. So, you, as a Committee, looking at what is going on, have no chance, there is no record.

The other matter that militates in favour of getting a system in place now while you can see what the issues are is the procedure involved. The arbitrator has a number of optional procedures. He can see all the parties, he can see some of the parties, he can see an expert witness without seeing others, or he can see none of them, he can sit at his desk and do it all on paper. What is more alarming and, if I may say so, fairly un-Australian, is that the medical assessor, be he doctor or not, can demand that the applicant be examined by him. In other words, the poor old worker is standing in front of them and the doctor can say, "Take your shirt off, mate", poke him around and then sit down as a judge and

⁴² Evidence of the Hon John Della Bosca, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations, 24 September 2001, p 4 (proof).

⁴³ Evidence of Mr John Katsogiannis, private citizen, (NSW workers Compensation manager, QBE Insurance), 10 October 2001, p 27 (proof).

make a decision on him. Again, there is no procedure to record what goes on and the result is a decision on a certificate. So, this new procedure can hardly be said to be transparent.⁴⁴

Commutations

3.17 Mrs Mary Yaagger, OH&S and Workers Compensation Co-ordinator, Labour Council of NSW stated the Labour Council of NSW's views on commutations:

There is a problem with commutations because there is no strategy in place and nobody is overseeing and making sure they are doing the right thing.⁴⁵

3.18 Mrs Yaager went on to add:

You need commutations. In my research in any scheme, in California or any scheme, you certainly need commutations. However, you have to make sure that they are properly targeted. You just cannot allow open slather. That is part of the problem now, that there is a blow-out in that area.⁴⁶

3.19 Mr Katsogiannis, private citizen, (current NSW workers Compensation Manager, QBE Insurance), identified commutations as an area in need of review with the potential to applying it in a more selective manner:

It has been a number of years since commutations were introduced, and I think it is time, like anything, to review what we have implemented. That time is just about right to review commutations, certainly not to remove them totally but, perhaps, be more selective in our choices.⁴⁷

3.20 In relation to cross checking for fraudulent behaviour by workers claiming for injury post commutation, Mr Katsogiannis noted:

There is a database that WorkCover has that we can access, and we do that if necessary. Whether it is foolproof, is another matter.⁴⁸

Injured workers' interests

3.21 Mr Fred Norris, former Claims Operations Manager at WorkCover South Australia, stated in his submission to the Inquiry:

⁴⁴ Evidence of Mr John Wynyard, Chairman, Workers Compensation Group, APLA, 10 October 2001, pp 44-45 (proof).

⁴⁵ Evidence of Mrs Mary Yaagger, OH&S and Workers Compensation Co-ordinator, Labour Council, 10 October 2001, p 9 (proof).

⁴⁶ Evidence of Mrs Mary Yaagger, OH&S and Workers Compensation Co-ordinator, Labour Council, 10 October 2001, p 9 (proof).

⁴⁷ Evidence of Mr John Katsogiannis, private citizen, (NSW workers Compensation manager, QBE Insurance), 10 October 2001, p 29 (proof).

⁴⁸ Evidence of Mr John Katsogiannis, private citizen, (NSW workers Compensation manager, QBE Insurance), 10 October 2001, p 30 (proof).

Community experience suggests that we ... are forced by insurance practices to make decisions about claiming against our insurance policies... The potential for premium incentives and penalties is to place pressure on injured workers not to submit claims and secondly for employers not to pass the claims on to the insurer.⁴⁹

Premium levels

- 3.22** The proprietor of a bakery in Orange since March 1990 supports the introduction of a no-claim bonus scheme on premiums and “the re-introduction of the long abandoned grading of employees for premium rating purposes according to the degree of risk”.⁵⁰

It [the NSW workers compensation scheme] seems to me to be a system that “screws” employers like us, and there would be thousands of the, to make up for the revenue lost and costs as a result of “rorting” of the system by employers, employees and lawyers alike.⁵¹

Rehabilitation

- 3.23** Mr Richard Gilley from The RiskNet Group noted in his submission to the Inquiry:

In workers compensation, the anecdotal evidence is that many doctors are, or have been guilty of aiding and abetting fraud through exaggeration. Most medical practitioners don't see it that why, they claim that they are acting on their professional and experience based judgment.

Some however, appear to have done so quite deliberately in order to maintain their business relationship with their patient. Many have admitted to this. The workers compensation system does not hold the doctors accountable, they are never pursued through the Courts because exaggeration of a symptom is hard to detect.⁵²

- 3.24** The value of rehabilitation was emphasised by occupational physician Dr John Graham in his submission to the Inquiry:

It needs to be understood by all parties that high compensation costs may benefit a minority of workers but come at a cost in terms of employment of their colleagues, in particular the least skilled. Lower awards, better targeted at deserving claims, and with more efficient medical and rehabilitation management in the absence of legal "oversight", will lead to better outcomes for both employees and employers at a cost to some lawyers and doctor (including myself). The outcry of the self-interested "advocates" should be seen for what it is, and disregarded.⁵³

WorkCover efficiency

- 3.25** Mr Greg Pattison, General Manager of Workplace Solutions at Australian Business Limited outlined in his submission to the Inquiry:

The general impression of employers is the WorkCover Authority is not as efficient as it might be.

⁴⁹ Submission No 11, Mr Fred Norris, 18 August 2001, page 1.

⁵⁰ Submission No 2, Mr P Woods, 7 August 2001, page 1.

⁵¹ Submission No 2, Mr P Woods, 7 August 2001, page 4.

⁵² Submission No 4, Mr Richard Gilley, The RiskNet Group, 13 August 2001, page 1.

⁵³ Submission No 3, Dr John Graham, Graham Occupational medicine Pty Ltd, 7 August 2001, page 2.

In relation to workers compensation specifically, the Authority is viewed as being bureaucratic, inflexible and generally insensitive to the realities facing businesses, particularly smaller businesses. Its operations are not regarded as transparent and the operational environment enables both service providers, particularly insurers, and officers of the Authority to appear to avoid accountability,

The Authority appears to have a workers compensation vented view of its environment, which in turn seems to restrict its ability to approach its tasks in ways which successfully engage employers and others.⁵⁴

3.26 The Housing Industry Authority, in its submission to the Inquiry stated:

Workcover's dual role as regulator and administrator of the Scheme has the potential to create inefficiencies as well as conflicts of interest. There is an argument to suggest that the regulatory and administrative functions that WorkCover currently perform should be separated with the administrative functions being performed by an organisation established along corporate lines.⁵⁵

Compliance

3.27 Ms Kate McKenzie, General Manager, WorkCover, discussed the extent and possible cost of non-compliance:

I would not want people to go away with an exaggerated view of how much the scheme might gain from these activities. In our recent blitzes we found, where we have looked at particular industries, the level of non-compliance is very low. We are lucky if 1 per cent of employers are not insured. So, there has to be a bit of balance in these. We are trying to make sure that the level of activity and the level of resources we are investing gets the maximum return we can and is commensurate with the risk to the scheme. It is easy for people to say you could be collecting enough to wipe out the deficit if you did this properly. All the objective evidence suggests that that is just nonsense. We will get a few million dollars back into the scheme, hopefully into the tens of millions if we do this well, but I would be shocked if it goes beyond that. All the objective evidence from the blitzes we have done is that the level of non-compliance in particular is very low. Most employers do the right thing.⁵⁶

3.28 Mr Rod McIness, Assistant General Manager, Insurance Division, WorkCover, elaborated on Ms McKenzie's comments:

Certainly the building industry has a worse record. Just to quantify some of these things, in non-insurance we pay out approximately \$10 million on uninsured claims each year. That compares to total scheme payments of well over \$2 billion. So that is roughly 0.5 per cent. On additional premium collected through underinsurance, last year we found an extra \$15 million in premiums. Again, that is less than 1 per cent of the total premium collected of about \$2.5 billion. So, we have relatively small percentages across the whole scheme. Certainly the numbers in construction, I would expect, would be higher. If I am not held to account exactly, from recollection, I would have thought the non-insurance in the construction industry is in the order of about 2 per cent. Underinsurance, I would have thought, again is probably higher than average but I do not know that it would be 10 per cent based on the numbers we have to date.⁵⁷

3.29 Mr Andrew Ferguson, State Secretary, CFMEU, provided considerable evidence to the Committee identifying various forms of non-compliance.

⁵⁴ Submission No 6, Mr Greg Pattison, General Manager of Workplace Solutions at Australian Business Limited, 14 August 2001, page 2.

⁵⁵ Submission No 10, Ms Elizabeth Crouch, executive Director -NSW, Housing Industry Association, 17 August 2001, page 9.

⁵⁶ Evidence of Ms Kate McKenzie, General Manager, WorkCover NSW, 24 September 2001, p 25 (proof).

⁵⁷ Evidence of Mr Rod McIness, Assistant General Manager, Insurance Division, WorkCover NSW, 24 September 2001, p 25 (proof).

...There is a crisis in terms of compliance. There is a need for an inquiry into what is going on. Tax phoenixing is a very major problem. It goes hand-in-hand with workers compensation fraud and payroll tax non-compliance. We believe that workers comp non-compliance is 40 per cent on building sites and that payroll tax non-compliance is 50 per cent plus. People will generally have workers comp policy because if they do not have a policy and a worker is injured, they might get sued. They generally have a piece of paper and a policy, but it is never a correct declaration of wages for all workers. They might cover one worker rather than 20 workers. They generally have a policy. The problem is not non-insurance; it is fraudulent, underinsurance.⁵⁸

3.30 In response to a question from the Chair seeking an estimate on the quantification of non-compliance for the workers compensation scheme, Mr Andrew Ferguson, State Secretary, CFMEU stated:

It is very hard to make that estimate but I certainly base it on my experience in the construction industry. The level of compliance is worse in contract cleaning in the rural sector. There is definitely hundreds of millions of dollars which is revenue, but the far more important issue from our point of view is fair competition and a level playing field. Companies that comply with the law either break the law to survive or will go out of business, and it is just so unsustainable for the Government to allow what is going on.⁵⁹

Premium avoidance

3.31 Occupational therapist Dr John Graham noted in his submission to the Inquiry:

The current premium structure is already responsive to employers claim experience. For middle size employers one or two large claims can have a dramatic effect on premiums, which are often already threatening the viability of their business.

As a result many strategies have been put in place by employers to lower their claims costs in order to lower their future premium. Some of these involve safety programs - generally of little effect because most compensation claims do not arise from identifiable or rectifiable workplace hazards. Some involve intensive efforts at vocational rehabilitation, with returns possibly outweighing costs.

Less legitimate strategies involve suppression of claims by various mechanisms - denying that a worker is covered (depending on worker ignorance), paying treatment and time-off costs directly rather than processing a claim, or by direct threats.⁶⁰

Other comments

3.32 Mr George Cooper, Director, Injuries Australia, made the following comments:

We are extremely unhappy with the results achieved under the workers compensation system. It is not good for injured workers. We are seeing the results now. Nothing has changed. I am sure that the Committee would be aware that since the upper House set up this inquiry another 24 people have died violently at work in New South Wales, and another 100 have died from injuries, poisoning and other work mishaps over the past two years. That is at an enormous cost to the industry. Industry is paying for these injuries. Nothing changes.⁶¹

3.33 Not all views from stakeholders contained criticisms of WorkCover and the workers compensation scheme. For example, consultant occupational physician Dr Ian Gardner stated in his submission:

Overall, I am happy with the performance of NSW WorkCover and its ongoing attempts to improve the management of the Workers Compensation scheme.

⁵⁸ Evidence of Mr Andrew Ferguson, State Secretary, CFMEU, 10 October 2001, p 9 (proof).

⁵⁹ Evidence of Mr Andrew Ferguson, State Secretary, CFMEU, 10 October 2001, p 14 (proof).

⁶⁰ Submission No 3, Dr John Graham, Graham Occupational medicine Pty Ltd, 7 August 2001, page 1.

⁶¹ Evidence of Mr George Cooper, Director, Injuries Australia, 10 October 2001, p 40 (proof).

3.34 Similarly, the submission received from the Australian Psychological Society Ltd was positive about WorkCover:

Our general impression of the WorkCover Authority (WCA) is positive. Its leadership seems positively oriented to the ideals and aspirations of the government, and generally to work constructively with employer bodies and the unions, eg through the Advisory Council. Its attempts to reform the legislation and administration of the Workers Compensation system seem to be driven *inter alia* by concerns about delivering good services to IWs as well as by finding ways to contain rising costs (which its General Manager attributes in large part to increased length of time of IWs on benefits). Its general level of administration appears to us as outside observers to be sound.⁶²

3.35 Mr John Wynyard, Chairman, Workers Compensation Group, APLA, suggested that consideration should be given to a longer term strategy for review and monitoring of the scheme and the new Act:

The life of this Committee expires in the middle of next year. As you will hear in a minute, we see no problem with WorkCover arranging things so that the comparisons look excellent until you are gone and then once you are gone the belts get tightened considerably.

One thing we would also ask you to consider is whether you can put some protocol in place that will continue to monitor the situation once you are gone.⁶³

⁶² Submission No 14, Dr Lyn Littlefield, Executive Director The Australian Psychological Society Ltd, 20 August 2001, page 9.

⁶³ Evidence of Mr John Wynyard, Chairman, Workers Compensation Group, APLA, 10 October 2001, p 44 (proof).

Chapter 4 Inquiry strategy

In accordance with the Committee terms of reference the Committee will be presenting quarterly reports until the scheduled completion of the inquiry on 30 June 2002. Upon completion of this first interim report, the Committee will work toward provision of a second interim report by 17 January 2002, a third interim report by 17 April 2002 and a final report by 30 June 2002.

- 4.1** The Committee' terms of reference 1 (a) – (d) identify four functions for the Committee to consider.
- (a) to monitor the financial position of the workers compensation scheme under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*, and
 - (b) to monitor and review the implementation and operation of the *Worker's Compensation Legislation Amendment Bill 2001 (No. 2)*, as finally passed by the Parliament,
 - (c) to investigate and report on the efficiency of the operation of the workers compensation system and the administration of the WorkCover Authority,
 - (d) to monitor the impact on premiums of the Bill.
- 4.2** Provisions of the *Workers Compensation Legislation Amendment Bill 2001 (No 2)*, as passed by both houses of New South Wales Parliament and assented to on 17 July 2001, will come into force on 1 January 2002. From this date until June 2002, the Committee will endeavour to investigate, review and monitoring functions associated with the implementation and operation of the Act in accordance with terms of reference (b). The extent to which all provisions including administrative support and procedural documentation from WorkCover NSW and other stakeholders will be implemented and operational prior to completion of the Committee's inquiry is yet to be determined.
- 4.3** At this stage the Committee wishes to express initial concerns that there may be insufficient time to adequately conduct functions identified under terms of reference (b). As such the Committee does not envisage giving this issue priority consideration during preparation for its second or third interim reports. The Committee intends to consider the matter in its final report and will be in a position to make a more informed comment after the Act commences.
- 4.4** Related to this matter is the capacity of the Committee to effectively consider terms of reference (d). The *Workers Compensation Legislation Amendment Bill 2001 (No 2)*, as passed by both houses of New South Wales Parliament and assented to on 17 July 2001, has a number of measures designed to reduce the cost of workers compensation premiums including provisions for a no claim bonus system to be adopted. Timing for implementation and operation of the legislation will affect the nature of any changes to premiums. It is the Committee's initial view that implications for premiums from the legislation may not be observed in totality for two or three years. To this end the Committee will assess the impact on premiums as part of its final report but not consider the matter as a priority for its second and third interim reports.
- 4.5** For the second and third interim reports the Committee will investigate matters associated with parts 1 (a) and 1 (c) of the terms of reference.
- 4.6** The Committee recognises that the issues involving workers compensation are numerous and interrelated. Further, the Committee is aware of the considerable amount of review and analysis undertaken by the NSW Government in recent years with respect to parts of the workers compensation scheme and operation of WorkCover NSW, which it does not wish to duplicate.⁶⁴ In

⁶⁴ Reports of relevance are identified at the end of Chapter 1 (para 1.20).

this context and drawing from issues identified by stakeholders in preparation of this report, the Committee intends to focus on the following matters for its second and third interim reports:⁶⁵

4.7 Factors contributing to the efficiency and financial position of the Scheme

- Delivery model
 - Delivery mechanisms
 - Design of delivery system
 - Role of insurers
 - Claim management
- Benefit design / delivery
 - Early intervention
 - Common law
 - Commutations
 - Dispute resolution (including legal, medical and other costs)
- System leakage
 - Premium leakage (under insurance, non compliance and classification)
 - Recoveries leakage (where another party has contributed to the injury)

4.8 To address these issues and manage the remainder of the inquiry the Committee envisages devoting investigations for the second interim report into matters associated with the Scheme and the third interim report for Scheme management. In the fourth and final report, the Committee will evaluate options and strategies with a view to making recommendations. An outline of the Committee's reports for the remainder of the inquiry are outlined below:

Second interim report

- The Scheme
 - Model assumptions
 - Other models (Western Australia, New Zealand, Wisconsin)

Third interim report

- Scheme management
 - WorkCover's management of the Scheme
 - Interaction between major players (including WorkCover, insurers and employers)
 - Investment management
- Options

Fourth / final report

- Evaluate options identified in 3rd interim report
 - Recommendations

4.9 The Committee welcomes comments by stakeholders in relation to the issues identified by the Committee, report outlines and proposed methodology employed by the Committee for the remainder of the inquiry. Comments may be forwarded to the Committee by the contact details listed on page iii of this report.

⁶⁵ The issues list is indicative and not exhaustive.

Appendix 1

Advertising

Committee terms of reference and
inviting submissions

Publications, position and date of advertising of committee's terms of reference

Publication	Position	Insertion date ⁶⁶	Estimated circulation ⁶⁷
National			
The Australian	Early General News	Saturday 14 July 2001	304,923
Australian Financial Review	Early General News	Saturday 14 July 2001	92,000
Metropolitan			
Daily Telegraph	Early General News	Saturday 14 July 2001	338,620
The Sydney Morning Herald	Early General News	Saturday 14 July 2001	385,000
Non-metropolitan			
Newcastle Herald	Early General News	Saturday 14 July 2001	45,253
The Land	Early General News	Thursday 19 July 2001	52,243
Illawarra Mercury	Early General News	Saturday 14 July 2001	49,658
Lismore Northern Star	Early General News	Saturday 14 July 2001	20,883
Coffs Harbour Advocate	Early General News	Monday 16 July 2001	23,120
Wagga Daily Advertiser	Early General News	Saturday 14 July 2001	15,541
Rural News	Early General News	Monday 16 July 2001	47,000
Dubbo Daily Liberal	Early General News	Saturday 14 July 2001	9,761
Orange Central Western Daily	Early General News	Saturday 14 July 2001	7,817
Town and Country Magazine	Early General News	Monday 16 July 2001	45,000
Western Magazine	Early General News	Monday 16 July 2001	59,350

Source: DPWS, Government Advertising Agency, Media Rate List, July 2000 to June 2001; AARDS, June 1999; Sydney Morning Herald pers comms 9 May 2001, The Land pers comms 9 October 2001, Audit Bureau of Circulation 2001.

The combined print media circulation of the committee's terms of reference is estimated to be 1,496,169.⁶⁸

⁶⁶ Government Advertising Agency estimate.

⁶⁷ DPWS, Government Advertising Agency, Media Rate List, July 2000 to June 2001; AARDS, June 1999; Sydney Morning Herald pers comms 9 May 2001, The Land pers comms 9 October 2001, Audited Bureau Circulation June 2001.

⁶⁸ Actual reach (or number of persons) who were exposed to the advertising would be less given duplication of readership.

Appendix 2

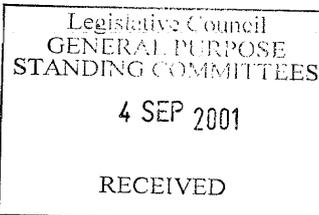
Initial Questions on Notice from Stakeholders

Initial Questions on Notice from Stakeholders



Special Minister of State
Minister for Industrial Relations
Assistant Treasurer
Minister Assisting the Premier on Public Sector Management and
Minister Assisting the Premier for the Central Coast

Reverend the Hon. F.J. Nile, M.L.C. E.D. L.Th.
Chairman, General Purpose Standing Committee No. 1
Legislative Council, Parliament House
Macquarie Street
SYDNEY NSW 2000



Dear Reverend Nile,

Thank you for your letter dated 16 August 2001 concerning the Committee's review and monitoring of the NSW Workers Compensation Scheme.

I look forward to working constructively with the Committee and hope to be able to attend the Committee's first hearing.

Please find attached a copy of WorkCover's answers to the questions asked by the Committee on behalf of the Scheme's stakeholders and service providers.

To assist the inquiry I have asked WorkCover to provide the following documents directly to the Committee Secretariat:

- WorkCover organisational structure;
- set of workers' compensation related legislation;
- WorkCover annual reports (including audited financial statements) from 1996 to the present;
- ½ yearly actuarial reports on the financial progress of the Scheme from 1996 to the present.

The Scheme's financial statements for the year ended 30 June 2001, and the actuarial report on the *Workers Compensation Legislation Amendment Act*, are currently being prepared and will be provided as soon as practicable.

It is understood that WorkCover will provide the Committee with an information seminar on the history of the Scheme, and its current key issues on 20 September 2001.

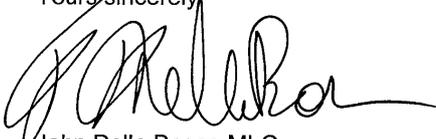
Level 30 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000, Australia
Tel: (02) 9228-4777 Fax: (02) 9228-4392 E-Mail: office@dellabosca.minister.nsw.gov.au

2

Finally, I would like to reiterate that I will make a strong effort to work constructively with the Committee, and I am confident that we can help one another to ensure that the Scheme delivers the best possible outcome for both employers and workers.

In the meantime, if you have any queries regarding the information provided, or co-ordinating seminar or hearing dates, please contact Ryan Fletcher, WorkCover's Manager Parliamentary Services in the first instance on 9370-6126.

Yours sincerely



John Della Bosca MLC
SPECIAL MINISTER OF STATE
MINISTER FOR INDUSTRIAL RELATIONS
ASSISTANT TREASURER
MINISTER ASSISTING THE PREMIER ON PUBLIC SECTOR MANAGEMENT
MINISTER ASSISTING THE PREMIER FOR THE CENTRAL COAST

- (1) Why has the WorkCover Authority not sought to control the practice of doctors protecting their own interests by certifying their patients as unfit for all duties when in the vast majority of circumstances the worker concerned would be fit for a range of alternative duties (albeit not with their current employer)?

Answer:

WorkCover has conducted numerous educational sessions for General Practitioners and some specialists groups on the WorkCover legislation and the requirements of Nominated Treating Doctors under this legislation. An educational program for General Practitioners focusing on management of low back pain is currently being piloted and this program includes additional information on legislative requirements and the role of medical practitioners within the workers compensation system.

WorkCover has also developed a training course, in consultation with insurers, to train insurer staff on working with doctors to improve outcomes for injured workers. The focus of this training is increased communication with medical practitioners to enable them to better interact with the complex workers compensation system.

WorkCover does not control the registration of medical practitioners. This is the role of the NSW Medical Board. The Medical Board does have guidelines for the provision of medical certification by medical practitioners. Complaints about medical practitioners are the responsibility of the Health Care Complaints Commission and the NSW Medical Board.

- (2) There are approximately 320,000 employers in NSW covered by WorkCover, the poor performers represent 0.15% of the numbers yet account for an estimated 20% of the costs.

The WorkCover Authority has identified the poor performers and has supposedly implemented a strategy to force them to improve their performance.

- (a) Given the above, who are the employers which would be regarded as consistently poor performers?
- (b) When did WorkCover commence working with the poor performers?
- (c) What have been the results of the case by case management of the poor performers by WorkCover's inspectorate?
- (d) What are WorkCover's proposals for dealing with the remaining poor performers?

Answer:

- (a) The employers who would be regarded as consistently poor performers' are those with higher than industry average workers compensation claims costs. This was identified in the Ratings Bureau Bad Policies Report tabled at the then WorkCover Advisory Council in June 1999. The Bad Policies Report identified 436 'poor performers'. The OHS Division undertook a further analysis of 'poor performers' based on the assumption that claims costs alone is too narrow an indicator. The OHS Division identified the following criteria as a more appropriate tool for selecting those employers who could be classified as poor performers:
 - percentage change in the numbers of claims over the past 5 years;
 - number of claims per \$1 million wages;
 - proportion of severe injuries i.e. fatalities, permanent disabilities, and temporary disabilities requiring six months or more off work; and
 - median gross incurred costs i.e. the sum of workers compensation payments plus an estimate of future liabilities.
- (b) WorkCover initiated pilot programs adopting a case management approach for poor performers in August 1999. The pilot programs continued throughout the remainder of 1999 and into early 2000.
- (c) The pilot program revealed that a case management approach using the criteria noted above has ~~serious~~ limitations. Specifically it lacks the flexibility to target employers within industry sectors that have emerging

safety management problems, because the data reflects historical performance rather than immediate issues of concern.

This is not to say that a case management approach is inappropriate. The selection criteria noted above remains one indicator amongst a series of performance measures that should be applied on an industry-by-industry basis. These may include indicators arising from the number of complaints received, the number of notices issued, concerns raised by stakeholders and so on.

- (d) On 5 June 2001 the Hon. J. J. Della Bosca advised the Legislative Council of WorkCover's premium discount scheme initiative. The scheme came into effect on 30 June 2001 and will provide the benefit of a discounted premium to those employers who demonstrate measurable improvement in their occupational health and safety, injury management and return-to-work practices. Premium discount advisers will audit employers in relation to their occupational health and safety and injury management performance, and assess whether they qualify for a discount.

