

General Purpose Standing Committee No. 1

NSW Workers Compensation Scheme

Final Report

Ordered to be printed 3 September 2002

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: Final Report / General Purpose Standing Committee No. 1 [Sydney, NSW]: The Committee, 2002.-201p.; 30 cm. (Parliamentary paper; no. 176)

Chair: The Revd the Hon Fred Nile MLC
"Ordered to be printed 3 September 2002".

ISBN 0-7347-6421-9

1. Workers compensation—New South Wales.
- I. Title
- II. Nile, Fred
- III. Series: Parliamentary paper (New South Wales. Parliament) ; 176

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,*
 - c) *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 and Minutes of Proceedings No. 134, 29 November 2001, Item No. 23)

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 Michael Gallacher MLC Liberal Party^{1,2}

The Hon Greg Pearce MLC Liberal party³

The Hon Janelle Saffin MLC Australian Labor Party⁴

The Hon Henry Tsang MLC Australian Labor Party

The Hon Dr Peter Wong MLC Unity

Participating Members

The Hon Ron Dyer MLC Australian Labor Party

The Hon Amanda Fazio MLC Australian Labor Party

¹ Correspondence received 6 July 2001, the Hon Richard Colless MLC will replace the Hon Patricia Forsythe MLC for the duration of this inquiry.

² Correspondence received 29 October 2001, the Hon Mike Gallacher MLC will replace the Hon Richard Colless MLC for the duration of this inquiry.

³ Correspondence received 6 July 2001, the Hon Greg Pearce MLC will place the Hon Don Harwin MLC for the duration of this inquiry.

⁴ Correspondence received 8 Aug 2001, the Hon Janelle Saffin MLC will replace the Hon Peter Primrose MLC for the duration of this inquiry.

Table of Contents

	Chairman's Foreword	x
	Summary of Recommendations and Conclusions	xiii
	Glossary	xxiii
Chapter 1	Introduction	1
	Background to this report	1
	Structure of the Committee's final report	1
	Conduct of the final stage of the inquiry	2
	Committee's draft recommendations	2
	Minutes of the proceedings of the Committee	2
	History and conduct of the full inquiry	3
	Terms of reference	3
	Interim reports	4
Chapter 2	Scheme design	7
	Principles of good scheme design	7
	Scheme Design Review	11
	Preferred underwriting framework	15
	Scheme stability	21
Chapter 3	Financial accountability and management	27
	A lack of ownership by Scheme participants	27
	Recording the Scheme deficit/surplus	28
	A fully funded Scheme	32
	Definition of "fully funded"	33
	Fully funding the current year	34
	Fully funding the deficit	37
	Independent premium setting	39
Chapter 4	WorkCover Authority	45
	WorkCover's performance	45
	Previous administrative reviews	45
	Evidence during current inquiry	47

	Gosford relocation	48
	Performance auditing	50
	Information availability	51
	Reducing duplication of systems	52
	Assisting monitoring progress of the Scheme	52
	Aiding the provision of timely and accurate information	52
Chapter 5	Regulation and insurers	56
	Role of WorkCover	56
	Previous reviews	56
	Current powers and functions	57
	Separation of WorkCover functions	59
	Insurer performance and regulation	64
	Insurer performance	64
	<i>Early injury management and claims management</i>	65
	<i>Timely offer of section 66 entitlements</i>	66
	<i>Proactive injury management</i>	67
	<i>Injury management – 21 and 42 day rule applied correctly</i>	67
	<i>Short term and long injury management</i>	69
	<i>Reasons for underperformance</i>	70
	Regulation of insurers	74
	Monitoring and enforcement	75
	Insurer remuneration arrangements	78
	Separation of insurer responsibilities and functions	80
	Regulation of non-insurer service providers	85
Chapter 6	Injury prevention and injury management	88
	Injury prevention	88
	Occupational Health and Safety Summit	88
	Incentives for employers	88
	<i>Financial incentives</i>	89
	Permanent psychological injury assessment	94
	Injury management	97
	Early reporting	97
	Return to work	102
	Injured worker benefits – structured settlements	107
Chapter 7	Enforcement	116
	Appropriate penalties for fraud and non-compliance	116
	Current problems	116
	Offences under the <i>Crimes Act 1900</i> (NSW)	117

	Plain English legislation	121
Chapter 8	Self-insurance and specialised insurance	124
	Benefits of self-insurance	124
	Regulation of self-insurers and specialised insurers	129
Chapter 9	Monitoring, transparency and ongoing reviews	136
	Ongoing reviews and monitoring	136
	The Advisory Council	140
	Increasing transparency through the release of reports and reviews	145
Appendix 1	Submissions	150
Appendix 2	Witnesses	154
Appendix 3	Tabled Documents	160
Appendix 4	Response from WorkCover to the Committee's draft recommendations re the Scheme Design Review	164
Appendix 5	Minutes	166

Figures, Tables and Charts

Table 3.1	Comparison of estimated breakeven and collected premium rates, 1987-88 to 2001-02, NSW workers compensation scheme (post-reforms)	35
Table 5.1	Insurer Performance for 1999/00 Remuneration Year Timely offer of section 66 entitlements	66
Table 5.2	Insurer Performance for 1999/00 Remuneration Year Proactive Injury Management	67
Table 5.3	Insurer performance for 1999/00 Remuneration Year – 21 Day Rule Applied Correctly	68
Table 5.4	Insurer performance for 1999/00 Remuneration Year – 42 Day Rule Applied Correctly	68
Table 5.5	Insurer performance for 1999/00 Remuneration Year – Short term Injury management	69
Table 5.6	Insurer performance for 1999/00 Remuneration Year – Long term injury management	70
Figure 6.1	Proposed Injury Response Centre Flow Chart	101

Chairman's Foreword

On average 456 workplace injury claims were made by NSW workers each and every day of the year in 1999/00.⁵ Each year numerous workers die as a result of a workplace injury and many more are permanently incapacitated and unable to work again. An effective and well-managed workers compensation scheme is essential for both preventing injury and for aiding employees when injuries do occur.

This report is the culmination of more than fourteen months work by General Purpose Standing Committee No 1. It is the final report in a series of five. In this report the Committee provides a series of conclusions and recommendations regarding the future of the workers compensation scheme in NSW. This final report was unanimously adopted by the Committee, as were the Committee's four interim reports.

It became clear during the Committee's inquiry that the NSW workers compensation scheme has over the last two decades experienced a range of problems and inefficiencies, which have resulted in the massive deficit facing the Scheme's trust today.

Some of the key issues identified by this inquiry have included:

- limited transparency and accountability,
- a lack of ownership of the Scheme as a whole by all participants,
- inadequacies in the financial structure of the Scheme,
- insufficient regulatory powers for WorkCover,
- inadequate injury management,
- a history of management problems both on the part of WorkCover and its' agents, and
- Scheme instability as a consequence of ongoing management and legislative changes.

The Committee, through its recommendations, has sought to either directly address these issues or to identify areas requiring more in depth investigation by other bodies. In addition, during this inquiry the Government announced the establishment of the Scheme Design Review, which is examining major design issues with the Scheme and is making recommendations regarding the preferred underwriting framework. The Committee recognises that the work of this review will guide and influence both the decisions of WorkCover and the Government with regards to the future of the Scheme. The Committee was advised by Ms Kate McKenzie, General Manager, WorkCover, that the Review's terms of reference are sufficiently broad and that the Steering Committee overseeing the Review will take into consideration the Committee's recommendations. The Committee believes that a number of the issues facing the Scheme (which are discussed by the Committee in this report) are of such vital significance to its future that they require further in depth analysis by this review.

Underlying all of the Committee's conclusions and recommendations are a series of principles on which the Committee believes an efficient and effective workers compensation scheme should be based.

⁵ *WorkCover NSW Annual Report 2000-01*, p 17. It should be noted that this figure includes injured employees covered by specialised insurers and self-insurers, as well as by WorkCover.

During the inquiry it became apparent that many participants in the Scheme believed there was a need for greater transparency by WorkCover, particularly in providing information about the Scheme's performance. It is for this reason that the Committee has recommended that the Standing Committee on Law and Justice continue the work of this inquiry by monitoring the Scheme on an annual basis. Where the Committee has recommended further consideration of an issue either by WorkCover, the Government or by another organisation/authority, it has generally also recommended that the work be presented to the Law and Justice Committee. The publication of reports and information regarding the performance of the Scheme will also help to improve the public's ability to monitor the Scheme's progress.

Another measure to improve transparency is to consolidate all the workers compensation legislation and redraft it in plain English. The Committee feels that this is vital for clarifying and aiding understanding by stakeholders. The Committee has also recommended that the Workers Compensation Advisory Council be reinstated in a revised form with varied functions. This will aid the involvement of the key participants (employers and employees) in the system.

One of the major contributors to the current deficit has been the setting of premiums at a rate below that necessary to fund claims. To facilitate the transparency of the premium rating process the Committee has recommended that an independent authority be responsible for recommending to the Minister the required target premium rate. The Minister will then be required to publicly state why he/she rejects or accept the recommendation.

The Committee heard evidence that changing the Scheme design from a hybrid system to either a completely privatised or publicly managed Scheme may improve both accountability within the Scheme and clarify the issues surrounding financial ownership. The most appropriate avenue to consider such a change is the Scheme Design Review. For the purposes of this report the Committee has assumed that in the medium to long term the Scheme will remain a hybrid. As a consequence, there remains a need to determine financial responsibility for the Scheme. The Committee believes that the deficit should either be recorded on the State accounts or on individual employers books. To ensure that the Scheme's deficit no longer continues to increase the premium needs to be set so as to fully meet annual claims costs each and every year. The Committee believes that this is an area of great importance that needs to be explored by the Scheme Design Review.

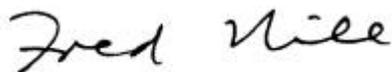
An effective workers compensation scheme should focus on preventing injuries. As a consequence, it is vital that employers be provided with appropriate incentives to support this aim. Currently the excess arrangements for employers do not provide an incentive for employers to prevent injuries. The Committee has therefore recommended to WorkCover that they undertake a review of the excess arrangements and consider various methods for improving the incentives created.

An aspect of the Scheme which is of particular concern to the Committee is the extent of WorkCover's regulatory powers. WorkCover is expected to have an interest in all aspects of the Scheme and in many ways is expected to oversee and manage the Scheme, yet is unable to properly fulfil this role because it lacks sufficient regulatory and enforcement powers. During the inquiry the Committee heard evidence that WorkCover has experienced problems with the performance of insurers in the past. It is for this reason that the Committee has recommended that the Scheme Design Review consider replacing the licensing arrangements between WorkCover and insurers with individual contracts. WorkCover's regulatory powers with regards to specialised insurers and self-insurers also need to be reviewed.

During the course of the inquiry the various roles and functions performed by WorkCover were explored and some participants made a strong argument that a number of the functions could be performed better if they were undertaken by different organisations. The Committee has heard arguments in favour of separating out the advisory roles from the regulatory roles, in particular; however the Committee believes that this needs to be the subject of a dedicated independent review. As a precursor to this work a review of WorkCover's performance by the Auditor General or another independent body would be useful.

The stability of the Scheme is another key issue. In recent years there have been a large number of legislative and management changes surrounding the Scheme. It was argued by some witnesses that the Scheme needed an opportunity to stabilise. Given the issues still facing the Scheme the Committee feels that it would be inappropriate to recommend that no changes be made to the Scheme in the near future. However the Committee believes that there is a strong argument against making significant changes to benefit levels, dispute resolution, legal procedures and the medical system for the next two years, as these areas have been the subject of much recent change.

Finally, I want to take this opportunity to thank my fellow Committee Members and the Committee secretariat for their tireless work on this very demanding inquiry. In particular, Senior Project Officers Ms Rachel Simpson and Ms Emma Lawson who shared in the drafting of this report, in organising the Committee's activities and had primary responsibility for seeing this inquiry to its conclusion. I am also very appreciative of the work undertaken by Ms Natasha O'Connor and Ms Ashley Nguyen who have formatted this report and have assisted in the administration of all aspects of the inquiry. Acknowledgement must also be given to the assistance and general counsel of Mr Steven Reynolds, Committee Director, the former Director Mr Steven Carr and Mr Warren Cahill, Clerk Assistant – Committees. Thanks also goes to Mr Peter McCarthy and staff from Ernst & Young for their invaluable technical actuarial and accounting guidance.



Revd Hon Fred Nile MLC
Chairman

Summary of Recommendations and Conclusions

Conclusion 10

The Committee believes a good workers compensation scheme will encompass the following desirable principles:

- The focus of the scheme will be on injury prevention wherever possible.
- In the event of a workplace injury or illness, the injury should be reported as soon as practicable following the incident. Prompt rehabilitation and return to work to appropriate duties is vital.
- The benefit system should compensate injured workers fairly and provide the right incentives for return to work, with a preference for ongoing care rather than lump sum compensation for the seriously injured.
- Benefit design should be such that fair compensation is available to all injured parties, but the focus should be on providing higher benefits to the seriously injured.
- The scheme should aim to provide appropriate incentives to employers to reduce the incidence and severity of workplace injury and promote return to work through affordable and fair premium rates.
- The scheme needs to be financially viable, including fully funded.
- Dispute resolution procedures should encourage early informal or alternative means of dispute resolution, with courts or tribunals being seen as a last resort
- Timely and accurate provision of relevant statistical and other information will enable informed strategic decision making.
- The roles and responsibilities of participants in the Scheme need to be clearly defined in legislation. Participants must be aware of and accountable for their role – a sense of ownership is fundamental.
- The Scheme must have adequate internal measures to prevent abuse and fraudulent activity.
- A strong open and accountable governing body with clearly defined authority over all aspects of workers compensation will facilitate the scheme meeting its objectives.

Recommendation 1 10

That the Scheme Design Review and any additional review following this inquiry consider the Committee's principles when making recommendations for the future design of the NSW Scheme.

Recommendation 2 14

That the report from the Scheme Design Review be made publicly available immediately on completion.

Recommendation 3 20

That the Scheme Design Review considers whether the Scheme should be privatised. In the event the Review recommends privatisation the Committee recommends the Scheme only be privatised after considering the following factors:

- **Whether the Scheme's finances have been stable for at least two years;**
- **Whether the Scheme's deficit is reduced to a manageable level;**

- **Whether it is clear that the insurance industry is financially capable of underwriting the Scheme without exposing the Government and employers to financial risk;**
- **Whether the managed agents' operational capabilities have improved substantially from their current level; and**
- **Whether the performance of managed agents and the insurance industry has been good and stable for a number of years.**

Recommendation 4 25

That no further significant reforms to benefit levels, dispute resolution, legal procedures and the medical system be considered for at least the next two (2) years, until the impact of the 2001 legislative reforms is firmly established, unless reasons are produced that show the reforms would improve the operation or viability of the Scheme. If, during this period the experience of the Scheme does not emerge as intended, the Committee recommends that the Government consider further significant reforms.

Conclusion 32

It is important that the Scheme's deficit/surplus be appropriately recorded and reported. The Committee concludes there are alternatives for where the deficit/surplus may be recorded. These include:

1. WorkCover balance sheet in the Total State accounts,
2. Employer balance sheets,
3. Insurers or other underwriters.

Recommendation 5 32

That the question of where the deficit/surplus in the statutory managed fund should be reported and identified be referred to the Scheme Design Review for in depth consideration and analysis, based on appropriate accounting and actuarial advice.

Conclusion 34

The Scheme is fully funded if the total of the Scheme's assets are equal to or exceed the Scheme's liabilities.

A premium is fully funded if:

It provides provision for a levy to finance the Scheme's current deficit in line with targets set to fund that deficit. (The levy could be set to zero).

Conclusion 37

It is important for each year's premium and income from investments to be sufficient to fund that year's claims costs. Only once this is achieved can the Scheme address the long term aim of fully funding the deficit.

Recommendation 6 39

That the Scheme Design Review consider whether the Scheme's premium rate should be set on a fully funded basis each year.

That, based on advice received by the Committee's consultant actuaries, Ernst & Young, a minimum period of 5 years be set to fully fund the Scheme's liabilities.

Conclusion 43

The premium setting process must be fully transparent in order to increase accountability and a sense of ownership within the Scheme.

An independent premium setting body may address the need for transparency in the premium setting process.

Recommendation 7 43

The Committee recommends that an independent authority be responsible for recommending to the Minister an appropriate target premium rate for the workers compensation scheme. The Minister would then have the option of publicly rejecting their advice.

The Government should establish in legislation the parameters under which the independent authority would operate in setting the premium rate.

Conclusion 49

The internal structure of the WorkCover Authority is currently undergoing significant change as a consequence of management initiatives, amendments to legislation and the move to Gosford. Given these matters the Committee has not been able to draw conclusions about the administration of WorkCover at this time.

Conclusion 51

Given the concerns expressed about the performance of WorkCover, the Committee believes that there is a need for a performance audit of the authority.

The Committee believes that the Auditor-General is the appropriate authority to undertake a performance audit of WorkCover.

The Committee also believes that a performance audit is an essential precursor to the review proposed in Recommendation 10 of this report.

Recommendation 8 51

That the Law and Justice Committee should consider whether there is a need for a performance audit of WorkCover by the Auditor General. (Refer Recommendation 26)

Conclusion 54

There are strong arguments for and against a centralised computer system. The Committee believes that a centralised system may possibly improve WorkCover's ability to monitor the financial progress of the Scheme, regulate its providers and provide information to stakeholders about various aspects of the Scheme to assist them in improving Scheme outcomes.

WorkCover should only embark on establishing a costly system if it is confident it will result in major improvements to service delivery, information provision and transparency.

Recommendation 9 54

That WorkCover report back to the Law and Justice Committee on the implementation of their new information technology strategy as part of that Committee's annual review of the Scheme (refer Recommendation 26).

Conclusion 63

There are strong arguments for and against the separation of WorkCover. In particular, it may be beneficial to separate the enforcement/regulatory roles from the educational/advisory roles performed by the Authority. However, the Committee believes that recommending this at this stage would be premature and that careful consideration needs to be given to the costs and benefits of undertaking such a separation.

Any future performance audit should be taken into account in any review considering the separation of WorkCover.

Recommendation 10 64

That an independent authority/organisation should be commissioned to undertake a review of WorkCover's structure, with a view to separating WorkCover. Possible options to be considered in this review include:

Option 1 – A body performing regulatory enforcement functions and a body undertaking workers compensation management functions;

Option 2 – A body performing OH&S and a body performing workers compensation functions.

Conclusion 73

The Committee recognises WorkCover's efforts in working towards new remuneration arrangements with the aim of more closely aligning the remuneration system with the overall Scheme objectives. However, the Committee is concerned that the new remuneration arrangements may not be a sufficiently powerful tool to achieve the desired results.

Conclusion 77

The current powers given to WorkCover in terms of licensing and remuneration provide WorkCover with limited options for penalising insurers where and when a problem is identified. Contractual arrangements may offer WorkCover more options for penalising insurers in these situations.

The problems in relation to WorkCover's relationship with insurers are part of a bigger issue regarding WorkCover's role in the Scheme and should be considered by the Scheme Design Review. The Committee is of the opinion that WorkCover is expected to have an interest in all aspects of the Scheme and in many ways is expected to oversee and manage the Scheme, yet is unable to properly fulfil this role because it lacks sufficient regulatory and enforcement powers.

Recommendation 11 77

That the Minister, after consultation with the Auditor General and Scheme Design Review Steering Committee, appoint a consultant or external agency to conduct an independent review of insurers to assess the quality of their claims management and the results provided to the Law and Justice Committee (Recommendation 26) together with recommended actions. This is a necessary precursor to any decision to separate the functions and responsibilities of insurers in the Scheme.

Recommendation 12 78

That the Scheme Design Review note the Committee's concerns regarding the current insurer licensing arrangements and consider the introduction of individual contracts.

Each contract should set out clear performance requirements of the agent and penalties that would apply if those requirements were not met.

Conclusion 79

It is disadvantageous for insurers and inappropriate for remuneration arrangements to be implemented prior to the industry and WorkCover knowing the details of the arrangements. This situation has the potential to result in problems for both the insurers, in terms of the management of their work and for WorkCover, in terms of their regulation of insurers. The cumulative impact of these problems has the potential to impact adversely on the Scheme as a whole.

Recommendation 13 79

That where possible the development and sign off, of all benchmarks of new insurer remuneration arrangements occurs prior to their date of implementation, so that the industry is completely clear about the details of the new arrangements and are able to set up appropriate systems for monitoring and management in advance.

Conclusion 84

There are some potential benefits in allowing non-insurers to undertake aspects of the work currently performed by insurers in the Scheme. There are particular benefits in claims management being undertaken by other organisations who are able to focus on the particular requirements of injured workers. The implementation of WorkCover's new Information Technology strategy should help facilitate the separation of various aspects of the Scheme by improving the sharing of information and by enabling the automatic transfer of clients between agencies where required.

Recommendation 14 85

That the Scheme Design Review include a feasibility study considering separate tenders for each of the main functions of WorkCover's agents (insurers). The main functions for consideration include:

- **Premium calculation;**
- **Fund investment;**
- **Claims and injury management;**
- **Tail management (management of claims over three years old and not included in an employer's premium calculation);**
- **Claims payments.**

The tender should be clear that non-insurers would be considered.

The Victorian experience with regard to including non-insurers, as agents of WorkCover, should be considered as part of this review.

Conclusion 86

There is an inconsistency between the regulation of insurers and the non-regulation of service providers

Recommendation 15 86

That the Scheme Design Review or an independent authority explore options for improving the regulatory powers of WorkCover with regard to non insurer service providers and the results of this review be reported to the Law and Justice Committee (See Recommendation 26).

Conclusion 94

Evidence before the Committee indicated that the current excess system does not:

- Allow for increases in the rate of excess with inflation and or changing market conditions,
- Relate to the employers business size, capacity or type,
- Provide an appropriate incentive for employers to prevent injuries.

There are a large number of options and possibilities for improving the incentives for employers provided through the excess system and it is important for equity purposes that excesses relate to an employers business.

Recommendation 16 94

That WorkCover review the role, level and impact of the current excess arrangements and analyse options for improving these arrangements to ensure that they contribute to the following aims:

- **Improving injury prevention measures,**
- **Improving Scheme outcomes,**
- **Early reporting,**
- **Providing incentives for employers,**
- **Improving accountability within the Scheme.**

In undertaking this review WorkCover should consider the merits of connecting the level of excess to the size of the organisation.

Conclusion 96

The role of psychologists with additional specialist training in impairment assessment should be negotiated between psychologists, WorkCover and other relevant parties.

Recommendation 17 97

That WorkCover should consider the recommendations of the research project (overseen by a reference group including representatives of psychiatrists and psychologists) that has been established under the auspices of the Heads of Workers Compensation Authorities to support the introduction of a universal scale for the measurement of permanent impairment arising from psychiatric or psychological disorders.

That WorkCover report progress on this project to the Standing Committee on Law and Justice (refer Recommendation 26).

Conclusion 102

The concept of a call centre as a mechanism for improving the reporting of claims may have merit. However, the Committee also appreciates the need for employer involvement and the possible constraints a call centre may place on innovations by insurers.

As a consequence, the Committee believes that the concept of a centralised call centre for the reporting of injuries needs be analysed and extensive consultation conducted with stakeholders.

Recommendation 18 102

That the Scheme Design Review consider the establishment of a Scheme-based call centre to facilitate the early reporting of claims by employers, workers and doctors, and;

That Scheme Design Review (in consultation with stakeholders) review the most efficient and effective method of operation for the call centre and determine how and by whom it would be managed (by WorkCover, insurers or an independent organisation).

Conclusion 106

A prompt return to work as soon as possible after an injury is beneficial for the Scheme, the employer and most importantly the injured employee.

As a consequence, a range of options/initiatives should be considered by WorkCover in developing methods to improve the NSW experience in this area.

Recommendation 19 107

That the Scheme Design Review and WorkCover should consider the effectiveness of the following initiatives in providing incentives for claimants to return to work:

- **Group schemes for small employers for suitable duties, arranged by industry or geographic area.**
- **Industry based group schemes for large and small employers.**
- **Utilising employment agencies to find suitable duties.**
- **Educating employers, especially small employers, about the benefits of finding suitable duties for injured workers.**
- **Financial assistance for employers, with a specific focus on small employers.**

In particular, it is recommended that WorkCover consider the success of these initiatives where they have been utilised by other jurisdictions.

That the Government report back to the Law and Justice Committee (See Recommendation 26) concerning it's initiatives regarding research, training and the accreditation of rehabilitation providers. (Refer Recommendation 26)

Conclusion 113

Structured settlements could be beneficial for injured workers who have received a substantial award for damages under common law and statutory s66 and s67 payments. However, before committing the NSW Government to considering changes to the system and lobbying for changes to taxation further analysis needs to be undertaken as to their applicability and impact.

Recommendation 20 114

That WorkCover review the applicability, role and possible impact of structured settlements.

If it is clear that structured settlements have a beneficial role for employees and would be likely to improve Scheme outcomes, the Committee recommends that the NSW Government work in conjunction with other state and territory governments to lobby the

Commonwealth Government to change taxation laws. The taxation changes should be designed to ensure that structured settlements are a financially practical option for the compensation of seriously injured workers.

Recommendation 21 121

That the maximum penalties for fraud contained in the *Workers Compensation Act 1987* be significantly increased to make the financial penalties and terms of imprisonment consistent with similar provisions in the *Crimes Act 1900* (NSW).

Recommendation 22 121

That the adequacy of WorkCover's fraud detection and prosecution resources should be considered during the implementation of the Government's response to the Review of Employers' Compliance with Workers Compensation Premiums and Pay-roll Tax in NSW.

Recommendation 23 121

That WorkCover continue to promote and publicise its successful prosecutions for fraud and non-compliance by service providers, employers and claimants.

Recommendation 24 123

That all Acts that form part of the workers compensation legislation in NSW be consolidated and redrafted in plain English, as was done with the OH&S legislation and regulations in 2000.

Conclusion 129

WorkCover should be cautious about further initiatives to encourage self-insurance. Any further move in this direction should only occur where a rigorous study of the likely financial impacts on the Scheme has shown that the effect will be minimal.

Conclusion 134

Self Insurers

As a consequence of the possible impacts on the Scheme and on injured employees of self-insurers having insufficient funds to cover outstanding claims liabilities, it is of vital importance that the on going capacity of individual self insurers to cover claims liabilities is closely monitored by WorkCover.

To do this WorkCover needs to have sufficient information about the performance of the self-insurer. The Committee is concerned that WorkCover may not currently have enough information about the performance of self-insurers. However, the Committee is also conscious that employers have a core business and that it is important not to detract from this with unrealistic and excessive demands for information.

Specialised Insurers

The regulation of specialised insurers needs to be consistent for all specialised insurers and that there are good arguments for improving the monitoring role currently performed by WorkCover with regards to specialised insurers.

Recommendation 25 135

That the licensing conditions for specialised insurers and self-insurers be reconsidered by the Government in light of the recommendations of the HIH Royal Commission and the Scheme Design Review.

That the outcomes of the reconsideration be reported back to the Law and Justice Committee (refer Recommendation 26).

- The transparency of the Scheme.
- Stakeholder involvement and ownership of the Scheme.
- Monitoring of the Scheme.

These issues were also considered in the Committee's previous reports, of particular relevance are Chapters 4 and 5 of the Second Interim Report and Chapters 6 and 8 of the Third Interim Report.

Conclusion 139

Ongoing monitoring of the workers compensation scheme, which is accessible to the public as a whole, will serve to aid the accountability and transparency of the Scheme and WorkCover.

Recommendation 26 139

That the *Workplace Injury Management Act 1998* (NSW) be amended to designate a role for a Legislative Council committee to annually review the implementation of the 2001 legislative reforms and any subsequent significant legislative reforms, the general financial status of the Scheme and the progress of the Scheme, consistent with that Committee's role under section 210 of the *Motor Accidents Corporation Act 1999* (NSW), and that WorkCover through the Minister provide progress reports to the Committee at least six monthly.

That the nominated committee be the Standing Committee on Law and Justice.

That the report of the IPART review of the workers compensation scheme, due to be completed in January 2003, and the report from the Scheme Design Review, form part of the Law and Justice Committee's first annual review of the Scheme.

Conclusion 144

There is a need for the Government to be proactive in involving key stakeholders in the actual Workers Compensation Scheme, through policy design, implementation and monitoring.

Recommendation 27 144

That the Advisory Council be reinstated but with revised functions and membership after the Scheme's deficit has been minimised and is stable.

That the Advisory Council consist solely of employers, employees and the General Manager of WorkCover. An actuary, an insurer representative and a representative for other non-insurer service providers should only perform advisory functions for the Council. The numbers of employer and employee representatives should be limited as much as possible.

That the Council perform consultative, advisory and monitoring functions for the workers compensation scheme. The exact extent of these functions should be negotiated between WorkCover, employees and employers. It is recommended that the experiences of other jurisdictions be considered in these negotiations.

That the Council can make recommendations to the Government but cannot perform any decision-making functions.

Recommendation 28 147

That WorkCover publicly release, on a quarterly basis, reports and information which are not covered by privacy legislation, to improve the transparency of the financial progress of the Scheme including:

- **Reports from its consulting actuary(s) including those on outstanding claims reserves, premium rates, quarterly monitoring and costing of reforms;**
- **Details on each insurer's performance relative to particular benchmarks;**
- **Details of the Scheme's investment performance relative to benchmarks;**
- **Data on the performance of Industry Reference Groups and if possible by industry.**

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 *Workers Compensation Act*.
- 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.
Provisional Liability	Provisional liability allows an insurer to make weekly and medical expenses payments without admitting liability. This enables an insurer to make early payments to the worker without delay.
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	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. <i>Section 66 and Section 67 benefits are referred to as Statutory lump sum payments.</i>
Sufficiency Level	Refers to the extent to which the organisation's capital reserves are sufficient to cover outstanding claims.
Significant Injury	A workplace injury that is likely to result in the worker being incapacitated for a continuous period of more than 7 days, whether or not any of those days are work days and whether or not the incapacity is total or partial or a combination of both.

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>
31 December Evaluation Report	Actuarial Review of the Outstanding Liabilities of the WorkCover Scheme Statutory Funds as at 31 December 2001
ABL	Australian Business Limited
AIG	Australian Industry Group
AMA	American Medical Association
ANZIC	Australian New Zealand Industry Classification
APLA	Australian Plaintiff Lawyers Association

APRA	Australian Prudential Regulation Authority
APS	Australian Psychological Society
CFMEU	Construction, Forestry, Mining and Energy Union
Commission	Workers Compensation Commission
Deloitte	Deloitte & Touche Consulting Group
Ernst & Young	Ernst & Young ABC, the Committee's Consultant Actuaries
Further 2001 Act	Workers Compensation Legislation Further Amendment Act 2001
Grellman Report	Report of the Inquiry into Workers Compensation System in NSW 1997
GST/NTS	Goods and Services Tax/New Tax System
HWCA	Heads of Workers Compensation Authorities
IAG	Insurance Australia Group
ICA	Insurance Council of Australia
Insurance Act	<i>Insurance Act 1973</i> (Cth)
IT	Information Technology
IPART	Independent Pricing and Regulatory Tribunal
LSNSW	Law Society of New South Wales
MCR	Minimum capital requirements
MGA	Managing General Agents
OH&S	Occupational health and safety
PDS	Premium Discount Scheme
PIRS	Psychological Injury Rating Scale
PwC	Pricewaterhouse Coopers
RANZCP	Royal Australian and New Zealand College of Psychiatrists
Scheme	NSW Statutory Workers Compensation Scheme
Sheahan Report	Report of the Commission of Inquiry into Workers Compensation Common Law Matters, August 2001
The Review	The Government's Scheme Design Review
Tillinghast	Tillinghast Towers-Perrin
WCRS	Worker Compensation Resolution Service
WorkCover	WorkCover Authority of NSW

Chapter 1 Introduction

Background to this report

- 1.1** This is the final report of the Committee's inquiry into the Review and Monitoring of the NSW workers compensation Scheme. Four interim reports have been published previously. This report focuses solely on the Committee's recommendations and draws together all the information received during the inquiry as well as evidence and correspondence received in response to draft recommendations circulated by the Committee. The history and conduct of the Inquiry leading up to this final interim report is summarised at the end of this introductory chapter.

Structure of the Committee's final report

- 1.2** The body of this report consists of eight chapters. Chapter 2 concerns the Committee's recommendations on the fundamental design of the NSW workers compensation scheme ("the Scheme"). It begins with a discussion of principles the Committee considers necessary for a soundly designed scheme, then considers the threshold issues of whether to move to private underwriting and the need for stability in the Scheme.
- 1.3** Chapter 3 discusses the issues of financial ownership and accountability and financial management of the Scheme. The question of the most appropriate place for the Scheme's deficit/surplus to be recorded is addressed in this chapter. The concept of a fully funded scheme is explored including whether there is a role for an independent premium setting body in NSW
- 1.4** Chapter 4 explores WorkCover's administrative performance as well as its internal information management systems. The Committee also makes recommendations regarding the improvement of the authority's information and data management systems.
- 1.5** Chapter 5 considers WorkCover's role in regulating and overseeing insurers. The extent of WorkCover's powers with regard to the regulation of participants in the Scheme is explored. In particular, consideration is given to the adequacy of WorkCover's powers for overseeing the work performed by insurers. The past performance of insurers in the areas of injury management, claims management and return to work are analysed. The appropriateness of separating the functions of insurers, so that non-insurers can enter the market, is explored.
- 1.6** Chapter 6 addresses the important issue of injury prevention and considers the continuum of injury prevention, assessment and management. The role of excesses in the Scheme and their value as an incentive to employers to reduce the incidence of occupational injury is discussed. The chapter also considers the means by which the Scheme managers can promote early reporting of injuries and facilitate an injured workers' return to work where appropriate.
- 1.7** Chapter 7 focuses on fraud non-compliance in the Scheme and the most effective penalties for non-compliance by all Scheme participants – employers, claimants and service

providers. It also considers the need for consolidated, plain-English workers compensation legislation which clearly establishes participants' roles and responsibilities in the Scheme.

- 1.8** Chapter 8 explores the impacts and benefits of self-insurance on the Scheme and the regulatory environment in which self-insurers and specialised insurers operate. The final chapter, Chapter 9, addresses the need for transparency and ongoing review of the Scheme in light of the length of time necessary for the full impact of the recent legislative reforms to become apparent. The role of the Advisory Council is considered as part of this discussion.
- 1.9** The Committee draws important conclusions at the end of each section where relevant and appropriate. Each chapter also contains the Committee's recommendations as they pertain to the issues canvassed.

Conduct of the final stage of the inquiry

Committee's draft recommendations

- 1.10** At its meeting on 7 June 2002, the Committee agreed on a number of principles and draft recommendations based on the evidence from the earlier reports. Given the complexity and scope of the issues raised during the Committee's inquiries, the Committee agreed to circulate the principles and draft recommendations to stakeholders for comment prior to their finalisation in this report. The Committee received 19 written responses to the draft recommendations which have contributed to this final report. A list of stakeholders who provided responses to the Committee's draft recommendations is included as part of Appendix 1.
- 1.11** The Committee also held a public hearing to obtain further comment from stakeholders on 2 July 2002. A number of questions had been posed in relation to the draft recommendations in the documents circulated to stakeholders and these formed the basis for the hearing. Witnesses represented many of the Scheme's participants, including representatives from: Pricewaterhouse Coopers; employer groups; the Insurance Council of Australia; workplace injury management services and the NSW Labor Council. A list of witnesses appears as Appendix 2 and a list of documents tabled during the public hearings appears as Appendix 3.
- 1.12** Witnesses at the Committee's hearings agreed to take a number of questions on notice providing further information to the Committee. The Committee found this process useful in obtaining additional and more technical information than that which could be presented orally. Answers to questions on notice are included in the text of the report where relevant.

Minutes of the proceedings of the Committee

- 1.13** The Committee considered the Chairman's draft final report at its meetings on 26 and 30 August 2002. The Minutes of Proceedings of the Committee relevant to the final report are presented as Appendix 5.

History and conduct of the full inquiry

Terms of reference

1.14 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 claim⁶*

1.15 On 29 November 2001, the terms of reference were amended to include the Workers Compensation Further Amendment Bill 2001 as finally passed by Parliament. Term of Reference 1(b) was affected. The amended term of reference reads:

⁶ *Minutes of the Proceedings of the Legislative Council*, No 111, 28 June 2001, Item No 21. Resolution passed by the Legislative Council based on the original motion of Mr Gallacher MLC as amended by the motion of Rev Nile MLC, further amended on the motion of Rev Nile MLC.

- b) to monitor and review the implementation and operation of the Worker's Compensation Legislation Amendment Bill 2001 (No. 2), and the Workers Compensation Further Amendment Bill 2001 as finally passed by the Parliament,⁷

1.16 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. Following a motion in the House by the Chairman, the Rev the Hon Fred Nile MLC, the reporting date for the final report was changed to 3 September 2002.⁸

1.17 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.⁹ 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
First interim report	17 October 2001
Second interim report	17 January 2002
Third interim report	17 April 2002
Fourth interim report	29 August 2002
Final report	3 September 2002

Interim reports

1.18 The Committee's interim reports were tabled in accordance with the Inquiry's reporting timetable. The first interim report included an overview of the workers compensation system in New South Wales and identified key issues and priority areas that the Committee intended to examine in subsequent interim reports and the final report. The Committee's second interim report focussed on areas of scheme design, including possible mechanisms for reducing the Scheme's deficit. It also continued to investigate the financial position of the Scheme and any financial impact on the Scheme of the 2001 legislative reforms. The third interim report focussed on scheme management, and in particular the roles and regulation of insurers, looking closely at injury management and assessment. The incidence of occupational health and safety and some injury prevention strategies was also considered. Information Technology and data management and the timely availability of key data was identified by the Committee as an area of concern. In the fourth interim report the Committee continued its monitoring of the impact of the 2001 legislative reforms on the financial position of the Scheme and examined the issues of dispute

⁷ *Minutes of the Proceedings of the Legislative Council*, No 134, 29 November 2001, Item No 23.

⁸ *Minutes of the Proceedings of the Legislative Council*, No 8, 9 April 2002, Item No 8.

⁹ *Minutes of the Proceedings of General Purpose Standing Committee No 1*, No 57, 6 July 2001, Item No 4.

resolution and the Workers Compensation Commission, WorkCover's IT strategy and the management of the Scheme's investment by insurers.

- 1.19** The reports are available by telephoning the Committee Secretariat on (02) 9230 3544 or via the Internet at www.parliament.nsw.gov.au following the links to General Purpose Standing Committee No 1.
- 1.20** Each of the Committee's interim reports is intended to follow on from previous interim reports. While it is intended that each interim report examines discrete issues and thus stands alone, each relies on previous reports for background and context. Readers might find it particularly useful to refer to the reports of the Committee's consultant actuaries, Ernst & Young ABC ("Ernst & Young") which appear as Appendix 4 of the first interim report, Appendix 1 of the second interim report, and Appendix 3 of the third interim report.
- 1.21** As with many industry fields, there are a number of key terms and concepts within workers compensation that have specific meaning and relevance. A Glossary of some such terms, developed in consultation with the Committee's consultant actuaries, Ernst & Young are presented at the front of this report to assist readers.

Chapter 2 Scheme design

This Chapter concerns the Committee's recommendations on the fundamental design of the NSW workers compensation scheme. It begins with a discussion of the principles necessary for a soundly designed scheme, then considers the issues of whether to move to private underwriting and the need for stability in the Scheme.

Principles of good scheme design

2.1 During the course of the Committee's inquiry, it became apparent that there are a number of fundamental principles that a well designed workers compensation scheme encompass. These principles are applicable and relevant whether the scheme is privately underwritten, completely public or a hybrid scheme such as the NSW Scheme. The Committee first discussed scheme design principles in its second interim report (see paragraphs 3.18 to 3.25 of that report).

2.2 The Insurance Australia Group (IAG), formerly NRMA insurance, agreed that establishing sound principles is fundamental to the success of any workers compensation scheme:

In our view the establishment of clear and soundly based principles is fundamental to the success of any workers compensation scheme. Thus it is pleasing that the Committee has listed what it considers to be the desirable principles on which a workers compensation scheme should be based¹⁰

2.3 The Committee's draft principles as circulated to stakeholders were as follows:

The focus of the scheme will be on injury prevention wherever possible.

In the event of a workplace injury or illness, the injury should be reported as soon as practicable following the incident. Prompt rehabilitation and return to work to appropriate duties is vital.

The benefit system should compensate injured workers fairly and provide the right incentives for return to work, with a preference for ongoing care rather than lump sum compensation for the seriously injured.

The scheme should aim to provide appropriate incentives to employers to reduce the incidence and severity of workplace injury and promote return to work through affordable and fair premium rates.

The scheme needs to be financially viable, including fully funded.

Timely and accurate provision of relevant statistical and other information will enable informed strategic decision making.

¹⁰ Correspondence received from Mr Jon Kelso, Business Planning, Personal Injury, Health & Commercial Insurance, Insurance Australia Group, 27 June 2002, p 1.

The roles and responsibilities of participants in the Scheme need to be clearly defined in legislation. Participants must be aware of and accountable for their role – a sense of ownership is fundamental.

A strong open and accountable governing body with clearly defined authority over all aspects of workers compensation will facilitate the scheme meeting its objectives.

2.4 The general reaction to the principles circulated by the Committee was positive, although stakeholders who responded to the Committee's invitation to comment on the draft recommendations and principles generally focussed on the recommendations rather than the principles. Mr Michael Concannon, Partner, Carrol & O'Dea Solicitors, made the following comments in relation to the principles:

Certainly, in my experience as a solicitor practicing in the workers compensation area, I would endorse the concentration on prompt rehabilitation and return to work. It is my experience however that a substantial number of service providers in the rehabilitation area focus on harassing workers back to work rather than encouraging them...

Whilst it is desirable that ongoing care be provided in preference to lump sum compensation for the seriously injured, nevertheless, in the real world seriously injured workers have a need for lump sums in order to prevent disintegration of their asset base ... it is often only the lump sum payment which enables a seriously injured worker to keep the family unit together in the pre-accident dwelling house. ...

I agree that a fully funded scheme is essential, however the difficulty in that regard is that the actuaries decide whether the scheme is fully funded and it has been my experience and indeed that of WorkCover I believe, that the prognostications of actuaries have been wildly inaccurate. Surely a better system of determining the well-being of the scheme from time to time could be arrived at rather than a guesstimate by WorkCover's actuary.¹¹

2.5 Some stakeholders suggested additional principles that might be considered important for good scheme design. Mr Greg Pattison, General Manager, WorkPlace Solutions, Australian Business Limited ("ABL"), wrote to the Committee that:

Generally we support the Principles, however we suggest they are deficient in one important respect.

Workers compensation does not operate in a vacuum. As has been clearly demonstrated in NSW, when workers compensation schemes are in difficulty there are consequential damaging effects on businesses and their capacity to provide employment.

It is our view the Principles would be strengthened by the adoption of an additional Principle along the following lines: -

¹¹ Correspondence received from Mr Michael Concannon, Partner, Carrol & O'Dea solicitors, 20 June 2002, pp 1-2.

The cost of the scheme should be sustainable in the longer term and not weaken the capacity of NSW businesses to provide employment.

We suggest the addition of this “economic principle” does not in any way diminish the current principles but adds an important qualifier that reflects the reality of the environment in which the scheme operates.¹²

2.6 The IAG suggested the following additional principles:

- a) Evidence based medicine and treatment protocols should be adopted for injury management.
- b) The assessment of injury for the purpose of determining access to scheme benefits should be based on an objective medical assessment process that is supported by a system of medical provider accreditation and compliance.
- c) Benefit design should be such that fair compensation is available to all injured parties, but the focus should be on providing higher benefits to the seriously injured.
- d) The drain by service providers on funds available to claimants should be minimised.
- e) Dispute resolution procedures should encourage early informal or alternative means of dispute resolution, with courts or tribunal being seen as a last resort.¹³

2.7 The Committee appreciates the comments provided by stakeholders in relation to the draft principles and suggested additional principles. Based on this feedback, the Committee believes that it has identified the core issues and principles relevant to a workers compensation scheme. Some of the additional principles suggested by stakeholders are specific and more in the nature of recommendations than principles. Two principles proposed by the IAG (number 3 and number 5 above) however, are sufficiently general to apply to the whole scheme, and have therefore been incorporated into the Committee’s final principles.

¹² Correspondence received from Mr Greg Pattison, General Manager, Workplace Solutions, Australian Business Limited, 25 July 2002, p 1.

¹³ Correspondence received from Mr Jon Kelso, Business Planning, Personal Injury, Health & Commercial Insurance, Insurance Australia Group, 27 June 2002, p 1.

