

REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE No. 1

INQUIRY INTO WORKERS COMPENSATION

At Sydney on Monday 24 September 2001

The Committee met at 10.00 a.m.

PRESENT

Reverend the Hon. F. J. Nile (Chair)

The Hon. Duncan Gay
The Hon. Michael Gallacher
The Hon. A. B. Kelly
The Hon. Greg Pearce
The Hon. Janelle Saffin
The Hon. H. S. Tsang
The Hon. P. Wong

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PRESENT

The Hon. John Della Bosca, *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*

WorkCover Authority

Ms K. McKenzie, *General Manager*

Mr R. McInnes, *Assistant General Manager, Insurance Division*

Ms M. Patterson, *Assistant General Manager, Occupational Health and Safety Division*

Mr P. Burrows, *Finance Director*

CHAIR: I welcome the media and members of the public to this hearing of General Purpose Standing Committee No. 1 for its inquiry into the New South Wales workers compensation scheme. I advise that under Standing Order 252 of the Legislative Council any evidence given before the Committee and any documents presented to the Committee that have not yet been tabled in Parliament "may not, except with the permission of the Committee, be disclosed or published by any member of such Committee or by any other person". Copies of guidelines governing broadcast of proceedings are available from the table. I welcome the witnesses, the Hon. John Della Bosca, Special Minister of State and Minister for Industrial Relations and Ms Kate McKenzie, General Manager, WorkCover New South Wales.

KATHERINE MARY McKENZIE, General Manager, WorkCover Authority, 400 Kent Street Sydney, sworn and examined:

CHAIR: In what capacity are you appearing before the Committee?

Ms McKENZIE: As General Manager of WorkCover.

CHAIR: Are you conversant with the terms of reference of this inquiry?

Ms McKENZIE: Yes.

CHAIR: If you should consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be heard or seen only by the Committee the Committee would be willing to accede to such a request. Minister, do you wish to make an opening statement?

The Hon. JOHN DELLA BOSCA: Yes, thank you, Mr Chairman. In 1986-87 the then New South Wales Government legislated for an entirely new approach to workers compensation. It is basically the origin of what we now described as the WorkCover scheme. That scheme had good early results. It did not last long enough in its original form for accurate judgments to be made about how sustainable those good early results were. Certainly, in terms of its fiscal sustainability it seemed to be going quite well and it provided consistent benefits, although there were some areas in which in hindsight perhaps a different approach could have been taken by a government of any persuasion.

The next important item of history from the point of view of an opening statement about workers compensation in New South Wales today is that the backlash against the Unsworth reform led to a number of significant changes, the first and most significant of which was the reintroduction of forms of common law appeal or common law access for workers compensation within the WorkCover scheme, particularly the introduction of the so-called narrative gateway or second gateway; that is, a means to establish a primary case at common law in terms of the degree of injury of a worker by a calculation based on the table of disabilities or a notional economic and non-economic loss. The change was accompanied shortly thereafter by a significant, and I suppose quite laudable, increase in benefits. But it is fair to say that that increase in benefits also occurred prior to the impact of the common law access being able to be clearly understood. So there was the beginning of a trend in the scheme whereby the scheme started charging significantly less in premium than the costs of the scheme. Mr Chairman, you may recall that in Parliament I provided this graph demonstrating that fact—the premium charge versus the cost of the scheme on a year to year basis.

CHAIR: Copies of the graph will be made available to members of the Committee.

The Hon. JOHN DELLA BOSCA: I acknowledge that the graph is not easy to interpret except when it is in someone's hand or easily accessible. The diamond shaped dots represent the true risk premium, that is the cost of the scheme, and the square shaped dots represent the actual premium charged. I am skipping through a fair bit of history, but on 31 March 2000 I was given responsibility for WorkCover. It is a point of consensus, although we may not necessarily fully agree on the reasons, that the WorkCover scheme was already under significant fiscal stress. There was a fair bit of evidence, both subjective anecdotal evidence and also some objective evidence, that it was also not performing in terms of helping injured workers to recover and return to work in a timely manner, and not adequately compensating workers. It also was not playing a significant subsidiary role of a workers compensation scheme in providing a proper incentive either by way of sanctions—I suppose common law negligence claims might be interpreted as the most serious sanction—through to incentives by way of lesser premiums et cetera for good practice.

They are the two fundamental things that seemed to be wrong with the scheme, and fairly evidently so, back on 31 March 2000. Indeed, the assumption that I had made as Minister—the Government has proceeded along with that presumption—was that the adversarial nature of the scheme, the lack of a focus on the treatment of injured workers and the lack of focus on a return to work, the shifting of the adversarial emphasis through common law into the statutory scheme as well, and so the expansion, has rather exacerbated and complicated the dispute resolution process and has contributed to that fiscal deterioration. Rather than try to tackle fiscal deterioration in isolation, we wanted to again make the scheme serve injured workers, make the emphasis of the scheme the proper and appropriate return to work of injured workers, with proper and direct compensation for them and identification of impairment and their treatment. It was a rather bold assumption, but nonetheless I think an appropriate assumption, that the fiscal aspects of the scheme would start to right themselves as the essential objectives of the scheme came back into focus.

I set in place a 10-step process beginning with premium compliance and further measures, culminating in the publication of the green paper which sets out in draft form a number of further legislative measures to address problems of workers compensation premium compliance. So I would think as a result of the community debate and the legislative debate about the green paper—phase one, if you like—the premium compliance issue would be settled.

Even today I make further announcements about some administrative changes in WorkCover which we can elaborate on or Ms McKenzie might like to speak about later which will I suppose further crack down and send signals to employers who are not paying correct premiums, by way of either avoidance or ignorance, that the Government will be very strict and seek to enforce all penalties available at law and also to have inspectors and auditors out there ensuring that those employers are paying the correct premium.

The ambiguity of one point—it is one of the things I have been a little concerned about and which we have been seeking advice about over time—is the impact on the scheme of premium avoidance, premium evasion and the underpayment of premiums. It is fair to say that actuarial and general administrative advice varies widely on that. Within the community I think you can say that there are two extreme views. There is one view by some industry insiders and people who are observers of the workers compensation scheme that premium fraud underpayment and premium evasion accounts for a very large amount of yearly loss to the scheme. There is another view which is that it is fairly marginal. It is also fair to say that that is true of so-called worker fraud as well.

Those two areas seem to be subject to a lot of public debate and probably a lot of popular prejudice about the scheme. Also, there are widely differing views about the impact of worker fraud on the financial fundamentals of the scheme. So the Government is ensuring that we address both. We are giving some priority to employers compliance simply because it is a fundamental matter of having an inspectorate and proper auditing. I think there would be a general acceptance, as we go through the problems of injury management and other aspects of the scheme in terms of incentives for employees, that the issue of so-called worker fraud may be somewhat more complicated but equally needing to be addressed where it does exist.

During the past 12 to 18 months we have addressed outstanding issues, including injury management and education for general practitioners. We did that in the spring session last year. As I mentioned before, we increased the penalties for employer premium fraud to a two-year gaol sentence. We have addressed outstanding issues, including the Carr Government's commitment to a new occupational health and safety framework based on the Upper House Committee's original recommendations, and also the ANZSIC industrial classification system which obviously was a decision that had been put off a number of times by governments.

The ANZSIC classification system is an important part of getting incentives and motivations right in the scheme because it removes cross-subsidies which further distort the real measurement of the impact of safety practices on premium levels. As well as legislative reform, I have reported to the Parliament and publicly on a number of occasions on some evidence-based pilot programs, looking at what I think is the critical issue in the scheme—injury management, that is, the way in which workers are dealt with. If I could take the time of the Committee to relate an anecdote from a practitioner in the industry which I think is very enlightening. It is a sub-theme of the approach to injury management.

It starts with a conversation between a medical practitioner who is a sport injury specialist and an insurer. They are both watching their kids play rugby league on a weekend. During the course of discussing what they do from a day to day and week to week, the conversation struck up on the basis of the interesting differences between an injury that occurs on a sporting field and an injury that occurs in our workplace. Obviously they are both professionals in the field talking about specifics. A cartilage injury in the workplace could result in five, six, eight, 10, 12 and so on weeks out of the workplace. An equivalent injury that occurs on a rugby league field to a professional footballer may result in two or three weeks away from a high impact sport where obviously soft tissue injuries are a great risk.

That underlines an examination of some of the differences and why that might occur. Apart from anything else, motivation is a key one, putting money aside and other issues. I think it is a very critical point that the way in which—to continue the practical analogy—a sporting team deals with an injury is very different to the adversarial way an employer and employee are forced to deal with an injury by our system.

A sporting team deals with an injury by keeping someone as part of the team. They turn up to team training, they are given exercises to do, the team physiotherapist look after them, the coach talks to them about their role in the team in game plans and so on when they return to the team. They are expected and encouraged to turn up to training, turn up to play, turn out to watch the games and are still treated very much as part of the team and their injury is dealt with as a problem for the whole team, and their injury is dealt with by the whole team and its ancillary professionals as something that everyone must address.

On the other hand, if you look at the workers compensation system, nothing could be further from the truth. There could be nothing more obviously opposite in the workers compensation system. A worker with a similar injury has the problem that immediately the employer may be confused about what to do, may be concerned about a negligence claim or may be worried about the impact of the loss of that employee on the sustainability of their workplace.

Suddenly there is a conflict, an adversarial situation develops. The employer does not want to know about the employee, the employee is made to feel to be not part of the workplace any longer until he is able to return to work.

The employee may even be set upon by the employer's insurance company and be followed around by people with video cameras, et cetera. Literally, the sort of behaviour that comes out of the workers compensation system does two things, and I notice that the Hon. Greg Pearce and the Hon. Janelle Saffin are present to hear this. First, the first friendly face that the worker may come across may be his solicitor; the first person who actually gives the employee a clue as to what to do to manage the situation is his solicitor. With no great disrespect to our great legal system, the first thing the solicitor does is set up an adversarial approach to the management of the problem.

The Hon. Janelle Saffin: Or their union rep.

The Hon. JOHN DELLA BOSCA: With respect to the Hon. Janelle Saffin, under current circumstances the union representative will often refer the employee to the union's solicitor, that is the common practice. There is nothing inherently wrong with that practice, except that it underlines the fact that their injuries are dealt with on an adversarial basis and that is the way that they are helped initially rather than being helped with the injury, returning to work and the social problems related to their loss of capacity in the workplace.

Injury management is dealt with very glibly and so much of our speeches and so much of our material. How someone's injury is dealt with really is a basic social issue. There is an increasing body of evidence from all the disciplines that WorkCover could be familiar with from the actuarial disciplines through to medical and clinical disciplines. I believe that many legal practitioners look at alternative methods of resolving these types of disputes, especially the lower level ones; they are anxious to look at ways to bring some of those more co-operative approaches into the workers compensation scheme.

