1. That the WorkCover recommit to implementing premium recovery and fraud investigation targets to enable greater premium recovery and also enable deterrent of fraud regardless of the party involved.

WorkCover does not, and has never, set monetary targets for fraud investigations or premium recovery. WorkCover's investigations into premium recovery are based on a wide range of detection capabilities to identify employers at risk of non-compliance, taking into account both public policy and the cost benefit of potential outcomes.

Any allegation of fraud is taken seriously.

2. That WorkCover terminate its moratorium on removal of self-insurers licenses and prosecuting scheme agent insurers who breach the law.

Section 183 of the *Workers Compensation Act 1987* gives the Authority the power to cancel or suspend a licence of an insurer to provide workers compensation insurance, for any reason it sees fit.

The Authority can cancel or suspend a licence for reasons, including the efficiency and conduct of the licensed insurer. Section 183A of the Act permits the Safety, Return to Work and Support Board to impose civil penalties on a person who is or was an insurer for a contravention of the workers compensation legislation.

There is no moratorium on the cancellation or suspension of self-insurance licences. WorkCover endeavours to address any issues with licensed insurers, including issues with regard to conduct and efficiency, in ways that enable the continuation of licences.

There is no moratorium on prosecution of Scheme agents who breach the law.

3. That the period for injured worker protection from termination be extended from 6 months to 12 months.

This would require legislative change. To change the legislation would be a matter for Government and, ultimately, the Parliament.

4. Require a positive burden of proof that the employer has no ability to provide suitable duties prior to termination.

The workers compensation legislation currently requires the prosecutor to prove that the employer did not provide suitable employment. An amendment to the legislation would be required to reverse the onus of proof.

Changing the legislation is a matter for the Government and, ultimately, the Parliament.

5. That a tri-partite panel be formed to manage WHS strategic direction and boost compliance and enforcement activity within NSW with regard to health and safety, return to work and injury management.

The Safety, Return to Work and Support Board has legislative responsibility to oversee the strategic direction of the Safety, Return to Work and Support agencies including WorkCover.

To change the legislation would be a matter for Government and, ultimately, the Parliament.

The Safety, Return to Work and Support agencies, including WorkCover, are developing an enhanced stakeholder engagement model, and will be consulting with stakeholders about the future approach.

6. That the functions of the WHS Division and the Workers Compensation Division be separated under different executive management and advisory councils to avoid conflicts of interest.

The structure of Government agencies is a matter for Government. The executive management of Safety, Return to Work and Support agencies, including WorkCover, is set by legislation. To change the legislation would be a matter for Government and, ultimately, the Parliament.

WorkCover's responsibilities for work health and safety and workers compensation are administered by separate divisions of WorkCover.

The current arrangement allows for synergies to be developed between ensuring work health and safety on the one hand and reducing the impact of work injuries and improving return to work rates on the other. WorkCover agrees it could communicate more clearly with the workers compensation community about the legislation and whether it is acting in its capacity as a regulator or insurer. WorkCover will continue to identify ways in which it can improve its operating model to better distinguish its regulatory and insurer functions.

7. That the Statistical Bulletin be re-established to enable timely and NSW relevant statistics available to the Minister and the general public about the operations of WorkCover Authority.

WorkCover will resume publication of the Statistical Bulletin, including a consolidated report, to be published by May 2014, followed by annual publication of the Bulletin.

Safe Work Australia also publishes the *Comparative Performance Monitoring Report*, which includes a wide range of statistical information on the New South Wales Workers Compensation Scheme. The *Return to Work Survey: Headline Measures Report* also published by SafeWork Australia also includes timely and relevant statistics benchmarking New South Wales workers compensation results.

The *Comparative Performance Monitoring Report* is at Attachment C and the *Return to Work Survey: Headline Measures Report* is at Attachment D.

8. That the WorkCover Authority reconstitute the Work Health and Safety and the Workers Compensation Advisory Council/s as a tripartite consultation mechanism as required by the ILO between employee and employer organisations and the Government.

While the *Safety, Return to Work and Support Board Act 2012* provides for the establishment of advisory committees by the Minister, none have been established to date.

WorkCover continues to consult with its stakeholders through its operational business activities and a range of targeted working groups and reference groups.

The Safety, Return to Work and Support agencies, including WorkCover, are developing an enhanced stakeholder engagement model, and will be consulting with stakeholders about the future approach.

Work health and safety model legislation, guides and codes of practice are currently developed collaboratively on a national basis under the auspices of SafeWork Australia – a formally constituted tripartite committee.

9. That the proposed Advisory Council and the Board open their meetings to greater transparency by allowing questions on notice, and staff and other observers to attend. While there will be an option for in camera sessions, there should be a direction that open meetings be given preference over closed sessions.

The operation of the Safety, Return to Work and Support Board is governed by the *Safety, Return to Work and Support Board Act 2012* and determined by the Board.