Since February 2000 WorkCover's Occupational Health and Safety Division has adopted an industry-based approach. WorkCover's Service Delivery Group (inspectorate) has 7 industry based and 2 country teams. Strategies to assist industry to be proactive and to improve OHS outcomes have been developed based on profiles for each industry or sections of industry. The profiles have been developed following analysis of data on workers compensation, accident notifications, complaints, and compliance action taken. The strategies adopted have included targeted interventions and case management.

WorkCover's industry teams based approach identifies poor performers within industry sectors and enables more effective delivery of intervention programs, including advisory and education initiatives. Each industry team is delivering a range of programs to improve the performance of individual employers and/or groups of employers within the industry. By way of example the Government Team has implemented a CouncilSafe program. This program is designed to help Councils improve their OHS performance by promoting the adoption of a systematic approach to managing OHS. To date 18 Councils have been involved and the program is cascading to other Councils throughout the State. These councils are now equipped to manage the quantum of safety issues that confront them.

A narrow 'single employer' based case management strategy could not have accommodated the program nor would it have the spread and impact achieved by this strategy.

The Health and Community Services Team has to date undertaken 21 managed interventions. These projects have picked up employers who have not adequately managed issues such as violence and aggression, chemical safety and manual handling. The Manufacturing Team is working with a number of employers in machinery and equipment manufacture, wood product manufacture and food manufacture. The Retail, Transport and Wholesale Team has implemented targeted case management programs for employers in cash in transit, service stations, railways, retail, bus drivers, long haul trucking and waste management. WorkCover has adopted a more strategic approach to managing poor performers. This approach is facilitated by the OHS Division industry teams structure and revolves around performance issues that are relevant to the industry. The strategy is flexible in that it uses a combination of historical data and field based evidence. It is effective in that it applies, in a consistent way, a single risk management methodology. It is far reaching in that the approach can be applied across a number of workplaces and is therefore resource efficient. (Please note: further examples of case management initiatives are included in response to Q4).

- (3) Rehabilitation service costs have increase from \$3 million in 1987 to \$60 million in 1998 and at the same time the numbers of workers on long term benefits (six months or more) has not decreased, it has doubled form 6% to 12%.
- (a) Given the above and that the prudential management of scheme funds is a WorkCover responsibility, should the Authority not have acted to change either the delivery of services process or properly controlled the costs of that delivery?
- (b) What if any cost benefit analysis of the rehabilitation provider network has been undertaken recently?
- (c) Why does the Authority continue to insist that all rehabilitation services must be delivered by accredited providers (in effect a closed shop) where there is no accreditation of any of the other scheme service providers (doctors, lawyers, investigators, risk management consultants etc)?

- (d) What alternative rehabilitation services provision models have been investigated recently and what was the result of the investigation?

Answer:

As the Scheme has developed over time the pool of open long-term claims (i.e. claims > 6 months weekly benefits) has increased. This pool of claims is the main focus of rehabilitation activity. Rehabilitation provider services and subsequent costs have therefore increased:

92/93 –

- Total cost \$12.2 M (WorkCover Statistical Bulletin)
- Total rehabilitation cases closed - 5,224 cases (WorkCover Provider Performance Report)

98/99 –

- Total cost \$57.6 million (WorkCover Statistical Bulletin)
- Total rehabilitation cases closed - 20,610 cases (WorkCover Provider Performance Report)
- Rehabilitation payments were 2.3% of the total payments for all cases.

- (a) The standards for rehabilitation providers, the system of accreditation of rehabilitation providers and reporting on provider outcomes were reviewed and redesigned by WorkCover in 1994. These standards were then evaluated and revised in 1996 and 1999.

- (b) A study into provider costs was conducted for WorkCover in 1997 by consultants David Caple and Associates Pty Ltd and Kinhill Economics. Their findings on the increased cost from 93/94 to 96/97 included:

- There was a 74.3% increase in the number of rehabilitation cases from 93/94 to 96/97. The increase in case numbers accounted for 60% of the increase in costs. The remaining 40% increase in costs was due to increases in average costs per case.
- It was concluded that providers were handling an increased proportion of complex cases.
- WorkCover initiatives to assist workers with on the job training such as work trials had increased from 477 cases in 94/95 to 1006 in 96/97.
- Report writing, monitoring return to work and assessment costs showed the greatest increase in cost.

Since 1997, WorkCover has participated each year in a national survey of return to work outcomes. The survey looks at workers who have submitted a claim 7 or 8 months previously. Rehabilitation costs are reported on as an aspect of this survey.

The national median cost of a rehabilitation provider per claim was found in 2000/2001 to be \$975. The NSW median cost is \$1,352. Tasmania, ACT and Comcare have a higher median cost than NSW. VIC, QLD and SA have a lower median cost.

The report also shows that the participation rate for rehabilitation in NSW has been relatively stable since May 1998 – ranging from a quarter to a third of all claims at 7 or 8 months having been referred to a rehabilitation provider.

- (c) In the spirit of NSW's obligations under the NCP Agreement in 1999 another review was undertaken of the accreditation of rehabilitation providers by WorkCover. The review was conducted by a working group consisting of employer, union, insurer, self-insurer, and rehabilitation provider representatives. This working group considered the continued need for the accreditation of rehabilitation providers.

It was determined that there was a need because unlike other provider groups (eg. doctors, lawyers, psychologists, physiotherapists) there is no professional body for rehabilitation providers that registers providers and ensures professional conduct.

The Registration Boards and/or professional associations that cover all health professionals do not provide adequate coverage or monitoring of the unique work of occupational rehabilitation that is undertaken by rehabilitation providers. The standards that should apply to rehabilitation providers are also not widely understood by consumers of their services, that is, employers and injured workers.

Insurers who pay for the services of rehabilitation providers also have inadequate systems for monitoring their performance. For these reasons, it was decided to continue with WorkCover accreditation. However, WorkCover has adopted a risk management approach to their monitoring and now has increased ability to respond comprehensively to complaints as well as a better system for monitoring data provided.

Other providers in the workers compensation system are approved or registered by WorkCover. These include Injury Management Consultants, Approved Medical Specialists and Physiotherapists.

- (d) The 1999 review of accreditation determined that from September 2000:

“Accreditation will continue but only for organisations that provide employment related services involving a planned provision of a number of occupational rehabilitation services.”

The review also decided that:

“Professionals who provide single or one-off occupational rehabilitation services will not require accreditation. The list of occupational rehabilitation (OR) services, that forms part of the standards for rehabilitation providers, specifies the professionals who are qualified to provide each service. This is meant to act as a guide to employers, insurers and workers. This will not come into effect until the Regulation governing the provision of occupational rehabilitation services has been changed.”

The minimum qualifications for professionals who provide vocational assessment and counselling services is under review at the moment and when this review is finalised the Regulation will be prepared and this provision implemented.

Provider organisations have also been invited to work with WorkCover in developing standards of service provision that reflect good practice rather than the minimum levels of servicing that are covered by the accreditation standards.

- (4) Apart from some limited prevention programs in relation back injuries and agricultural safety, what is being done to prevent accidents in the Construction industry and Road Transport industries?

Answer:

As indicated in Answer 2 (d) above, since February 2000 WorkCover's Occupational Health and Safety Division has adopted an industry-based approach. WorkCover's Service Delivery Group (inspectorate) has 7 industry based and 2 country teams. Strategies to assist industry to be proactive and to improve OHS outcomes have been developed based on profiles for each industry or sections of industry. The profiles have been developed following analysis of data on workers compensation, accident notifications, complaints, and compliance action taken. The strategies adopted have included targeted interventions and case management.

A significant factor in these strategies is the intervention projects undertaken by each Industry and Country Team. Currently the Construction Team has 7 significant intervention projects underway in areas such as residential housing construction, electrical safety and noise management.

In addition, WorkCover is now finalising a major review of the impact, which the Construction Memorandum of Understanding on OHS (signed between the NSW Government and major construction companies in 1998) and other Government initiatives have had on the NSW construction industry. There are six significant intervention projects underway in the Road Transport Industry designed to address OHS issues of particular concern to that industry, including violence and work related issues affecting the safety of drivers.

On 4 July 2001 the Hon. J.J. Della Bosca MLC advised the Legislative Council of action being taken by the Government to improve occupational health and safety in small businesses in the transport and storage industry?

The Minister indicated that the Government has established industry reference groups to reduce the incidence and severity of work-related injuries and improve return-to-work rates among injured employees. The transport and

storage industry was identified as a high-risk area. Many small businesses need particular assistance to implement basic occupational health and safety systems to enable them to improve prevention and injury management for their employees. The transport and storage industry reference group recognised that these small businesses are often owner operated and have very little knowledge and understanding of the legislative requirements and how to comply with them.

To assist these small businesses the industry reference group, representing bus, coach, taxi, waste and road transport employer organisations as well as the transport unions, has produced a guide that small businesses can readily use.

The guide enables managers to obtain key information from a single document and to apply a risk-management approach to occupational health and safety. The guide is highly recommended in all areas of the transport and storage industry as it both fills a need and is user friendly. The guide continues to have high usage rates among small businesses. It is an excellent example of providing practical help to improve occupational health and safety for small businesses in the transport and storage industry. It will also assist small businesses that wish to participate in WorkCover's premium discount scheme.

- (5) Will WorkCover launch an enhanced crack-down on avoidance by some employers of:
- (a) paying any Workers Comp premium,
 - (b) incorrect classifications of the risk profile of their workers,
 - (c) incorrect wages declarations and therefore underinsurance,
 - (d) rebirthing of companies with bad Occupational Health and Safety and WorkCover records?

Answer:

The avoidance measures mentioned fall into three main areas: debt collection, under insurance and non-insurance. WorkCover's existing measures to target avoidance include:

Debt Collection

WorkCover has in place a thorough process for pursuing outstanding premium debts. Overdue premiums are referred at 45 days to a third party collection agency and are progressively escalated to ensure maximum recovery. Bad debt write-offs are low at 0.8% of premium for 1999/2000.

Under Insurance and Non Insurance

On 26 June 2001 the Hon. J.J. Della Bosca MLC advised the Legislative Council of the action being taken by the Government to improve compliance. The Minister indicated that the total provision for payment to uninsured workers in the WorkCover accounts for 2000/2001 amounts to \$13m. This compares to a total annual premium income, net of GST, for the period, of \$2,143m and represents 0.6% of the total premium.

The Minister also indicated that the Government has instituted a range of initiatives to address the issue of non-compliance. The *Workers Compensation Legislation Amendment Act 2000* introduced a number of significant amendments to enhance compliance. These included:

- the introduction of a broad fraud provision, which enables WorkCover to prosecute any person who has committed an act of fraud against the WorkCover Scheme. This provision includes a penalty of \$50,000, two years imprisonment or both.
- Extension of liability for premium debt to Directors of Corporations where corporations are uninsured and where the corporation has provided the insurer with false or misleading information.
- Recovery of audit costs from employers who have under-declared their wages by 25 per cent or more.
- Charging employers interest on avoided premium due to under-declaration of wages.

- New provisions governing the issuance and inspection of Certificates of Currency which contain details of an employer's workers compensation policies and premiums.
- Increase in penalties for non-insurance from \$22,000 to \$55,000, failure to maintain or provide wage records for inspection from \$5,500 to \$55,000; failure to produce workers compensation policy for inspection from \$2,200 to \$5,500; failure to comply with direction from a WorkCover inspector to enter premises and inspect documents from \$5,500 to \$11,000.
- Introduction of a \$750 Penalty Notice for non-insurance.
- Power to exercise a Search Warrant.
- Amendment to make it clear that an employer is prohibited from taking or receiving money from a worker for the purpose of paying the employer's workers compensation premium.

In March 2001, two additional \$500 Penalty Notices were introduced for employers who fail to provide the insurer with either a Wage Declaration or an Estimate of Wages.

WorkCover has commenced development of computer models to assist in identifying employers suspected of under-insuring. These computer models assisted WorkCover to initiate a large-scale program of targeted audits of employers suspected of non-compliance in November 2000. To date, these targeted audits have yielded a 1,000 per cent increase in the amount of additional premium identified per audit dollar spent, compared to previous returns for workers compensation audit projects.

In April 2001, the Hon. J.J. Della Bosca MLC asked the Workers Compensation and Workplace Occupational Health and Safety Council to establish a Compliance Working Party, to examine options for further legislative reforms to assist in improving employers' compliance with workers compensation insurance requirements. The Government is currently considering the recommendations of the Working Party.

WorkCover has commenced sharing data and working with agencies including Office of State Revenue, Department of Transport and Department of Fair Trading to enhance its capacity to detect employers who are avoiding premiums through either non-insurance or under-insurance. For example, wage audits of a small number of taxi operators based on data supplied by the Department of Transport has yielded significant additional premium revenue for the WorkCover Scheme.

WorkCover recognises that avoidance measures are not unique to workers compensation compliance, and will continue to work with relevant agencies at a Commonwealth and State level regarding additional compliance strategies where appropriate.

- (6) Although employee fraud is rare, are significant resources being given to follow up on this aspect of cost-control?

Answer:

Examples of fraudulent activities by workers under the workers compensation legislation include:

- providing false statements in connection with claims, such as claiming for injuries that do not exist or claiming for non-work related injuries;
- altering medical certificates;
- failing to inform the insurer of additional employment and/or income while on benefits.

The *Workers Compensation Legislation Amendment Act 2000* increased the penalties for employee fraud which include:

Offence	Penalty	Provision
Making false statements in connection with a claim, including altering medical certificates.	100-penalty units (currently \$11,000) and/or two years imprisonment.	Section 67(1) <i>Workplace Injury Management and Workers Compensation Act 1998</i>
Failing to notify their employer or the insurer of a return to work when still in receipt of workers compensation benefits.	40 penalty units (currently \$4400).	Section 57(1) <i>Workers Compensation Act 1987</i>
General fraud offence enabling WorkCover to prosecute service providers, accountants, lawyers and any other party involved in fraud against the <i>WorkCover Scheme</i> . This section has a penalty of \$55,000 and/or up to two years imprisonment.	500-penalty units (currently \$55,000) and/or two years imprisonment.	Section 235 <i>Workplace Injury Management and Workers Compensation Act 1998</i>

Note:

- Each individual offence is a separate charge and penalty.
- The above offences can also be prosecuted as 'serious offences' under Sections 178BA or 178BB of the *Crimes Act 1900*, with a max penalty of five years imprisonment. Under Sections 300 & 301 of the *Crimes Act*, 'forgery' of a medical certificate or claim form can incur a max penalty of 10 years imprisonment.
- The *Workers Compensation (General) Amendment (Advertising) Regulation 2001* restricts advertising by lawyers that could encourage fraudulent claims.

Licensed Insurers have the key responsibility for managing claims lodged by injured workers. In the process of making a decision on liability, insurer claims staff are expected to carefully examine documentation lodged by employers and injured workers to ensure that claims are legitimate. In the process of determining liability, claims staff have a decision-making role in determining whether further documentary evidence is required or whether a factual investigation should be undertaken.

This scrutiny of claims continues throughout the life of a claim particularly on long-term claims where claimants may be on benefits for many years. In respect of these claims insurers periodically require claimants to undergo medical examination and may undertake surveillance of claimants.

Approximately \$100M is spent annually by insurers on a range of claim related investigations. Insurers refer matters to WorkCover for further investigation and prosecution where the initial investigative work undertaken by claims staff indicates that the claim or part of a claim is fraudulent.

As indicated in Answer 5 above, WorkCover established a dedicated workers compensation compliance function in early 2000 to crackdown on employer premium avoidance and non-insurance, and claimant fraud. Thirteen staff are allocated to resource this function, including a 3-person fraud detection team.

WorkCover received 191 referrals of suspected fraud during 2000\1, which are currently being investigated. During 2000\1 6 matters were successfully prosecuted.

WorkCover is currently using data mining techniques on the WorkCover claims database to identify potentially fraudulent claims. Fraud investigators are currently progressing 20 matters, which are believed to be fraudulent, for prosecution. A further 136 matters require further investigation which will result in a proportion of matters being referred for prosecution.

- (7) There are legal opinions in existence advising Insurers/Employers that this is the recommended course of action. My belief is that this will work against the principles enshrined in the new legislation and may lead to an increase in litigation. There needs to be a follow-up mechanism to ensure that Insurers (including self-insurers) immediately pay the vast majority of claims. If there's employee fraud, then it needs to be prosecuted.

What mechanisms does WorkCover propose to stop Insurers (including especially Self-Insurers) declining liability in the majority of cases notified under the new scheme?

Answer:

The *Workers Compensation Legislation Amendment Act 2001* has been designed to improve dispute prevention and to reform the structures and processes used to resolve disputes.

Provisional Liability is being introduced as a dispute prevention mechanism.

Approximately 15% of all disputes in NSW arise out of failure by the insurer to make a timely decision on liability for a claim for weekly benefits. In the majority of matters where the worker pursues their claim, the insurer is ultimately found to have a liability to pay.

Insurers, including self insurers and specialised insurers are required to commence provisional liability payments within 7 days after an initial notification of injury is made unless a "reasonable excuse" exists as defined in WorkCover Guidelines.

The legislation also has provisions to impose monetary fines and fees on insurers who fail to comply with provisional liability provisions and who create unnecessary disputes. These will be a direct cost to the insurer (including self-insurers).

Insurers (excluding self & specialised) are also exposed financially through the insurer remuneration package if they fail to meet the requirements of the legislation.

Self insurers and specialised insurers put at risk a continuation of their licence if they fail to comply with the legislation.

- (8) As an occupational medicine specialist and a long term Medical Panel Member of the Medical Panels appointed under the *Compensation Court Act*, I am concerned that we are throwing out a perfectly good mechanism for determining impairment that has worked well since 1926 and replacing it with another as-yet-untested system using Approved Medical Specialists. (Disclaimer: I am also an Approved Medical Specialist.) At present, Medical Referees are appointed by the Chief Judge of the Compensation Court on the advice of the Chief Medical Officer and are seen to be as impartial as possible. At least to my mind and that of some other members of the Workers Comp and OH&S Council of NSW, some of the currently appointed Approved Medical Specialists could not possibly be seen to be impartial. Some have worked for major insurers for more than 20 years. Others only ever do plaintiff type medico-legal opinions.

What steps does WorkCover propose to overhaul these Approved Medical Specialist appointments so that all claimants will feel a high degree of confidence that their impairment will be assessed by a Referee who is seen to be impartial?

Answer:

The *Workers Compensation Legislation Amendment Act 2001* (the Act), provides that the President of the Workers Compensation Commission, in accordance with the criteria developed by the Minister in consultation with the Council, is to appoint medical practitioners to be approved medical specialists for the purposes of undertaking medical assessments.

The Act provides that the terms of any such appointment may restrict an approved medical specialist to medical disputes of a specified kind.

The Act states that the President is to ensure that, as far as reasonably practicable, arrangements are in place to facilitate the taking place of assessments under Part 7 of the Act, in the regional areas of the State.

The Act provides that the Authority may arrange for the provision of training and information to approved medical specialists to promote accurate and consistent assessments under Part 7 of the Act.

To meet the requirements of the new legislation, a new process is being developed for the appointment of the Approved Medical Specialists. This will result in new lists of Approved Medical Specialists being established.

- (9) (a) What independent actuarial advice, if any, did WorkCover rely on when supplying the Minister with this estimate of the Scheme's deficit?
- (b) Was the information in WorkCover's Common Law Register relied on when calculating the size of the current deficit?
- (c) If so, what proportion of all workers compensation common law matters (in percentage terms) does the Common Law Register hold details for, and, considering this percentage, how can the Common Law Register form the basis for anything more than a guess about the size of the workers compensation scheme deficit?
- (d) If not, how was the size of the common law component of the scheme deficit able to be determined with any degree of confidence?

Answer:

- (a) WorkCover relied on actuarial advice from the Scheme's independent actuary, Tillinghast-Towers Perrin, entitled Actuarial Review of the Outstanding Liabilities of the WorkCover Scheme Statutory Funds as at 31 December 2000. The Minister's covering letter to the Committee Chairman indicates that this report will be provided directly to the Committee Secretariat.
- (b) Yes.
- (c) Based on a comparison with the main WorkCover claims database, it is understood that the Common Law Register ("CLR") hold details of approximately 90% of all statements of claim under common law in the WorkCover Scheme.
- (d) Not applicable.
- (10) Given the uncertainty which emerged in WorkCover's oral evidence to the Sheahan Inquiry as to what the appropriate threshold percentage should be for common law matters under the new system:
- (a) By what means was the 25% threshold figure determined?
- (b) How was it possible for WorkCover to categorically state in its submission to the Inquiry that:

*"... WorkCover's view is that the prudent course of action would be to set a threshold at 25% whole person. This **would** target benefits to the most seriously injured, and provide an opportunity to monitor the reduced Scheme cost arising from the recently enacted legislation, and progressively provide higher benefit as the Scheme's financial position improves",*

*"**Conclusion and Recommendation...** The threshold **should** be set at 25% (whole person impairment assessment), and that it should be determined objectively by medical assessment prior to the claimant making a common law election."*

Answer:

- (a) After balancing the interests of the two clients of the Scheme, workers and employers, and assessing what level would give the most seriously injured workers access to the common law.
- (b) WorkCover's recommendation should be read in the context of its whole submission, which indicates that access to common law should be based on two factors:
- The need of the individual, ie the level of the severity of the injury; and
 - The capacity of the Scheme to pay.

(11) In regards to Ms McKenzie's statement that:

*"We contend that a 25 per cent whole of person impairment is the appropriate index of injury severity and I guess that is **partly** based on an assumption that the common law should be reserved for the seriously injured and everybody else should get properly compensated under the statutory scheme"*

What other factors were involved in WorkCover's determination that 25% is an appropriate threshold figure for the scheme?

Answer:

Ms McKenzie's statement should be read in the context of the whole *WorkCover Submission to the Commission of Inquiry into Workers Compensation Common Law Matters*, which indicates that access to common law should be based on two factors:

- The need of the individual, ie. the level of the severity of the injury; and
- the capacity of the Scheme to pay.

(12) What percentage of compensation claimants will be entitled to damages if this threshold is introduced in the manner proposed in the WorkCover Submission to the Sheahan Inquiry?

Answer:

It is estimated that approximately 2.0 - 2.5% of qualifying compensation claimants in the NSW WorkCover Scheme each year would qualify for a 25 per cent or greater whole of person impairment.

(13) Does WorkCover concede that the current evidence suggests that the 10% permanent impairment threshold under the *Motor Accidents Compensation Act 1999* allow through only about 1% of claimants?

Answer:

The Motor Accidents Authority advises that:

- For the first 18 months operation of the new Motor Accidents Scheme (as at 31 March 2001) insurers received 19,887 notifications (including claims and accident notification forms)
- By comparing the first 18 months of the new scheme to the last 18 months of the old scheme it can be clearly seen that the new system is benefiting accident victims. In the last 18 months of the old scheme 18,484 claims were received, 3,346 or 18 per cent were finalised and 25 people received non-economic loss payments equivalent to new scheme benefits. After 18 months of the new scheme 19,887 notifications were made, 5,271 or 27 per cent were finalised and 36 people received non-economic loss payments.
- Under the new scheme where there is a dispute about the extent of a person's impairment, the matter is heard and determined by the independent Medical Assessment Service. In relation to the 132 permanent impairment determinations made by the Medical Assessment Service as at 31 July 2001, 16 people (i.e 12% of impairment determinations) received a determination that their injuries were over or were likely to be over the 10 per cent threshold.
- Non-economic loss payouts cannot be quantified until an injury stabilises. Therefore, for an accident victim who has a serious injury, such as spine or brain damage, the extent of non-economic loss cannot be quantified immediately and in most cases not until some considerable time after the accident.

(14) What has WorkCover done to address each of the difficulties identified above since the publishing of the Council's report in 1996, and what has WorkCover done to investigate the options and implement the recommendations that were contained in the report in relation to these difficulties?

Answer:

From the Schedule of Findings and Recommendations on pages 5 and 6 of the Council's report:

- (a) *WorkCover's costs have grown significantly faster than program or inflation indicators and are high on a benchmarked basis:*
- *administrative costs per claim have increased in real terms by over 50 per cent since 1989/90*
 - *WorkCover revenue and expenditure have increased well above CPI and AWE, and market indicators*
- (b) *WorkCover's accounting and program reporting systems and practices do not give a fair and meaningful basis for the evaluation of WorkCover's policies and programs, and hide "community service" activities*
- (c) *WorkCover's surpluses are not returned to the State as dividends*
- (d) *There is a weakness in the external supervision and monitoring of WorkCover*
- (e) *WorkCover does not have a program for verifying that its premium collections are maximised in specific high-risk sectors*
- (f) *WorkCover's accounting arrangements make the financial performance of WorkCover difficult to track, and there is no incentive to maximise financial performance*
- (g) *The structure of the worker's compensation insurance market and the bundling of funds management with other services appears to impede the maximisation of returns on funds management*
- (h) *There may be an opportunity to rationalise Commonwealth/State surveillance of insurers by including the licensed insurers under the sole purview of the Federal Insurance and Superannuation Commission*
- (i) *WorkCover performs three key roles: it regulates licensed insurers and rehabilitation providers; it enforces workplace regulations, and it provides services and advice, in one reporting structure and in a non-competitive environment. The accountabilities are unclear*
- (j) *The WorkCover Board historically has been orientated to generalist skills rather than specialist skills required for high level performance in insurance*
- (k) *WorkCover's inspectors and offices overlap with the Department of Industrial Relations and others*
- (l) *WorkCover's structure contains too many levels of management, with unclear accountability*
- (m) *WorkCover's structure has a number of duplicated and split functions, and high levels of corporate support staff*
- (n) *Industrial relations regulation has significantly different requirements from OH&S regulation, and it is important to maintain the integration of workers' compensation insurance and OH&S at a policy and planning level*
- (o) *WorkCover's strategic management and planning focuses on what "WorkCover does" rather than "what it is meant to achieve".*

There are a number of potential organisational structures which could improve accountabilities and the delivery of WorkCover's roles.