There is evidence that they help not only the worker return to work, but also help the injury, and that means that the employee gets better more quickly in a literal sense. Certainly there is a lot of evidence that the poor handling of injury management and the poor handling of claims management, has the exact opposite effect—small injuries become protracted injuries and may end up having a psychological and psychosocial dimension, because of that alienation from the workplace. Soon the employee is in a great deal of difficulty and his only recourse to justice is purely the adversarial approach to workers compensation, rather than being compensated for the injury and getting back to work.

I deviated in my statement, because I wanted to give weight to that critical area of claims management and injury management. The critical failure of the post-Unsworth scheme has been the inability to come to grips with that critical problem. Certainly there is a lot of evidence, which the Committee will hear later from WorkCover, about the actuarial manifestation of that problem.

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

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

If an accident happens and the employer seeks to resolve the issues, they will be charged premium based on their industry classification plus their premium history. They are literally trapped by their history, and this is especially true of medium-size employers. For the benefit of the Deputy Leader of the Opposition, that is especially true of the rural sector, because in many cases farmers find themselves unable to break out of premiums even when they take significant measures to reduce risk on their farm.

The Hon. DUNCAN GAY: It was not insurance, it was pay-as-you-go.

The Hon. JOHN DELLA BOSCA: Yes. The Government introduced a premium discount scheme which, essentially, is a bold leap forward. The premium discount scheme is an attempt to come to grips with employers being trapped by their history and being unable to break out of a number of accidents. The employers have resolved the issues, but are still stuck with their historical industry-based premium. The industry-based premium will be more accurate in future with the Australian and New Zealand Standard Industries [ANZSIC] transition, but the premium discount scheme will give an opportunity to overcome that frustration. It has been welcomed by a lot of employers.

Ms McKenzie will report on injury management and worker compliance through the improvements made at WorkCover with data analysis and the inspectorate. The aim for the coming year is to capitalise on the new dispute resolution process that we believe is now in place to prevent disputes from becoming more exaggerated than they need to be. More of the money from the scheme should be going to injured workers if we succeed in doing that, and we believe we will be. As the Parliament has been told and as members of this Committee would be very much aware, currently the Government has asked for public comment on the Sheahan inquiry.

The Government has held preliminary discussions with key interest groups about that inquiry. The scheme envisaged by Justice Sheahan and with the further changes that he suggested will be a very sustainable scheme and one that the Government looks towards as getting the best out of next year. It contains a whole new approach to dispute resolution in workers compensation. The Sheahan report recognises that injured workers are the focus and we need some synergy between common law and the statutory scheme. Justice Sheahan does that in a different way from that anticipated by the Government in previous public indications of its policy direction. Frankly, I believe it is superior to the one I envisaged would be taken.

I am very happy with the outlines of the Sheahan report. However, we are still waiting for public reaction to the details. Shortly the Government will be preparing a response. Today there are actuaries present to advise the

Committee. They will say that actuaries can work only by measuring trends and likely outcomes. They have to make assumptions. The reality is that there are no quick fixes to the deficit or to injury management. It is a matter of transformation of the culture and turning around some of the motivations and incentives in the scheme to get those trends going the right way. I now wind up my remarks and ask Ms McKenzie to address the Committee.

The Hon. GREG PEARCE: Is the chart you have provided meant to reflect actual figures?

The Hon. JOHN DELLA BOSCA: What do you mean by actual?

The Hon. GREG PEARCE: Actual or budget?

The Hon. JOHN DELLA BOSCA: Actual.

The Hon. GREG PEARCE: Could you please provide a chart plotted with budget figures as well?

Ms McKENZIE: The chart does not relate to the budget. That is the deficit

The Hon. GREG PEARCE: I am trying to establish what the chart is. Could you provide your actuals against the budget?

Ms McKENZIE: Okay.

The Hon. JOHN DELLA BOSCA: We can supply that.

Ms McKENZIE: Do you mean historically?

The Hon. GREG PEARCE: Yes.

Ms McKENZIE: We would have to go away and see whether we still have sufficient information to be able to plot that against historically what was projected, but we can have a go.

CHAIR: That can be dealt with at question time.

The Hon. GREG PEARCE: It was just that it related to the Minister's presentation.

CHAIR: It comes from WorkCover, so it is probably better to get those financial details from WorkCover personnel. The Committee thanks the Minister for outlining the WorkCover arrangements for the past, present and, hopefully, the future.

(Short adjournment)

CHAIR: For the information of the Committee, the Deputy Leader of the Opposition, the Hon. Duncan Gay, replaces the Hon. Rick Colless.

Ms McKENZIE: I guess we should start with an overview of how the scheme works. We thought that that might be of benefit to the Committee members.

CHAIR: For the benefit of the people in the public gallery, I point out that we are having a briefing from the General Manager of WorkCover New South Wales on the operation of the scheme, as part of a Legislative Council inquiry into the WorkCover scheme.

Ms McKENZIE: I guess that if I commence with an overview, we will run through WorkCover's role; the direction, control and management of the scheme's funds; the workers compensation scheme objectives; key problems and issues; and current and future policy directions. WorkCover's role, as spelled out in the Workplace Injury Management and Workers Compensation Act makes WorkCover responsible for promoting injury prevention in the workplace and the development of healthy and safe workplaces; the promotion of prompt, efficient and effective injury management to help workers to get back to work as safely and as quickly as possible; regulating insurance arrangements and monitoring and reviewing the financial performance of the scheme; regulating service providers to meet professional standards and to deliver innovative, efficient and value-for-money

services; monitoring the operation and effectiveness of the scheme; and providing the Minister with policy and technical advice.

I think it is important to set out those objectives at the commencement of my presentation because often WorkCover is criticised for not delivering on things for which is not WorkCover's role to deliver. While I am happy for us to accept responsibility for the things that are within our control, I think it is important for Committee members to understand the limits of the authorities and controls. I will move on to direction, control and management of the scheme's funds. The slide shows that the funds in the scheme are divided into two buckets: One is a fund that is controlled by WorkCover and the other is a fund which WorkCover merely regulates. The funds that are controlled by WorkCover are the WorkCover Authority fund, the insurers guarantee fund, the bush fire fighters compensation fund, the emergency and rescue workers compensation fund and security deposits and bank guarantees. Funds that are not controlled by WorkCover, but regulated by WorkCover, in the sense that the Scheme's rules apply to these funds, are the self-insurer funds. There are 16 self-insurers that make up about 30 per cent of the scheme.

The Hon. GREG PEARCE: Do you have paper copies of these slides?

Ms McKENZIE: Yes. I will be able to provide them.

The Hon. GREG PEARCE: Could I have them? Do you have them here now?

Ms McKENZIE: I do not have copies with me now, no, but we will be able to provide Committee members with copies afterwards.

The Hon. GREG PEARCE: It is just that it would have been easier to take notes on a hard copy as we were going.

Ms McKENZIE: There are also the specialised insurer funds, the Treasury managed fund, which is the main fund that looks after public sector employees, and the workers compensation scheme statutory fund, which is the scheme that we most often talk about—the fund that is currently in deficit and that most of the focus and energy is upon. As the Committee can see from the slide, there is a reasonably complex array of funds that all together make up the various forms of workers compensation that are available in New South Wales, some of which are self-insured, some of which are run under the main scheme, some of which are public sector focused, and some of which are smaller, more specialised schemes such as the bush fire fighters fund and the emergency and rescue workers fund.

Key problems and issues include the fact that claim numbers in the scheme are falling but increasing in cost and are contributing to a large and growing deficit. All Committee members would have heard of the figure of \$2.2 billion which was the actuarial estimation of the deficit as at 31 December 2000. I think that the Committee has been provided with a valuation report that provides a detailed explanation of how the figure was arrived at. Key problems also include delays and barriers to effective injury management and return to work, which the Minister talked about in his opening remarks; unnecessary disputes and high legal costs, which certainly were debated at great length in this Chamber in the last session of Parliament; and premiums which are high but still insufficient to meet scheme costs.

The next slide shows diagrammatically that claims are gradually falling over the accident year, yet at the same time that this is happening the scheme costs are rising. Significant claims are also falling, as can be seen from the next slide. Basically what this is telling us is that the severity of injuries that injured workers are becoming victim to are gradually dropping off. Once again it is difficult to explain why at a point in time, when both the number of claims and seriousness of those claims are falling, the costs of the scheme are still continuing to rise. The next slide shows increasing claim costs based on the number of people who are on weekly benefits after 26 and 52 weeks. Once again this is a little bit counterintuitive because the significance of injuries is dropping, and the number of injuries is dropping, yet the number of people who are on weekly benefits after 26 and 52 weeks is rising.

Partial explanation for some of this might be shown by the next slide which refers to trends and commutations. As the slide shows, during the last few years, particularly in the last year or so, we have seen a very dramatic increase in the number of commutations. Partly this is a result of a deliberate policy that was introduced back in 1998 to liberalise the way in which people could get commutations. The theory was that it was better to commute the claims and for people to leave the scheme and get on with their lives rather than have them stay on weekly benefits, but I think that the latest actuarial valuations tell us that rather than being a benefit to the scheme,

the number of commutations is beginning to be of increasing concern because they are increasing at such a rapid rate, yet that is not reducing the number of people who are receiving long-term weekly benefits.

Similarly the next slide displays the increase in the number of common law claims. Once again that is a very worrying trend from the scheme's point of view. Common law was originally designed for the seriously injured and it looks like—from recent work that we have done and research that Price Waterhouse Coopers have done on behalf of the scheme—numbers of people who are making common law claims are increasing quite rapidly. We are seeing common law claims being made in relation to a class of claimant who is less seriously injured than were claimants five years ago. The next slide shows increasing claims costs. That is a follow-on which shows that the numbers of common law claims are increasing and have increased very, very rapidly this year, 2001. That is partly why we ended up with the Sheahan inquiry.

The next slide shows actuarial projections for 2001-02. I hope that all members of the Committee can see that. This is aimed at showing where the costs in the scheme are going to. As the slide shows, the biggest slice goes on weekly benefits. The next biggest slice goes on legal fees. The next biggest slice goes on common law claims. This slide emphasises that if the aim is to have the bulk of scheme costs going to injured workers, it is not at all clear that we are even close to achieving that. The next slide is the one to which the Minister referred in his opening remarks. Again, this explains that this is a longstanding problem that we are talking about. It emphasises that the scheme has been in trouble for a number of years now and there is not going to be any quick fixes or overnight solutions.

Since back in 1991, the amount of premium that has been collected has been insufficient to meet the cost of the scheme. During all that period of the 1990s, the slide shows that the size of the deficit was increasing. We did manage to claw back a little in 1998 with some reforms that were initiated then, but based on recent trends it appears that those clawbacks are not going to be sustainable, and the scheme is still trending in the wrong direction in terms of the amount of premium collected being insufficient to cover the costs of the scheme.

