CORRECTED

REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE No. 1

INQUIRY INTO THE REVIEW AND MONITORING OF THE NEW SOUTH WALES WORKERS COMPENSATION SCHEME

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At Sydney on Wednesday, 6 March 2002

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The Committee met at 9.30a.m

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PRESENT

Reverend the Hon. Fred Nile (Chair)

The Hon. Michael Gallacher
The Hon Tony Kelly
The Hon. Greg Pearce
The Hon. Dr Peter Wong

DAVID JOHN FINNIS, Principal and Actuary, Tillinghast-Towers Perrin, Level 17 MLC Centre, Martin Place, Sydney,

SALLY-ANNE WIJESUNDERA, Manager, Tillinghast-Towers Perrin, Level 17 MLC Centre, Martin Place, Sydney, and

LEIGHTON DEAN JAMES, Principal and Actuary, Tillinghast-Towers Perrin, Level 17 MLC Centre, Martin Place, Sydney, sworn and examined:

CHAIR: I welcome the media and members of the public to this public hearing of General Purpose Standing Committee No. 1 inquiring into the review and monitoring of the New South Wales Workers Compensation Scheme. I ask that all those present turn off their mobile phones during the proceedings. The Committee has previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of guidelines governing the broadcast of proceedings are available from the table by the door. I point out that in accordance with the Legislative Council guidelines for the broadcast of proceedings, members of the Committee and witnesses may be filmed or recorded.

People in the public gallery should not be the primary focus of any filming or photographs. The media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee. Witnesses, members and their staff are advised that any messages should be delivered through the attendant on duty or through the Committee clerks. I advise that under Standing Order No. 252 of the Legislative Council evidence given before the Committee and any documents presented to the Committee that have not yet been tabled may not, except with the permission of the Committee, be disclosed or published by any member of such Committee or by any other person.

Did you each receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

Mr FINNIS: Yes.

Ms WIJESUNDERA: Yes.

Mr JAMES: Yes, I did.

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

Mr FINNIS: Yes.

Ms WIJESUNDERA: Yes.

Mr JAMES: 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 seen or heard only by the Committee, the Committee would be willing to accede to your request and will go into camera. The Committee is confused by different versions of Tillinghast's advice to the Committee and some statements made by them at the last hearing. Some of their comments may contradict the views and statements made by WorkCover at the last hearing. Does Tillinghast have any opening comments or would the witnesses like to clarify any part of the advice provided by them, the comments made by them at the last hearing, the second interim report of the Committee or the statements made by WorkCover at the hearing of 14 February?

Mr FINNIS: Given the spirit of our co-operation with the Committee and the hearing we attended on 21 November last year and our attempt at that hearing to pass on as much information as possible about our work in respect of the reform process in particular, we are disappointed and somewhat surprised at the scale of the Committee's apparent misunderstanding and misinterpretation of our work. We are also concerned that the Committee's second interim report and subsequent media comment relating to that may be interpreted as unfairly questioning our integrity. So as a result of that I would like to read a prepared statement.

As the Committee is aware Tillinghast is presently retained as consulting actuary to the WorkCover Authority of New South Wales and provides actuarial services to WorkCover in respect to the New South Wales Statutory Managed Funds Workers Compensation Scheme. As part of this role Tillinghast has undertaken work for WorkCover since August 2000 in connection with the ongoing legislative scheme reforms, known as the reform package. Tillinghast has prepared a report in connection with today's hearing to assist us in giving evidence concisely and in more precise terms than is enabled by oral testimony alone. This report provides the basis upon which our evidence is given to the standing committee today and forms part of our evidence, with your permission.

You have already heard from my two colleagues. Sally Wijesundera, who has assisted me throughout much of our work on the reform package. As I advised the standing committee the week before last, my firm's policy is to have a second senior consultant present during proceedings such as these and Leigh James is here today in that capacity. In preparing our report we are aware that the standing committee's second interim report and, more specifically, Ernst and Young's consultants report, which is included as an attachment to the second interim report, have raised a number of issues regarding Tillinghast's work in connection with the reform package. We remain comfortable with the work we have undertaken and we look forward to clarifying a number of misinterpretations and misunderstandings that have arisen from our work.