- (a) *WorkCover's costs have grown significantly faster than program or inflation indicators and are high on a benchmarked basis:*
- *administrative costs per claim have increased in real terms by over 50 per cent since 1989/90*
 - *WorkCover revenue and expenditure have increased well above CPI and AWE, and market indicators*

This measure of total WorkCover Scheme administration costs shows that the increase was down markedly at 7.4% in real terms between 1995 and 2000.

Increases in revenue and expenditure since 1996 have matched CPI and AWE and expenditure has included WorkCover's resourcing of a major community awareness campaign *on workplace safety and injury management*.

A comparison of administration costs across all States and Territories shows that WorkCover's costs compare favourably with all other states and are marginally below the national average.

- (b) *WorkCover's accounting and program reporting systems and practices do not give a fair and meaningful basis for the evaluation of WorkCover's policies and programs, and hide "community service" activities.*

The alignment of resources to key result areas has been done since 1996/97 and thereby made financial data available for evaluation.

The Council acknowledges that community service activities are very minor for WorkCover.

It is important to note the distinction between WorkCover and Government Trading Enterprises. The NSW Workers Compensation Scheme has a legislative set of objectives that were designed and agreed to by the Scheme's major stakeholders.

WorkCover's role and accountabilities are clearly set by the *Workplace Injury Management and Workers Compensation Act 1998* which provides that WorkCover is responsible for managing the State's workplace safety, injury management and workers compensation systems, and for ensuring compliance with workers compensation and occupational health and safety legislation including:

- promoting the prevention of injuries and diseases at the workplace and the development of healthy and safe workplaces;
- promoting the prompt, efficient and effective management of injuries to persons at work;
- ensuring the efficient operation of workers compensation insurance arrangements, and
- ensuring the appropriate co-ordination of arrangements for the administration of the schemes to which the workers compensation legislation or the occupational health and safety legislation relates.

In any case, WorkCover's commitment to community service activities is reflected in its current Mission to work in partnership with the New South Wales community to achieve safe workplaces, effective return to work and security for injured workers.

Recent examples of this commitment are:

- the tractor roll-out protection system rebate scheme;
- WorkCover's new, [16-page magazine on rural safety](#), highlighting initiatives being taken to reduce rural death and injury;
- WorkCover warnings on the illegal use of fireworks over the Queen's Birthday long weekend;
- WorkCover's \$1.7million public education campaign targeted specifically at the health and safety of young workers;
- WorkCover's sponsorship of Guide for Managing Loss and Grief in the Aged Care Industry under the Injury Prevention and Education Research Grant Scheme; and
- WorkCover Sponsorship of Paralympians.

Details of these and other community service initiatives are actively promoted by WorkCover and are reported in WorkCover's annual report in the normal way.

- (c) *WorkCover's surpluses are not returned to the State as dividends.*

WorkCover is explicitly prohibited from paying a dividend from the WorkCover Scheme under section 196 of the *Workers Compensation Act*.

- (d) *There is a weakness in the external supervision and monitoring of WorkCover.*

The WorkCover Authority:

- is now part of the annual State Budget which includes revenue and expenditure budgets, a capital program and review by Parliamentary Estimates Committees;
- is providing NSW Treasury with monthly operating statements, statements of cash flows and balance sheets;
- is complying with NSW Treasury's net cost of services requirements and approvals; and
- has its investment function monitored periodically by NSW Treasury in accordance with the *Public Authorities (Financial Arrangements) Act*.

- (e) *WorkCover does not have a program for verifying that its premium collections are maximised in specific high-risk sectors.*

All insurers are required by WorkCover to have a wage audit program. WorkCover established a dedicated Compliance Improvement Branch in 2000 to focus on reducing uninsurance and underinsurance, particularly in specific high-risk industries (for additional information please see Answer to Question 4).

- (f) *WorkCover's accounting arrangements make the financial performance of WorkCover difficult to track, and there is no incentive to maximise financial performance.*

WorkCover's accounting arrangements and external financial reports continue to be prepared in accordance with Australian accounting standards, the *Public Finance & Audit Act* and Treasurer's directions. The development of the current structure and presentation of the financial accounts involved input from The Audit Office. The accounts appropriately report the aggregated financial results and financial position of the four funds currently under the WorkCover Authority's direct control and management.

A comprehensive set of notes and annexures accompany the financial statements to assist the users of financial information. Furthermore, a distinction is made between the Authority's use of resources and its funding obligations such as for the Compensation Court and the Uninsured Liability and Indemnity Scheme. The accountability for each differs.

At the time of the Council's review in 1995/96, WorkCover directly managed eleven funds and since that time a strategy to rationalise the number of funds under management has been successfully implemented.

- (g) *The structure of the worker's compensation insurance market and the bundling of funds management with other services appears to impede the maximisation of returns on funds management.*

WorkCover has implemented a master custodian arrangement in June 1999 to improve monitoring of investment performance. Scheme investment managers have performed well with returns strongly surpassing the relevant peer group "Towers Perrin Survey for Capital Stable Funds" returns and also achieving the WorkCover reference portfolio benchmark.

- (h) *There may be an opportunity to rationalise Commonwealth/State surveillance of insurers by including the licensed insurers under the sole purview of the Federal Insurance and Superannuation Commission.*

The Australian Prudential Regulation Authority has specifically exempted WorkCover Statutory Funds/insurance arrangements from its legislation and purview because of the nature of the statutory arrangements and supervision in NSW and other States and Territories.

- (i) *WorkCover performs three key roles: it regulates licensed insurers and rehabilitation providers; it enforces workplace regulations, and it provides services and advice, in one reporting structure and in a non-competitive environment. The accountabilities are unclear.*

WorkCover is the Government agency charged with regulating the NSW Workers Compensation Scheme. WorkCover does not underwrite the Managed Fund, nor is it a direct service provider to workers, employers,

insurers or any other participant in the Scheme. The Scheme has a legislative set of objectives that were designed and agreed to by the Scheme's major stakeholders.

WorkCover's role and accountabilities are clearly set by the *Workplace Injury Management and Workers Compensation Act 1998* which provides that WorkCover is responsible for managing the State's workplace safety, injury management and workers compensation systems, and for ensuring compliance with workers compensation and occupational health and safety legislation including:

- promoting the prevention of injuries and diseases at the workplace and the development of healthy and safe workplaces;
- promoting the prompt, efficient and effective management of injuries to persons at work;
- ensuring the efficient operation of workers compensation insurance arrangements, and
- ensuring the appropriate co-ordination of arrangements for the administration of the schemes to which the workers compensation legislation or the occupational health and safety legislation relates.

WorkCover's Structure

The Council acknowledged that it did not reach consensus on the optimum organisation structure for WorkCover. WorkCover is currently structured into four divisions:

- General Manager's Group

Comprises the Office of the General Manager, which provides executive support to the Board, Minister, General Manager and consultative bodies, the Information Management Branch, responsible for WorkCover's technical infrastructure, data support and records management and the Finance Branch.

- Occupational Health and Safety

The OHS Division promotes safer and healthier workplaces for employees and provides 'one stop shop' information and assistance on occupational health and safety, workers compensation and injury prevention and management to employers, workers and the public through the network of WorkCover offices located throughout NSW.

It enforces the OHS and workers compensation legislation through: inspections; investigations of incidents and complaints and; where necessary, penalties and prosecutions; the licensing and certification of defined premises, activities and the operation of hazardous equipment; and implements targeted prevention and education programs.

- Insurance

The overall purpose of the Division is to lead the continuous improvement of the workers compensation and injury management systems in NSW. The Division seeks to efficiently and effectively ensure the systems:

- (i) assist in securing the health, safety and welfare of workers and in particular preventing work related injuries;
- (ii) provide injured workers and their dependants with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses;
- (iii) require contributions by employers which are commensurate with the risks faced, taking into account strategies and performance in injury prevention, injury management and return to work;
- (iv) provide: prompt treatment of injuries, effective and proactive management of injuries, necessary medical and vocational rehabilitation following injuries in order to assist injured workers to promote their return to work as soon as possible; and, are fair, affordable and financially viable.

- Corporate Governance

The Division provides specialist information, advice and services to the Minister, the Board, the Workers Compensation and Workplace OHS Council, Industry Reference Groups, the General Manager's Group, and the two operational divisions.

It advises on policy development; corporate and business planning; communications and marketing, including media liaison; human resource management; corporate governance; and property, purchasing and fleet management.

Board of Directors

A Board consisting of the General Manager and six part-time directors manages WorkCover NSW. The Board is responsible for determining the administrative policies of WorkCover and ensuring that all activities are carried out properly and efficiently.

Workers Compensation and Workplace Occupational Health and Safety Council of NSW

The Council comprises worker and employer representatives, medical and legal practitioners, insurance, injury management and occupational health and safety experts. The Council's key function is to give advice to the Minister on a systemic approach to the prevention of workplace injury, injury management/return to work and compensation issues.

- (j) *The WorkCover Board historically has been orientated to generalist skills rather than specialist skills required for high level performance in insurance.*

The current Board has directors experienced in insurance, occupational health & safety, workers compensation law, industrial relations and medicine. A change in the composition of the Board is a matter of Government policy.

- (k) *WorkCover's inspectors and offices overlap with the Department of Industrial Relations and others.*

While WorkCover and Department of Industrial Relations inspectors work quite independently, it is the case that OHS and industrial relations issues often overlap. WorkCover NSW works cooperatively with the DIR to develop strategies to address issues of this nature, for example, the Clothing Industry Taskforce. In addition WorkCover and the DIR are actively considering opportunities for co-locating services in regional operations.

- (l) *WorkCover's structure contains too many levels of management, with unclear accountability.*

Restructuring and re-engineering within 3 divisions was implemented in 1998 as recommended by Deloitte & Touche. Further restructuring occurred in 2000 through the implementation of OHS multi-skilled teams and greater strategic and service focus for the Insurance Division. Flattening of the structure also occurred in 2000 through the information management and financial management functions becoming directly responsible to the General Manager.

The Council reported six levels of decision-making. WorkCover's main business decision making occurs within four levels of management from the General Manager to branch, and now, OHS team manager level.

- (m) *WorkCover's structure has a number of duplicated and split functions, and high levels of corporate support staff.*

Major restructuring from five to three divisions has occurred since the Council's report and related activities have been addressed in the information management, prosecutions and corporate relations functions.

WorkCover's level of corporate support staff was at the median range in a comparable category of Government agencies, according to the Premier's Department benchmarking study in 1995.

Throughout 1998 and 1999, all branches and selected business processes in the corporate services function were reviewed and restructured.

- (n) *Industrial relations regulation has significantly different requirements from OH&S regulation, and it is important to maintain the integration of workers' compensation insurance and OH&S at a policy and planning level.*

WorkCover has always agreed with this finding and it is consistent with the OH&S Industry Commission report (1995). *This integration is reflected in WorkCover's structure and in the structures of similar agencies in other states, the ACT and the Commonwealth*

- (o) *WorkCover's strategic management and planning focuses on what "WorkCover does" rather than "what it is meant to achieve".*

The Scheme has a legislative set of objectives that were designed and agreed to by the Scheme's major stakeholders. WorkCover's role and accountabilities are clearly set by the *Workplace Injury Management and Workers Compensation Act 1998* which provides that WorkCover is responsible for managing the State's workplace safety, injury management and workers compensation systems, and for ensuring compliance with workers compensation and occupational health and safety legislation including:

- promoting the prevention of injuries and diseases at the workplace and the development of healthy and safe workplaces;
- promoting the prompt, efficient and effective management of injuries to persons at work;
- ensuring the efficient operation of workers compensation insurance arrangements, and
- ensuring the appropriate co-ordination of arrangements for the administration of the schemes to which the workers compensation legislation or the occupational health and safety legislation relates.

There are a number of potential organisational structures which could improve accountabilities and the delivery of WorkCover's roles.

Restructuring and re-engineering within 3 divisions was implemented in 1998 as recommended by Deloitte & Touche. Further restructuring occurred in 2000 through implementation of OHS multi-skilled teams and greater strategic and service focus for the Insurance Division. *In its report, the Council acknowledged "...that the creation and performance of WorkCover has produced positive forces in reform of workers' compensation and OH&S in New South Wales."*

- (15) Since the publishing of the Grellman Report, what measures has WorkCover taken to address these difficulties?

Answer:

The Final Report of the Inquiry into Workers' Compensation System in NSW, published in September 1997 and Chaired by Rick Grellman, cited under the heading "weaknesses in the NSW System" (on page 4) the following:

- *Lack of legal and financial accountability and control of statutory funds.*
- *Conflicting roles of WorkCover, preventing it from carrying out its roles effectively.*

The question of control of the statutory funds by WorkCover has been addressed in conjunction with the Auditor General, NSW Treasury and the Solicitor General. WorkCover's audited financial statements reflect the attention to this issue.

WorkCover's role and accountabilities are clearly set by the *Workplace Injury Management and Workers Compensation Act 1998* which provides that WorkCover is responsible for managing the State's workplace safety, injury management and workers compensation systems, and for ensuring compliance with workers compensation and occupational health and safety legislation including:

- promoting the prevention of injuries and diseases at the workplace and the development of healthy and safe workplaces;
- promoting the prompt, efficient and effective management of injuries to persons at work;
- ensuring the efficient operation of workers compensation insurance arrangements, and

- ensuring the appropriate co-ordination of arrangements for the administration of the schemes to which the workers compensation legislation or the occupational health and safety legislation relates.

Since the publishing of the Grellman report the Government has enacted the *Workplace Injury Management and Workers Compensation Act 1998* which clearly spells out the Scheme's legislative set of objectives that were designed and agreed to by the Scheme's major stakeholders (please see Answer above for additional information).

(16) The Grellman Report stated at page 107 that:

WorkCover was reviewed by the Council on the Cost of Government at the request of the Premier in October 1995 and has established a committee to implement its recommendations.

The Inquiry is also aware that WorkCover has called for tenders for a review of its processes and structure.

The Inquiry suggests that the review be undertaken in conjunction with the implementation of the new system and the transition from the existing system.

- (a) Has this review been completed?
- (b) If not, why not?
- (c) If so:
 - (i) Please provide the details of the conduct of this review, including the details of its commencement date, completion date, and the firm that undertook the review.
 - (ii) What was the cost of the review?
 - (iii) What were the findings of the review?
 - (iv) Were the findings of the review made public, and if not, why not?
 - (v) Have these findings been implemented?

Answer:

- (16) (a) Yes
- (b) Not Applicable.
- (c) (i) Undertaken by Deloitte & Touche Consulting Group between September and November, 1997.
- (ii) \$129,215.
- (iii) A summary of the review's main recommendation as contained in the Executive Summary of the Deloitte & Touche report is:
 - a. Organisational restructuring from 5 to 3 divisions,
 - b. reduce corporate services costs,
 - c. set up two units as full cost recovery administrative units,
 - d. develop a tight, pragmatic planning, evaluation and performance management system with Board participation in setting the direction and priorities;
 - e. re-engineer corporate services;
 - f. restructure middle level organisation within the Regional Operations Division to better reflect strategic industry and hazards approach to OHS employer behaviour;

- g. develop multi-skilled team approach and resolve geographic distribution issues;
 - h. develop specialist “head of discipline” responsibilities;
 - i. integrate Risk Management Division staff and management within new operational and organisational frameworks set within context of strategic and operational plans and, ensure appropriate training and infrastructure are available.
 - j. re-engineer licence processes.
- (iv) The review was not made public as it was commissioned as an internal management review.
- (v) Restructuring to 3 divisions was completed in 1998.

Corporate Services costs and staffing have not decreased. The level of corporate services is a matter being re-addressed by the current General Manager and Assistant General Manager, Corporate Governance Division both of who were appointed in 2000.

The larger of the two units has a business plan for full cost recovery. (The smaller of the two units accounts for 1% of WorkCover’s total turnover).

The 1999/2002 corporate plan was approved by the Board. Evaluation and performance management is undergoing further development following appointment of the current General Manager and Assistant General Manager, Corporate Governance Division in 2000.

Throughout 1998 and 1999, all branches and selected business processes in the corporate services function were restructured and re-engineered respectively. OHS Division implemented an industry teams structure in February 2000. This structure aligned the Division’s services with key industry sectors. Further to this it mirrored WorkCover’s consultative arrangements with the bipartite industry reference group.

Importantly the industry focused approach moved away from the old geographic centered structure. Each office throughout the metropolitan area has a combination of industry team members who respond to issues relating to industry not location. The restructure of the OHS Division resulted in multi disciplinary teams consisting of field staff, technical specialists and project officers. This approach has allowed all of the resources of the Division to work strategically with industry sectors in addressing immediate health and safety issues and developing proactive solutions to emerging problems.

A key feature of the restructure is the establishment of a Compliance Coordination Team. This team consists of specialist officers across a range of disciplines such as chemical management, plant and working environment (eg manual handling). This ‘head of discipline’ structure allows for the coordination and integration of initiatives into Team activities and ensures that work programs in their areas are delivered consistently across the State.

A key objective of the new structure is to integrate the technical services of the former Risk Management Division and the field staff of the former Regional Operations Division so that all of the resources of the Division work together on agreed industry issues. The need for leading edge training is recognised and OHS Division has retained and enhanced a specialist Learning and Development Unit.

The licensing function was reviewed in 2000 in preparation for the introduction of new OHS legislation.

- (17) The Grellman Report stated at page 38 that:

WorkCover focuses on what is being carried out in the claims management process rather than what has been achieved. Consequently, licensed insurers direct their resources to fulfilling the reporting function when they could more effectively be used in managing and finalising claims.

What action has WorkCover taken to address this difficulty since the time the Grellman Report was issued?

Answer:

In 1997/98 WorkCover made significant changes to the insurers' remuneration package to ensure that insurers focus on outcomes rather than process. The changes to the remuneration package introduced a larger component of performance fees to achieve Scheme outcomes. Performance fees are based on individual insurer performance levels for specified outcome measures linked to desired scheme outcomes. The performance measures represent key areas and outcomes that are critical to the scheme achieving its financial and service delivery objectives.

For the 2001/2002 period, a new insurers' remuneration package has been introduced as a result of an independent review by PriceWaterhouse Coopers which was commissioned by WorkCover. The key element of the new package is to provide insurers with a stronger incentive for improved performance as well as a stronger penalty against continued poor performance. The performance fee component of the new package has been increased considerably to provide insurers with a strong incentive to improve injury and claims management.

- (18) It is claimed that a substantial proportion of the recent deterioration in the scheme deficit is due to under-collection of premiums.

On 27 July 2001, an article was posted on the Labor Council LaborNET site, which stated (in part) the following:

WorkCover Finally Fesses Up

The head of WorkCover this week confirmed what trade unions have argued for years - the troubles in the workers compensation scheme are the result of employers not paying adequate premiums.

WorkCover general manager Kate McKenzie was quoted by APP making the comments at a conference this week. She said the scheme's problems dated back to the early 1990s when it was not collecting enough premium revenue to cover costs.

"We're still not collecting enough premium and the deficit has not been addressed at this stage," she was reported to have said.

- (a) Does the Authority have any actuarial information to quantify the extend of the alleged underpayment of premium?
- (b) What measures are being put in place to ensure premiums are fully collected, and when will these measures be operational?

Answer:

- (18) (a) There is currently no recognised, acceptable methodology for accurately calculating the total cost of non-compliance with workers compensation insurance obligations.
- (b) Please see Answer to Question 5 which details the recent compliance measures enacted by the *Workers Compensation Legislation Amendment Act 2000* that came into effect on 1 January 2001.
- (19) The WorkCover Authority guidelines require the estimation of claims for premium purposes based upon a claimant's projected weekly entitlement up until retirement age. Has this resulted in employers paying inflated premiums in view of the fact that cases settle generally for a much lesser sum than that estimated?

Answer:

Large employers (Category A employers; basic tariff premiums over \$3,000) have their premiums based on their individual claims experience while small (Category B) employers do not. Most employers are Category B employers.

For Category A employers, the claims experience component of the premium is based on the cost of claims for the current year and the previous two years. The cost of a claim includes the amount already paid on the claim and an estimate of the future cost of the claim. In order for an estimate to include weekly benefits until retirement age, the injured worker would have to have been off work for 104 weeks. Only a small proportion of injured workers remain

on weekly benefits after this amount of time. In addition, there is a limit of \$150,000 on a claim estimate for the purposes of premium calculation.

- (20) (a) Does the WorkCover Authority have a system whereby it checks the outcomes in each claim against the estimate?
- (b) If so, where the outcomes are less than the estimate, does the WorkCover Authority recredit the increased premiums charged as a result of the original claims estimation?
- (c) If not, why not?

Answer:

- (a) Insurers are required to periodically update claim estimates during the life of the claim.
- (b) No, but employers will not be charged more where outcomes are more than the estimate.
- (c) Estimates may under or over estimate the actual cost of a claim. It is not practical to adjust (up or down) premium calculations based on the actual cost of claims. Serious (high cost) claims can take many years to resolve and to determine the actual cost. Under the current system delays of three years are common, and delays of over ten years are not unusual. This approach is consistent with practice in other jurisdictions.
- (21) (a) If a claim is dismissed, does the WorkCover Authority recredit the relevant employer's premium rate to that which pertained at the time the claim was originally made?
- (b) If not, why not?

Answer:

- (21) (a) Generally no, subject to circumstances involving fraudulent claims.
- (b) Estimates may under or over estimate the actual cost of a claim. It is not practical to adjust (up or down) premium calculations based on the actual cost of claims. Serious (high cost) claims can take many years to resolve and to determine the actual cost. Under the current system delays of three years are common, and delays of over ten years are not unusual. This approach is consistent with practice in other jurisdictions.
- (22) (a) Do the assumptions made by the Scheme actuaries as to the financial position of the scheme differ from the assumptions upon which the WorkCover Authority requires the fund manager insurers to estimate claims made by workers against employers?
- (b) If so, what are the assumptions that the actuaries base their projections upon?

Answer:

- (22) (a) The Scheme actuarial assumptions are different from assumptions for the purpose of making claims estimates. When actuaries evaluate the financial position of the scheme, they use methodology and modeling which is based on actual amounts paid for all claims as at the date of the valuation. The assumptions that Workcover require insurers to make to arrive at the outstanding cost of claims in accordance with the claim estimating manual is for premium calculation purposes only. These claims estimates are not used to evaluate the financial position of the scheme.
- (b) Scheme actuaries make various assumptions about future numbers and amount of active weekly claims, common law claims, commutations, s66/67 claims, etc. to arrive at the estimated outstanding claims liability of the Scheme.
- (23) The Premier told the Parliament that the Scheme was losing \$1 million per day. The published accounts of the WorkCover Scheme reveal that in fact the Scheme's asset based has grown from about \$3.5 billion in 1995 to \$6.8

billion in 2000, and that it is continuing to grow. How can the Scheme be losing \$1 million per day and yet continue to grow?

Answer:

On 28 June 2001 during his reply to the second reading debate, the Hon. J.J. Della Bosca MLC, responded to comments made by the Hon. Ian Cohen MLC, citing an advertisement by the Australian Plaintiff Lawyers Association, which claimed that the scheme's assets had risen from \$3.7 billion to \$6.8 billion.

The Minister responded that the increase in assets would be good news, except that liabilities have increased by an even greater amount and have increased to \$9.1 billion as at December 2000.

The Minister also indicated that the last valuation of the scheme by its independent actuaries, Tillinghast-Towers Perrin, in June 2000, calculated the deficit by looking at current trends and claim numbers, the type of claim payments, claim duration, inflation and return payments. The actuaries examined which factors are trending better or worse in their earlier projections and adjusted projections accordingly.

- (24) The WorkCover actuaries say there is a deficit in the Scheme, and that, that deficit is based upon assumptions as to the cost of future claims. Is it not the case that the deficit can only be realised if all claims were payable in full at the one time?

Answer:

On 28 June 2001 during his reply to the second reading debate on the *Workers Compensation Legislation (Amendment) Bill 2001* the Hon. J.J. Della Bosca MLC, indicated that:

- the last valuation of the scheme by its independent actuaries, Tillinghast-Towers Perrin, in June 2000, calculated the deficit by looking at current trends and claim numbers, the type of claim payments, claim duration, inflation and return payments. It examined which factors are trending better or worse in their earlier projections and adjusted projections accordingly.
- the actuarial projections by Tillinghast-Towers Perrin are a breakdown of what the future costs for 2000 will be. Essentially it means that the premiums collected this year have to pay for everyone insured this year and who will require payment for the next, say, 30 years. If they do not collect enough premiums this year to cover those claims for people who are injured this year and will require ongoing care, and keep doing that for a few years, we will end up with a giant multibillion dollar problem, a real problem.

- (25) Is there any situation that the WorkCover Authority can conceive when all outstanding claims will have to be paid at the same time in full value?

Answer:

Please see Answer to Question (24).

- (26) (a) Does the Executive Government have the power at any time to adjust workers' entitlements?
(b) Does the Executive Government have the power to cancel the Scheme?

Answer:

- (26) (a) The *Workers Compensation Act 1987* enables the Executive Government to make Regulations concerning:
Indexation of Benefits

Section 80 of the 1987 Act allows benefits under the Act to be adjusted on 1 April and 1 October each year according to changes in certain wage rate indexes published by the Australian Bureau of Statistics. This is done through a regulation. Amounts can generally only be adjusted upwards, and not downwards.

Common law thresholds and maximum amounts are adjusted through the same process.

Medical Expenses

Sections 59 and 60 confer powers on Workcover to fix the maximum amount that an employer is liable to pay to hospitals and health service providers. Orders have been made in relation to public hospital fees, physiotherapist's fees and private hospital fees. Where a maximum amount is set, the service provider is expressly prohibited from recovering any "gap" from the injured worker. This provision does not therefore effect workers entitlements directly.

In addition, the Act allows WorkCover to direct an insurer to pay an amount greater than the nominal maximum payable in individual claims for medical (\$50,000 max), hospital (\$50,000 max), ambulance (\$10,000 max), and rehabilitation expenses. There is a similar power for WorkCover to direct payments greater than the nominal \$2000 maximum for damages to clothing, glasses and the like.