In response to that, in June 2000 the Special Minister of State announced the Government's plan for delivering an efficient, affordable and fair scheme. I emphasise that there will not be an overnight solution to this. Basically, we are engaged in wholesale reform of just about every aspect of the scheme and the trick is working out the order in which you do that, and the priorities you attribute to the various aspects of poor scheme performance because almost every aspect of the scheme requires review and revision.

The Government's policy directions for delivering on this include managing risk and preventing injuries and in relation to that, the commencement of the new Occupational Health and Safety Act and the regulation on 1 September should be a major contribution. We now have occupational health and safety legislation that can take us into the twenty-first century focusing on a much more modern approach to occupational health and safety. We also have the Premium Discount Scheme which, as I think the Minister spelt out, is aimed at making people focus on preventing injuries in their workplaces, and trying to make a more direct link between the premium that they pay and the effort they put into occupational health and safety, and the consequences for the scheme.

We also have a number of injuring management pilots, which are once again focused on improving injuring management in the scheme. Although there have been significant legislative changes in the last few years I think we would all agree that we have not quite there yet in terms of delivering world's best injury management. We have a number of injury management pilots under way at the moment: two insurer based ones and some non-insurer based ones, and over time we will be evaluating the outcomes of those pilots to try to see what works and what does not work. They are mainly focused on trying to have injuries notified earlier and trying to get parties involved in the management of those injuries to communicate more clearly and rapidly so that treatment for the injured worker can be commenced. Hopefully, this will improve their recovery rates.

We would hope that by January next year—they will have been in operation for a year—we will have been able to draw some conclusions from what has happened with those pilots. We are also looking at initiatives in improved claims management, timely advice and information for workers and their employers, fair, flexible and efficient dispute resolution and compliance improvement. We have a number of initiatives under way under the heading of compliance improvement. We also have incentives for employers to improve their performance—once again the Premium Discount Scheme and the introduction of ANZSIC, which is a more finely grained rating system which more closely identifies the real risk of a particular workplace. Also, there is control of fees by professional service providers, deficit reduction measures and an assessment of industry-based schemes and self-insurance, which has led to us liberalising the rules about self-insurance and specialised insurance in an effort to encourage appropriate workplaces to undertake those sorts of arrangements rather than being part of a managed fund. There

are a lot of initiatives under way. The jury is still out on where some of these things will lead but we are hopeful that we will begin to see the outcomes from some of those initiatives.

Turning to managing risk and preventing injury, as I said the new occupational health and safety legislation sets out requirements for all workplaces to assess, eliminate and/or control health and safety risks. We have introduced transitional arrangements to allow employers time to adjust to the new more modern arrangements. For most businesses that means a 12-month phase-in of the new risk management approach. If you are a small business with less than 20 employees you will have two years to adjust to those new arrangements. We are also rolling out a significant public seminar program to make sure people are adequately informed about their obligations under the new arrangement and as we speak one of those seminars is taking place in Wollongong. It began on 17 September on the Central Coast and we are trying to make sure that all employers, not just in the Sydney metropolitan area but in rural and regional New South Wales, have the opportunity to attend one of those seminars and find out more about their obligations.

We are also offering information, advertising and promotion. Some of you may have seen our new WorkCover advertising campaign, which is backed up by a lot of detailed information that all employers will be able to access about specific obligations that they have. A lot of guidance material has been developed to support the new Act and regulation to make sure that everybody can be well-informed about their obligations. We have also advertised recently for a program called WorkCover Assist. Essentially, this is aimed at filling the information vacuum that the Minister talked about where there will be money available for both employer groups and unions to put together programs to inform their memberships on either side about their obligations, both under the new dispute resolution system and under the new occupational health and safety regime. The hope is that once that information starts to be disseminated more broadly, some of those information gaps will cease to exist. We are also linking in closely with industry reference groups. All industries are represented on industry reference groups that are part of the WorkCover infrastructure. They are essentially people who are experts from their particular industry. We link them in closely with our occupational health and safety division in devising ways to disseminate information. They give us input on particular issues for their industry and we hope by doing this in a fairly scientific way, based on the data that we have available about where the problems are in specific industries, that we can manage to target our effort on both occupational health and safety and workers compensation more accurately than we have been able to in the past.

We have also a significant compliance program under way. That involves a number of prongs. We have had some legislative reform that has increased our powers and given us more fining abilities. We have also put in place a compliance branch inside WorkCover, which has 14 experts using sophisticated data mining software, linking in with other agencies to try to get better intelligence about where we think there might be issues about compliance. The early signs are that that should deliver quite a lot of improvement in terms of the amount of money that we can collect from non-complying employers.

We have a number of targeted programs focused on specific industries, trying to improve compliance in those industries. Construction is an obvious one, also contract cleaning, and some manufacturing ones where we are working closely with the industry to try to make sure that everyone knows their obligations and to the extent that we can that they are being complied with. We have also significantly increased the number of audits that we are doing of people's compliance with their obligations. In relation to all of these things, we are endeavouring to ensure that we have adequate monitoring and evaluation in place. We will be actively monitoring the implementation of the occupational health and safety regulation, making sure that we identify any implementation issues and, where necessary, make adjustments to the new regulation. We will be continuing to work closely with stakeholders to monitor the effectiveness of the regulation.

Moving to injury management, I have already mentioned briefly our injury management pilots that are under way. Also in this area we have clinical practice guidelines being developed to help doctors and patients to make decisions about appropriate health-care. In the middle of 2001 WorkCover started an educational program for all New South Wales general practitioners to enable them to effectively manage the medical condition and return to work of injured workers with acute low back pain, our most common injury in the scheme. There are three distinct but related projects of this initiative that are currently under way. We are also in the process of introducing provisional liability. That was one of the issues dealt with in the last package of reform.

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.

At the moment we have some quite ludicrous examples of where, because a decision has not been made, an injured worker cannot go and get a simple medical examination. That might be all that is required to advance treatment, but because the claim is disputed by the insurer or a decision is not made at all, the injured worker is not able to access that treatment knowing that it will be paid for by the scheme. It is just an example of the fact that what may begin as reasonably minor injuries can escalate out of control because early treatment is not made available to the injured worker.

We have also introduced a new remuneration package for insurers. We commissioned an independent PricewaterhouseCoopers review of the insurers remuneration package. The new package provides insurers with much stronger incentives for improved performance. It takes a much more outcomes-based approach to the way insurers are paid, as well as providing strong penalties against continued poor performance. We are hoping that, once again, this will encourage insurers to invest more time, effort and energy into injury management. The early signs are quite good. We have heard that they are all out there hiring injury managers, which is certainly a good sign from our point of view.

I turn now to improved claims management. As I have said, approximately 15 per cent of all disputes arise because insurers fail to make a timely decision about the payment of weekly benefits. Once again, from our legislative package from last session, the Act provides that insurers who, without reasonable excuse, fail to commence weekly payments within seven days from a notice of injury will now be subject to a maximum penalty of \$5,500. The acceptance of professional liability will not prejudice the insurer's ability to cease if it is later found that the worker was not entitled. WorkCover can also order the repayment of money obtained by false statements or fraudulent claims.

I now turn to making insurers accept professional liability. The guidelines are another significant factor that we have not so far discussed this morning. The guidelines for the objective assessment of permanent impairment are currently being finalised. These are an important aspect of the new dispute resolution system. We have had committees of expert doctors working on those guidelines, and they are now nearing completion. The aim of those guidelines is to try to ensure that, to the extent possible, we can objectively assess the degree of permanent impairment that someone has suffered as a result of a workplace injury. Hopefully, this will cut down the duelling doctor syndrome, where we have the insurer sending the worker to an insurer doctor and the workers' representative sending them to a worker doctor, and therefore the scheme getting wildly variant assessments as to the level of permanent impairment, and the next thing you know you have a major dispute. The hope is that with the introduction of guidelines you will get much more consistency, because two doctors using those guidelines should come up with the same more or less the same answer about what level of permanent impairment the injured worker has suffered. This should be quite significant in terms of reducing the number of disputes that we have over those issues.

I now wish to deal with timely advice and information for workers and employers. It is important that scheme participants have accurate and timely information to meet their needs and enable them to fulfil their obligations. Recent initiatives that once again flowed from the last package of reform through this House include the Claims Advisory Service. That is something that we are working through to help injured workers and employers navigate the system. Essentially, the service will be run out of WorkCover and we hope to be able to graft it onto our existing information centre and link in with our inspectorate, which has a regional presence, with the aim of giving more timely, accurate and consistent advice to people in the system, without crossing the boundaries of doing the insurers' job for them. We are very conscious that in the design of the Claims Advisory Service we have to make sure that we do not cross that boundary. Another recent initiative is the Claims Assistance Service, which I have already spoken about, to enable worker and employer groups to provide advice and information services to members.

I now turn to flexible and efficient dispute resolution. New South Wales has the highest rate of disputed claims in Australia, with 45 per cent of major claims referred for conciliation. This was addressed in a major way in the package of reforms that passed through the Parliament last session. We are aiming to establish a new Workers Compensation Commission, which we are aiming to have up and running by 1 January 2002. It will provide integrated dispute resolution for the scheme. We are working through with the stakeholders the details of the implementation of the new commission, but at this stage we are reasonably hopeful that the 1 January start date will be achieved.

I will now deal with compliance improvement. Our compliance strategies include the new fraud provision; making directors of uninsured corporations liable; recovery of audit costs from employers; increases in penalties for non-insurance; on-the-spot penalties for non-insurance; our WorkCover compliance improvement branch, which I have already referred to; our data sharing with other agencies; and the compliance green paper that the Government has recently released, which proposes a mixture of potential legislative changes and administrative changes that might be implemented in the scheme to improve the level of compliance with workers compensation obligations. We will certainly be waiting with great interest to see what kind of feedback we get in relation to some of those propositions in the green paper. Once that happens, it will be with a view to giving advice to the Government on a final position in terms of which of those initiatives should be implemented.

I now turn to incentives for employers to improve their performance. I think the Minister covered some of these in his opening address. They include the Premium Discount Scheme, which we are rolling out at the moment. That includes a small business strategy, which aims to make the Premium Discount Scheme more available for small businesses. Essentially, it allows them to band together so that they can get the benefit of the premium discount by sharing the resources, rather than individual, very small businesses being required to invest in occupational health and safety by themselves. It is aimed to get some of the employer organisations to organise it for them, and to assist a number of small employers to get together so that they can get the benefit of the Premium Discount Scheme.