As will be apparent from our report, the reform package comprises a complex set of reforms that evolved over an 18-month period, commencing in the middle of 2000. We undertook a range of analyses and provided advice to WorkCover over the 18 months on aspects of the overall reform package as it evolved. Tillinghast has had extensive experience of workers compensation systems in Australia and around the world, including evaluation of the effects of reforms to such systems. I personally have been a key consultant to our investigations in the last 10 years into reform effects in New South Wales, as well as Victoria, South Australia, Tasmania and Western Australia.

The Ernst and Young report makes a number of specific comments that we have endeavoured to address in some detail in the report we have prepared for you today. There are a few more general issues raised by the Ernst and Young report, which I would like to comment upon in this opening statement. The Ernst and Young report could be interpreted to imply that Tillinghast is not an independent firm of consulting actuaries. This implication would be incorrect and we confirm to the standing committee that Tillinghast is an independent firm of consulting actuaries. We are, therefore, uncertain as to the merits of the proposal by Ernst and Young that the standing committee request WorkCover to engage another actuary to conduct an independent review.

We would wish to make it clear to the standing committee that we are satisfied that we have performed our work for WorkCover professionally, objectively and in accordance with the scope of our work, whilst applying our best endeavours to meet reporting time frames asked of us by WorkCover. The Ernst and Young report may also be interpreted by the reader to the effect that relevant parties may not have received appropriate actuarial advice prior to the passage of the reform package. As will be apparent from explanations contained in our report, we do not accept those Ernst and Young criticisms.

We cannot ascertain from the Ernst and Young report how they have formed their overall conclusion but we do note that they did not have the opportunity to see all relevant material before reaching their conclusions. We acknowledge that it is a matter for the standing committee alone to consider whether or not to seek any explanation from Ernst and Young on this matter. We also note that Ernst and Young appear to have misunderstood the impact on our report into WorkCover of a number of important aspects of the reform package and have suggested that aspects of our reporting have been inconsistent.

In early January we held a number of discussions with Ernst and Young during which we sought to address their misunderstandings. We note, however, that a number of these misunderstandings still apparently prevail. We have, therefore, sought to address these in our report today. We do not accept that our advice to WorkCover has been inconsistent and we have provided a summary audit trail within the report on certain key aspects of that reporting process. We believe there is considerable room for legitimate differences in professional opinion in the evaluations of the form we have undertaken for the reform package. We acknowledge that Ernst and Young appear to have a different professional view from us in certain respects. We are somewhat surprised at the apparently definitive nature of certain comments within the Ernst and Young report, which leave us unclear as to whether or not Ernst and Young similarly acknowledge that there is room for legitimate differences in professional opinion regarding many of the issues covered by the report.

As Ernst and Young themselves have commented, we wish to reaffirm to the standing committee that the results of evaluations in the form we have taken for the reform package are inherently uncertain. The actual future outcomes will depend upon a range of complex and interacting events and factors and there is considerable actuarial

judgment involved in projecting these future uncertain factors. We are also concerned with a number of statements in the main body of the Committee's second interim report, in particular, comments that perhaps imply that the standing committee has assumed a significant proportion of our testimony on 21 November hearing was in regard to the impact on the scheme deficit.

To clarify matters, we can state that any numbers quoted on 21 November were in relation to annual savings and not to the impact on the deficit. No testimony was given on the estimated impact of the deficit apart from the view expressed by me about the difficulty of seeing how the reforms, as they stood then, could have a significant effect on the deficit. The movement of this view to the $810 million estimate in the 7 January letter is covered in the report we provide today. If the Committee still feels some uncertainty exists in this area, we are happy to continue working to help improve that understanding. I have brought along copies of our report for the standing committee's reference today and I intend, if agreed by you, Mr Chairman, to refer to parts of this report during today's proceedings in an attempt to avoid any further misinterpretation and misunderstanding.

Report tabled.

CHAIR: Do you want to give an overall explanation of the contents of the report so we know what is in it?

Mr FINNIS: Basically, the main intent is to help correct the misunderstandings and misinterpretations. Section 1 of the report gives the background and purpose. Section 2 is a summary of the findings. Section 3 deals with the distribution and use. Section 4 summarises the reliancea and limitations attaching to comments in our report. Section 5 may be the one you want to concentrate on the most because it gives a detailed commentary of our approach, why we used that approach, things like effects on the deficit, why that has moved over the period and, hopefully, answers as many questions as we can that are outstanding at the moment. Section 6 takes you through the reporting process and that is an attempt to help you understand, during this 18 months of reporting, what a dynamic process it was and what changes took place, as well as our reaction to those changes and how we reported to take those into account. Then we have a couple of attachments to provide further support and they are referred to in the main body of the report.