Conclusion

The Committee believes a good workers compensation scheme will encompass the following desirable principles:

- The focus of the scheme will be on injury prevention wherever possible.
 - In the event of a workplace injury or illness, the injury should be reported as soon as practicable following the incident. Prompt rehabilitation and return to work to appropriate duties is vital.
 - The benefit system should compensate injured workers fairly and provide the right incentives for return to work, with a preference for ongoing care rather than lump sum compensation for the seriously injured.
 - Benefit design should be such that fair compensation is available to all injured parties, but the focus should be on providing higher benefits to the seriously injured.
 - The scheme should aim to provide appropriate incentives to employers to reduce the incidence and severity of workplace injury and promote return to work through affordable and fair premium rates.
 - The scheme needs to be financially viable, including fully funded.
 - Dispute resolution procedures should encourage early informal or alternative means of dispute resolution, with courts or tribunals being seen as a last resort
 - Timely and accurate provision of relevant statistical and other information will enable informed strategic decision making.
 - The roles and responsibilities of participants in the Scheme need to be clearly defined in legislation. Participants must be aware of and accountable for their role – a sense of ownership is fundamental.
 - The Scheme must have adequate internal measures to prevent abuse and fraudulent activity.
 - A strong open and accountable governing body with clearly defined authority over all aspects of workers compensation will facilitate the scheme meeting its objectives.
-

Recommendation 1

That the Scheme Design Review and any additional review following this inquiry consider the Committee's principles when making recommendations for the future design of the NSW Scheme.

- 2.8** The Committee's recommendations are designed to promote the principles in the NSW Scheme.

Scheme Design Review

- 2.9** Following an announcement by the Minister for Industrial Relations, the Hon John Della Bosca MLC (“the Minister”), in April 2002 a tender was called for a review of the NSW workers compensation scheme design (“the Review”). The Government raised the prospect of the review at the time it repealed the provisions allowing for private underwriting of the Scheme (see para 2.25 below). The Review is also intended to address the NSW Government’s review obligations arising under the National Competition Policy Principles Agreement.¹⁴
- 2.10** The Committee notes that tenders for the Review closed on 17 May 2002. The tender document specifies the timetable for the Review, stating in paragraph 3.5 that:
- it is required that the Review commences by 30 June 2002.¹⁵
- 2.11** In paragraph 3.6 it stated that:
- a definitive issues paper must be produced by 31 October 2002 and a draft final report by 30 March 2003 to enable the final report to be submitted to the Minister by 30 June 2003.¹⁶
- 2.12** The tender document also sets out the objectives of the Review to be:
- ... to inquire into and make recommendations for the optimum underwriting and insurance arrangements for the Scheme, and on how to achieve better outcomes for the Scheme, having regard to the matters in the Terms of Reference.
- 2.13** The Committee endorses the Review, the terms of reference of which require the Review to address the following matters:
- a) Inquire into and make recommendations for the optimum underwriting / insurance arrangements that will support the delivery of:
 - i. the workers compensation scheme’s objectives, as outlined in the workers compensation legislation; and
 - ii. the policy principles outlined by the Special Minister and the Minister for Industrial Relations in Parliament on 8 June 2000;
 - b) Inquire into and make recommendations for the optimum underwriting / insurance arrangements that will support the delivery of:

¹⁴ WorkCover NSW, *Review of Workers Compensation Scheme scheme design – Request for Tenders*, 19 April 2002, p 3.

¹⁵ WorkCover NSW, *Review of Workers Compensation Scheme scheme design – Request for Tenders*, 19 April 2002, p 5.

¹⁶ WorkCover NSW, *Review of Workers Compensation Scheme scheme design – Request for Tenders*, 19 April 2002, p 5.

- (i) price, service and efficiency;
 - (ii) injury and claims management;
 - (iii) risk management;
 - (iv) funds management;
 - (v) premium collection.
- c) In relation to matters 1 and 2, a range of underwriting options must be considered.
- d) The Review is to consider the issue of management of the deficit during any transition to any new system recommended.

...

The Review should include consultation with key stakeholders (employers and employees), service providers and other scheme participants through the Workers Compensation and WorkPlace Occupational Health and Safety Council of New South Wales.¹⁷

2.14 The Review is required to provide a final report detailing the Review's findings and recommendations to the Minister by 30 June 2003.

2.15 The tender documents state that the Review was due to commence by 30 June 2002. On 10 August 2002 the Committee received correspondence from Ms Kate McKenzie, General Manager, WorkCover NSW, informing the Committee that McKinsey & Company had been selected to undertake the Review. The letter stated that the consultancy will commence on 14 August 2002 and is expected to be completed by 30 June 2003 as specified in the tender documents. The Committee is concerned, given the breadth and complexities of the issues to be considered, that the delay in finalising the consultancy has resulted in the time allowed for the review being substantially shortened.

2.16 The dangers of the Committee pre-empting the outcome of the Scheme Design Review were raised with the Committee. Mr Daniel Tess, Director, Pricewaterhouse Coopers ("PwC") said in evidence:

... we would generally advise against any recommendations which at this time would pre-empt a comprehensive, thorough and impartial review of all the options for the underwriting and insurance arrangements of the scheme.¹⁸

2.17 The Committee is mindful of this concern. However, there is some confusion over the scope of the Review. The Committee notes, for example, that self insurers and specialised insurers do not come within the parameters of the Review. Mr Michael Playford, Director, PwC also informed the Committee that in his opinion, "benefit structure is outside the

¹⁷ WorkCover NSW, *Review of Workers Compensation Scheme scheme design – Request for Tenders*, 19 April 2002, Appendix A.

¹⁸ Evidence of Mr Daniel Tess, Director, PriceWaterhouse Coopers, 7 July 2002, p 1.

review”.¹⁹ Mr Tess expressed a similar concern in relation to the Committee’s draft recommendation (considered in Chapter 5) requesting the Review to consider splitting WorkCover into separate bodies performing regulatory and management functions:

Your recommendation ... is that the scheme design review consider whether the WorkCover Authority ought to be separated into two bodies, performing regulatory functions and workers compensation management functions. My reading of the request for tender is that this recommendation, although it addresses the scheme review, is not currently in the terms of reference for the review. Therefore, it could be interpreted as an addition to the scope. If that is what you want to recommend, I think it would be a good idea for you to liaise with the steering committee for that review to ensure that what you want the terms of reference to be is what they become.²⁰

2.18

The Committee was also concerned that the terms of reference of the Review would not allow additional matters to be examined as part of the review. Following feedback from stakeholders, the Committee wrote to Ms Kate McKenzie, General Manager, WorkCover NSW, in her capacity as Chair of the Steering Committee overseeing the Review on 14 August 2002. The Committee asked her to comment on the scope of the scheme design review in relation to the Committee’s draft recommendations. In response, Ms McKenzie indicated that a number of the Committee’s draft recommendations either directly or indirectly affect scheme design issues. In particular, the following draft recommendations were highlighted by Ms McKenzie as being either directly or indirectly relevant to the Review:

- Draft recommendation 2 – private underwriting
- Draft recommendation 4 – recording the deficit / surplus
- Draft recommendation 5 – fully funding the Scheme
- Draft recommendation 7 – splitting WorkCover
- Draft recommendation 8 – licensing arrangements with insurers / agents
- Draft recommendation 9 – separate tenders for functions performed by insurers
- Draft recommendation 11 – independent premium setting body
- Draft recommendation 15 – self insurance
- Draft recommendation 16 – prudential regulation of self insurers
- Draft recommendation 17 – call centre for reporting claims

¹⁹ Evidence of Mr Michael Playford, Director, PriceWaterhouse Coopers, 7 July 2002, p 8.

²⁰ Evidence of Mr Daniel Tess, Director, PriceWaterhouse Coopers, 7 July 2002, p 7.

- Draft recommendation 18 – return to work initiatives.²¹

2.19 Ms McKenzie wrote:

I think it is important that individual Scheme design issues are not considered in isolation, and I will therefore ask the Steering Committee overseeing the Scheme Design Review to consider the Committee's recommendations.²²

2.20 Ms McKenzie's letter is appended as Appendix 4.

2.21 The view contained in the letter supported evidence previously given to the Committee by Mr Greg McCarthy, Executive Director, Workplace Injury Management Services:

We should ensure that this forthcoming scheme design review really needs to take into account all those issues. It is my understanding that there are no foregone conclusions in the review and that it is very open and transparent. We need to make sure that there is an opportunity to look at all of these things in the context of one review rather than a whole range of reviews, so that we are not distracted from the end result.²³

2.22 The Minister placed the Review against the background of other reviews of workers compensation in NSW, including the Committee's current inquiry of which a review of scheme design principles is a part. The Committee believes the Review should give consideration to issues that have been raised during the course of the Committee's inquiry, and the recommendations made by the Committee in response to the issues. The Committee has identified in its recommendations those matters which it believes should be included in the Review. These are recommendations number 3, 5 and 14.

2.23 The Committee believes that the Review must be independent and transparent. To achieve this, and promote a sense of ownership in the Scheme after any changes that are made following the Review's recommendations, it is essential that the report of the Review be made publicly available.

Recommendation 2

That the report from the Scheme Design Review be made publicly available immediately on completion.

2.24 Aside from the importance of the Review to the future of the workers compensation scheme in NSW, there are several other fundamental issues the Committee has considered

²¹ Please note that the draft recommendation numbers do not necessarily correlate with the final recommendations contained in this report.

²² Letter from Ms Kate McKenzie, General Manager, WorkCover NSW, 12 July 2002.

²³ Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 2 July 2002, p 16.

in making its final recommendations. A major threshold issue is whether the Scheme should be privately underwritten.

Preferred underwriting framework

2.25 The *Workers Compensation Legislation Further Amendment Act 2001* (“the Further 2001 Act”) repealed the provisions enabling private underwriting of the Scheme, originally due to commence on 1 October 1999. The reasons for the decision to repeal the provisions were stated by the Hon Mr Richard Amery MP, representing the Minister for Industrial Relations in the Legislative Assembly, during the second reading speech to the Further 2001 Act:

The commencement of these provisions has been deferred twice, primarily on the basis of unaffordability. A further review will be conducted to identify the preferred option for underwriting the scheme. Accordingly, it is appropriate that the current provisions should be repealed.²⁴

2.26 The Committee discussed the options for underwriting the Scheme in its second interim report (paragraphs 3.2 to 3.17 of that report). At one end of the underwriting spectrum, a scheme maybe privately underwritten and competitive. At the other end a scheme may be monopolistic or public. In the middle of the spectrum are ‘hybrid’ schemes, of which the NSW scheme is an example. In hybrid schemes monopolistic pricing policies are combined with varying degrees of competitive service delivery.

2.27 The Committee has previously acknowledged the Government’s policy not to move to private underwriting in the near future, and the need to look within the framework of a hybrid scheme for areas in which performance of the Scheme can be improved. Likewise, the Committee has operated on an understanding that the Scheme will not be made fully public in the near future, but will continue as a hybrid scheme with greater or lesser degrees of competition and intervention. In this context, the Committee proposed the following draft recommendation:

That the WorkCover Scheme not be privatised in the medium to long term. Privatisation should only be considered if and when:

- *the Scheme’s finances have been stable for at least two years;*
- *the Scheme’s deficit is reduced to a manageable level;*
- *it is clear that the insurance industry is financially capable of underwriting the Scheme without exposing the Government and employers to financial risk;*
- *the managed agents’ operational capabilities have improved substantially from their current level, and*

²⁴ NSWPD, 27 November 2001, p 18895.

- *the performance of managed agents and the insurance industry has been good and stable for a number of years.*

2.28 This draft recommendation generated a lot of discussion and comment, and the reaction by stakeholders was mixed. Some, including the Labor Council were clearly opposed to private underwriting at any stage:

... the clear position from the union movement is that it is opposed to the move to private underwriting. This is also on the basis of the motor accident scheme which is privately underwritten and I think the unions have seen evidence during the past couple of years that that is not really a fair and equitable scheme for those that are seriously injured. Also they have not delivered savings to the consumers, in terms of a reduction in green slips. We are very sceptical about the move from WorkCover to be privately underwritten.²⁵

2.29 The view of employer groups was aligned to the Labor Council's view that private underwriting is not appropriate for NSW at this time. Mr Pattison stated his view very clearly in evidence before the Committee:

We have had a long, hard look at this, Chairman. I guess, in summary, our view is that we should now not even contemplate any prospect of private underwriting; that the time has come to walk away from that. Our concern with the recommendation as it stands is that, in leaving open the prospect of private underwriting at some future date—and we recognise the recommendation acknowledges that it is likely to be some time away—we may in fact be limiting other options in future scheme design that may be more beneficial.²⁶

2.30 Mr Pattison elaborated on how retaining the option for private underwriting could inhibit the development of other, more beneficial, scheme design options:

If you remain with the prospect of private underwriting, does that mean that perhaps providers have to remain private insurers? Does that limit the ability to bring new players into the market, new skill sets, new cultures and new approaches? We see that as, perhaps, being part of the future. With alternative providers we may start to get some of the cultural and service delivery changes that we need. Despite an extensive legislative program since the mid-1990s, we would need to acknowledge that we still have not put the rubber on the road in terms of service delivery to employers and injured workers. We still have a challenge to deliver an effective post-injury management system. Part of the future solution, in our view, is to bring new players into the game.²⁷

2.31 Mr Robert Thomson, Manager, Workers Compensation, Insurance Council of Australia, reiterated Mr Pattison's point regarding scheme design options and the involvement of

²⁵ Evidence of Mrs Mary Yaager, Occupational Health and Safety Workers Compensation Co-ordinator, Labor Council of NSW, 2 July 2002, p 37.

²⁶ Evidence of Mr Greg Pattison, General Manager, Workplace Solutions, Australian Business Limited, 2 July 2002, p 28.

²⁷ Evidence of Mr Greg Pattison, General Manager, Workplace Solutions, Australian Business Limited, 2 July 2002, p 28.

non-insurers as agents in the Scheme. Mr Thomson said that the long-term objective for the Scheme needs to be clearly established so that any prospective Scheme participants are fully informed of their potential role:

It comes back to looking at the long-term objective of the scheme. If the long-term objective of the scheme is not to privatise at any point in the next five to 10 years, there might be a role for agents who are not insurers if they can demonstrate that they have appropriate resources and capabilities and that they can add value to the scheme. But if the outcome that you are seeking is privatisation in three years or five years, there would be little value in having new entrants to the market in that sort of environment. That will not assist you in your end game.

... If any new agents or non-insurer agents who were coming into the scheme knew that the objective was privatisation in five years time, they would have to look at their plans and say, "Is it worth us coming into this scheme and investing resources, capital, et cetera, for a short period, knowing that eventually we will not be in the game?" You have to look at those sorts of issues in context.²⁸

2.32 Mr Gary Brack, Chief Executive Officer, Employers First, expressed employers' concerns that if the Scheme was to move to private underwriting, premium levels could skyrocket:

If the question about having private underwriting is that if it were private underwriters' own money they would behave efficiently, force the pace in the scheme and force people back to work and force employers to introduce the right kind of safety strategy, otherwise your premium goes through the roof. All of those things are okay, except that you do not actually have that degree of control in the marketplace if you are going to define the benefit level. If you define the benefit levels then inevitably the premiums will be fixed in relation to those benefit levels and then you will add on top of that a margin for employers who are good risks or bad risks. Therefore, employers will end up paying premiums that are going through the roof because claims costs are rising, even though claims numbers are falling. The history, since the late 1970s and perhaps beyond that, has been of falling numbers of claims, but rising average cost of claims.²⁹

2.33 There was also some strong support for private underwriting. For instance, Mr Howard Harrison, Partner, Carrol & O'Dea Solicitors, told the Committee at GPSC No1's Workers Compensation Forum that he believes a strongly regulated private system is the most appropriate for NSW:

... we feel that there is a strong case for private insurers being allowed back in to do what they do well, against a strong regulatory background, and the reasons for that position are set out in my paper. Certainly Mr Chairman in terms of the experience since 1987 we think that, in terms of the provision of capital and allowing the market to have a role, the scheme should allow for claims management aspects and other aspects to be in effect powered by private insurers who have got a substantial incentive to reduce financial outcomes, with a strong

²⁸ Evidence of Mr Rob Thomson, Manager, Workers Compensation, Insurance Council of Australia, 2 July 2002, p 28.

²⁹ Evidence of Mr Gary Brack, Chief Executive, Employers First, 2 July 2002, p 30.

leadership group sitting at the top, taking responsibility for outcomes, and against a clear cut and strong regulatory background.³⁰

2.34 Mr Greg McCarthy previously told the Committee in evidence that although he would support private underwriting “in a perfect world” there is no evidence to suggest that privatisation of disability insurance has been successful in Australia:

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. ... 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.³¹

2.35 The response from insurers to the question of whether the Scheme would benefit from privately underwriting was generally that the Scheme should look to privatisation in the future. In their response to the Committee’s draft recommendations, IAG stated:

At the outset we should state that we support privatisation of the NSW workers compensation scheme. This is on the grounds that we believe that, based on our experience in other privately underwritten schemes, private underwriting offers the best means of serving the interests of all the major stakeholders in the scheme ie. Employers, claimants and government.³²

2.36 Mr Colin Fagen, General Manager, QBE Insurance, had previously told the Committee in evidence that he also supports a move to private underwriting:

I am a laissez-faire economist so I have a preference towards private underwriting.³³

2.37 Mr Richard Grellman, who authored the 1997 report into the NSW Scheme which recommended a move to private underwriting, told the Committee in evidence in November 2001 that he still believed that private underwriting is the most appropriate underwriting framework for NSW:

In my report I recommended transfer of the risk to the underwriting community. I actually still believe that that is the appropriate place for the risk-carrying responsibility to reside.

2.38 Those stakeholders who do support a move to private underwriting, however, acknowledge that the time is not right in NSW for such a move to occur. Mr Grellman told the Committee:

³⁰ Presentation by Mr Howard Harrison, Partner, Carrol & O’Dea Solicitors, 15 March 2002, p 10.

³¹ Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 10 October 2001, p 40.

³² Correspondence received from Mr Jon Kelso, Business Planning, Personal Injury, Health & Commercial Insurance, Insurance Australia Group, 27 June 2002, p 2.

³³ Evidence of Mr Colin Fagen, General Manager, QBE Insurance, 6 March 2002, p 63.

I am not sure that just at this point of time is the right time to transfer that across.³⁴

2.39 Similarly, Mr Fagen told the Committee that:

... I do not see it as a short-term objective in New South Wales as such. Some of the alignments which normally go with private underwriting are actually there in the new remuneration methods, and making sure that we get people back to work.³⁵

2.40 While not ruling out privatisation altogether, Mr Mark Goodsell, representing Australian Industry Group (“AIG”) stated in his response to the Committee’s draft recommendations that the Scheme should not be considered for privatisation “until the funding issues have been resolved”:

Australian Industry Group has consistently argued that the Scheme should not be considered for privatisation until the Scheme funding issues have been resolved. We have consistently argued that the Scheme should not be considered for privatisation until it is stable, and we do not consider that achieved until there is an average premium of 2.3% of wages or lower. We agree with the thrust of the recommendation, however we are of a view that they should be framed with the targets we have articulated.³⁶

2.41 The question posed to stakeholders by the Committee in relation to a move to private underwriting acknowledged the inappropriateness of privatisation in the current environment. The question asked whether the Committee’s criteria for a move to private underwriting as set out in the draft recommendation are appropriate. The response from the Insurance Council of Australia (“the ICA”) states that:

On the whole the industry does not believe that the criteria for determining whether privatisation should be considered are appropriate.³⁷

2.42 Mr Thomson told the Committee that the ICA believes that there should be greater focus on a number of areas, including:

We actually believe that there should be a greater focus on the points highlighted in [our] paper which are broadly that the scheme's design is stable and supports an environment that encourages appropriate behaviours from all the stakeholders within the scheme, so that appropriate mechanisms that are effective for the management of the tail are developed; that the prudential regulation of insurance should be the sole responsibility of the Australian Prudential Regulation Authority

³⁴ Evidence of Mr Richard Grellman, Chairperson, Motor Accidents Authority, 21 November 2001, p 2.

³⁵ Evidence of Mr Colin Fagen, General Manager, QBE Insurance, 6 March 2002, p 63.

³⁶ Correspondence received from Mr Mark Goodsell, General Manager Workplace Solutions, Australian Industry Group, 25 July 2002, p 1.

³⁷ Correspondence received from Mr Rob Thomson, Manager, Workers Compensation, Insurance Council of Australia, 2 July 2002, p 2.

[APRA], ... that there be an appropriate regulatory model that supports the fundamental objectives of the scheme and ensures that there is transparency so that the various stakeholders can actually see what is going on at points in time and have access to the appropriate data; and that there are appropriate mechanisms to have approval of the rating structure, as such, on a file and write basis which works within the compulsory third party [CTP] market at this current point in time. That is what we believe the focus should be.³⁸

2.43 Mr Richard Gilley, Managing Consultant, the RiskNet Group, also commented on the Committee's suggested criteria:

The criteria for consideration of privatization should be broadened to include: "*If the Government accepts that the scheme deficit be consolidated into the NSW's Accounts ... then privatization should be considered*". This should be added because private underwriting of the Scheme will remove any further deficit being added to the State's Accounts. Deficit reduction in NSW's accounts is surely a Government objective.³⁹

2.44 The optimum underwriting arrangement for the Scheme is a fundamental part of the Scheme Design Review's terms of reference (see para 2.13 above). As this is clearly a matter to be considered by the Review, the Committee has amended its draft recommendation so as not to pre-empt the outcome of the Review.

2.45 The Committee believes that there are certain minimum requirements for the Scheme which must be met before the decision can be made to move to private underwriting. Based on the evidence received from employee and employer groups, the Committee is concerned that if the Scheme is privatised before the conditions are met, there will be considerable resistance from stakeholders and any feeling of ownership within the Scheme may be diminished. The Committee's requirements contained in recommendation 3 are a starting point, which will need to be further refined once the outcome from the Review is known. Accordingly, the Committee makes the following recommendation:

Recommendation 3

That the Scheme Design Review considers whether the Scheme should be privatised. In the event the Review recommends privatisation the Committee recommends the Scheme only be privatised after considering the following factors:

- **whether the Scheme's finances have been stable for at least two years;**
 - **whether the Scheme's deficit is reduced to a manageable level;**
-

³⁸ Evidence of Mr Rob Thomson, Manager, Workers Compensation, Insurance Council of Australia, 2 July 2002, p 21.

³⁹ Correspondence received from Mr Richard Gilley, Managing Consultant, The RiskNet Group, 24 June 2002, p 1.

- **whether it is clear that the insurance industry is financially capable of underwriting the Scheme without exposing the Government and employers to financial risk;**
- **whether the managed agents' operational capabilities have improved substantially from their current level; and**
- **whether the performance of managed agents and the insurance industry has been good and stable for a number of years.**

2.46 The Committee's final report is based on an understanding that the Scheme will not be privatised in the medium to long term but will continue to operate as a hybrid scheme.

Scheme stability

2.47 A recurring theme during the Committee's inquiry has been the need for stability in the Scheme, particularly in the current environment where substantial legislative reforms have occurred in recent years. In response to this concern, the Committee proposed the following draft recommendation:

That no further reforms to benefit levels, dispute resolution, legal procedures and the medical system be considered for at least the next two (2) years until the impact of the 2001 legislative reforms is firmly established. If, during that period, the emerging claims experience is not favourable as intended, the Committee recommends that the Government consider further reforms.

2.48 There are a number of reasons why stability in the Scheme is important. In their most recent Scheme evaluation, as at 31 December 2001, Tillinghast-Towers Perrin ("Tillinghast") commented on the added difficulties of accurately estimating outstanding liabilities in periods of instability such as that being experienced by the Scheme currently. Tillinghast stated:

In stable circumstances, evidence from a period of development, such as is available since the start of the Scheme, would enable a reasonable level of confidence to be placed in our valuation projections. However, the continuing significant changes in claim culture and amending legislation have reduced the relevance of past experience in making our projections.⁴⁰

2.49 Mr Greg McCarthy highlighted the danger of losing track of the impact of reforms if insufficient time is allowed for the impact to be felt:

I would be cautious at the moment of too much more change or tinkering until we really do get a chance to see how effective the new changes will be. The danger is if you keep changing things, you never know really what it is that has brought

⁴⁰ WorkCover Authority of NSW, *Actuarial Review of the Outstanding Liabilities of the WorkCover Scheme Statutory Funds as at 31 December 2001*, vol 1, 5 July 2002, p 5.

about the change. Also, constant change can actually undo the change you have done. We have had some fairly dramatic change.⁴¹

2.50 Another reason for allowing time to implementation is that WorkCover is devoting a lot of resources to implement the reforms. A number of the reforms were very complex and resulted in substantial changes to the Scheme. Ms McKenzie told the Committee that:

We have engaged in some significant reforms over the past 12 months and certainly our focus at the moment is very much concentrated on trying to ensure that those reforms are implemented as effectively as we can possibly manage. A lot of effort and energy inside the organisation—the reform process and the monitoring process—is going in to trying to ensure that those targets that have been set are met, to the extent that that is within our control. We need to spend some time and energy concentrating on that. The other point is that that has caused a lot of upheaval for participants in the scheme and we need a little time for it to settle down before we launch into more major change.⁴²

2.51 Stakeholders were asked to comment on whether or not two years was an appropriate time frame during which the Committee could expect the impact of reforms to become evident. In response to this question, Mr McCarthy stated:

In answer ... as to whether two years is sufficient time for the impact of the 2001 legislative reforms to be established—which I think was the question for stakeholders—I think it is sufficient time for us to get a feel for whether or not the reforms will have the effect that was intended. Whether or not the work or the benefit has actually been produced at the end of two years might be a little bit early. I think it will take quite a bit of time for all that good work to come through, but we will certainly know by the end of two years whether or not the current reforms will do the job which was asked of them.⁴³

⁴¹ Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 2 July 2002, p 11.

⁴² Evidence of Ms Kate McKenzie, General Manager, WorkCover, 14 February 2002, p 32.

⁴³ Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 2 July 2002, p 11.

2.52 Mr Thomson stated in his response to the Committee's draft recommendations that:

In long tail classes it is difficult to assess the impact of legislative change in a short period of time. Two years may be insufficient time to properly assess the effectiveness or otherwise of the 2001 legislative reforms. There is an absolute need to ensure that there are appropriate monitoring tools in place to assess the performance of the scheme including the 2001 changes.⁴⁴

2.53 Mr Richard Gilley stated that two years is an insufficient time for the impact of the 2001 reforms to be established.⁴⁵ Instead he suggested that three years would be more appropriate:

Three years of stability (no change unless there is an obvious legislative drafting error) should be allowed for the scheme to consolidate.⁴⁶

2.54 Ms McKenzie replied in response to a question from the Chair asking whether WorkCover had a timetable in mind for the implementation of the reforms, that:

I think six months will definitely be too short because of the current rate at which matters are coming in—we will have had hardly any matters by then. The early indications are encouraging. In 12 months we will have a slightly better indication, but in some cases it will be three to five years before we really know. It is worth reiterating some of the evidence given previously to the Committee: these are long-tail schemes; claims can last for 40 or 50 years. Looking at short time periods and trying to make judgments about the future can be a very dangerous pastime. Mistakes were made in the past: things looked as though they were travelling well and changes were made to the scheme that ended up sending it back into deficit. I think we should be careful not to draw too many conclusions too soon about how these things are travelling.⁴⁷

2.55 There was some concern raised by stakeholders that the Committee's draft recommendation would prevent any reforms to the areas of dispute resolution, benefit levels, legal procedures or the medical system. The NSW Law Society stated:

The legislative amendments should be closely monitored on an ongoing basis. Any fault or shortcoming that becomes apparent should be immediately remedied.⁴⁸

⁴⁴ Correspondence received from Mr Rob Thomson, Manager, Workers Compensation, Insurance Council of Australia, 2 July 2002, p 3.

⁴⁵ Correspondence received from Mr Richard Gilley, Managing Consultant, The RiskNet Group, 24 June 2002, p 1.

⁴⁶ Correspondence received from Mr Richard Gilley, Managing Consultant, The RiskNet Group, 24 June 2002, p 2.

⁴⁷ Evidence of Ms Kate McKenzie, General Manager, WorkCover, 14 February 2002, p 32.

⁴⁸ Correspondence received from Ms Kim Cull, President, The Law Society of New South Wales, 27 June 2002, p 3.

2.56 Mr Brack expressed a similar concern to the Committee:

... You say no reforms for two years. Our view is that you have to watch everything that happens in the scheme every month so that if there is a commission or court decision tomorrow, which is a "bad decision", then you need to legislate within a period of a few months to send out the clear signal that that decision was wrong and inconsistent with the whole goals and aspirations of the scheme. We are going to reverse it. If you leave that for two years, by the time you have two years it has been entrenched and the scheme is going down the drain backwards. Then no-one has the political capacity to reverse it down the track. Our view is that although the notion of stability may be a good one generally, you cannot set it up as a precondition, even though you have said numbers of claims, or claims experience should be an excepting factor. Our view is that it is not just claims experience costs, but also the costs might be rising even though you might have the same number of claims.⁴⁹

2.57 In the same way, IAG could not support the recommendation on the basis that it did not allow sufficient flexibility to make further reforms to the Scheme in areas where poor performance is detected. In their response to the Committee's draft recommendations, IAG wrote:

In summary, IAG does not support this recommendation because we believe there should be sufficient flexibility to make any necessary adjustments as experience under the new reforms emerges. This should be supported by improved quality and timeliness of data.⁵⁰

2.58 The employer representative group, Australian Business Limited, did not support the draft recommendation for similar reasons. In his response to the Committee's draft recommendations Mr Mark Goodsell stated:

The Draft Recommendation is not supported. ...

While it may be desirable the most recent reforms be given some time to become "established" we do not believe it is in the interests of Scheme stakeholders, most particularly employers and employees, that any artificial constraints be placed on Government in the pursuit of reforms.

As recent experience in NSW has shown, reforming workers compensation schemes where unfavourable trends are well established is a difficult and long undertaking. When the need for change is identified, that change needs to occur quickly. Effective future management of the Scheme is likely to require more frequent, but less dramatic legislative and regulatory interventions rather than fewer.⁵¹

⁴⁹ Evidence of Mr Gary Brack, Chief Executive, Employers First, 2 July 2002, p 30.

⁵⁰ Correspondence received from Mr Jon Kelso, Business Planning, Personal Injury, Health & Commercial Insurance, Insurance Australia Group, 27 June 2002, p 4.

⁵¹ Correspondence received from Mr Mark Goodsell, General Manager Workplace Solutions, Australian Business Limited, 25 July 2002, p 3.

- 2.59** The Committee acknowledges that, without the context of a report to explain it, its draft recommendation in this area may have been misleading or unclear. The Committee has no desire to preclude further reforms of any area of the Scheme should the Scheme's experience prove such reforms necessary. However, the Committee strongly believes it is also very important to allow the 2001 reforms time to be established so that their impact may be properly assessed. In order to clarify the draft recommendation, the Committee has limited its recommendation to significant reforms to specific areas of the Scheme that have been the subject of recent legislative reforms. Naturally, should the need for further reforms become evident, the Committee recommends that the Government consider additional significant reforms as necessary.
- 2.60** The Committee has recognised the need for ongoing review of the workers compensation scheme in NSW. Recommendation No 26 provides for an annual review by the Legislative Council Standing Committee on Law and Justice. See Chapter 9 for further detail. This recommendation may address the concerns of many stakeholders that if obvious anomalies do occur there will be a mechanism for recommending change without undermining the stability of the Scheme.

Recommendation 4

That no further significant reforms to benefit levels, dispute resolution, legal procedures and the medical system be considered for at least the next two (2) years, until the impact of the 2001 legislative reforms is firmly established, unless reasons are produced that show the reforms would improve the operation or viability of the Scheme. If, during this period the experience of the Scheme does not emerge as intended, the Committee recommends that the Government consider further significant reforms.

Chapter 3 Financial accountability and management

Scheme ownership and accountability has been a recurrent theme during the inquiry. “Ownership” was defined in the second interim report to include both financial ownership of and responsibility for the deficit, and also ownership by stakeholders of the Scheme generally. The Scheme’s deficit is the figure representing the difference between the Scheme’s outstanding claims-related liabilities and the Scheme’s assets. At 31 December 2001 this was \$2.558 billion reflecting the difference between \$9.346 billion in liabilities and \$6.788 billion assets.⁵² In its second interim report, the Committee concluded:

This lack of ownership continues to adversely impact on claims management, compliance and return to work rates. This situation combined with a lack of clarity regarding responsibility for the financial management of the Scheme is culminating in ongoing problems with the deficit.⁵³

This chapter draws together the results of the Committee’s inquiries into ownership and accountability in the Scheme and the effect of this on the Scheme’s financial position. The chapter makes recommendations primarily directed at clarifying ownership and financial responsibility for the Scheme’s deficit.

A lack of ownership by Scheme participants

3.1 As discussed in Chapter 4 of the Committee’s fourth interim report, “ownership” can refer to ownership by stakeholders generally or specific financial ownership and responsibility for the Scheme’s deficit. In respect to ownership generally, Mr Richard Grellman, author of the 1997 *Report of the Inquiry into the Workers Compensation system in NSW* (“The Grellman Report”) informed the Committee that when he conducted his inquiry into the NSW Scheme in 1997, a lack of ownership was the most outstanding problem he encountered:

I think the most outstanding problem that I encountered four years ago was what I called lack of stakeholder ownership and the fact that the two stakeholders—employers and employees—were both suffering from a sense of lack of ownership. Therefore a lot of the dynamic in the scheme at that time was being driven by service providers or political processes. From the people who were paying for the scheme—being the employers—and those who were potentially benefiting from it—being the employees—I was hearing a lot of frustration at that time. I think that was the primary weakness that I encountered.⁵⁴

⁵² WorkCover NSW, *Actuarial Review of the Outstanding Liabilities of the WorkCover Scheme Statutory Funds as at 31 December 2001*, p 7.

⁵³ General Purpose Standing Committee No 1, *NSW Workers Compensation Scheme Second Interim Report*, Report 17, January 2002, Conclusion 8, p 36.

⁵⁴ Evidence of Mr Richard Grellman, Chairman, Motor Accidents Authority, 21 November 2001, p 2.

- 3.2** Mr John Walsh, Partner, Pricewaterhouse Coopers ("PwC"), elaborated that the lack of ownership and resultant responsibility extends to all stakeholders, not just employers and employees/claimants:

My view is that all stakeholders, probably including actuaries, have a responsibility for the way in which the New South Wales scheme has gone—probably including government. The state of the New South Wales workers compensation scheme is a result of the political environment in which it operates, the advice that has been given by all professional advisers to the scheme, the stakeholders, including employers and injured workers, and service providers, including medical, legal, rehabilitation and investigators, and insurers, of course. I think that to say that the fault, if you like, is that of any one person is the wrong way to attack the problem. I do not think it is a constructive way to look at it.⁵⁵

- 3.3** Generally, stakeholders agreed with the need to clarify ownership and management responsibilities generally. In relation to the more specific question of financial ownership, there is much debate over where the ownership should lie.

Recording the Scheme deficit/surplus

- 3.4** The issue of how the Scheme's deficit/surplus is reported is closely linked to an understanding of ownership and accountability in the Scheme and a consequent sense of financial responsibility. Presently, the deficit is not recorded as a part of the State's finances. This stems from the nature of the Scheme which is a statutory trust. This was explained to the Committee by Ms Kate McKenzie, General Manager, WorkCover NSW, to mean:

It is a creature of statute. It is not owned by Government. It is run for the benefit of employers and ... it is a legislative construct.⁵⁶

- 3.5** Mr Walsh explained the problem of a lack of financial ownership to the Committee during his presentation to the Forum:

Financial ownership in the scheme I think has been non-existent. The Government has distanced itself from recognising the deficit in the accounts, and until recently has not taken the legislative steps necessary to satisfy the requirements. Employers really have not, I think, accepted responsibility to manage claims properly, and insurers, because they have no financial incentives in the scheme, probably have not done the job as well as they should.⁵⁷

- 3.6** The Committee has heard evidence previously from the Auditor-General, Mr Bob Sendt and others about the most appropriate place to record the Scheme deficit/surplus. This issue was discussed at length in the Committee's third interim report (paras 2.30 to 2.44 of that report). Mr Sendt's concern regarding the deficit is clearly established in the Auditor-

⁵⁵ Evidence of Mr John Walsh, Partner, PriceWaterhouse Coopers, 21 November 2001, p 15.

⁵⁶ Evidence of Ms Kate McKenzie, General Manager, WorkCover NSW, 21 November 2001, p 59.

⁵⁷ Presentation of Mr John Walsh, Partner, PriceWaterhouse Coopers, 15 March 2002, p 17.

General's 2001 report to Parliament, relevant parts of which was appended in Appendix 5 of the Committee's third interim report. The Auditor-General's report states in part:

As we have reported over a number of years, the Scheme does not form part of the whole-of-Government financial report. Our view is that the Scheme Statutory Funds are controlled by the State ... We believe that Government has the capacity to dominate decision-making in relation to the financial and operating policies of the Scheme, partly because it has the legislative power to give policy directions and it has the ability to set premiums and to determine the range of benefits under the Scheme.

Last year, and again this year, we qualified the Independent Audit Report of the Total State Sector Accounts because the assets and liabilities of the Scheme Statutory Funds have not been consolidated into those Accounts.⁵⁸

3.7 The Committee concluded in its third interim report that:

The Auditor-General's opinion that the Scheme's deficit or profit would be consolidated in the total State accounts should be considered by the independent Review of Scheme Design as reported by the Minister in his letter to the Committee dated 5 April 2002.⁵⁹

3.8 The draft recommendation proposed reflected the Committee's conclusion:

That the question of where the deficit / surplus in the statutory managed fund should be reported and identified be referred to the Scheme Design Review, in accordance with Conclusion 4 in the Committee's third interim report.

3.9 When this draft recommendation was circulated to stakeholders, the questions asked of stakeholders were:

- Where should the Scheme's deficit / surplus be recorded, and
- Is the Scheme Design Review the appropriate mechanism for determining where the deficit / surplus should lie?

3.10 The Committee received varied feedback from stakeholders on this issue. Mr Greg Pattison, General Manager, Labour Market Services, Australian Business Ltd ("ABL"), told the Committee:

Part of the argument about giving the deficit a home, if you will, is to concentrate on questions of financial accountability. I did note the Auditor-General's comments in the third interim report. Perhaps it does need to find a home, but if you are going to put it with government we would perhaps get a bit concerned. It

⁵⁸ *Auditor-General's Report to Parliament 2001*, vol 7, WorkCover Scheme Statutory Funds, p 445.

⁵⁹ General Purpose Standing Committee No 1, *NSW Workers Compensation Scheme Third Interim Report*, Report 18, April 2002, Conclusion 4, p 16.

might be fine from our perspective for government to take up the deficit, but what happens with surpluses? Do they get alienated in the future?⁶⁰

3.11 This concern was reiterated in the response received from the Australian Industry Group (“AIG”). The AIG, while supporting the Committee’s draft recommendation did so with the following qualification:

We support the recommendation in so far as it increases transparency about the Scheme’s financial position. We would seek assurances that the workers compensation system is not a vehicle for increasing government revenue.⁶¹

3.12 Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, suggested that where the deficit is recorded is of less importance than reducing its level, because “at the end of the day”, the community will be required to fund any deficit in the Scheme, either directly through increased premiums or indirectly through increased service charges. Mr McCarthy told the Committee:

... I do not know that I have a strong view on where it should be recorded. I have a view at the moment that the legislation clearly says that the deficit belongs to the employers of New South Wales. Therefore, if there is a deficit, at the end of the day the scheme has the right to go back to the employers and ask them to fund that deficit. Whether you need to change that or not, at the end of the day the community will have to pay for whatever the deficit is because if the employers have to pay, the community ends up paying because the costs are passed on through service charges and so forth.⁶²

3.13 In relation to the question of the most appropriate forum to determine where the deficit/surplus should be recorded, Mr McCarthy expressed an opinion that appears to the Committee to be generally agreed with by the stakeholders who responded:

The scheme design is the appropriate area to review what you might do with the deficit or where the deficit might ultimately lie. I think that is all I can say at this stage. I have no strong view on where it should be recorded, other than it appears to belong to the employers of New South Wales.⁶³

3.14 Mr Greg Pattison explained some of the consequences of consolidating the deficit/surplus into the Total State Accounts:

Superficially there may be some attraction in having the Scheme’s deficit/profit included in the State accounts.

⁶⁰ Evidence of Mr Greg Pattison, General Manager, Labour Market Services, Australian Business Ltd, 2 July 2002, p 31.

⁶¹ Correspondence received from Mr Mark Goodsell, Director - NSW, Australian Industry Group, 28 June 2002, p 2.

⁶² Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 2 July 2002, p 18.

⁶³ Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 2 July 2002, p 18.

It can be argued that this change would have the effect of “concentrating the mind” of the government of the day particularly if there is a relationship between the financial status of the scheme and the State’s credit rating.

On the other hand the existence of the Deficit Reduction Contribution means the deficit can be addressed as and when required, so the imperative for giving the deficit a home is reduced.

Of greater concern is the possible alienation of future scheme profits or surpluses by Government if the statutory fund were to be included in the State Accounts.

It is our view that any surpluses should be retained within the Scheme to reduce premiums and build up adequate reserves so that the inevitable fluctuations that will occur in investment markets, and other factors affecting scheme performance, can be absorbed.

However it is not difficult to contemplate a government arguing that having the Statutory Scheme included in the State Accounts means the government is effectively the scheme underwriter and is, therefore entitled to a return for having assumed that risk.⁶⁴

- 3.15** The Committee received very strong support from Mr Richard Gilley, Managing Consultant, the RiskNet Group, to the suggestion that the deficit be recorded on the State accounts. He wrote:

There is absolutely no doubt in our minds that the deficit must be recorded on NSW's accounts.

There is no need whatever for the Scheme Design Review to make recommendations on where the deficit ought to be recorded. We are at a loss to understand why the Government has ignored the recommendation of the Auditor General in this regard, he is quite clear on where the deficit should be recorded.⁶⁵

- 3.16** The Committee notes the Auditor-General’s concern about appropriate expertise of the Review members to address the question:

While I am not opposed to the Recommendation, it is ultimately the Treasurer’s decision to consolidate, or not consolidate, the Scheme’s result in the Total State Accounts. This is an accounting standards issue and I am not sure that the Review members will necessarily have the appropriate expertise to address this matter.⁶⁶

- 3.17** The Committee believes that it is important for a sense of ownership and financial accountability in the Scheme that the deficit is recorded. The Committee therefore concludes:

⁶⁴ Correspondence received from Mr Greg Pattison, General Manager, Labour Market Services, Australian Business Ltd, 25 July 2002, p 4.

⁶⁵ Correspondence received from Mr Richard Gilley, Managing Consultant, The RiskNet Group, 24 June 2002, p 2.

⁶⁶ Correspondence received from Mr Bob Sendt, NSW Auditor-General, 24 June 2002.

Conclusion

It is important that the Scheme's deficit/surplus be appropriately recorded and reported. The Committee concludes there are alternatives for where the deficit/surplus may be recorded. These include:

1. WorkCover balance sheet in the Total State accounts,
 2. Employer balance sheets,
 3. Insurers or other underwriters.
-

3.18 The Committee's consultant actuary, Ernst & Young ABC ("Ernst & Young") advised the Committee that in their opinion the deficit is not directly within the scheme design review's ("the Review") terms of reference.⁶⁷ In contrast, the question of where the deficit should be recorded is one that Ms McKenzie identified as either directly or indirectly affecting scheme design issues in her letter to the Committee dated 12 July 2002. Ms McKenzie assured the Committee that the Committee's recommendation in relation to this matter will, therefore, be considered by the Steering Committee overseeing the Review. After considering the feedback from stakeholders on the draft recommendation, the Committee recommends:

Recommendation 5

That the question of where the deficit/surplus in the statutory managed fund should be reported and identified be referred to the Scheme Design Review for in depth consideration and analysis, based on appropriate accounting and actuarial advice.

A fully funded Scheme

3.19 The funding position of the Scheme has been a key theme during the Committee's inquiry. In the Committee's most recent interim report, the 31 December 2001 Scheme Evaluation by the Scheme actuaries, Tillinghast-Towers Perrin ("Tillinghast"), was discussed. As noted in the Committee's interim report, the actuarial assessments contained in the 31 December 2001 Evaluation include the effect of the 2001 legislative reforms, without which the financial position of the Scheme would be significantly worse than reported. A major driver of the 2001 legislative reforms has been to reduce the deficit to a zero level. In this situation the Scheme is fully funded (the funding ratio would, therefore, be 100% if this were to eventuate). Tillinghast estimated the Scheme deficit at 31 December 2001 to be \$2,558M, which is a reduction of \$198M from the previous Scheme evaluation at 30 June

⁶⁷ Correspondence received from Mr Peter McCarthy, Ernst & Young ABC, 17 July 2002, p 7.

2001 and represents a funding ratio of 73%.⁶⁸ Based on Tillinghast's best estimate, the Scheme's deficit will continue to increase without further reforms, to an estimated \$3.917 billion by June 2006. This represents a funding ratio of 63%.⁶⁹

Definition of "fully funded"

3.20 In response to concerns about the funding of the Scheme, the Committee proposed the following draft recommendation:

That the Scheme set an objective target period over which it is to be fully funded, and that the Scheme manager be accountable for achieving that result.