Permanent Impairment Compensation

The *Workers Compensation Legislation Amendment Act 2001* substantially amends provisions of the 1987 Act relating to permanent loss/impairment compensation. The amount of compensation payable will be determined by a formula. The Minister has made a commitment during the second reading debate on that legislation to transfer the formulas to the Act as soon as practicable to ensure that changes to the formulas in the future can only be made through an amending Act.

Other powers

There are some other miscellaneous benefit provisions (such as maximum amounts for funeral expenses, rehabilitation services and funeral expenses) that can be varied by regulation. In general, these amounts can only be varied upwards.

- (b) No. Regardless of whether the Government decides to proceed to private underwriting, the Act itself provides for the establishment of the scheme that will continue operating until such time as all claims are finalised.

- (27) If the answer to either of questions (26) (a) and (b) is "yes", then although actuaries may predict on present assumptions that there is a deficit, in fact can the Executive Government at any time alter those assumptions so as to wipe out the deficit?

Answer:

Please see Answer to Question 24.

- (28) If that is the case, then is not the relevant question whether the Scheme is actually solvent rather than whether it can theoretically run at some time in the future into deficit?

Answer:

Please see Answer to Question 24.

- (29) (a) Do the WorkCover Authority actuaries agree that the Scheme is solvent at the moment?
- (b) Do the WorkCover Authority actuaries agree that the Scheme's assets are growing?
- (c) Do the WorkCover Authority actuaries agree that those assets will continue to grow?

Answer:

On 28 June 2001 during his reply to the second reading debate, the Hon. John Della Bosca MLC, responded to comments made by the Hon. Ian Cohen MLC, citing an advertisement by the Australian Plaintiff Lawyers Association, which claimed that the scheme's assets had risen from \$3.7 billion to \$6.8 billion.

The Minister responded that the increase in assets would be good news, except that liabilities have increased by an even greater amount and have increased to \$9.1 billion as at December 2000.

The Minister also indicated that the last valuation of the scheme by its independent actuaries, Tillinghast-Towers Perrin, in June 2000, calculated the deficit by looking at current trends and claim numbers, the type of claim payments, claim duration, inflation and return payments. The actuaries examined which factors are trending better or worse in their earlier projections and adjusted projections accordingly.

- (30) (a) Has there been any inquiry into the cost efficiency of expenditure on rehabilitation?
(b) If so, what is the report and what are the results?

Answer:

Please refer to Answer to Question 3.

- (31) (a) Are there actuarial reports examining the expected savings under the Bill?
(b) If so, what are the reports and what are the findings of those reports?

Answer:

The Scheme's Actuary provided WorkCover with interim draft advice during the passage of the Bills and is currently finalising its advice on the Act, which will be provided to the Committee as soon as practicable.

- (32) (a) Is it the case that self insurers are able to fully fund their workers compensation and common law liabilities for figures substantially less than the cost of paying a premium to WorkCover?
(b) If so, why is this the case?

Answer:

- (a) In general, and if compared on a like-with-like basis, employers who self-insure have lower average claims costs than equivalent employers insured with WorkCover.
(b) It is difficult to draw clear conclusions from data about prevention and injury management by managed fund and self-insurers because of the differences in risk profile between the two groups (self insurers generally operate in higher risk industries). Even though, in most years, self-insurers had a higher claim rate, they were able to achieve a better return to work rate. This translates to substantially better average claims cost.

- (33) What percentage of injured workers are in fact provided with suitable duties in respect of:
(a) self insurers,
(b) employers other than self insurers?

Answer:

The National Return to Work Monitor measures the percentage of workers who return to work on suitable duties. The percentage of workers in NSW returning on suitable duties in the 2000/2001 survey was 76%. This compares with the national average of 77%.

Self insurers have not been included in this survey in the past but are to be included in future.

- (34) (a) The introduction of Ss.68A, 9A, 11A, 52A, the Abolition of Interest and the 25% reduction in S.66 and 67 benefits have combined to greatly reduce the amounts paid to injured workers. Are there actuarial reports examining the effect of those savings upon the Scheme?
- (b) If so, what are the results of those reports?

Answer:

The results of the actuarial reports on the introduction of these statutory provisions are contained in the Scheme's ½ yearly actuarial reports. The Minister's covering letter to the Committee Chairman indicates that these reports will be provided directly to the Committee Secretariat.

- (35) Since 1995 there have been almost annual changes to the benefits and operation of the Scheme.
- (a) Has the frequency of these changes caused any problems in assessing the state of the Scheme and if so, what are those problems?
- (b) Have WorkCover actuaries raised any difficulties in assessing the future of the Scheme as a result of those frequent changes?
- (c) If so, what difficulties have they highlighted?

Answer:

- (a) Any problems are related to the approach taken in a standard actuarial valuation. Essentially, such a valuation relies on stability in past claim trends and amounts in projecting future outcomes. The extent to which recent amendments to the Scheme cause discontinuities in such trends reduces confidence in the future projections upon which actuarial estimates of claim liability are based.
- (b) Yes.
- (c) Examples of the difficulties arising from such legislative and system changes are:
- changes in the apparent utilisation of the common law option;
 - difference over time in the type and average cost of claims being settled by commutation.
 - changes in frequency and cost of statutory non-economic loss claims.
 - changes in continuance rates of statutory economic loss (i.e. "weekly") claims
 - changes in interaction between usage of the various different benefit types.



**Special Minister of State
Minister for Industrial Relations
Assistant Treasurer
Minister Assisting the Premier on Public Sector Management and
Minister Assisting the Premier for the Central Coast**

24 SEP 2001

Reverend the Hon. F.J. Nile, M.L.C. E.D. L.Th.
Chairman, General Purpose Standing Committee No. 1
Legislative Council, Parliament House, Macquarie Street
SYDNEY NSW 2000

Legislative Council
GENERAL PURPOSE
STANDING COMMITTEES
24 SEP 2001
RECEIVED

Dear Reverend Nile,

Thank you for your letter dated 7 September 2001 including an additional six questions from the Scheme's stakeholders and/or service providers.

Please find attached a copy of WorkCover's answers to the questions.

I have also received your letter dated 19 September 2001, and I am grateful for the Committee's agreement to include the WorkCover seminar as part of the Committee's public hearing on Monday 24 September 2001.

Yours sincerely

**John Della Bosca MLC
SPECIAL MINISTER OF STATE
MINISTER FOR INDUSTRIAL RELATIONS, ASSISTANT TREASURER
MINISTER ASSISTING THE PREMIER ON PUBLIC SECTOR MANAGEMENT
MINISTER ASSISTING THE PREMIER FOR THE CENTRAL COAST**

Level 30 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000, Australia
Tel: (02) 9228-4777 Fax: (02) 9228-4392 E-Mail: office@dellabosca.minister.nsw.gov.au

- (1) Has the WorkCover Authority given any consideration to the possibility that a commutation provided for in s.87F may not allow for such a settlement to include a settle of common law liability (by way of a release or otherwise) by reason of the operation of s.87J(1) and to the implications of this possibility on the overall cost of the scheme?

Answer:

The existing provisions of the *Workplace Injury Management and Workers Compensation Act 1998* (the Act) enable insurers to require workers to provide a release indemnifying the Scheme from any future common law claims before they receive a lump sum commutation payment. These provisions are designed to ensure that claimants do not “double dip” by receiving a lump sum commutation, and then pursuing a common law claim. The provisions are supplemented by standard industry practice by which insurers obtain a release as part of the commutation agreement.

- (2) (a) Is it WorkCover’s understanding that the requirement to commence payment of compensation (for up to 12 weeks) within 7 days of notice of injury subsists even where no medical certificate has been provided?
- (b) If so, has consideration been given to the adverse impact that this will have on the overall cost of the scheme?

Answer:

Approximately 15 per cent of all disputes in the Scheme arise because insurer’s fail to make a timely decision about the payment of weekly benefits. This compromises the early notification and prompt treatment of injuries.

In the majority of matters where an injured worker pursues his or her claim the insurer is ultimately found to be liable.

The *Amendment Act* is designed to reduce the likelihood of unnecessary disputes by providing that:

- insurers who without reasonable excuse fail to commence weekly payments within 7 days from the notice of injury will be subject to a maximum penalty of \$5,500,
- the acceptance of provisional liability will not prejudice the insurer’s ability to cease payments if it is later found that the worker was not entitled to compensation,
- insurers can require a worker to provide medical certificates, and stop payments if the medical certificate is not provided within 7 days,
- WorkCover may order the repayment of money obtained by false statements or fraudulent claims.

The provisions are also supplemented by the standard industry practice by which insurers required workers to promptly provide medical certificates.

The new provisions are unlikely to give rise to any additional costs, and it is anticipated that the new integrated dispute resolution service will reduce overall dispute resolution costs.

- (3) Has the WorkCover Authority made any assessment of the increased costs to the scheme of expedited assessments noting that the Act allows for such assessments to be made with little or no evidence or submission on behalf of the respondent and with a heavy presumption in favour of the claimant and with very limited (or indeed no) right to appeal?

Answer:

NSW has highest rate of disputed claims in Australia with 45% of major claims disputed. The *Amendment Act* targets this problem by establishing a new integrated dispute resolution service that is anticipated to reduce overall dispute resolution costs.

The Workers Compensation Commission commences operations on 1 January 2002 and will be headed by an independent Judge (President) and will provide:

- expedited assessment of disputes about medical expenses, suitable duties and return to work plans and weekly benefits,
- assessment of disputed medical issues by approved medical specialists, with limited appeal process,
- arbitration of genuine disputes before legally qualified arbitrators, and
- determination of appeals by the President.

- (4) Why is it that self insurers are not excluded from the operation of s.146 given that there is clearly no need for an employer to be notified of a proposed agreement where the employer is self insured?

Answer:

The *Amendment Act* inserts a new section 146 which provides that:

- a claim cannot be commuted to a lump sum unless WorkCover has given the employer notice of the proposed agreement,
- the employer must be given a reasonable opportunity to make a submission, and
- WorkCover must take the employer's submission into account.

Section 146 should be read in the context of the whole of Part 2 of the Act, which is designed to ensure that an employer (other than a self-insurer) must obtain an insurance policy from a licensed Insurer. WorkCover considers that section 146 would therefore not apply to self-insurers, except where the Uninsured Liability and indemnity Scheme receives a claim from a worker employed by a previous self-insurer who, has surrendered their self insurance licence.

- (5) Has the WorkCover Authority given consideration to the adverse impact on the overall cost of the scheme which would arise by reason of s.317(2) (which provides that an assessment of work injury damages is binding on the employer) having regard in particular to the fact that a statement made in proceedings before the commission is not admissible in proceedings before a Court in respect of a claim for work injury damages by reason of s.354(8)?

Answer:

29,000 claims were referred to conciliation in NSW in 2000. The *Amendment Act* targets this problem by establishing a new integrated dispute resolution service that is anticipated to reduce overall dispute resolution costs.

The *Amendment Act* will enable the Workers Compensation Commission to make an assessment of work injury damages that will be binding in limited circumstances and to a limited extent. The provisions are designed to ensure that work injuries are treated promptly in order to maximise return to work outcomes. Assessments will only arise where the claimant has referred the matter to the Commission and the employer (or his insurer) has wholly disputed liability for the claim.

Having regard to those limitations on the binding status of work injury damages assessments under section 317(2), WorkCover does not consider that these provisions will give rise to an adverse impact on overall scheme costs. In fact, as with other provisions mentioned above, they are part of the range of improvements that are anticipated to reduce overall dispute resolution costs.

The fact that, as provided under section 354(8), statements made in proceedings before the Workers Compensation Commission (including proceedings relating to work injury damages assessments) are not admissible in later common law proceedings, unless agreed by the person who made the statement, should encourage parties to be frank with one another and the Commission, and avoid unnecessary disputes.

- (6) What action has the WorkCover Authority taken or does the WorkCover propose to take in respect of the large number of referrals to the WorkCover Authority by the Workers Compensation Resolution Service in respect of alleged failures to comply with sections such as s.79A and s.81A of the Act?

Answer:

Sections 79A and 81A of the Act were designed to enhance the efficiency of the conciliation process by requiring parties to exchange medical reports and other documentary evidence prior to a conciliation conference. This is consistent with practices in the Supreme Court and the District Court that require expert reports to be filed with the court when the proceedings are first commenced.

It is understood that insurers experienced initial difficulties in complying with these provisions. WorkCover therefore negotiated with insurers and the Workers Compensation Resolution Service improved procedures and communications to ensure that initial difficulties were overcome. It is understood that the new system is working more effectively.

Sections 79A and 81A also provide that if a party does not exchange relevant documents, they cannot use those documents in later proceedings before a conciliator or the Compensation Court. These provisions were designed to ensure that parties provided one another with relevant documents.

The *Amendment Act* establishes a new integrated dispute resolution service that is anticipated to reduce overall dispute resolution costs. It is anticipated that the Rules of the Commission will encourage parties to be frank with one another and exchange documents in a timely manner.

Appendix 3

Questions on notice - public hearing 24 September 2001

- answers received to date

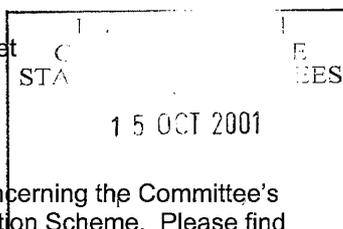
Questions on notice - public hearing 24 September 2001



Special Minister of State
Minister for Industrial Relations
Assistant Treasurer
Minister Assisting the Premier on Public Sector Management and
Minister Assisting the Premier for the Central Coast

15 OCT 2001

Reverend the Hon. F.J. Nile, M.L.C. E.D. L.Th.
 Chairman, General Purpose Standing Committee No. 1
 Legislative Council, Parliament House, Macquarie Street
 SYDNEY NSW 2000



Dear Reverend Nile,

Thank you for your letter dated 27 September 2001 concerning the Committee's review and monitoring of the NSW Workers Compensation Scheme. Please find attached answers that have been prepared to date in relation to the Committee's additional questions.

The answers indicate that a number of documents were delivered to the Committee Secretariat on 11 October 2001, and that other documents will be provided directly to the Committee Secretariat on 15 October 2001.

Given the Committee's short deadline, a number of answers, concerning technical questions, are still being prepared. I will provide you with these answers as soon as practicable.

As indicated during the Committee's hearing on 24 September 2001, WorkCover intends to fully co-operate with the Committee, but needs to ensure that it complies with the disclosure provisions under the *Privacy and Personal Information Protection Act 1998* and the *Workplace Injury Management and Workers Compensation Act 1998*.

WorkCover has therefore sought advice from the Crown Solicitor's Office on how to comply with the Committee's request, but meet its legal obligations under the relevant legislation. The attached advice indicates that the common law database can only be legally provided, by excising any information that would make the identity of any individuals apparent, or reasonably ascertainable from the information provided. This edited information will be provided directly to the Committee Secretariat on 15 October 2001.

WorkCover is currently compiling Board papers (including reports and other documentation) for the period relating to June 2000 to December 2001. WorkCover intends to provide these documents directly to the Committee Secretariat but needs to ensure that it satisfies any legal disclosure requirements under the *Workplace Injury Management and Workers Compensation Act 1998*.

Level 30 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000, Australia
 Tel: (02) 9228-4777 Fax: (02) 9228-4392 E-Mail: office@smos.nsw.gov.au

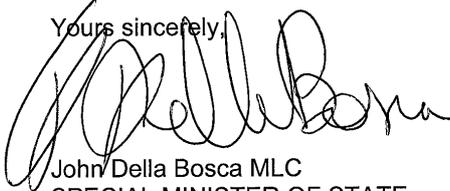
The Board papers include reference to, or information provided by, individuals, service providers, and other Government agencies. The Crown Solicitor's Office advises that WorkCover is required to obtain their consent before this information is provided to the Committee.

WorkCover has therefore written to the various individuals, service providers, and other Government agencies, in order to obtain their written consent by 26 October 2001. The Board papers and associated documents will be provided directly to the Committee Secretariat once this consent is obtained. I understand that these arrangements have been discussed with the Committee Secretariat, and that WorkCover will continue to liaise with the Committee in order to provide these papers in an efficient and helpful manner.

Finally, it is understood that the Committee held a public hearing on 10 October 2001. I am concerned that statements made by a number of witnesses require clarification if they are to avoid a possible misleading impression.

I would like to help the Committee to obtain an accurate and balanced view about the issues raised. I therefore intend to analyse the hearing transcripts, and will consider responding either in writing, or when I next meet with the Committee.

Yours sincerely,



John Della Bosca MLC
SPECIAL MINISTER OF STATE
MINISTER FOR INDUSTRIAL RELATIONS, ASSISTANT TREASURER
MINISTER ASSISTING THE PREMIER ON PUBLIC SECTOR MANAGEMENT
MINISTER ASSISTING THE PREMIER FOR THE CENTRAL COAST

1. Revd Nile asked the Special Minister of State, Minister Industrial Relations, Assistant Treasurer, the Hon John Della Bosca, MLC—

Could you please outline the Government's policy objectives in relation to workers compensation (and specifically reform of the Workers Compensation Scheme)?

Answer:

The Government's goal is to implement a robust and comprehensive reform package that will deliver a Scheme that provides appropriate long and short-term social and economic policy objectives by:

- (i) Reducing the risk of workplace injury, illness and disease;
- (ii) Giving prompt treatment for injury, and necessary medical and vocational rehabilitation to promote early return to work;
- (iii) Providing a simply designed benefits structure which gives injured workers income support during incapacity, and equitable compensation for permanent impairment, and which supports return to work strategies;
- (iv) Ensuring that premium costs are commensurate with the inherent risks of their industry, taking into account their performance in targeting injury prevention and management; and
- (v) Delivering these objectives efficiently and effectively while making sure that the Scheme and all its participants get the best value for money.

2. Revd Nile asked the Special Minister of State, Minister Industrial Relations, Assistant Treasurer, the Hon John Della Bosca, MLC—

What does the Government want to achieve in the area of workers compensation (and reform of the workers compensation scheme)?

Answer:

The Government wants to improve the Scheme to make it more affordable, efficient and fair.

3. Revd Nile asked the Special Minister of State, Minister Industrial Relations, Assistant Treasurer, the Hon John Della Bosca, MLC—

- (1) What performance indicators does the Government have in place in relation to workers compensation?
- (2) How will you assess the success of the Government's reforms?

Answer:

- (1) Successive Governments have measured the performance of the Scheme according to its affordability for employers and the level of benefits provided for injured workers.

These principal indicators can be broken down into 4 key criteria on which the Scheme is evaluated:

- (i) Affordability: cost of premiums;
 - (ii) Effectiveness: consideration of claim numbers, claim costs and whether or not the structures are working well in the way that is intended and remain cost effective;
 - (iii) Efficiency: timely delivery of benefits and services
 - (iv) Fairness: the system should operate fairly and equitably between claimants and ensure that those who are most seriously injured receive the maximum compensation.
- (2) It is intended that the success of the Government's reforms will be measured against the below primary and

flow-on objectives:

Primary objectives

- (i) Fewer disputes
- (ii) Timely resolution of disputes
- (iii) Lower cost of resolving disputes
- (iv) Work injury damages to be targeted to those most in need
- (v) Lower cost of processing claims for work injury damages
- (vi) Better client service

Flow-on objectives

- (i) Prompt payment of benefits
- (ii) Earlier return to work
- (iii) Reduction in time lost because of injury
- (iv) Fewer long term claims
- (v) Effective injury management
- (vi) Increasing injured workers income capacity through sustainable employment

4. Revd Nile asked the Special Minister of State, Minister Industrial Relations, Assistant Treasurer, the Hon John Della Bosca, MLC—

What do you see as the biggest challenges facing the Government in relation to workers compensation (and the reform of the scheme)?

Answer:

The biggest challenge facing the Government is to effect the cultural change required to get employers, workers and service providers to work together to achieve the objectives outlined in question 3. Employers, workers and service providers need to recognise that there are a number of key problems undermining the long-term viability of the Scheme. These problems include:

- Claims numbers are falling but are increasing in cost and contributing to a large and growing deficit (estimated at \$2.75 billion as at 30 June 2001);
- Delays and barriers to effective injury management and return to work;
- Unnecessary legal disputes and high legal costs; and
- Premiums are high but insufficient to meet Scheme costs.

Once employers, workers and service providers recognise these problems, they will need to support measures that will make the Scheme more affordable, efficient and fair.

5. Revd Nile asked the Special Minister of State, Minister Industrial Relations, Assistant Treasurer, the Hon John Della Bosca, MLC—

- (1) What would be the features of an ideal workers compensation scheme?
- (2) How would such a scheme be different from the scheme that is currently in place?

Answer:

- (1) Commentators depending on their social, economic and political beliefs, have many different views about the features of an ideal workers compensation scheme.

Pragmatically, the Government considers that an 'ideal' workers compensation scheme should be efficient, affordable and fair, and based on the following objectives:

- the possibility of workplace injury should be reduced by identifying, assessing, controlling and/or eliminating health or safety risks;
- when workplace injuries do occur, they should be treated safely and promptly, to enable the injured worker to return to durable employment;
- injured workers should be provided with income support during incapacity, and be compensated for permanent impairment;
- the benefits structure should be straightforward and provide adequate compensation to injured workers and their dependents, and support return to work strategies;
- employer costs should be commensurate with the inherent risks of their industry, and reflect their performance in injury prevention and management;

The features of an ideal workers compensation scheme should deliver efficient and effective outcomes that satisfy the above objectives.

- (2) The Government's ten-point plan for reforming the Scheme is designed to make it more efficient, affordable and fair. Once the Government's reform program has been fully implemented, and the Scheme has been given time to mature, it should reflect the features of an ideal workers compensation scheme.

6. Revd Nile asked the Special Minister of State, Minister Industrial Relations, Assistant Treasurer, the Hon John Della Bosca, MLC—

What would the Government like to see come out of the Committee's inquiry?

Answer:

The Government would like the Committee to acknowledge that:

- the Scheme's long and short-term social and economic policy objectives need to strike an appropriate balance between reasonably priced premiums for employers and adequate benefits for injured workers;
- fundamental reform is required in order to ensure the long term viability of the Scheme;
- the Government's ten point plan for reforming the Scheme is designed to make it more efficient, affordable and fair;
- significant progress has already been made through initiatives including injury prevention and management; improved claims management; an integrated dispute resolution service; compliance and incentives for employers and service providers to improve their performance; and
- the continuing process of reform should be supported and given time for proper implementation.

7. Mr Pearce asked the Special Minister of State, Minister Industrial Relations, Assistant Treasurer, the Hon John Della Bosca, MLC—

(Please refer to p.5, Inquiry into Workers Compensation Hansard, Monday, 24 September 2001)

In relation to Figure 8 "Premiums are high but insufficient to meet scheme costs". Could WorkCover provide the committee with a chart plotting actual against budgeted for each year?

Answer:

WorkCover has prepared the attached charts.

8. Revd Nile asked General Manager, WorkCover Authority, Ms K McKenzie—

- (1) What are the legal structures between insurers and the Government?
- (2) What are the legal structures between insurers and WorkCover?

Answer:

The legal structures between the NSW Government, WorkCover and insurers are prescribed by the *Workers Compensation Act 1987* and the *Workplace Injury Management Act and Workers Compensation Act 1988*. Copies of this legislation and supporting material have already been provided directly to the Committee Secretariat.

The legislation prescribes different legal structures for different classes of insurers. These legal structures largely depend on whether the insurer is acting as a licensed insurer, or as a self-insurer or specialised insurer.

WorkCover is currently preparing a briefing note to help the Committee to understand the different legal structures, and WorkCover's role in relation to the Scheme's different funds.

It is understood that the Committee's first report (due to be tabled on 17 October 2001) will indicate which matters are of most interest to the Committee. WorkCover intends to address these matters in its briefing note.

9. Revd Nile asked General Manager, WorkCover Authority, Ms K McKenzie—

I understand that all the state workers compensation regulators get together and meet to discuss issues and compare different scheme designs.

Is the Government able to provide a copy of the comparison for the last two years? (WorkCover may have a copy)

Answer:

The Heads of Workplace Safety and Compensation Authorities (*HWSCA*) publishes the *Comparison of Workers' Compensation arrangements in Australian Jurisdictions*. The publication is compiled from information supplied by the HWSCA jurisdictions.

The Committee Secretariat has been provided with publications for January 2000 and July 2000. The next report is due November 2001 and will be provided to the Committee when available.

10. Revd Nile asked General Manager, WorkCover Authority, Ms K McKenzie—

APRA are introducing reforms to the general insurance industry. Part of those reforms require insurers to discount their claims liabilities at the risk free rate of return and to set up risk margins over central estimates of liabilities to ensure claims reserves will be adequate.

- (a) Is WorkCover intending to adopt with these two reforms?
- (b) If so, what will the financial impact be on the scheme deficit?
- (c) If not, then why not?

Answer:

The first reform is already the current practice adopted by WorkCover. The rates used by WorkCover's consulting actuary to discount the claim liabilities is the estimated risk-free discount rate intended to reflect the long-term yield on a portfolio of fixed-interest government securities with a mean term, which matches the mean term of future claim payments on claims outstanding as at the valuation date.

Australian Accounting standards are silent on the issue of prudential (ie. risk) margins. A prudential margin is usually included in the provision for outstanding claims in the private sector insurance industry. However, the WorkCover Scheme is a compulsory statutory insurance scheme with premium rates prescribed by legislation. The legislation also provides for the funding of any overall deficit by the payment of a contribution by employers as part of future

premiums.

The decision as to whether to include a prudential margin is a matter to be determined by the Board of WorkCover. The Board has decided that the appropriate accounting policy for the WorkCover Scheme is to bring to account the central estimate of the outstanding claims liability without any prudential margin.