10. That the actuarial advice and timing regarding a projected return to surplus for the June 2012 amendments be tabled as a public document, including the actuarial advice and assumptions for the previous five years.

The Scheme valuation is always conducted on a retrospective basis so there is no 'projected' date of return to surplus. WorkCover is currently exploring whether it is able to publish the actuarial valuations of the Workers Compensation Scheme.

11. That this Parliamentary Committee acquires its own actuary and conduct a review of the above actuarial reports, and identifies mechanisms to restore workers benefits.

This is a matter for the Committee.

12. That the Parliament establish a review as per clause 27(4) as the Minister is aware that the scheme has returned to surplus.

The review will be conducted by independent consultants engaged by the Department of Finance and Services (DFS) to ensure independence from WorkCover.

13. That no further premium reductions be authorised until the review is conducted and the Parliamentary Committee actuary has assessed how to restore benefits.

Premiums are set by way of an Order published in the NSW Government Gazette, section 168 of the *Workers Compensation Act 1987*. The Order is recommended by the Authority and to be approved the Governor.

Premium reductions and increases are made by the Government on advice from WorkCover as required.

14. That Work Capacity Decisions be stayed for injured workers who are appealing the decision to ensure sustainable return to work.

Section 44(4) of the *Workers Compensation Act 1987* stipulates that a review of a work capacity decision does not operate to stay the decision or otherwise prevent the taking of action based on the decision. Changing this provision in the legislation is a matter for Government and ultimately the Parliament.

15. That the 12 month limit on medical expenses after weekly payments cease, be removed and delay in the pre-approval of medical expenses be able to be taken to the Workers Compensation Commission.

Section 59A of the *Workers Compensation Act 1987* provides the entitlement to medical expenses ceases 12 months after the entitlement to weekly payments ceases. Changing this provision in the legislation is a matter for Government and ultimately the Parliament.

16. That the WorkCover Authority be directed to enforce penalties for non-compliance with pre-approval time limits.

An enhanced, robust compliance and enforcement framework is being developed, to ensure the additional regulatory powers provided in the 2012 reforms are properly utilised. All matters are investigated and enforcement decisions will be made in accordance with the compliance and enforcement framework.

17. That an independent government officer such as a WorkCover Ombudsman be charged with overseeing all administrative decisions of WorkCover including decisions related to health and safety enforcement and that this not be done to the exclusion of existing appeals processes.

To change the legislation would be a matter for Government and, ultimately, the Parliament.

<u>18.</u> That the ABS data Work Related Injuries in the ABS Multi-Purpose Household Survey (MPHS) be used to evaluate the relative success of the WorkCover Authority in WHS injury prevention.

The Work Related Injuries Survey (WRIS) is conducted every four years by the Australian Bureau of Statistics (ABS). The last two surveys were done in 2005/06 and 2009/10. The WRIS collected information over the 2009/10 period from a sample of people aged 15 years and over who worked at some time in the last 12 months and experienced a work-related injury or illness in that period. A range of details about their most recent work-related injury or illness were collected.

As the data is from a sample, the results are adjusted or weighted to infer results for the total working population. Care has been taken to only show results that are considered robust enough for analysis. This is in accordance with ABS principles. Safe Work Australia has produced a number of publications looking at various aspects of the injuries reported on.

WRIS data is a valuable source of information on injuries for which compensation has not been claimed. WorkCover uses the data to develop a good understanding of such injuries.

In terms of evaluating the relative success of injury prevention programs, WorkCover uses multiple sources of data depending on the program. These include workers compensation claims data, hospitalisation data, ABS data including WRIS and data collections maintained by other government departments.

<u>19.</u> That a tripartite panel be established to assist WorkCover in undertaking this function of encouraging research in WorkCover's subject matter.

The Safety, Return to Work and Support agencies including WorkCover are developing an enhanced stakeholder engagement model, and will be consulting with stakeholders about the future approach. The suggested tri-partite panel for WorkCover will be considered in consultation with WorkCover's stakeholders.

<u>20.</u> To reconvene a further round of WorkCover Assist Education grants for employer an employee organisations.

WorkCover currently provides a range of assistance programs including rebates and mentoring, the healthy worker initiative and research. WorkCover reviews the requirements for assistance, including rebate and grants programs each year, depending on areas of high risk and grants.

<u>21.</u> That a tripartite panel be developed to assist WorkCover identify areas of high cost in health and safety and workers compensation and identify strategies to reduce the cost to the scheme.

The Safety, Return to Work and Support agencies including WorkCover are developing an enhanced stakeholder engagement model, and will be consulting with stakeholders about the future approach. The suggested tri-partite panel for WorkCover will be considered in consultation with WorkCover's stakeholders.