The new industry classification system, which we call ANZSIC, once again began its implementation at the beginning of the financial year. We have moved to a much more fine-grade classification system where the rate you are paying in premium should be much more closely related to the actual business you are undertaking. We have gone up to 529 industry classes, up from 110, and they are ranged into 17 broad industry divisions. Once again, the removal of cross-subsidisation of this should send a much clearer signal to businesses about what their performance is really like.

I now turn to control of fees by professional service providers. We are now working through some cost regulations for the legal profession that will go along with the implementation of the new dispute resolution system. We have also introduced restrictions on legal advertising. I guess that was a response to a view out there that legal advertising was in some cases encouraging workers to make claims in circumstances where that may not have been legitimate. We have also introduced the new insurer remuneration package, which aims to keep the costs of insurers under control and only pay them when they actually deliver on what they are supposed to be doing.

We are also having a number of ongoing negotiations with the medical profession about regulation of medical fees. This is a very difficult area, because whilst on the one hand we might all agree that regulation of those fees is a good thing, on the other hand we have to be careful that we do it in a consultative way, because we do not want the result of that to be large numbers of medical practitioners not participating in the scheme because of the arrangements that we make.

I will now deal with deficit reduction measures. We ran an expressions of interest process from the private sector for innovative deficit reduction measures. This was in response to a number of people suggesting that there were private sector bodies out there who would have ideas about how the deficit might be reduced using a variety of financial instruments. To put some order into that, we ran a public expressions of interest process. That was assessed by an independent panel and has not quite come to fruition, but at this stage it does not look like it is going to yield what we might have hoped it would yield, and may be something that we need to think about further down the track when the scheme is a little more stable than it is currently.

Mostly what came out of that—without wishing to disclose any confidential details of the process—is the discovery that the costs and risks involved in many of the propositions put forward were really not affordable. I have talked to a lot of the reinsurers and people such as that who get involved in these sorts of arrangements and their advice is that, until we get the scheme back under control and a little more stable, any financing solution to the deficit will have a premium added onto it in terms of the cost of that solution because of the uncertainty about the future of the scheme.

As for next steps—I think the Minister referred to some of these in his opening remarks—consultation concerning the recommendations of Justice Sheahan's common law inquiry is now under way and we are hoping to be able to introduce legislation giving effect to the outcome of that consultation. There is then still a third stage of reform, in accordance with the Minister's 10-point plan, which will look at a plain English version of the legislation and scheme design issues. I hope that that is a helpful overview of where we are at right now in terms of the scheme.

RODNEY STUART McINNESS, Assistant General Manager, Insurance Division of WorkCover, 400 Kent Street, Sydney, sworn and examined:

CHAIR: Are you familiar with the terms of reference of this inquiry?

Mr McInnes: Yes

CHAIR: I remind you that evidence to this Committee may be given in camera, but the Parliament has the right to override that decision, should you seek that privilege.

I have a general question to set the record regarding the pressure of the WorkCover situation, the inquiry and the deficit. Can you give an update of the scheme deficit as at 30 June 2001?

Ms McKENZIE: Coincidentally, the 30 June valuation goes to the board this afternoon, and it is not customary for us to talk about the numbers in the valuation report before it has been to the board. Is that an issue? It is imminent but it is still a draft at this point.

CHAIR: Will you take that question on notice and advise the Committee of the numbers when the report is presented to the board?

Ms McKENZIE: That is fine. I think we will be able to give the Committee a clear answer by tomorrow. It is a matter of a breach of protocol as it is still a draft document and has not been to the board.

CHAIR: The Committee may want to follow up that information at a later hearing. Could you explain what impact a fall in the share markets since 30 June 2001 will have on the scheme deficit?

Ms McKENZIE: I could not put a dollar impact on that. I will have to take that question on notice as well. If the share market drops it will certainly not be a good thing from the scheme's point of view because it will have an impact on the returns of the funds that the scheme has invested—some of which are in the share market.

CHAIR: Obviously interest rates are dropping, and may drop even further as a result of events in New York and the United States as a whole. What impact will the fall in interest rates since 30 June 2001 have on the scheme deficit?

Ms McKENZIE: Once again, it will mean a lower return on some of our investments than we would have expected in other economic circumstances. However, I could not put a dollar figure on that.

Mr McInnes: There are also some offsetting effects in terms of the way in which liabilities are accounted for because they include assumptions about future returns. So when you make adjustments they are offset to some extent.

CHAIR: Ms McKenzie, both you and the Minister referred to the graph. Is there any simple explanation of why costs and premiums changed so dramatically in 1990-91? They were running parallel to that point but suddenly they eventually swapped sides.

Ms McKENZIE: A partial explanation—although most of these things are not simple and comprise lots of disparate parts—is that at about that time common law was reintroduced and some benefit augmentations were introduced into the scheme. From that day forward the gap between the premiums collected and the scheme's costs began to widen. Without wanting to make it too complicated, the scheme was introduced only in 1987. Perhaps with the benefit of hindsight, the benefit augmentations introduced in 1991 were a little premature. Because the scheme showed surpluses in the very early years, everybody thought it was all rosy. However, probably not enough time was taken. These schemes take a long time to adjust and people see what is really happening with their operation. Although the scheme yielded good results financially in its first couple of years, perhaps it might have been wiser to wait a little longer before introducing the benefit augmentations. But it is easy to say that a decade after the event.

The Hon. DUNCAN GAY: Has actuarial advice been obtained that will demonstrate the financial savings to the scheme following the passage of the second tranche of reforms?

Ms McKENZIE: We certainly have actuarial advice. We do not have a written report like we have a valuation report, but we have worked with the actuaries to develop a model that allows us to model the impact of various changes to the scheme. The difficulty with costing savings from the legislation that was passed last session is that it is not really complete: we still have the common law issues, the impairment guidelines and the percentage threshold to put into the legislation. Only when that is done will you have a complete picture of what that will add up to. You can then make an assessment as to what the overall savings will be. At this stage, all we really have is a bunch of variables. Depending on what you do with those variables, you come up with quite different answers about the extent of the savings.

The Hon. DUNCAN GAY: Who provided the actuarial advice?

Ms McKENZIE: Tillinghast is the scheme actuary and it worked with us on that.

The Hon. DUNCAN GAY: Did you receive single or multiple advice?

Ms McKENZIE: We have ongoing dialogue with the actuaries as these things develop and different options are considered in terms of what we might do with the parameters of numbers for thresholds, assessments of how the impairment guidelines might operate and what sort of threshold we will have for things like pain and suffering in the statutory scheme and what maximum amounts we will have. It is hard to come up with one bottom-line answer: it depends what variables you feed into the model.

The Hon. DUNCAN GAY: Did you receive that advice pre or post the legislation?

Ms McKENZIE: Some work was done before the legislation. As you know, there was a long series of negotiations about the last package of legislation, and the model that the Government proposed originally was changed significantly through that process of consultation. Therefore, the savings estimates that we had changed over time. As I have said, we have never really finished that work because, in the end, some very significant aspects of what will impact on the level of savings have not yet been completed.

The Hon. DUNCAN GAY: How meaningful are they without the medical guidelines?

Ms McKENZIE: That is a hard question to answer. It is hard to draw any really meaningful conclusions without having a complete picture of what this next raft of reforms will deliver. All you can do is make estimates about changes in behaviour. The actuarial model deals much better with real numbers. It tends to give a more meaningful answer if you have numbers or a percentage—what is the gateway to common law, what is the threshold for access to various aspects of the scheme and what formula are you going to apply? When you get the impairment guidelines, they give a percentage of impairment and then a formula needs to be applied to give you a number as to what an injured worker would get in a specific case. Without all of that information fed into the model it does not give you a very meaningful answer.

CHAIR: The committee has now chosen Ernst and Young, who has representatives here today, to assist it in actuarial and financial matters.

Ms McKENZIE: If it would be helpful to the committee, we would be happy to make Tillinghouse available to talk to your experts to explain how that model has been arrived at. You can spit out various different numbers, depending on what you put into the model. If it is helpful to the committee, we are happy to make Tillinghouse available to the committee's people to explain it.

CHAIR: The committee has taken note of that, and will make a decision in due course.

The Hon. MICHAEL GALLACHER: What actuarial advice has been supplied to the Advisory Council following the submission of the Sheehan inquiry in relation to calculations with regards to the findings and recommendations of the inquiry?

Ms McKENZIE: The Advisory Council has had a presentation on the outcomes of the Sheehan inquiry. It has got a working group planned to do some more detailed discussion of it and has asked that some actuarial assistance be provided to them as part of that meeting which, I think, will take place later this week. We have actually run into some difficulties because the scheme actuary is not here at the moment. The intention is that we would share with them the same information about the model, and what you can feed into it, what numbers that gives you. Unfortunately at this stage that has not happened.

The Hon. MICHAEL GALLACHER: At this stage no-one on the Advisory Council has been given a figure of the expected savings?

Ms McKENZIE: As I just explained, it is a bit difficult to do that because you have got so many variables.

The Hon. MICHAEL GALLACHER: I am just talking about the common law aspect.

Ms McKENZIE: You cannot look at that in isolation, because what you do with that has flow-on impacts for the rest of what needs to be dealt with in the next package. You cannot just give a bald number, and think that that will be meaningful. You have got to feed in all the variables that you want to feed in and then that will give you an aggregate number of what you might save if you do all of those things together.

The Hon. MICHAEL GALLACHER: When can we expect WorkCover or, indeed, the Government to indicate what savings will be made? Where will be the benefits for business following the completed passage of the second tranche of reforms, including the common law aspect?

Ms McKENZIE: That will be possible once the parameters of that are known. As soon as the period of consultation is completed, and the Government makes its decision about what package it will put before the House, we would then have enough definite parameters to be able to give a better estimate as to what the savings would be.

The Hon. MICHAEL GALLACHER: In so far as just that portion of it that is already passed, forgetting common law for one moment, you indicated earlier that the guidelines are just about completed?

Ms McKENZIE: Yes.

The Hon. MICHAEL GALLACHER: Once they are completed that is the missing piece to the jigsaw insofar as the second tranche of reforms are concerned—

Ms McKENZIE: Guidelines, thresholds and formula.

The Hon. MICHAEL GALLACHER: Will they all be completed very shortly?

Ms McKENZIE: Yes.

The Hon. MICHAEL GALLACHER: Will we then be in a position to hear publicly what sort of savings will be forthcoming?

Ms McKENZIE: Perhaps that is something that is more appropriate to ask the Minister, but as far as I am concerned, yes.

The Hon. MICHAEL GALLACHER: The first legislation we received, we were given a figure, from memory, approximately a \$300 to \$350 million savings, it moved up and down a bit, but we did not get a similar figure in relation to the second tranche. I recognise what you say about the information that was required. It is extremely important that we have that figure as a matter of urgency.