The Victorian WorkCover Authority Fund also adopts a similar accounting policy and brings to account its outstanding claims liability on a central estimate basis with no prudential margin.

The Audit Office of NSW is satisfied that WorkCover's accounting policy relating to outstanding claims comply with relevant accounting standards and has not qualified WorkCover's financial statements in respect of this policy.

11. Revd Nile asked General Manager, WorkCover Authority, Ms K McKenzie—

There have been a number of corporate collapses recently including HIH, One-tel, Ansett, etc. The world and Australian economy are heading towards higher unemployment. Typically in this scenario workers compensation claims experience deteriorates with an increase in claim numbers and average claims size (brought about by claimants staying on benefit for longer periods and increased frequency of common law claims).

- (a) Have WorkCover estimated (in dollar figures) the potential impact on the scheme deficit of various higher unemployment rates?
- (b) Does WorkCover consider it part of good business management to undertake such work?

Answer:

- (a) WorkCover does not routinely monitor or measure in dollars terms the potential impact on Scheme's deficit projections of movements in unemployment rates.
- (b) As far as WorkCover is aware, monitoring of unemployment rates and modeling their potential impact on the incidence and cost of claims is not routinely undertaken by any Australian workers compensation scheme.

High level monitoring of this kind will not prevent and is not likely to be useful in identifying the practical solutions to problems and issues that may arise due to corporate failures, industry restructuring and downsizing and higher unemployment rates.

However, in 2001 WorkCover commissioned research to investigate the impact of industry downsizing and large scale retrenchments on both the Scheme's financial position and the recovery and return to work of injured workers.

The research will include quantitative analysis of the relationship between industry downsizing and claims incidence and costs, and qualitative analysis of the outcomes for injured workers, in three NSW industry sectors that have recently experienced significant restructuring or downsizing.

The research is intended to identify practical strategies for minimising and efficiently managing claims by newly unemployed injured workers, taking into account industry-specific variables such as workforce demographics, the nature and incidence of injuries and the availability of alternate employment opportunities.

12. Revd Nile asked General Manager, WorkCover Authority, Ms K McKenzie—

What impact (dollar estimate) has the poor performance of insurers had on the financial performance of the scheme?

Answer:

Undoubtedly insurers' poor performance will have an impact on the Scheme. This is the reason for WorkCover introducing performance-based fees as part of insurers remuneration in 1997. Modelling such an impact will be a complex and subjective exercise. Modelling has not been performed and consequently the impact (dollar estimate) cannot be quantified.

13. Revd Nile asked General Manager, WorkCover Authority, Ms K McKenzie—

- (1) Could WorkCover please outline their philosophy of **managing** the scheme rather than regulating the scheme?
- (2)
 - (a) Some commentators have suggested that there is substantial leakage in the area of recoveries. Has WorkCover investigated the extent of leakage from the system?
 - (b) If so, can they detail the results including quantifying the financial impact on the scheme?
 - (c) If not, why not?

Answer:

- (1) WorkCover is currently preparing a briefing note to help the Committee to understand WorkCover's role.

It is understood that the Committee's first report (due to be tabled on 17 October 2001) will indicate which matters are of most interest to the Committee. WorkCover intends to address these matters in its briefing note.

- (2) WorkCover has always instructed insurers that where a right of recovery is apparent and sustainable at law, insurers must effect recovery. However, the performance of insurers in effecting recoveries varies across individual insurers. WorkCover has not quantified the possible impact of any leakage in the area of recoveries on the scheme.

To improve insurer's performance in effecting recoveries, WorkCover has introduced this as a new performance measure in the 2001/02 insurer remuneration package. The introduction of claims recoveries as a performance measure will enable WorkCover to monitor and assess insurers' effectiveness in making claim recoveries from third parties. To give a perspective of the dimensions of claim recoveries, WorkCover's consulting actuary Tillinghast's June 2001 Scheme Valuation estimates potential recoveries of \$277 million from a gross outstanding claim liability of \$8 billion.

14. Revd Nile asked General Manager, WorkCover Authority, Ms K McKenzie—

(In relation to WorkCover's Green Paper of Premium System)

- (1)
 - (a) Do insurers have little financial incentive to classify employer's wages into correct industry classifications?
 - (b) Is there more incentive for insurers to incorrectly classify employers so they retain the client?
 - (c) If so, why has it taken WorkCover so long to address this as a major operational issue?
- (2)
 - (a) Did the Insurance Council of Australia recommended in early 1999 that WorkCover take over the classification of employers from insurers to reduce premium fraud, to which WorkCover agreed?
 - (b) If so:
 - (i) Why has this not been implemented?
 - (ii) When will it be implemented?
- (3) Insurers through the Rating Bureau in 1999 developed premium rates by ANZSIC classification that reduces that substantial cross subsidisation within the scheme.

Why did it take 2 years for WorkCover to implement this improvement when essentially all the work have been undertaken by insurers and delivered to WorkCover?

- (4)
 - (a) Has WorkCover investigated whether insurers bend to pressure from employers to reduce case estimates on claims around renewal time so that employers pay lower premiums?
 - (b) If so, can the committee be provided with the results?

- (c) If not, why not?
- (d) What is WorkCover intending to do with this matter?

Answer:

- (1)
 - (a) Since 1997, one of the performance measures in the insurer performance based fee component of their remuneration package is - correct tariff rates applied for policies. Insurers were also advised that the objective of this performance measure is to ensure correct premiums are charged to maintain Scheme income and ensure equity across employers in the Scheme. This performance measure has been retained in the PWC remuneration model to provide financial incentive to insurers to classify employers correctly.
 - (b) Insurers only earn their full performance fees for this performance measure if they achieve between 90% to 100% correct tariff classifications. Feedback from insurers indicates that they need to earn performance fees to be financially viable so the incentive to insurers to generally incorrectly classify employers to retain clients may not be there.
- (2)
 - (a) Yes, but ICA proposed that as part of the changes related to the proposed move to private underwriting (on 1 October 1999) that WorkCover should take over classifying employers for premium rating processes. It should be clearly noted that this proposal was not intended to reduce premium fraud by employers, but reflected concerns that in a competitively privately underwritten environment, individual insurers may attempt to apply incorrect and lower rated classifications to employers in order to attract business and undermine the integrity of the classification system.
 - (b)
 - (i) This proposal was not implemented due to the deferral of the introduction of private underwriting.
 - (ii) There are currently no plans to implement this proposal as it is not considered necessary in a Managed Fund environment.
- (3) The proposed ANZSIC-based classification structure and premium rates prepared by the Rating Bureau in 1999 was intended for a privately underwritten environment. Under the Rating Bureau's proposals, all industry classes would be subject to their assessed true risk premium rate.

Because of the substantial levels of cross-subsidisation in the existing industry classification system, this would have resulted in excessive premium increases for many industry classes, and was strongly opposed by employer groups. The Bureau's proposal that the WorkCover Scheme provide affected employers with a cash rebate to partially offset these premium rate increases was not acceptable to the Government as it would have appreciably added to the WorkCover Scheme deficit.

Following the decision in June 2000 to indefinitely defer the implementation of private underwriting, WorkCover commenced planning for the adoption of an ANZSIC-based classification system, which would incorporate the gradual unwinding of cross-subsidies in order to mitigate the adverse financial impact on employers of excessive premium rate increases.

WorkCover undertook consultation on options in this regard through release of a Discussion Paper in January 2001. As a result, an ANZSIC-based classification system, incorporating transitional measures to protect employers from large premium rate movements while maintaining overall Scheme income levels was introduced, commencing 30 June 2001.

As a result, WorkCover introduced an ANZSIC—based system in a way that was financially responsible with regard to its impact on both the Scheme and NSW employers, at the first available opportunity following the decision to defer private underwriting.

- (4)
 - (a) to (d) WorkCover has not specifically investigated this issue. However WorkCover has implemented measures to reduce this risk. All insurers are required to estimate claims in accordance with WorkCover's Claims Estimation Manual. Since 1997, one of the performance measures in the insurer performance based fee component is - claims estimated correctly in accordance with WorkCover's Claims Estimation Manual.

This performance fee is also linked to the same objective as in Q14 (1) (a) above. PWC has retained this measure in the PWC remuneration model to provide incentive to insurers to estimate claims correctly.

15. Revd Nile asked General Manager, WorkCover Authority, Ms K McKenzie—

(In relation to 31 December 2000 Actuarial Report (Tillinghast dated 8 May 2001)

- (1) Tillinghast's actuarial report dated 8 May 2001 on page 6 quotes:

"We recommend close monitoring and control of common law claims to increase the confidence in our current estimate of related costs."

- (a) What additional monitoring of common law claims has WorkCover set in place **since** that report? (Please describe these in detail.)
- (b) What are the results of that additional monitoring?
- (c) What mechanisms have WorkCover set in place to control common law claims?
- (2) Tillinghast have projected a flattening of common law claims for accident years since 1998. Does WorkCover consider this to *be a brave assumption given the substantial deterioration to date?*
- (3) Tillinghast refer on page 12 and 13 to reasons for the increase in the deficit to December 2000. One **unexpected** reason given is:

"\$120M increase due to the effect of the under collection of premiums..."

Page 16 of the same report suggests the shortfall in the premium rate will continue into 2001/02 and increase to \$160m.

Both figures compare targeted premiums compared to actual received premiums.

- (a) Can the Government please set out the reasons why there has been an under collection of premiums?
- (b) What actions have WorkCover put in place to ensure that there is no under collection of premiums in future and in particular in 2001/02?
- (c) What action has WorkCover put in place to reduce the estimated under collection of premiums of \$120m up to 31 December 2001?
- (4) On Page 15 and 16 Tillinghast set out suggested ACTION POINTS for WorkCover:

Tillinghast recommended, "The need for collection of better information, generally, and most importantly, for common law claims:"

- (a) What are the deficiencies in the information provided to Tillinghast and in particular for common law claims?
- (b) Since 8 May 2001:
- (i) What investigations has WorkCover made into improving collection of information?
- (ii) What has been implemented to improve the information given to WorkCover actuaries?

Tillinghast recommended, "Increased focus on the use of the commutation option. This will enable savings from the use of this option to continue."

- (c) What actions have WorkCover put in place to increase the use of commutations by insurers since 8 May?

- (d) What monitoring has WorkCover put in place on commutations in addition to that provided by Tillinghast?
- (e) What have been the results?
Tillinghast recommended, "More interactive asset/liability management."
- (f) What actions have WorkCover taken since 8 May 2001 on this recommendation?
Tillinghast recommended, "Investigation into appropriate levels and types of treatment to deliver better RTW results."
- (g) What investigations into this matter and actions have WorkCover undertaken since 8 May 2001?
- (h) What are the results from those investigations?
- (5) On page 72 Tillinghast project the scheme deficit to increase from \$2.179B at December 2000 to \$3.765B at June 2005.

This is a very substantial increase that will be disastrous for the scheme and for NSW. What operational steps are WorkCover putting in place or investigating to arrest the increase in the deficit?

Answer:

- (1) (a) In June 2001, WorkCover commissioned PriceWaterhouse Coopers Actuarial to undertake a comprehensive analysis of current common law claim trends and their underlying causes.
- (b) The PwC report was finalised in August 2001 and provided to the Inquiry into Workers Compensation Common Law matters being undertaken by Justice Terry Sheahan. This report has also been provided to the Standing Committee.
- (c) Legislative proposals intended to control common law claims were introduced to Parliament in the *Workers Compensation Amendment Bill* in March 2001. Following consultation on this Bill, these proposals were withdrawn and Justice Terry Sheahan was commissioned to conduct an independent inquiry into workers compensation common law matters. The Government is currently consulting stakeholders on the recommendations of Justice Sheahan's report and expects to introduce legislative proposals in October 2001.
- (2) Tillinghast's report (dated 8 May 2001) was based on analysis of scheme claims performance to the end of December 2000. Their findings and assumptions are considered reasonable in view of the data available at that time.

It should be noted that, Tillinghast have subsequently revised their methodology for projecting common law claims numbers, as indicated in their report (dated 26 September 2001) of the financial position of the Schemas at 30 June 2001 (see in particular pages 38 - 42).

In this report Tillinghast attribute the recent acceleration of the increase in common law claims to both the continuation of the underlying 35% growth rate in common law claim numbers experienced over recent years and the bringing forward of the lodgement of common law claims due to concerns about the impact of the proposed legislative reforms.

- (3) (a) Reasons for the unexpected under collection in premiums in the six months to 30 December 2000 include:
- an overestimation of the amount of declared wages in the six months to 30 December 2000. Tillinghast's June 2000 estimate of wages for this six month period was \$52.943 billion (based on an assumed 7.5% increase in wage roll compared to 2000/01) whereas actual wage declarations were \$50,530 billion, a \$2.414 billion or 4.6% difference.
 - a greater than expected movement of employees to lower risk industry sectors resulting in lower than expected basic tariff premium collections

- lower than expected experience premium collections due to the inadequacy of claims adjustment or “f” factors in view of the greater than expected deterioration in claims experience

It should also be noted than in addition to the unexpected under collection of premiums due to these factors, the projected continuation of the under collection in 2001/02 also reflects the Government’s decision to maintain the target average premium rate at 2.8% of wages (net of GST) which is below the projected “breakeven” premium rate.

(b) Actions taken to rectify the reported under collection of premiums in 2001/02 includes:

- increases to initial premium “f” factors for 2001/02 gazetted in June 2001.
- Tillinghast was requested to adjust projections of declared wages for 2001/02 to take into account recent trends in wages growth and the impact of self-insurers exiting the Scheme during 2001/02.
- a range of measures to ensure improved accuracy in wage declarations and employer premium rate classifications as part of a comprehensive and strategic approach to ensuring improved compliance with insurance obligations, including increased and targeted audits, increased penalties for premium evasion and raising awareness of employer obligations regarding workers compensation insurance.

(c) Actions taken to reduce the reported under collection of premiums in 2000/01 include

- making provision for the continuation of the observed long term trend in the movement of employees to lower risk industry sectors in the determination of industry premium rates for 2001/02
- increases to hindsight premium “f” factors for 2000/01 gazetted in June 2001 to reflect the deterioration in claims experience.
- adjustment of projections of ultimate declared wages for 2000/01 to take into account the impact of self-insurers exiting the Scheme during 2000/01
- ongoing enhancement of a comprehensive and strategic approach to ensuring improved compliance with insurance obligations as indicated in the answer to 1 5(3)(b) including the establishment of industry-based taskforces and a doubling of number of wage audits in 200 1/02 to 1,000 per month.

In addition, it should be noted that further proposed measures to ensure employer compliance with insurance obligations are contained in the Workers Compensation Insurance Compliance Green Paper which was released for public comment in September 2001.

(4) (a) Identified opportunities for improving the collection of information on Scheme performance include:

- more detailed categorisation of medical services costs;
- detailed breakdowns of common law claim award payments according to head of damage and plaintiff legal costs,
- greater consistency and ability to match the common law claims and payments data provided by insurers and stored in the main WorkCover database (INSITE) and the data on WorkCover’s common law register regarding initiated but unfinalised common law claims.
- improved data about the utilisation and outcomes of dispute resolution processes and associated legal costs.

It should be noted that from an actuarial perspective, a key problem in the usefulness of Scheme data and information is the impact of the various changes to legislative provisions regarding Scheme benefits and consequent changes in utilisation of the various benefit types. The regular changes in Scheme legislation reduce the actuaries confidence in identifying and projecting future benefit

utilisation and claims cost trends.

- (b) (i) WorkCover is continuing to progress plans for the establishment of a new and improved database to replace INSITE. Substantial investigation of the design and data specifications for a new database was undertaken between 1998 and 2000. However, this work was predicated on the assumption of the privatisation of the WorkCover Scheme.

Since the decision to indefinitely defer private underwriting, WorkCover has reviewed investigations to date and is developing design specifications for a new database, taking into account the differences in the types of data collected and the relationship between insurer and WorkCover information systems in a managed fund environment as opposed to a privately underwritten environment.

However, progress on this project has been given second priority to urgently progressing changes to WorkCover and insurer information systems to accommodate the changes in premium rate classifications, the premium discount scheme from June 2001, and the Amendment 2001 reforms.

It is anticipated that the new WorkCover database will become operational in late 2002.

- (ii) In the interim, WorkCover has undertaken and commissioned specific data analysis and research projects into legal costs, dispute resolution processes and outcomes, common law claims and commutations in order to provide better quality information to assist actuarial valuation and the development of effective legislative reforms.
- (c) WorkCover has not undertaken specific action to increase the use of commutations by insurers since 8 May 2001. In view of the continuing increase in commutations it was considered appropriate to undertake further research into the characteristics of commuted claims in order to determine the extent to which they result in net costs or savings to the Scheme, as well as examine the long-term outcomes for injured workers.

The Committee should note that the commend by Tillinghast was not intended to imply there should be a unilateral increase in the utilisation of commutations, but rather increase efforts to focus commutations on claims that are more likely to generate savings for the Scheme, as opposed to claims that are likely to inflate costs. Hence WorkCover's subsequent research work on this subject.

- (d) In July 2001, WorkCover sought tenders for detailed research to analyse the characteristics of claims which are being commuted in order to identify the overall cost/benefit to the Scheme of commutations and to identify the types of claims for which commutation would result in Scheme savings.
- (e) The preliminary results of the quantitative component of the research are expected in early October 2001, with more comprehensive qualitative analysis scheduled for completion in 2002.
- (f) After a competitive tendering process, WorkCover commissioned Tillinghast to review and make recommendations about improving the current guidelines for investment of statutory funds by licensed insurers. The revised investment mandate was approved by the WorkCover Board and implemented effective 30 June 2001.
- (g) Prior to the 8 May 2001 actuarial valuation, WorkCover had commissioned the development of evidence-based clinical guidelines to improve treatment and return to work outcomes from workers with low back injuries, which are the single most common type of workplace injury.

The clinical guidelines have been developed and tested in with the close cooperation of the Royal College of General Practitioners. Once evaluated the clinical guidelines will be revised and implemented, with an extensive training program for treating doctors. This initiative is expected to result in both more effective and appropriate levels and types of treatment for lower back injuries.

In a separate but related initiative, WorkCover has recently implemented a system for reviewing extended physiotherapy treatments for injured workers due to concerns about the extreme variability in utilisation of physiotherapy services and their cost and effectiveness. As a result, cases of extended

physiotherapy treatment will be referred to independent physiotherapy experts to assess the need and utility of continuing physiotherapy treatments.

- (h) It is too early to properly evaluate the implementation of evidence-based clinical guidelines for lower back injuries and the physiotherapy review process. However, both initiatives will be closely monitored and the formally evaluated in due course.
- (5) WorkCover is progressing the implementation of the Government's comprehensive program of WorkCover Scheme reforms, as outlined in the Minister's June 2000 statement to Parliament.

16. Revd Nile asked General Manager, WorkCover Authority, Ms K McKenzie—

Can the Government provide the committee with details of the new industry Classification Scheme, ANZSIC (S29 Industry Classes) and old scheme (110 Industry Classes) p.11 draft?

Answer:

WorkCover publishes an annual guidance booklet "Outline of the NSW Workers Compensation Scheme". The 2000/01 and 2001/02 booklets contain details of the previous and the new ANZSIC-based industry classification systems. Copies of the booklets have been provided directly to the Committee Secretariat.

17. Revd Nile asked General Manager, WorkCover Authority, Ms K McKenzie—

(Please refer to p.13, Inquiry into Workers Compensation Hansard, Monday, 24 September 2001)

What is the impact on the scheme deficit of a movement of 0.25 percent increase or decrease in interest rates?

Answer:

The interaction between interest rates and the deficit is a complex one and WorkCover has therefore sought the attached written advice from the Scheme's actuaries.

18. Ms Saffin asked General Manager, WorkCover Authority, Ms K McKenzie—

(Please refer to p.16, Inquiry into Workers Compensation Hansard, Monday, 24 September 2001)

Part of the report commissioned by Price Waterhouse Coopers states:

"There is a general stakeholder agreement in the New South Wales Workers Compensation Scheme that various operational aspects of the system perform poorly."

- (1) What is WorkCover's response to that statement in the report?
- (2) How long has there been that agreement about poor performance?

Answer:

Please see answer to question 23.

19. Dr Wong asked General Manager, WorkCover Authority, Ms K McKenzie—

(Please refer to p.17, Inquiry into Workers Compensation Hansard, Monday, 24 September 2001)

Could WorkCover provide the Committee with actuarial reports and projections on a yearly basis from 1991 to 1996?

Answer:

Copies of the following actuarial reports will be provided directly to the Committee Secretariat:

- Actuarial Review of the WorkCover Scheme Statutory Funds as at 30 June 1996.
- Actuarial Review of the WorkCover Scheme Statutory Funds as at 31 December 1995.
- Actuarial Review of the WorkCover Scheme Statutory Funds as at 31 December 1994.
- Actuarial Review of the WorkCover Scheme Statutory Funds as at 31 December 1993.
- Actuarial Review of the WorkCover Scheme Statutory Funds as at 31 December 1992.
- Actuarial Review of the WorkCover Scheme Statutory Funds as at 31 December 1991.

20. Ms Saffin asked General Manager, WorkCover Authority, Ms K McKenzie—

(Please refer to p.18, Inquiry into Workers Compensation Hansard, Monday, 24 September 2001)

Could WorkCover provide the committee with WorkCover's summary of the actuarial reports and projections given to the Minister, including any recommendations made to the Minister at the time?

Answer:

WorkCover is currently recalling documents from archives and once retrieved they will be provided directly to the Committee Secretariat.

21. Mr Pearce asked General Manager, WorkCover Authority, Ms K McKenzie—

(Please refer to p.20, Inquiry into Workers Compensation Hansard, Monday, 24 September 2001)

Could WorkCover provide the committee with board papers (including reports and other documentation) for the period relating to June 2000 to December 2000?

Answer:

As indicated during the Committee's hearing on 24 September 2001, WorkCover intends to fully co-operate with the Committee, but needs to ensure that it complies with the disclosure provisions under the *Privacy and Personal Information Protection Act 1998* and *Workplace Injury Management and Workers Compensation Act 1998*.

WorkCover has therefore sought advice from the Crown Solicitor's office advice on how to comply with the Committee's request, but meet its legal obligations under the relevant legislation. The attached advice indicates that the common law database can only legally be provided, by excising any information that would make the identity of any individuals apparent, or reasonable ascertainable from the information provided. This information will be provided directly to the Committee Secretariat on 15 October 2001.

WorkCover is currently compiling Board papers (including reports and other documentation) for the period relating to June 2000 to December 2001. WorkCover intends to provide these documents directly to the Committee Secretariat but needs to ensure that it satisfies any legal disclosure requirements under the *Workplace Injury Management and Workers Compensation Act 1998*.

The Board papers include reference to, or documents provided by, individuals, service providers, and other Government agencies. The Crown Solicitor's Office advises that WorkCover is required to obtain their consent before this information is provided to the Committee.

WorkCover has therefore written to the various individuals, service providers, and other Government agencies, in order to obtain their written consent by 26 October 2001. The Board papers and associated documents will be provided directly to the Committee Secretariat once this consent is obtained. These arrangements have been discussed with the Committee Secretariat, and WorkCover will continue to liaise with the Committee in order to provide these papers in an efficient and helpful manner.

22. Mr Pearce asked General Manager, WorkCover Authority, Ms K McKenzie—

(Please refer to pp.20-21, *Inquiry into Workers Compensation Hansard, Monday, 24 September 2001*)

- (1) Can WorkCover provide the committee with an explanation of what the workers compensation common law register is and how it is compiled?
- (2) Can WorkCover also make arrangement to make the register available to be viewed by the committee?

Answer:

When insurers receive notification that a worker has initiated common law litigation, the insurer must notify and supply details of the common law litigation to WorkCover.

WorkCover compiles a register of this information and uses it to measure the cost of common law claims, and to monitor the settlement of claims.

Crown Solicitor's advice indicates that section 18 of the *Privacy and Personal Information Act* precludes the production of personal information to the Committee or the Parliament.

On the advice of the Crown Solicitor, to comply with both the Committee's request and WorkCover's legal obligations under the Act, WorkCover has edited a version of the common law register to excise any personal information.

A copy of the edited common law register will be provided directly to the Committee Secretariat.

23. Dr Wong asked General Manager, WorkCover Authority, Ms K McKenzie—

(Please refer to p.23, *Inquiry into Workers Compensation Hansard, Monday, 24 September 2001*)

- (1) Can WorkCover provide the committee with a copy of the May 2001, Price Waterhouse Cooper report dealing with remuneration of insurers?
- (2) The report states that there is general stakeholder agreement that various operational aspects of the NSW workers compensations system perform poorly.
 - (a) How long has there been such agreement?
 - (b) If it has been for a few years, why has WorkCover done nothing about it?
 - (c) Who are the stakeholders who perform poorly?
 - (d) In what area is performance poor?
 - (e) How significant is this poor performance?

Answer:

- (1) To comply with the legal disclosure requirements of the *Workplace Injury Management Act 1998*, WorkCover has written to Price Waterhouse Coopers to obtain its consent to the release of the report. PWC has been requested to provide this consent as soon as possible in order that the report can be provided directly to the Committee secretariat. It is anticipated that the report will be provided by 19 October 2001.
- (2) The PWC review was commissioned in December 2000 and reported to a joint WorkCover/insurer steering committee in May 2001. The review was designed to examine existing remuneration arrangements and develop and recommend new arrangements that will provide adequate remuneration for licensed insurers to achieve the Scheme's social and financial objectives; to ensure that remuneration arrangements are aligned to Scheme objectives; to ensure that remuneration levels correspond to performance; to be simple and transparent; and to minimise the risk of gaming and other aberrant behaviour.