3.21 A number of stakeholders questioned the Committee's definition of "fully funded", pointing out that the term can apply to both the current year and also to the outstanding liabilities that constitute the tail. Mr McCarthy explained to the Committee the need to separate the two issues:

When you look at underwriting the business going forward, I think you need to be looking at moving to a situation where the premiums that have been charged on business being written this year are fully funded. At the moment that is not the case, the scheme is being subsidised. I am not sure of the actual levels, I think it is a 2.8% premium rate which is not sufficient to fully fund the claims that we will incur this year. So I think you need to separate those two issues out and you can move fairly quickly, depending on the state of the economy, I guess, to try to get a fully funded premium. But the fully funded premium can come about in two ways: obviously charging more premium or, obviously, having reform issues that bring about the ability to manage claims in a more effective way as well so the liabilities drop and the premium that is being charged may be sufficient to cover that. I do think you need to separate the two issues out at the tail and the underwriting years going forward.⁷⁰

3.22 Chapter 6 of the Committee's second interim report outlined options for reducing the Scheme's deficit. Broadly, there are four means by which the deficit can be reduced. These are:

- increase premium levels;
- reduce benefit payments;
- increase operational efficiencies, or

⁶⁸ WorkCover NSW, *Actuarial Review of the Outstanding Liabilities of the WorkCover Scheme Statutory Funds as at 31 December 2001*, p 89.

⁶⁹ WorkCover NSW, *Actuarial Review of the Outstanding Liabilities of the WorkCover Scheme Statutory Funds as at 31 December 2001*, p 89.

⁷⁰ Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 2 July 2002, p 12.

- reinsurance.

3.23 Mr Pattison emphasised reducing current costs of the Scheme below the current capped premium rate of 2.8% as the means by which the Scheme should aim to improve its funding position. Mr Pattison wrote in his response to the Committee's draft recommendations:

The first objective has to be a reduction in the Scheme annual break-even rate below the current capped rate of 2.8% so pressures for premium increases to address a deteriorating deficit are removed.

The second objective needs to be a reduction in premium rates so as to improve the competitive position of NSW businesses. Reductions in premium rates must not be conditional on the total elimination of the Scheme deficit, although it is recognised some of the savings which would result from a lowering of the break-even rate below 2.8% will need to be directed towards deficit reduction.⁷¹

3.24 The Committee received assistance from its consultant actuary, Ernst & Young ABC, to develop a definition of "fully funded". Ernst & Young suggested a definition based on section 27(8) of the *Motor Accidents Compensation Act 1999* adjusted for the context of the NSW workers compensation scheme.⁷² The Committee's definition is presented in the conclusion below.

Conclusion

The Scheme is fully funded if the total of the Scheme's assets are equal to or exceed the Scheme's liabilities.

A premium is fully funded if:

- a. It provides a sum of money that together with anticipated investment income is equal to the best estimate of the cost of claims plus claim settlement expenses (in inflated dollars) at the assumed date of settlement.
 - b. It provides to pay all expenses including appropriate Managed Agent and WorkCover expenses.
 - c. It provides provision for a levy to finance the Scheme's current deficit in line with targets set to fund that deficit. (The levy could be set to zero).
-

Fully funding the current year

⁷¹ Correspondence received from Mr Greg Pattison, General Manager, Labour Market Services, Australian Business Ltd, 25 July 2002, p 4.

⁷² Correspondence received from Mr Peter McCarthy, Ernst & Young ABC, 17 July 2002, p 8.

3.25 The Committee's second interim report detailed the difference between the breakeven rate and collected premium rate for the years 1987-88 to 2000-01. Table 4.1 in that report illustrated the fact that since 1991-92 the collected premium rate (as a percentage of wageroll) had fallen short of the breakeven premium rate (as a percentage of wageroll). For example in 2000-01 the breakeven premium rate was 3.06%, whereas the collected premium rate was only 2.77%, a shortfall of 0.29%.⁷³ The Committee concluded in that report that:

The current average premium of 2.75% is insufficient to cover the current costs of the Scheme. The average premiums have been insufficient since 1991-92.⁷⁴

3.26 Table 3.1 below is an updated version of Table 4.1 from the Committee's second interim report, reproduced from Tillinghast's 31 December 2001 Scheme evaluation:

Table 3.1 Comparison of estimated breakeven and collected premium rates, 1987-88 to 2001-02, NSW workers compensation scheme (post-reforms)

Policy Renewal Year	Breakeven Rate (% of wageroll)	Collected Rate (% of wageroll)	Surplus/(Shortfall)
1987/88	1.76	2.47	0.71
1988/89	1.76	2.45	0.69
1898/90	1.76	2.24	0.48
1990/91	1.90	1.92	0.02
1991/92	2.14	1.71	(0.43)
1992/93	2.62	1.73	(0.89)
1993/94	3.01	1.83	(1.18)
1994/95	3.20	1.95	(1.25)
1995/96	3.22	2.43	(0.79)
1996/97	3.09	2.66	(0.43)
1997/98	3.12	2.76	(0.36)
1998/99	3.21	2.86	(0.35)
1999/00	3.21	2.75	(0.46)
2000/01	3.06	2.77	(0.29)
2001/02	2.97	2.69	(0.28)
2002/03	2.96	2.87 ¹	(0.09)

¹ Rate targeted by WorkCover NSW

Source: *Actuarial Review of the Outstanding Liabilities of the workers compensation Scheme Statutory Funds as at 31 December 2001*, p 89.

3.27 As illustrated in the table above, the most recent Scheme evaluation reported that the post-reform breakeven premium rate for 2001-02 was 2.97% of wages. The actual collected rate was 2.69% which represents a shortfall of 0.28%. The projected breakeven premium rate for 2002-03 is 2.96% of wages (post reform). WorkCover targeted collection rate for 2002-

⁷³ For further detail see General Purpose Standing Committee No 1, *NSW Workers Compensation Scheme Second Interim Report*, Report 18, April 2002, pp 54 to 58.

⁷⁴ General Purpose Standing Committee No 1, *NSW Workers Compensation Scheme Second Interim Report*, Report 18, April 2002, conclusion 14, p 58.

03 is 2.87% of wages, which is 0.09% below the estimated breakeven rate.⁷⁵ The Committee notes that WorkCover only met its targeted premium collection rate once, in 1998/99, since it was first capped at 2.8% in 1996.

3.28 The Committee received advice from Ernst & Young that this under collection of premium, benchmarked against WorkCover's targeted premium rate of 2.8% since 1996, could have equalled as much as \$255 million in lost premiums in recent years:

... if premium collections had been at targeted levels set by WorkCover and investment earnings during the period 1996/97 to 2001/02 had been between 5%pa and 8%pa, then the Statutory Scheme's deficit would have been between \$235m and \$255m less than the deficit of \$2,558m estimated by Tillinghast at 31 December 2001.⁷⁶

3.29 The impact on the deficit would be even more substantial had WorkCover collected the breakeven premium rate as estimated by Tillinghast in the 31 December 2001 evaluation report:

... if premium collections had been at breakeven levels estimated by Tillinghast at 31 December 2001 and investment earnings during the period 1996/97 to 2001/02 had been between 5%pa and 8%pa, then the Statutory Scheme's deficit would have been between about \$1,700m and \$1,825m less than the deficit of \$2,558m estimated by Tillinghast at 31 December 2001.⁷⁷

3.30 If this had occurred, the deficit at 31 December 2001 would have been between \$858m and \$733m.

3.31 Mr Michael Playford, Director, PwC, stated in relation to the current year:

If you are talking in terms about the premium that you are charging to fund the current year's claim costs; we believe that that should occur immediately. The scheme should be aiming to do nothing else but fully fund the current year from the current year's premiums.⁷⁸

3.32 Mr Daniel Tess, also from PwC elaborated:

Before you think about how you should start funding your deficit for old years, it seems to me that you would be well advised to figure out the policy issues around this year's premium funding. The premiums that employers will pay this year will target 2.8 per cent of wages. That is not enough: That is not what the scheme actuary has thought, for a number of years now, would be a fully funded rate. That means that you will make the deficit worse this year, not better. That policy

⁷⁵ WorkCover NSW, *Actuarial Review of the Outstanding Liabilities of the WorkCover Scheme Statutory Funds as at 31 December 2001*, p 89.

⁷⁶ Correspondence received from Mr Peter McCarthy, Ernst & Young, 19 August 2002, p 2.

⁷⁷ WorkCover NSW, *Actuarial Review of the Outstanding Liabilities of the WorkCover Scheme Statutory Funds as at 31 December 2001*, p 89.

⁷⁸ Evidence of Mr Michael Playford, Director, PriceWaterhouse Coopers, 2 July 2002, p 2.

point must be worked out before you can rationally address the issue of how to solve the old year's funding deficit.⁷⁹

Conclusion

It is important for each year's premium and income from investments to be sufficient to fund that year's claims costs. Only once this is achieved can the Scheme address the long term aim of fully funding the deficit.

Fully funding the deficit

3.33 In relation to strategies to fully fund the deficit, Mr Playford told the Committee:

It is clear that WorkCover already has a number of strategies in place to improve the claims experience of the scheme, such as revising the insurer remuneration arrangements and benefit the changes that happened last year, the premium discount scheme which is aimed at improving occupational health and safety for employers, operational changes such as provisional liabilities and the claims assistance service, and dealing with disputes via the commission. What is important is to try to form a view of what the success of those strategies is likely to be and will it be enough to achieve full funding over whatever period politically the deficit is aimed to be eliminated in.⁸⁰

3.34 The question asked by the Committee was what is an appropriate time in which the Scheme should strive to become fully funded. In response to this question, Mr Tess told the Committee that in his view:

choosing the time period is a political decision and what is more important is to have the strategies in place to make that happen.⁸¹

3.35 Mr Playford agreed that setting a target date for the Scheme to be fully funded is responsible financial management. Although, ultimately, the time frame is a political decision, lessons may be learned from other Australian jurisdictions:

I think a target date should be set. In terms of responsible financial management of the scheme, that is a reasonable thing to do. ...

I think it is a political decision. That said, other schemes in Australia which have made decisions about wanting to eliminate deficits have usually been able to achieve that within a five-year time frame. My personal view is that if you go much beyond five years it starts to become meaningless because you do not have the focus on trying to achieve it within a reasonable period of time.⁸²

⁷⁹ Evidence of Mr Daniel Tess, Director, PriceWaterhouse Coopers, 2 July 2002, p 3.

⁸⁰ Evidence of Mr Daniel Tess, Director, PriceWaterhouse Coopers, 2 July 2002, p 2.

⁸¹ Evidence of Mr Daniel Tess, Director, PriceWaterhouse Coopers, 2 July 2002, p 2.

⁸² Evidence of Mr Michael Playford, Director, PriceWaterhouse Coopers, 2 July 2002, p 2.

3.36 Mr Gary Brack, Chief Executive Officer, Employers First, expressed his concern that setting a target period for the Scheme to be fully funded would have the effect of increasing premiums:

... if you now say, "We are going to set three years"—or whatever it is—"as the finite period", our concern is that everyone will be focusing on that three years and premiums will be rising. You say, "Give to the fund manager the responsibility for achieving it." Does that mean that premiums will then go through the roof and we do not get the opportunity to pay it off over 10 years? It is easy to say, "Raise premiums". It is perhaps more politically difficult to say, "Let's cut the guts out of benefits." As soon as you do that, you have an easy solution but not an acceptable solution.⁸³

3.37 A minimum period of 10 years was suggested by Mr Pattison:

Certainly I would not envisage a period of less than 10 years. The key has to be to get the scheme premium break even rate below 2.8 per cent and then gradually work down the unfunded liability. That has always been the dream or the plan from about 1997-98. That is still a valid strategy. Whilever we have an annual break even rate of 2.8 per cent or lower—and we need to get it lower—one could argue there is no absolutely pressing imperative to reduce the unfunded liability in any precipitant way.⁸⁴

3.38 Mr Pattison cautioned the Committee that whatever the target period, it needs to be sufficiently flexible to accommodate fluctuations in the Scheme's performance over that period:

Whatever targets are set it is important they be sufficiently flexible to accommodate fluctuations in Scheme performance that may be reasonably expected given the long time frame.⁸⁵

3.39 As part of the process of drafting its recommendations the Committee received advice from its consultant actuaries, Ernst & Young, who drew the different views on this issue to the Committee's attention. Ernst & Young advised the Committee to consider setting a minimum target period of five years as the period over which the Scheme should aim to fully fund the Scheme's liabilities.⁸⁶

3.40 To achieve the aim of being fully funded, in both the current year and also in respect to the deficit, the Committee makes the following recommendation:

⁸³ Evidence of Mr Gary Brack, Chief Executive Officer, Employers First, 2 July 2002, pp 31-32.

⁸⁴ Evidence of Mr Greg Pattison, General Manager, Labour Market Services, Australian Business Ltd, 2 July 2002, p 32.

⁸⁵ Correspondence received from Mr Greg Pattison, General Manager, Labour Market Services, Australian Business Ltd, 25 July 2002, p 5.

⁸⁶ Correspondence received from Mr Peter McCarthy, Director, Ernst & Young ABC, 17 July 2002, pp 8-9.

Recommendation 6

That the Scheme Design Review consider whether the Scheme's premium rate should be set on a fully funded basis each year.

That, based on advice received by the Committee's consultant actuaries, Ernst & Young, a minimum period of 5 years be set to fully fund the Scheme's liabilities.

- 3.41** An issue that will be integral to future attempts to fully fund the Scheme will be who sets the premium rate. The potential value of an independent premium setting process is discussed below.

Independent premium setting

- 3.42** As part of the Scheme evaluation each year, the Scheme actuaries recommend a breakeven premium rate that is necessary to cover the costs of the Scheme. The projected breakeven premium rate for 2002-03 is 2.96% of wages, taking into consideration the effect of the 2001 legislative reforms. The targeted collected premium rate is 2.87% of wages (including GST/NTS-related effects), a shortfall of 0.09%.⁸⁷
- 3.43** It has become apparent during the Committee's inquiry that a significant contributor to the Scheme deficit is the unrealistically low premium collected since 1991-92. This was the last time premiums were sufficient to cover the costs of the Scheme. Despite advice recommending a higher premium be charged, WorkCover has maintained a steady targeted premium rate of 2.8% since 1996. In her presentation to the Committee's Forum, Ms McKenzie acknowledged the impact this policy has had on the deficit:

Since 1991 premiums have been insufficient to meet scheme costs and since 1996 premiums have been capped at the relatively high rate of 2.8 per cent, including GST, but even at this rate the amount of premium the scheme has collected has not been sufficient to cover the costs of the scheme. The shortfall has led to a deficit estimated at \$2.76 billion as at June 2001.⁸⁸

⁸⁷ WorkCover NSW, *Actuarial Review of the Outstanding Liabilities of the WorkCover Scheme Statutory Funds as at 31 December 2001*, p 89. "NTS" refers to the New Tax System, of which the Goods and Services Tax (GST) is a part.

⁸⁸ Presentation of Ms Kate McKenzie, General Manager, WorkCover NSW, 15 March 2002, p 3.

3.44 To address this shortfall, and increase transparency in the Scheme, the Committee proposed an independent body set premium rates. The Committee's draft recommendation in this area was:

That the Independent Pricing and Regulatory Tribunal (IPART) be responsible for setting target premium rates.

3.45 The Committee asked stakeholders the following questions in relation to this draft recommendation:

- Is IPART the appropriate body to set premium rates for NSW workers compensation, and
- Should IPART's recommended premium rate be mandatory or advisory?

3.46 Most stakeholders supported an independent and transparent premium setting process, although employer representatives raised concerns about resulting premium levels. Mr Brack expressed this concern to the Committee:

... we are moving to a system of some external agencies setting the premiums, as per one of your other recommendations, employer premiums will go through the roof and there will be mayhem all over the place.⁸⁹

3.47 The general reaction to the specific recommendation that IPART set the premium rates was doubt over whether IPART has sufficient relevant experience or expertise to carry out the task. The insurance industry could not support IPART setting premium rates for this reason, as Mr Thomson explained in his response to the draft recommendations:

The industry would not support IPART being responsible for or being involved in the process of rate setting. To the best of our knowledge they have little or no expertise or experience with workers compensation let alone knowledge about the setting of rates within a scheme such as the NSW managed fund. The setting of premium rates is not just an exercise in reviewing financial results. It requires detailed knowledge of the risk inherent in different ANZSIC classifications as well as understanding current trends in the market place. The rates themselves are not set in isolation and there is a need to understand the interactions within the premium formula and be able to take this into account in the setting of the rates.

Employers need to be in the position where they can receive an informed explanation of how and why the rates have been set at certain levels. They require open and timely access to the decision makers.⁹⁰

⁸⁹ Evidence of Mr Gary Brack, Chief Executive Officer, Employers First, 2 July 2002, p 31.

⁹⁰ Document tabled by Mr Rob Thomson, Manager, Workers Compensation, Insurance Council of Australia, 2 July 2002, p 7.

3.48 ABL also did not support the Committee's draft recommendation. In his response to the Committee's draft recommendations Mr Pattison explained why:

The setting of premium rates is a complex process. Rather than IPART setting premium rates we believe it more appropriate IPART be required to examine WorkCover premium recommendations to confirm those recommendations conform to predetermined premium setting criteria. ...

This mechanism would require the prior establishment of premium design principles. These could well form a part of "performance contract" between the Minister and the WorkCover Board, or its successor. ...

Employers remain sceptical about the premium setting process. The injection of an independent review by IPART may be expected to assist in reducing this scepticism.⁹¹

3.49 Mr McCarthy also expressed reservations over the relevance of IPART's expertise:

I do not really know much about IPART. I think the difficulty for any organisation either overwriting or setting their own recommended premium rates, is what expertise have they got to be doing that and, if they have not, where would they get it, and, by getting it, are we really just duplicating and/or depleting the resources that are already out there to do this sort of thing now? I am not sure about that one. I would be cautious of anybody reviewing premium rates or recommending mandatory premium rates without a real understanding of what it is they are doing and why they are doing it, because it is broader than just trying to set a premium, it is trying to understand how premium rates would drive the situation or, with particular employers, it is about getting the balance right between the various industry groupings and so forth. Without the proper experience one would have to be very cautious about something like that.⁹²

3.50 Mr Thomson agreed that there may a role for an independent body in the premium setting process. The role may be more of a reviewing role rather than actually setting the premium:

There may be a role for an independent body to review. Whether they actually set the rate, I am not sure; I would probably have to think about that a little further...⁹³

⁹¹ Correspondence received from Mr Greg Pattison, General Manager, Labour Market Services, Australian Business Ltd, 25 July 2002, p 7.

⁹² Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 2 July 2002, p 15.

⁹³ Evidence of Mr Rob Thomson, Manager, Workers Compensation, Insurance Council of Australia, 2 July 2002, p 23.

3.51 Mr Gilley suggested reinstating the Premium Rating Bureau which was formed as part of the preparation for a privately underwritten scheme:

It would be most inappropriate for IPART to have any role in premium rating. The most appropriate body, the Rating Bureau has been established and has published two premium methodologies, but has since been disbanded.

We believe that the Rating Bureau should be re-established in its previous form and roles and that its target premium rates should be mandatory.⁹⁴

3.52 ABL's *NSW Business Priorities 2003* addressed premium setting in NSW in the following way:

Premium setting in NSW is not transparent. ...

It is recommended that proposed premiums be reviewed by an independent third party, with the power to accept or reject proposed premiums. ...⁹⁵

3.53 The second question asked by the Committee was whether the recommended premium rate should be mandatory or advisory. The main contention in response to this question was that if the Scheme manager is to be accountable for fully funding the Scheme and reducing the deficit, it is a necessary part of that accountability that the manager be able to set premium rates. If not, the means of achieving that for which the Scheme manager is being held accountable are compromised. IAG addressed this question in their response to the Committee's draft recommendations:

In regards to whether the recommended premium rate should be mandatory, IAG again supports a similar approach to the PRC [Premium Rates Committee in WA] where the relevant body sets recommended rates and there is then some flexibility about the actual rate that can be charged (eg up to 100% loading). This helps in more accurately pricing risk for individuals and again supports the concept of a fully funded scheme.⁹⁶

3.54 Mr Brack also addressed this question as part of his evidence before the Committee:

That leaves open the question of mandatory versus advisory. If they are advisory only, then you move back into a quasi privately underwritten system to see what the divergence is between the advisory rate and the actual rate in the market. The history on that has not been particularly flash. You need to be very careful about that before you move to an advisory system. The rules, in my view, need to be reasonably well understood.⁹⁷

⁹⁴ Correspondence received from Mr Richard Gilley, Managing Consultant, The RiskNet Group, 24 June 2002, p 5.

⁹⁵ Australian Business Limited, *NSW Business Priorities 2003*, March 2002, p 15.

⁹⁶ Correspondence received from Mr Jon Kelso, Business Planning, Personal Injury, Health & Commercial Insurance, Insurance Australia Group, 27 June 2002, p 7.

⁹⁷ Evidence of Mr Gary Brack, Chief Executive, Employers First, 2 July 2002, p 34.

- 3.55** There are several possible options for an independent premium setting body. For example the body may restrict itself to a consideration of the overall targeted premium rate as a percentage of wageroll, or may also examine the experience rating parameters within the premium setting formula which would impact on specific industries' premium rate. The Committee considers it more appropriate in a hybrid scheme such as NSW that an independent agency's role is restricted to setting the overall target premium rate for the Scheme as a whole.
- 3.56** The Committee agrees with stakeholder views that IPART may not be the most appropriate body to set the premium rate. Very few options were suggested for an alternative premium setting body. The Committee believes that the setting of a mandatory premium is not appropriate within a hybrid scheme such as NSW, although to improve transparency it is important that an independent body be responsible for publicly recommending a target overall premium rate. Taking into consideration all the feedback received by the Committee on this issue, the Committee makes the following conclusion and recommendation:

Conclusion

The premium setting process must be fully transparent in order to increase accountability and a sense of ownership within the Scheme.

An independent premium setting body may address the need for transparency in the premium setting process.

Recommendation 7

The Committee recommends that an independent authority be responsible for recommending to the Minister an appropriate target premium rate for the workers compensation scheme. The Minister would then have the option of publicly rejecting their advice.

The Government should establish in legislation the parameters under which the independent authority would operate in setting the premium rate.

Chapter 4 WorkCover Authority

Under the NSW workers compensation scheme WorkCover NSW is responsible for administering and enforcing compliance with occupational health and safety, injury management and workers compensation legislation, and managing the workers compensation system.

During the course of the inquiry the Committee has heard significant evidence about the administration of WorkCover and its performance. This chapter explores these internal aspects of WorkCover NSW, including the need for a centralised database.

WorkCover's performance

4.1 Under point 1(c) of the Committee's terms of reference for this inquiry the Committee was to:

...investigate and report on the efficiency of the operation of the workers compensation system and the administration of the WorkCover Authority.⁹⁸

4.2 During the course of this inquiry the Committee has not inquired in any detail into the administration of WorkCover because it felt that:

- A full analysis of the internal functioning of an agency as complex and large as the WorkCover Authority requires a dedicated review.
- Recent changes to the administration of the authority, as well as the upcoming changes associated with the move to Gosford, have meant that this is an inappropriate time to review the Authority.

4.3 However, the Committee is aware that previous reviews have highlighted administrative problems and that the Committee itself has also heard some evidence from a number of witnesses indicating that the organisation may still be experiencing some administrative issues.

Previous administrative reviews

4.4 In 1995 the Council on the Cost of Government completed a review of the financial performance and organisational structure of WorkCover NSW. The Council found that:

- Administrative costs had grown significantly faster than program or inflation indicators since 1989/90;
- There were weaknesses in the external supervision and monitoring of WorkCover;

⁹⁸ General Purpose Standing Committee, Review and Monitoring of the NSW Workers Compensation Scheme, Terms of Reference.

- The WorkCover Board historically had been orientated to generalist skills rather than the specialist skills required for high level performance in insurance;
- WorkCover's management contained too many levels with unclear accountability; and
- WorkCover's structure had a number of duplicated and split functions, and high levels of corporate support staff.⁹⁹

4.5 Following this work a study of WorkCover's internal arrangements was undertaken by Deloitte & Touche Consulting Group ("Deloitte") and reported back to WorkCover in November 1997. During the process Deloitte & Touche highlighted a number of issues being experienced by WorkCover. These included:

- Fragmentation of authority and effort resulting in serious inefficiency;
- Most staff are involved in reacting to incidents and requests, and the necessary proactive/reactive balance was skewed inappropriately;
- There was a lack of evaluation, performance assessment, analysis of cost and benefit or justification of initiatives and investment;
- A large proportion of resources were deployed in support roles, including corporate support.¹⁰⁰

4.6 Deloitte drew the following conclusions based on these characteristics:

- Strategic considerations were weak in the day to day activity of WorkCover;
- The organisation was often reactive;
- Outcomes were not clearly specified and accountability was blurred.¹⁰¹

It appears that there is a reluctance to "own" results unless they bring kudos. This situation is exacerbated by the absence of top-down drive towards results that are meaningful to outside stakeholders.¹⁰²

4.7 Following the finalisation of these reviews the authority went through a period of considerable change. In particular, WorkCover was restructured to improve management, reduce duplication and improve accountability in accordance with the issues highlighted by the Council on the Cost of Government and Deloitte. In addition, changes were made in

⁹⁹ Council on the Cost of Government, *Review of The WorkCover Authority of New South Wales Report*, May 1996, p 5-6.

¹⁰⁰ Deloitte & Touche Consulting Group, *The Case for Business Process Reengineering*, November 1997, p 5.

¹⁰¹ Deloitte & Touche Consulting Group, *The Case for Business Process Reengineering*, November 1997, p 6.

¹⁰² Deloitte & Touche Consulting Group, *The Case for Business Process Reengineering*, November 1997, p 6.

the 1998 *Act* to improve the accountabilities of the Authority as a whole.¹⁰³ However, some concerns raised by the Council of Cost of Government, have not resulted in changes being made to the authority. For example, the broader make up of the WorkCover Board.¹⁰⁴

Evidence during current inquiry

4.8 Although the Committee did not directly inquire into the administration of WorkCover, the Committee did receive some evidence in relation to this issue. The concerns raised by some witnesses regarding the administration of the authority ranged from a general lack of confidence in the authority to specific management issues in particular areas.

4.9 In their submission to the Inquiry Australian Business Ltd (“ABL”) indicated that the authority still had problems with transparency and accountability despite the changes made after the reviews undertaken in 1995 and 1997. ABL also raised concerns about the general efficiency of WorkCover:

The general impression of employers is the WorkCover Authority is not as efficient as it might be. 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.¹⁰⁵

4.10 In her evidence to the Committee, Ms Mary Yaager, OH&S Workers Compensation, Coordinator, Labor Council of NSW, indicated that the unions had lost confidence in WorkCover:

We do not have a great confidence in WorkCover. The union certainly does not. Back in 1997, when the Government established the advisory council, we were able to direct WorkCover to do certain things. The advisory council, if you look at its record, the deficit it had at the time was being reduced by our strategies and the scheme going forward was trending downwards—all of the measures that we put in place. But what happened was that they took our powers away. We really have not had the same co-operation from WorkCover, and they are not in the same position to influence or direct.¹⁰⁶

¹⁰³ It should be noted that many witnesses have raised the accountability and transparency of the Authority as a major issue during the Committee’s inquiry. This issue is discussed in some depth in Chapter 5 of this Report.

¹⁰⁴ Answers to questions from stakeholders, *NSW Workers Compensation Scheme First Interim Report*, October 2001, pp 47-52.

¹⁰⁵ *Submission No 6*, Australian Business Ltd, p 2.

¹⁰⁶ Evidence of Ms Mary Yaager, OH&S Workers Compensation, Coordinator Labor Council of NSW, 10 October 2001, p 9.

4.11 In his evidence Mr John Wynyard, Barrister, Australian Plaintiff Lawyers Association, indicated that they had concerns about WorkCover. He said:

It is a very complicated, detailed area. It seems to us that the only people who really know are the WorkCover authority and it is the WorkCover authority about whom we have some reservations, if I can put it that way as politely as possible.¹⁰⁷

4.12 Some concerns were also raised specifically with regards to the expertise of the WorkCover staff. The General Manager of WorkCover, Ms Kate McKenzie, commented:

Now, having had a pretty good look at the place, I think if anything, there are some areas where we could improve our level of expertise. Like any organisation, it is not perfectly run. There are probably areas where people are not utilised as well as they could be.¹⁰⁸

4.13 In their submission to the inquiry the Australian Psychological Society also raised this issue. They wrote:

While the WCA staff individually are no doubt competent and energetic, we consider the WCA staff profile overall to be unbalanced, with a bias in favour of the “technical” occupations and operations.¹⁰⁹

4.14 However, despite their concerns the Australian Psychological Society indicated that:

Our general impression of the WorkCover Authority (WCA) is positive. Its leadership seems positively orientated to the ideals and aspirations of the Government and generally to work constructively with employer bodies and unions, eg through the Advisory Council.¹¹⁰

4.15 It is important to note that senior management of WorkCover and staff have not been directly questioned about the internal administration and workings of WorkCover during this inquiry.

Gosford relocation

4.16 WorkCover has further organisational changes occurring later this year with the move to Gosford. This move is resulting in some staff turn over and may have some broader ramifications for the administration of the authority.

¹⁰⁷ Mr Christopher Wynyard, Barrister, Australian Plaintiff Lawyers Association, October 10 2001, p 45.

¹⁰⁸ Evidence of Ms Kate McKenzie, General Manager, WorkCover NSW, 14 February 2002, p 26.

¹⁰⁹ *Submission No14*, Australian Psychological Society, p 9.

¹¹⁰ *Submission No14*, Australian Psychological Society, p 9.

4.17 In her evidence to the Committee Ms McKenzie outlined her view on the opportunities which were being created by WorkCover's move to Gosford:

...we have begun a process of organisational improvement that is going through at a very micro level, looking at each branch in the organisation, what it does, whether it has the right staffing complement, whether it has the right skills set, looking at all of those issues. I guess we are seeing Gosford as an opportunity in that context because we expect we will have a higher rate of turnover than would be normal to ensure that we are not filling jobs that we do not need to fill, that if we are we are having a look at those jobs to make sure that they are still relevant, that we are recruiting people with the right skills set. That will be an ongoing process for at least the next 12 months.¹¹¹

4.18 Ms McKenzie also highlighted the skills of many of the new employees at WorkCover. She said:

...we are just trying to ensure that to the extent that we can manage it actively we have the crucial people we need in place to ensure that we have business continuity and that this is managed over a period of time. People come and go. I guess in the end it is just about managing a slightly higher rate of turnover than we have traditionally had in WorkCover. In some cases that is probably not such a bad thing. We have had some very good people join the organisation in recent times because they live on the Central Coast and they are sick of commuting. They have brought a lot of new enthusiasm and keenness to the organisation...¹¹²

4.19 However, concerns have also been raised about the impact on the authority and its administration of the move to Gosford. In his evidence to the Committee Mr John Walsh, Partner, Pricewaterhouse Coopers ("PwC"), indicated that being so far from the centre of business might have implications:

I think the move to Gosford is a major risk for the scheme. I think having a statutory scheme like this, which is so dependent on the buy-in of employers and injured workers, being located 100 kilometres from the action is going to be difficult.¹¹³

Conclusion

The internal structure of the WorkCover Authority is currently undergoing significant change as a consequence of management initiatives, amendments to legislation and the move to Gosford. Given these matters the Committee has not been able to draw conclusions about the administration of WorkCover at this time.

¹¹¹ Evidence of Ms Kate McKenzie, General Manager, WorkCover NSW, 14 February 2002, p 26.

¹¹² Evidence of Ms Kate McKenzie, General Manager, WorkCover NSW, 14 February 2002, p 26.

¹¹³ Evidence of Mr John Walsh, Partner, Pricewaterhouse Coopers, 15 March 2002, p 19.

Performance auditing

4.20 Performance audits are reviews designed to determine how efficiently and effectively an agency is carrying out its functions. Where appropriate, performance audits make recommendations for improvements relating to those functions.¹¹⁴ Performance audits look specifically at processes undertaken by the agency/authority in fulfilling their role, their results, the costs involved in fulfilling their role, due process and accountability.

4.21 Under section 38 of the *Public Finance and Audit Act 1983* the Auditor-General is given the authority to undertake performance audits of any Government agency or program. Section 38B (1) states:

The Auditor-General may, when the Auditor-General considers it appropriate to do so, conduct an audit of all or any particular activities of an authority to determine whether the authority is carrying out those activities effectively and doing so economically and efficiently and in compliance with all relevant laws.¹¹⁵

4.22 Section 38C outlines what the performance audit may contain. 38C(4) states:

The Auditor-General, in a report of a performance audit under this section:

- a) may include such information as he or she thinks desirable in relation to the activities that are the subject of the audit, and
- b) is to set out the reasons for opinions expressed in the report, and
- c) may include such recommendations arising out of the audit as the Auditor-General thinks fit to make.¹¹⁶

4.23 The Committee understands that the performance audits undertaken by the Auditor-General's Office are conducted by specialist auditors who are drawn from a wide range of professional disciplines.¹¹⁷

¹¹⁴ www.audit.nsw.gov.au

¹¹⁵ *Public Finance and Audit Act 1983*, section 38.

¹¹⁶ *Public Finance and Audit Act 1983*, section 38.

¹¹⁷ www.audit.nsw.gov.au

Conclusion

Given the concerns expressed about the performance of WorkCover, the Committee believes that there is a need for a performance audit of the authority.

The Committee believes that the Auditor-General is the appropriate authority to undertake a performance audit of WorkCover.

The Committee also believes that a performance audit is an essential precursor to the review proposed in Recommendation 10 of this report.

Recommendation 8

That the Law and Justice Committee should consider whether there is a need for a performance audit of WorkCover by the Auditor General. (Refer Recommendation 26)

Information availability

4.24 In the third and fourth interim reports the Committee explored some of the information technology issues being experienced by WorkCover and how these relate to the successful regulation of participants in the Scheme.

4.25 At the Workers Compensation Forum as well as during the Committee's hearings a number of witnesses raised concerns about WorkCover's IT systems. It should be noted that the Committee has also had difficulties obtaining data from WorkCover for the purposes of this inquiry.

4.26 The Committee concluded in its third interim report that:

The Committee is concerned that WorkCover's data and information management systems are currently inadequate for WorkCover to properly fulfil one of its primary roles as regulator of the workers compensation scheme.¹¹⁸

4.27 Given the weight of the evidence received by the Committee on this issue and the concerns expressed by witnesses the Committee determined the following draft recommendation for comment by stakeholders:

That WorkCover set up centralised compatible computer software to facilitate WorkCover's provision of appropriate data and other information to Scheme participants.

4.28 This recommendation was broadly supported by almost all stakeholders in the Scheme except WorkCover's agents (the insurers).

¹¹⁸ General Purpose Standing Committee No 1, *NSW Workers Compensation Scheme Third Interim Report*, April 2002, p 59.

4.29 Witnesses suggested that a centralised computer system would be useful for the Scheme because it would help:

- Reduce system duplication;
- Monitor the status of the Scheme, and;
- Provide for the timely provision of accurate information.

Reducing duplication of systems

4.30 In his evidence to the Committee, Mr McCarthy indicated that one of the benefits of a centralised system was that you wouldn't have ten different insurance companies with different systems:

Why have you got 10 different insurance systems? It just does not seem to make sense to me. At the end of the day I would have one central computer system with the base data that everybody wants and individual insurance companies could put their own smarts on top of that. The insurers probably will not agree with me on that...¹¹⁹

Assisting monitoring progress of the Scheme

4.31 In her evidence to the Committee Ms Yaager indicated that a centralised computer system would help WorkCover and the Advisory Council monitor the Scheme. She said:

...the advisory council has been pushing for a centralised computer system or an approved data system since we were set up. I think it is vital—actuaries tell you this all the time—to get the right data so that you can monitor the scheme properly. The current system does not really allow us to do that. We collect tapes from the insurers at the end of three months when we should be looking at some sort of real-time system that provides the appropriate data immediately.¹²⁰

Aiding the provision of timely and accurate information

4.32 Mr Goodsell indicated in correspondence to the Committee that centralised computer systems would help aid the provision of information to stakeholders:

Our members would welcome any initiative, which centralises this process. Once clear advantage would be in a situation where an employer chooses to change insurer. Currently the data transfer needed when a company changes its insurer

¹¹⁹ Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 2 July 2002, p 15.

¹²⁰ Evidence of Ms Mary Yaager, Workers Compensation Coordinator, Labor Council of NSW, 2 July 2002, p 40.

relies on the good will of the outgoing insurer. A centralised system would eliminate this risk.¹²¹

4.33 Mr Alexander Salomon, Chair, Self Insurers Association, said that a centralised system would also improve accuracy of data available to the Scheme. In correspondence to the Committee he wrote:

The Association fully supports this recommendation. Data that is timely and reliable is an asset to any workers compensation scheme. The Association would also like to see some rationalisation in the data requirements.¹²²

4.34 Mr Gilley expressed concern that a centralised computer system had not been already established. In correspondence to the Committee he wrote:

We believe that it is a scandal that the implementation of a centralised computer system has not been completed and that GPSC1 is now forced to bring this to the attention of Government by making this recommendation.¹²³

4.35 However, insurance company representatives generally did not support the need for a centralised computer system. Mr Thomson suggested that a centralised computer system would be unlikely to improve the provision of data:

Industry's view is that it may (aid WorkCover's provision of accurate data), but it is unlikely. It has the potential to do that but we believe that the result could be achieved through other means, for example, by having a centralised data warehouse.¹²⁴

4.36 Mr Thomson suggested that there were other ways of providing accurate, timely and appropriate data to the Scheme's participants:

No off-the-shelf product is available in the market that would be able to be used for a centralised scheme. Industry fully supports the need for appropriate data to be available to scheme participants and on a more timely basis. We believe that that can be delivered by way of a centralised data warehouse. WorkCover is currently in the process of putting strategies in place to ensure that it happens.¹²⁵

4.37 This view was also expressed by Mr Jon Kelso, of IAG:

¹²¹ Correspondence received from Mr Mark Goodsell, Director, Australian Industry Group, 28 June 2002, p 3.

¹²² Correspondence received from Mr Alexander Salomon, Chairman, Self Insurers Association, 27 July 2002, p 2.

¹²³ Correspondence received from Mr Richard Gilley, Managing Consultant, RiskNet, 24 June 2002, p 5.

¹²⁴ Evidence of Mr Robert Thomson, Manager Workers Compensation, Insurance Council of Australia, 2 July 2002, p 22.

¹²⁵ Evidence of Mr Robert Thomson, Manager Workers Compensation, Insurance Council of Australia, 2 July 2002, p 22.

IAG believes that there are more cost-effective approaches to gathering and storing data than a centralised compatible computer system. ... A preferred solution would be to implement a data warehouse for storing the data that is collected from individual agents. This would not require a centralised computer system.¹²⁶

4.38 Mr Thomson said that a centralised system had the potential to limit innovation by insurers:

A centralised system has some attractions, but it limits innovation because you are forcing people to use it. But if you want to have innovation and competition in the marketplace, having individual systems enhances that and encourages it.¹²⁷

4.39 The Committee understands that the costs of similar systems in other states have blown out and that similar problems could arise during the establishment of such a system in NSW.¹²⁸

Conclusion

There are strong arguments for and against a centralised computer system. The Committee believes that a centralised system may possibly improve WorkCover's ability to monitor the financial progress of the Scheme, regulate its providers and provide information to stakeholders about various aspects of the Scheme to assist them in improving Scheme outcomes.

WorkCover should only embark on establishing a costly system if it is confident it will result in major improvements to service delivery, information provision and transparency.

Recommendation 9

That WorkCover report back to the Law and Justice Committee on the implementation of their new information technology strategy as part of that Committee's annual review of the Scheme (refer Recommendation 26).

¹²⁶ Correspondence received from Mr Jon Kelso, Business Planning, Insurance Australia Group, 27 June 2002, p 7.

¹²⁷ Evidence of Mr Robert Thomson, Manager Workers Compensation, Insurance Council of Australia, 2 July 2002, p 22.

¹²⁸ In evidence Mr Robert Thomson, Manager Workers Compensation, ICA, 2 July 2002, p 31, said that the cost of South Australia's centralised computer system had increased from the initial quote of \$20 million to close to \$100 million.

Chapter 5 Regulation and insurers

Insurers are licensed to issue and administer policies for the workers compensation scheme. In particular, insurers manage the collection of premiums, perform injury management and administer most claims processes.

During the course of the inquiry the Committee has heard extensive evidence about the extent of WorkCover's regulatory powers over insurers and service providers in addition to evidence regarding the performance of insurers. This chapter explores these aspects of the workers compensation scheme.

Role of WorkCover

5.1 During the inquiry one of the key issues raised has been that of the varied nature of WorkCover's powers and the extent to which a number of these powers are in conflict with each other. This issue was discussed in depth in Chapter 4 of the Committee's Second Interim Report.

Previous reviews

5.2 The extent of WorkCover's powers has also been raised by previous reviews and inquiries into the Scheme. For example, during the Council on the Cost of Government's review of the WorkCover Authority in 1996 the issue of WorkCover's powers was considered. The review looked at the roles performed by WorkCover and made recommendations to rectify the tensions that existed. The Council summarised the problem with WorkCover's role:

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 market. The accountabilities are unclear.¹²⁹

5.3 One of the options considered by the Council as a way to deal with the conflicts in WorkCover's role was to split WorkCover's functions into a specialist workers compensation insurance regulator, and a separate planning body concerned with workers' compensation and occupational health and safety ("OH&S").¹³⁰

5.4 However, the Council recommended that, instead of splitting WorkCover, the responsibilities for regulatory functions and OH&S should be more clearly defined and clearly separated from insurance regulation.¹³¹

¹²⁹ Council on the Cost of Government, *Review of The WorkCover Authority of New South Wales Report*, May 1996, p 6.

¹³⁰ Council on the Cost of Government, *Review of The WorkCover Authority of New South Wales Report*, May 1996, p 6.

¹³¹ Council on the Cost of Government, *Review of The WorkCover Authority of New South Wales Report*, May 1996, p 6.

5.5 The Grellman Inquiry into the Scheme also identified this as an issue in 1997. In his evidence to the Committee Mr Richard Grellman indicated that during the inquiry he had noticed a conflict between the advisory and prosecutor roles of WorkCover. However he also indicated that he did not think that this was a serious problem:

In my report, the conflict issue I raised was WorkCover's obligation, on the one hand, to prosecute breaches of safety practice and, on the other hand, be like a big brother, an advisory group, to help employers get their processes right. So, as the policeman and the big brother, I think there is a tension. I do not think it is impossible for WorkCover to be a regulator and also to watch over the insurers, who are essentially the service providers. I do not think that is a profound flaw or difficulty. I am not sure how well it is doing that, because I have not been close to it, but I imagine it is manageable.¹³²

Current powers and functions

5.6 As highlighted in the previous chapter, the WorkCover Authority underwent a restructure in the late 1990's. Part of the restructure included reducing the number of divisions and changing internal responsibilities for certain functions.

5.7 WorkCover currently performs the following roles:

- Occupational Health and Safety – provision of information and advice as well as enforcement of OH&S legislation/regulations and general regulatory functions.
- Workers Compensation – advice, management of insurers, agents and other providers, licensing, regulation and all policy, all scheme design issues.
- Premium Rating setting, design and monitoring,
- Human Resources and Administration.¹³³

5.8 The breakdown of how the roles are split up between the different divisions is summarised as follows:

- General Manager's Group

This group comprises 1) the Office of the General Manager, which provides executive support to the Board, Minister, General Manager and consultative bodies, 2) the Information Management Branch, responsible for WorkCover's

¹³² Evidence of Mr Richard Grellman, 21 November 2001, p 5.

¹³³ Derived from information contained in correspondence received from the Hon John Della Bosca, Minister for Industrial Relations, 4 September 2001.

technical infrastructure, data support and records management and 3) the Finance Branch.¹³⁴

- Occupational Health and Safety

The OHS Division promotes safer and healthier workplaces for employees and provides 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 and where necessary prosecutions of incidents and complaints; licensing and certification of defined premises, activities and the operation of hazardous equipment; and implements prevention and education programs.

- Insurance

The purpose of the Division is to focus on the workers compensation and injury management systems in NSW. The Minister described the Division's aims as being to ensure the systems:

- assist in securing the health, safety and welfare of workers and in particular preventing work related injury;
- 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;
- 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;
- 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 ensure the systems are fair, affordable and financial viable.¹³⁵

- Corporate Governance

This Division provides 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;

¹³⁴ Derived from information contained in correspondence received from the Hon John Della Bosca, Minister for Industrial Relations, 4 September 2001.

¹³⁵ Correspondence received from the Hon John Della Bosca, Minister for Industrial Relations, 4 September 2001.

communications and marketing including media liaison; human resource management; corporate governance and property and purchasing.¹³⁶

Separation of WorkCover functions

5.9 The Committee during this inquiry heard evidence that the separation of WorkCover's roles into two or more authorities may be beneficial.

5.10 Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, highlighted the issue of WorkCover's conflicting roles in his evidence. He indicated that in particular the insurance/regulatory functions and the enforcement functions did not sit well together:

It needs to fill the role of a regulator and also be more focused on the insurance issues. I would see it being less focused on what I would call the inspectorate style of issues, the sorts of issues that would be more appropriate in an industrial relations department to get a much more clear focus on the risk management and claims management/injury management, if you want to call it that. The policing should be left to a separate body, because the policing can often intimidate an employer when you should be risk managing rather than policing. There is a role for both but they do not go hand-in-hand well together.¹³⁷

5.11 In light of the issue, the Committee developed the following draft recommendation for comment by stakeholders:

That the Scheme Design Review consider whether the WorkCover Authority should be separated into two bodies performing regulatory functions and workers compensation management functions.