CHAIR: In view of the comments made by the witness, do any members of the Committee want to ask questions on that opening statement, or shall we just go straight to detailed questions?

The Hon. GREG PEARCE: I just want to be clear on something here. When we see your valuation for 31 December 2001, will the deficit be reduced by $809 million or $810 million from $3,132 million to, on my calculations, $2,323 million, or will it not?

Mr FINNIS: Almost certainly not.

The Hon. GREG PEARCE: So it will be a greater reduction?

Mr FINNIS: No, it will be a different reduction, which is all I can say at this stage. We are going through the valuation process now. The additional information, if you like, that we take into account in deciding why that figure would be different is the actual experience of the scheme itself over six months from 1 July 2001 to 31 December 2001 and also we have taken a more detailed look. The figures we gave to you in the 7 January letter were, at your request, a response to a valuation-related effect and we have now taken a more detailed look, or we are in the midst of it, if you like.

The Hon. GREG PEARCE: Can you see how people would get a bit misled, I suppose, when you trumpet out this huge report with a one-off reduction which you quantify at $809 million and now you tell me that the one-off reduction is not going to be that one-off reduction?

Mr FINNIS: I am sorry that you have interpreted it that way.

The Hon. GREG PEARCE: Well, that is what it says. Do you want to see how many times it says that? I can probably count them up for you.

Mr FINNIS: I think if you refer to the reliance and limitations section, that tries to point the reader at the fact that that figure is a central estimate from a range or a wide possible range of outcomes.

The Hon. GREG PEARCE: But you put out a report that says that there will be a one-off reduction of $810 million to $1.33 billion. You knew that that was put out in a political context. You knew that the Minister was looking for savings. You knew that the Minister was going to use it. You knew that the Minister was going to go to the media on it. What did you expect?

Mr FINNIS: I will just prepare my answer to make sure that I answer your question properly. I guess the—

The Hon. GREG PEARCE: The Minister went straight out with his press release. In fact the Minister took the higher figure. WorkCover wrote to the Committee and said, "Here is the report. Look at this. Isn't it wonderful. It says there will be a $1.33 billion saving in the deficit." That is what WorkCover said to us when it sent your report in. It did not even mention the $810 million. It said the $1.33 billion.

The Hon. MICHAEL GALLACHER: It went straight to the top.

Mr FINNIS: I guess I cannot comment on how WorkCover reported to the Minister. I would be disappointed if they did not point out to the Minister that there is a wide range.

The Hon. GREG PEARCE: I am talking about how you have reported to us, to the Committee.

Mr FINNIS: We responded to a direct question from the Committee and we answered the question as best we could.

The Hon. MICHAEL GALLACHER: Are you saying that it was improper for them to use the $1.3 billion figure?

Mr FINNIS: No.

The Hon. MICHAEL GALLACHER: So the $1.3 billion figure is therefore correct?

Mr FINNIS: No. I am saying it is improper to use that figure in isolation. That figure was part of a range, as we stated in our 14 January report in particular, of potential outcomes that moved from a small increase in cost to a bigger saving than the $1.3 billion.

The Hon. MICHAEL GALLACHER: I take it from what you have said and the evidence you have given so far which make reference to the $800 million figure that in your actuarial estimations the figure will not be the $1.3 billion but is more likely to be closer to the $800 million. Is that correct?

Mr FINNIS: Maybe I can give you a bit of the background to the calculation process, if you like, and why those scenarios are different.

The Hon. MICHAEL GALLACHER: But can you answer my question? It is a straightforward question?

Mr FINNIS: As part of that, I think I will answer your question. If I do not, please come back to me on that.

The Hon. MICHAEL GALLACHER: I will.

Mr FINNIS: I can see where you are coming from. As part of the suggestion that we use only two scenarios—and I think it was Ernst and Young who raised this in their report—the suggestion was that it did not present a balanced view of possible outcomes of the reform package. We did not accept that criticism and believed that the assertions regarding optimistic, central and pessimistic estimates reflect a misunderstanding of our reporting. During the course of 2001 we actually provided WorkCover with results of a range of up to five different scenarios and these were also summarised in a 14 January report. In certain of our reports we chose to include two scenarios for the purpose of concise reporting. As we explained in our reports, the scenarios selected were essentially the two, if you like, best-estimate scenarios, one being the Tillinghast best estimate at respective dates and the other being the scenario that we understood WorkCover intended to adopt internally for performance monitoring and internal goal-setting purposes.