Ms McKENZIE: As far as I am aware the Minister would have no problem at all with making that available. Once again, if I could offer, in an effort to advance that dialogue it might make sense for our scheme actuary to either explain to the members, if they are interested, or explain to your actuaries the model that we have developed and how you get numbers out the other end of it that are meaningful.

The Hon. JANELLE SAFFIN: Are you aware of that part of the report commissioned by Price Waterhouse Coopers that states:

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

Ms McKENZIE: Which report of Price Waterhouse Coopers?

The Hon. JANELLE SAFFIN: It is the one on remuneration of insurers.

Ms McKENZIE: Yes.

The Hon. JANELLE SAFFIN: What is response of WorkCover to that statement in the report? How long has there been that agreement about poor performance?

Ms McKENZIE: The short answer is, yes 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. Under the new remuneration structure, insurers that do not perform and deliver on the outcomes that they are supposed to be delivering on, will not get paid enough money to even cover their costs so they have actually got money at risk. On the flip side, if they perform well there is a potential for them to earn a lot more money than the ones who are performing badly. We are very hopeful that that will provide a much better incentive for the insurers to deliver on what they should be delivering on.

The Hon. JANELLE SAFFIN: Is that what that statement in the report meant? I did not take it to mean what you have just answered. It talked about operational aspects performing poorly. You were talking about the actual insurers performing poorly. Is there not a difference?

Ms McKENZIE: Perhaps I am taking it out of context, but I thought that was referring to insurer performance.

Mr McInnes: In the context of the report, it was really focussed on insurers, although not entirely, and their role in the operation of the scheme. Obviously, they have a primary role as the main administrators of the scheme.

The Hon. JANELLE SAFFIN: With that report and knowledge, what steps are in place to improve the claims management? I know you have already said something about it in your opening address.

Ms McKENZIE: Essentially I say that the new remuneration structure hopefully will give them the incentive to manage the claims more clearly. Also we are hoping that a number of other more administrative-type initiatives that we are working with them on, we will be able to improve early notification. Some of these initiatives will take a little bit longer to bring to fruition but looking at ways where we can, in conjunction with insurers, allow people to lodge claims via the Internet without as much toing-and-froing, as goes on now sometimes in relation to lodgment of claims which interfere with injury management.

The Hon. JANELLE SAFFIN: How does WorkCover actually assess the effectiveness of insurers claims management? If it is seen to be ineffective, what action are you able, or do you take?

Ms McKENZIE: 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—

The Hon. JANELLE SAFFIN: It is a different regulatory system?

Ms McKENZIE: That is right. 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.

The Hon. JANELLE SAFFIN: So that you can get further analysis?

Ms McKENZIE: 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 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.

The Hon. Dr PETER WONG: I refer to the chart, figure 8, which has been supplied by you. Have you prepared actuarial reports and projections on a yearly basis? If so, what were the projections? Would you supply the Committee with those projections and reports? In particular, I want to know why, when the gap was widening, nothing was done? When the common law and benefits scheme began, I assume that WorkCover would have fully followed the trend and report to the government of the day. I am surprised that nothing was done until 1998. Was their gross mismanagement between 1991 and 1998?

Ms McKENZIE: These trends have been documented in actuarial reports. We do an evaluation of the scheme every six months, that has been occurring all those years and that information has been shared. I believe we have made a number of those valuation reports available to the Committee. There is not much else I can say about that.

The Hon. Dr PETER WONG: Would you supply the Committee with the actuarial reports and projections on a yearly basis so that we can form some conclusions about what was happening?

Ms McKENZIE: We have actually done that.

Mr McInnes: We provided reports going back five years.

CHAIR: The Committee has those reports.

The Hon. Dr PETER WONG: I am asking from reports from 1991.

CHAIR: Are the reports available from 1991 to 1996?

Ms McKENZIE: Yes.

CHAIR: Can they be made available to the Committee?

Ms McKENZIE: Yes, they can be made available. I am not sure how meaningful they would be for members, but I am very happy to make them available.

CHAIR: If you could make them accessible for inspection by members.

The Hon. JANELLE SAFFIN: Could I ask a follow-on question?

CHAIR: Yes.

The Hon. JANELLE SAFFIN: I would imagine that you would advise the Government each year about the standing of the scheme. Is that advice available? That would be more telling than numerous reports.

Ms McKENZIE: I have only been in the job for just over a year. I cannot vouch for what advice was provided before then.

Mr McInnes: Normally the reports would be provided, and the information in those reports is the key advice that is provided.

The Hon. JANELLE SAFFIN: Ministers do not sit down and read those reports. You provide other advice.

The Hon. DUNCAN GAY: Is there a summary?

CHAIR: A summary with a very strong recommendation that something had to be done?

Ms McKENZIE: That will basically require us to go back and dredge through the various files on this topic to see what we have got that might be useful.

The Hon. JANELLE SAFFIN: That would be helpful.

CHAIR: Those files could be made available to the Committee without transferring them to Parliament House. Our staff could negotiate with you the Committee's access to those documents.

Ms McKENZIE: Rather than having all our files floating about somewhere—

CHAIR: Rather than shifting them, you could make them accessible to us.

Ms McKENZIE: Maybe out of session I can talk to the Committee staff about exactly what you want. There will be all sorts of bits and pieces floating about. I do not want to be unhelpful. We are happy for you to have whatever advice is available. By the same token I do not want to give you truck loads of material that is not interesting or useful to anybody. There is a real risk of that occurring because it gets very complex very quickly.

CHAIR: Perhaps the major reports could be made available and a summary of the reports.

Ms McKENZIE: If everybody is happy with that, we can give you all the valuation reports with a summary.

CHAIR: And the recommendations that were made at the time.

The Hon. DUNCAN GAY: That is the important one—the recommendations that were made to the Minister at the time, rather than a summary.

Ms McKENZIE: I do not know how easy that will be to find, but we can certainly see what there is.

The Hon. GREG PEARCE: Referring again to the chart, figure 8, during the break you mentioned it would be hard to give budgets to match this because every six months the figures are updated to the actuals. Would you explain to me what you mean by "cost" and "premium" in this chart? Have you divided the funds into those that are controlled by you and those that are regulated?

Ms McKENZIE: This is just the scheme, not all those other funds that we spoke about. This is just the managed fund scheme and the actual cost of running that scheme for each of those years compared to the amount of premium that was actually collected in each of those years. As you say, the difficulty is that every six months we get a scheme valuation report that projects into the future. We always get into this confusion about incurred costs versus projected costs.

The Hon. GREG PEARCE: When you say the "scheme", you mean the Workers Compensation Statutory Fund?

Ms McKENZIE: That is right.

The Hon. GREG PEARCE: It is not the operation of WorkCover?

Ms McKENZIE: No.

The Hon. GREG PEARCE: This shows the costs of the Workers Compensation Statutory Fund against the premiums collected by the Workers Compensation Statutory Fund?

Ms McKENZIE: That is right.

Mr McInnes: They are the most recent projections out of the latest actuarial report, which is the report we have done as at December.

The Hon. GREG PEARCE: That will be updated to an actual when you have your board meeting today?

Mr McInnes: There will be a further projection. The reality is that all the costs do not reach an ultimate figure until everything is paid out. That takes 40 to 50 years. There is an element of projection in all of those cost figures even though for the earlier years it is quite small. Similarly, for the more recent years there is an element of projection in the premiums to the extent that we have not yet collected all the premium in relation to 2000-01.

CHAIR: The deficit of \$2.2 billion relates to this particular scheme?

Mr McInnes: Yes.

The Hon. GREG PEARCE: How do you distinguish between your ability to manage part of this cost blow-out and the inevitability of it all in terms of the claims? To what extent are you able to manage this ongoing process and the growth of the deficit? What checks and balances do you have in place, other than asking the Government to bail you out with amendments to the scheme to, for example, eliminate an area of payments?

Ms McKENZIE: Partly what we have tried to describe is the range of initiatives we are now implementing, which is really the limit of our capacity to control this. At the end the day, the amount of premium that is collected is pre-determined. The number of claims that occur are the number of claims that occur. We can try to influence that by prevention initiatives, by fixing up the dispute resolution system and by all the other reform initiatives that we have under control. But in terms of individual claims, the insurers are managing the individual claims. We regulate the insurers, so indirectly we can have an impact on that. That is why we are looking at things like provisional liability and insurer remuneration. There are a lot of players in this scheme. At the end of the day we are a regulator of the scheme. We give advice to the Government about the design of the scheme and we do the best we can. But, as you put it, there are some inevitabilities about what results we will get depending on the number of claims we ultimately get, how well they are managed and how much premium is collected.

CHAIR: There is a deficit of \$2.2 billion. Through all your efforts you stopped it increasing. Could you actually reduce the deficit at some point?

Ms McKENZIE: As the Minister outlined this morning, with this very big reform program that we are part way through at the moment, we are trying to reverse the trend to get to the point where we have fixed up the incentives in the scheme sufficiently so that the scheme will deliver lower scheme costs. Ultimately if the costs get low enough and get below the level of premium that we are collecting, then we will start to see the deficit trend in the opposite direction. The deficit really is just a collection of all the outstanding claims. The changes that we make in the future which have a beneficial impact on the cost of managing those claims, if we can make enough savings, will begin to impact on the deficit and we will begin to see it reducing rather than continuing to grow.

The Hon. GREG PEARCE: I am trying to deal with the same point that the Hon. Dr Peter Wong was having some difficulty with. We hear you talking about incentives for insurers and so on. Those seem to be, in laymen's terms, management matters. As the Hon. Dr Peter Wong pointed out, there has been a declining trend for some considerable time. We are trying to get a sense of what action was taken in relation to those sorts of management issues earlier on, as distinct from legislative changes.

Ms McKENZIE: I can only speak of what has been happening since I got there just over a year ago. I am not sure what you mean by management changes.

The Hon. GREG PEARCE: We may all be, but certainly I am, struggling to get a feeling for how the scheme is being managed, as distinct from the legislative aspects of it, to which we may have input. I am trying to get inside your organisation a bit. If you are going to set up a data room with regard to due diligence, that probably is the way to handle the documentation. But I would like to see a sample period of board papers, reports and other documentation that has gone up to the board so that I can get an understanding of what has been happening. I suggest a sample period of three or four months, say from September to December last year. I do not want to go back through history, but I want to know what the quality of reporting is, the issues being raised, and the mechanisms that you have in place to test some of these things.

The Hon. MICHAEL GALLACHER: Mr Chairman, I think it is a good idea to use the period of time last year when the scheme had an escalation of a further \$500 million that took it to \$2.2 billion, to see how WorkCover is managing such a significant blowout.

CHAIR: Would you take the question on notice?

The Hon. GREG PEARCE: I take it from your nodding that you are happy to do that?

Ms McKENZIE: Yes, subject to our taking some advice that that is appropriate and that there is no issue with it.