5.12 Those who provided comment on the draft recommendation overwhelmingly felt that the separation of WorkCover's functions would be beneficial for the management of the Scheme. However, there were differing opinions as to which roles should be separated and which roles WorkCover should continue to perform.

5.13 In his evidence to the Committee Mr Gary Brack, Chief Executive Officer, Employers First, indicated that WorkCover needed to be separated because it was not fulfilling its advisory role:

WorkCover will not advise employers. WorkCover sets about drafting regulations on the basis of maximum prosecutability. I say that on the basis of discussions with a person who was originally employed by WorkCover and who indicated quite clearly that was a goal... WorkCover has to be put back in the role of the practical adviser; not one where an officer goes out today and tomorrow an inspector comes to the employer and says, "That is wrong, that is wrong, that is

¹³⁶ Derived from information contained in correspondence received from the Hon John Della Bosca, Minister for Industrial Relations, 4 September 2001.

¹³⁷ Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 10 October 2001, p 39.

wrong." How did the inspector know? Because the guy advising the employer yesterday said he saw those things. It is a Catch-22. The employer gets the advice, but the next day someone comes out to hit him over the head. It is important to separate the roles and put the WorkCover officer back in the role of friendly adviser.¹³⁸

5.14 In his evidence to the Committee Mr Greg Pattison, General Manager, Labour Market Services, Australian Business Limited ("ABL"), went further indicating that a separate authority should be managing the Scheme. He said:

We would support a change in the structure of WorkCover. ...we will be suggesting that a separate statutory authority should be looking after the scheme. Taking the issues of accountability, when you talk about programs for running down deficits and performance, perhaps some of those programs could be dealt with by performance agreements, which are open and transparent, between the statutory authority and the Minister. We would certainly support the notion of a reshaping of WorkCover.¹³⁹

5.15 Mr Mark Goodsell, Director NSW, Australian Industry Group ("AIG"), indicated that the functions of WorkCover needed to be separated in four ways. In correspondence he wrote:

Currently there is the potential for conflict of interest between the regulatory functions and workers compensation management functions. We would further recommend the separation include not only regulatory functions and workers compensation management functions but include a separation of the advisory functions as opposed to the compliance function.¹⁴⁰

5.16 In correspondence to the Committee Mr Michael Concannon, Partner, Carrol & O'Dea Solicitors suggested that the administration of the authority should be separated from the collection of premiums and prosecutions:

There are many able and progressive personnel at WorkCover, however there needs to be a clear and formal division of functions of the Authority. Administration of the scheme for delivery of benefits should be handled by a body separately and distinct from that which collects premiums and prosecutes breaches of the Act. Monitoring of the health of the scheme should be the province of a separate regulatory Authority.¹⁴¹

¹³⁸ Evidence of Mr Gary Brack, Chief Executive, Employers First, 2 July 2002, p 32.

¹³⁹ Evidence of Mr Greg Pattison, General Manager Labour Market Services, Australian Business Ltd, 2 July 2002, p 32.

¹⁴⁰ Correspondence received from, Mr Mark Goodsell, Australian Industry Group, 28 June 2002, p 2.

¹⁴¹ Correspondence received from, Mr Michael Concannon, Partner, Carroll & O'dea Solicitors, 25 June 2002, p 2.

5.17 In his evidence Mr McCarthy suggested that the inspectorate/enforcement areas be separated from the insurance areas. He said:

I go hot and cold on this one. There are times when I do think it should be separated into two areas. I probably lean more towards WorkCover being split into two areas between what I will call the old occupational health and safety inspectorate area that used to be handled by—I am going to show my age here—the old Department of Labour and Industry [DLI] and what I call the insurance or the workers compensation component. I think it is a little bit difficult when you have got the inspectors and so forth that on one hand are the enforcement officers and, on the other hand, supposedly risk managers. I do not think it augurs very well for good risk management and, at the same time, good policing of safe workplaces and so forth.¹⁴²

5.18 Ms Kim Cull, President, Law Society of NSW expressed a similar view. In correspondence to the Committee she recommended that the compliance regulatory branches of the Authority be separated from WorkCover and placed in the Department of Industrial Relations (DIR) and the work regarding the validity of benefits, claims and the general administration of the Scheme be left with WorkCover.¹⁴³

5.19 Ms Helen Weston, Kairros Pty Ltd, also indicated that there needed to be a separation between the educational role performed by WorkCover and the regulatory functions. She wrote:

The regulatory function currently conflicts with the educational function of WorkCover. On numerous occasions employers have commented to us that while they might wish to have a definitive comment from WorkCover regarding the management of a particular risk, they would not request an inspection for fear of attracting a fine or some other punitive action as a consequence of a site visit.¹⁴⁴

5.20 In correspondence to the Committee Mr Richard Gilley, Managing Consultant, RiskNet Group, supported this view:

We believe that the regulation of the various Acts WorkCover is responsible for should be undertaken by a regulatory body. Other functions of WorkCover, such as the provision of advisory services on a commercial basis should be undertaken by a separate body. We believe that there are benefits to separating WorkCover functions provided that there are clear and distinct definitions of the roles.¹⁴⁵

¹⁴² Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 2 July 2002, p 12.

¹⁴³ Correspondence received from Ms Kim Cull, President, Law Society NSW, 27 June 2002, p 5.

¹⁴⁴ Correspondence received from Ms Helen Weston, Kairros Pty Ltd, 18 June 2002, p 1.

¹⁴⁵ Correspondence received from Mr Richard Gilley, Managing Consultant, RiskNet Pty Ltd, 24 June 2002, p 3.

5.21 Some witnesses who provided comment on the Committee's draft recommendation raised concerns about how the functions would be split and whether this would increase the layers of bureaucracy.

5.22 In his evidence to the Committee Mr Robert Thomson, Manager Workers Compensation, ICA, indicated that, although he could see benefits in splitting some of WorkCover's functions, he was concerned that this may increase the levels of bureaucracy and lead to problems in communication between the two organisations. He said:

We do have some concerns that at times some people are dealing with operational and functional issues and that they are the same people responsible for dealing with licensing type issues and performance remuneration issues. Overall, we think there is probably some benefit in reviewing WorkCover's role and how it is functioning, but we are concerned that, by splitting it into two, you may just be adding additional layers of bureaucracy. How would you ensure that there is appropriate interaction and appropriate communication between the two that delivers additional benefit to the scheme without it significantly adding to the costs being borne by employers? ...Before any action is taken in that area, you should review where the functions have been split in the past in other jurisdictions or in other areas, to assess the benefits or detriments that may have been achieved and at what cost.¹⁴⁶

5.23 In correspondence to the Committee Mr Jon Kelso, Insurance Australia Group (IAG), stated that IAG did not support the separation of WorkCover into two bodies. He provided the following reasons for his stance:

1. There is a high risk that the separation would simply create an additional bureaucracy in the scheme's management, which would inevitably lead to higher administrative costs of running the scheme.
2. There may not be a clear boundary between 'regulatory' and 'management' functions, which creates the risk of lack of role clarity and confusion amongst the industry as to which body serves which function.
3. The separation of functions model is usually most suitable in Government agencies that have both distinct regulatory and operational functions. In our view WorkCover's current role is largely of a policy and regulatory nature, rather than being operational, so there is little justification for separating the functions. Although there is a separation of functions in Queensland workers compensation, this is mainly because under the Queensland scheme WorkCover has both operational and policy functions.¹⁴⁷

¹⁴⁶ Evidence of Mr Robert Thomson, Manager Workers Compensation, Insurance Council of Australia Ltd, 2 July 2002, p 21.

¹⁴⁷ Correspondence received from Mr Jon Kelso, Business Planning, Insurance Australia Group (IAG), 27 June 2002, p 5.

5.24 In correspondence to the Committee the Australian Psychological Society indicated that they thought that separating functions into different agencies was extreme. They wrote:

Generally we consider that this rather extreme kind of differentiation of functions (presumably the main goal of separation) should occur only where it is required to ensure optimum performance of the whole system, including to avoid serious conflict of responsibilities within or between internal sub-systems not resolvable by less extreme means. ...increased differentiation requires increased, not less integration effort if the whole system is to maintain effectiveness and integrity.¹⁴⁸

5.25 In her evidence to the Committee Ms Yaager, was cautious about the proposal. She indicated that the Labor Council would need to see the proposal before providing support. However, she said the Labor Council would be supportive if the proposal to split WorkCover would result in improvements in prosecutions for non-compliance.¹⁴⁹

Conclusion

There are strong arguments for and against the separation of WorkCover. In particular, it may be beneficial to separate the enforcement/regulatory roles from the educational/advisory roles performed by the Authority. However, the Committee believes that recommending this at this stage would be premature and that careful consideration needs to be given to the costs and benefits of undertaking such a separation.

Any future performance audit should be taken into account in any review considering the separation of WorkCover.

5.26 The Committee understands that the Scheme Design Review (“the Review”) to be undertaken later this year will consider issues relating to the roles performed by WorkCover, however the Committee believes that this is not the appropriate forum to undertake a review of issues pertaining to the separation of WorkCover’s roles. The General Manager of WorkCover, Ms Kate McKenzie, is chairing the Steering Committee for the Review which may create a conflict of interest with regard to this issue.

¹⁴⁸ Correspondence received from The Australian Psychological Society, 23 July 2002, p 34.

¹⁴⁹ Evidence of Ms Mary Yaager, Workers Compensation Coordinator, Labor Council of NSW, 2 July 2002, p 39.

Recommendation 10

That an independent authority/organisation should be commissioned to undertake a review of WorkCover's structure, with a view to separating WorkCover. Possible options to be considered in this review include:

Option 1 – A body performing regulatory enforcement functions and a body undertaking workers compensation management functions;

Option 2 – A body performing OH&S and a body performing workers compensation functions.

5.27 Whether WorkCover remains as a single body or is separated, an organisation will in some form be responsible for the regulation of insurers in the workers compensation system. The sections below consider current issues in the regulation of insurers.

Insurer performance and regulation

5.28 A major issue during the inquiry was that of the performance of insurers. In particular, concerns were raised about the performance of insurers with regards to claims and injury management. A number of suggestions were made about improving insurers management of this area. These included:

- Improving the regulation of insurers through contracts,
- Improved monitoring,
- An in depth review of insurers, and
- Separating some of the functions currently performed by insurers and allowing these to be performed by other service providers.

5.29 This section explores this issue and makes suggestions for improving performance.

Insurer performance

5.30 During the inquiry the Committee heard extensive evidence regarding the performance of insurers with regard to different aspects of the Scheme. Most of the evidence concerned insurers' previous performance. Witnesses argued that it was difficult to assess quantitatively the improvements in insurers' performance since the introduction of the new insurer remuneration arrangements, which were not brought into effect until July 2001.

5.31 The Committee heard evidence from a number of witnesses indicating that under the remuneration arrangements which existed prior to July 2001 the performance of insurers had been poor in relation to a number of measures. In particular, concerns were raised about the performance of insurers with regard to early injury management, general claims

management and return to work. Data provided by WorkCover on this issue supported the qualitative evidence received.

Early injury management and claims management

5.32 In her evidence to the Committee Ms McKenzie indicated that one of the areas in which insurers had been performing badly was that of early injury management. She said:

Approximately 15 per cent of all disputes in the scheme arise because insurers 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 workers pursues his or her claim the insurer is ultimately found to be liable in any event, so the legislation passed in the last session of Parliament will 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.¹⁵⁰

5.33 Mr Walsh, Partner, PriceWaterhouse Coopers ("PwC") also highlighted early injury management and claims management as an issue:

It is probably a general statement of commitment to the New South Wales scheme in terms of being managers rather than owners. The fact that they have had that role means that the attention and commitment to the scheme are less than they would be were they more directly involved with the outcome of performance of the scheme. That results in less attention in the early management of the scheme than would be the case, leading to delays and possibly poor outcomes as a result of the delay. The ongoing claims management is not as well organised as it might be in terms of the relationship between injury management and claims finalisation.¹⁵¹

5.34 In response to the Committee's request for quantitative data on the performance of insurers, WorkCover has provided the Committee with comparative data of the performance of insurers against certain performance measures for the 1999/00 remuneration year. An analysis of this data shows that most insurers were generally performing poorly on the following measures:

- Timely offer of section 66 entitlements,
- Proactive injury management,
- Injury management – 21 day rule applied correctly,
- Injury management – 42 day rule applied correctly,
- Short term (4 weeks claim duration) injury management,

¹⁵⁰ Evidence of Ms Kate McKenzie, General Manager, WorkCover NSW, 24 September 2001, pp 8-9.

¹⁵¹ Evidence of Mr John Walsh, Partner, PwC, 21 November 2001, p 16.

- Long Term (26 weeks claim duration) injury management.

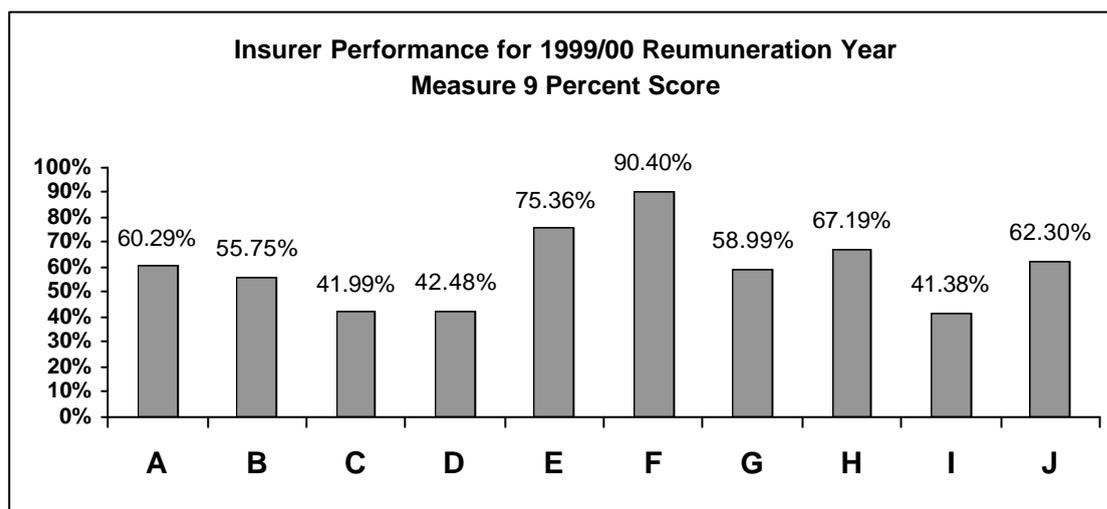
5.35 Each of these measures are considered separately in the following paragraphs. It is important to note that the names of the insurers have been removed and have been replaced with a letter of the alphabet, from A to J.

Timely offer of section 66 entitlements

5.36 This measure (measure 9) was designed to ensure that insurers made prompt payments of their Section 66 (permanent impairment) benefits to entitled workers. It is considered to be a desirable characteristic of the Scheme that injured workers receive their appropriate entitlements promptly.

5.37 However, as Table 5.1 shows, out of the ten insurers, eight received a percentage score of less than 70% and three of these received scores of less than 50% on this measure.

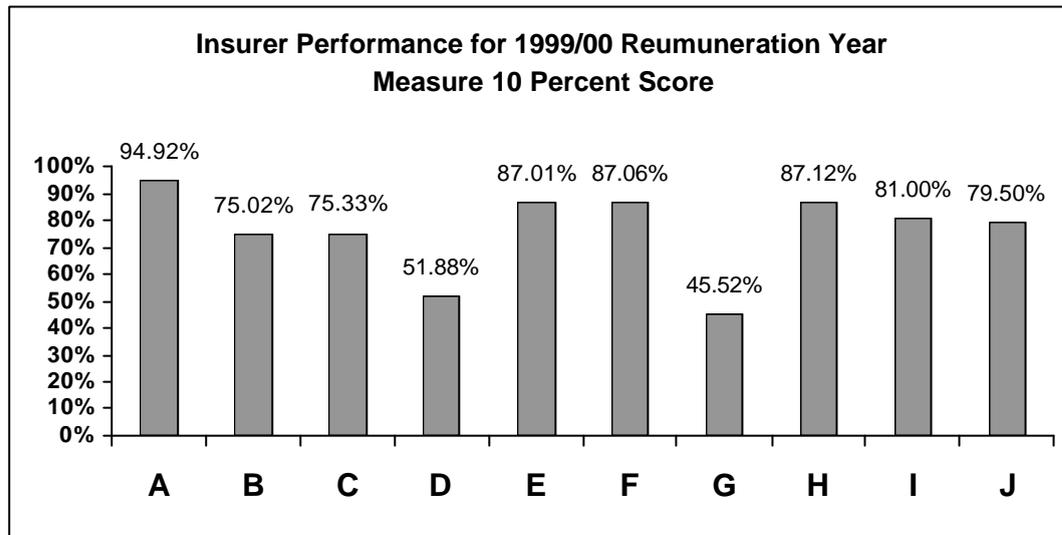
Table 5.1 Insurer Performance for 1999/00 Remuneration Year Timely offer of section 66 entitlements



Source: WorkCover Authority, "Legislative Council General Purpose Standing Committee No 1 Outline of Insurer Performance Measures and Scheme Outcomes that the Performance Measures are Designed to Achieve", 5 April 2002, p.9.

Proactive injury management

- 5.38** This measure was designed to ensure that insurers proactively manage injuries. It is considered to be a desirable outcome of the Scheme that injuries are treated promptly and appropriately and that injured workers can return to sustainable work as quickly and safely as possible. However, as Table 5.2 shows only one insurer received a percentage score over 90% and two insurers received scores less than 70%.

Table 5.2 Insurer Performance for 1999/00 Remuneration Year Proactive Injury Management

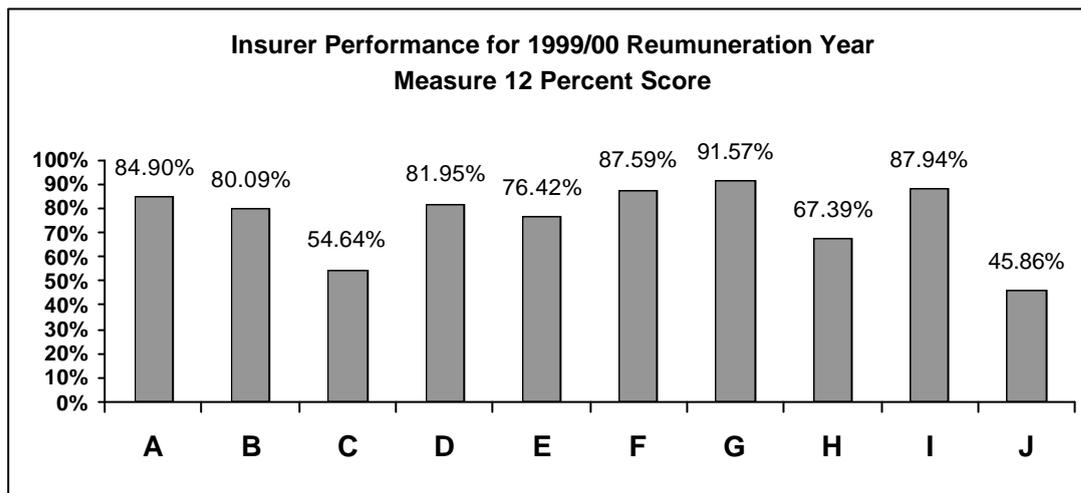
Source: WorkCover Authority, "Legislative Council General Purpose Standing Committee No 1 Outline of Insurer Performance Measures and Scheme Outcomes that the Performance Measures are Designed to Achieve", 5 April 2002, p.9

Injury management – 21 and 42 day rule applied correctly

- 5.39** Measures regarding the correct application of the 21 and 42 day rule were designed to ensure that insurers complied with claims handling procedures for paying correct benefits to entitled workers and made timely decisions on liability issues. It is considered to be a desirable characteristic of the Scheme that injured workers receive their initial entitlements promptly.

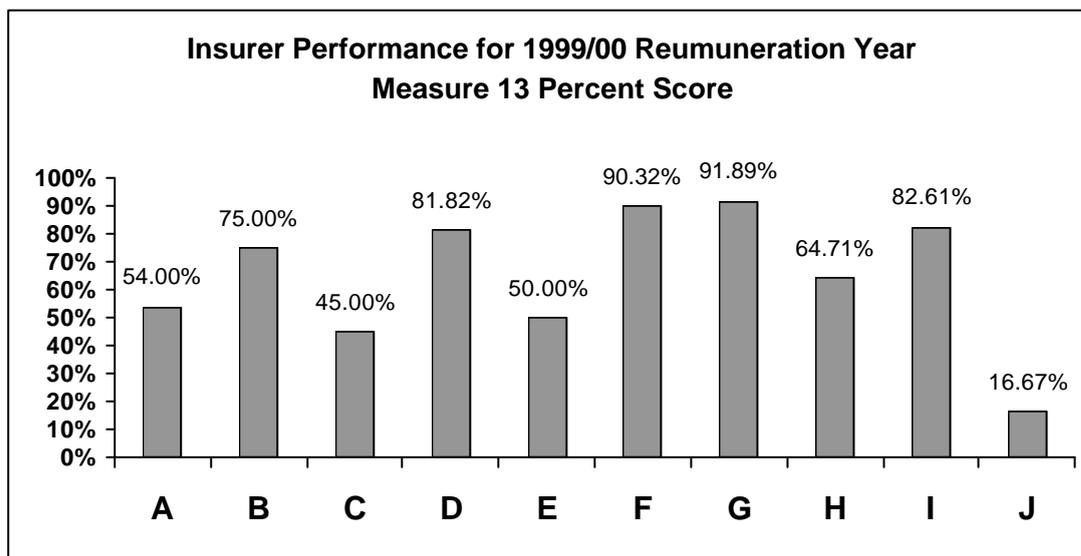
5.40 As Table 5.3 shows, several insurers performed poorly with regards to applying the 21-day rule correctly. However, the performance of insurers with regards to the 42-Day rule was worse and very variable. As illustrated in Table 5.4, half of the insurers received percentage scores less than 70% and only two insurers received scores over 90% in relation to this measure.

Table 5.3 Insurer performance for 1999/00 Remuneration Year – 21 Day Rule Applied Correctly



Source: WorkCover Authority, "Legislative Council General Purpose Standing Committee No 1 Outline of Insurer Performance Measures and Scheme Outcomes that the Performance Measures are Designed to Achieve", 5 April 2002, p.10

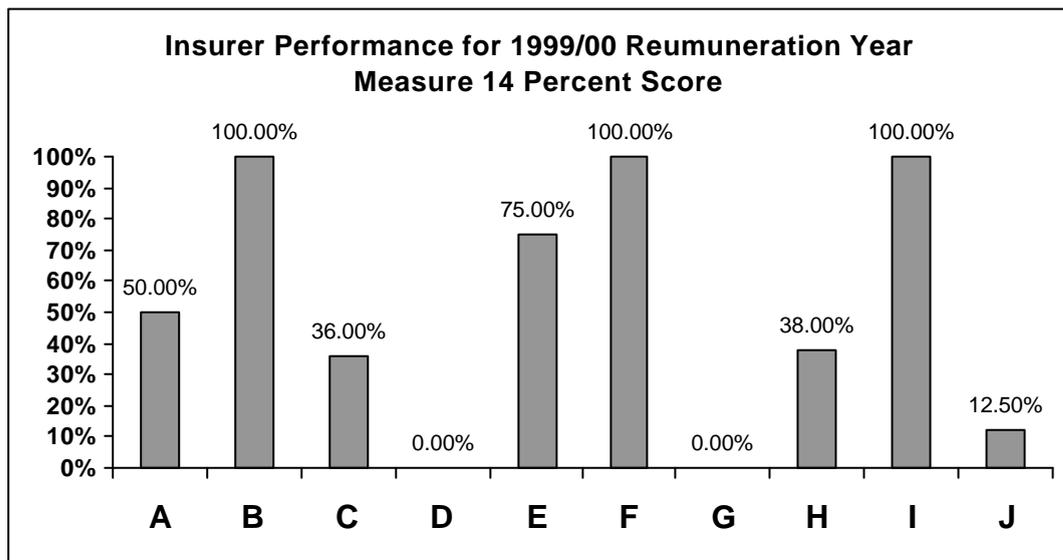
Table 5.4 Insurer performance for 1999/00 Remuneration Year – 42 Day Rule Applied Correctly



Source: WorkCover Authority, "Legislative Council General Purpose Standing Committee No 1 Outline of Insurer Performance Measures and Scheme Outcomes that the Performance Measures are Designed to Achieve", 5 April 2002, p.11

Short term and long injury management

- 5.41** The worst standards of performance across the industry can be seen by the measures, which assessed insurers performance with regard to short term and long term injury management. Within these measures insurers were measured against return to work benchmarks, which require continuous improvement relative to historical performance. Adjustments were made to the benchmarks to allow for variation in industry and claims mix.
- 5.42** A desirable outcome of the Scheme is to ensure that insurers manage short term and long term claims efficiently and effectively and that injured workers return to sustainable work as quickly and safely as possible.¹⁵²
- 5.43** As Table 5.5 shows three insurers performed exceptionally well with regard to their management of short term claims, receiving scores of 100%. However six insurers performed very poorly receiving scores less than 50%, two of which received 0% scores.

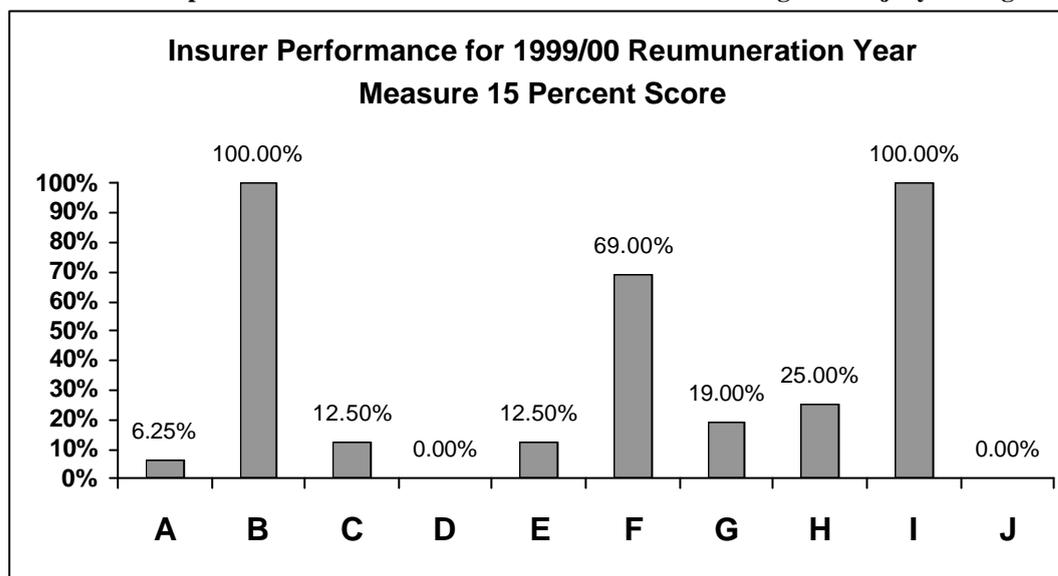
Table 5.5 Insurer performance for 1999/00 Remuneration Year – Short term Injury management

Source: WorkCover Authority, "Legislative Council General Purpose Standing Committee No 1 Outline of Insurer Performance Measures and Scheme Outcomes that the Performance Measures are Designed to Achieve", 5 April 2002, p.11

¹⁵² Correspondence received from Ms Kate McKenzie, General Manager, WorkCover NSW, 5 April 2002, p 11.

5.44 The management of long-term claims was also mixed. Two out of the 10 insurers received scores of 100%. However seven of the insurers received scores of less than 30%. Two insurers received scores of 0%, as illustrated in table 5.6.

Table 5.6 Insurer performance for 1999/00 Remuneration Year – Long term injury management



Source: WorkCover Authority, "Legislative Council General Purpose Standing Committee No 1 Outline of Insurer Performance Measures and Scheme Outcomes that the Performance Measures are Designed to Achieve", 5 April 2002, p.12

Reasons for underperformance

5.45 Both the qualitative and quantitative information received by the Committee indicates that prior to the 2001/02 remuneration year performance by insurers with regards to early injury management and claims management was generally poor. However, it should be noted that a couple of the insurers performed well across all of the performance measures.

5.46 It is noted that the data provided in these tables is now a number of years old, although it was the most recent information able to be provided to the Committee by WorkCover. In correspondence to the Committee WorkCover suggested that the data may not represent entirely the current performance of insurers:

Insurers have indicated that data from the 1999/00 remuneration period may give a misleading impression of the current performance of an insurer and that the information at best can be considered as "lead indicators" of the performance of individual insurers.¹⁵³

5.47 The Committee received evidence indicating that one of the core reasons why insurers were not performing well over a range of measures prior to 2001/02 may be that the financial incentives were not in place to encourage them to do so.

¹⁵³ Correspondence received from Ms Kate McKenzie, General Manager, WorkCover NSW, 5 April 2002, p 3.

5.48 In his evidence to the Committee Mr Grellman indicated that, unlike a privatised system, insurers in the NSW Scheme are not underwriting the Scheme and hence do not have the same incentives to perform:

If you look at the experience of insurers in jurisdictions where the risk is carried by the insurance community—there are some states in the US where this is worth having a look at—there really are some world's best practice processes and procedures to rehabilitate people who are injured. They are doing that because it is their own capital at risk and they want people to get back into the workforce sooner rather than later so that that will reduce the cost to them of remuneration of those employees for their incapacity, or of supporting them during their incapacity. At the moment, under the current system, I do not think that there are is much incentive for the insurers, given the role that they are playing, to reach for best practice rehab activities.¹⁵⁴

5.49 Mr Kelso also highlighted this perspective. In correspondence to the Committee he wrote:

The fact that the Committee considers that industry performance has been poor is largely a reflection of the lack of alignment between overall scheme objectives and insurer remuneration measures.¹⁵⁵

5.50 Mr Walsh, summarised for the Committee the findings of study undertaken by PwC into the remuneration arrangements for insurers:

I suppose at the highest level what we found was that there is not enough incentive in the system at the moment to reward insurers for good performance—or to penalise them, for that matter, for bad performance.¹⁵⁶

5.51 WorkCover is aware of the previous problems regarding the lack of financial incentives for insurers.¹⁵⁷ In her evidence to the Committee Ms McKenzie indicated that the new remuneration arrangements being developed by WorkCover in conjunction with the insurers is an attempt to change the incentives.¹⁵⁸

I would agree that there is a general consensus that there is poor performance. I guess the fundamental point of introducing the new insurer remuneration arrangements is to try to change the incentive for the insurers. Previously, they have been paid mainly on a base remuneration rate so they get the same amount of money whether they perform well or badly.¹⁵⁹

¹⁵⁴ Evidence of Mr Richard Grellman, 21 November 2001, p 6.

¹⁵⁵ Correspondence received from Mr Jon Kelso, IAG, 28 June 2002, p 3.

¹⁵⁶ Evidence of Mr John Walsh, Partner, PwC, 21 November 2001, p 12.

¹⁵⁷ Correspondence received from Ms Kate McKenzie, General Manager, WorkCover NSW, 5 April 2002, p 13.

¹⁵⁸ The new insurer remuneration arrangements are considered in some depth later in this chapter.

¹⁵⁹ Evidence of Ms Kate McKenzie, General Manager, WorkCover NSW, 24 September 2001, p 10.

5.52 The Committee has not received any quantitative evidence indicating that there has been a marked improvement in the performance of insurers since the new remuneration arrangements have been implemented. The Committee has however received some evidence from witnesses suggesting that this may be the case.

5.53 In her evidence to the Committee Ms McKenzie, indicated that she thought the new arrangements were having a positive impact on the behaviour of insurers. She said:

It is developing, it is still early days. I do not want to be overly optimistic, but it is certainly something that we will focus on to ensure that we are achieving the outcomes. The early signs are encouraging. Insurers have been hiring more injury management staff and are serious about it. With luck, and if our projections prove to be accurate, that should lead to improve outcomes from the point of view of both the scheme and injured workers.¹⁶⁰

5.54 In her evidence Ms Yaager indicated that the unions had witnessed a change in the behaviour of insurers, particularly in relation to the payment of claims. She said:

I must point out that the unions are complimentary of insurers at the moment. They believe they have seen a real shift in insurance culture since 1 January: The insurers are starting to pay claims on time and to develop relationships with the union. The GIO has met with the Police Association to build a relationship and discuss how they can work better together. I do not know whether it is the new insurance remuneration package that WorkCover has put in place or the fear of this review and the fact that insurance companies will not be operating under the WorkCover scheme any longer, but there has been a shift.¹⁶¹

5.55 Mr Colin Fagen, General Manager Workers Compensation, QBE, indicated that the new remuneration arrangements have resulted in them improving the skill set within the organisation. He said:

Basically we are employing people with different skill sets, allied medical backgrounds, different tertiary qualifications, industrial relations management, et cetera. People bring the parties together face to face and try to speed up the process. A number of individuals in the process are not acting speedily or with any degree of urgency to handle an injured person's claim. What happens in the first three to four weeks basically sets the process for the next five years. We are ensuring that we are acting in a timely manner by getting out and bringing people together in collaboration and communication.¹⁶²

¹⁶⁰ Evidence of Ms Kate McKenzie, General Manager, WorkCover NSW, 6 March 2002, p 32.

¹⁶¹ Evidence of Ms Mary Yaager, OH&S Workers Compensation Coordinator, Labor Council of NSW, 7 July 2002, p 40.

¹⁶² Evidence of Mr Colin Fagen, Manager, Workers Compensation, QBE, 6 March 2002, p 53.

5.56 The Committee also heard evidence that the new remuneration arrangements may not be sufficient to rectify the problems being experienced with insurers performance. In correspondence to the Committee Mr Kelso, indicated that only private underwriting could fully solve the performance issues of insurers:

While the new remuneration measures are a step in the right direction, as discussed at our appearance before the Committee last year a system of private underwriting, with insurers capital at risk, provides the ultimate incentive and discipline for maximising operational performance.¹⁶³

5.57 In her presentation at the Workers Compensation Forum, Ms Nancy Carl, Industrial Officer, NSW Labor Council, indicated that the remuneration arrangements may not aid the Scheme's objectives. She said:

The way that the current remuneration and incentive arrangements are made will not, we say necessarily deliver the scheme's objectives. The options to be explored include insurers handling the investment, other agents administering and managing the claims, and the exploration of one administrator for all claims.¹⁶⁴

5.58 In his evidence to the Committee Mr Daniel Tess, Director, PwC, indicated that the changes to the remuneration arrangements were not certain to achieve the desired outcomes. Mr Tess told the Committee that an actuarial study undertaken by PwC into the new arrangements found that there is a 75% chance that the remuneration changes would produce scheme savings of between 3.4% and 17%. Conversely, there is a 25% chance that the new arrangements would either produce no savings at all to the scheme or could in fact increase costs.¹⁶⁵

Conclusion

The Committee recognises WorkCover's efforts in working towards new remuneration arrangements with the aim of more closely aligning the remuneration system with the overall Scheme objectives. However, the Committee is concerned that the new remuneration arrangements may not be a sufficiently powerful tool to achieve the desired results.

5.59 The Committee is concerned that one of the reasons why WorkCover has had difficulty in controlling the work undertaken by insurers with regards to claims and injury management is that the authority's regulatory powers do not provide sufficient mechanisms for monitoring, overseeing and enforcing the work which the insurers are licensed to undertake.

¹⁶³ Correspondence received from Mr Jon Kelso, IAG, 28 June 2002, p 3.

¹⁶⁴ Presentation by Ms Nancy Carl, Industrial Officer, NSW Labor Council, 15 March 2002, p 35.

¹⁶⁵ Evidence of Mr Daniel Tess, Director, PwC, 21 November 2001, p 16.

Regulation of insurers

5.60 The Committee has heard evidence that despite the authority's ability to license and set the remuneration arrangements for insurers, WorkCover is limited in the extent to which it can regulate insurers in the current legislative environment. For details about the current licensing arrangements for insurers please refer to Chapter 3 of the Committee's Fourth Interim Report and Chapter 5 of the Committee's Third Interim Report.

5.61 In her evidence to the Committee, Ms McKenzie indicated that the licensing arrangements were limited and that the remuneration system was one of the few tools they could use to modify insurers' behaviour:

There are some limitations on that because essentially in our scheme insurers are licensed. We do not have a direct contract with the insurers so the remuneration arrangements are the main tool that we have got for modifying their behaviour. We can fine them. We can audit them. We have introduced a lot more provisions that will allow us to do that in the future. In the past that has not been the tradition. In a way that is a consequence of the way that the scheme is set up, that they are licensed insurers and once they get their licence...¹⁶⁶

5.62 Ms McKenzie also indicated that the legislative framework limited WorkCover's broader regulatory powers:

I certainly think there are limitations associated with the current legislative framework and the powers that WorkCover has. In most cases we are one step removed: it is all care but no real control over what the players in the scheme do. In my view, we need to move in one direction or the other.¹⁶⁷

5.63 In his evidence to the Committee, Mr Douglas Pearce, Chief General Manager, Commercial Insurance and Financial Services, NRMA (now IAG) indicated that the current system does not provide an adequate regulatory environment for the management of the Scheme. He said:

Having recently tried to look into and understand how this scheme came about, and our own role, I understand it to be that basically we had an underwritten scheme that was then changed to one where the Government did not become the underwriter, insurers were no longer underwriters but acted and were regulated as if they were. So, you took away all of these financial imperatives and all the financial accountability on the one hand but it was not replaced with any regulation or contractual arrangement between it and WorkCover or the owner of the scheme.¹⁶⁸

¹⁶⁶ Evidence of Ms Kate McKenzie, General Manager, WorkCover NSW, 24 September 2001, p 11.

¹⁶⁷ Evidence of Ms Kate McKenzie, General Manager, WorkCover NSW, 14 February 2002, p 32.

¹⁶⁸ Evidence of Mr Douglas Pearce, Chief General Manager, Commercial Insurance and Financial Services, NRMA, 21 November 2001, p 45.

5.64 While discussing the incentives that could be created for insurers by changing their remuneration arrangements Mr Walsh indicated that WorkCover did not have sufficient powers available to them to penalise insurers. He said:

I suppose at the highest level what we found was that there is not enough incentive in the system at the moment to reward insurers for good performance—or to penalise them, for that matter, for bad performance. At the same time there is not enough strength in the tools available to WorkCover to ensure that insurers make that commitment.¹⁶⁹

5.65 Mr Fagen suggested that the way WorkCover is able to regulate insurers does not allow for differences in performance and restricts innovation. In evidence to the Committee he said:

The problem is when regulating for a whole scheme the regulators tend to establish rules for the lowest common denominator. As such that restricts organisations that may be more innovative or above that base line. To ensure that we are complying with the process components is probably a poor use of resources.¹⁷⁰

Monitoring and enforcement

5.66 The Committee has also heard evidence which has led the Committee to conclude that improved monitoring of insurers and the application of more stringent penalties for under performance may also improve the incentives for insurers and hence their performance.

5.67 Of particular concern to the Committee is the monitoring of insurers. The Committee is concerned that to a large extent WorkCover relies on insurers to monitor their own performance.

5.68 In her evidence Ms McKenzie indicated that WorkCover had largely relied on insurers to report to them about their performance, except for occasional audits. In her evidence to the Committee, she said:

We certainly keep an eye on what they are doing but we rely on them to report to us about their performance largely. We hope with improved information technology and data over the next couple of years that will be less of an issue for us because we would like to get to the point where we are directly linked into the insurer's system so we could actually see for ourselves what they are doing.¹⁷¹

At the moment we are pretty much reliant on them telling us what they are doing, with some audits over the top of it to verify that information. As part of the new insurer remuneration package we have actually invested in some independent third

¹⁶⁹ Evidence of Mr John Walsh, Partner, PwC, 21 November 2001, p 12.

¹⁷⁰ Evidence of Mr Colin Fagen, Manager, Workers Compensation, QBE, 6 March 2002, p53.

¹⁷¹ Evidence of Ms Kate McKenzie, General Manager, WorkCover NSW, 24 September 2001, p 10.

party audits of what the insurers are up to, just so that we can cross-check whether the information that we have given is right.¹⁷²

5.69 The Committee understands that under the 2000/01 system of remuneration for insurers there were 15 performance measures. Measures 1-13 were based on a self-assessment by each insurer of their own performance. WorkCover conducted occasional spot check audits on self-assessment results to ensure they were accurate and reported in accordance with the measurement requirements. The remaining two measures concerned tail liability reduction and were independently assessed by the Scheme's actuary.¹⁷³

5.70 Under the new remuneration arrangements for 2001/02 there are 18 performance measures, eight of which will be self audited.¹⁷⁴ The eight measures to be self audited include:

- Correct workforce industry classification rating;
- Claims estimating;
- Payment of continuing benefits;
- Soundly based decisions and dispute prevention;
- Timely offer of Section 66 entitlements;
- Injury management early contact;
- Proactive injury management; and
- Timely determination of liability.¹⁷⁵

5.71 Five measures will be audited through an automatic calculation, WorkCover's actuaries will assess three, and two will be audited manually.¹⁷⁶ In correspondence to the Committee WorkCover states that it will undertake spot checks of information received under the self-auditing process. They wrote:

Following completion of self-audit by insurers WorkCover will undertake spot checks of submitted data recorded by the insurer as meeting the performance criteria to confirm the integrity of these results. The process of sample selection

¹⁷² Evidence of Ms Kate McKenzie, General Manager, WorkCover NSW, 24 September 2001, p 11.

¹⁷³ Correspondence received from Ms Kate McKenzie, General Manager, WorkCover NSW, 5 April 2002, p 1.

¹⁷⁴ Correspondence received from WorkCover NSW, 7 July 2002, p 2.

¹⁷⁵ Correspondence received from WorkCover NSW, 7 July 2002, p 2.

¹⁷⁶ Correspondence received from WorkCover NSW, 7 July 2002, p 2.

will be by random selection drawn from the sample that the insurer has reported as correct to WorkCover.¹⁷⁷

- 5.72** The Committee also understands that WorkCover has established a procedure where if there is a discrepancy between the result reported by the insurer and that which WorkCover derives after undertaking a “spot check” then a meeting will be held to discuss the reasons for the difference. WorkCover has also put in place a penalty system where the short-term performance fee will be affected where a spot check determines a calculated percentage difference.¹⁷⁸
- 5.73** The Committee has not heard any evidence about the numbers of spot audits undertaken by WorkCover. As a consequence, the Committee cannot draw conclusions with regards to their frequency or impact.
- 5.74** The Committee is concerned the system of self-auditing and general monitoring currently utilised by WorkCover in overseeing insurers. This system does not provide WorkCover with enough information to determine how well insurers are actually performing. In particular, the self-auditing and spot auditing processes concern the Committee.

Conclusion

The current powers given to WorkCover in terms of licensing and remuneration provide WorkCover with limited options for penalising insurers where and when a problem is identified. Contractual arrangements may offer WorkCover more options for penalising insurers in these situations.

The problems in relation to WorkCover’s relationship with insurers are part of a bigger issue regarding WorkCover’s role in the Scheme and should be considered by the Scheme Design Review. The Committee is of the opinion that WorkCover is expected to have an interest in all aspects of the Scheme and in many ways is expected to oversee and manage the Scheme, yet is unable to properly fulfil this role because it lacks sufficient regulatory and enforcement powers.

Recommendation 11

That the Minister, after consultation with the Auditor General and Scheme Design Review Steering Committee, appoint a consultant or external agency to conduct an independent review of insurers to assess the quality of their claims management and the results provided to the Law and Justice Committee (Recommendation 26) together with recommended actions. This is a necessary precursor to any decision to separate the functions and responsibilities of insurers in the Scheme.

¹⁷⁷ Correspondence received from WorkCover NSW, 7 July 2002, p 6.

¹⁷⁸ Correspondence received from WorkCover NSW, 7 July 2002, p 7.

- 5.75** A benefit of contractual arrangements between WorkCover and insurers is that they would allow WorkCover to have individually tailored contracts with each insurer. Unlike licenses, contracts can differ between the insurers reflecting the different expectations/outcomes that may be required from each.

Recommendation 12

That the Scheme Design Review note the Committee's concerns regarding the current insurer licensing arrangements and consider the introduction of individual contracts.

Each contract should set out clear performance requirements of the agent and penalties that would apply if those requirements were not met.

Insurer remuneration arrangements

- 5.76** On a number of occasions in the Committee's interim reports the Committee has raised concerns about the implementation of the 2001/02 remuneration arrangements for insurers.¹⁷⁹
- 5.77** The implementation date for the new arrangements was set for July 2001, however the Committee has heard evidence that more than a year after the implementation date, the exact details of a number of the measures have not been finalised. In particular, the Committee understands that the following measures have not been finalised:
- Measure 17 Return to Work - which has a performance fee rating of 25% and is worth \$24.54million¹⁸⁰
 - Measure 18 Tail Management – fees open ended.
 - Measure 20 Loss Ratio – fees open ended.
 - Investment Fee – remuneration based on a percentage of the market value of investments.¹⁸¹
- 5.78** In correspondence to the Committee Mr Thomson indicated that the industry is concerned by this situation:

It is difficult to determine when there will be final agreement on the total package due to the issues surrounding the actuarial measures of return to work, tail and more importantly for the loss ratio. Broadly speaking the industry would contend

¹⁷⁹ See Chapter 4 of the Committee's Second interim Report, Chapter 5 of the Committee's Third Interim Report and Chapter 2 of the Committee's Fourth Interim Report)

¹⁸⁰ Correspondence received from WorkCover NSW, 7 August 2002, p 3.