WorkCover has introduced in the past few years a systematic approach to reducing the risks to work health and safety in New South Wales workplaces. The approach is referred to as a risk base targeting approach. Examples of this approach can be seen in the Focus on Industry, High Consequence Low Frequency and Focus on Workplace Health programs.

In general the approach embodies the development of a risk profile of the area proposed as a target. The profile is based on all available information WorkCover has access to about the target and this is subject to analysis and is used to inform the consultation on risk profile. It is important that the targeted business sector or area is consulted to ensure that we have a common understanding of what real, not perceived, barriers to the creation of a safe outcome exist.

WorkCover has deployed a "Stage Gate Model" for the management of these programs. During this consultation phase WorkCover is also building the potential for voluntary compliance as an outcome to the targeting. The programs are usually launched at a tripartite event such as the recent launch of the Focus on the House Construction sector held at a TAFE college in Western Sydney. It is this type of engagement that characterises WorkCover's approach to our prevention work. Working closely with those who are influential in the management of the workplaces in the target sector brings with it the best understanding of the complexities of the issues and the greatest potential for the successful addressing of workplace risk.

22. That the outcomes of the Return to Work Pilot Project be released and acted upon in full where successful.

The purpose of the Return to Work Pilot in 2012 was for WorkCover to identify and trial strategies for engaging with workplaces about return to work. Although the pilot report has not been publicly released, all report recommendations have been built into the new organisation-wide Return to Work Strategy. Based on the report findings, the following recommendations were made:

- Integrated return to work strategies
    - External stakeholder engagement to promote return to work and recovery at work messages and to build capability and collaboration.
    - Recognition of good return to work performance – Return to Work awards at the Safework awards.
    - Target specific high risk areas, for example micro-employers, regional employers and labour hire companies, older workers and dismissed workers.
- Inspectors and return to work
    - Improve capability of inspectors
    - Develop a Return To Work inspectorate

The strategy is in its final stages of development and approval. With consideration to the outcomes of the pilot, several initiatives have already commenced, including:

- the recruitment of specialist Return to Work inspectors,
- the development of incentives and programs to support small/micro employers achieve improved outcomes, and
- interventions to increase the return to work capability of stakeholders.

23. That the JobCover Placement Program be reintroduced.

The JobCover Program underwent significant enhancement in 2011 to increase its usage as a major employer incentive to offset the costs of employing a worker with an injury and assist workers obtain work with a new employer. The program has seen increased utilisation since these enhancements with 680 instances of JobCover being used in the 2013 calendar year.

24. That WorkCover review and improve how it assists or incentivises (sic) employers with at work rehabilitation and re-employment of injured workers after long term incapacitation.

The reforms to the legislation in 2012 placed a focus on early intervention, work capacity and return to work for injured workers. WorkCover has continued to review how it assists its stakeholders and promote incentives for return to work.

The purpose of WorkCover's Return to Work Pilot in 2012 was to identify and trial strategies for engaging with workplaces about return to work. The Pilot found further work and effort was needed in:

- Building collaboration between insurers and Workcover.
- Capability building in Inspectors.
- Following up WorkCover's engagement with employers.
- Awareness building and return to work messages among employers.

WorkCover's subsequent Return to Work Strategy is in its final stages of development and several initiatives have already commenced. Many of these initiatives aim to adopt an early intervention approach to promote return to work outcomes and help to minimise those workers who go on to experience long term incapacitation.

For those workers who do unfortunately experience long-term absence from work, WorkCover continues to assist employers and unemployed workers in a number of vocational programs:

- Transition to Work payment can help to address any immediate or short-term barriers or needs that prevent an injured worker from obtaining or accepting employment. For example a tier 1 payment may cover costs up to $200 to assist the worker prepare for job seeking. Tier 2 payments may cover costs up to $5,000 to overcome an identified barrier to commencing new employment, such as travel, transitional child care arrangements, or clothing requirements.
- A work trial is a voluntary short term agreement which involves undertaking work tasks with a host employer.
- Retraining, equipment and/or modifications to a workplace or equipment can assist an injured worker to remain at work or return to safe and durable employment.
- The JobCover Placement Program provides incentives of up to $27,400 to the employer to employ an injured worker for the worker's first year of employment.

<u>25.</u> That the Doctors Certificate of Capacity be modified to include a recommendation for access to workplace rehabilitation services to prompt earlier access to the workplace and rehabilitation.

The current certificate of capacity has space in the 'capacity for employment' section to prompt referral to a workplace rehabilitation provider if appropriate. It asks:

"Do you recommend referral to workplace rehabilitation provider?" Yes / No.

<u>26.</u> That WorkCover allow injured workers in remote areas to attend Doctors via telelink.

WorkCover has endorsed the use of telemedicine services since May 2012. The *Workers Compensation (Medical Practitioners Fees) Order 2014* notes that video consultations are permissible when approved in advance by the insurer. The insurer will consider if the video consultation is reasonably necessary, appropriate and likely to be effective when making a decision whether to approve the service.