The Hon. GREG PEARCE: It would only be open to scrutiny by members of the Committee, and you could mark anything that is confidential. Given that you have not been there so long, you might annotate anything

that you consider should be considered differently. I would be quite happy to see your annotation on those sorts of things. I now turn to something specific. In a number of the answers to questions on notice is some discussion of the workers compensation common law register. Can you explain to me what that register is, and how it is compiled?

Mr McInnes: We get notifications from insurers. When a statement of claim is lodged they complete a form and send it through to us, and we then compile what is called the common law register. That is used by us to assist in managing common law as an issue for the scheme. We get further material in relation to those claims as the claims progress through the court system, and ultimately we get the result of the common law action. That completes the information on that particular claim on the register.

The Hon. GREG PEARCE: From a reading of those answers, there seems to be a bit of controversy about whether that register, on which I think you rely, accurately reflects the common law situation. Might you also place that register on the data room so that members of the Committee can have a look at it? Again, it will be kept confidential.

Mr McInnes: It is an electronic register, not a book or anything. The other issue for us is that there are some privacy issues in relation to that information.

The Hon. GREG PEARCE: The Committee has the power to require you to produce those things. I think it would be much better if you did it on some sort of anonymised basis, rather than having to go through that requiring process. I am sure that you could do some sort of anonymised reporting for us.

Mr McInnes: We have a register that is a database, if you like.

The Hon. GREG PEARCE: Could I leave it with you. I would like to have a look at it, just to satisfy myself on these issues. If you cannot produce it, we can go through the process of requiring it to be produced, which obviously we would need to get under way.

CHAIR: Have you any problem with that?

Ms McKENZIE: No, I think that is fine. But, as I say, we would be concerned about any privacy issues.

CHAIR: It may be made available to the Committee subject to some confidentiality or commercially in confidence proviso.

Ms McKENZIE: If we could just take that on notice and have a look at the privacy issue, because we have some legislative prescriptions regarding to whom we can make this sort of information available. It may well be a potential breach for us to make this information available informally, and it might be better for it to be formally required, for the protection of all concerned. Otherwise, there is no problem; we just need to sort through those issues.

CHAIR: Would you let us know whether you need a formal request?

Ms McKENZIE: Yes.

The Hon. DUNCAN GAY: In answer to question 10 of the questions on notice, WorkCover simply states that it took into account the need to balance the interests of workers and employers in determining the appropriate threshold for common law claims, and that it determined that an appropriate level was 25 per cent. How exactly did WorkCover determine the 25 per cent threshold for common law claims?

Ms McKENZIE: I think the answer is that we were trying to balance the two clients of the scheme, bearing in mind that the common law originally was meant to be reserved for the seriously injured, and trying to work out what was a reasonable figure that would give the seriously injured access to common law, whilst at the same time encouraging everybody else to get their benefits from the statutory scheme, and 25 per cent was our best estimate.

The Hon. DUNCAN GAY: Bearing in mind your need to achieve the balance in the scheme, how was the need translated into an exact percentage, especially in the absence of actuarial reports detailing the savings to be generated by the new scheme?

Ms McKENZIE: The exact percentage is, to some extent, our best estimate. But the reason we thought an exact percentage was an important thing to recommend was that at the moment we do not have an exact percentage; we have a percentage of table-of-maims damage, plus we have a narrative threshold. It is our view that the existence of the narrative threshold has led to the erosion of the threshold into common law. Certainly, some of the recent work that we have been doing indicates that that is so, and that more people with less serious injuries are getting into common law. We felt it was important to have a single number that could be clearly quantified and, using the impairment guidelines, was arrived at objectively and impartially, as a gateway to the common law, in the interests of clarity and balance of injured workers' rights and the affordability of the scheme, because there is no question that increasing costs in common law are a very significant contributing factor to increasing scheme costs.

The Hon. DUNCAN GAY: The reality is that it is just a guess, isn't it?

Ms McKENZIE: It is an educated guess.

The Hon. DUNCAN GAY: But a guess all the same?

Ms McKENZIE: Yes. And, in a sense, we are just recording our view of it. In the end, it will not be up to the WorkCover Authority to decide what the number will be; it will be up to this Parliament.

The Hon. DUNCAN GAY: In relation to WorkCover's answer to question on notice No. 13, concerning motor accidents, does WorkCover concede, on the basis of the figures given in its response, that only 0.6 per cent of claimants under the new motor accidents scheme have been assessed as being over the 10 per cent permanent whole-of-body impairment threshold? If that is so, how can it be correct for WorkCover to state that a significantly larger number of claimants—around 2 to 2.5 per cent—would succeed in being assessed as being over the much higher 25 per cent, not 10 per cent, threshold proposed for the new workers compensation scheme?

Ms McKENZIE: I am not an authority on the motor accidents scheme.

The Hon. DUNCAN GAY: They are your figures.

Ms McKENZIE: They are figures that we got from the Motor Accidents Authority. That is their advice to us and, in the interests of being helpful, we passed that on to the Committee. I think questions about the Motor Accidents Authority are probably better addressed to David Bowen, who is much more on top of what is happening with his scheme than I am. Certainly, we do talk to each other and communicate, and, as far as I am aware, the information that we have given the Committee on that point is accurate.

The Hon. DUNCAN GAY: But there is a contradiction.

Ms McKENZIE: The threshold does a different job in the motor accidents scheme. There is a big distinction between the way the motor accidents scheme operates and the way in which the statutory scheme operates. In workers compensation you have not only common law rights but significant rights to access lump sums under the statutory scheme. You get access to those lump sums under the statutory scheme without passing any threshold at all.

To make the comparison, it goes back to what I was saying earlier that in our view common law should be restricted to the seriously injured, and the bulk of people with more moderate to minor injuries should get their lump sums under the statutory scheme. In some ways that is reasonably consistent with the sorts of things that Justice Sheahan recommended in his report. You have to bear in mind that to get your lump sum under the statutory scheme you do not have to pass any threshold. If you have a level of permanent impairment those would be objectively assessed and you would get an amount of money according to the severity of the injury. At the moment you have to elect whether you are going to go to common law or whether you are going to seek the benefits under the statutory scheme. It is only when you go to common law that the common law threshold becomes relevant. It will not cut you out from any benefits to which you are entitled under the statutory scheme. In that regard it is quite different to the Motor Accidents Scheme.

Mr McInnes: The other point I would make in relation to that is that the numbers we have presented to the Committee are based on the number of claims currently getting common law under the WorkCover scheme and the apparent severity of the injuries. That is what we spoke earlier about the modelling we have done for cost projections. Essentially, it is based on our data rather than Motor Accidents data.

The Hon. MICHAEL GALLACHER: If a taxi driver has a passenger in the front seat of his vehicle and both he and the passenger receive exactly the same sort of injury in a motor vehicle accident, they can be dealt with totally differently in terms of the final outcome, can they not?

Mr McInnes: Certainly, they can be. You have a whole range of reasons for that. Under the Motor Accidents legislation you have to prove the fault before you are entitled to do anything. Assuming the taxi driver is a worker, the taxi driver would be entitled to claim under workers compensation and would be entitled to statutory benefits, regardless of fault. Again, that driver may be entitled to pursue common law under either the Motor Accidents Scheme or the WorkCover scheme. We have different laws for motor accidents versus workers compensation.

The Hon. MICHAEL GALLACHER: It gets back to the point that the Hon. Duncan Gay made earlier, the guesstimate of the 25 per cent. We have one figure under MAA legislation and a substantially higher one proposed under the—

Ms McKENZIE: But it serves a quite different purpose.

The Hon. MICHAEL GALLACHER: Tell that to the cabbie.

CHAIR: They are two different schemes.

The Hon. Dr PETER WONG: Earlier you mentioned cross-subsidisation of different sectors of the industry. How bad is the cross-subsidisation? What are the cost saving of the reforms you implemented?

Mr McInnes: The short answer is that there are no cost savings, you are talking about cross-subsidies, which means you are merely redistributing the cost between employers who are paying too much and those who are currently paying too little. There are no net savings out of the process. But because it is a fair assessment of premium we expect that will influence behaviour because if employers underline expected costs are more accurately assessed, that would affect their behaviour. They would hope to minimise those costs.

The Hon. Dr PETER WONG: Who are the worst performers?

Mr McInnes: Traditionally, the worst-performing industry sector has been sawmilling. For sometime the sawmilling industry has had the highest premium rating in the scheme.

The Hon. Dr PETER WONG: A WorkCover report of May 2001 dealing with the remuneration of insurers states that there is general stakeholder agreement in the New South Wales Workers Compensation Scheme that various operational aspects of the system perform poorly. How long has there been such stakeholder agreement about poor performance? If it has been for a few years, why has WorkCover done nothing about it? In what area is performance poor and how significant is it?

Ms McKENZIE: Can you run through those again? I am not sure that I got all aspects of the question.

The Hon. Dr PETER WONG: A report in May 2001—

Ms McKENZIE: This is the insurer remuneration report?

The Hon. Dr PETER WONG: Yes, that was commissioned by WorkCover. It states that there is general stakeholder agreement in the New South Wales Workers Compensation Scheme that various operational aspects of the system are performed poorly. How long has there been such stakeholder agreement about poor performance? If it has been for a few years, why has WorkCover done nothing about it? Who are the stakeholders who perform poorly? How significant is this poor performance?

The Hon. JANELLE SAFFIN: Perhaps Dr Wong might take that on notice. I have asked some of those questions in a more general way. His question is more particular. It might be better if they were on notice.

The Hon. Dr PETER WONG: I will take it on notice.

Ms McKENZIE: That report was focused essentially on the role of insurers in the scheme. It is a little bit hard to add anything as to why WorkCover has done nothing about it. Certainly, it has attempted to change the

arrangement with insurers. Some of those issues go to scheme design, and the respective role of us as the regulator and the insurers in the scheme.

The Hon. HENRY TSANG: As Australia is heading for high unemployment, with corporate collapses recently of HIH, One.Tel, Ansett and Pasminco, et cetera, will workers compensation scheme deteriorate with increasing claim numbers, larger average claims size, longer-lasting benefits and increased frequency of common law claims? If the answer is yes, what does WorkCover estimate will be the potential deficiency impact on the scheme with the potential deteriorating unemployment rate?

Ms McKENZIE: In answer to your first question, historically there is some evidence to suggest that when you have a decline in the economy and a number of companies cease trading it has a detrimental impact on the number of claims. It is very difficult for us to make any kind of sensible assessment as to what the overall impact of that might be. It is a bit like projecting the future with a lot of uncertainty involved. For example, Pasminco is a self-insurer, so strictly speaking its claims are not covered under the managed fund. For some of those other companies to which you referred, they would have some impact potentially on the scheme, but probably not a big enough impact to make a big difference to overall scheme costs. Certainly, your proposition is largely correct that when the economy is in decline and companies are going into liquidation it is likely to increase the number of claims and costs of the scheme. But I am not too sure there is all that much that we can do about that, except try to continue to run the scheme as efficiently as we can.