¹⁸¹ Correspondence received from WorkCover NSW, 7 August 2002, p 3.

that the fundamentals of the remuneration arrangements for 2001/02 have been finalised. However, as noted above there is still a significant amount of work to be completed that has significant amounts of remuneration allocated to it, and this is of real concern to the industry.¹⁸²

5.79 The Hon John Della Bosca concurred that the remuneration arrangements were yet to be finalised, but that these measurements were less critical than others. In correspondence to the Committee received on 30 July 2002 he wrote:

After the structure for the package was approved by the WorkCover Board in July 2001, WorkCover and the insurers have been working to jointly implement the package. This has involved the finalisation of detailed definitions for each of the measures. WorkCover have advised this work is now largely complete. ...Detailed specification of the measures is complete for all the service capability index measures and all the performance measures, except for return to work, tail management and loss ratio. While conceptual arrangements for these measures have been agreed, they are based on actuarial models which required substantial development, particularly the loss ratio model which will require up to 12 months development work. The timing of these measures was considered less critical because of their longer term nature, than resolving the shorter term operational measures.¹⁸³

Conclusion

It is disadvantageous for insurers and inappropriate for remuneration arrangements to be implemented prior to the industry and WorkCover knowing the details of the arrangements. This situation has the potential to result in problems for both the insurers, in terms of the management of their work and for WorkCover, in terms of their regulation of insurers. The cumulative impact of these problems has the potential to impact adversely on the Scheme as a whole.

Recommendation 13

That where possible the development and sign off, of all benchmarks of new insurer remuneration arrangements occurs prior to their date of implementation, so that the industry is completely clear about the details of the new arrangements and are able to set up appropriate systems for monitoring and management in advance.

¹⁸² Correspondence received from Mr Robert Thomson, Manager Workers Compensation, ICA, 29 July 2002, p 3.

¹⁸³ Correspondence received from the Hon John Della Bosca, Minister for Industrial Relations, received 30 July 2002.

Separation of insurer responsibilities and functions

5.80 Another suggestion for improving the management of claims and injuries, currently solely undertaken by insurers, was to allow other service providers to perform these functions. During the inquiry the Committee heard evidence that it would be possible for other agencies to undertake some of the services provided by insurers. It was also thought that if other agencies were to undertake certain aspects of the insurers role, such as injury management, improvements in service delivery may result.

5.81 Given the evidence received on this issue and the Committee's concerns regarding the performance of insurers, the following draft recommendation was developed for consideration and comment by stakeholders:

That the Scheme Design Review consider separate tenders for each of the main functions of WorkCover's agents. The main functions include:

- *Premium calculation.*
- *Fund investment.*
- *Claims and injury management.*
- *Tail management (management of claims over three years old and not included in an employers premium calculation).*

Non-insurers should be allowed to tender. WorkCover should consider which functions, if any, are appropriate for it to undertake.

5.82 The Committee received a mixed response to this draft recommendation with four respondents being very supportive, three cautious and two unsupportive of the proposal.

5.83 Those supportive of the proposal cited the following reasons for their support:

- Because underwriting is not an issue in the NSW Scheme – other agencies could feasibly have the skills to perform some of the functions currently performed by insurers,
- Allowing new providers other than insurers would help bring new skill sets into the environment and perhaps improve the culture. At least it could improve the focus on certain areas.

5.84 In response to this recommendation Mr McCarthy indicated that the proposal was worth considering:

I think it is worth looking at. If you stayed in a managed funding arrangement you have basically got one insurance company, WorkCover. It needs to make sure that it is going to get the best service in relation to premium collection, fund investment, claims management and the like, and it does not necessarily follow

that one organisation is going to be the best at all of those. It does not necessarily follow that they will not be either.¹⁸⁴

5.85 Mr McCarthy also indicated that there should be no reason why non-insurers couldn't be involved in managing aspects of the Scheme, given the insurers currently managing the claims were not underwriting the Scheme:

Should non-insurers be allowed to tender? Well, assuming that they can deliver the service, I do not see any reason why they should not. This is a bit of a misnomer that we get into here where we keep referring to the insurers. They are not really insurers in this scheme, they are agents or claims handlers or premium collectors; it just so happens that they happen to be insurance companies that provide that service. I do not believe you need to be an insurance company. The difficulty we have is that the only people or the only organisations with the capability to hit the ground running with this stuff at the moment tend to be insurance companies. If you were going to allow other players into the game, I think you would need to have a lot of lead time in order for them to gear up and have the capability and understanding of what was needed to be able to provide the services and deliveries that were expected of them.¹⁸⁵

5.86 Mr Brack also stated this view:

We are not dealing with an insurance market at all. You cannot have an insurance market where you set the premiums and the benefits, then say to insurers, "Go out and be insurers" because they cannot be insurers in that context. It is virtually impossible. This environment is altogether different. It is about injury management and claims management. ...Return-to-work strategies do not fit easily with the sorts of skills they have, and they do not fit the conventional insurance model. There is no evidence that insurers behaving like true insurers can effectively operate an early intervention return-to-work scheme. However, having said that, as you will know several pilot studies were carried out, two of which—EMI and QBE—demonstrated that they can do things in a non-conventional insurance environment to improve their management of injury, that is in a return-to-work, early intervention kind of environment. Some of the innovations were very good. There is very strong debate about whether the innovations are economic in the sense that the amount of resources they had to apply to the return-to-work model was significant.¹⁸⁶

5.87 In his evidence to the Committee Mr Pattison highlighted that new providers may help change the culture. He said:

If you remain with the prospect of private underwriting, does that mean that perhaps providers have to remain private insurers? Does that limit the ability to bring new players into the market, new skill sets, new cultures and new approaches? We see that as, perhaps, being part of the future. With alternative

¹⁸⁴ Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 2 July 2002, p 13.

¹⁸⁵ Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 2 July 2002, p 13.

¹⁸⁶ Evidence of Mr Gary Brack, Chief Executive, Employers First, 2 July 2002, p 29.

providers we may start to get some of the cultural and service delivery changes that we need. Despite an extensive legislative program since the mid-1990s, we would need to acknowledge that we still have not put the rubber on the road in terms of service delivery to employers and injured workers. We still have a challenge to deliver an effective post-injury management system. Part of the future solution, in our view, is to bring new players into the game.¹⁸⁷

5.88 Mr McCarthy indicated that some functions could feasibly be separated from insurers:

Are they the only functions that could be provided? The only other function that I could think of that you might separate out might be the actual payment capabilities in that claims and injury management is very much that and claims processing is very much a different function. So it is possible that you could get better value by having an organisation responsible for the financial transaction processing, if I can call it that. I have not given a lot of thought as to how you might go about doing it but in answering the question, is there anything else you could do, that is something that could be possible.¹⁸⁸

5.89 The Australian Psychological Society also highlighted injury management and treatment as an area which could be managed by other agencies. In correspondence to the Committee they wrote:

Some separation of functions may well be appropriate, especially such that the management of injury assessment, treatment and rehabilitation is not made subservient to other functions, especially financial, but are still undertaken as part of a total system and are accountable for performance, including in financial terms.¹⁸⁹

5.90 Ms Weston indicated that the management of the tail could be enhanced if long-term claims were managed by an organisation with special expertise. In correspondence she wrote:

The effective management of the tail would, in our view be greatly enhanced if it was separated functionally and opened to tender to agents with special expertise in the management of these cases.¹⁹⁰

5.91 In response to a question regarding the skills of insurers in managing vocational training for injured workers, Mr Thomson indicated that this was work not currently being undertaken by insurers:

Some work on this is done by the insurers. It is probably not to the extent that it could possibly be done. The issue comes back to assessing how effective it is

¹⁸⁷ Evidence of Mr Greg Pattison, General Manager, Labour Market Services, Australian Business Ltd, 2 July 2002, p 28.

¹⁸⁸ Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 2 July 2002, p 13.

¹⁸⁹ Correspondence received from Australian Psychological Society, 19 July 2002, p 35.

¹⁹⁰ Correspondence received from Ms Helen Weston, Kairros Pty Ltd, 18 June 2002, p 2.

going to be and how effectively it can be managed. Even if you take it away from workers compensation for the moment and head toward, say, Centrelink, it has the same sort of tasks, to try to get people back to work. They probably have more appropriate skills and facilities available to do it. The insurers are limited in that and probably have not had a great deal of training in that. There is definitely work being done in it, but whether it is to the extent required I am not sure.¹⁹¹

5.92 There were however, many stakeholders who did not support the entry of other agents. In correspondence to the Committee Mr Gilley was cautious about the idea of allowing other agents to manage aspects of the Scheme. He indicated that the separation of functions might cause disruptions to the Scheme's management:

We believe that any separation of the functions of insurers must be considered very very carefully. There is only one function which we believe can be separated without causing major disruptions to the management of the scheme and that is funds investment, although there is little or no evidence to suggest that the current arrangements are failing scheme objectives. Insurers are expert at risk assessment and premium calculation. These skills have been developed over decades and are extremely difficult to replicate consistently.¹⁹²

5.93 In his evidence to the Committee Mr Thomson indicated that there would be little point in allowing non-insurers to become agents for the Scheme if it is going to be privatised in the near future. He also raised the issue of needing to ensure that the agents had the appropriate base skills. He said:

It comes back to looking at the long-term objective of the scheme. If the long-term objective of the scheme is not to privatise at any point in the next five to 10 years, there might be a role for agents who are not insurers if they can demonstrate that they have appropriate resources and capabilities and that they can add value to the scheme. But if the outcome that you are seeking is privatisation in three years or five years, there would be little value in having new entrants to the market in that sort of environment. That will not assist you in your end game. The Industry believes that, if new agents come into the market, we can compete adequately with them. There is no problem about that. But you need to ensure that what they bring to the scheme will increase the value provided. You have to determine whether they have the capacity, the resources and the capabilities to deliver what is required to be delivered.¹⁹³

5.94 In her correspondence to the Committee Ms Cull commented that the inclusion of other agents was not desirable because it could fragment management. She said:

This Recommendation is not considered desirable as it fragments the functions of the insurer when the aim should be to create efficiency and/or uniformity in approach. Again it would be interesting to ascertain what evidence was available to

¹⁹¹ Evidence of Mr Robert Thomson, Manager Workers Compensation, ICA, 6 March 2002, p 59.

¹⁹² Correspondence received from Mr Richard Gilley, Managing Consultant, RiskNet Group, 24 June 2002, p 4.

¹⁹³ Evidence of Mr Robert Thomson, Manager Workers Compensation, Insurance Council of Australia, 2 July 2002, pp 21-22.

the Committee to support this Recommendation particularly as a prior attempt by WorkCover to “hive off” claims management in a pilot scheme to non insurers resulted in one notable disaster which is the subject of present litigation between the nominated claims manager and the WorkCover Authority.¹⁹⁴

5.95 IAG indicated in their correspondence to the Committee that they did not support the recommendation, for the following reasons:

- Scheme outcomes are likely to be optimised by allowing the same organisation to apply an integrated approach to managing both short and long term claims. For example, an integrated approach allows for synergies and efficiencies in areas such as administrative processes as well as injury management. Return to work and medical treatment.
- The evidence from well functioning, privately underwritten schemes suggests that scheme outcomes and the interests of all parties are optimised by allowing flexibility and integration of functions, particularly claims management functions.
- It could lead to a deterioration in service standards to employers as they would be required to deal with multiple agents.¹⁹⁵

Conclusion

There are some potential benefits in allowing non-insurers to undertake aspects of the work currently performed by insurers in the Scheme. There are particular benefits in claims management being undertaken by other organisations who are able to focus on the particular requirements of injured workers. The implementation of WorkCover’s new Information Technology strategy should help facilitate the separation of various aspects of the Scheme by improving the sharing of information and by enabling the automatic transfer of clients between agencies where required.

5.96 The Committee is cognisant of the concerns raised by a number of stakeholders regarding the potential inefficiencies and confusions, which could arise under a system where other providers could take on the functions performed by insurers. As a consequence, the Committee feels that the pros and cons of allowing non-insurers into the Scheme requires further consideration and in depth analysis.

¹⁹⁴ Correspondence received from Ms Kim Cull, President, The Law Society of New South Wales, 27 June 2002, p 5.

¹⁹⁵ Correspondence received from Mr Jon Kelso, Business Planning, Insurance Australia Group, 27 June 2002, 6.

Recommendation 14

That the Scheme Design Review include a feasibility study considering separate tenders for each of the main functions of WorkCover's agents (insurers). The main functions for consideration include:

- **Premium calculation;**
- **Fund investment;**
- **Claims and injury management;**
- **Tail management (management of claims over three years old and not included in an employer's premium calculation);**
- **Claims payments.**

The tender should be clear that non-insurers would be considered.

The Victorian experience with regard to including non-insurers, as agents of WorkCover, should be considered as part of this review.

Regulation of non-insurer service providers

5.97 Further to the evidence heard by the Committee regarding the regulatory powers of WorkCover with regards to insurers, the Committee also heard evidence that the powers to regulate other service providers in the Scheme is also limited. This issue was discussed in Chapter 6, of the Committee's Third Interim Report.

5.98 In his evidence Mr Pearce of the (then) NRMA indicated that incomplete regulation of other service providers was resulting in problems for the Scheme. He said:

...there has been a drain by service providers with incomplete regulation, and that is still the case.¹⁹⁶

5.99 In his evidence to the Committee Mr Colin Fagen, QBE, also indicated that there was a need to regulate other providers to improve the efficiency of the Scheme:

One of the factors that is often missed is that injury management revolves around early collaboration with injured workers, doctors and employers. At the moment it is ineffective in only one party is being regulated, and that is ourselves. We are trying to be as effective as we can as a conduit between those parties to bring them together as quickly as possible to ensure proactive management of injured people. We spend time going through some of the minor process areas that

¹⁹⁶ Evidence of Mr Douglas Pearce, Chief General Manager, Commercial Insurance and Financial Services, NRMA, 21 November 2001, p 40.

restrict our effectiveness. As such, we need to ensure that we are allowed to be as flexible as possible in maximising the injury management, which is basically a subset of claims management.¹⁹⁷

And

We have a number of disparate parties at the moment that all need to be aligned. At the moment we tend to have one regulated.¹⁹⁸

5.100 In his evidence to the Committee Mr Thomson indicated a similar system to the insurer remuneration arrangements was needed for other service providers in the Scheme. He said:

Just touching base on the insurer remuneration arrangements, they have been developed in conjunction and consultation with the insurers and they have focused to a large extent on scheme outcomes and they have been defined in various remuneration measures. We believe that this approach needs to be expanded to cover some of the other service providers within the scheme so that their involvement is actually assessed on scheme outcomes and judged on that, so that they get a base fee for performance of certain aspects of their work, but then the other component of it is actually dependent upon the scheme outcomes they finally achieve.¹⁹⁹

Conclusion

There is an inconsistency between the regulation of insurers and the non-regulation of service providers

Recommendation 15

That the Scheme Design Review or an independent authority explore options for improving the regulatory powers of WorkCover with regard to non insurer service providers and the results of this review be reported to the Law and Justice Committee (See Recommendation 26).

¹⁹⁷ Evidence of Mr Colin Fagen, General Manager, Workers Compensation, QBE, 6 March 2002, p 53.

¹⁹⁸ Evidence of Mr Colin Fagen, General Manager, Workers Compensation, QBE, 6 March 2002, p 60.

¹⁹⁹ Evidence of Mr Robert Thomson, Manager Workers Compensation, Insurance Council of Australia, 15 March 2002, p 24.

Chapter 6 Injury prevention and injury management

This Chapter considers the continuum of injury prevention, assessment and management. These are the three important stages in any workers compensation scheme and effective action at any one stage has a major influence on the next step of the process for an injured worker.

Injury prevention

Occupational Health and Safety Summit

- 6.1** In its Third Interim Report the Committee discussed the issue of occupational health and safety and came to the conclusion that:

...a majority of workplace deaths and injuries are preventable. This further reinforces the importance of good OH&S practices in NSW.

- 6.2** The importance of occupational health and safety is reinforced by the Committee in its statement of key principles for good Scheme design. The first principle states:

The focus of the Scheme will be on injury prevention wherever possible.²⁰⁰

- 6.3** The Committee has received evidence that in recent years there have been improvements in the rate of occupational injuries. However, it also believes that this is an area in which improvements always need to be considered. It is for this reason that the Committee commends WorkCover for holding the Workplace Safety Summit in July 2002. The Summit was used to brainstorm ideas for reducing the incidence of workplace injuries and to try to reach consensus on these ideas. The Workplace Safety Summit provided an excellent opportunity to incorporate stakeholders in the development of policy and further improve ownership among stakeholders of the need to work towards improving occupational health and safety. The Committee looks forward to the Government's response to the Summit's communiqué.

- 6.4** The following section explores ways of providing incentives to employers to improve their injury prevention measures.

Incentives for employers

- 6.5** The Committee believes that the right incentives for employers can contribute greatly to improvements in occupational health and safety and in turn the prevention of workplace injuries.

- 6.6** In considering methods that could be used as incentives for employers to improve their prevention measures, the Committee analysed the financial imperatives currently available to employers. Other non-financial options for further strengthening the incentive structure were also considered in evidence.

²⁰⁰ The Committee's Principles are contained in the Conclusion on page 9 of this report.

Financial incentives

- 6.7** The Committee notes that one of the best ways to provide incentives for employers is through financial mechanisms.
- 6.8** One of the financial incentives offered under the current Scheme is that of premiums and employer excesses. Currently employers pay an annual premium based on their industry classification and claims cost experience. There are 529 industry classes, each of which has its own workers compensation premium rate and dust diseases levy.²⁰¹
- 6.9** For the purposes of premium calculation all employers are classified as either being Category A or Category B. Category A are those employers whose basic tariff premium exceeds \$3,000 at the time the insurer first demands a premium payment. This category of employers has their premium adjusted to take into account their past claims experience.
- 6.10** All employers who do not fall into the Category A group are referred to as Category B employers. These employers do not have their premium experience adjusted and, unlike Category A employers, they have the option of insuring against the \$500 claims excess payment on each workers compensation claim.
- 6.11** The Committee heard evidence on ways to improve incentives for employers through the excess system. The Committee was interested in suggestions that made the excess more relative to the employer's size. Generally in NSW a standard \$500 excess applies per claim made. This system is different from that which applies in other states where the excess is generally linked to the individual business and the income of the injured worker. This is achieved by making the excess equal to a certain number of days pay. For example in Victoria employers have to pay the first 10 days of incapacity while in Tasmania it is the equivalent of 5 days of injury.²⁰²
- 6.12** Another incentive for employers is the Premium Discount Scheme. Under this Scheme employers may qualify for premium discounts over a three-year period if they are assessed by an approved Premium Discount Adviser as meeting specified OH&S and injury management system benchmarks.²⁰³ Under the Premium Discount Scheme Small Business Strategy, small business employers may qualify for a premium discount if they successfully participate in OHS and injury management improvement programs.²⁰⁴
- 6.13** In her evidence to the Committee, Ms Kate McKenzie, General Manager, WorkCover NSW, highlighted the importance of premiums as an incentive for employers:

In theory, premiums are meant to serve two objectives. They are meant to cover scheme costs and provide a financial incentive for reducing the incidence, severity and duration of workplace injuries. For premiums to work effectively as a

²⁰¹ WorkCover NSW, *Outline of the NSW Workers Compensation Premium Scheme 2001/2002*, p 3.

²⁰² Heads of Workers Compensation Authorities, *Comparison of Workers Compensation Arrangements in Australian Jurisdictions*, July 2000, p 6.

²⁰³ WorkCover NSW, *Outline of the NSW Workers Compensation Premium Scheme 2001/2002*, p 3.

²⁰⁴ WorkCover NSW, *Outline of the NSW Workers Compensation Premium Scheme 2001/2002*, p 4.

prevention mechanism, they should be closely aligned to the true risk and fully cover employer or scheme costs.²⁰⁵

6.14 The Committee considered a number of options for achieving further improvements in the financial incentives offered through the excess system in particular and prepared the following draft recommendations for consideration and comment by stakeholders:

That, to take account of inflation since the 1987 Act commenced, the standard excess of \$500 per claim should be increased to at least \$1,000 (\$500 in March 1987 is equivalent to approx \$1,000 in March 2002, based on increases in average weekly earnings).

That the option of buying out their excess for small employers and that the option of a reduced premium in return for a higher excess is considered by WorkCover for all employers.

That the standard claims excess per claim for large employers not choosing self insurance should be proportionate to the amount of annual premium paid.

6.15 In general, stakeholders were unsupportive of the recommendations. It was generally thought that the Committee needed to be very clear about what it was trying to achieve through implementing such changes and it was suggested that there may be more appropriate ways of achieving these aims.

6.16 The only support for the draft recommendations came from Ms Mary Yaager, OH&S Workers Compensation Coordinator, Labor Council NSW. In her evidence to the Committee Ms Yaager highlighted the Labor Council's support for an increase in employer's excess:

The union movement has been pushing that for the past 10 years, so it feels like groundhog day. You get a big tick for that one.²⁰⁶

6.17 Generally it was agreed that excesses could be utilised in some way to improve injury prevention and create the right incentives for employers but that there were other possibly more appropriate and effective options than those suggested in the draft recommendations.

6.18 In his evidence to the Committee Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, said that the excesses could be used to create the right incentives for employers. He said:

They require incentives to be able to provide suitable duties and so forth. The excess could be structured in a way that creates incentives rather than disincentives. Larger employers are very different and the premium formula is very sensitive to the way they behave in driving up their premiums.²⁰⁷

²⁰⁵ Presentation by Ms Kate McKenzie, General Manager, WorkCover NSW, 15 March 2002, p 5.

²⁰⁶ Evidence of Ms Mary Yaager, Manager OH&S and Workers Compensation, 2 July 2002, p 42.

²⁰⁷ Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 2 July 2002, p 22.

6.19 Mr McCarthy indicated that there were many ways that excesses could be used within the Scheme. In evidence he provided an example:

You could give a \$10,000 or a \$20,000 excess if they stay in the scheme, but they are really managing claims up to the first \$10,000 themselves, almost to the extent that WorkCover becomes the reinsurer. You are keeping them in the scheme, keeping control of them and not having the uncertainty about whether they were to go into financial difficulty and you would then have all the unfunded liabilities that the scheme is going to have to pick up through the uninsured liabilities system or just pick up because the self-insurer has gone broke. We need to watch what happens with self-insurers. We can use excesses as a viable alternative to that.²⁰⁸

6.20 Mr Robert Thomson, Manager Workers Compensation, Insurance Council of Australia, gave an example of how excesses could be used in a more positive way in his evidence to the Committee:

As a result of the Employers Mutual injury management pilot, they tried a different approach in relation to excesses. They notified all the employers in their scheme and said, "If you report your injury within the appropriate time frames, we will rebate the excess; we will actually give it back to you." So they got the excess back if they reported within the desired time frame; they used it as an incentive rather than as a disincentive. But for those who did not report within the time frame, they sent letters back to the employer saying, "You have missed out on the ability to achieve. You will not get your excess back." We probably have not expressed it in the paper, but I can say that they did it in two levels. They sent it to the financial controllers of the organisations, which quite often has a different impact within the organisation.²⁰⁹

6.21 In correspondence Mr Greg Pattison, General Manager, Workplace Solutions, Australian Business Limited ("ABL"), suggested that it may be better to structure excesses in terms of days wages rather than a dollar quantum because this takes into account the differences between organisations:

An alternative strategy, which would eliminate the need for indexing of the excess would be to express the excess in terms of working days e.g the employer may be responsible for the first 5 days wages. In our view this approach is inherently fairer and better reflects both the risk profile and employment cost profiles within a particular business.²¹⁰

6.22 However, some witnesses were cautious of making changes to excess arrangements without careful consideration because of the difficulties in predicting what the potential impact would be on employer behaviour. In his evidence to the Committee Mr Thomson

²⁰⁸ Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 2 July 2002, p 22.

²⁰⁹ Evidence of Mr Robert Thomson, Manager Workers Compensation, Insurance Council of Australia, 2 July 2002, p 24.

²¹⁰ Correspondence received from Mr Greg Pattison, General Manager Workplace Solutions, ABL, 25 July 2002, p 8.

indicated that increases to excesses could result in further delays to the reporting of injuries:

The industry believes that one of the biggest issues facing the scheme at the moment is early notification of claims and the commencement of injury management initiatives. At the moment the average reporting delay is about three weeks, on average, and for smaller to medium and employers it is probably even greater than that. The excess potentially encourages a further delay in the reporting of injuries to the insurer. It comes back to whether employers are encouraged to put them on sick leave and the like, and how they want to deal with them.²¹¹

6.23 Mr Thomson also raised concerns about whether an increase in the excess would actually result in changes to employers behaviour:

It is not how much financial impact it is going to have. If the employer only gets one or two claims every five or 10 years, the size of the excess is really not going to drive their behaviour. The size of the excess will drive their behaviour if they are having significant numbers of claims and they can potentially see a financial benefit in wearing that, rather than having excesses and claim costs impacting on the premium.²¹²

6.24 In his correspondence to the Committee Mr Mark Goodsell, Director NSW, Australian Industry Group ("AIG") indicated that the impact of provisional liability on employers needed to be considered before changes to excesses were made:

AI Group cannot support increases in the excess until the impact of provisional liability is known. Provisional liability has the potential to significantly increase the level of short-term claims regardless of genuine injury levels. The total reform package may lead to lower scheme costs overall.²¹³

6.25 In her evidence to the Committee Ms Yaager indicated that other incentives apart from excesses should be considered. She said:

We would prefer to see an enhancement of the Premium Discount Scheme or other discount options based on an employer's occupational health and safety and injury management performance. There are systems that operate in California whereby an insurer can audit them and give them a discount. I think that is the way to go rather than the excess. ²¹⁴

²¹¹ Evidence of Mr Robert Thomson, Manager Workers Compensation, Insurance Council of Australia, 2 July 2002, p 24.

²¹² Evidence of Mr Robert Thomson, Manager Workers Compensation, Insurance Council of Australia, 2 July 2002, p 24.

²¹³ Correspondence received from Mr Mark Goodsell, Director NSW, AIG, 28 June 2002, p 5.

²¹⁴ Evidence of Ms Mary Yaager, OH&S Workers Compensation Coordinator, Labor Council of NSW, 2 July 2002, p 41.

6.26 Given the complexity of changing the excess arrangements some witnesses felt that this area needed to be the subject of an in depth review. In his evidence to the Committee Mr Daniel Tess, Director, Pricewaterhouse Coopers (“PwC”), indicated that the issue of excesses was important and that it really needed to be the subject of an in depth study in its own right:

In general we feel that the issue of employer excesses is important, and that it ought to be studied in its own right and that all three of these questions really should be subject to further specific study in a New South Wales context. For example, our practice has recently done a similar study for the Victorian scheme as part of a premium review project that was undertaken this year. We would suggest that a similar study would be a good idea in New South Wales.²¹⁵

6.27 Mr McCarthy also recommended that the issue be the subject of further review:

The scheme design review could look at how to use the excess within the various categories of employers to really drives been behaviour. One needs to acknowledge that there are two groups of employers. Essentially, there is the small-to medium-size businesses that do not have much capability in managing workers compensation and/or knowledge about what to do when something happens.²¹⁶

6.28 In undertaking a review it was thought that it was important to be clear about what the aims were and what behaviour outcomes were desired. In his evidence to the Committee Mr Thomson said:

...it comes back to what you are trying to achieve with the excess: What is its purpose; what is it trying to drive at? I think that needs to be clearly understood before you can determine what level should or should not be used.²¹⁷

²¹⁵ Evidence of Mr Daniel Tess, Director, PwC, 2 July 2002, p 6.

²¹⁶ Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 2 July 2002, p 21.

²¹⁷ Evidence of Mr Robert Thomson, Manager Workers Compensation, Insurance Council of Australia, 2 July 2002, p 24.

Conclusion

Evidence before the Committee indicated that the current excess system does not:

- allow for increases in the rate of excess with inflation and or changing market conditions,
- relate to the employers business size, capacity or type,
- provide an appropriate incentive for employers to prevent injuries.

There are a large number of options and possibilities for improving the incentives for employers provided through the excess system and it is important for equity purposes that excesses relate to an employers business.

Recommendation 16

That WorkCover review the role, level and impact of the current excess arrangements and analyse options for improving these arrangements to ensure that they contribute to the following aims:

- **Improving injury prevention measures,**
- **Improving Scheme outcomes,**
- **Early reporting,**
- **Providing incentives for employers,**
- **Improving accountability within the Scheme.**

In undertaking this review WorkCover should consider the merits of connecting the level of excess to the size of the organisation.

Permanent psychological injury assessment

6.29 Prior to the *Workers Compensation Legislation Amendment 2001* (“the 2001 Act”), psychologically injured workers in NSW were unable to access compensation for their injuries. The 2001 Act included a number of changes to the assessment of permanent injury, one of which was the inclusion of psychological injuries. This issue was discussed in some depth in Chapter 7 of the Committee’s Third Interim Report. Some of the key issues raised regarding the assessment of psychological injuries included:

- The extent to which the scale for measuring psychological impairment has been tested,
- The reliability of the scale,

- The costs likely to be incurred by utilising the scale,
- The utilisation of the median score for determining the level psychological injury under the scale,
- The involvement of psychologists in assessing impairment.

6.30 Although psychologists raised all of these issues, of particular concern to them was that under current legislation psychologists are not allowed to determine the level of psychological impairment. The WorkCover *Guides for the Evaluation of Permanent Impairment* states:

Evaluation of psychiatric impairment is conducted by a psychiatrist who has undergone appropriate training in this assessment method.

And

The impairment rating must be based upon a psychiatric diagnosis...²¹⁸

6.31 The Australian Psychological Society has questioned the legitimacy of this. In correspondence to the Committee, Dr Edwards, a consultant psychiatrist from Westmead Hospital and a representative of the Society, highlighted the importance of involving psychologists in the process. He wrote:

Finally, the importance of having psychologists included in the impairment assessment process must be emphasised. Detailed cognitive impairment can only be done by a competent qualified psychologist. In the case of head injury for example, a battery of psychological tests designed specifically for use in such disorders is frequently necessary.²¹⁹

6.32 In her evidence to the Committee Ms Mary Hawkins, Manager, Workplace Injury Management Branch, WorkCover NSW, indicated that the reason why psychologists were not involved with the assessment was because they were not medical specialists. Ms Hawkins drew a comparison between the roles/experience of orthopaedic surgeons and physiotherapists with the roles of psychiatrists and psychologists:

Not on the use of the PIRS because the PIRS is the instrument. The same as it would be in the spine chapter of the AMA-neurosurgeon or orthopaedic surgeon utilises that scale, does the assessments and comes to their decision. But they will take account of the physiotherapists' assessments and reports.²²⁰

²¹⁸ *WorkCover Guides for the Evaluation of Permanent Impairment*, 1st edition, December 2001 p 53.

²¹⁹ Correspondence received from Dr Graham Edwards, Consultant Psychiatrist, Westmead Hospital, 28 march 2001.

²²⁰ Evidence of Ms Mary Hawkins, Manager, Workplace Injury Management Branch, WorkCover NSW, 6 March 2002, p 35.

6.33 In his evidence to the Committee Dr Nielszen, Chairman of the NSW forensic branch of the Royal Australian and New Zealand College of Psychiatrists (“RANZCP”), indicated that the work of psychologists was psychological assessment, not assessment of permanent impairment:

They do have a very valuable role to play but it is not in the assessment of permanent impairment. That has to be the domain-it always has been in the past-of medical specialists.²²¹

6.34 The Committee noted in its Third Interim Report that the Victorian Workers Compensation Scheme, after initially excluding psychologists, began to allow clinical psychologists with additional training to make assessments. One reason given for this was the lack of psychiatrists available.

Conclusion

The role of psychologists with additional specialist training in impairment assessment should be negotiated between psychologists, WorkCover and other relevant parties.

6.35 The Committee understands that the national Heads of Workplace Safety and Compensation Authorities (“HWSCA”) have commissioned a research project to investigate the reliability and validity of the PIR scale as well as other scales to measure permanent impairment arising from mental and behavioural disorders. The project aims to identify;

- Scales that measure permanent impairment arising from mental and behavioural disorders, (which are capable of being used to assign an amount of monetary compensation in a compensation setting);
- Test the relative reliability and validity of each of the scales and;
- To suggest enhancements which would improve the reliability and validity of the scales.

6.36 The project is being overseen by a steering committee made up mainly of HWSCA representatives. In addition, a consultative group made up of various representatives will be asked to comment on various aspects of the project. It is expected that the project will be finalised by the end of 2003.²²²

²²¹ Evidence of Dr Olav Nielszen, NSW Forensic Section, RANZCP, 7 March 2002, p 26.

²²² Correspondence received from WorkCover NSW, 2 September 2002.

Recommendation 17

That WorkCover should consider the recommendations of the research project (overseen by a reference group including representatives of psychiatrists and psychologists) that has been established under the auspices of the Heads of Workers Compensation Authorities to support the introduction of a universal scale for the measurement of permanent impairment arising from psychiatric or psychological disorders.

That WorkCover report progress on this project to the Standing Committee on Law and Justice (refer Recommendation 26).

Injury management

6.37 During the inquiry the Committee heard extensive evidence highlighting that the early reporting of injuries and early return to work were critical aspects of successful injury management.

Early reporting

6.38 During the Committee's inquiry the importance of the early reporting of injuries and early injury management was not questioned. However, the Committee received conflicting evidence about the extent to which the 1998 workers compensation reforms had improved return to work rates in NSW (for further detail, refer to Chapter 6 of the Committee's Third Interim Report).

6.39 Irrespective of whether the 1998 reforms improved early management of injuries or not, the Committee has heard evidence suggesting that there is still need for improvement in this area. A number of reasons were given as to why early injury management is not working optimally, these included:

- The performance of insurers.
- The role of other providers.
- The role of employers.
- Education/communication.
- Benefit signals/processes.

6.40 A practical solution to make it easier for all stakeholders to report injuries and improve communication generally was made by a witness to the Committee, during this inquiry. In his presentation to the Workers Compensation Forum, Mr McCarthy outlined the benefits of a centralised call centre approach. He said:

So I think with early reporting there needs to be a system provided to make it simple. I have suggested something as simple as the telephone system, "If you have an injury just ring this number", and then experienced people can move in to take control and in giving directions to mobilise management to take place. I have also suggested that there (these) should be... centrally based, and not individually based with each insurer. It could be a collective run by agents or insurers. I think the reasons for that are it is much easier for a central body than I guess WorkCover or its agents collectively to advertise to the community on a continuing basis "When you have an injury just ring this number" so that people can respond and be aware of what to do. It makes it easy. I think it is also cost effective. At the end of the day the scheme has got to pay for these systems, whether it be individual done by the insurers or elsewhere. I also think it enables the message to be consistent, it doesn't vary between the different organisations.²²³

6.41 In order to gain feedback on the proposal the Committee forwarded the following draft recommendation to stakeholders for comment:

That a Scheme-based call centre be established to facilitate early reporting of claims by employers, workers and doctors.

6.42 Generally the feedback received by the Committee on the draft recommendation was supportive. In his evidence to the Committee Mr Thomson was generally supportive of the proposal and indicated that it may assist a number of initiatives currently being implemented by the sector:

The industry believes that a centralised system would support a lot of the initiatives that are currently going on, but we would not see the need to have a call centre as being the only mechanism. It should be one of a number of mechanisms available within the scheme. ... As a means to facilitate and improve the reporting for small and medium employers who have only the occasional claim I think the industry would support it in principle, not that it should be necessarily managed by WorkCover. It could be managed by the insurers quite easily or by another body, for that matter.²²⁴

6.43 In her evidence to the inquiry Ms Yaager was very supportive of the proposal. She said:

We certainly support the establishment of a scheme-based call centre.²²⁵

²²³ Evidence of Mr Greg McCarthy, Director, Workplace Injury Management Services, 15 March 2002, p 26.

²²⁴ Evidence of Mr Robert Thomson, Manager Workers Compensation, ICA, 2 July 2002, p 26.

²²⁵ Evidence of Ms Mary Yaager, OH&S Workers Compensation Coordinator, 2 July 2002, p 42.

6.44 In his evidence to the inquiry Mr McCarthy highlighted the benefits of a call centre approach. He said:

We need to provide a facility that makes it easy for the majority of employers in New South Wales to report injuries quickly and to get assistance quickly stop at the moment the scheme supports very well those employers that have those capabilities but the large majority of employers in New South Wales are small-to-medium-size enterprises and about 90 or 95 per cent of employers pay less than \$10,000 in premium and they account for about 50 per cent of the claims... A central early reporting capability, essentially using a telephone, could be set up. That is the easiest way to do things.²²⁶

6.45 There were some witnesses who had concerns about the draft recommendation. Mr Pattison indicated that he thought the idea had merit, but that it would need to incorporate employers into the process:

I think there is merit in simplifying the processes. The concern that we would have about a scheme-based call centre and multiple chains or means of reporting is how that loop is closed off to the employer. If we are to go down the injury management route and we want to make it work we must get the employers engaged. It is not uncommon for organisations such as ours—and I am sure Gary has had a similar experience—and for other employers to find out about claims long after the event and long after the paperwork has been lodged. Therefore they have no opportunity to get involved and engaged in the return to work strategies, et cetera. So I think there are some potential efficiency payoffs with that sort of approach but you also need to design a system that does not exclude people who need to be included.²²⁷

6.46 Mr Mark Goodsell was cautiously supportive of the proposal but, raised similar concerns about employers being excluded by the system. In correspondence to the Committee:

...we are weary of mechanisms that will further alienate an injured worker from their employer. A call centre should only operate in away that reinforces the reality of the employment relationship upon which the claim is founded rather than to deny or ignore it.²²⁸

And

However, generally a call centre approach might be useful if it were part of an overall strategy to address the above concerns on the employment relationship and the role of medical advice.²²⁹

²²⁶ Evidence of Mr Greg McCarthy, Director, Workplace Injury Management Services, 2 July 2002, p 16.

²²⁷ Evidence of Mr Greg Pattison, General Manager, Labour Market Services, ABL, 2 July 2002, p 35.

²²⁸ Correspondence received from Mr Mark Goodsell, Director NSW, AIG, 2 July 2002, p 4.

²²⁹ Correspondence received from Mr Mark Goodsell, Director NSW, AIG, 2 July 2002, p 4.

6.47 In correspondence to the Committee Mr Jon Kelso, Insurance Australia Group (“IAG”), indicated that he had concerns about the constraints a centralised system may place on innovation:

While we agree that early reporting should be a key focus for employers and insurers we believe that measures such as a call centre should be left in the hands of individual insurers as this will encourage innovation and the development of best practice. A centralised call centre may also duplicate measures being put in place by insurers. Finally, early reporting should be considered as a mandatory requirement and be supported by legislative and compliance requirements imposed on employers, doctors and insurers.²³⁰

6.48 In correspondence Mr Richard Gilley, Managing Consultant, RiskNet Group, said that the call centre would not be helpful. He said:

We believe that this recommendation is without merit and will only cause long term confusion in any follow up actions required. We don't believe that a central call centre can possibly add value nor function effectively.²³¹

6.49 A number of the concerns raised about the concept of a call centre by stakeholders reflected the fact that no information was provided about how it would be structured, who it would be operated by or how.

6.50 In correspondence to the Committee on 24 July 2002 Mr McCarthy provided a broad concept outline for a possible call centre system:

The IRC (Injury Response Centre) provides for all early reporting of injuries via the telephone or web. Employers are encouraged to report ALL injuries (regardless of nature or severity) as soon as they become aware of them to the IRC by telephone or the web. Telephone is the preferred option because of its immediacy. The IRC operators collect the injury details, which are entered directly into the IRC system. Injury triage or profiling takes place at the initial receipt of the details. The injury can fall into three categories, significant, potentially significant or non-significant.²³²

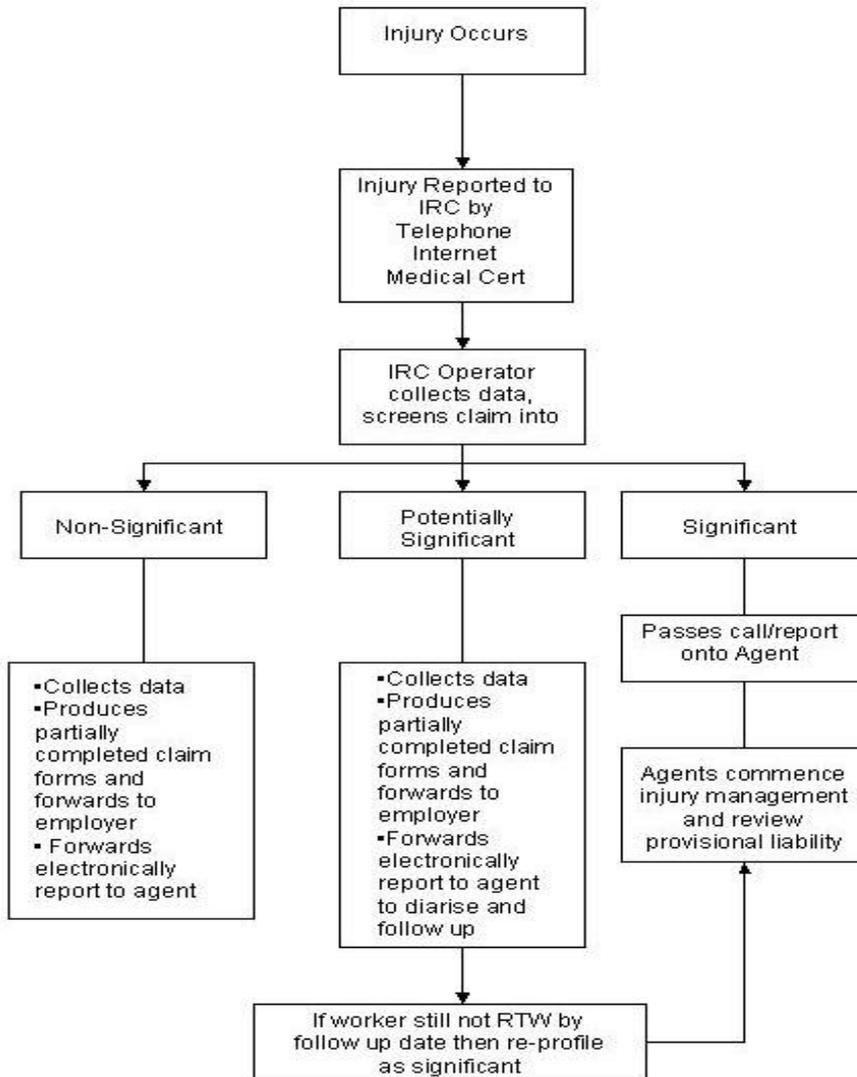
²³⁰ Correspondence received from Mr Jon Kelso, Business Planning, Personal Injury Health and Commercial Insurance, IAG, 27 June 2002, p 10.

²³¹ Correspondence received from Mr Richard Gilley, Managing Consultant, RiskNet, 24 June 2002, p 6.

²³² Correspondence received from Mr Greg McCarthy, Director, Workplace Injury Management Services, 24 July 2002, p 1.

6.51 Mr McCarthy's call centre system is illustrated in the flow chart below:

Figure 6.1 Proposed Injury Response Centre Flow Chart



Source: Correspondence from Mr Greg McCarthy, 24 July 2002.

6.52 The importance of a centralised computer system to the suggested response system was highlighted by Mr McCarthy:

A central Injury Response Centre (IRC) could be contemplated for employers and employees in NSW for the early reporting of workplace injuries and incidents

however an integrated data management system would be essential for its overall success.²³³

- 6.53** The Committee agrees that the systems suggested by Mr McCarthy and call centres generally rely on an advanced computer system. It should be noted that the Committee did not have the opportunity to provide the call centre proposal to other stakeholders for comment.

Conclusion

The concept of a call centre as a mechanism for improving the reporting of claims may have merit. However, the Committee also appreciates the need for employer involvement and the possible constraints a call centre may place on innovations by insurers.

As a consequence, the Committee believes that the concept of a centralised call centre for the reporting of injuries needs be analysed and extensive consultation conducted with stakeholders.

Recommendation 18

That the Scheme Design Review consider the establishment of a Scheme-based call centre to facilitate the early reporting of claims by employers, workers and doctors, and;

That Scheme Design Review (in consultation with stakeholders) review the most efficient and effective method of operation for the call centre and determine how and by whom it would be managed (by WorkCover, insurers or an independent organisation).