- (a) PWC formed the view that stakeholders agreement existed at the time research was done for the report. The PWC report does not explore the historical views of stakeholders.
- (b) WorkCover formed a view in early 1997 that insurers focused on process rather than outcomes. In 1997/98 WorkCover made significant changes to the insurers' remuneration package to increase insurer focus on outcomes rather than process. The changes to the remuneration package introduced a larger component of performance fees to achieve Scheme outcomes. Performance fees are based on individual insurer performance levels for specified outcome measures linked to desired Scheme outcomes. The performance measures represent key areas and outcomes that are critical to the Scheme achieving its financial and service delivery

Following the PWC review, for the 2001/2002 period, a new insurers' remuneration package is being introduced. The key element of the new package is to provide insurers with even a stronger incentive for improved performance as well as a stronger penalty against continued poor performance. The performance fee component of the new package has been increased considerably to provide insurers with a strong incentive to improve injury and claims management.

The remuneration arrangements only form part of WorkCover's strategy to get insurers to improve their performance. Other initiatives include a new range of penalties under the *Workers Compensation Legislation Amendment Act 2000*, and the requirement for insurers to accept provisional liability under the *Workers Compensation Legislation Amendment Act 2001*. Details of these initiatives have already been provided in earlier answers to questions asked by the Committee.

- (c) and (d) Answers to these questions are contained in the Executive Summary and Chapter 8 of the PWC report.

24. Revd Nile asked General Manager, WorkCover Authority, Ms K McKenzie—

(Please refer to p.25, Inquiry into Workers Compensation Hansard, Monday, 24 September 2001)

Could WorkCover supply the committee with the Price Waterhouse Coopers advice on the common law commissioned by WorkCover as part of the Sheahan inquiry?

Answer:

WorkCover commissioned Price Waterhouse Coopers to undertake an analysis of common law experience since the start of the 1987 Scheme. The report was commissioned prior to the commencement of the Sheahan Inquiry in anticipation that it would be of assistance to Justice Sheahan. The report was subsequently downloaded on the Commission's website.

A copy of the report will be provided directly to the Committee Secretariat.

25. Mr Gay asked General Manager, WorkCover Authority, Ms K McKenzie—

(Please refer to p.28, Inquiry into Workers Compensation Hansard, Monday, 24 September 2001)

Could WorkCover supply the committee with statistics from recent blitzes on non-compliance?

Answer:

WorkCover is using a strategic approach to achieve the best outcomes for improving compliance. Inspection activity of employers has been increased, including the doubling of employer wage audits. WorkCover has a number of targeted compliance blitzes underway. A table listing the blitzes and their results to date is attached.

26. Mr Pearce asked General Manager, WorkCover Authority, Ms K McKenzie—

(Please refer to p.30, Inquiry into Workers Compensation Hansard, Monday, 24 September 2001)

Could WorkCover provide the committee with a briefing note on the role that WorkCover plays in relation to each of the funds in the NSW workers compensation scheme (including Treasury Managed Fund)?

Answer:

WorkCover is currently preparing a briefing note to help the Committee to understand WorkCover's role in relation to each of the funds.

It is understood that the Committee's first report (due to be tabled on 17 October 2001) will indicate which matters are of most interest to the Committee. WorkCover intends to address these matters in its briefing note.

27. Mr Gallacher asked General Manager, WorkCover Authority, Ms K McKenzie—

(Please refer to p.30, Inquiry into Workers Compensation Hansard, Monday, 24 September 2001)

Could WorkCover provide the committee with copies of information (eg annual reports and financial statements) provided to WorkCover by Treasury Managed Fund?

Answer:

Treasury Managed Fund cover includes:

- Workers Compensation
- Property
- Public Liability
- Comprehensive Motor Vehicle
- any other insurance risk (ie not financial risks), that Agencies may have, with the exception of Compulsory Third Party motor vehicle cover. Cover is unlimited and applied to all insurance exposures. This insulates the New South Wales Budget from additional funding requests that were a feature of the previous unfunded arrangements.

A copy of the audited accounts of the NSW Treasury Managed Fund and the NSW Crown Entity for the year ended 30 June 2000 has been provided directly to the Committee Secretariat.

Section 211 B of the *Workers Compensation Act 1987* provides that any government employer covered by the government's managed fund scheme is taken to be a self-insurer for the purposes of this Act.

Section 213 of the Act also provides that the licensing provisions of the Act do not apply to TMF self-insurers and that WorkCover may, with the approval of the Treasurer, impose conditions of a kind that WorkCover could impose on the licences of other self-insurers. No conditions have been imposed by WorkCover on the Treasury Managed Fund but the Treasury has agreed to provide information including audited financial statements to WorkCover.

It is anticipated that WorkCover's briefing note on the role WorkCover plays in relation to each of the funds will provide additional information.

28. Mr Pearce asked General Manager, WorkCover Authority, Ms K McKenzie—

(Please refer to p.32, Inquiry into Workers Compensation Hansard, Monday, 24 September 2001)

- (1) Could WorkCover provide the committee with board papers outlining WorkCover's investment strategy, and investment reports for the period June to December 2000?
- (2) Could WorkCover also provide the committee with internal protocols for accessing pay-roll tax and other personal information?

Answer:

- (1) As indicated in the answer to question 21, WorkCover will provide copies of the Board's papers directly to the Committee Secretariat as soon as possible.
- (2) WorkCover is currently preparing a detailed response to this question that will be provided to the Committee as soon as practicable.

Level 17, MLC Centre
19-29 Martin Place
Sydney NSW 2000
GPO Box 3779
Sydney NSW 2001
Tel: (02) 9233 5565
Fax: (02) 9233 5566
Fon: (02) 9233 5588

Management Consultants
and Actuaries

Tillinghast - Towers Perrin

Tuesday, 9 October 2001

Rod McInnes
Assistant General Manager
WorkCover NSW

Dear Rod:

IMPACT OF A 0.25% REDUCTION IN INTEREST RATES ON THE WORKCOVER SCHEME

As requested, we have performed an initial limited calculation of the impact on the Scheme Deficit of a 0.25% reduction in interest rates for all future periods, assuming all other assumptions and economic effects (such as movements in CPI, wage inflation etc.) are kept constant.

In preparing this advice, Tillinghast has relied on quantitative and qualitative information provided by WorkCover as set out in our reports "Actuarial Review of the Liabilities of the WorkCover Scheme 30 June 2001", and "WorkCover Authority of NSW Asset Assumptions Paper".

This letter has been provided to WorkCover for internal use, in relation to an estimate of the impact of a small interest change on the Scheme deficit. It is not intended, nor necessarily suitable, for any other purpose. We cannot be held responsible for conclusions drawn from our reports by unauthorised third parties.

We understand that WorkCover may wish to provide a copy of the letter to all members of NSW Parliament General Purpose Standing Committee Number 1. Permission for this has hereby been granted.

We remain available to answer any questions that may arise regarding this letter.

Towers, Perrin, Forster & Crosby, Inc. AFBN 002 551 019 is incorporated in USA and has limited liability

Tuesday, 9 October 2001
Page 2.

ANALYSIS

The effect of a cut in the "Cash" rate by the Reserve Bank of Australia on the Scheme's deficit depends on the way it is priced by the bond and equity markets. There are 3 basic scenarios possible:

- The cut results in a parallel shift downwards in yield curves over the whole term structure, while equity market premiums (over bond rates) do not change. This will cause the liability value to increase, and will be largely matched by an increase in equity and bond values. This economic scenario can be viewed as the standard scenario when the "Cash" rate changes, and is the one that we have modelled and explained below.
- The cut results in a parallel shift downwards in yield curves over the whole term structure, and equity market premiums (over bond rates) fall as well. This will result in the liability value increasing. Bond values will increase as well, while equity markets will not move. The net result will be a larger increase in the deficit than the first scenario.
- The cut only results in short-term interest rates falling, with longer-term rates falling a lesser amount. Equity market premiums do not change. This will cause the liability value to increase, but by a lesser amount than the first scenario. This will be largely matched by an increase in equity and bond values (but not to the same extent as the first scenario).

At this stage, only the first scenario has been presented here due to time constraints.

The immediate impact on the Scheme will be to increase the value of the liabilities net of recoveries by \$62million. There is also likely to be an increase in the market value of the assets of WorkCover, which should largely offset the change in liabilities. The impact on the assets is highly uncertain, and will be heavily influenced by factors other than interest rates. We have however made an attempt to quantify the effect, coming up with an increase in asset value of \$40million for the fixed interest portfolio, and possibly \$14million for the non-fixed-interest (mainly equity) portfolio. There fore, the net effect will be an increase in the deficit of \$8million. It must be noted that if a perfectly "matched" portfolio of assets and liabilities had been held, there would have been a very negligible impact on the deficit of the Scheme.

It must also be stressed that our estimate assumes that no other changes occur to affect the assets or liabilities. In practice, this assumption is unlikely to be the case. Changes in interest rates are usually due to the Reserve Bank of Australia's response to looming depressed economic activity or changes to inflation. The effect due to

***Tillinghast -
Towers Perrin***

Calculation of effect of decrease in interest rates by 0.25% on WorkCover Deficit

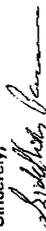
ASSETS affected by interest rate movements		LIABILITIES affected by interest rate movements	
Fixed Interest	\$ 4,027 million	Net Value @ 30/6/2001	\$ 8,284 million
Non Fixed Interest	\$ 1,838 million	DMT	3.0 years
TOTAL	\$ 5,865 million	Change in	0.25%
	4 years	Value change of liability	\$ 62 million
Change in	0.25%	Value change Non Fixed Interest	\$ 40 million
		Value change Fixed Interest	\$ 14 million
		(assumes "mean term" of non fixed interest portfolio is 3 years)	
		EFFECT ON DEFICIT	
		\$ 8 million	

Tuesday, 9 October 2001
Page 3.

these factors is likely to be far more important on asset and liability values than the change in interest rates.

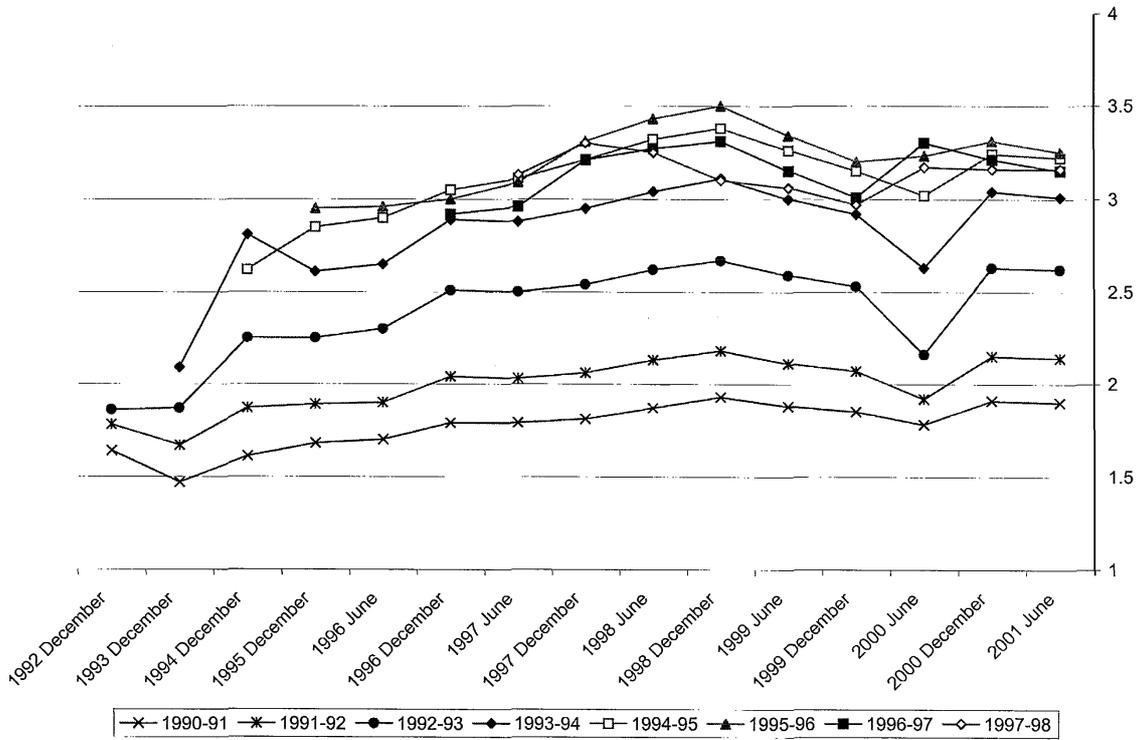
Attached with this letter is a summary of our estimate, and the assumptions used in calculating it.

Sincerely,


Siddharth Parameswaran


Tillinghurst - Owen Perrin

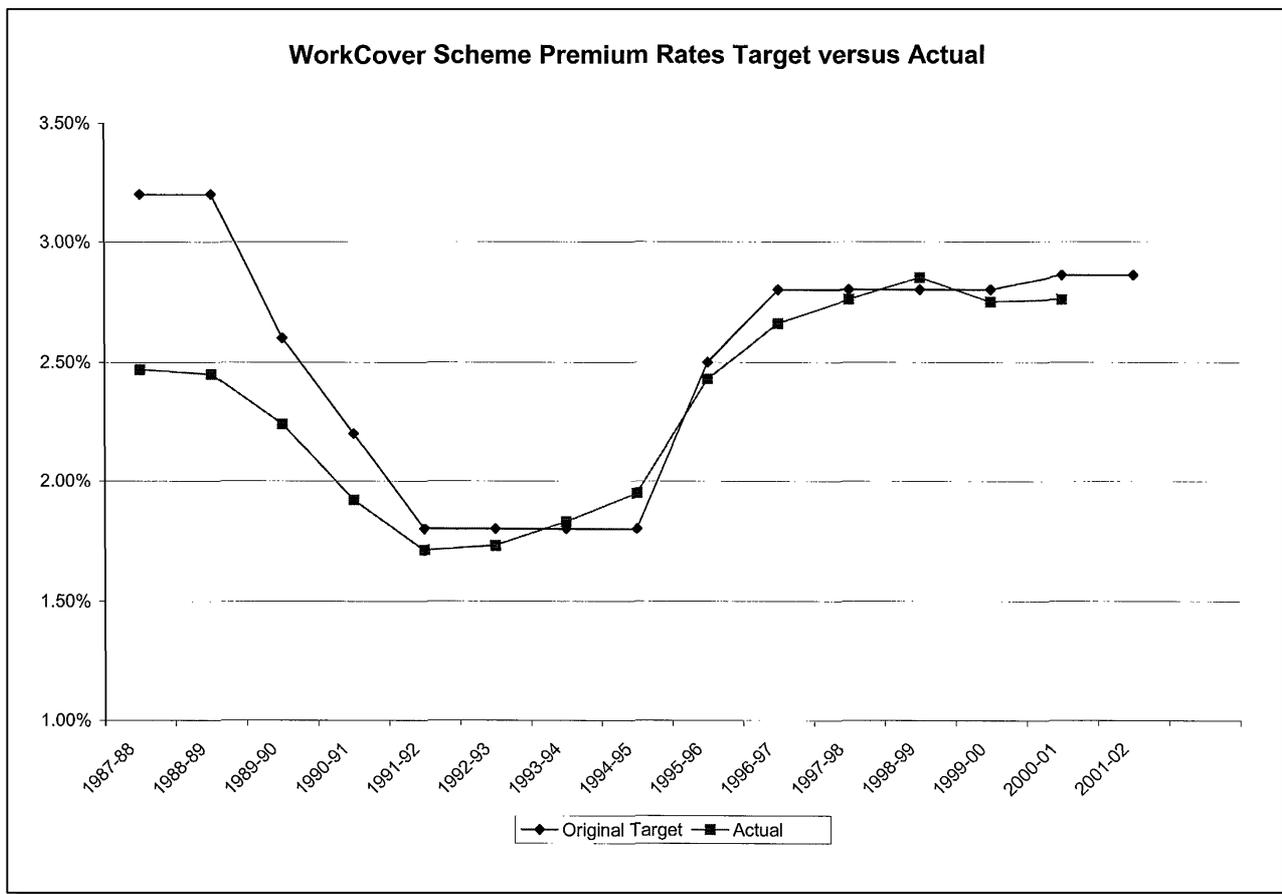
WorkCover Scheme: Actuarial Cost Projections Over Time



Development of Projected Scheme Cost by Date of Valuation

Valuation Date	Policy Year														
	1987-88	1988-89	1989-90	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01	2001/02
2001 June	1.75	1.76	1.76	1.9	2.14	2.62	3.01	3.22	3.25	3.15	3.16	3.23	3.21	3.06	3.05
2000 December	1.77	1.77	1.78	1.91	2.15	2.63	3.04	3.24	3.31	3.21	3.16	3.12	3.01	2.87	2.89
2000 June		1.78	1.78	1.78	1.92	2.16	2.63	3.02	3.23	3.30	3.17	3.07	2.94	2.89	
1999 December	1.70	1.72	1.72	1.85	2.07	2.53	2.92	3.15	3.20	3.01	2.97	2.93	2.95	2.95	
1999 June	1.74	1.76	1.75	1.88	2.11	2.59	3.00	3.26	3.34	3.15	3.06	2.93	2.95		
1998 December	1.78	1.80	1.80	1.93	2.18	2.67	3.11	3.38	3.50	3.31	3.10	3.05	3.08		
1998 June	1.73	1.74	1.74	1.87	2.13	2.62	3.04	3.32	3.43	3.27	3.25	3.27			
1997 December	1.66	1.68	1.69	1.81	2.06	2.54	2.95	3.21	3.31	3.21	3.30	3.40			
1997 June	1.63	1.65	1.66	1.79	2.03	2.50	2.88	3.11	3.09	2.96	3.13				
1996 December	1.63	1.64	1.66	1.79	2.04	2.51	2.89	3.05	3.00	2.92					
1996 June	1.50	1.55	1.56	1.70	1.90	2.30	2.65	2.90	2.96						
1995 December	1.49	1.55	1.56	1.68	1.89	2.25	2.61	2.85	2.95						
1994 December	1.55	1.48	1.48	1.61	1.87	2.25	2.81	2.62							
1993 December	1.49	1.43	1.43	1.47	1.67	1.87	2.09								
1992 December	1.75	1.73	1.66	1.64	1.78	1.86									
1991 December	1.85	1.83	1.72	1.60	1.78										
1990 December	1.83	1.78	1.62	1.73											

Please note - Prior to 1996 only one valuation was completed per year



Premium Rates Target and Actual

	Original Target	Actual
1987-88	3.20%	2.47%
1988-89	3.20%	2.45%
1989-90	2.60%	2.24%
1990-91	2.20%	1.92%
1991-92	1.80%	1.71%
1992-93	1.80%	1.73%
1993-94	1.80%	1.83%
1994-95	1.80%	1.95%
1995-96	2.50%	2.43%
1996-97	2.80%	2.66%
1997-98	2.80%	2.76%
1998-99	2.80%	2.85%
1999-00	2.80%	2.75%
2000-01	2.86%	2.76%
2001-02	2.86%	

Note actual rates are based on the actuarial projections from the June 2001 valuation report. For the most recent years these may be subject to variation.

WORKERS COMPENSATION COMPLIANCE BLITZES JULY 2000- OCTOBER 2001

DESCRIPTION OF COMPLIANCE BLITZ	FOCUS OF BLITZ	DATE	BLITZ PROGRESS REPORT AND OUTCOMES
<p><u>Industrial Estates Blitz</u></p> <p>Employers in industrial estates in the central coast, western Sydney and the Illawarra were blitzed to check for evidence of a current workers compensation policy. The blitz was supported by media releases and local advertising.</p>	Non insurance	Nov-Dec 2000	543 employers were targeted by WorkCover inspectors. 15 employers were found to be uninsured. Penalty Notices of \$750 were issued.
<p><u>Blitz of businesses in Wagga Wagga</u></p> <p>Approximately 1000 businesses in Wagga Wagga were identified through data matching as potentially being uninsured. Notices to produce policies were sent to these employers requiring them to provide evidence of workers compensation insurance.</p>	Non-insurance	Late January 2001	Approximately 600 businesses responded indicating that they were not employers. WorkCover inspectors are currently investigating the remaining 400 businesses which did not respond.
<p><u>Construction industry premium evasion blitz</u></p> <p>815 employers were identified through data mining as being high risk in terms of premium evasion. These employers were targeted by WorkCover for investigations of their wage records.</p>	Underinsurance	Nov 2000 and ongoing	167 investigations have been completed resulting in \$3,889,605 in additional premiums.
<p><u>Taxi industry premium evasion blitz</u></p> <p>815 employers were identified through data from the Department of Transport as being high risk in terms of premium evasion. These employers were targeted by WorkCover for investigation.</p>	Underinsurance	Nov 2000 and ongoing	50 investigations have been completed with \$577,949 in additional premium billed.
<p><u>Premium evasion blitz of employers declaring substantially reduced wages to their insurers</u></p> <p>600 employers were identified through data mining as being high risk in terms of premium evasion. These employers were targeted by WorkCover for investigation.</p>	Underinsurance	Nov 2000 and ongoing	235 investigations have been completed with \$1,723,988 in additional premium billed.
<p><u>Labour Hire industry premium evasion blitz</u></p> <p>600 employers were identified through data mining as being high risk in terms of premium evasion. These employers were targeted by WorkCover for investigation..</p>	Underinsurance	Nov 2000 and ongoing	284 investigations have been completed with \$387,237 in additional premium billed.
<p><u>Employer premium evasion blitz</u></p> <p>340 employers were identified through data sharing with OSR as being high risk in terms of premium evasion. These employers were targeted by WorkCover for investigation..</p>	Underinsurance	May 2001 and ongoing	47 investigations have been completed with \$130,551 in additional premium billed.

<p>Blitz on premises of a group of Manufacturing companies in Western Sydney in relation to non-insurance, under-insurance and fraud.</p>	<p>Underinsurance</p>	<p>October 4 2001</p>	<p>Raid completed on October 4 2001 by 10 authorised officers. Copies made of records, statements taken from 30 workers and the company Director. Investigation is continuing into non-insurance, under-insurance and fraud.</p>
<p><u>Workers Compensation Taskforce</u></p> <p>In September 2001 the Minister announced the establishment of a Taskforce to blitz employers in the construction, metal manufacturing, cleaning and clothing industries suspected of premium evasion.</p> <p>The following blitzes have been planned or are underway:</p> <ul style="list-style-type: none"> • 100 site audits of metal manufacturing employers • 150 investigations of employers in construction, cleaning and clothing industries suspected of premium classification abuse. • 400 employers will be selected from the above industry categories through data mining for investigations into under-declaration of wages 	<p>Under-insurance</p>	<p>October 2001</p>	<ul style="list-style-type: none"> • Underway. • Planning at an advanced stage • Planning at an advanced stage
<p>The above blitzes will be supported by advertising and advertorials in targeted industry publications.</p>			

Appendix 4

Consultant's report

from Ernst & Young

Consultant's report



■ Ernst & Young ABC
Consulting Actuaries
321 Kent Street
Sydney NSW 2000
Australia

■ Tel: 61 2 9248 5522
Fax: 61 2 9248 4489
DX: 10172 Sydney
Stock Exchange

Mail Address
GPO Box 2646
Sydney NSW 2001

15 October, 2001

Reverend the Hon F J Nile MLC ED LTh
Chairman, General Purpose Standing Committee No 1
Legislative Council, Parliament House, Macquarie Street
SYDNEY NSW 2000

Dear Reverend Fred

REVIEW AND MONITORING OF THE NSW WORKERS' COMPENSATION SCHEME

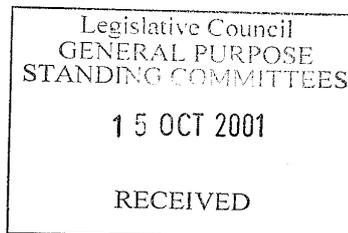
We have pleasure in submitting our first report of the Legislative Council's General Purpose Standing Committee No 1 Review and Monitoring of the NSW Workers' Compensation Scheme.

In the report we summarise the key features of the financial status of the Scheme and suggest areas of focus for the review.

Please contact either myself on 02 9248 4301 or Warrick Gard on 02 9248 4484 if you require further details.

Yours sincerely

Peter McCarthy, FIAA
Director, General Insurance



Enc

THE LEGISLATIVE COUNCIL
NSW WORKERS'
COMPENSATION REVIEW

15 October 2001

 Liability is limited by the
Accountants' Scheme in NSW

Ernst & Young ABC
CONSULTING ACTUARIES

**THE LEGISLATIVE COUNCIL
NSW WORKERS’ COMPENSATION REVIEW**

CONTENTS

	Page
1. Introduction	1
2. Financial Position of Scheme	2
3. Areas of Further Investigation.....	6
4. Reliances and Limitations	9

1. INTRODUCTION

- 1.1 Ernst & Young ABC ("EYABC") has been engaged to advise General Purpose Standing Committee No. 1 of the NSW Legislative Council to provide actuarial and accounting advice into the Committee's Review and Monitoring of the NSW Workers' Compensation Scheme. This is EYABC's first report to the Committee.
- 1.2 In this report reference to the "Scheme" refer to the NSW WorkCover Managed Fund Scheme. Thus it excludes self insurers, Treasury Managed Fund and other Funds regulated by WorkCover.
- 1.3 We have divided our observations and comments into:
 - Financial position of the WorkCover Scheme
 - Areas of further investigation
- 1.4 Our comments are based on information presented at the first hearing on September 2001 and information available prior to the first hearing excluding information from questions on notice. Specific reports available for our review included:
 - Report of the Sheahan Inquiry into Common Law
 - PricewaterhouseCoopers ("PwC") report dated August 2001 on Common Law
 - PwC report dated May 2001 on Review of WorkCover NSW MGA Remuneration Arrangements
 - Six monthly scheme reports by the Scheme Actuary from December 1996 to June 2001
- 1.5 We refer you to Section 4 on Reliances and Limitations.