The Hon. HENRY TSANG: My question really is whether you would propose a further improvement on the efficiency of the WorkCover scheme to the Minister for consideration for further legislative changes?

Ms McKENZIE: It is a little difficult to say. In a way we have to wait and see what the overall impact of those things might be. It might be virtually non-existence or it might be, over time, if the economy really took a dive, quite significant. But in terms of what you could do about the scheme, we are doing about as much as we can think of to try to get the scheme under control. One of the issues is that he cannot keep chopping and changing every five minutes and keep changing the rules, and expect people to be able to navigate their way through the system. As far as we can we would want to stick to the reasonably well thought-through strategic direction we have at the moment and hope that delivers enough to get the scheme back under control rather than run off widely and come up with some idea out of left field in response to a rush of liquidations because you might end up doing more harm than good. You do not want that volatility. You want a reasonable amount of stability in the scheme.

The Hon. MICHAEL GALLACHER: So you are saying, "Thank goodness that the national economy has been managed well over the last couple of years, otherwise this situation could be worse?"

Ms McKENZIE: Yes.

CHAIR: It has been suggested that one of the reasons WorkCover has debt problems and so on is that it caused much of this poor performance by focusing too much on compliance, acting more as a regulator and not giving enough consideration to the day-to-day management of the scheme. Is there a problem with the way in which WorkCover has been established?

Ms McKENZIE: Effectively, because of the way in which the scheme is set up, we are a regulator. So we are not responsible for the day-to-day management of claims. That is the role of the insurers. We can do things to try to influence that behaviour from the point of view of the overall scheme, but WorkCover is not out there managing these claims; that is the job of other people, including insurers, rehabilitation providers, injury management consultants, doctors and lawyers. Essentially, we are cast in the role of a regulator. All we can do is try to design rules for the scheme that provide the right incentives for all those other players in the scheme to do the right thing.

I would not want to claim that we are there, as I do not think we are. One of the reasons why we have a long process of reform—reform which we are only really part way through—is to try to address that question of incentives for all players in the scheme. But it is unrealistic to think that, in a scheme the size of the New South Wales scheme—in which we have over 150,000 claims a year—any of those claims would be managed by us. None of those claims are managed by us; they are managed by other people.

CHAIR: Earlier the Hon. Henry Tsang asked a question about companies that have gone into bankruptcy. What risk management plans does WorkCover have in place in the event of the failure of one of its insurers, such as happened recently with HIH Insurance?

Ms McKENZIE: In relation to the failure of insurers, once again there are limits as to what we can do. We certainly keep in contact with Australian Prudential Regulatory Authority, the Federal regulator, to try to keep track of the performance of insurers. For all insurance that has been written since 1987 when the scheme came into place, the funds that support the scheme are quarantined in a separate bucket that cannot be called upon if the company goes into liquidation. So, for example, when HIH went into liquidation, although it had a reasonably big slice of the workers compensation market, for all post-1987 claims the money that HIH had collected and was investing on behalf of the scheme was quarantined and not available on liquidation.

That fund was simply transferred across to the NRMA, which took over the management of those claims on the part of HIH. The only issues that we had were with claims that pre-dated the current scheme, that is, pre-1987 claims, when funds were not quarantined. The Insurer Guarantee Fund has been called upon to finance those pre-1987 claims. But were that to happen now, the rules have changed. Any money post-1987 is quarantined for the benefit of the scheme and cannot be called upon in a liquidation.

CHAIR: Earlier a question was asked about common law. Could WorkCover supply to the Committee PricewaterhouseCoopers advice on the common law commissioned by WorkCover as part of the Sheahan inquiry?

Ms McKENZIE: Certainly, yes.

The Hon. Dr PETER WONG: You mentioned earlier that one of the roles of WorkCover is to be the regulator. I am sure that the Committee is aware that the Treasury managed fund and self-insurers have been performing efficiently, with the exception of the WorkCover Statutory Fund. You also implied earlier that it is not WorkCover's fault; that it might be the fault of insurers and everyone else. You referred in your introduction to the fact that you are an adviser to government. Do you not think that WorkCover, which has a lot to do with advising the Government, should be answerable to the Government and to the community for this \$2.2 billion deficit?

Ms McKENZIE: Ultimately, the Government and the Parliament make the rules that govern the scheme. I would not want to deny any responsibility for it. WorkCover has the job of advising the Government about the circumstances that the scheme is in. So far as I am concerned, since I have been here we have certainly been doing that. We can provide advice on initiatives that can be taken. Any change to the scheme is obviously controversial. It is not for me to judge whether governments or parliaments want to make one change or another. The most that we can do is make recommendations about what we think will work.

The Hon. Dr PETER WONG: What is the major difference between the Treasury managed fund and self-insurers? Why has there been such a disastrous result for WorkCover?

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

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

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

The Hon. TONY KELLY: I refer to the workers compensation green paper that was recently released, which deals with premium evasion. How long has WorkCover known about premium evasion? What steps have been taken to address that issue? What work has been done to estimate the extent of premium evasion? What is its estimated financial impact each year? When do you intend to implement changes to address this issue?

Ms McKENZIE: In all these schemes and in any kind of arrangement of this sort there will be an assumption that there is some level of evasion. It is always difficult to estimate what that level of evasion is. Because of the very nature of that evasion you do not know about it. We have tried in recent years—and I outlined some of this in my presentation—to get a lot cleverer and a lot more targeted in the way in which we go about trying to find those who might be evading compliance with their workers compensation obligations.

We have put in place a new compliance branch which has available to it state-of-the-art software. Basically, that branch goes through a database and it looks for clues about why something does not look quite right and why the numbers are not adding up. It gives you a much better sense of where you should go and visit. Before we had this technology available to us our task was very complaints driven. We mainly investigated allegations when somebody rang in and said, "We do not think that Joe is doing the right thing."

Now we are moving towards being much more proactive about it. We are trying to target individual employers and industries when we have evidence to suggest that there might be a difficulty. A number of task forces are under way, including one into the construction industry, where we suspect that the level of evasion is likely to be reasonably high just because of the nature of that industry and the nature of employment arrangements in that industry.

It gets very difficult, though, because a lot of complex questions have to be answered before we can prosecute someone for non-compliance. We have more tools in our armoury now compared to what we had before, including things like on-the-spot fines, capacity to charge double premiums and to prosecute people who have deliberately avoided their obligations. We are now in the process of trying to make use of those better provisions by having a whole range of field activities under way. We have a team of 30 inspectors involved in three different taskforces, targeting particular industries. That is leading to a whole range of matters if we can get our evidence together. Once again, that can be difficult, particularly in industries where employment arrangements are fairly fluid. Often, by the time we find these people they have disappeared or moved on to the next job. Once again, it is trying to get cleverer about where we put our resources to try to get maximum return for the investment we make into compliance activity. Early indications are that we are now recovering a lot more money than we could have previously with a similar amount of resource input.

The compliance green papers are a raft of proposals that have come out of a working party looking at what else we might do to improve compliance in the industry. We will be waiting anxiously for some input from the various stakeholders about what they think about those propositions. There is always the issue of balance, putting imposts on businesses in relation to the information they have the record and give back to us and trying to make an assessment about how many of those new initiatives—a lot of which relates to people giving us more regular information about how many people they are employing and therefore what their premiums should be—will be effective in the scheme, capturing the right amount of premium income over time. We have given until the end of October for people to give us comments on the compliance green paper. Depending on what those comments yield we will be looking at recommending to the Government implementation of some or all of those recommendations.

The Hon. TONY KELLY: With those tools that you mentioned and the increased database you are using, do you have the ability to do a post gains, for example, on payroll tax or income taxation figures, or is there some legal problem with that?

Mr McInnes: With income tax there is, but we can match against payroll tax and other State Government databases to crosscheck, both to detect underdeclaration of wages and also to detect businesses who are not insured. So, it is not a foolproof process.

The Hon. TONY KELLY: But it is indicative?

Mr McInnes: It is a way in which we can crosscheck and make sure consistent information is being reported.

The Hon. DUNCAN GAY: It is impressive what you intend to do in the future. It brings me to the question of what has WorkCover done in the past? What sort of steps has WorkCover taken to address premium evasion in the past?

Mr McInnes: Historically we would run an audit system, for example, to detect underdeclaration or underpaying of premiums.. Historically, that was done effectively on a random basis. Over the past three or four

years we have progressively tried to make that more targeted at areas where we identify that there are common problems, if you like, and there are particular industries that have a poorer record of compliance than others. We have increasingly targeted those industries, for example, and increasingly tried to use data analysis, as we have talked about, as a means for doing that targeting. So, again, if you go back, say, five years, the process was effectively random. Increasingly, over the past five years, we have moved to a more targeted approach until we have got to the point where we are using this more sophisticated data mining approach.

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

CHAIR: You said 1 per cent. If you look at a particular industry, could it be 10 per cent, say, for the building industry, an industry where there are more problems?

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

CHAIR: I just picked that figure out of the air. I was not basing it on any actual figure. I was just giving an example.

Mr McInnes: It is perhaps in the 5 per cent to 10 per cent range. Again, certainly that is a target industry for us, because that is clearly identified as the problem area.

Ms McKENZIE: The other issue for us with the construction industry is that it is often very difficult to attract companies, the individuals, the subcontractors, down through the chain to work out who was the actual responsible employer from the point of view of workers compensation, working out who is a subcontractor and who is an employee. Once again, a lot of resources have to go into pursuing that. Often when you get to the end of that process the parties have disappeared.

CHAIR: We have been through that with Fair Trading. We appreciate there are big problems there.

The Hon. DUNCAN GAY: The final question on this, some commentators feel the loss could be in the hundreds of millions in evasion. You put the figure closer to the tens. If you have evidence, could you provide it to the Committee so that it backs up the statement you have made?

Ms McKENZIE: Yes. Those sorts of figures come from our experience of what has been yielded from previous exercises aimed at compliance. So, we could put together for you some statistics coming out of our recent blitzes which give those sorts of numbers.

The Hon. Dr PETER WONG: Following what the Deputy Leader of the Opposition was asking, again my subjective impression is that the housing industry or the construction industry has been evading WorkCover premiums for a long time, and probably in a big way, I would say. I am surprised that WorkCover did nothing until three of four years ago. Surely there must be some reports or projections what the likely scenario was going to be. Judging from the answers so far, it seems to me that from 1991 to 1994-95 virtually nothing has been done to correct this disastrous happening. In the first five years, from 1991 to 1995, it seems nothing or very little has been done.

The Hon. HENRY TSANG: What is the question?