Return to work

- 6.54** The Committee understands that early return to work for injured workers is critical not only to the employer and the Scheme but to the health and future employment prospects of the injured worker.
- 6.55** A recent study by the Royal Australasian College of Physicians has highlighted a range of causes of poorer health outcomes for injured workers. One of these was the length of time away from work. Their report states that one of the factors contributing to poorer health outcomes is:

The length away from work. Unemployment is, in itself, a risk factor for poor health. There are multiple interrelating effects for being away from work,

²³³ Correspondence received from Mr Greg McCarthy, Director, Workplace Injury Management Services, 24 July 2002, p 1.

including loss of sense of identity, loss of social networks, loss of economic control and independence, loss of social status, loss of financial security (such as loss of the family home), and so on. Long-term unemployment is notoriously hard to break. (Where unemployment is caused by injury, this is exacerbated by employers' reluctance to employ anyone with pre-existing injuries because of risk to workers' compensation premiums and the perceived risk of re-injury.)²³⁴

6.56 The importance of this has been recognised by WorkCover NSW and they currently have a number of programs in operation, which are designed to improve early return to work rates. In her presentation at the Committee's workers compensation Forum, Ms McKenzie highlighted that measures to increase early return to work were the focus of the Government's reforms in 2000. She said:

In June 2000 the Special Minister of State announced the Government's plan for fixing these problems and for delivering a fair, affordable and efficient scheme. ...The main key directions were: identification of further measures to increase the focus on injury management and early return to work;...²³⁵

6.57 These reforms were detailed in Chapters 3 and 6 of the Committee's Third Interim Report. They include:

- Work trials.
- Retraining.
- The JobCover Placement Program.
- The Premium Discount Scheme, to encourage employers to employ injured workers.

6.58 Although WorkCover is undertaking a number of initiatives with regards to early return to work, the Committee has heard evidence that this is an area in which improvements should continually be sought and that alternative strategies to those currently being implemented need to be explored.

6.59 The Committee forwarded the following draft recommendation to stakeholders for their comment and feedback on this issue:

The Committee notes that Victoria is considering the effectiveness of group programmes to facilitate claimants return to work. On the completion of Victoria's evaluation. WorkCover should consider the effectiveness of the following initiatives in providing incentives for claimants to return to work for small employers.

²³⁴ The Royal Australasian College of Physicians, *Compensable Injuries and Health Outcomes*, Sydney 2001, p 4.

²³⁵ Evidence of Ms Kate McKenzie, General Manager, WorkCover NSW, 15 March 2002, p 3.

- *Group schemes for small employers for suitable duties, arranged by industry or geographic area,*
- *Industry based group schemes for large and small employers,*
- *Utilising employment agencies to find suitable duties,*
- *Educating employers, especially small employers about the benefits of finding suitable duties for injured workers.*

6.60 All stakeholders who provided comment to the Committee agreed that the issue of return to work rates was important and were supportive of the need to consider alternatives and options for improving the NSW experience in this area. In particular, many commented about the need to help small employers improve their capacity in this area.

6.61 In his evidence to the Committee Mr Brack, Chief Executive Officer, Employers First highlighted the problems faced by small employers in trying to find suitable work for their injured employees. He said:

...I think the old advisory council already recommended something to try to deal with the question of how you get people back to work in small businesses where they plainly do not have the resources to take on somebody for suitable duties. The real question is how you fund that activity. Instead of paying the employee a benefit you pay the next employer the benefit for taking them on. You have to protect that new employer against claims associated with that individual. In my view, the protection now is too short and too narrow. This is not an easy thing to do because as soon as you start providing funding to employers it may well be that some employers would take advantage of that scheme and say they have this "injured worker" there forever and a day so the discipline in the system and the problem in it is how to keep employers honest while they are being provided with government funding. The notion of these things is certainly worthwhile examining.²³⁶

6.62 Ms Yaager indicated to the Committee that the issue hinged around the need to provide financial assistance to employers to help injured workers. She said:

I think employers need some financial assistance or some sort of scheme to help them. It is not only small employers but large employers and government departments that have difficulties in this area. Peter will tell you about the police, Health and the Ambulance Service. This whole area needs proper investigation and some recommendations. I think the advisory council could come up with the recommendations and research. It is a problem not only in Australia but overseas. Read anything that the Workers Compensation Research Institute is producing: It says that its major problem is redeployment when somebody cannot return to a job or an industry. The redeployment issue is a major one for us.²³⁷

²³⁶ Evidence of Mr Garry Brack, Chief Executive, Employers First, 2 July 2002, p 36.

²³⁷ Evidence of Ms Mary Yaager, OHS Workers Compensation, Labor Council, 2 July 2002, p 42.

6.63 Mr Thomson said that he thought there was a need to review approaches to return to work both in Australia and overseas:

A number of approaches have been used in Australia and overseas, and I think there is justification for the scheme review that will commence soon to see what benefits can be gained. Our view would be that the potential is that geographically there is scope for getting alternative duties from employers, but on an industry base the issues are likely to be, where the worker got injured in this place, to try to replace him in another the issues will be exactly the same. So the likelihood of there being synergies is limited. I think we should always be open to looking at and reviewing what other people are doing to see whether it can work in the New South Wales environment.²³⁸

6.64 In correspondence to the Committee Mr Goodsell questioned how successful group schemes would be in improving return to work rates. He said:

There has been work in the past sponsored by NSW WorkCover looking at group schemes to facilitate return to work. They have not proven very successful.²³⁹

6.65 Mr Goodsell also suggested that there are sufficient penalties in place for employers regarding returning injured workers to work, but that employers generally were not aware of them:

The way the premium is formulated currently has sufficient penalties for employers who do not return injured employees to work. Many employers do not understand this. There needs to be an education process so employers can understand the impact on premium. Giving this function to outside agencies could impact detrimentally on an employers premium.²⁴⁰

6.66 The adoption of successful practices from interstate was also supported by Mr Kelso, but with some caution:

We support the concept of adopting successful practices from other States, particularly where they promote important scheme objectives such as return to work. Our only qualification to this support is that the introduction of these measures should not become mandatory and be required in situations where they are not feasible or practical.²⁴¹

²³⁸ Evidence of Mr Robert Thomson, Manager Workers Compensation, ICA, 2 July 2002, p 25.

²³⁹ Correspondence received from Mr Mark Goodsell. Director NSW, AIG, 28 June 2002, p 4.

²⁴⁰ Correspondence received from Mr Mark Goodsell. Director NSW, AIG, 28 June 2002, p 4.

²⁴¹ Correspondence received from Mr Jon Kelso, Business Planning, Personal Injury Health and Commercial Insurance, IAG, 27 June 2002, p 11.

6.67 In a document tabled during his evidence Mr Thomson, highlighted the need to undertake an analysis of why employers have difficulty providing opportunities for injured workers to return to work:

There is a need to understand the real dynamics of the reluctance of employers to provide return to work opportunities. Small employers usually are unable to fund or find alternate duties as the potential disruption breaks down their business continuity. The behavioural issues involved that affect businesses and employees in the workplace relationship play an important role when an injury occurs and this has significant implications for any potential return to work initiatives. The work being undertaken in Victoria should be considered as should approaches along these lines in other jurisdictions be they in Australia or overseas.²⁴²

Conclusion

A prompt return to work as soon as possible after an injury is beneficial for the Scheme, the employer and most importantly the injured employee.

As a consequence, a range of options/initiatives should be considered by WorkCover in developing methods to improve the NSW experience in this area.

²⁴² Tabled document, Mr Robert Thomson, Manager Workers Compensation, Insurance Council of Australia, 2 July 2002, p 10.

Recommendation 19

That the Scheme Design Review and WorkCover should consider the effectiveness of the following initiatives in providing incentives for claimants to return to work:

- **Group schemes for small employers for suitable duties, arranged by industry or geographic area.**
- **Industry based group schemes for large and small employers.**
- **Utilising employment agencies to find suitable duties.**
- **Educating employers, especially small employers, about the benefits of finding suitable duties for injured workers.**
- **Financial assistance for employers, with a specific focus on small employers.**

In particular, it is recommended that WorkCover consider the success of these initiatives where they have been utilised by other jurisdictions.

That the Government report back to the Law and Justice Committee (See Recommendation 26) concerning it's initiatives regarding research, training and the accreditation of rehabilitation providers. (Refer Recommendation 26)

Injured worker benefits – structured settlements

6.68 During the Committee's inquiry extensive evidence was heard about:

- The benefits available to injured workers, including common law, Section 66 & 67 payments (under the 1987 Act), commutations, statutory non-economic loss and weekly payments.
- The pros and cons from both the Scheme's perspective and the perspective of the injured worker of the different types of benefits/damages, with particular emphasis on lump sums versus weekly or structured payments.²⁴³

6.69 As highlighted in Recommendation 4, the Committee feels that no further significant reforms to benefit levels should occur for at least the next two years. However, the Committee has heard extensive evidence about the pros and cons of the provision of lump sum payments (in the form of commutations and or non statutory awards) versus the structured provision of payments. This has raised issues about the need to look at this area in the longer term development of the Scheme.

²⁴³ Further information about benefits can be found in Chapter 2 of the Committee's First Interim Report and Chapter 4 of the Committee's Second Interim Report.

6.70 Although much of the debate focused on the provision of lump sums through commutations, the same arguments can be made regarding the provision of common law awards, as they are both different forms of lump sum payments.

6.71 At the Committee's workers compensation Forum, the Forum's facilitator, Sir Laurence Street summarised the debate amongst participants about the pros and cons of lump sums. He said:

Some say that the provision of a lump sum will enable a new start and that used to be the basis upon which one justified applications for commutation, or whether it is simply a disincentive to trying to get back to work is, I repeat, a matter where there is a degree of tension, and it is an area of policy that I think around the table we simply had to recognise has still to be worked through in the months ahead.²⁴⁴

6.72 Mr David Zaman, consulting actuary, outlined the positive aspects of lump sums for both the injured employee and the Scheme in his evidence to the Committee:

Obviously, like in all other matters, if you get a cash sum up front you want to get some sort of discount on that compared to a continuous stream into the future. That is where it comes down to some negotiation that the money is up front, the person can take it away and use it how they want compared to an income stream. That is pretty normal. It will save money compared to the long-term cost; the long-term cost can be very high.²⁴⁵

6.73 Mr Graham Layt from the Self Insurers Association also outlined the benefits for both the employer (particularly self insurers) and the employee of being able to access lump sums through commutations:

If the option is available, as it has been in the past, to settle the claim and finalise it by way of a lump sum settlement, we always believe that that is in the best interests of the worker, who is the employee, and the organisation that I work for. ...It gives the worker an opportunity to get on with his or her life. Again, rehabilitation does not work in a lot of cases... A lot of money is spent on attempting to find people alternative duties because a lot of people are fit only for permanently modified work which unfortunately cannot be available. Therefore, one of the better ways of managing the whole risk is to offer a commutation. We find that under the current system, with the severe restrictions on commutations, it is going to lengthen the tail. Our provisions are going to increase and that is certainly not good claims management.²⁴⁶

6.74 However, in her evidence to the Committee Ms McKenzie highlighted some of the problems that exist with the provision of lump sums:

I think at some point in this conversation you get into some fairly subjective judgments about what is in people's interests and what is not. But there is certainly quite a lot of research to support the fact, including the material that the College

²⁴⁴ Summary of Workers Compensation Forum proceedings, Sir Laurence Street, 15 March 2002, p 38.

²⁴⁵ Evidence of Mr David Zaman, Consulting Actuary, 3 June 2002, p 47.

²⁴⁶ Evidence of Mr Graham Layt, Self Insurers Association, 6 March 2002, p 66.

of Physicians has been working on, that people might, in the short term, think, "\$40,000 in a commutation is a lot of money and I'll take it, and I don't care if I've got no job after that." But in two years or three years time, when the money has disappeared and they are unemployable, they might take quite a different view about whether that was the right choice for them to make. I think there are very difficult questions of judgments there that you have to be very careful about: people being attracted by the short-term attractiveness of a lump sum when, in the longer term, that might be absolutely to their detriment in terms of their continuing to contribute to the work force and the general community.²⁴⁷

6.75 In his evidence Mr Colin Fagen, Manager, Workers Compensation, QBE Insurance, also raised concerns about the incentives created by lump sums. He said:

If there are numerous lump sums in the scheme the incentive is not necessarily there to get people back to work to recoup their wages. There are various incentives acting on every party and interacting at the same time.²⁴⁸

6.76 As a consequence of the perceived problems that exist with the provision of lump sums through commutations in particular, Ms McKenzie told the Committee that WorkCover is trying to reduce the reliance on lump sums in the Scheme and focus stakeholders on better injury management and return to work.²⁴⁹

6.77 The Committee feels that similar problems to those that exist with commutations also exist for those injured workers who have been awarded lump sum payments under common law or section 66 and section 67 of the 1987 *Act*. In particular, the Committee is concerned that:

- Injured workers may either have problems managing a lump sum so that it lasts them the duration of their incapacity or;
- That the lump sum may act as a disincentive to looking for other work.²⁵⁰

6.78 As a consequence, the Committee has considered applying the option of structured settlements, which is currently available in other areas of insurance including motor accidents and public liability.

6.79 The *Motor Accidents Compensation Act 1999* defines a structured settlement as:

...an agreement that provides for the payment of all or part of an award of damages in the form of periodic payments funded by an annuity or other agreed means.²⁵¹

²⁴⁷ Evidence of Ms Kate McKenzie, General Manager, WorkCover NSW, 6 March 2002, p 39.

²⁴⁸ Evidence of Mr Colin Fagen, Manager, Workers Compensation, QBE, 6 March 2002, p 54.

²⁴⁹ Evidence of Ms Kate McKenzie, General Manager, WorkCover NSW, 21 November 2001, p 50.

²⁵⁰ As discussed in the previous section of this Chapter entitled Return to Work, it is important for an injured worker's future work prospects that they return to a form of employment as soon as possible after recovery from their injury.

6.80 In response to a question from the Committee about the usefulness of structured settlements in the context of workers compensation, Mr Thomson said:

There are some more issues about structured settlements because they can be of value in certain circumstances whereas in other circumstances it is not necessarily as much value. There needs to be some more thought put into the process as to how effective and whether it should or should not apply.²⁵²

6.81 However, in contrast to Mr Thomson's view Mr Cameron McCullagh, Chief Executive Officer, Employers Mutual Indemnity indicated that structured settlements may be an advantage in workers compensation:

I believe that structured settlements would be a significant advantage in workers compensation, as they are in other types of insurance. Historically, when people have got lump sums they blow that money. People will take the lump sum rather than a structured settlement unless the tax is equal for the two of them. The great benefit of a structured settlement is that it saves people from taking a second bite of the cherry. They take their lump sum, they blow it and the figures that are done are similar, I believe in Australia and America in that they blow the money not on assets but on consumption. They give it to people, they spend the money. By giving them a structured settlement, they are getting a small amount in perpetuity and it is protecting them but it is also protecting society.²⁵³

6.82 Mr Thomson qualified Mr McCullagh's statement by arguing that the legal process plays a role in the success of structured settlements:

The only qualification I would put on that is that it depends a lot upon the actual legal process that is in place at the time because potentially if the court process and the dispute process, the way it is done, it can end up with greater amounts being paid when up-front instructions are in place. There are some counter tensions. I agree totally with what Mr McCullagh has said. There are some practical applications and how it is put in place, depending on the actual dispute and the legal system that applies and that needs to be taken into account. There are just some tensions that need to be thought through.²⁵⁴

6.83 Mr Thomson also indicated in his evidence that there is no difference between workers compensation and other types of insurance, so there was not reason why workers compensation should not have structured settlements. He said:

We are following that pattern of not having workers compensation initially and there is coming in later, because I can see no reason for a distinction between workers compensation and another type of insurance. I think it is a bad practice to give many people a lump sum where they are not accustomed to receiving that

²⁵¹ *Motor Accidents Compensation Act 1999*, Part 8.3.

²⁵² Evidence of Mr Robert Thomson, Manager Workers Compensation, ICA, 3 June 2002, p 29.

²⁵³ Evidence of Mr Cameron McCullagh, Chief Executive Officer, Employers Mutual Indemnity, 3 June 2002, p 29.

²⁵⁴ Evidence of Mr Robert Thomson, Manager Workers Compensation, ICA, 3 June 2002, pp 29-31.

sort of money, which is to provide for the next 20 or 30 years, not be consumed in two years.²⁵⁵

- 6.84** As a consequence of the varied evidence received by the Committee on the issue of structured settlements and lump sums more generally, the Committee forwarded the following draft recommendation to stakeholders for further comment:

That the NSW Government work in conjunction with other state and territory governments to lobby the Commonwealth Government to change taxation laws so that structured settlements become a practical option for the management and compensation of seriously injured workers compensation claimants.

- 6.85** Responses to the draft recommendation were mixed. In her evidence to the Committee Ms Yaager highlighted that the Labor Council was not supportive of the proposal:

I worked for an insurance company prior to working for the unions and at the end of the day workers want that finality, so that they can get on with their lives. When you look at a lump sum, they are closing the door on that chapter and getting on with their lives. I do not think a structured settlement, as I understand it, will do that. It will pay them a certain amount. Also, structured settlements are very expensive to administer.²⁵⁶

- 6.86** In correspondence to the Committee Ms Cull indicated that structured settlements were not necessary in New South Wales because the utilisation of common law has been reduced by recent legislation:

The amendments to the Workers Compensation Legislation in this State has already moved from a lump sum to a pension scheme with the effective termination of the right to sue at common law and the removal of the opportunity to commute claims other than with rare exceptions in both instances.²⁵⁷

- 6.87** In his evidence to the Committee Mr Michael Playford, Actuary, PwC also indicated that structured settlements were not relevant to workers compensation in New South Wales:

My views on the relevance of structured settlements to New South Wales workers compensation is that it is probably not that relevant. ...The Federal Government also imposed some minimum conditions on the structure of structured settlements. In particular, there is a requirement that a structured settlement must be able to provide a minimum periodic benefit equivalent to the old age pension. When you do the mathematics behind that, and look at life expectancy of these typical claimants, it equates to lump sums of the order of at least \$600,000 or \$700,000. It is only the very largest lump sums which would meet the Federal Government's criteria to be eligible. I also see difficulties in a significant structured settlement market developing in the near future. It does require life insurers to be interested in establishing the market. Life insurers in recent years

²⁵⁵ Evidence of Mr Robert Thomson, Manager Workers Compensation, ICA, 3 June 2002, p 29.

²⁵⁶ Evidence of Ms Mary Yaager, OHS Workers Compensation Coordinator, Labor Council, 2 July 2002, p 44.

²⁵⁷ Correspondence received from Ms Kim Cull, President, Law Society of NSW, 27 June 2002, p 8.

have not been proactive in trying to expand into an annuity market at all. ...I think they will be less interested in being involved in this market than perhaps governments around Australia would wish. It is also less attractive in an environment where lump sums are being costed, using the 5 per cent discount rate.²⁵⁸

And

The manner in which they would cost a structured settlement would make it less attractive in the eyes of a claimant compared to the lump sum that they would achieve. That is all quite negative. I do support structured settlement legislation because I think for social policy reasons it is actually very good. It is about trying to protect the claimant from the risks associated with mortality and investment. It is good social policy legislation, but I do not think that it is going to take off in a big way in the near future in Australia generally. But I also do not think it is particularly relevant to the New South Wales workers compensation scheme.²⁵⁹

6.88 However, in his evidence to the Committee Mr McCarthy was supportive of the proposal. He said:

In a privately underwritten market I am a strong believer in structured settlements, although I am not a strong advocate of ultimately giving people access to large sums of money. However, in a managed fund environment I would argue that the managed fund itself is a structured settlement. The scheme is providing a structured assessment in the way that it is paying continuing benefits to individuals that they would get if you paid out a structured settlement. I am not sure whether the scheme needs to be limiting in its liability and passing it on to someone else to administer. It seems like double handling to me in a statutory environment.²⁶⁰

6.89 Mr Thomson indicated that the insurance industry was supportive of structured settlements and agreed that taxation arrangements needed to be considered:

In broad principle the insurance industry supports structured settlements, but the issue when it comes to workers compensation the main reason why workers compensation was not included in the structure settlements arrangements that have just been agreed to is taxation. A significant component of any lump sum within a workers compensation scheme is a weekly benefit component, and the Australian Taxation Office gets its tax out of that component. It is how you deal with that issue. That is one of the clear reasons why, compared to other areas, structured settlements were not applied to workers compensation. Until that fundamental issue is dealt with it will be difficult to see any movement in that area. In principle, the industry supports the concept but until that barrier is dealt with I do not believe there is any room to do anything with it.²⁶¹

²⁵⁸ Evidence of Mr Michael Playford, Actuary, PwC, 2 July 2002, pp 3-4.

²⁵⁹ Evidence of Mr Michael Playford, Actuary, PwC, 2 July 2002, pp 3-4.

²⁶⁰ Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 2 July 2002, p 16.

²⁶¹ Evidence of Mr Robert Thomson, Manager Workers Compensation, ICA, 2 July 2002, p 25.

6.90 Peak employer bodies that responded to the recommendation were also generally supportive of structured settlements.²⁶² However, in his evidence Mr Pattison indicated that there could be limits to its effectiveness:

The extent to which it is likely to be effective will also be the extent to which it remains solely at the discretion of the claimant.²⁶³

6.91 Mr Gilley was also supportive of the proposal. In correspondence to the Committee he wrote:

...structured settlements seem to suit the injured party in other jurisdictions and protect their interests. Structured settlements do not seem to suit the legal profession.²⁶⁴

6.92 Mr Thomson highlighted the complexity of the issues involved in structured settlements in a document tabled during his evidence:

The issue of structured settlements is a complex one and agreement has only recently been reached to progress this issue excluding workers compensation.²⁶⁵

Conclusion

Structured settlements could be beneficial for injured workers who have received a substantial award for damages under common law and statutory s66 and s67 payments. However, before committing the NSW Government to considering changes to the system and lobbying for changes to taxation further analysis needs to be undertaken as to their applicability and impact.

²⁶² Evidence of Mr Greg Pattison, General Manager, Labour Market Services, ABL and Mr Garry Brack, Chief Executive Officer, Employers First, 2 July 2002, p 35.

²⁶³ Evidence of Mr Greg Pattison, General Manager, Labour Market Services, ABL, 2 July 2002, p 35.

²⁶⁴ Correspondence received from Mr Richard Gilley, Managing Consultant, RiskNet, 24 June 2002, p 7.

²⁶⁵ Tabled document, Mr Robert Thomson, Manager Workers Compensation, Insurance Council of Australia, 2 July 2002, p 10.

Recommendation 20

That WorkCover review the applicability, role and possible impact of structured settlements.

If it is clear that structured settlements have a beneficial role for employees and would be likely to improve Scheme outcomes, the Committee recommends that the NSW Government work in conjunction with other state and territory governments to lobby the Commonwealth Government to change taxation laws. The taxation changes should be designed to ensure that structured settlements are a financially practical option for the compensation of seriously injured workers.

Chapter 7 Enforcement

This Chapter draws together evidence received during the Inquiry in relation to enforcement. The chapter makes recommendations aimed at providing WorkCover with adequate resources and the ability to impose sufficiently severe penalties to act as a real deterrent against future fraud and non-compliance in the Scheme.

Appropriate penalties for fraud and non-compliance

Current problems

- 7.1** The Committee's Fourth Interim Report looked at the issue of fraud and non-compliance and some of WorkCover's initiatives to reduce the incidence of both. In that report the Committee concluded:

Fraud and non-compliance continue to be a significant problem in the Scheme. The initiatives contained in WorkCover's Compliance Report should help reduce the incidence of fraud and non-compliance. Many of the recommendations require structural or legislative changes which may be slow to occur.²⁶⁶

- 7.2** The Fourth Interim Report listed the offences that are contained within the 1987 Act and the maximum penalty provided for those offences. The maximum penalties ranged from a penalty notice of \$750 to a \$55,000 fine and/or six months imprisonment. The offence attracting this most severe penalty is failure to have a policy of insurance (s 155). Failure to maintain or provide access to wage records (s 174) also attracts a maximum \$55,000 penalty. The 1998 Act also contains an offence of obtaining financial advantage by deception (by injured worker, employer, insurer or medical or other service provider). Section 235A, inserted in 2000, also carries a maximum penalty of \$55,000 and/or up to 2 years imprisonment.

- 7.3** The Committee heard evidence criticising the penalties available for non-compliance. It was asserted that the difficulties facing WorkCover in prosecuting perpetrators of fraud, in particular, resulted in very few convictions. Mr Cameron McCullagh, Chief Executive Officer, Employers Mutual Indemnity, stated that in his opinion:

Under the Act there is not a lot that can be done about worker fraud, in general. If a worker commits a fraud by remaining employed, for example in the black economy, the greatest sanction against them is that they have to pay back the money. My belief is that they should be charged, prosecuted and sent to gaol, if they have committed fraud.²⁶⁷

²⁶⁶ General Purpose Standing Committee No 1, *NSW Workers Compensation Scheme Fourth Interim Report*, Report 20, August 2002, p 30.

²⁶⁷ Evidence of Mr Cameron McCullagh, Chief Executive Officer, Employers Mutual Indemnity, 3 June 2002, p 36.

7.4 Mr Jon Kelso, representing the Insurance Australia Group (“IAG”), expressed his organisation’s concerns about the amount of resources devoted to prosecuting fraud by WorkCover in NSW. Mr Kelso suggested that it is not only the legislative framework that is a problem but the resources devoted to compliance and prosecutions within WorkCover in NSW. He compared the level of prosecutions in NSW to that in Victoria and Queensland:

... who is going to be responsible for conducting the prosecutions. At the present time this function has been performed by WorkCover. An interesting statistic is that whilst Queensland and Victoria have high levels of prosecutions for fraud, unfortunately NSW has substantially very low levels of fraud prosecution.

As a comparison, Queensland WorkCover average between 30 to 40 prosecutions each year and have a total of 12 human resources devoted to fraud investigation and analysis. Victoria also have a very proactive approach to fraud investigation with over 70 prosecutions last year. Whereas, NSW with one resource had 5 prosecutions.²⁶⁸

Offences under the *Crimes Act 1900* (NSW)

7.5 In response to these types of concerns, the Committee proposed a number of draft recommendations directed towards serious fraud by participants in the Scheme:

That the definition of ‘serious fraud’ (including a dollar value) be inserted into the Workers Compensation Act 1987 (NSW) and Workplace Injury Management Act 1998 (NSW).

and

That the Workers Compensation Act 1987 (NSW) and Workplace Injury Management Act 1998 (NSW) be amended so that serious frauds by employers, service providers and claimants are prosecuted under sections 178BA and 178BB of the Crimes Act 1900 (NSW).

7.6 Sections 178BA and 178BB of the *Crimes Act 1900* (NSW) state as follows:

178BA Obtaining money etc by deception

- (1) Whosoever by any deception dishonestly obtains for himself or herself or another person any money or valuable thing or any financial advantage of any kind whatsoever shall be liable to imprisonment for 5 years.
- (2) In subsection (1): **deception** means deception (whether deliberate or reckless) by words or conduct as to fact or as to law, including:
 - (a) a deception as to the present intentions of the person using the deception or of any other person, and

²⁶⁸ Correspondence received from Mr Jon Kelso, Business Planning, Personal Injury, Health and Commercial Insurance, Insurance Australia Group, 28 June 2002, p 11.

- (b) an act or thing done or omitted to be done with the intention of causing:
- (i) a computer system, or
 - (ii) a machine that is designed to operate by means of payment or identification,
 - (iii) to make a response that the person doing or omitting to do the act or thing is not authorised to cause the computer system or machine to make. ...

178BB Obtaining money etc by false or misleading statements

- (1) Whosoever, with intent to obtain for himself or herself or another person any money or valuable thing or any financial advantage of any kind whatsoever, makes or publishes, or concurs in making or publishing, any statement (whether or not in writing) which he or she knows to be false or misleading in a material particular or which is false or misleading in a material particular and is made with reckless disregard as to whether it is true or is false or misleading in a material particular shall be liable to imprisonment for 5 years. ...

7.7

While there is some similarities with offences under the workers compensation legislation the penalties under the *Crimes Act 1900* (NSW) are more severe. When the Committee circulated the draft recommendations to stakeholders the following questions in relation to the above recommendations were posed:

- Does the *Crimes Act 1900* provide the best method for responding to serious fraud in the Scheme?
- What level of fraud is sufficient to constitute “serious fraud”?
- Should the definition of “serious fraud” account for claimants, employees and service providers? Should the requirements be the same?

7.8

Mr Peter Remfrey, Secretary, NSW Police Association, expressed in principle support for the draft recommendations:

In respect to fraud, we support in principle—subject to getting some legal advice from a criminal lawyer which is necessary in this area of law—the notion that the *Crimes Act* might be the appropriate method for dealing with these issues. We would be especially supportive of a focus on prosecutions of employers for non-compliance, particularly in the area of premium avoidance and manipulation.²⁶⁹

²⁶⁹ Evidence of Mr Paul Remfrey, Secretary, Police Association of NSW, 2 July 2002, p 45.

7.9 Many stakeholders believed themselves to be unqualified to make constructive comments in regards to these draft recommendations. However, the feedback received by the Committee was constructive and useful. IAG made the following comment in relation to inserting a definition of “serious fraud” into the workers compensation legislation:

... there is a great potential of fraudulent claimants, employees and service providers to commit a high number of individual specific offences but the dollar amounts may not total a figure that the legislation deem serious. Where there is a legislative requirement to have a certain dollar value or number of separate offences the legislative change would have little significance. A quick fix to overcome the difference between the Crimes Act provision and the workers compensation provision would be to increase the penalty from 2 years imprisonment to 5 years which would put both pieces of legislation on par with each other...²⁷⁰

7.10 The most common observation concerned the criminal onus of proof, which is proof “beyond reasonable doubt” and the consequent difficulties that might arise for prosecutors endeavouring to secure a conviction under the *Crimes Act*. Mr Mark Goodsell, Director, NSW, Australian Industry Group made the following comments:

There is a superficial attractiveness attached to prosecutions under the Crimes Act due to the seriousness of such a remedy. Therefore we support the remedy being available as much as a deterrent as anything. However, given the nature of fraud in relation to workers compensation, in practical terms the criminal onus of proof is likely to mean that there are few successful prosecutions against workers and service providers.²⁷¹

7.11 Mr Greg Pattison, General Manager Workplace Solutions, Australian Business Limited (“ABL”), made a similar comment:

It would seem that the most pressing issue with respect to fraud against the WorkCover Scheme is the difficulty in satisfying the required criminal burden of proof. The creation of a new criminal offence of “serious fraud” is going to be of limited if any substantive value if prosecutions cannot be successfully mounted.

The increased penalties, which would become available under the Crimes Act 1900 (NSW) will only have the desired effect if prosecutions can be brought to conclusion.²⁷²

²⁷⁰ Correspondence received from Mr Jon Kelso, Business Planning, Personal Injury, Health and Commercial Insurance, Insurance Australia Group, 28 June 2002, p 12.

²⁷¹ Correspondence received from Mr Mark Goodsell, Director, NSW, Australian Industry Group, 28 June 2002, p 5.

²⁷² Correspondence received from Mr Greg Pattison, General Manger Workplace Solutions, Australian Business Limited, 25 July 2002, p 10.

7.12 Mr Robert Thomson from the Insurance Council of Australia elaborated on the benefits of retaining a civil onus of proof for fraud prosecutions in correspondence received by the Committee:

The industry believes that there would be considerable merit in relation to fraud to adding civil liability penalties to the criminal provisions which are currently provided for in the legislation. ... certain provisions of the legislation, if breached, give rise to a civil penalty that is the imposition of a monetary penalty on the civil burden of proof. Typically, these provisions provide for strict liability and that there is no requirements to meet the criminal burden of proof that is beyond reasonable doubt or to prove criminal intent or knowledge. The imposition of civil penalties does not carry with it a criminal conviction but nevertheless, consequential orders can be made such as orders for compensation in the civil penalty proceedings.²⁷³

7.13 The Committee agrees that there is little benefit to be gained from a legislative regime providing harsher penalties aimed at deterring future perpetrators of the offences if the reality is that fewer successful prosecutions are achieved. The Committee is also not certain of the impact increased resources within WorkCover may have on the success of prosecutions under existing legislation. Mr Thomson addressed the issue of WorkCover's investigative powers in correspondence to the Committee:

One of the lessons which has come out of the corporate area since the 1970s is the need for legislation to make clear provision in respect of the obligations of parties and to ensure that there are adequate penalties and investigative powers relating to breaches of those obligations.

One issue we have not fully investigated is the investigative powers of WorkCover. One thing that could be done is to review these provisions to see to what extent they are aligned with what could be described as modern practice.²⁷⁴

7.14 The combination of more sophisticated data mining tools, discussed in the Committee's Fourth Interim Report and additional staff devoted to investigating and prosecuting offenders may in fact contribute to changing the culture of fraud and non-compliance more than legislative changes. After considering the feedback on the draft recommendations, the Committee makes the following recommendations:

²⁷³ Correspondence received from Mr Rob Thomson, Manager, Workers Compensation, Insurance Council of Australia, 24 July 2002, p 1.

²⁷⁴ Correspondence received from Mr Rob Thomson, Manager, Workers Compensation, Insurance Council of Australia, 24 July 2002, p 2.

Recommendation 21

That the maximum penalties for fraud contained in the *Workers Compensation Act 1987* be significantly increased to make the financial penalties and terms of imprisonment consistent with similar provisions in the *Crimes Act 1900* (NSW).

Recommendation 22

That the adequacy of WorkCover's fraud detection and prosecution resources should be considered during the implementation of the Government's response to the Review of Employers' Compliance with Workers Compensation Premiums and Pay-roll Tax in NSW.²⁷⁵

Recommendation 23

That WorkCover continue to promote and publicise its successful prosecutions for fraud and non-compliance by service providers, employers and claimants.

Plain English legislation

- 7.15** One important aspect of compliance is that the legislative requirements are properly understood. The use of plain language in legislative drafting can contribute to greater compliance by employers, employees and service providers. Occupational health and safety ("OH&S") was discussed in the Committee's Third Interim Report, where it was observed that new workplace safety laws came into effect in NSW on 1 September 2001. The Act and regulation that make up the legislative package rewrote pre-existing workplace safety laws and consolidated them into plain English with clearly defined responsibilities and duties. The task involved rewriting the *Occupational Health and Safety Act 1983* (NSW) and consolidating workplace safety laws contained in 36 previous sets of regulations and two Acts into the Occupational Health and Safety Regulation 2000.
- 7.16** Since its commencement in 1987 the *Workers Compensation Act* has been amended by at least 65 discrete amending Acts, each containing multiple separate amendments. The 1998 Act has been amended by at least 18 individual Acts, also containing multiple amendments since its commencement in 1998.
- 7.17** The Committee has received evidence supporting a simplification of the workers compensation legislation in NSW. Mr Thomson indicated in evidence previously received

²⁷⁵ The interim report from this review, conducted by Associate Professor Neil Warren, UNSW and Penny Le Couter, was released on 22 March 2002.

by the Committee that the proficiency and complexity of the legislation and many amendments made it difficult for stakeholders to understand the Scheme. He stated:

I think one of the issues that the scheme as a whole faces ... is the complexities of the scheme. You have currently got the situation where you have got the 1987 Act, the 1998 Act, the 2000 and 2001 Acts and the 2001 further amendment Act, and you have got the guidelines in relation to provisional liability in relation to permanent impairment, claims estimation manuals, legal costs regulations and a host of other regulations. The picture I am trying to draw is not just from our side but also from the injured workers' point of view and trying to know how to work within the scheme. The same applies to employers in particular.

You have actually got a heap of regulations and legislation approximately 20 centimetres high to try to work within and they are all intertwined with each other. You might read one piece here but you have to make sure that it does not counteract something else along the line. From where the industry sits, the complexities of dealing with legislation from the point of view of all the parties involved in the scheme is a serious issue and I know there has been talk about whether we can get a consolidated Act. There are potential dangers with that as well but certainly for operating within the scheme, we see that as a significant issue.²⁷⁶

7.18 In response to a question from the Chair asking him whether he would support a consolidation of the workers compensation legislation Mr Thomson answered:

I think it is something that would improve the position and it would get rid of some of the complexity. The concept is good because, from the injured workers' point of view and everyone else within the scheme, that is something that needs to be considered. At the moment it is a very difficult issue. The other point that leads on from that and which we see as an issue is that because of these complexities, it actually makes it quite difficult to attract the right type of people within the industry, that is, people who are prepared to come into the industry and stay within the industry.²⁷⁷

7.19 In relation to compliance, Mr Thomson, made the following connection between simplifying the requirements for compliance and the successful detection and prosecution for non-compliance:

... if you simplify the requirements for compliance and make the requirements of compliance clear and easily understood then ultimately it would be much easier to demonstrate non-compliance when that in fact occurs.²⁷⁸

²⁷⁶ Evidence of Mr Rob Thomson, Manager, Workers Compensation, Insurance Council of Australia, 6 March 2002, p 45.

²⁷⁷ Evidence of Mr Rob Thomson, Manager, Workers Compensation, Insurance Council of Australia, 6 March 2002, p 46.

²⁷⁸ Correspondence received from Mr Rob Thomson, Manager, Workers Compensation, Insurance Council of Australia, 24 July 2002, p 2.

7.20 The importance of transparent and easily enforceable laws was also emphasised in the *Review of Employers' Compliance with Workers Compensation Premiums and Pay-roll Tax in NSW*, commissioned by WorkCover and the Office of State Revenue and released in March 2002:

What is uncontroversial yet often overlooked is that the administration of any system must be complemented with transparent and enforceable laws. Anything less will make improving compliance difficult and costly.²⁷⁹

7.21 The Committee acknowledges that rewriting workers compensation legislation may be an arduous and time-consuming task. However, the benefit to be gained from having a clear legislative framework with easily understood responsibilities is immeasurable. The Committee therefore recommends:

Recommendation 24

That all Acts that form part of the workers compensation legislation in NSW be consolidated and redrafted in plain English, as was done with the OH&S legislation and regulations in 2000.

²⁷⁹ P Le Couteur & N Warren, *Review of Employers' Compliance with Workers Compensation Premiums and Pay-roll Tax in NSW – interim report*, commissioned by WorkCover NSW and the Office of State Revenue, 22 March 2002, p 27.

Chapter 8 Self-insurance and specialised insurance

This Chapter explores the impacts and benefits of self-insurance on the NSW workers compensation scheme and the regulatory environment in which self-insurers and specialised insurers operate.

Benefits of self-insurance

8.1 Self-insurance relieves an employer or corporate group of employers from the obligation of obtaining a workers compensation policy and allows such employers to carry their own underwriting risk. Self-insurers are responsible for the payment of their claims liability and for the management of those claims. All costs of any individual employee becoming injured in the workplace are therefore borne by the employer directly. Self-insurers by law are required to provide the same benefits to an employee as would be supplied by an employer covered by the NSW workers compensation scheme. Under the Scheme WorkCover has a responsibility to ensure that workers outstanding claims are adequately protected and will be met. The Committee notes that WorkCover has recently reviewed the licensing arrangements for self-insurers and specialised insurers.

8.2 In Chapter 5 of the Committee's Third Interim Report the Committee explored the pros and cons of self-insurance from the perspective of the Scheme, employees and the self-insured. In summary the following are considered to be the benefits of self insurance:

- Creates better incentives for injury management and return to work.²⁸⁰
- Introduces competition to the system – self-insured employers compete with insurer employers.²⁸¹
- Provides companies with a direct way to manage their own OH&S risk.²⁸²
- Gives employers control of their claims.
- Provides another source for innovation.²⁸³

²⁸⁰ Evidence of Ms Kate McKenzie, General Manager, WorkCover NSW, 15 March 2002, pp 6-7.

²⁸¹ Presentation by Martin Fry, Daniel Smith and Taylor Fry at the Eighth Accident Compensation Seminar, *Self Insurance – Its place in the scheme of things*, p 610.

²⁸² Presentation by Martin Fry, Daniel Smith and Taylor Fry at the Eighth Accident Compensation Seminar, *Self Insurance – Its place in the scheme of things*, p 610.

²⁸³ Presentation by Martin Fry, Daniel Smith and Taylor Fry at the Eighth Accident Compensation Seminar, *Self Insurance – Its place in the scheme of things*, p 610.

8.3 The following are considered to be the potential negatives of self-insurance:

- Workers compensation is a long term business and claims may last longer than the businesses which are managing them. This can create problems for the ongoing provision of benefits to injured workers,²⁸⁴
- Better risk employers are more likely to leave the Scheme to become self-insurers, leaving the poorer risk employers in the Scheme. This results in a increase in the average premium of the Scheme due to reduced cross subsidisation,²⁸⁵
- If employers become self-insurers while there is a deficit in the Scheme they could potentially leave behind their share of the deficit.

8.4 Based on the arguments in the Third Interim Report, the Committee forwarded the following draft recommendation to stakeholders for their comment:

That self-insurance for large employers should be encouraged as a means of introducing more accountability into the Scheme subject to workers' entitlements being adequately protected.

8.5 Most of those who commented on this issue were cautious about the extension of self-insurance. Two main issues were highlighted as potential problems with encouraging self-insurance. These were as follows:

- “Anti-selection” - that better performing insurers are more likely to move towards self-insurance leaving behind those with higher risks and or higher claims experiences, this in turn will have impacts on the average premium rates and the deficit,
- The difficulties associated with the payment of workers entitlements should the self-insurer go out of business.

8.6 In his evidence to the Committee Mr Daniel Tess, Director, Pricewaterhouse Coopers (“PwC”), highlighted the issue of anti-selection:

We would urge caution with respect to self-insurance recommendations. There are some very good arguments for making self-insurance more attractive but we think we ought to point out that self-insurance is not a panacea. We also think we ought to point out that although it may be good for self-insured employers to adopt a self-insurance approach, and if they pursue it well, there may be some negative impacts on the scheme. More specifically, I am talking about a pretty well documented phenomena of anti selection. The people in the scheme that would be most likely to go to self-insurance are your better performing employers: They have the most to gain. Employers that are left in the scheme will be in a different

²⁸⁴ Evidence of Ms Kate McKenzie, General Manager, WorkCover NSW, 15 March 2002, pp 6-7.

²⁸⁵ Presentation by Martin Fry, Daniel Smith and Taylor Fry at the Eighth Accident Compensation Seminar, *entitled Self Insurance – Its place in the scheme of things*, p 610.

financial position as a group. It is going to make things like a deficit be harder to dig out. You should be aware of those sorts of pros and cons. Self-insurance is not cut and dry.²⁸⁶

- 8.7** In his evidence Mr Robert Thomson, Manager Workers Compensation, Insurance Council of Australia, indicated the positives of self-insurance, but also issued a caution about the impact of anti selection on the Scheme:

We believe that self-insurance does have a very positive role to play within the New South Wales scheme, but it needs to be managed and reviewed carefully. In the majority of cases the employers that go this way are the better performing employers; they have a strong commitment to OH&S, they have the appropriate systems and strategies in place, and they link their approach to managing the claims with their human resource issues. So they can clearly interlink the two and get the benefit out of this....The danger of letting too many of the better performing employers go out of the scheme is that you can end up with the scheme having the poorer performers left in the scheme with smaller employers. I know you are not trying to maximise cross-subsidisation, but you are creating issues and tensions within the scheme as to how much cross-subsidisation may or may not exist.²⁸⁷

- 8.8** Ms Kim Cull, President, Law Society of NSW, made similar comments to those of Mr Thomson:

It will be appreciated that self-insurers operate in a more positive and cost effective manner than other employers who are covered by the Scheme. If more larger employers are encouraged to become self insurers then this will put further detrimental pressure on the profitable viability of the Scheme.²⁸⁸

- 8.9** In his correspondence to the Committee Mr Jon Kelso, Insurance Australia Group ("IAG"), also raised concerns about the impact of cross-subsidies that exist in the system. He wrote:

While supporting the principle of allowing employers to self insure, IAG has some reservations about encouraging a movement to self insurance in the current scheme environment. This is because the flaws in the current Scheme, particularly the fact that it is not fully funded and that some cross-subsidies still exist, mean that a large scale move to self insurance would further threaten the viability and the stability of the Scheme.²⁸⁹

²⁸⁶ Evidence of Mr Daniel Tess, Director, PwC, 2 July 2002, p 5.

²⁸⁷ Evidence of Mr Robert Thomson, Manager Workers Compensation, ICA, 2 July 2002, p 25.

²⁸⁸ Correspondence received from Ms Kim Cull, President, Law Society of NSW, 5 July 2002, p 8.

²⁸⁹ Correspondence received from Mr Jon Kelso, Business Planning, IAG, 27 June 2002, p 9.

8.10 Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, highlighted in evidence to the Committee the difficulties associated with guaranteeing entitlements to injured workers whose self-insured employer has gone out of business:

We need to encourage more accountability with large employers. Not all self-insurance is a viable option. We could offer the alternative of a larger excess which would encourage more accountability but keeps them in the scheme so we have that safeguard about what ultimately happens to entitlements and so forth if they were to go broke.²⁹⁰

8.11 Mr Gary Brack, Chief Executive Officer, Employers First, also raised similar concerns:

...we support self-insurance. Whoever it is must make sure that they have the resources available and the scheme will not be stuck with paying out.²⁹¹

8.12 Some stakeholders were not supportive of the proposal at all. In his evidence to the Committee Mr Richard Gilley, Managing Consultant, RiskNet argued against the proposal and used impacts on employee benefits after the collapse of Pasminco as an example:

Tasmanian experience with the Pasminco affair should have sent shudders through all Workers Compensation self-insurance regulators.²⁹²

8.13 The Committee understands that one reason why the collapse of Pasminco caused problems for the workers compensation scheme was that, unlike insurers generally, self-insurers are not required to maintain separate trust funds to secure outstanding claims liabilities.