<u>27.</u> There is a need for an independent body to review on grounds of merit and process work capacity decisions and assessments.

The WorkCover Independent Review Office undertakes procedural reviews of work capacity decisions and deals with complaints concerning the conduct of insurers. An injured worker can make a complaint to the WorkCover Independent Review Office at any time.

Changes to legislation would be required to establish an independent body to specifically conduct merit review of work capacity decisions and assessments. Amendments to legislation are a matter for Government and, ultimately, the Parliament.

<u>28.</u> Section 32A be amended to remove part b of the definition of suitable employment.

This is a matter for the Government and, ultimately, the Parliament.

<u>29.</u> That the Workplace Injury Management and Workers Compensation Act be modified to include: an extra dot point to promote the establishment and operation of "health and safety representative structures".

This is a matter for the Government and, ultimately, the Parliament.

<u>30.</u> For a tripartite panel to develop a technical guide for inspectors on how to apply assistance to facilitate the establishment and operation of WHS committees and HSRs.

The Safety, Return to Work and Support agencies including WorkCover are developing an enhanced stakeholder engagement model, and will be consulting with stakeholders about the future approach. The suggested tri-partite panel for WorkCover will be considered in consultation with WorkCover's stakeholders.

Work health and safety model legislation, guides and codes of practice are currently developed collaboratively on a national basis under the auspices of SafeWork Australia – a formally constituted tripartite committee.

31. That Entry Permit Holder be authorised to inspect Return to Work Programs.

This would require an expansion of the power of Entry Permit Holders under section 118 of the *Work Health and Safety Act 2011* to deal with issues under the *Workplace Injury Management and Workers Compensation Act 1998*.

This is therefore a matter for the Government and, ultimately, the Parliament.

32. That inspectors actively seek out return to work programs and apply enforcement where they do not exist.

When entering a workplace inspectors are required to generally undertake a return to work check that includes:

- existence of workers compensation policy;
- existence of a return to work program; and
- a discussion with the employer regarding the current status of an injured worker's return to work where applicable.

33. That inspectors be charged with enforcing return to work outcomes.

Inspector powers relate to employer obligations within Chapter 3 of the *Workplace Injury Management and Workers Compensation Act 1998*, specifically:

- Section 43 – Employer must comply with obligations under injury management program.
- Section 44 – Employer must notify of workplace injury within 48 hours.
- Section 46 – Employer must participate, cooperate and comply with obligations under injury management plan.
- Section 49 – Employer must provide suitable work.
- Section 52 – Employer must establish return to work program.

The reformed legislation requires employers to find suitable work for injured workers who have a capacity to work. The changes mean WorkCover can now formally request an employer to provide suitable employment for a worker deemed fit to return to work. WorkCover inspectors are authorised to issue legally binding notices to employers and penalties of up to $11,000 apply for businesses that fail to meet injury management and return to work obligations.

The Return To Work Pilot demonstrated that a visit by an inspector to a workplace to follow up on an employee who has been off work following a workplace injury or illness can positively influence the employer's to decision to make an offer of suitable employment.

<u>34.</u> That fines for employers are increased for non-compliance with return to work provisions.

Any increase in penalties is a matter for the Government and, ultimately, the Parliament.

<u>35.</u> That the WorkCover Authority be charged with reconstituting industry tripartite groups as per the National Safety Strategy and Conventions that enable the provision of up to date information and monitoring by the industry of the progress of safety, workers compensation and injury management.

In 2012, the Government established three new oversight mechanisms for WorkCover:

- the Safety, Return to Work and Support Board;
- oversight by a Parliamentary Committee (resulting in the current Review of the Exercise of the Functions of the WorkCover Authority by the Legislative Council Standing Committee on Law and Justice); and
- the WorkCover Independent Review Officer.

The Government and WorkCover are also committed to providing statistical performance information for publication in national benchmarking publications.

The Safety, Return to Work and Support agencies including WorkCover are developing an enhanced stakeholder engagement model, and will be consulting with stakeholders about the future approach. The suggested tri-partite approach will be considered in consultation with WorkCover's stakeholders.

Work health and safety model legislation, guides and codes of practice are currently developed collaboratively on a national basis under the auspices of SafeWork Australia – a formally constituted tripartite committee. SafeWork Australia also publishes date monitoring the performance of work health and safety and workers compensations systems in Australia.

<u>36.</u> Reinstate Journey Claims which was a minimal cost to the scheme.

This is a matter for the Government and ultimately the Parliament.

Journey claims are still compensable under section 10 of the *Workers Compensation Act 1987*. Recent decisions of the Workers Compensation Commission have made this clear and a test for what constitutes a 'real and substantial connection' between employment and the accident or incident out of which the injury arose is being developed.