2. FINANCIAL POSITION OF SCHEME

Scheme Deficit

2.1 Having reviewed the scheme actuarial reports to December 2000, a very brief review of the scheme actuarial reports at June 2001 and additional information presented at the first hearing by WorkCover (excluding questions on notice) we have the following comments:

- The Scheme's financial position has deteriorated substantially during the year to June 2001 with the deficit increasing from \$1,589m at June 2000 to \$2,756m at June 2001 an increase of \$1,167m (73%). The deficit increased by an average of \$3.2m per day over the year.
- The main reasons for the increase in the deficit in the year to June 2001 according to the scheme actuary are:
 - growth in common law claims in excess of expectations
 - adverse claims experience for commutations
 - adverse claims experience for legal expenses
 - inadequate premium collections.

2.2 The Scheme deficit will continue to grow significantly, even if there is no further deterioration in Scheme's claims experience in excess of the actuary's assumption. The Scheme's actuary has projected the deficit will increase by about \$500m per year as shown in the following table:

Scheme Actuary's Projected Scheme Deficit		
Balance Date	Deficit \$m	Funding Ratio* %
June 2001	2,756	70
June 2002	3,228	67
June 2003	3,747	65
June 2004	4,293	63
June 2005	4,866	60
June 2006	5,468	58

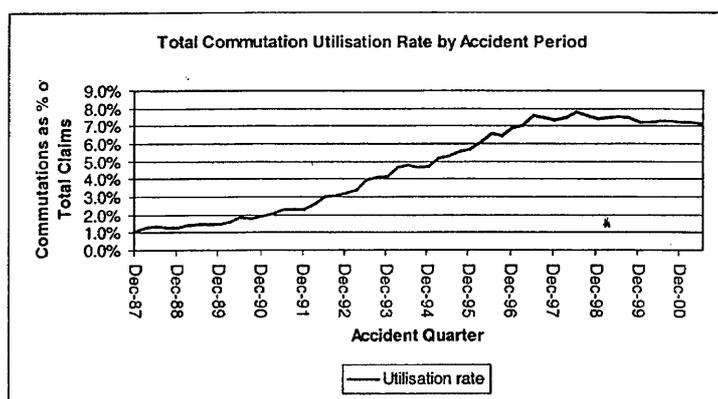
The funding ratio is the ratio of the Scheme's assets to its liabilities and it is projected to fall from 70% at June 2001 to 58% at June 2006.

This forecast is the result of continuing inadequate premium collections and lost investment income on the amount of the deficit.

- 2.3 Since June 2001 there have been significant changes to the economic environment with bond yields decreasing by about 1.5%, a significant fall in the sharemarket and a poorer unemployment situation and outlook. These factors combined with an inadequate premium rate have probably resulted in an increase in the Scheme deficit at 30 September 2001 beyond Tillinghast's projections. A fall in bonds yields will have a net adverse impact on the deficit with an increase in the value of assets being more than offset by a higher increase in the value of claims liabilities. The fall in the share market reduces the value of scheme assets. In workers compensation schemes such as the WorkCover scheme higher levels of unemployment usually result in more claims especially common law claims and claimants staying on weekly benefits longer with a consequent increase in the schemes' claims liabilities.

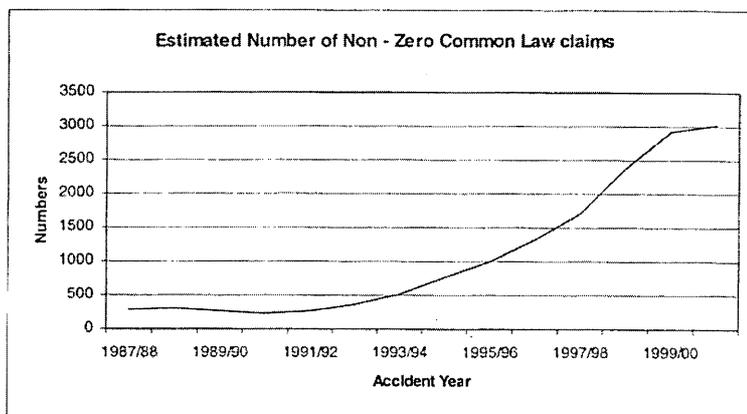
Common Law and Commutations

- 2.4 The Scheme's claims experience during the last year has demonstrated significant adverse trends compared to previous years and consequently could perhaps be described as somewhat unstable. The Scheme's actuary has found claims experience deteriorating in excess of his projections. This instability combined with many Scheme changes over the last few years, increases the uncertainty in estimating the Scheme's liabilities.
- 2.5 The Scheme actuary highlights the considerable uncertainty in estimating the outstanding claims liabilities for common law and commutations. They have assumed the ultimate proportion of claims with commutations will stabilise at a little over 7% in accident periods 1997 to 2001. This has become an important assumption as it is now acknowledged that commutations have a negative financial impact on the Scheme's funding position. Hence, if actual commutations exceed the actuary's expectations the growth in the scheme deficit will increase. The Scheme actuary's assumptions taken from their latest report are replicated below.



Ernst & Young ABC
CONSULTING ACTUARIES

2.6 For common law the Scheme actuary is assuming the number of ultimate common law claims will stabilise in accident year 2000/2001 after very substantial deterioration during the last six years of about 35% per annum. Again, this is an important assumption as common law claims have a significantly higher average claim size than non-common law claims. Actual common law claims exceed the actuary’s expectations the growth in the Scheme deficit will increase. The Scheme actuary’s assumptions taken from their latest report are replicated below

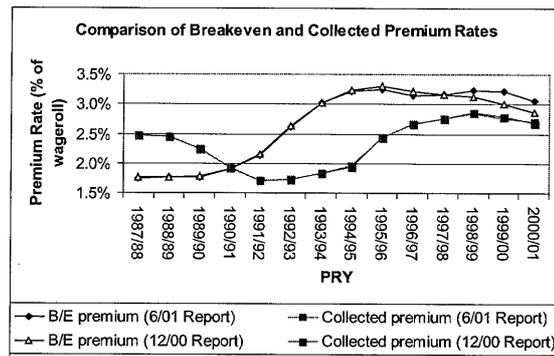


2.7 If the rate of deterioration experienced in the past continues into the future for both common law and commutation then the Scheme actuary’s estimate of outstanding claims liabilities will probably require a significant increase with a consequent increase in the Scheme deficit.

Breakeven Premiums vs Collected Premiums

2.8 The following graph provided by the Scheme actuary compares the breakeven (“B/E”) and collected premium rates over the history of the Scheme based on the actuary’s assumptions at December 2000 and June 2001.

Breakeven Premiums vs Collected Premiums



2.9 Our main observations on the graph are:

- The difference between the B/E premium at December 2000 and June 2001 clearly shows the deterioration in the Scheme's expectations in 1998/99 to 2000/01.
- Despite numerous changes to the Scheme since the mid 1990's there appears to have been no significant reduction in the Scheme claims costs.
- The difference between premiums collected and the Scheme costs have been fairly constant during the last four years.

3. AREAS OF FURTHER INVESTIGATION

- 3.1 The poor financial state of the scheme indicates that there are a number of significant weaknesses in the current scheme. The main areas that require further investigation are set out below with some comments. These areas arise from submissions to the Inquiry and our own experience.

Financial and Management Accountability

- 3.2 There is no clear financial accountability for the Managed Fund part of the Scheme, unlike Self Insurers including the Treasury Managed Fund, where employers have clear financial accountabilities. This issue was raised in the Grellman report in 1997 but has not yet been resolved.

- 3.3 The impact of the lack of financial accountability can be illustrated by:

- Limited financial incentive on managed agents to align their administration and management to the Scheme's financial objectives.

The managed agents (known as insurers) are agents of WorkCover who are required to comply with WorkCover's requirements and have their own profit imperatives.

- Observations in the Sheahan Inquiry:

"The insurers appear to have no interest or incentive in securing, by humane means, an early return to work, on an individual case-by-case basis, nor in tabling a timely approach to questions of settlement."

- Observations in PwC report of May 2001 titled Review of WorkCover NSW MGA Remuneration Arrangements:

"There is general stakeholder agreement in the NSW Workers' Compensation Scheme that various operational aspects of the Scheme perform poorly and that performance ought to be better."

- 3.4 One important implication of the lack of financial accountability is it appears no one is responsible for the management of the Scheme compared to the regulation of the Scheme where, clearly WorkCover are responsible.
- 3.5 The lack of financial and management accountability is probably having a major adverse impact on the Scheme's financial position possibly leading to significant inefficiencies in the Scheme and is worthy of further detailed consideration. In particular the management and performance of managed agents including the legal and management relationship between WorkCover and the agents are worthy of consideration.

- 3.6 The lack of financial and management accountability manifests itself in various ways including its impact on claims management, premium leakage and other system leakage that are referred to later in this section.

Commutations and Common Law

- 3.7 The size and deterioration in the cost of common law benefits has been substantial over many years. The Sheahan Inquiry has suggested restrictions on access to common law benefits. These are currently the focus of public debate.
- 3.8 The Sheahan Inquiry Chapter 9 implies that limiting access to common law is likely to lead to substantial growth in commutations. The relevant quotes from the Inquiry's report are:

"History proves that when one pressure point in the workers' compensation scheme is resolved, another arises."

"...the next "growth" sector in scheme costs will, in the Inquiry's view, be commutations of scheme benefits."

- 3.9 The Scheme's Actuary for the first time at June 2001 believes commutations are having an adverse impact on the Scheme's financial position whereas in previous actuarial assessments they had a beneficial impact.
- 3.10 Little financial benefit would arise if restrictions on common law lead to a compensating increase in commutations. Consequently, a review of the commutations is required before restrictions on common law are worthy of proper consideration.

Premium System Leakage

- 3.11 Various commentators believe there is substantial leakage from the premium system. The premium system could be considered to be inefficient. Some estimates of leakage are in the hundreds of millions of dollars. WorkCover have issued a Green Paper on options for changes to the premium system. A more efficient premium system would help reduce the scheme deficit by providing better financial incentives for employers to reduce claims costs and consequently increase premium collections. Consequently a review of the efficiency of the premium system is worthy of consideration.

Other Areas of Scheme Leakage

- 3.12 Other areas of Scheme leakage or inefficiencies (eg recoveries, claims management) are worthy of consideration. At present managed agents have no incentive to reduce Scheme leakage.

Disputes

- 3.13 Observers to the Scheme believe there are too many disputes creating an adversarial environment in resolving claims. The process of resolving disputes seems to be protracted. Changes to the Scheme currently being implemented will go some way towards reducing the number of disputes and their faster resolutions. It will take some time before the impact of these changes on the Scheme is known.

Scheme Deficit

- 3.14 The deficit of the Scheme is very large having deteriorated substantially during the last year. The deficit will continue to escalate to a significant rate with the current inadequate premium rate. Changes to the scheme currently being implemented and proposed changes to common law will help address, to some extent, the current inadequate premium rate. However, there are no clear proposals to deal with the scheme deficit and reducing the deficit is worthy of further consideration.

4. RELIANCES AND LIMITATIONS

- 4.1 In undertaking this investigation, we have relied upon information supplied by The Legislative Council. In general, reliance was placed on but not limited to the information provided. We have used the information without independent verification. However, it was reviewed where possible for reasonableness and consistency.
- 4.2 While we have endeavoured to allow for perceived incomplete information, the conclusions from our review may not be identical with those we would have reached using more complete information.
- 4.3 We have performed the work assigned and have prepared this report in conformity with its intended utilisation by persons technically familiar with the areas addressed and for the stated purposes only. Judgements as to the data, methods and assumptions contained in the report should be made only after studying the report in its entirety, as conclusions reached by a review of a section or sections on an isolated basis may be incorrect. Members of Ernst & Young ABC staff are available to explain or amplify any matter presented herein.
- 4.4 Distribution or disclosure of the report, or the opinion and conclusion contained therein, to other parties apart from The Legislative Council, is expressly prohibited without Ernst & Young ABC's prior consent, and is subject to Ernst & Young ABC providing a copy of the report in its entirety to each party and each party agreeing to be bound by these conditions. Distribution of this report is subject to the confidentiality agreement between Ernst & Young ABC and The Legislative Council.



Peter McCarthy
Fellow of the Institute of Actuaries of Australia

Appendix 5

Submissions

Submission

No	Author
1	Mr Mark Williams
2	Mr P Woods
3	Dr John Graham, <i>Graham Occupational Medicine Pty Ltd</i>
4	Mr Richard Gilley, <i>The RiskNet Group</i>
5	Dr Ian Gardner
6	Mr Greg Pattison
7	Mr Mark Richardson, <i>The Law Society of New South Wales</i>
8	Dr Hannah Middleton, <i>Australian Plaintiff Lawyers Association Ltd (APLA)</i>
9	Mr Alex Salomon, <i>NSW Self Insurers Association</i>
10	Ms Elizabeth Crouch, <i>Housing Industry Association (HIA)</i>
11	Mr Fred Morris
12	Mr Rod Gribble, <i>Australian Grain Harvesters Association Inc</i>
13	Mr John Tucker, <i>NSW Minerals Council</i>
14	Dr Lyn Littlefield, <i>The Australian Psychological Society Ltd</i>
15	Mr George Cooper, <i>Injuries Australia</i>
16	Mr Rodney Stinson, <i>Occupational Analysis</i>
17	Ms Ruth McColl, <i>The New South Wales Bar Association</i>

Appendix 6

Witnesses

Witnesses

Monday, 24 September 2001

The Hon John Della Bosca MLC

Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast
NSW Parliament

Ms Catherine McKenzie

General Manager
WorkCover Authority New South Wales

Mr Rodney McIness

Assistant General Manager
Insurance Division of WorkCover

Wednesday, 10 October 2001

Mrs Mary Yaager

Workers Compensation and Occupational Health and Safety Officer
Labor Council of New South Wales

Ms Rita Mallia

Senior Legal Officer
Construction, Forestry, Mining and Energy Union (CFMEU)

Mr Andrew Ferguson

New South Wales Secretary
Construction, Forestry, Mining and Energy Union (CFMEU)

Mr Jonathan Fowler

National Spokesman
Small Business Association of Australia

Mr George Katsogiannis

New South Wales Workers Compensation Manager
QBE Insurance

Mr Gregory McCarthy

Director
Workplace Injury Management Services

Mr George Cooper

Director
Injuries Australia Ltd

Mr Christopher Wynyard

Barrister
Australian Plaintiff Lawyers Association (APLA)

Ms Allison Robertson

Solicitor
Australian Plaintiff Lawyers Association (APLA)

Ms Eva Scheerlinck

Public Affairs Manager
Australian Plaintiff Lawyers Association (APLA)

Appendix 7

Minutes of the Proceedings

Minutes of the Proceedings

Minutes No. 57

Friday 6 July 2001

At Parliament House (Room 1108), at 12:00 noon

1. Members Present

Revd Nile (in the Chair)
Mrs Forsythe
Mr Johnson (Mr Kelly)
Mr Harwin
Mr Primrose
Mr Tsang

2. Apologies

Dr Wong

3. Tabled documents

CORRESPONDENCE RECEIVED - REVIEW AND MONITORING OF THE NSW WORKERS COMPENSATION SCHEME

The Chair tabled the following item of correspondence received:

Letter from the Hon John Della Bosca MLC, Special Minister of State, and Minister for Industrial Relations, to Chair, received on 6 July 2001, requesting that the committee consider the inclusion of the introduction of no-claim bonuses in the committee's terms of reference into the Review and monitoring of the NSW Workers compensation scheme.

4. Review and monitoring of the NSW Workers Compensation Scheme inquiry

The Chair tabled the terms of reference referred by the House to the committee on Thursday 28 June 2001.

1. That General Purpose Standing Committee No. 1, have the following functions:
 - (a) to monitor the financial position of the workers compensation scheme under the Workers Compensation Act 1987 and the Workplace Injury Management and Workers Compensation Act 1998, and
 - (b) to monitor and review the implementation and operation of the *Workers Compensation Legislation Amendment Bill 2001 (No. 2)*, as finally passed by the Parliament,
 - (c) to investigate and report on the efficiency of the operation of the workers compensation system and the administration of the WorkCover Authority,
 - (d) to monitor the impact on premiums of the Bill.
2. That the Committee be authorised to engage the services of:
 - (a) an actuary, who is a member of the Institute of Actuaries of Australia, and

- (b) an accountant, who is a member of the Institute of Chartered Accountants in Australia or the Australian Society of Certified Practising Accountants,
- for the purpose of advising and assisting the Committee, as the Committee thinks fit, in relation to the Committee's functions.
3. That the Committee:
- (a) provide interim reports to the House each 3 months, and
- (b) finally report to the House by 30 June 2002.
4. Nothing in this resolution authorises the Committee to investigate a particular compensation claim⁶⁹

The committee deliberated.

Resolved, on motion of Ms Forsythe, that: the period for the committee's first 3 month review commences from the assent date of the *Workers Compensation Bill*.

The Chair tabled a draft advertisement calling for public submissions to the inquiry.

The committee deliberated.

Resolved, on motion of Ms Forsythe, that: in accordance with the Minister's correspondence of 6 July 2001, the draft advertisement be amended by inserting after the terms of reference:

"In addition the committee is interested in receiving submissions addressing the possible introduction of no claim bonuses on premiums."

Resolved, on motion of Ms Forsythe, that: the closing date for written submissions be Friday 17 August 2001.

Resolved, on motion of Ms Forsythe, that: the draft advertisement, as amended, be adopted.

The committee deliberated.

Resolved, on motion of Mr Tsang, that: the committee advertises in the following press:

- Sydney Morning Herald,
- The Australian,
- Daily Telegraph,
- Australian Financial Review,
- Newcastle Herald,
- Illawarra Mercury,
- The Land, and
- major regional newspapers.

The Chair tabled his draft inquiry strategy.

The committee deliberated.

Resolved, on motion of Mr Tsang, that: the following draft inquiry strategy, as amended, be adopted:

⁶⁹ *Minutes of the Proceedings of the Legislative Council*, second session, 52nd Parliament, 28 June 2001, item no 21.

- 12 October 2001 (or 3 months from date of assent): report to be tabled, consisting of annotated transcript of hearing and written answers to questions on notice, together with commentary as required
- Monday 24 September 2001:
 - 10am – 12noon - hearing with General Manager of WorkCover and Minister if the committee so resolves.
 - 2pm – 4pm – Committee deliberative
- Early to mid September 2001 - Committee receives detailed documentation from WorkCover dealing with financial position of scheme, implementation of legislation; operations of WorkCover, premiums. WorkCover documentation to be analysed by Committee members, Committee staff, actuary and accountant.
- Wednesday 5 September 2001
 - 2pm – 5pm committee deliberative to consider material received from Workcover.
- End of August: written answers to Questions on Notice received from WorkCover, analysed as above
- Early August: written Questions on Notice submitted to WorkCover by committee
- Mid July: Chair writes to key stakeholders inviting them to submit written questions which they would like the Committee to consider asking WorkCover

Resolved, on motion of Mr Primrose, that: the Chair write to the President through the Clerk of the Parliaments requesting that the President seek approval from the Treasurer of budget supplementation to conduct the workers compensation inquiry.

The committee agreed to provide the secretariat with details of potential witnesses or stakeholders by 5pm Friday 13 July 2001.

5. Adjournment

The meeting adjourned at 12:45pm, until Wednesday 5 September 2001.

Warren Cahill
Clerk Assistant-Committees

Minutes No. 59
Wednesday 5 September 2001
At Parliament House (Room 1108), at 2:05pm

1. Members Present.

Rev Nile (Chairman)
Mr Kelly
Mr Pearce
Mr Ryan (Colless)
Ms Saffin
Mr Tsang
Mr Wong

Also in attendance

Mr Gallacher

2. Substitute Member

The Chairman noted correspondence received from the Opposition Whip, dated 5 September 2001, advising that Mr Ryan would be replacing Mr Colless for the purpose of the day's meeting.

3. Member also in attendance

In accordance with s.10 of the resolution of 13 May 1999 establishing the committee, the committee agreed to the participation by another Member (Mr Gallacher).

4. Confirmation of minutes

Resolved, on motion of Mr Tsang, that the draft minutes of meeting number 57 be confirmed.

5. Tabled documents

CORRESPONDENCE SENT

The Chairman tabled the following items of correspondence sent:

Letter to the Hon John Della Bosca, MLC, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations, dated 19 July 2001, advising of the commencement of the workers compensation scheme inquiry and proposed initial public hearing.

Letter to the Hon John Della Bosca, MLC, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations, dated 16 August 2001, providing questions on notice from stakeholders concerning the workers compensation scheme inquiry.

Facsimile to Ms Kate McKenzie, General Manager, WorkCover NSW, dated 17 August 2001, clarifying stakeholder questions on notice.

CORRESPONDENCE RECEIVED

The Chairman tabled the following items of correspondence received:

Letter from the Hon John Della Bosca MLC, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations, dated 4 July 2001, requesting that the committee give consideration to including no-claim bonuses in its terms of reference for the workers compensation scheme inquiry.

E-mail from the Hon Michael Gallacher MLC, Leader of the Opposition in the Legislative Council, dated 13 July 2001, identifying stakeholders that may be invited to prepare questions for the workers compensation scheme inquiry.

Memorandum from the Hon John Jobling MLC, Opposition Whip, in the Legislative Council, dated 17 July 2001, advising that the Hon Patricia Forsythe MLC will be replaced by the Hon Greg Pearce MLC and the Hon Don Harwin MLC will be replaced by the Hon Richard Colless MLC for the duration of the workers compensation scheme inquiry.

Letter from the Hon Michael Gallacher MLC, Leader of the Opposition in the Legislative Council, to Chair, dated 18 July 2001, identifying a representative of KPMG as suitably qualified to provide accounting and actuarial services.

Letter from the Hon Michael Gallacher MLC, Leader of the Opposition in the Legislative Council, to Committee Director, dated 18 July 2001, identifying a representative of KPMG as suitably qualified to provide accounting and actuarial services.

Letter from Mr Rod McInnes, Acting General Manager, WorkCover NSW, dated 18 July 2001, offering to meet with the Chair to discuss ways to assist the committee during its inquiry into the workers compensation scheme.

E-mail from the Hon Peter Primrose, Government Whip, in the Legislative Council, dated 24 July 2001, that the Hon Ian Macdonald MLC will serve as proxy for himself in relation to the workers compensation scheme inquiry.

Letter from Mr Ray Willing, Director, Ernst & Young, dated 25 July 2001, detailing accounting and actuarial services available.

Letter from the Hon Michael Gallacher MLC, Leader of the Opposition in the Legislative Council, dated 1 August 2001, identifying a representative of Ernst & Young as suitably qualified to provide actuarial services.

E-mail from the Hon Peter Primrose, Government Whip, in the Legislative Council, dated 8 August 2001, that the Hon Janelle Saffin MLC will replace Ian Macdonald MLC as proxy for the Hon Peter Primrose MLC in relation to the workers compensation scheme inquiry.

Letter from Mr Bill Healey, Executive Director, Australian Retailers Association (New South Wales), dated 14 August 2001, advising that no questions are proposed to be submitted for the workers compensation scheme inquiry.

Letter from Mr Audrey Lee, Executive Manager, Statutory Classes, Insurance Council of Australia, dated 17 August 2001, identifying a contact officer for committee queries in relation to the workers compensation scheme inquiry.

Letter from Mr Ray Willing, Director, Ernst & Young, dated 24 August 2001, detailing accounting and actuarial services available and daily costs.

Letter from the Hon Michael Gallacher MLC, Leader of the Opposition in the Legislative Council, dated 28 August 2001, submitting for committee consideration two proposals for greater involvement of a consulting actuary or account during public hearings (attached). Inquiry into the review and monitoring of the NSW Workers Compensation Scheme

ENGAGEMENT OF ACTUARIAL AND ACCOUNTING SERVICES

The Chairman tabled the following documents and once circulated were taken as being read:

- Covering letter from Chair to Members, dated 3 September 2001
- Briefing note for Members, dated 31 August 2001
- Draft bid specifications and conditions of engagement, dated 5 September 2001
- Draft invitation letter to consultants, dated 5 September 2001
- Draft list of individuals and organisations invited to submit a bid (not dated)

The committee proceeded to consider the draft bid specifications and conditions of engagement, dated 5 September 2001.

Resolved, on motion of Mr Pearce, that: section 2, item 1, (page 2), initial sentence be amended by deleting “week” and inserting instead “14 days”.

Resolved, on motion of Mr Pearce, that: section 2, item 1, first dot point, (page 2) be amended by inserting at the end of the sentence “as at 30 June 2001 and as at subsequent committee reporting periods”.

Resolved, on motion of Mr Pearce, that: section 2, item 1, third dot point, (page 2) be amended by inserting “and” after “for use” and before “by Committee members”.

The committee noted the letter from the Hon Michael Gallacher MLC, Leader of the Opposition in the Legislative Council, dated 28 August 2001, submitting for committee consideration two proposals for greater involvement of a consulting actuary or account during public hearings.

The committee deliberated.

Resolved, on motion of Mr Pearce, that: section 2, item 2, (page 2) be amended by deleting all words after “evidence being taken” and inserting instead “including any necessary amplifications of technical evidence and any desirable lines of questioning to further the Committee’s work”.

Resolved, on motion of Mr Pearce, that: section 2, item 4, (page 2) be amended by inserting the words “to give affect to the Committee’s terms of reference” after “be required” and before “by resolution of the Committee”.

Resolved, on motion of Ms Saffin, that: section 3, paragraph 2, (page 3) be amended by inserting as the second sentence the words “Provision of a current and historical client list would also assist the committee in its deliberations on conflicts of interest.”.

Resolved, on motion of Mr Pearce, that: section 6, paragraph 2, (page 4) be deleted.

Resolved, on motion of Mr Pearce, that: section 6, paragraph 3, (page 4) be amended by deleting “(90 hours each)”.

Resolved, on motion of Mr Kelly, that: section 7, (Page 4) be amended by deleting all words after “final”.

Resolved, on motion of Mr Kelly, that: at the closure of the bidding process, the committee secretariat is to provide Members with a copy of all bids along with a short list of recommended applicants.