8.14 In contrast, the employer representatives Australian Business Limited and the Australian Industry Group were very supportive of the proposal.²⁹³

8.15 In correspondence to the Committee Mr Alexander Salomon, Chairman, Self Insurers Association, indicated that the Association was supportive of the expansion of self-insurance as long as self-insurers met prudential and claims/injury management requirements. He said:

The essential requirements for self-insurance should be prudential requirements and claims/injury management requirements.²⁹⁴

²⁹⁰ Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 2 July 2002, p 15.

²⁹¹ Evidence of Mr Gary Brack, Chief Executive Officer, Employers First, 2 July 2002, p 34.

²⁹² Correspondence received from Mr Richard Gilley, Managing Consultant, RiskNet, 24 June 2002, p 6.

²⁹³ Correspondence received from Mr Greg Pattison, General Manager, Workplace Solutions, ABL, 2 July 2002, p 9 and Correspondence received from Mr Mark Goodsell, Director NSW, AIG, 28 June 2002, p 3.

8.16 In her evidence to the Committee Ms Mary Yagger, OH&S Workers Compensation Coordinator, Labor Council NSW, also gave some qualified support to the proposal. She said:

...self-insurers definitely outperform licensed insurance, perhaps because they manage their own risk. However, some of the unions are critical of self-insurers in terms of their rehabilitation and return-to-work programs. There has been some criticism there. If you are going to look at regulation, we would be looking more at compliance in that area.²⁹⁵

8.17 Overwhelmingly the evidence received by the Committee on this issue was that further encouragement of self-insurance has the potential to be detrimental to the financial position of the Scheme as a consequence of either:

- High performing employers leaving the Scheme and reducing the scope for cross subsidisation,
- The possible financial costs for the Scheme of self-insurers outstanding claims liabilities where they have subsequently gone out of business.

8.18 The Committee also heard evidence that in fact there has been a large increase in self-insurance and specialised insurance to date. In his evidence to the Committee Mr David Zaman, consulting actuary, said:

The first one is that earlier this year WorkCover gave you some information about the number of employees within the self-insurers sector compared to the whole of the State. As at 1 July 2000. There have been a lot of changes since that time — in particular Campbelltown Council, McDonald's, OneSteel, Prestige, University of Wollongong, Woolworths and Coles Myer have all gone self-insured since that time. Further, as a specialised insurer, an industry's self-insured scheme has been set up to cover local government in this State, and I understand that around 70 per cent of the councils are within the scheme called Statecover. If we look at all those self-insured groups plus the ones before 2000, the Treasury-managed fund and also the other specialised insurers we are looking at may be 35 per cent or so of the New South Wales work force is outside the managed fund in some form of self-managed or self-insurance arrangement.²⁹⁶

8.19 In September 2001 Ms McKenzie indicated that the 16 self-insurers cover approximately 30% of the Scheme.²⁹⁷

²⁹⁴ Correspondence received from Mr Alexander Salomon, Chairman Self Insurers Association, 27 July 2002, p 3.

²⁹⁵ Evidence of Ms Mary Yaager, OH&S Workers Compensation Coordinator, 2 July 2002, p 42.

²⁹⁶ Evidence of Mr David Zaman, Consulting Actuary, 3 June 2002, p 46.

²⁹⁷ Evidence of Ms Kate McKenzie, General Manager, WorkCover NSW, 24 September 2002, p 6.

Conclusion

WorkCover should be cautious about further initiatives to encourage self-insurance. Any further move in this direction should only occur where a rigorous study of the likely financial impacts on the Scheme has shown that the effect will be minimal.

Regulation of self-insurers and specialised insurers

8.20 At paragraph 5.53 of the Committee's Third Interim Report the Committee outlines the broad criteria under which self-insurers are licensed. This includes a summary of the information required by WorkCover for regulatory purposes. In summary, WorkCover requires the following information from self-insurers on an ongoing basis for regulatory purposes:

- A copy of the organisation's annual report, including an audited statement,
- An annual report outlining the outcomes of the OH&S management systems self audit,
- Monthly claim data in a form approved by WorkCover,
- A report of their self audit results on injury management (to be provided to WorkCover at least 6 months prior to their licence expiry date),
- Any revision of their injury management program and;²⁹⁸
- Annual Actuarial reports.

8.21 Specialised insurers can be described as being akin to a smaller version of a privatised workers compensation scheme, in that they are responsible for setting, collecting premiums and underwriting their own liabilities. The major differences between specialised insurers and insurers in a private system, are that specialised insurers can only underwrite industries of a similar nature, (for example Statecover can only underwrite workers compensation claims for local councils) and specialised insurers are regulated by WorkCover.

8.22 The Committee has not considered the evidence received regarding the regulatory environment in which specialised insurers exist in earlier reports. As a consequence a brief outline of the licensing requirements for specialised insurers is given here.

8.23 Specialised insurers must demonstrate long-term financial viability, prudent claims, reserving policies and must have sufficient financial resources to meet their liabilities. Specialised insurers who do not hold authority from APRA are expected to demonstrate an equivalent level of solvency to that required from APRA approved insurers.

²⁹⁸ WorkCover NSW, *Licensing Policy of the WorkCover Authority for Self Insurers and Group Self Insurers Licensed under Section 211 of the Workers Compensation Act 1987.*

8.24 Applicants for specialised insurance licenses must demonstrate that they have the necessary infrastructure and resources required to meet statutory obligations and to comply with the directions, guidelines and manuals issued by WorkCover from time to time. A specialised insurer is expected to maintain a professional standard at all times. Failure to meet such standards may constitute a basis for licence suspension, cancellation or non-renewal. Some arrangements for key operational functions may be outsourced with WorkCover's permission.

8.25 Other licensing requirements include:

- Australian Prudential Regulatory Authority (APRA) – Unless exempted by Section 5 of the *Insurance Act 1973* (Cth), specialised insurers must hold an authority granted by APRA to carry on insurance business.
- Specialised insurers are required to advise WorkCover of any changes in the control and ownership of the organisation,
- Specialised insurers must demonstrate a capacity to undertake workers compensation business in NSW.
- Specialised insurers are expected to comply with the statutory requirements of Chapter 3 of the *Workplace Injury Management and Workers Compensation Act 1998* regarding Workplace Injury Management.
- Specialised insurers are required to have a program in place to provide advise and assist their insured employers to meet their OH&S obligations.
- WorkCover requires those specialised insurers authorised by APRA to provide copies of APRA returns and correspondence. Specialised insurers who do not hold APRA authority are required to provide information as specified by WorkCover (based on APRA returns).
- Specialised insurers must obtain appropriate reinsurance.
- Specialised insurers are required to lodge with WorkCover an annual actuarial evaluation of their outstanding claims.
- Different conditions may be written into individual licenses.²⁹⁹

8.26 In their third report to the Committee, the Committee's consultant actuary Ernst & Young raised the issue of APRA's regulation and the options for applying APRA's regulatory requirements to self-insurers and specialised insurers in New South Wales. (The Ernst & Young report is attached as Appendix 3 of the Committee's Third Interim Report.) In particular, Ernst & Young raised concerns about the differing licensing rules and regulatory provisions between self-insurers and specialised insurers, and more importantly the differences between individual specialised insurers.

²⁹⁹ WorkCover NSW, *Licensing Policy for Specialised Insurers under Division 3 of Part 7 of the Workers Compensation Act*.

- 8.27** In their Third Report to the Committee, Ernst & Young, highlight that not all self insurers are licensed under the *Insurance Act 1973* (Cth). They wrote:

Some specialised insurers are licensed under both WorkCover and Insurance Act legislation. Specialised insurers licensed under both sets of legislation are Catholic Church Insurance, Guild Insurance, State Cover and North. These insurers write other classes of insurance other than workers compensation. WorkCover licenses the Joint Coal Board and the Thoroughbred Racing Board as specialised insurers but they are not licensed under the Federal Insurance Act. The Joint Coal Board is like a group scheme insuring coal industry workers from many different employers but it does not have to comply with the greater prudential requirements of similar insurers licensed under the Insurance Act... We note on occasions in this section that some specialised insurers are licensed under the Insurance Act and some are not.³⁰⁰

- 8.28** There is no reason why all specialised insurers should not be licensed under the *Insurance Act*. In their report Ernst & Young wrote:

We suggest there is no rationale for these specialised insurers not being licensed under the Insurance Act. This creates an uneven playing field with the specialised insurers licensed under the Insurance Act being subject to a higher standard of prudential regulation especially from 1 July 2002, than specialised insurers not licensed under the Insurance Act. Consequently, it may be inferred that the employee workers compensation entitlements insured by the unlicensed specialised insurers are subject to an inferior level of prudential supervision.³⁰¹

- 8.29** The extent of WorkCover's regulation of self-insurers was raised as an issue by Ernst & Young:

Self insurers (excluding Treasury Managed Fund) are required to purchase a bank guarantee as for specialised insurers. In the failure of Pasmenco, a licensed self-insurer, the bank guarantee did not protect claimant's workers compensation entitlements. With the benefit of the failure of Pasmenco and the introduction of APRA's higher standard of prudential requirements. WorkCover may wish to formally review the adequacy of the 30% requirement given APRA's more stringent requirements.³⁰²

- 8.30** Ernst & Young suggested that the actuarial reports provided to WorkCover by self-insurers may need to be reviewed by an actuary:

We do not know if WorkCover asks its actuary to review the actuarial reports of each self insurer and report the results to WorkCover. As part of its prudential supervision of self-insurers, WorkCover should have the actuarial reports of each self-insurer reviewed by an actuary it appoints at least once every three years and have the actuary report to it on the adequacy of the actuarial advice. There is a compelling argument for this given the substantial under reserving within the

³⁰⁰ Ernst & Young ABC, *NSW Workers Compensation Review Third Report*, 25 March 2001, p 3.

³⁰¹ Ernst & Young ABC, *NSW Workers Compensation Review Third Report*, 25 March 2001, p 4.

³⁰² Ernst & Young ABC, *NSW Workers Compensation Review Third Report*, 25 March 2001, p 5.

general insurance industry over the last few years even though actuaries reviewed most of the outstanding claims reserves of insurers.³⁰³

- 8.31** Given the concerns raised about the regulation of self insurers and specialised insurers, the following draft recommendation was developed and provided to stakeholders for their comment:

That the Government conduct a formal and transparent review of the prudential regulation of self-insurers and specialised insurers (self insurers and specialised insurers are not a part of the Government's independent review of Scheme design). The purpose of the review would be to ensure that the regulation of self-insurers is at least as strong as for insurers regulated by APRA.

- 8.32** Generally the comments provided by stakeholders on this issue were more supportive of need to improve the regulation of specialised insurers (not currently licensed under the *Insurance Act*) than of increasing the regulatory provisions with regards to self-insurers.

- 8.33** In his evidence to the Committee Mr Thomson indicated that there is a need to review the regulatory requirements for specialised insurers not currently covered by APRA regulations. He said:

Our view would be that for those that are subject to APRA regulations, there is no need to do any more because the Federal legislation, especially that which came into effect on 1 July, should be sufficient. There may be cause to consider the issue in relation to those specialised insurers that are not.³⁰⁴

- 8.34** Australian Business Limited also stated that a review of the regulatory environment for specialised insurers was warranted.³⁰⁵

- 8.35** There was support for the regulatory provisions for self-insurers to be reviewed. In his evidence to the Committee Mr Gilley argued for the need to review self-insurers. He said:

We believe that the strengthened APRA prudential and other requirements are the minimum standards, which ought to apply to self-insurers. We also believe that there is too much actuarial concentration in the NSW self-insurance market, with one actuary having the majority of the business. We believe that there ought to be a requirement for different actuarial firms to conduct self-insurance valuations from year to year.³⁰⁶

³⁰³ Ernst & Young ABC, *NSW Workers Compensation Review Third Report*, 25 March 2001, p 5.

³⁰⁴ Evidence of Mr Robert Thomson, Manager Workers Compensation, ICA, 2 July 2002, p 25.

³⁰⁵ Correspondence received from Mr Greg Pattison, General Manager, Workplace Solutions, ABL, 2 July 2002, p 9.

³⁰⁶ Correspondence received from Mr Richard Gilley, Managing Consultant, RiskNet, 24 June 2002, p 6.

8.36 In his evidence to the Committee, Mr McCarthy also highlighted the need to monitor self-insurers closely. He said:

Self-insurers generally need to come under some very tight scrutiny on how they are managing their scheme and the finances involved in those schemes and the financial capability of the company over time to make sure that they are strong and financially viable enough to continue.³⁰⁷

8.37 Mr Gary Brack, Chief Executive, Employers First, indicated in evidence that it was important to ensure that self-insurers had the capacity to manage their own workers compensation, but was cautious about supporting the application of APRA's requirements:

Whoever it is must make sure that they have the resources available and the scheme will not be stuck with paying out. If you ask, "How do we do it?", perhaps we will include some suggestions in our submission about the detail of that. The prudential regulation is part of that same question. I think if they are performing well it would not be appropriate for WorkCover to load them up with a load of bureaucratic stuff, which WorkCover tends to do. They want to come out and inspect them every five minutes and what have you. As soon as you start loading them with all that bureaucracy, you raise their costs and the very thing that they are good at is actually keeping their costs down, managing their claims well. Once they get those combined outcomes working satisfactorily it is in their interest to go down the self-insurance path which is beneficial.³⁰⁸

8.38 However, a number of witnesses indicated that the current regulatory provisions for self-insurers are sufficient and raised concerns about the impact that increasing the reporting requirements may have on the employers. In his evidence to the Committee, Mr Thomson said:

In relation to the financial position of self-insurers, there is a need to ensure that there is appropriate protection. I think the existing guidelines issued are probably quite reasonable. The point we would raise comes back to the actuarial assessments undertaken in relation to some self-insurers. In our recommendation we suggest that the actuarial assessments currently undertaken for self-insurers be periodically reviewed by the scheme actuary or an actuary appointed by the WorkCover authority to ensure that there is veracity in the assessments being undertaken at the moment. I do not think anyone can really say whether they are right or wrong. I think there is concern about whether they are appropriate or not.³⁰⁹

³⁰⁷ Evidence of Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, 2 July 2002, p 15.

³⁰⁸ Evidence of Mr Gary Brack, Chief Executive Officer, Employers First, 2 July 2002, p 34.

³⁰⁹ Evidence of Mr Robert Thomson, Manager Workers Compensation, ICA, 2 July 2002, p 25.

8.39 Mr Salomon also raised concerns about the impact on employers of requiring more information. He wrote:

Current licensing conditions are strong enough through the annual employer reports and actuarial reports. It is important to note that for self-insurers, as distinct from specialised insurers, worker's compensation is not a core business of the employer. Self-insurers do not solely operate as an insurer and should not be aligned in any way with APRA requirements in insurers generally.³¹⁰

8.40 In correspondence to the Committee Mr Pattison said:

While we can understand the concerns the Committee may have with respect to the maintenance of proper prudential arrangements within the current environment we believe the current prudential requirements with respect to self-insurers are adequate.³¹¹

Conclusion

Self Insurers

As a consequence of the possible impacts on the Scheme and on injured employees of self-insurers having insufficient funds to cover outstanding claims liabilities, it is of vital importance that the on going capacity of individual self insurers to cover claims liabilities is closely monitored by WorkCover.

To do this WorkCover needs to have sufficient information about the performance of the self-insurer. The Committee is concerned that WorkCover may not currently have enough information about the performance of self-insurers. However, the Committee is also conscious that employers have a core business and that it is important not to detract from this with unrealistic and excessive demands for information.

Specialised Insurers

The regulation of specialised insurers needs to be consistent for all specialised insurers and that there are good arguments for improving the monitoring role currently performed by WorkCover with regards to specialised insurers.

³¹⁰ Correspondence received from Mr Alexander Salomon, Chairman Self Insurers Association, 27 July 2002, p 3.

³¹¹ Correspondence received from Mr Greg Pattison, General Manager, Workplace Solutions, ABL, 25 July 2002, p 9.

Recommendation 25

That the licensing conditions for specialised insurers and self-insurers be reconsidered by the Government in light of the recommendations of the HIH Royal Commission and the Scheme Design Review.

That the outcomes of the reconsideration be reported back to the Law and Justice Committee (refer Recommendation 26).

Chapter 9 Monitoring, transparency and ongoing reviews

In the previous four reports the transparency of the Scheme and the WorkCover Authority was raised as a major issue by the Scheme's stakeholders. It was felt that there was some need to improve the ability of stakeholders to gain access to information about the Scheme and to monitor WorkCover's performance. It was also thought that there needed to be a mechanism for ongoing monitoring of the Scheme.

This Chapter considers and makes recommendations about improving:

- The transparency of the Scheme.
- Stakeholder involvement and ownership of the Scheme.
- Monitoring of the Scheme.

These issues were also considered in the Committee's previous reports, of particular relevance are Chapters 4 and 5 of the Second Interim Report and Chapters 6 and 8 of the Third Interim Report.

Ongoing reviews and monitoring

9.1 It was suggested to the Committee that once it had concluded its inquiry into the Workers Compensation Scheme that there was some need for the Scheme to be reviewed on an ongoing basis. In his evidence to the Committee Mr Christopher Wynyard of the Plaintiff Lawyers Association said that General Purpose Standing Committee No 1 needed to establish a system to enable the Scheme to be monitored:

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.³¹²

9.2 Currently the Law and Justice Standing Committee of the Legislative Council has an ongoing monitoring role with regards to the Motor Accidents Authority. This role is provided for under Part 8.3 of the *Motor Accidents Compensation Act 1999*. It states:

Appointment of Parliamentary Committee

- (1) As soon as practicable after the commencement of this Part and the commencement of the first session of each Parliament, a committee of the Legislative Council is to be designated by resolution of the Legislative Council as the designated committee for the purposes of this Part.
- (2) The resolution of the Legislative Council is to specify the terms of reference of the committee so designated which are to relate to the supervision of the

³¹² Evidence of Mr Christopher Wynyard, Barrister, Australian Plaintiff Lawyers Association, October 10 2001, p 45.

exercise of the functions of the Authority and the Motor Accidents Council under this Act.³¹³

- 9.3** The Committee felt that one way to ensure the ongoing external monitoring of WorkCover and the Scheme would be for the Law and Justice Committee to perform a similar role for WorkCover that it does for the Motor Accidents Authority. In order to gain comment on this option the following draft recommendation was forwarded to stakeholders for feedback:

That the Workplace Injury Management Act 1998 (NSW) be amended to designate the Legislative Council Standing Committee on Law and Justice to annually review the implementation of the 2001 legislative reforms and the general financial and other progress of the Scheme, consistent with that Committee's role under section 210 of the Motor Accidents Corporation Act 1999 (NSW) and that WorkCover through the Minister provide progress reports to the Committee at least six monthly.

That the report of the IPART review of the Workers Compensation Scheme, due to be completed in January 2003, form part of the Law and Justice Committee's first annual review of the Scheme.

- 9.4** The stakeholders who responded to the Committee's draft recommendation were overwhelmingly positive about the proposal.
- 9.5** In correspondence to the Committee, Ms Kim Cull, President, NSW Law Society, supported the role of the Law and Justice Committee in reviewing the Scheme and indicated that the Committee should be proactive in its role. She said:

The Committee's role should be pro-active by seeking a broad range of views such as would indicate shortcomings in the legislation and more particularly the recent reforms. The reports should identify problems in the legislation and recommend action to rectify such problems.³¹⁴

- 9.6** Mr Richard Gilley, Managing Consultant, RiskNet, also supported the recommendation and suggested that it be expanded. He said:

The major thrust of the recommendation is agreed to. We suggest that the recommendation be broadened to include any and all present and future amendments (including those by Regulation) to the Workers Compensation Act 1987 and the Work Injury Management and Workers Compensation Act 2001.³¹⁵

- 9.7** In correspondence to the Committee Mr Jon Kelso, Business Planning, IAG, indicated that an ongoing review would help achieve long term stability in the Scheme. He said:

IAG supports a regular review process to monitor the effectiveness of the 2001 reforms and the overall performance of the scheme as this will help to achieve

³¹³ *Motor Accidents Compensation Act 1999, Part 8.3*

³¹⁴ Correspondence received from Ms Kim Cull, President, Law Society of NSW, 27 June 2002, p 1.

³¹⁵ Correspondence received from Mr Richard Gilley, Managing Consultant, 24 June 2002, p 1.

long-term stability and allow any areas of concern to be identified. We agree that the IPART review should form part of the Law and Justice Committee's first annual review of the Scheme.³¹⁶

9.8 Mr Gary Brack, Chief Executive, Employers First, was supportive of an annual review because it would provide for further opportunities for the involvement of stakeholders. He said:

I think the notion of an annual review is worthwhile. It should be public. It would no doubt provide another opportunity to evaluate scheme performance amongst all participants, including WorkCover, the commission, insurers, other service providers, employers and employees. So, from that point of you, I would support an annual review. Also, importantly, it should review the underlying assumptions that actuaries make or have when they review the scheme. Depending on the assumptions that they make, you can get widely differing views about likely scheme performance. I think everybody recognises that the actuary's job is an impossible one: 50 per cent is based on data before them, and the other 50 per cent is based on their assumptions about what might happen to the data in the future. So, any review like this I think should focus on those things.³¹⁷

9.9 In addition, both the Australian Industry Group³¹⁸ and the Insurance Council of Australia were supportive of the recommendation.³¹⁹

9.10 Although supportive of the need for transparency and of the need to constantly review the Scheme, Mr Greg Pattison, General Manager, Labour Market Services, Australian Business Limited, raised concerns about the number of reviews currently occurring:

We would certainly agree with Gary's position on transparency and review of the scheme, and the need for it to be under constant review. Our only difference on that particular position is that there is a lot of review going on at the moment. We have the scheme review coming forward from the Minister by the end of next year. We think the whole Government's overview structure should be seen within the context of that review.³²⁰

9.11 In her evidence to the Committee Ms Mary Yagger, OH&S Workers Compensation, Coordinator, Labor Council, said that she thought the most appropriate body to monitor the Scheme was the Workers Compensation and Workplace Occupational Health and Safety Council:

...the Labor Council continues to support the role of the Workers Compensation and Workplace Occupational Health and Safety Council. We have been actively involved in that council, particularly, the establishment of that council. The

³¹⁶ Correspondence received from Mr Jon Kelso, Business Planning, IAG, 27 June 2002, p 2.

³¹⁷ Evidence of Mr Gary Brack, Chief Executive, Employers First, 2 July 2002, p 27.

³¹⁸ Correspondence received from Mr Mark Goodsell, Director NSW, AIG, 28 June 2002, p 1.

³¹⁹ Evidence of Mr Robert Thomson, Manager Workers Compensation, ICA, 2 July 2002, p 20.

³²⁰ Evidence of Mr Greg Pattison, General Manager, Labour Market Services, ABL, 2 July 2002, p 28.

council meets on a monthly basis and it monitors the scheme on a monthly basis.³²¹

9.12 This view was reiterated by Mr Peter Remfrey, Secretary, NSW Police Association. He said:

The council comprises of major stakeholders in the workers compensation area—employers, ourselves and the WorkCover Authority—and we think that that is the appropriate forum for these issues to be resolved and for advice to be given to the Minister about the scheme.³²²

9.13 The Committee notes the concerns and issues raised by Mr Remfrey and Ms Yaager in their evidence. The role of the Workers Compensation and Workplace Occupational Health and Safety Council is considered in the next section of this report.

Conclusion

Ongoing monitoring of the workers compensation scheme, which is accessible to the public as a whole, will serve to aid the accountability and transparency of the Scheme and WorkCover.

9.14 In earlier chapters of this report the Committee recommends several reviews of particular aspects of the workers compensation scheme (Recommendations 8, 9, 10, 11, 15, 16 and 25). The Law and Justice Committee would be the appropriate body to receive the reports from these reviews as part of its ongoing monitoring role.

Recommendation 26

That the *Workplace Injury Management Act 1998* (NSW) be amended to designate a role for a Legislative Council committee to annually review the implementation of the 2001 legislative reforms and any subsequent significant legislative reforms, the general financial status of the Scheme and the progress of the Scheme, consistent with that Committee's role under section 210 of the *Motor Accidents Corporation Act 1999* (NSW), and that WorkCover through the Minister provide progress reports to the Committee at least six monthly.

That the nominated committee be the Standing Committee on Law and Justice.

That the report of the IPART review of the workers compensation scheme, due to be completed in January 2003, and the report from the Scheme Design Review, form part of the Law and Justice Committee's first annual review of the Scheme.

³²¹ Evidence of Ms Mary Yaager, OHS Workers Compensation Coordinator, Labor Council NSW, 2 July 2002, p 37.

³²² Evidence of Mr Peter Remfrey, Secretary, NSW Policy Association, 2 July 2002, p 37.

9.15 The Committee has made a number of recommendations in this report which include the referral of the completed work to the Law and Justice Committee. These recommendations include:

- A feasibility study into the creation of a centralized computer system.
- A study exploring options for improving the regulatory powers of WorkCover.
- A study into the appropriateness of APRA regulations for self-insurers and specialised-insurers.

The Advisory Council

9.16 In 1998, based on the advice contained within the Grellman Report, an Advisory Council and a network of Industry Reference Groups were established. The Advisory Council's intended role was outlined by the Minister for Industrial Relations, the Hon Jeff Shaw MLC, during the second reading of the *Workers Compensation Legislation Amendment Bill 1998*. He stated:

One of the main proposals is to promote stakeholder control and accountability by establishing a permanent Workers Compensation Advisory Council. The council will have a key advisory role in relation to the ongoing policy direction and review of the scheme, and further recommendations for change. All legislative amendment proposals, including regulation-making proposals, will be formulated by the advisory council and recommended to the Government. This will replace in part the role and functions previously carried out by the board of the WorkCover Authority. The council, however, will not be distracted by the day-to-day management of the WorkCover Authority, which will have the role of a genuinely independent scheme regulator managed as it currently is by a board of directors appointed by the Minister.³²³

9.17 The principal functions of the Advisory Council were to:

- Be responsible for the formulation of recommendations to the Minister with respect to the objectives and policy directions of the workers compensation legislation and the occupational health and safety legislation,
- Be responsible for the formulation of recommendations to the Minister with respect to the amendment or replacement of any such legislation,
- Monitor and report to the Minister on the operation and effectiveness of any such legislation, and on the performance of the schemes to which any such legislation relates;
- Undertake consultation in connection with current or proposed legislation relating to any such scheme as it thinks fit,

³²³ NSWPD, 14 November 2000, p 9889.

- Report its views about any proposed legislation that might impact on any such scheme to the Minister or the proponent of the proposed legislation,
- Monitor and review key indicators of financial viability and other aspects of such schemes,
- Advise the Minister on any matter relating to any such legislation or any such scheme that the Minister refers to the Advisory Council for advice,
- Monitor and review the operations of the Authority in connection with the exercise of the Authority's functions.³²⁴

9.18 The Council consisted of five employer representatives, five employee representatives, two insurer representatives and the General Manager of WorkCover. After less than two years of operation the Advisory Council was abolished and some of its functions/objectives merged with the Occupational Health and Safety Council ("The OH&S Council").³²⁵ The new consultative committee was called the Workers Compensation and Workplace Occupational Health and Safety Council of NSW ("the Council").

9.19 The new Council is comprised of 17 representatives including the chair, five employer representatives, five employee representatives, one legal representative, one medical representative, one health care representative, one insurer representative, one injury management and rehabilitation expert and one occupational health and safety expert.

9.20 The Council's key function is to give advice to the Minister, providing for a greater emphasis on a systemic approach to the prevention of workplace injury/ injury management/return to work and workers compensation issues.³²⁶

9.21 During the inquiry the Committee heard evidence regarding the Advisory Council and the new Council. The majority of this evidence is outlined in Chapter 4 of the Second Interim Report. The Committee concluded in that report that:

The establishment of the Advisory Council was a mechanism to instill a sense of ownership by stakeholders. This purpose remains valid.

Four years after the Grellman report and over a year after the merger of the Advisory Council and the Occupational Health and Safety Council, there remains a lack of scheme ownership among stakeholders. This lack of ownership continues to adversely impact on claims management, compliance and return to work rates. This situation combined with a lack of clarity regarding responsibility for the financial management of Scheme is culminating in ongoing problems with the deficit.

³²⁴ WorkCover NSW, Annual Report 1999/2000, p 105.

³²⁵ NSWPD, 14 November 2000. p 9889.

³²⁶ WorkCover NSW, Annual Report 2000/01, p 147.

9.22 The Committee heard that while the Advisory Council is supported by many conceptually, the timing of its inception as well as its make up may have contributed to it being merged with the OH&S Council. In his evidence to the Committee Mr John Walsh, Partner, Pricewaterhouse Coopers, (“PwC”) highlighted this issue. He said:

I think the concept of the Advisory Council is excellent. We actually wrote a paper that was used, to some extent, by Richard Grellman in forming that governance model. I think the Advisory Council was effective in its first, probably, 12 months of operation, and I thought that the initiatives that went into the 1998 Act were positive and constructive. Ultimately, I think it may have been just a bit too late. I think the financial position of the scheme was so difficult that the decisions that had to be taken by the Advisory Council led to, I suppose, not a full sharing of responsibility in terms of walking away totally from the constituencies. My personal view-although I have never said this to any of the Advisory Council members-is that that ultimately was the difficulty with the New South Wales Advisory Council. I do not think that commentary says that it was not a good idea.³²⁷

9.23 Mr Walsh indicated that he thought the merger between the Advisory Council and the OH&S Council was appropriate given the difficulties being faced by the Advisory Council in reaching consensus about key issues. He said:

I think the new model was probably a necessary result of that outcome. It seemed to me that the financial position of the scheme was deteriorating at a rate that needed some hard decisions to be made. It did not seem that the Advisory Council was able to get consensus to make those hard decisions. The individuals on the Advisory Council have an enormous amount to offer to the scheme, so I think it is a legitimate and positive step to keep them involved and keep their contributions going.³²⁸

9.24 In his evidence to the Committee Mr Grellman said that one of the reasons why the Advisory Council may have had troubles making decisions was that there were too many representatives and hence reduced dialogue:

No, the advisory council was established in accordance with my recommendations save for one point and that was that it ended up a little bigger than I was recommending. . .It is just that, from memory, I suggested four employer and four employee representatives, and I think there were five or possibly six of each. I think in simple terms that reduced the amount of dialogue around the table, making the reaching of a conclusion that much more challenging. Whether that was a fundamental flaw or not is arguable, but I doubt it was a fundamental flaw in the way that the advisory council operated. It just made its task that much harder, I think.³²⁹

³²⁷ Evidence of Mr John Walsh, Partner, PwC, 21 November 2002, p 19.

³²⁸ Evidence of Mr Richard Grellman, 21 November 2001, p 2.

³²⁹ Evidence of Mr John Walsh, Partner, PwC, 21 November 2001, p 19.

9.25 However, like Mr Walsh, Mr Grellman also raised the issue of the difficulties stakeholders had in overcoming their differences:

It certainly seems like the group found difficulty in dealing with entrenched differences in a way that was going to be productive.³³⁰

9.26 Although the Committee did not directly ask this of stakeholders, a number of stakeholders indicated that they would like the Advisory Council to be re-established. In her evidence to the Committee Ms Yaager, said that the Advisory Council was the best placed to monitor the Scheme:

We know that the committee wants to meet on an annual basis and continuously review the scheme, but we really believe that that is the role of the council. We would rather see the former powers and functions, those that were in the original 1998 Act, be restored to the council.³³¹

9.27 Mr Brack told the Committee that it was important to monitor the Scheme closely and that the Advisory Council was best placed to do this:

However, I think the reality is that, to understand what is happening to a workers compensation scheme, one needs at least monthly, detailed oversight of the data and debate concerning key issues that arise. Many issues now arise from the Advisory Council's monthly meetings, which would not surface, in my view, in an annual or even six-monthly review, and you need that information.³³²

And

The problem with the Standing Committee doing a review annually is that that is not sufficiently frequent. You do not get the build-up of the discussion. You do not get the month-by-month subtleties and nuances of the small changes, which then lead to questions being raised. And then you do not have the opportunity and the framework of that review to get to the bottom of all those things. Whereas, if you have the Advisory Council doing that stuff all the way through, then the review you might conduct will be, in my view, on a foundation of a much better data set, a much better understanding of what is going on and going wrong and going right. I see that as a fundamental foundation to any review that might be conducted by this body.³³³

9.28 The Committee notes that the Government has embarked on a number of strategies to help improve stakeholder ownership of the Scheme including the Scheme Design Review, injury management pilots, the Occupational Health and Safety Summit, medical

³³⁰ Evidence of Mr Richard Grellman, 21 November 2001, p 2.

³³¹ Evidence of Ms Mary Yaager, OHS Workers Compensation Coordinator, Labor Council NSW, 2 July 2002, p 37.

³³² Evidence of Mr Garry Brack, Chief Executive, Employers First, 2 July 2002, p 27.

³³³ Evidence of Mr Garry Brack, Chief Executive, Employers First, 2 July 2002, p 28.

management pilots, the premium discount scheme, compliance initiative and the small business strategy.³³⁴

- 9.29** The Committee feels that a number of the initiatives undertaken by the Government have been useful in involving stakeholders in designing strategies for preventing injuries and hopefully, in turn, in actually preventing injuries. The Occupational Health and Safety Summit and the Workers Compensation and Workplace Occupational Health and Safety Council are cases in point.
-

Conclusion

There is a need for the Government to be proactive in involving key stakeholders in the actual Workers Compensation Scheme, through policy design, implementation and monitoring.

- 9.30** The Committee hopes that stakeholders, given the opportunity to again be involved with the Scheme (through the Advisory Council), will work collaboratively and that the interests of the Scheme as a whole (over and above its individual parts) will be made paramount in the Council's deliberations.
-

Recommendation 27

That the Advisory Council be reinstated but with revised functions and membership after the Scheme's deficit has been minimised and is stable.

That the Advisory Council consist solely of employers, employees and the General Manager of WorkCover. An actuary, an insurer representative and a representative for other non-insurer service providers should only perform advisory functions for the Council. The numbers of employer and employee representatives should be limited as much as possible.

That the Council perform consultative, advisory and monitoring functions for the workers compensation scheme. The exact extent of these functions should be negotiated between WorkCover, employees and employers. It is recommended that the experiences of other jurisdictions be considered in these negotiations.

That the Council can make recommendations to the Government but cannot perform any decision-making functions.

- 9.31** The Committee has consistently held that injury prevention is paramount in the Scheme. Reflecting the importance of injury prevention, the Committee believes that the Advisory
-

³³⁴ Refer to paragraph 4.13 of the Committee's Second Interim Report for details.

Council should have a committee dedicated to considering OH&S issues. Furthermore, following the re-establishment of the Advisory Council, the OH&S Council should continue as it did before it was merged with the Advisory Council.

Increasing transparency through the release of reports and reviews

9.32 Ownership has been a recurrent theme during this inquiry. One means by which a sense of ownership in the Scheme can be promoted is transparency of processes and information. The Committee has experienced some difficulties obtaining relevant information in a timely manner during the course of the inquiry. This issue was addressed in the Committee's third interim report, and is partly attributable to WorkCover's computer and IT systems which the Committee has found may hinder the collection and dissemination of information. The Committee's Fourth Interim Report looked at WorkCover's IT strategy which is intended to address some of the concerns about access to WorkCover information and data.

9.33 With transparency in mind, the Committee proposed the following draft recommendation:

That WorkCover publicly release reports from its consulting actuary to improve the transparency of the financial progress of the Scheme, including reports on outstanding claims reserves, premium rates and monitoring. The use of the Internet could be investigated as a means of publishing these reports.

9.34 The feedback from stakeholders overwhelmingly supported increased transparency and access to information. The only issue is which reports should be publicly released. Representing the insurance industry, IAG also supported increased dissemination of information; stating that WorkCover should make available all reports and information which demonstrate or show how the scheme is performing.³³⁵ Mr Thomson told the Committee that the manner in which information is disseminated is relevant, to enable readers to understand and make full use of the information:

[The insurance] industry supports greater access to data. It is a complex scheme. There must be an air of caution over what information is released and how it is released. Various information has been released in the past and it has been interpreted in different ways. There must be a clear understanding of what information people need and how it is or is not interpreted. It must be sent out in a form that is easily understandable so that it cannot be misconstrued. It also has to be sent out on a timely basis and against predetermined benchmarks that have been set for the scheme as to how it should and should not perform in certain areas so that people have some means of trying to assess its performance against predetermined targets.³³⁶

³³⁵ Correspondence received from Mr Jon Kelso, Business Planning, Personal Injury, Health & Commercial Insurance, Insurance Australia Group, 27 June 2002, p 5.

³³⁶ Evidence of Mr Rob Thomson, Manager, Workers Compensation, Insurance Council of Australia, 2 July 2002, pp 20-21.

9.35 Members of the legal profession also expressed support for making reports and publications available to the public. The NSW Bar Association expanded the concept to include the raw data upon which reports and publications are based:

All reports and publications including all appendices should be available to the public including the raw data to enable objective actuarial valuation of the material. No privacy considerations arise. Presumably the information ordinarily does not identify individuals.³³⁷

9.36 Mr Pattison also suggested that the scope of the Committee's draft recommendation should be widened to include information regarding provider and Scheme manager performance. He wrote:

Reporting should not be restricted to Scheme performance. Scheme users need to be better informed regarding provider and Scheme manager performance so they are better placed to make informed decisions, and in the absence of normal market conditions, there are adequate proxies for normal market signals.³³⁸

9.37 Mr Thomson's response to the Committee's draft recommendations contained a caution over the complexity of much of the actuarial and other information regarding Scheme performance. He expressed concern that this could result in misinterpretation of the information released:

... actuarial reports are complex, and are routinely supported by extremely complex calculations, models and spreadsheets. Difficulties experienced by more than one Scheme actuary in recent years, in relation to the interpretation of scheme actuarial data, should serve caution to the distribution of scheme actuarial data. Care must be taken to ensure that whatever information is made available is in a form that can be easily understood and includes where possible some plain English description to guard against the data being misinterpreted or misused.

To capitalise on any real value associated with the reporting of this information it needs to be released on a timely basis and should be compared against predetermined benchmarks that have been set for the Scheme's performance.

Consideration needs to be given to whether data at an industry level is released and if so in what form. Privacy issues should be capable of being managed effectively. The only potential problem could arise if one organisation dominates a particular ANZSIC classification and the release of data highlights their performance specifically.³³⁹

³³⁷ Correspondence received from Mr Ian Harrison SC, Senior Vice President, The New South Wales Bar Association, 25 June 2002, p 1.

³³⁸ Correspondence received from Mr Greg Pattison, General Manager Workplace Solutions, Australian Business Limited, 25 July 2002, p 5.

³³⁹ Correspondence received from Mr Rob Thomson, Manager, Workers Compensation, Insurance Council of Australia, 2 July 2002, p 4.