The Hon. Dr PETER WONG: The question is, No. 1, there seems to be a perception that the construction industry has been evading premiums much larger than it is and, secondly, that simply WorkCover has done nothing from 1991 to 1995.

Ms McKENZIE: It predates me, but I think it is not true to say that WorkCover has done nothing. WorkCover has made several attempts through various means, including using the inspectorate work force and using these task forces and responding to complaints. But unfortunately it has not necessarily yielded any higher levels of compliance. All we can do is keep on working away at that and try to get cleverer and smarter about the way we target those industries.

The Hon. MICHAEL GALLACHER: What percentage of the market did HIH have before it collapsed?

Mr McInnes: In the order of 15 per cent. I would have to clarify the exact percentage.

The Hon. MICHAEL GALLACHER: In terms of their ongoing role as managing the 15 per cent—

Ms McKENZIE: They are not managing it any more.

The Hon. MICHAEL GALLACHER: No, but they were managing it before. What would that be worth to a company like HIH?

Mr McInnes: I could not estimate the goodwill value of that. It would be more a matter for the insurers. I really could not estimate it.

The Hon. MICHAEL GALLACHER: NRMA has now taken over that 15 per cent of the market?

Mr McInnes: They negotiated with the liquidator to transfer that business across. I am not sure what commercial arrangement was between the liquidator and the—

The Hon. MICHAEL GALLACHER: They were not previously a registered or licensed insurer.

Mr McInnes: NRMA had just recently taken on a licence, at the end of last year.

The Hon. GREG PEARCE: How do you allocate the costs of administering WorkCover across the various funds? Are there any common costs that you have to apportion some way or another or do you somehow manage to keep them confined to particular funds? You listed about eight different categories. I am wondering how you manage that cost allocation.

Ms McKENZIE: You mean in terms of WorkCover Authority's administrative costs?

The Hon. GREG PEARCE: Yes.

Ms McKENZIE: In a budgeting sense we do not allocate particular amounts of money for the management of different funds, because our interaction with those different funds alters. I cannot see any benefit in trying to divide up the amount of effort and energy that goes into each. For most of the regulated funds we regulate them. So apart from maybe being able to divide up how much audit time we spent on self-insurers or how many issues there have been, we tend to regard that as a function that is carried out across the board. Similarly with the other funds: it is the management of the investment of those funds plus the activity that relates to those funds, which is quite a different order of activity to the activity that we carry out in relation to the regulated funds. The short answer is that we do not attempt to unbundle that; we just regard that as part of our overall set of administrative costs.

The Hon. GREG PEARCE: So that does not get allocated in any way or charged to the workers comp. stat. fund or the Treasury managed fund or whatever?

Mr McInnes: Not directly, no. To run the WorkCover Authority we rely on levies from the scheme plus from self-insurers and from Treasury managed fund as a way of funding the operating costs of WorkCover.

The Hon. GREG PEARCE: The levy is your recovery of costs then?

Mr McInnes: Yes.

The Hon. GREG PEARCE: How is that levy calculated?

Mr McInnes: It is on a percentage of premiums. It is currently 4.1 per cent of premiums.

The Hon. GREG PEARCE: Across each of the funds?

Mr McInnes: Yes.

The Hon. GREG PEARCE: What is the position of the Treasury managed fund? Is it in surplus, in deficit or what?

Mr McInnes: I do not know the current position.

Ms McKENZIE: Once again, we just regulate that fund; we do not administer it. So that might be a more appropriate question to ask the Treasurer rather than us.

The Hon. GREG PEARCE: You regulate the workers compensation statutory fund and you know the figures for that.

Ms McKENZIE: But responsibility for the administration of the Treasury managed fund does rest with Treasury. So it is probably more appropriate to be asking Treasury about what it is doing rather than us.

The Hon. GREG PEARCE: No, I am asking you because part of our terms of reference is to investigate and report on the administration of the WorkCover Authority. So I am trying to ascertain—

Ms McKENZIE: We do not administer the Treasury managed fund, though. That is not part of our administration.

The Hon. GREG PEARCE: You do not monitor or review—

Ms McKENZIE: In the sense that we are working on scheme regulation more generally and designing rules for the scheme, they apply to the Treasury managed fund. That is about the extent of our involvement.

The Hon. MICHAEL GALLACHER: So you are not really a regulator then, are you? You are not quite the APRA?

Ms McKENZIE: No, we are not .

The Hon. MICHAEL GALLACHER: So "regulator" is not really the proper term.

Ms McKENZIE: No, it probably needs to be unpacked a little more when it comes to the individual funds and what role we carry out in relation to the individual funds.

The Hon. GREG PEARCE: Could you give us a briefing note on the role you play in relation to each of the funds? It may be that we will want to consider some other questions.

Ms McKENZIE: Yes.

The Hon. MICHAEL GALLACHER: It was somewhat misleading when the overhead we saw earlier showed WorkCover regulating the fund, because you are not really regulating.

Ms McKENZIE: I suppose it is only from the scheme design point of view. To the extent that rules about the scheme are changing they apply to those people. It would be true to say that we have a more pro-active role in relation to the self-insurers than we would have in relation to a fund such as the Treasury managed fund. We can try to unpack that a bit for you.

The Hon. MICHAEL GALLACHER: So they never provide you with an annual report or any sort of information in terms of how they are managing their own funds?

Mr McInnes: Yes, they do. I suppose the short answer is that we do not have any financial accountability in relation to that fund. I guess that is the tenor or of your questions.

The Hon. MICHAEL GALLACHER: When did they last produce financial statements?

Mr McInnes: I would have to take that on notice. I do not know the answer as to when that was provided. We can provide that.

The Hon. MICHAEL GALLACHER: We are getting only part of the equation. There is the private sector and the public sector.

Ms McKENZIE: This inquiry is focused on the WorkCover scheme and the WorkCover Authority. We can answer questions in relation to them but we do not administer the Treasury managed fund. So you will need to ask somebody else about that.

The Hon. MICHAEL GALLACHER: But bear in mind that the benchmark by which they determine their claim is the workers compensation scheme.

Ms McKENZIE: Yes, and I guess that is why we describe it as regulation, although, as you suggest, that needs to be unpacked a bit more clearly because it is a different role in relation to different—

The Hon. GREG PEARCE: I think we are going to have more questions on this, so if you could do that little explanatory note—

CHAIR: That will be put on notice.

The Hon. GREG PEARCE: Yes. How do you manage investments in the workers comp. statutory fund? What sort of reporting mechanisms do you have in place, what sort of benchmarks, whatever?

Mr McInnes: The insurers do the investment on the scheme's behalf. They invest according to portfolio allocation that has been broadly determined by WorkCover. So the investment strategy is determined by WorkCover. The investments are held by a custodian to ensure that they are maintained and that any investments are consistent with the investment strategy that we have put in place. The tactical decisions about which stocks to buy and which stocks to sell, when to buy bonds and when to sell bonds, are made by the insurers. Because we have the custodian in place we are effectively able to monitor every transaction. We are able at any point in time to assess what the current total assets are, what the return has been over the last month, the last three months, twelve months, three years, five years or whatever period we want to look at. We provide regular reports on that to the board. We have a small team monitoring that on an ongoing basis.

The Hon. GREG PEARCE: External advisers as well?

Mr McInnes: We do also have external advisers. Currently we have Tillinghast-Towers Perrin providing us with advice.

The Hon. GREG PEARCE: I assume that the board meets monthly.

Mr McInnes: Yes.

The Hon. GREG PEARCE: So you would get an investment report monthly?

Mr McInnes: Quarterly.

The Hon. GREG PEARCE: How do you account for the lost premium under the premium discount scheme? How much is it projected to be? Presumably you can check that without actuaries.

Mr McInnes: We did undertake actuarial modelling of the scheme prior to entering into it to ensure that the way it was structured was going to give us a positive return in the sense that the savings in reduced claims costs

would significantly outweigh the premium given away in discounts. On the computer system we have where we collect premium information we will be separately identifying any discounts that are provided and will be able to monitor those on an ongoing basis so we will be able to measure how much money is provided in discounts and will also then be assessing the claims records of those employers to measure to what extent there has been an improvement.

The Hon. DUNCAN GAY: So that is "will be"?

Mr McInnes: We have the systems in place to do that, and it has only just started.

The Hon. MICHAEL GALLACHER: What is the total pool of money available for discounts?

Mr McInnes: In a theoretical sense it is only limited by the number of employers who join. If every employer joined, in theory it could be 15 per cent of the total premium pool. We do not expect that every employer will join, and current indications are that it certainly will not be taken up to that extent. So we would expect in the first year, I could guess a figure. I guess we are expecting something like in the order of 1,000 employers to join the scheme in year one, and that they might have discounts. Again, it is hypothetical to the point of putting a figure on it.

The Hon. MICHAEL GALLACHER: If you got 10 per cent—say you did not get 15 per cent—am I right in assuming you are talking about \$200 million?

Mr McInnes: That is assuming that every single employer joins. I guess our projections are that we would expect more like 1,000 employers in year one out of the 300,000-plus employers to join. Again, most of them are very small employers and it is probably not cost effective for the very smallest employers to join and hence we have set up a separate small business scheme for them. But, as I said, if you were to pick 1,000 employers they would be getting discounts in the order of a maximum of \$75,000. If we assume an average of \$25,000 being paid out by 1,000 employers, that equates to \$25 million.

CHAIR: The time for the hearing has elapsed. I ask the Committee members to supply further questions on notice to the Committee staff by 5.00 p.m. tomorrow, and I ask WorkCover to supply answers to those questions by 8 October, two weeks time.

Ms McKENZIE: We will certainly try to do that.

CHAIR: When we make a report to the Parliament we would like to have as much information as possible.

The Hon. GREG PEARCE: Just to clarify one issue that arose on a number of occasions, we have asked the representatives of WorkCover to provide us with various materials. The Hon. Dr Peter Wong asked for the actuarial reports and valuations from 1991. I asked for a sample period of board papers, three or four meetings, September to December 2000, with all the back-up documents. I asked for the common law register. I assume that the investment strategy and reports will be included in the board papers, but if not I would like to see at least a sample of them. Somebody asked for the PriceWaterhouseCoopers report on remuneration. I did not get a chance to ask you this but you mentioned that you have access to pay-roll tax information. I assume they are protocols or other privacy documents. I would like to see what they are or your internal protocols for accessing that kind of information.

CHAIR: That list is not exclusive.

Ms McKENZIE: We are very happy to co-operate and provide as much of that as quickly as we can, but we will need to go away and ensure that we have taken account of the privacy considerations adequately and that there is nothing in our legislation that makes it a problem to do that informally as opposed to more formally. We will be in touch with the Committee if there are any issues.

(The Committee adjourned at 12.34 p.m.)