Resolved, on motion of Mr Pearce, that: the draft bid specifications and conditions of engagement, dated 5 September 2001, as amended, be adopted.

The committee proceeded to consider the draft invitation letter to consultants, dated 5 September 2001.

The committee deliberated.

Resolved, on motion of Ms Saffin, that: the draft invitation letter to consultants, dated 5 September 2001 be adopted.

Resolved, on motion of Ms Saffin, that: requests for extensions from bidders be at the discretion of the Chairman.

The committee proceeded to consider the draft list of individuals and organisations invited to submit a bid (not dated).

The committee deliberated.

Resolved, on motion of Mr Ryan, that: the draft list of individuals and organisations invited to submit a bid be adopted.

Resolved, on motion of Ms Saffin, that: the list of individuals and organisations invited to submit a bid may be added to with the consent of the Chairman.

Resolved, on motion of Ms Saffin, that: if required, the Chairman and Deputy Chairman may meet with recommended and short listed bidders to ascertain their suitability.

INVITATION FOR MINISTER TO APPEAR AT INITIAL PUBLIC HEARING

Resolved, on motion of Mr Kelly, that: the committee invite the Hon John Della Bosca MLC, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations to appear at the public hearing of 24 September 2001 for a period of up to 30 minutes commencing at 10:00am.

Resolved, on motion of Mr Kelly, that: the committee invite Ms Kate McKenzie, General Manager, WorkCover NSW and appropriate staff to appear at the public hearing of 24 September 2001 with a scheduled appearance time of 10:30am – 12:30pm.

RESPONSES TO QUESTIONS ON NOTICE BY WORKCOVER NSW

The Chairman tabled responses to questions on notice by WorkCover NSW dated 4 September 2001.

BRIEFING SEMINAR BY WORKCOVER NSW

The Committee considered an offer by WorkCover NSW provide Members with an informal briefing seminar on aspects related to the workers compensation scheme inquiry.

The committee deliberated.

Resolved, on motion of Mr Kelly, that: the committee invite WorkCover NSW to provide a briefing seminar on Thursday, 20 September 2001, from 1:00pm to 2:30pm.

6. Adjournment

The meeting adjourned at 3:35pm, until Wednesday 19 September 2001, at 1:00pm.

Steven Carr
Director

Minutes No. 60
 Wednesday 19 September 2001
 At Parliament House (Room 1043) at 1:37pm

1. Members present.

Rev Nile (Chairman)
 Mr Kelly
 Mr Colless
 Mr Pearce
 Ms Saffin
 Mr Tsang
 Dr Wong

2. Confirmation of minutes

Resolved, on motion of Mr Tsang, that the draft minutes of meetings numbered 51, 58 and 59 be confirmed.

3. Tabled documents***SUBMISSIONS******INQUIRY INTO THE REVIEW AND MONITORING OF THE NSW WORKERS COMPENSATION SCHEME******SUBMISSIONS IDENTIFIED AS PUBLIC***

The Chair tabled 17 submissions identified as public:

- Submission 1 – Mr M Williams, private citizen, private citizen, received 17 July 2001.
- Submission 2 – Mr P Woods, private citizen, received 7 August 2001.
- Submission 3 - Dr J Graham, Occupational Physician, Graham Occupational Medicine Pty Ltd, received 7 August 2001.
- Submission 4 – Mr Richard Gilley, Managing Consultant, The RiskNet Group, received 13 August 2001.
- Submission 5 – Dr Ian Gardner, Consultant Occupational Physician, received 13 August 2001.
- Submission 6 – Mr Greg Pattison, General manager, Workplace Solutions, received 14 August 2001.
- Submission 7 – Mr Mark Richardson, Chief Executive Officer, The Law Society Of New South Wales, received 14 August 2001.
- Submission 8 – Dr Hannah Middleton, NSW Campaign Officer, Australian Plaintiff Lawyers Association, received 15 August 2001.
- Submission 9 - Mr Alex Salomon, Secretary, NSW Self Insurers Association, received 16 August 2001.
- Submission 10 – Ms Elizabeth Crouch, Executive Director – NSW, Housing Industry Association, received 17 August 2001.
- Submission 11 – Mr Fred Morris, private citizen, received 18 August 2001.
- Submission 12 – Mr Rod Gribble, Secretary, Australian Grain Harvesters Association, received 20 August 2001.

- Submission 13 – Mr John Tucker, Executive Director, NSW Minerals Council, received 20 August 2001.
- Submission 14 – Dr Lynn Littlefield, Executive Director, Australian Psychological Society, received 20 August 2001.
- Submission 15 – Mr G Cooper, Director, Injuries Australia, received 21 August 2001.
- Submission 16 - Mr R Stinson, Principal Analyst, Occupational Analysis, received 27 August 2001.
- Submission 17 - Ms R McColl, President, The NSW Bar Association, received 28 August 2001.

The committee deliberated.

Resolved, on motion of Ms Saffin, that: the submissions be made publicly available.

CORRESPONDENCE SENT

The Chairman tabled the following items of correspondence sent:

Letter to Mr Donald Findlater, Partner, KPMG Assurance and Advisory, dated 6 September 2001, inviting a bid for provision of actuarial and accounting services in relation to the workers compensation scheme inquiry.

Letter to Mr Peter McCarthy, Director, General Insurance, Ernst and Young ABC, dated 6 September 2001, inviting a bid for provision of actuarial and accounting services in relation to the workers compensation scheme inquiry.

Letter to Mr Craig Jackson, Managing Partner, Assurance, Andersen, dated 6 September 2001, inviting a bid for provision of actuarial and accounting services in relation to the workers compensation scheme inquiry.

Letter to Mr David Finnis, Principal, Tillinghast Towers Perrin, dated 6 September 2001, inviting a bid for provision of actuarial and accounting services in relation to the workers compensation scheme inquiry.

Letter to Mr Adrian Gould, Director, Taylor Fry, dated 6 September 2001, inviting a bid for provision of actuarial and accounting services in relation to the workers compensation scheme inquiry.

Letter to Mr Rory O'Connor, Partner, Deloitte Touche Tohmatsu, dated 6 September 2001, inviting a bid for provision of actuarial and accounting services in relation to the workers compensation scheme inquiry.

Letter to Mr John Walsh, Price Waterhouse Coopers, dated 6 September 2001, inviting a bid for provision of actuarial and accounting services in relation to the workers compensation scheme inquiry.

Letter to the Hon John Della Bosca MLC, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations, dated 7 September 2001, providing further stakeholder questions on notice relating to the workers compensation scheme inquiry (attached).

Letter to the Hon John Della Bosca MLC, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations, dated 7 September 2001, inviting him and WorkCover NSW to attend a public hearing on Monday 24 September 2001 (attached).

CORRESPONDENCE RECEIVED

The Chairman tabled the following items of correspondence received:

Letter from the Hon John Della Bosca MLC, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations, received 4 September 2001, responding to questions on notice from stakeholders relating to the workers compensation scheme inquiry (previously circulated).

Letter from Mr Nicholas Meagher, President, The Law Society of New South Wales, received 10 September 2001, enquiring about attendance of representatives to observe the committee public hearing on 24 September 2001.

Letter from Ms Kim Cull, Acting President, The Law Society of New South Wales, received 13 September 2001, noting concerns with the inquiry process of the Commission of Inquiry into Workers Compensation Common Law Matters and providing a copy of the Society's submission to the same (attached).

Letter from Mr Peter McCarthy, Director, General Insurance, Ernst and Young ABC, received 14 September 2001, providing a bid for provision of actuarial and accounting services in relation to the workers compensation scheme inquiry.

Letter from Mr Jason Slade, Director, Andersen, received 14 September 2001, providing a bid for provision of actuarial and accounting services in relation to the workers compensation scheme inquiry.

Letter from Mr David Finnis, Principal, Tillinghast-Towers Perrin, received 14 September 2001, providing a bid for provision of actuarial and accounting services in relation to the workers compensation scheme inquiry.

Letter from Mr Adrian Gould, Director, Taylor Fry, received 14 September 2001, providing a bid for provision of actuarial and accounting services in relation to the workers compensation scheme inquiry.

Letter to Mr Rory O'Connor, Partner, Deloitte Touche Tohmatsu, dated 6 September 2001, inviting a bid for provision of actuarial and accounting services in relation to the workers compensation scheme inquiry.

Letter from Mr John Walsh, Price Waterhouse Coopers, received 16 September 2001, providing a bid for provision of actuarial and accounting services in relation to the workers compensation scheme inquiry.

4. Inquiry into the review and monitoring of the NSW Workers Compensation Scheme

CONSIDERATION OF BIDS TO PROVIDE ACCOUNTING AND ACTUARIAL SERVICES

The committee considered bids from Andersen, Ernst and Young, Deloitte Touche Tohmatsu, Price Waterhouse Coopers, Taylor Fry and Tillinghast-Towers Perrin.

The Chairman tabled a briefing paper on the bids including a recommended short list prepared by the committee secretariat.

The committee deliberated

Resolved, on motion of Mr Pearce, that: Ernst and Young be offered first opportunity to provide accounting and actuarial services to the committee in relation to its inquiry into the NSW Workers Compensation Scheme and that Price Waterhouse Coopers be identified as the next preferred.

The committee deliberated

Resolved, on motion of Ms Saffin, that: the Committee Director make any necessary arrangements to engage Ernst and Young to provide accounting and actuarial services.

PROPOSED AMENDMENT TO SCHEDULE FOR WORKCOVER NSW BRIEFING (20 SEPTEMBER 2001) AND PUBLIC HEARING (24 SEPTEMBER 2001)

The Chair tabled correspondence received from the Hon John Della Bosca MLC, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations, dated 18 September 2001, suggesting the committee re-schedule a WorkCover NSW briefing seminar to coincide with the committee's public hearing on Monday 24 September 2001.

The committee deliberated.

Resolved, on motion of Ms Saffin, that: the committee:

- accept the Minister's suggestion to incorporate the WorkCover NSW briefing into the public hearing scheduled for 24 September 2001
- accept the Minister's suggestion to schedule the public hearing as:

Time	Witness
10:00am – 10:30am	The Hon John Della Bosca MLC, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations
10:30am – 11:00am	WorkCover NSW briefing seminar
11:00am – 12:30pm	WorkCover NSW

- reserve the opportunity to recall Ms McKenzie, General Manager, and other relevant WorkCover NSW representatives, prior to completion of its first interim report, if time limits complete discussion of issues.

5. Next meeting

The meeting adjourned at 2:14pm, until Monday 24 September 2001, at 10:00am.

Steven Carr
Director

Minutes No. 61
Monday 24 September 2001
At Parliament House (Legislative Council Chamber) 10:00am

1. Members present.

Rev Nile (Chairman)
Mr Kelly
Mr Gay (Colless)
Mr Pearce
Ms Saffin
Mr Tsang
Dr Wong

Also in attendance

Mr Gallacher

2. Substitute Member

The Chairman noted correspondence received from the Opposition Whip, dated 21 September 2001, advising that Mr Gay would be replacing Mr Colless for the purpose of the day's meeting.

The Chairman noted additional correspondence received from the Opposition Whip, dated 24 September 2001, advising that Mr Gallacher would be replacing Mr Colless for the purpose of the afternoon's meeting.

3. Member also in attendance

In accordance with s.10 of the resolution of 13 May 1999 establishing the committee, the committee agreed to the participation by another Member (Mr Gallacher) during the public hearing.

4. Confirmation of minutes

Resolved, on motion of Mr Kelly, that: the draft minutes of meeting number 60 be confirmed.

5. Tabled documents

CORRESPONDENCE SENT

The Chair to table to following item of correspondence sent:

Letter to Mr Peter McCarthy, Director, General Insurance, Ernst and Young ABC, dated 20 September 2001, offering the opportunity to provide accounting and actuarial services in relation to the workers compensation scheme inquiry and advising of work requirements for the initial public hearing (attached).

6. Inquiry into the review and monitoring of the NSW Workers Compensation Scheme

HEARING

The Committee deliberated.

Resolved, on motion of Mr Kelly , that in accordance with the Resolution of the Legislative Council of 11 October 1994 the Committee authorises the sound broadcasting and television broadcasting of its public proceedings held today.

The public and media were admitted.

The Chairman welcomed the gallery and reminded the media of their obligation under Standing Order 252 of the Legislative Council in relation to evidence given before, and documents presented to, the Committee. The Chair also distributed copies of the guidelines governing broadcast of proceedings.

The Hon John Della Bosca MLC, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations was examined.

Evidence concluded and the witness withdrew.

Ms Kate McKenzie, General Manager, Mr Rod McInnes, Assistant General Manager, Insurance Division, both of WorkCover NSW, were sworn and examined.

Evidence concluded and the witnesses withdrew.

Public hearing concluded, the media and public withdrew.

BRIEFING SEMINAR

The committee adjourned to room 814/815, Parliament House.

A briefing seminar was provided by Ernst and Young.

The committee deliberated.

The committee agreed to consider Ernst and Young's proposed inquiry review strategy and key milestones at its next meeting.

Resolved, on motion of Mr Pearce, that: the committee conduct a further hearing on Thursday 11 October 2001 with a proposed witness list to be circulated by the Director in consultation with the Chairman.

The committee agreed to give further consideration to the structure and viability of the Treasury Managed Fund.

7. Next meeting

The meeting adjourned at 3:35pm, until Thursday 11 October 2001, at 10:00am.

Steven Carr
Director

Minutes No. 62
Wednesday 10 October 2001
At Parliament House (Jubilee Room) at 9:30am

1. Members present

Rev Nile (Chairman)
Ms Fazio (Kelly)
Mr Jobling (Colless) from 2:00pm
Mr Pearce
Ms Saffin
Mr Samios (Colless) from 9:30am to 2:00pm
Mr Tsang

2. Apologies

Dr Wong

3. Substitute Members

The Chairman noted correspondence received from the Government Whip, dated 26 September 2001, advising that Ms Fazio would be replacing Mr Kelly for today's meeting.

The Chairman noted correspondence received from the Opposition Whip, dated 10 October 2001, advising that Mr Samios would be replacing Mr Colless from the commencement of today's meeting until 2:00pm.

The Chairman noted additional correspondence received from the Opposition Whip, dated 10 October 2001, advising that Mr Jobling would be replacing Mr Colless for today's meeting from 2:00pm onwards.

4. Tabled documents

CORRESPONDENCE SENT

The Chair tabled the following item of correspondence sent:

Letter to the Hon John Della Bosca MLC, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations, dated 27 September 2001, seeking responses to questions on notice from the committee hearing on 24 September 2001.

CORRESPONDENCE RECEIVED

The Chair tabled the following three items of correspondence received:

Letter from the Hon John Della Bosca MLC, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations, received 24 September 2001, responding to additional questions on notice from stakeholders relating to the workers compensation scheme inquiry.

Letter from Mr Thomas George MP, Member for Lismore, received 24 September 2001, inviting the committee to visit the Lismore electorate as part of its inquiry into the NSW Workers Compensation Scheme.

Letter from the Hon John Della Bosca MLC, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations, received 25 September 2001, outlining the financial position of the WorkCover Scheme Statutory fund as at 30 June 2001.

5. Review and monitoring of the NSW Workers Compensation Scheme

HEARING

The committee deliberated.

Resolved, on motion of Mr Pearce, that in accordance with the Resolution of the Legislative Council of 11 October 1994 the Committee authorises the sound broadcasting and television broadcasting of its public proceedings held today.

The public and media were admitted.

The Chairman welcomed the gallery and reminded the media of their obligation under Standing Order 252 of the Legislative Council in relation to evidence given before, and documents presented to, the Committee. The Chair also distributed copies of the guidelines governing broadcast of proceedings.

Mrs Mary Yaager, OH&S and Workers Compensation Coordinator, Labour Council of NSW and Ms Rita Mallia, Senior Legal Officer, CFMEU, were sworn and examined.

Mrs Yaager tendered one document in support of her evidence.

Resolved, on motion of Ms Saffin, that: the committee accept the document.

Evidence concluded and the witnesses withdrew.

Mr Andrew Ferguson, State Secretary, CFMEU, was sworn and examined.

Mr Ferguson tendered three documents in support of his evidence.

Resolved, on motion of Mr Pearce, that: the committee accept the documents.

The committee deliberated.

Resolved, on motion of Mr Pearce, that pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and under the authority of Standing Order 252, the Committee authorises the Clerk of the Committee to the committee make the documents publicly available.

Evidence concluded and the witness withdrew.

Mr Jonathon Fowler, National Spokesman, Small Business Association of Australia and small business owner, was sworn and examined.

Evidence concluded and the witness withdrew.

Mr George Katsogiannis, private citizen (NSW Workers Compensation Manager, QBE Insurance), was sworn and examined.

Evidence concluded and the witness withdrew.

Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, was sworn and examined.

Evidence concluded and the witness withdrew.

Mr George Cooper, Director, Injuries Australia, was sworn and examined.

Mr Cooper tendered one document in support of his evidence.

Resolved, on motion of Mr Jobling, that: the committee accept the document.

Resolved, on motion of Mr Pearce, that pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and under the authority of Standing Order 252, the Committee authorises the Clerk of the Committee to the committee make the document publicly available.

Evidence concluded and the witness withdrew.

Mr John Wynyard, Chairman, and Ms Alison Robertson, Member, both of the Workers Compensation Group, and Ms Eva Scheerlink, Public Affairs Officer, all of the Australian Plaintiff Lawyers Association (APLA), were sworn and examined.

Mr Wynyard tendered one document in support of his evidence.

Resolved, on motion of Ms Saffin, that: the committee accept the document.

The committee deliberated.

Resolved, on motion of Mr Pearce, that pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and under the authority of Standing Order 252, the Committee authorises the Clerk of the Committee to the committee make the document publicly available.

Mr Wynyard tendered one additional document (Example A) in support of his evidence.

Resolved, on motion of Ms Saffin, that: the committee accept the document.

The committee deliberated.

Resolved, on motion of Mr Pearce, that pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and under the authority of Standing Order 252, the Committee authorises the Clerk of the Committee to the committee make the document publicly available.

Evidence concluded and the witnesses withdrew.

Public hearing concluded, the media and public withdrew.

DRAFT INQUIRY STRATEGY

The Chairman tabled his draft inquiry strategy proposal.

The committee deliberated.

Resolved, on motion of Mr Pearce, that: the draft strategy be amended by inserting “Early intervention” as a sub-category of “Benefit design / delivery”.

Resolved, on motion of Mr Pearce, that: the draft strategy be amended by inserting “Wisconsin” as another model for consideration.

Resolved, on motion of Mr Pearce, that: the draft strategy be amended by inserting "Investment management" as a sub-category of "Scheme management".

Resolved, on motion of Mr Pearce, that: the draft strategy, as amended, be adopted.

REPORT DELIBERATIVE

Resolved, on motion of Mr Samios, that: the Committee meet to deliberate on the draft first interim report on:

- Monday 15 October 2001 (4:00pm – 5:00pm) and if required on
- Tuesday 16 October 2001 (6:30pm – 6:45pm).

SECURITY SERVICES AT COMMITTEE HEARINGS

The Chairman sought committee views on the appropriateness of conducting committee public hearings on sensitive issues without the presence of security services.

Resolved, on motion of Mr Pearce, that: the Chairman write to the President seeking comment on the appropriateness of providing security services and attendant services during committee hearings.

6. General business

Resolved, on motion of Mr Pearce, that the Chairman identify time in November 2001 suitable to conduct a public hearing(s) in relation to the Workers Compensation inquiry.

7. Next meeting

The meeting adjourned at 4:28pm, until Monday 15 October 2001, at 4:00pm.

Steven Carr
Director

Minutes No. 63
Monday 15 October 2001
At Parliament House (Room 1153) at 5:00pm

1. Members present

Rev Nile (Chairman)
Mr Kelly
Mr Pearce
Ms Saffin
Dr Wong

2. Apologies

Mr Tsang
Mr Colless

3. Confirmation of minutes

Resolved, on motion of Ms Saffin, that: the minutes of meeting no 62 be confirmed.

4. Review and monitoring of the NSW Workers Compensation Scheme

The Chairman tabled his draft report entitled "NSW Workers Compensation Scheme, First Interim Report". Once circulated, the report was accepted as being read.

The committee deliberated.

Resolved, on motion of Mr Pearce, that: the report be amended by deleting paragraph 2.30 and inserting instead:

The financial position of the Scheme has been reported to be \$2.76 billion deficit at 30 June 2001.⁷⁰ With respect to the level of deficit, the Committee has received submissions and heard evidence questioning the reported \$2.76 billion deficit and the actuarial methodologies and assumptions that formed the basis of the calculation.⁷¹ The following analysis of the financial position of the scheme was prepared for the Committee by the Committee's consultant actuaries, Ernst & Young. The report in its entirety is presented as Appendix 4. This report is the opinion of Ernst & Young only and does not represent the opinions of the Committee. The Committee intends to investigate the size of the deficit and actuarial methodologies employed by the WorkCover actuaries in calculating their projections in its forthcoming reports.

Resolved, on motion of Mr Pearce, that: the report be amended by inserting at the end of the paragraph:

The overview is provided for information purposes only and may not reflect the considered opinion of the Committee which is still to investigate these matters.

The committee deliberated.

⁷⁰ R Wainwright, 'Compo debt heading fro \$3bn-plus', *The Sydney Morning Herald*, 26 September 2001.

⁷¹ Submission No 7, NSW Law Society, 14 August 2001, page 2; Submission No 8, Australian Plaintiff Lawyers Association, 15 August 2001, page 1; Submission No 10, Housing Industry Association, 17 August 2001, page 7; Submission No 17, NSW Bar Association, 28 August 2001, page 1; Evidence of Mr John Wynyard, Chairman, Workers Compensation Group, APLA, 10 October 2001, pages 52-55 (proof); Evidence of Ms Allison Robertson, Member, Workers Compensation Group, APLA, 10 October 2001, pages 53-55 (proof).

Resolved, on motion of Mr Kelly, that: the Chairman write to the Hon John Della Bosca MLC, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations, seeking urgent written comment on whether he has any reservations or concerns about the committee proposing to append the Tillinghast-Towers Perrin valuation of the WorkCover Scheme Statutory Funds (as at 30 June 2001) to the first interim report prior to the report being presented to the House.

The committee deliberated.

Resolved, on motion of Mr Kelly that: the report, as amended, be adopted.

Resolved, on motion of Mr Pearce, that: the report be signed by the Chairman and presented to the House in accordance with the resolution establishing the committee of 13 May 1999.

Resolved, on motion of Dr Wong, that: pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and under the authority of Standing Order 252, the Committee authorises the Clerk of the Committee to publish the report.

CONSIDERATION OF ADVERSE REFLECTION – PUBLIC HEARING 10 OCTOBER 2001

The committee considered whether Mr Andrew Ferguson, State Secretary, CFMEU, made adverse reflections on certain organisations and individuals at the committee's public hearing on 10 October 2001.

The committee deliberated.

Resolved, on motion of Mr Kelly, that:
the committee delete names of individuals or organisations on a temporary basis whilst seeking their written response.
that the transcript with names deleted be made public with an advisory note attached.
the committee consider responses and the status of the temporarily removed names in the transcript at a latter time.

FUTURE HEARING

Resolved, on motion of Mr Pearce, that: the Chairman circulate to the committee possible hearing dates during the period 15 - 30 November 2001.

5. Adjournment

The meeting adjourned at 5:33pm, *sine die*.

Unsigned

Appendix 8

Tillinghast-Tower Perrin valuation of the WorkCover Scheme

as at 30 June 2001

Tillinghast-Towers Perrin valuation of the WorkCover Scheme

16 October 2001
Page 2.

Tillinghast - Towers Perrin

- That the Committee's report does not include any statement that would have the effect of contradicting or overriding the statements made by Tillinghast in section 2 of the Report.

Yours sincerely



(DUNCAN AINSLINGS)

Dr Dave Finnis

c.c. Rod McInnes, WorkCover Authority of NSW

16/10/2001 16:23 SYDNEY\GENERAL\VALUAT_01.DOCF

Level 17, MLC Centre
 20-29 Martin Place
 Sydney NSW 2000
 GPO Box 5273
 Sydney NSW 2001
 Tel: (02) 9229 5556
 Fax: (02) 9229 6666
 Pst: (02) 9229 6999
 Management Consultants
 and Actuaries

Tillinghast - Towers Perrin

16 October 2001

Rev the Hon Fred J Nile MLC
 Chairman
 Legislative Council General Purpose Standing Committee No. 1
 Parliament House
 MACQUARIE STREET NSW 2000

C/o Mr Rod McInnes
 Assistant General Manager
 WorkCover Authority of NSW
 Level 11
 400 Kent Street
 SYDNEY NSW 2000

By Facsimile: (02) 9370 6111

Dear Reverend Nile

LEGISLATIVE
 GENERAL PURPOSE
 STANDING COMMITTEE
 16 OCT 2001

ACTUARIAL REVIEW OF THE OUTSTANDING LIABILITIES OF THE WORKCOVER SCHEME STATUTORY FUNDS AS AT 30 JUNE 2001, DATED 26 SEPTEMBER 2001, ("the Report").

Further to our letter of consent to WorkCover dated 12 October 2001, Tillinghast-Towers Perrin ("Tillinghast") hereby consent, on the terms set out in this letter, to the Legislative Council General Purpose Standing Committee ("the Committee") including our Report as an appendix to the Committee's report in relation to its inquiry into the NSW Workers' Compensation Scheme.

This consent is granted subject to the following conditions:

- That the Report is included in its entirety as an attachment/appendix to the Committee's report.
- That the Report is only distributed as an attachment to the Committee's own report/findings, such that the Report is not otherwise distributed by the Committee separately from the Committee's own report.

16/10/2001 16:23 SYDNEY\GENERAL\VALUAT_01.DOCF

Towers, Perrin, Forster & Crosby, Inc. ARBN 002 551 019 is incorporated in USA and has limited liability