9.38 After considering feedback received from stakeholders on the issue of increasing transparency through WorkCover publicly releasing more reports and information, the Committee makes the following recommendation:

Recommendation 28

That WorkCover publicly release, on a quarterly basis, reports and information which are not covered by privacy legislation, to improve the transparency of the financial progress of the Scheme including:

- **reports from its consulting actuary(s) including those on outstanding claims reserves, premium rates, quarterly monitoring and costing of reforms;**
 - **details on each insurer's performance relative to particular benchmarks;**
 - **details of the Scheme's investment performance relative to benchmarks;**
 - **data on the performance of Industry Reference Groups and if possible by industry.**
-

Appendix 1

Submissions

Submissions

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>
18	Ms Helen Weston, <i>Kairros Pty Ltd</i>
19	Mr Doug Pearce, <i>NRMA</i>
20	The Hon Morris Iemma MP, <i>Minister for Public Works and Services</i>
21	Mr Harry Neesham, <i>WorkCover Western Australia</i>
22	Mr Tony Hawkins, <i>WorkCover Queensland</i>
23	Mr Bill Mountford, <i>WorkCover Victoria</i>
24	Mr Robert Taylor

Responses to the Committee's draft recommendations

1	Mr Michael Concannon, <i>Carroll O'Dea Solicitors</i>
2	Ms Kim Cull, <i>The Law Society of New South Wales</i>
3	Mr Richard Gilley, <i>The RiskNet Group</i>
4	Mr Mark Goodsell, <i>Australian Industry Group</i>
5	Mr Ian Harrison SC, <i>The New South Wales Bar Association</i>
6	Mr Jon Kelso, <i>Insurance Australia Group</i>
7	Dr Lynn Littlefield, <i>The Australian Psychological Society</i>
8	Mr Greg McCarthy, <i>Workplace Injury Management Services</i>
9	Ms Kate McKenzie, <i>WorkCover Authority</i>
10	Mr Bill Mountford, <i>WorkCover Victoria</i>

- 11** Mr Greg Pattison, *Australian Business Limited*
- 12** Mr Duncan Rawlinson, *Tillinghast – Towers Perrin*
- 13** Mr Alexander Salomon, *The NSW Workers' Compensation Self Insurers' Association*
- 14** Mr Robert Sendt, *The Audit Office of New South Wales*
- 15** Justice Terry Sheahan, *Workers Compensation Commission*
- 16** Mr Robert Thomson, *Insurance Council of Australia*
- 17** Ms Helen Weston, *Kairros Pty Ltd*
- 18** Ms Mary Yaager, *The Labor Council*

Appendix 2

Witnesses

Witnesses

Monday, 24 September 2001 (Parliament House, Sydney)

The Hon John Della Bosca MLC	<i>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</i>
Ms Kate McKenzie	<i>General Manager</i> WorkCover Authority NSW
Mr Rodney McIness	<i>Assistant General Manager</i> Insurance Division of WorkCover

Wednesday, 10 October 2001 (Parliament House, Sydney)

Mrs Mary Yaager	<i>Workers Compensation and Occupational Health and Safety Officer</i> Labor Council of New South Wales
Ms Rita Mallia	<i>Senior Legal Officer</i> Construction, Forestry, Mining and Energy Union (CFMEU)
Mr Andrew Ferguson	<i>New South Wales Secretary</i> Construction, Forestry, Mining and Energy Union (CFMEU)
Mr Jonathan Fowler	<i>National Spokesman</i> Small Business Association of Australia
Mr George Katsogiannis	<i>New South Wales Workers Compensation Manager</i> QBE Insurance
Mr Greg McCarthy	<i>Director</i> Workplace Injury Management Services
Mr George Cooper	<i>Director</i> Injuries Australia Ltd
Mr Christopher Wynyard	<i>Barrister</i> Australian Plaintiff Lawyers Association (APLA)
Ms Allison Robertson	<i>Solicitor</i> Australian Plaintiff Lawyers Association (APLA)
Ms Eva Scheerlinck	<i>Public Affairs Manager</i> Australian Plaintiff Lawyers Association (APLA)

Wednesday, 21 November 2001 (Parliament House, Sydney)

Mr Richard Grellman	<i>Former Chairman</i> Motor Accidents Authority
Mr John Walsh	<i>Actuary and Partner</i> PricewaterhouseCoopers
Mr Michael Playford	<i>Actuary and Director</i> PricewaterhouseCoopers
Mr Daniel Tess	<i>Actuary and Director</i> PricewaterhouseCoopers
Mr Dave Finnis	<i>Principal</i> Tillinghast-Towers Perrin

Mr Andrew Cohen	<i>Manager</i> Tillinghast-Towers Perrin
Mr Gary Moore	<i>General Manager, Commercial</i> NRMA Insurance Ltd
Mr Douglas Pearce	<i>Chief General Manager, Commercial Insurance and Financial Services</i> NRMA Insurance Ltd
Ms Kate McKenzie	<i>General Manager</i> WorkCover Authority NSW
Mr Rodney McInnes	<i>Assistant General Manager, Insurance Division</i> Insurance Division of WorkCover NSW

Thursday, 22 November 2001, (Parliament House, Sydney)

Mr Richard Gilley	<i>Managing Consultant</i> RiskNet Group
-------------------	---

(via tele-conference)

Mr Anthony Hawkins	<i>Chief Executive Officer</i> WorkCover Queensland
--------------------	--

(Department of Information Technology and Management, Sydney, via video-conference)

Mr William Mountford	<i>Chief Executive Officer</i> Victorian WorkCover Authority
Mr Henry Neesham	<i>Executive Director</i> WorkCover Western Australia

Thursday, 14 February 2002 (Parliament House, Sydney)

The Hon John Della Bosca MLC	<i>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</i>
Mr Robert Sendt	<i>Auditor-General</i> Audit Office of NSW
Mr Lee White	<i>Assistant Auditor-General</i> Audit Office of NSW
Ms Kate McKenzie	<i>General Manager</i> WorkCover Authority NSW
Mr Rodney McInnes	<i>Assistant General Manager</i> Insurance Division of WorkCover Authority NSW

Wednesday, 6 March 2002 (Parliament House, Sydney)

Mr David Finnis	<i>Principal</i> Tillinghast-Towers Perrin
-----------------	---

Ms Sally Wijesundera	<i>Manager</i> Tillinghast-Towers Perrin
Mr Leighton James	<i>Principal</i> Tillinghast-Towers Perrin
Ms Kate McKenzie	<i>General Manager</i> WorkCover Authority NSW
Mr Brian Russell	<i>Director, Strategic Operations Group</i> WorkCover Authority NSW
Ms Siew Kiang	<i>Director, Insurance Service Delivery Group</i> WorkCover Authority NSW
Ms Mary Hawkins	<i>Manager, Workplace Injury Management Branch</i> WorkCover Authority NSW
Mr Robert Thomson	<i>Manager, Workers Compensation</i> Insurance Council of Australia
Mr Colin Fagen	<i>General Manager of Workers Compensation</i> QBE Insurance
Mr Ken Young	<i>Representative</i> Self Insurers Association
Mr Mick Franco	<i>Representative</i> Self Insurers Association
Mr Graham Layt	<i>Representative</i> Self Insurers Association

Thursday, 7 March 2002 (Parliament House, Sydney)

Dr Julian Parmegiann	<i>Forensic Psychiatrist</i>
Dr Jim Stewart	<i>Chair</i> Permanent Impairment Coordinating Group
Mr Robert Wilkes	<i>Psychologist</i> Australian Psychological Society
Dr Jack White	<i>Registered Psychologist</i> Australian Psychological Society
Professor Paul Martin	<i>President</i> Australian Psychological Society
Dr Olav Nielssen	<i>Chairman</i> Forensic Branch, Royal Australian and New Zealand College of Psychiatrists

Monday, 3 June 2002 (Parliament House, Sydney)

Justice Terry Sheahan	<i>President</i> NSW Workers Compensation Commission
-----------------------	---

Ms Helen Walker	<i>Registrar</i> NSW Workers Compensation Commission
Mr Robert Benjamin	<i>Solicitor – Councillor</i> Law Society of NSW
Mr Steve Lancken	<i>Arbitrator & Solicitor - Representative</i> Law Society of NSW
Mr David Spruell	<i>Chief Executive Officer</i> Allianz Asset Management
Mr Cameron McCullagh	<i>Chief Executive Officer</i> Employers Mutual Indemnity
Mr Robert Thomson	<i>Manager, Workers Compensation</i> Insurance Council of Australia
Mr Steven Britt	<i>Asset Consultant</i> Towers-Perrin
Mr Duncan Rawlinson	<i>Consultant</i> Towers-Perrin
Mr David Zaman	<i>Consulting Actuary</i>

Friday, 7 June 2002 (Parliament House, Sydney)

Mr Rod McInnes	<i>Assistant General Manager, Insurance Division</i> WorkCover NSW
Ms Kate McKenzie	<i>General Manager</i> WorkCover NSW
Mr Rod McInnes	<i>Assistant General Manager, Insurance Division</i> WorkCover NSW
Mr Peter Hole	<i>Director, Information Management Branch</i> WorkCover NSW
Ms Kate McKenzie	<i>General Manager</i> WorkCover NSW
Mr Rod McInnes	<i>Assistant General Manager, Insurance Division</i> WorkCover NSW
Mr Peter Hole	<i>Director, Information Management Branch</i> WorkCover NSW

Friday 15th March 2002

Public Forum “The Way Forward on Scheme Ownership & Design” – Delegates

The Hon John Della Bosca MLC	<i>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</i>
Mr David Bowen	<i>General Manager</i> Motor Accidents Authority
Professor Michael Fearnside	Westmead Specialist Medical Centre

Mr Mark Goodsell	<i>Director</i> Australian Industry Group
Mr Howard Harrison	<i>Partner</i> Carrol & O’Dea Solicitors (Plaintiff Law Firm)
Mr Greg McCarthy	<i>Chairman</i> WorkCover Advisory Council
Ms Kate McKenzie	<i>General Manager</i> WorkCover Authority NSW
Dr Tom Parry	<i>Chairman</i> Independent Pricing and Regulatory Tribunal
Ms Nancy Carl	<i>Industrial Officer</i> Labor Council of NSW
Mr Bob Sendt	<i>Auditor-General</i> The Audit Office of NSW
Mr Lee White	<i>Assistant Auditor-General</i> The Audit Office of NSW
Sir Laurence Street	<i>Facilitator</i>
Mr Robert Thomson	<i>Manager, Workers’ Compensation</i> Insurance Council of Australia
Mr John Walsh	<i>Partner</i> PricewaterhouseCoopers

Appendix 3

Tabled Documents

Tabled Documents

24 September 2001

Ms Kate McKenzie

WorkCover New South Wales

NSW Workers Compensation Scheme – An explanation of how the Scheme works

10 October 2001

Mrs Mary Yaager

Labour Council of NSW

NSW Workers Compensation System - PowerPoint Presentation

Mr Andrew Ferguson

CFMEU

- *Correspondence*
- *Response to the Government's Green Paper on compliance by the Construction, Forestry, Mining and Energy Union, 10 October 2001*

Mr George Cooper

Injuries Australia

AMA Media release

Mr John Wynyard

Australian Plaintiff Lawyers Association Workers Compensation Group

- *Workers Compensation Legislation Amendment Bill part 7*
- *Graph*

21 November 2001

Mr John Walsh

Partner, Price WaterhouseCoopers

PwC Actuarial work in NSW Workers Compensation

22 November 2001

Mr Richard Gilley

The Risk Net Group

- *Workplace Relations Ministers' Council Comparative Performance Monitoring Third Report Australian & New Zealand Occupational Health and Safety and Workers' Compensation Schemes August 2001.*
- *Risk Net Group – PowerPoint Presentation.*
- *Guidelines for the management of employees with compensable low back pain, Victorian Workcover Authority.*

Wednesday 6 March 2002

Mr David Finnis

Tillinghast-Towers Perrin

Report: "Response to Standing Committee"

Mr Robert Thomson

Insurance Council of Australia

NSW WorkCover Insurer Remuneration Proposed Structure 2001/02

Thursday 7 March 2002

Dr Julian Parmegiani

Forensic Psychiatrist

- *Curriculum Vitae*
- *A paper entitled "Degree of Permanent Impairment"*
- *Participants list: NSW Conference on Psychiatric Impairment*

Dr Jack White

Australian Psychological Society

Mr Robert Wilkes	<p><i>A paper entitled "Approaches to Measurement of Mental Impairment in WorkCover matters"</i></p> <p>Australian Psychological Society</p> <ul style="list-style-type: none">• <i>Report entitled "Sprains and Strains – Care Model Framework"</i>• <i>Published pamphlet entitled "WorkCover Victoria – The Case for Change"</i>• <i>Presentation overheads by Brendan Wood, WorkCover Victoria</i>
Dr Olav Nielssen	<p>Chairman, Forensic Branch, Royal Australian and New Zealand College of Psychiatrists</p> <p><i>Paper entitled "Australia and New Zealand Journal of Psychiatry, August 2001, vol 35, No.4"</i></p>
Monday 3 June 2002	
Mr Robert Thomson	<p>Insurance Council of Australia</p> <ul style="list-style-type: none">• <i>NSW Workers Compensation Scheme Investment Management Structure</i>• <i>Changes to Reference Portfolio – Allianz</i>
Mr Steven Britt	<p>Towers-Perrin</p> <p><i>Investment Issues, Review and Monitoring of the NSW Workers Compensation Scheme</i></p>
Friday 7 June 2002	
Ms Kate McKenzie	<p>WorkCover New South Wales</p> <ul style="list-style-type: none">• <i>Presentation: Information Management Technology and Strategy</i>• <i>Presentation: Setting Investment Strategy and Monitoring Performance of WorkCover Scheme Investments</i>• <i>Performance Monitoring of WorkCover Dispute Prevention & Resolution Reforms – March 2002 Quarterly Report</i>• <i>Review of Employers' Compliance with Workers Compensation Premiums and Pay-roll Tax in NSW</i>
Tuesday 2 July 2002	
Mr Robert Thomson	<p>Insurance Council of Australia Ltd</p> <p><i>Submission on Draft Recommendations of the Review and Monitoring of the NSW Workers Compensation Scheme by the General Purpose Standing Committee No 1</i></p>

Appendix 4

Response from Kate McKenzie, General Manager, WorkCover to the Committee's draft recommendations in relation to the Scheme Design Review terms of reference

Response from WorkCover to the Committee's draft recommendations re the Scheme Design Review

WorkCover New South Wales, 400 Kent Street, Sydney 2000. Telephone 9370 5000 ALL MAIL TO G.P.O. BOX 5364 SYDNEY 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

12 JUL 2002

Dear Reverend Nile,

Legislative Council
GENERAL PURPOSE
STANDING COMMITTEES

13 JUL 2002

RECEIVED

Thank you for your letter dated 3 July 2002 concerning the Committee's draft recommendations and the pending Scheme Design Review.

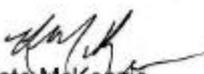
It appears that draft recommendations 2, 4, 5, 7, 8, 9, 11, 15, 16, 17 and 18 either directly or indirectly affect Scheme Design issues.

I think it is important that individual Scheme design issues are not considered in isolation, and I will therefore ask the Steering Committee overseeing the Scheme Design Review to consider the Committee's recommendations.

The Review's terms of reference are broad and also require extensive consultation.

Under the circumstances, I do not think it will be necessary to amend the review's terms of reference to enable it to consider the Committee's recommendations.

Yours sincerely


Kate McKenzie
General Manager

Appendix 5

Minutes

Minutes

Meeting No. 77
Friday 7 June, 2002
At Parliament House (Room 814/815)

1. Members present

Rev Nile (Chairman)
Mr Kelly
Mr Gallacher
Mr Jobling (Pearce)
Ms Saffin
Mr Tsang
Dr Wong

2. Apologies

Mr Pearce

Inquiry into Workers Compensation

A PUBLIC HEARING

The Chairman noted correspondence received from the Opposition Whip, dated 7 June 2002, advising that Mr Jobling would be replacing Mr Pearce for the purposes of today's meeting.

Resolved, on the 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 Chairman also distributed copies of the guidelines governing broadcast of proceedings.

Ms McKenzie, General Manager, WorkCover NSW, Mr Rod McInnes, Assistant General Manager, Insurance Division, WorkCover NSW and Mr Peter Hole, Director, Information Management Branch, WorkCover NSW, were sworn and examined.

Ms McKenzie made a presentation to the Committee on WorkCover's investment management.

Ms McKenzie made a presentation to the Committee on WorkCover's IT strategy.

Ms McKenzie tabled four documents in support of her evidence. Resolved, on the motion of Mr Jobling, that the documents be accepted.

Ms McKenzie, Mr McInnes and Mr Hole undertook to answer questions on notice from the Committee.

Evidence concluded and the witnesses withdrew.
The public hearing concluded and the public withdrew.

Resolved, on the motion of Mr Kelly, 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 make tabled documents and corrected transcripts of the day's hearings publicly available.

B DELIBERATIVE MEETING

4. Confirmation of minutes

Resolved, on the motion of Mr Gallacher, that the draft minutes of meeting no. 72 be confirmed.

Resolved, on the motion of Mr Tsang, that the draft minutes of meeting no. 76 be confirmed.

5. Correspondence sent

The Chairman tabled the following items of correspondence sent:

- Letter to Mr Peter McCarthy, Director, Ernst & Young ABC, dated 19 April 2002 advising Ernst & Young of the Committee's decision to take up its option to extend Ernst & Young's contract to provide actuarial services to the Committee for the remainder of its inquiry.
- Letter to the Minister dated 8 May 2002 regarding the Government's Workplace Safety Summit.
- Letter to the Minister, dated 9 May 2002, requesting copies of actuarial reports and clarification of the provision of actuarial advice to WorkCover NSW.
- Letter to Mr George Cooper, Director, Injuries Australia, dated 21 May 2002 in response to his letter of 9 May 2002.
- Letter to Mr Rodney Stinson, Principal Analyst, Occupational Analysis, dated 21 May 2002 in response to his letter dated 13 May 2002.
- Letter to the Minister dated 28 May 2002 regarding Ms Simpson and Ms Lawson's attendance at the OH & S Summit in Bathurst in July 2002.

6. Correspondence received

The Chairman tabled the following items of correspondence received:

- Letter from Mr Peter McCarthy, Director, Ernst & Young ABC, dated 10 April 2002 advising the Committee of the outcome of its tender to the ICA to conduct a review of Tillinghast's insurer remuneration work.
- Letter from Mr Peter McCarthy, Director, Ernst & Young ABC, dated 11 April 2002 regarding Ernst & Young's fees to assist the Committee with its fourth stage of inquiry.
- Letter from Mr Peter McCarthy, Director, Ernst & Young ABC, dated 15 April 2002 advising the Committee that Ernst & Young intends to submit a tender to provide actuarial services to WorkCover NSW.

- Letter from the Minister dated 29 April 2002 and attached executive summary of Tillinghast's 31 December 2001 Scheme evaluation.
- Letter from Mr George Cooper, Director, Injuries Australia, dated 9 May 2002, commenting on the progress of the Committee's inquiry.
- Letter from Mr Rodney Stinson, Principal Analyst, Occupational Analysis, dated 13 May 2002, commenting on the progress of the Committee's inquiry.
- Letter from Mr Peter McCarthy, Director, Ernst & Young ABC, dated 21 May 2002, relating to potential conflicts of interest with Ernst & Young's work for the Committee).
- Letter from Mr Peter Gerrard, NSW Government Actuary, dated 27 May, containing some comments on the Committee's second interim report (confidential).
- Letter from Mr Steven Britt, Asset Consultant, Towers-Perrin, dated 31 May 2002, in relation to Towers Perrin's appearance at the Committee's public hearing on 3 June 2002.

7. Workers Compensation Summit

Rev Nile and Mr Gallacher indicated their intention to attend the Workers Compensation Summit on 3, 4 & 5 July 2002, in Bathurst. Mr Kelly, Ms Saffin and Dr Wong indicated their intention to attend part of the Summit.

8. Draft Recommendations

Mr Peter McCarthy and Mr Warrick Gard, both of Ernst & Young ABC, made a short presentation to the Committee highlighting main points from Mr McCarthy's report to the Committee, *Draft Suggested Committee Recommendations*.

The Committee considered the draft recommendations previously circulated.

The Committee deliberated.

Resolved, on the motion of Mr Kelly, that draft section titled "Principles" be endorsed.

Resolved, on the motion of Mr Kelly that the draft section titled "Committee response to Review of Scheme design" be endorsed.

Resolved, on the motion of Mr Kelly, that the draft section titled "Draft recommendations" be endorsed.

Resolved, on the motion of Mr Kelly, that the words "and that WorkCover through the Minister provide progress reports to the Committee at least six monthly" be added to draft recommendation 1 after the word "(NSW)".

Resolved, on the motion of Mr Kelly that the words "That the report of the IPART review, due to be completed in January 2003, form part of the Law and Justice Committee's first annual review of the Scheme" be added after draft recommendation 1.

Resolved, on the motion of Mr Kelly, that draft recommendation 2 be endorsed.

Resolved, on the motion of Mr Kelly, that draft recommendation 3 be endorsed.

Resolved, on the motion of Mr Jobling, that draft recommendation 4 be deleted and replaced with the following words:

That the question of where the deficit / surplus in the statutory managed fund should be reported and identified be referred to the Scheme Design Review, in accordance with Conclusion 4 in the Committee's third interim report.

Resolved, on the motion of Mr Jobling, that the words "a target period" in draft recommendation 5 be replaced with the words "an objective target period" and that the words "for example five (5) years" be deleted.

Resolved, on the motion of Mr Kelly, that draft recommendation 6 be endorsed.

Resolved, on the motion of Mr Jobling that the words "the Scheme Design Review consider whether" be inserted before "the WorkCover Authority" in draft recommendation 7.

Resolved, on the motion of Mr Kelly, that draft recommendation 8 be endorsed.

Resolved, on the motion of Mr Kelly, that the words "the Scheme Design Review consider whether" be inserted before "the licensing arrangements" and the words "should be considered" be deleted in draft recommendation 9.

Resolved, on the motion of Dr Wong, that the words "compatible software" be inserted after the word "centralised" and the words "to replace those used by agents, self insurers and specialised insurers" be deleted from draft recommendation 10.

Resolved, on the motion of Mr Kelly that draft recommendation 11 be deleted and replaced with the words "that IPART be responsible for setting target premium rates".

Resolved, on the motion of Mr Kelly, that draft recommendation 12 be endorsed.

Resolved, on the motion of Ms Saffin, that draft recommendation 13 be endorsed.

Resolved, on the motion of Dr Wong, that the words "should be increased" be replaced with "should be proportional to" and that the table following the words "premium paid" be deleted from draft recommendation 14.

Resolved, on the motion of Mr Jobling, that draft recommendation 15 be deleted.

Resolved, on the motion of Ms Saffin, that the words "subject to workers' outstanding entitlements being adequately protected" be inserted at the end of draft recommendation 16.

Resolved, on the motion of Mr Kelly, that draft recommendation 17 be endorsed.

Resolved, on the motion of Mr Kelly, that draft recommendation 18 be endorsed.

Resolved, on the motion of Ms Saffin, that the words "That WorkCover should run pilots to evaluate the effectiveness of" be replaced with the words "The Committee notes that Victoria is considering the effectiveness of group programmes to facilitate claimants' return to work. On the completion of Victoria's evaluation WorkCover should consider" in draft recommendation 19.

Resolved, on the motion of Mr Kelly, that draft recommendation 20 be endorsed.

Resolved, on the motion of Mr Tsang, that draft recommendation 21 be endorsed.

Resolved, on the motion of Ms Saffin, that draft recommendation 22 be endorsed.

Resolved, on the motion of Mr Kelly, that draft recommendation 23 be endorsed.

Resolved, on the motion of Mr Tsang, that draft recommendation 24 be deleted.

Resolved, on the motion of Ms Saffin, that the draft recommendations be circulated to Forum participants and other key stakeholders for comment.

9. General business

10. Next meeting

Friday 28 June 2002, Room 814/815.

**The Rev Hon Fred Nile MLC
Chairman**

Meeting No. 89
Tuesday 2 July, 2002
Jubilee Room, Parliament House

1. Members present

Rev Nile (Chairman)
Mr Gallacher
Mr Pearce
Ms Saffin
Mr Dyer (Kelly)
Mr Tsang
Dr Wong

2. Apologies

Mr Kelly

3. Substitutions

The Chairman informed the meeting that the Government Whip had advised him that Mr Dyer would be substituting for Mr Kelly during the deliberative meeting

4. Inquiry into Workers Compensation

4.1 PUBLIC HEARING

Resolved, on the motion of Ms Saffin, 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.

Mr Daniel Tess, Actuary, and Mr Michael Playford, Actuary, both of PriceWaterhouse Coopers were sworn and examined.

Evidence concluded and the witnesses withdrew.

Mr Greg McCarthy, Executive Director, Workplace Injury Management Services, was sworn and examined.

Evidence concluded and the witness withdrew.

Mr Robert Thomson, Manager, Workers Compensation, Insurance Council of Australia, was sworn and examined.

Mr Thomson tendered a submission on behalf of the Insurance Council addressing the Committee's draft recommendations.

Evidence concluded and the witness withdrew.

Mr Gary Brack, Chief Executive, Employers First, and Mr Greg Pattison, General Manager, Labour Market Services, Australian Business Ltd, were sworn and examined.

Evidence concluded and the witnesses withdrew.

Ms Mary Yaager, Co-ordinator, OH & S Workers Compensation, Labor Council of NSW, and Mr Peter Remfrey, Secretary, NSW Police Association, were sworn and examined.

Evidence concluded and the witnesses withdrew.

The public hearing concluded and the public withdrew.

4.2 Publication of Proceedings

Resolved, on the 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 make tabled documents and corrected transcripts of the day's hearings publicly available.

4.3 Correspondence

The Committee noted the following items of correspondence, which had been circulated:

4.3.1 Correspondence received

- Letter from the Minister dated 11 June 2002 responding to the Chairman's letters dated 8 and 9 May 2002
- Letter from Kate McKenzie, General Manager WorkCover dated 28 June 2002 regarding appointment of actuarial adviser. (tabled at meeting)
- Letter from the NSW Worker's Compensation Self Insurers' Association dated 27 July 2002 in response to the Committee's recommendations. (tabled at meeting)
- Letter dated 24 June 2002 from Bill Mountford, Chief Executive, Victorian WorkCover Authority, in response to the Committee's draft recommendations. (tabled at meeting)
- Letter dated 27 June 2002 from Jon Kelso, Business Planning, Insurance Australia Group in response to the Committee's draft recommendations. (tabled at meeting)

4.3.2 Responses to draft recommendations

- Letter from the Mr Bob Sendt, Auditor-General, dated 24 June 2002
- Letter from Mr Ian Harrison SC, Senior Vice-President, The NSW Bar Association dated 24 June 2002
- Letter from Justice Terry Sheahan, President, Workers Compensation Commission, dated 25 June 2002 (attached)
- Letter from Mr Michael Concannon, Carrol & O'Dea Solicitors, dated 20 June 2002
- Letter from Mr Duncan Rawlinson, Tillinghast-Towers Perrin, dated 21 June 2002
- Letter from Ms Helen Weston, Kairros Pty Ltd, dated 18 June 2002
- Letter from Mr Richard Gillie, RiskNet Group, dated 24 June 2002
- Letter from Mr Jon Kelso, Insurance Australia Group, dated 27 June 2002

4.4 Draft Recommendations

Mr Peter McCarthy of Ernst & Young ABC, made a short presentation to the Committee highlighting main points from the hearing which impact on the draft recommendations.

The Committee deliberated.

Resolved, on the motion of Ms Saffin, that the Committee meet from 10:00 am until 1:00 pm on 19 July 2002 for a deliberative to finalise draft recommendations, with Peter McCarthy submitting a written report prior to that meeting, considering the evidence of today's hearing and submissions received.

Resolved, on the motion of Mr Tsang, that the Committee Chairman write to the Steering Committee for the Scheme Design Review enclosing the Committee's draft recommendations and asking for comment on

- which recommendations are within the scope of the issues being examined under the Scheme Design Review terms of reference, and
- whether the terms of reference can be expanded to include those draft recommendations, which are currently outside the review.

5. General business

The Chairman tabled a letter from the Treasurer and Minister for State Development dated 1 July 2002 requesting an extension for a response to questions on notice as a result of the Budget Estimates hearing on the Treasury.

Resolved, on the motion of Mr Wong, that the Treasurer be provided an extension until Friday 9 August 2002.

6. Adjournment

The Committee adjourned at 4:12 pm until Wednesday 3 July 2002 at 10:00 am (Inner City Schools inquiry).

The Rev Hon Fred Nile MLC
Chairman

**Meeting No. 91
Monday 26 August 2002
Room 1108, Parliament House**

1. Members present

Rev Nile (Chairman)
Mr Tsang
Mr Gallacher
Mr Wong
Ms Saffin
Mr Dyer
Mr Pearce

2. Apologies

Mr Kelly

3. Substitution

Chair noted advice received from the Government Whip that Mr Dyer would be substituting for Mr Kelly during the deliberative meeting.

4. Confirmation of draft minutes

Resolved on the motion of Mr Pearce that the draft minutes numbered 77 and 89 be confirmed.

INQUIRY INTO THE NSW WORKERS COMPENSATION SCHEME

5. Tabled documents

The Chairman tabled the following items of correspondence as sent:

6. Correspondence sent

- Letter to Ms Kate McKenzie, General Manager, WorkCover NSW dated 3 July 2002 requesting information on the Scheme Design Review's terms of reference in relation to the Committee's draft recommendations (attached)
- Letter to the Hon John Della Bosca MLC, Minister for Industrial Relations, dated 11 July 2002, requesting information about the new insurer remuneration arrangements (attached)
- Letter to Mr Rob Thomson, Manager, Workers Compensation, Insurance Council of Australia, dated 11 July 2002, requesting information about the new insurer remuneration arrangements (attached)
- Letter to the Hon John Della Bosca MLC, Minister for Industrial Relations, dated 14 July 2002, requesting information about the timetable for the announcement of the successful tenderer for the Scheme Design Review (attached)
- Letter to the Hon John Della Bosca MLC, Minister for Industrial Relations, dated 14 July 2002, requesting permission to append the 31 December Scheme Evaluation Report to the Committee's report (attached)

7. Correspondence received

The Chairman tabled the following items of correspondence received:

- Letter from Justice Terry Sheahan, President, NSW Workers Compensation Commission, dated 17 June 2002, in response to questions on notice (attached)
- Letter from Mr Michael Playford, Director, PriceWaterhouse Coopers, dated 12 July 2002, in response to questions on notice (previously circulated)
- Letter from Ms Kate McKenzie, General Manager, WorkCover NSW, dated 12 July 2002, in response to the Committee's letter requesting information about the Scheme Design Review's terms of reference (previously circulated)
- Letter from Ms Kate McKenzie, General Manager, WorkCover NSW, received 22 July 2002, in response to questions on notice (previously circulated)
- Letter from Mr Rob Thomson, Manager, Workers Compensation, Insurance Council of Australia, dated 24 July, in response to the Committee's letter requesting information about the new insurer remuneration arrangements (previously circulated)
- Letter from Mr Rob Thomson, Manager, Workers Compensation, Insurance Council of Australia, dated 24 July, in response to questions on notice (previously circulated)
- Letter from the Hon John Della Bosca MLC, Minister for Industrial Relations, dated 31 July 2002, in response to the Committee's letter requesting information about the new insurer remuneration arrangements (previously circulated)
- Letter from Ms Kate McKenzie, General Manager, WorkCover NSW, dated 2 July 2002, advising the Committee of the appointment of Pricewaterhouse Coopers Actuarial as the new Scheme actuarial advisers (previously circulated)
- Letter from Ms Kim Cull, President, Law Society of NSW, dated 5 July 2002, in response to questions on notice (previously circulated)
- Letter from Mr Greg Donnelly, Branch Secretary, Shop, Distributive & Allied Employees' Association, dated 2 August 2002, in relation to restrictions on the availability of commutations in NSW (attached)
- Letter from Ms Mary Yaager, OHS and Workers Compensation Coordinator, NSW Labor Council, dated 6 August 2002, in response to questions on notice (attached)
- Letter from Ms Kate McKenzie, General Manager, WorkCover NSW, dated 15 August 2002, advising the Committee that McKinsey & Company have been selected to undertake the Scheme Design Review (previously circulated)
- Letter from Justice Terry Sheahan, President, NSW Workers Compensation Commission, dated 19 August 2002, containing Workers Compensation Commission statistics up to 30 June 2002 (attached)
- Letter from Mr Peter McCarthy, Director, Ernst & Young, dated 19 August 2002, in response to the Committee's request for information on the impact on the Scheme from inadequate premium collections (attached)

- Letter from Mr Bill Mountford, Chief Executive Officer, Victorian WorkCover Authority, dated 24 June 2002 (previously circulated)
- Letter from Ms Kim Cull, President, Law Society of NSW, dated 27 June 2002 (previously circulated)
- Letter from Mr Alex Salomon, Chairman, NSW Workers Compensation Self-Insurers Association, dated 8 July 2002 (previously circulated)
- Letter from Mr Greg Pattison, General Manager Workplace Solutions, dated 25 July 2002 (previously circulated)
- Additional information received from WorkCover, 7 August 2002 (attached)

8. Consideration of motion to seek leave of the House to present a fourth interim report

Resolved on the motion of Mr Dyer that the Chairman move the following motion in the House to amend the terms of reference for the Committee's Inquiry into the NSW workers compensation scheme to enable the Committee to table a fourth interim report:

That the resolution of the House of 28 June 2001, requiring General Purpose Standing Committee No. 1 to monitor and review the NSW Workers Compensation Scheme, be amended by inserting after "3 months" in paragraph 3 (a), the words "including a fourth interim report if necessary prior to the tabling of the Committee's final report".

(Note: To be rescinded by the Committee on advice that it was no longer necessary.)

9. Consideration of the Chairman's draft fourth interim report

The Chairman tabled his draft report entitled "NSW Workers Compensation Scheme Fourth Interim Report". Once circulated, the draft report was accepted as being read.

The Committee deliberated.

Resolved on the motion of Mr Pearce that: a paragraph be inserted stating that although WorkCover was unable to provide a definition of "Targets Mainly Achieved" in evidence, they subsequently provided this information in answers to questions on notice.

Resolved on the motion of Mr Pearce that: the definition of "Targets Mainly Achieved" provided by WorkCover be inserted following the above statement.

Resolved on the motion of Mr Dyer that: Conclusion 1 be amended by inserting the following sentence at the end of the first sentence of the first paragraph:

Although the actuary's 31 December 2001 Scheme Evaluation recognises that the liability estimate would have been \$757 million greater without the reforms of 2001.

Resolved on the motion of Mr Pearce that: a quote from Ms McKenzie stating a figure for employee fraud is inserted after paragraph 3.32.

Resolved on the motion of Mr Pearce that: Conclusion 8 be amended by inserting "however there is concern that this" after the word "assets" and before the words "may result" in the first sentence of the second paragraph.

Resolved on the motion of Mr Pearce that: the words “such as Towers Perrin and Mr Spruell from Allianz” be inserted after the words “medium term expert opinion” in the second paragraph of Conclusion 8.

Resolved on the motion of Mr Pearce that: Conclusion 10 be amended by inserting “or another suitable body” at the end of the second sentence.

Resolved on the motion of Ms Saffin that the report, as amended be adopted.

Resolved on the motion of Mr Dyer that the report be signed by the Chair and presented to the House on 29 August 2002 in accordance with the resolution establishing the committee of 13 May 1999.

Resolved on the motion of Mr Gallacher 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.

10. Consideration of the Chairman’s draft final report

The Chairman tabled his draft report entitled “NSW Workers Compensation Scheme Final Report”. Once circulated, the draft report was accepted as being read.

The Committee deliberated.

Resolved on the motion of Mr Gallacher that: the Conclusion on page 9 be amended by inserting a new dot point before the last dot point stating:

The Scheme must have adequate internal mechanisms to prevent abuse and fraudulent activity.

Mr Gallacher moved that: Recommendation 3 be amended by inserting the following text after the first sentence:

The Committee agrees with the principle of privatisation but supports deferral pending the Scheme Design Review.

The Committee deliberated.

Resolved on the motion of Mr Dyer that: a decision on the amendment to Recommendation 3 proposed by Mr Gallacher be deferred to the next meeting.

Mr Gallacher moved that: Recommendation be amended by adding the following text after the word “established”:

“unless reasons are produced that the reforms would improve the operation or viability of the Scheme.”

and that the word “if” be replaced with the word “unless”.

The Committee deliberated.

Resolved on the motion of Ms Saffin that the decision on the amendment to Recommendation 4 proposed by Mr Gallacher be deferred to the next meeting.

Resolved on the motion of Mr Dyer that: the conclusion on page 30 be amended by:

- Deleting the word “believes” and replacing with “concludes”,
- Deleting the words “These are” and replacing with “These include”,
- Adding an additional bullet point stating – “Insurers or other private underwriters”.
Resolved on the motion of Mr Pearce that: Recommendation 5 be amended by adding, “based on appropriate actuarial and accounting advice.” at the end of the sentence.

Mr Gallacher moved that: the conclusion on page 35 be amended by adding the words “and income from investment” after the words “each year’s premium”.

The Committee deliberated.

Resolved on the motion of Mr Dyer that the decision to amend the conclusion on page 35 be deferred to the next meeting.

Mr Pearce moved that a quote from the Committee’s consulting actuary Ernst and Young ABC regarding the appropriateness of 5 years as a targeted time period be inserted after paragraph 3.43.

The Committee deliberated.

Resolved on the motion of Mr Gallacher that the decision to insert the quote be deferred to the next meeting.

Mr Dyer moved that: the first bullet point of Recommendation 6 be deleted.

The Committee deliberated.

Resolved on the motion of Mr Pearce that: the decision to deleted part of the recommendation be deferred to the next meeting.

Resolved on the motion of Mr Pearce that: the conclusion on page 46 is amended by:

- Inserting the words “management initiatives, amendments to legislation and” between the words “consequence of” and “the move to Gosford”.
- Deleting the last sentence and replacing it with “Given these matters the Committee has not been able to draw conclusions about the administration of WorkCover at this time”.

Mr Dyer moved that: paragraphs 4.25 – 4.28, recommendation 8 and the conclusion on page 48 be deleted.

The Committee deliberated.

Resolved on the motion of Ms Saffin that: the decision regarding the deletion of paragraphs 4.25 – 4.28, recommendation 8 and the conclusion on page 48 be deferred to the next meeting.
Resolved on the motion of Ms Saffin that: the conclusion on page 51 be amended by:

- Deleting the first sentence and replacing it with- “There are strong arguments in favour and against for a centralised computer system”.
- Deleting the words “would greatly” and replacing them with “may possibly”.

Mr Dyer moved that: the text of Recommendation 9 be deleted and replaced with the following words:

“That WorkCover NSW report back to the Law and Justice Committee on the implementation of their new information technology strategy”

Resolved on the motion of Ms Saffin that: a decision on the amendment to Recommendation 9 is deferred to the next meeting.

11. Next meeting

Friday 30 August 2002, at 10am in Room 1108, Parliament House.

Meeting concluded at 5.00pm

**The Rev Hon Fred Nile MLC
Chairman**

Minutes No. 92
Friday 30 August 2002
Room 1108, Parliament House at 10:00 am

1. Members Present

Rev Nile (Chairman)
Mr Tsang
Mr Gallacher
Mr Wong
Ms Fazio (Saffin)
Mr Dyer (Kelly)
Mr Pearce

2. Apologies

Mr Kelly
Ms Saffin

3. Substitutions

Chair noted advice received from the Government Whip that Mr Dyer would be substituting for Mr Kelly and Ms Fazio for Ms Saffin during the deliberative meeting.

4. Confirmation of Minutes

Resolved, on motion of Mr Dyer, that the minutes of meeting number 91 be confirmed.

5. Inquiry into the NSW Worker's Compensation Scheme

5.1 Recision of resolution re motion by Chairman to amend terms of reference

The Chairman advised that the Clerk Assistant Committees had advised that the Committee did not need to move that the House amend the terms of reference in order to table a fourth interim report.

Resolved, on the motion of Mr Gallacher, that the Committee rescinds the resolution, which stated:

The Chairman move the following motion in the House to amend the terms of reference for the Committee's Inquiry into the NSW workers compensation scheme to enable the Committee to table a fourth interim report:

That the resolution of the House of 28 June 2001, requiring General Purpose Standing Committee No. 1 to monitor and review the NSW Workers Compensation Scheme, be amended by inserting after "3 months" in paragraph 3 (a), the words "including a fourth interim report if necessary prior to the tabling of the Committee's final report"

The Committee noted the Fourth Interim report had been tabled on Thursday 28 August 2002.

5.2 Consideration of Final Report

The Committee resumed consideration of the Chairman's draft report entitled "NSW Workers Compensation Scheme Final Report".

The Chairman referred members to the deferred amendments from meeting number 91, which had been circulated.

Mr Gallacher moved that Recommendation 3 be amended by inserting the following text after the first sentence:

The Committee agrees with the principle of privatisation but supports deferral pending the Scheme Design Review.

The Committee deliberated.

Question put.

Ayes: Mr Pearce
Mr Gallacher

Noes: Mr Dyer
Mr Tsang
Rev Nile

Question resolved in the negative.

Resolved, on the motion of Mr Pearce, that Recommendation 3 be amended by deleting the words “if and when” and replacing them with “after considering the following factors:”, and by adding the word “whether” to each of the dot points which follow.

Resolved, on the motion of Mr Gallacher, that Recommendation 4 be amended by replacing “if” with “unless” and adding the following words after the word “established”:

Unless reasons are produced that show the reforms would improve the operation or viability of the Scheme.

Resolved, on the motion of Mr Gallacher, that the conclusion on page 35 be amended by inserting the words “and income from investment” after the words “each year’s premium”.

Resolved, on the motion of Mr Pearce, that after para 3.43, a new paragraph be inserted quoting the advice from Ernst and Young recommending a five year period for the Scheme to be fully funded.

Resolved, on the motion of Mr Dyer, that the first dot point of Recommendation 6 be amended by adding, after “That”, the words “the Scheme Design Review consider whether”.

Resolved, on the motion of Mr Dyer, that the second dot point of Recommendation 6 be amended by adding, after “That”, the words “based advice received from the Committee’s consultant actuaries Ernst and Young”.

Mr Dyer moved a motion that Recommendation 8 be deleted and replaced with the following:

That the Law and Justice Committee should consider whether there is a need for a performance audit of WorkCover by the Auditor General.

Question put:

Ayes: Mr Tsang
Ms Fazio
Mr Dyer
Rev Nile

Noes: Mr Gallacher
Mr Pearce

Question resolved in the affirmative.

Resolved, on the motion of Mr Dyer, that the quote from Mr Greg McCarthy on page 58 include his statements where he expresses some equivocation on the issue of separation.

Resolved, on the motion of Mr Dyer, that the conclusion on page 60 be amended by adding the words "and against" after "arguments for", and deleting "would" and replacing with "may be".

Resolved, on the motion of Mr Gallacher, that the second paragraph of the conclusion on page 60 be amended by deleting the words "The" and "as recommended in Recommendation X" and adding "Any future" at the start of the sentence.

Mr Dyer moved a motion that Recommendation 10 be deleted.

Question put.

Ayes: Mr Dyer
Mr Tsang
Ms Fazio

Noes: Mr Gallacher
Mr Pearce
Mr Wong
Rev Nile

Question resolved in the negative.

Mr Pearce moved a motion that Recommendation 10 be amended by deleting the words "That following the completion of the Auditor-General's performance audit of WorkCover" and inserting "should" after "organisation".

Question put.

Ayes: Peter Wong
Mr Gallacher
Mr Pearce
Rev Nile

Noes: Ms Fazio
Mr Dyer
Mr Tsang

Question resolved in the affirmative.

Resolved, on the motion of Mr Tsang, that the conclusion on page 69 be amended by replacing "commends" with "recognises" and deleting "for its".

Resolved, on the motion of Mr Dyer, that the conclusion on page 73 be amended by replacing "would" with "may" in the first paragraph.

Resolved, on the motion of Ms Fazio, that the second paragraph of the conclusion on page 73 be amended by adding to the end of the first sentence the words “ and should be considered by the Scheme Design Review”.

Resolved, on the motion of Ms Fazio, that Recommendation 11 be amended by adding after “Minister” the words “after consultation with the Auditor-General and the Scheme Design Review Steering Committee”.

Resolved, on the motion of Mr Dyer, that Recommendation 12 be deleted and replaced with the following:

That the Scheme Design Review notes the Committee’s concerns regarding the current insurer licensing arrangements and consider the introduction of individual contracts.

Resolved, on the motion of Ms Fazio, that the words “where possible” be inserted at the beginning of Recommendation 13.

Resolved, on the motion of Ms Fazio, that the conclusion on page 80 be amended by deleting the words “The creation of a centralised computer system” and “would” and adding the words “the implementation of WorkCover’s IT strategy should”.

Resolved, on the motion of Ms Fazio, that Recommendation 15 be amended by adding the words “the Scheme Design Review or” to the start of the sentence.

Resolved, on the motion of Mr Gallacher, that the conclusion on page 89 be amended by inserting the words “Evidence before the committee indicated that” to the beginning of the first sentence.

Resolved, on the motion of Ms Fazio, that Recommendation 17 be deleted and replaced with the following:

That WorkCover should consider the recommendations of the research project (overseen by a reference group including representatives of psychiatrists and psychologists) that has been established under the auspices of the heads of workers compensation authorities to support the introduction of a universal scale for the measurement of permanent impairment arising from psychiatric or psychological disorders.

That WorkCover report progress on this project to the Standing Committee on Law and Justice (see Recommendation 26)

Resolved, on the motion of Ms Fazio, that a paragraph be inserted after 6.39 to refer to the research project discussed in the recommendation.

Resolved, on the motion of Ms Fazio, that the conclusion on page 96 be amended by deleting the words “has considerable” and replacing them with “ may have”.

Resolved, on the motion of Mr Dyer, that Recommendation 18 be amended by inserting at the beginning of the recommendation the words “ the independent Scheme Design Review consider the establishment of” and deleting the words “be established”.

Resolved, on the motion of Ms Fazio, that the second paragraph of Recommendation 18 be amended by deleting “WorkCover” at the start of the sentence and replacing it with “The Scheme Design Review”.

Resolved, on the motion of Ms Fazio, that Recommendation 19 be amended by adding “and the Scheme Design Review” after “WorkCover” at the start of the sentence.

Mr Gallacher moved a motion that the following addition be made to Recommendation 19:

The Government establish a funded rehabilitation institute to undertake research and train rehabilitation providers to adopt world best practice in rehabilitation to NSW conditions. To assist industry, in particular small business, to establish rehabilitation plans.

Question put.

Ayes: Mr Gallacher

Noes: Mr Dyer
Ms Fazio
Mr Tsang
Rev Nile

Question resolved in the negative.

Resolved, on the motion of Mr Dyer, that Recommendation 19 contain the following addition:

That the Government report back to the Law and Justice Committee (see Recommendation 26) concerning initiatives regarding research, training and accreditation of rehabilitation providers.

Resolved, on the motion of Ms Fazio, that Recommendation 22 be deleted and replaced with the following:

That the adequacy of WorkCover's fraud detection and prosecution resources should be considered in the implementation of the government's response to the independent expert compliance review. [Insert review's proper title]

Mr Gallacher moved a motion that an additional Recommendation be made with the following words:

That a separate agency to be called the Workcover Fraud Investigative Agency be established to investigate and prosecute fraudulent activity and to have suitable power to carry out these duties effectively.

Question put.

Ayes: Mr Gallacher
Rev Nile

Noes: Mr Dyer
Ms Fazio
Mr Tsang

Question resolved in the negative.

Resolved, on the motion of Ms Fazio, that the following sentence be inserted at the end of para 8.6:

The Committee notes WorkCover has recently reviewed the licensing arrangements for self insurers and specialised insurers.

Resolved, on the motion of Ms Fazio, that Recommendation 25 be amended by deleting the first two paragraphs and replacing them with the following:

That licensing conditions for self-insurers and specialised insurers should be reconsidered by the Government in the light of the HIH Royal Commission and the Scheme Design Review.

Mr Gallacher moved a motion that an additional Recommendation be added with the following words:

That self-insurers should be allowed to” (i) Remove restrictions placed on self-insurers ability to offer commutations to injured workers following the passage of the *Workers Compensation Legislation Amendment Act 2001 and Workers Compensation Legislation Further Amendment Act 2001* and to continue self-insurers own arrangements for rehabilitation of injured workers. (ii) that the commutation agreements made between self-insurers and injured workers be subject only to the approval of the Workers Compensation Commission.

Question put.

Ayes: Mr Gallacher
Rev Nile

Noes: Mr Tsang
Ms Fazio
Mr Dyer

Question resolved in the negative.

Resolved, on the motion of Ms Fazio, that Recommendation 26 be amended by deleting “the”, “Standing” and “on Law and Justice” and replacing with the words “a” and “(recommended that the Law and Justice Committee be nominated)”.

Mr Gallacher moved that Recommendation 27 be amended by deleting the words “negotiated between Workcover, employees and employers” in the third sentence of the third paragraph and replacing it with “consistent with its former structure and role under the *Workers Compensation Act 1987*”.

Question put.

Ayes: Mr Gallacher

Noes: Mr Dyer
Mr Tsang
Ms Fazio
Rev Nile

Resolved, on the motion of Mr Gallacher, that Recommendation 27 be amended be adding to the fourth paragraph, after “Council” the words “make recommendations to Government but”.

Resolved, on the motion of Mr Tsang, that the report, as amended, be adopted.

Resolved, on the motion of Mr Dyer, that the report be signed by the Chair and presented to the House in accordance with the resolution establishing the committee of 13 May 1999.

Resolved, on the motion of Mr Dyer, 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, all correspondence, submissions and tabled documents, except those for which confidentiality has been requested.

Resolved, on the motion of Mr Dyer, that any dissenting reports be lodged with the secretariat by no later than 5:00 pm on Monday 2 September 2002.

Resolved, on the motion of Mr Tsang, that the Committee thanks the staff of the secretariat for all their efforts during the workers compensation inquiry and for producing the Chair's draft report.

5.3 Government Response to Report

Resolved, on the motion of Mr Gallacher, that the Chairman move the following motion in the House prior to the tabling of the Committee's final report:

1. (a) *The Clerk of the House is to refer the Final Report of General Purpose Standing Committee No 1' inquiry into the NSW Workers Compensation Scheme to the Minister for Industrial Relations, the Hon John Della Bosca MLC, who must within 3 months of the report being tabled, report to the House what action, if any, the Government proposes to take in relation to the recommendations of the Committee.*
- (b) *If, at the time at which the Government seeks to report to the House, the House is not sitting, a Minister may present the response to the Clerk of the House.*
2. *A response presented to the Clerk is:*
 - (a) *on presentation, and for all purposes, deemed to have been laid before the House*
 - (b) *to be printed by authority of the Clerk*
 - (c) *for all purposes deemed to be a document published by order or under the authority of the House, and*
 - (d) *to be recorded in the Minutes of the Proceedings of the House*

The President is to report to the House when any Government response has not been received within the 3 month deadline.

...

8. Adjournment

The meeting closed 12:45 pm – *sine die*

The Rev Hon Fred Nile MLC
Chairman