The Hon. GREG PEARCE: Can I just stop you there for one second because I want to get this clear. The $1.33 billion is not your work, is it? It is WorkCover's figure that WorkCover gave you as its target, is it not?

The Hon. MICHAEL GALLACHER: In the scenarios.

Mr FINNIS: Well, what actually happened was that we produced four initial scenarios.

The Hon. GREG PEARCE: Just read what you just read—the last sentence you just read—and then answer my question whether the $1.33 billion is your professional work, or whether it is what WorkCover told you to put in the report.

Mr FINNIS: No. I think I—

The Hon. GREG PEARCE: Just read the sentence again that you just read.

Mr FINNIS: Okay. The sentence says, "As we explained in our report, the scenarios selected were essentially two best estimate scenarios, one being the Tillinghast best estimate at respective dates and the other being the scenario that we understood WorkCover intended to adopt internally for performance monitoring and internal goal-setting purposes."[1]

The Hon. GREG PEARCE: Thank you very much—one being Tillinghast's work and one being WorkCover's internal adopted figure.

Mr FINNIS: For illustration purposes—

The Hon. GREG PEARCE: And you could then put it in your report as the high-range position, and that is what the Minister then grabbed to race off and say that that is what the saving is. That was just WorkCover's figure. You understand why you look as though you did not perform professionally on this? You have just put in here, as though it is your work, WorkCover's figure.

Mr FINNIS: I beg to differ there. I think that within our report we do explain fully what that is.

The Hon. GREG PEARCE: Where? Show me where you explain that fully?

Mr FINNIS: If I can take that on notice, I will get back to you on that.

The Hon. GREG PEARCE: Well, it is pretty fundamental. I would have thought you would understand where you explain that. I have the report here. Show me where you explain that.

Mr FINNIS: Well, there is potential for misinterpretation if I give you a verbal response. I think I would like to take that away and give you a proper and full response. As we have seen already—

The Hon. GREG PEARCE: Mr Chairman, this is pretty fundamental because what we have got here is a supposed professional report which we are told by WorkCover shows an up to $1.33 billion one-off reduction in the deficit. Everyone ran off believing that, and in fact that is just WorkCover's internal target.

The Hon. MICHAEL GALLACHER: It is what they were aiming for.

The Hon. GREG PEARCE: These people have presented that as their work. It is not.

CHAIR: I think that the witness said that they would like to clarify that—where in their report they made clear the origin of that figure. In the way you have just explained in the evidence, was that sentence anywhere in your original report, qualifying that figure?

The Hon. GREG PEARCE: Or the report of 7 January, or the one of 21 November?

CHAIR: The 7 January report would be the relevant one.

Mr FINNIS: What we stated in our 14 January report was the Target's Mainly Achieved scenario.

The Hon. GREG PEARCE: What page?

[1] Please refer to clarifications on page 77 ~ *Mr David Finnis, 13 Mar 02*

Mr FINNIS: This is in Appendix A.

The Hon. GREG PEARCE: In Appendix A? So it is not in the executive summary?

Mr FINNIS: But it is part of the report.

The Hon. GREG PEARCE: Yes, hidden away. On what page in Appendix A?

Mr FINNIS: It is in Appendix A and referred to in the main body of the report.

The Hon. GREG PEARCE: Yes? Where in the main body of the report? What exactly in Appendix A are you pointing to?

Mr FINNIS: The description of the Target's Mainly Achieved scenario.[2]

The Hon. GREG PEARCE: Three lines.

Mr FINNIS: In fact, if you go back to our draft 26 November report, on page 2—

The Hon. MICHAEL GALLACHER: Hang on. Before you refer to that, I am going to ask questions about that. You cannot refer to the draft November report when you so strongly fought for it to be expunged from any record by this Committee. So be on guard that that is coming as well. Please continue.

The Hon. GREG PEARCE: Just read out the item in Appendix A, which is hidden at the back of the report, that you say makes it plain that the $1.33 billion is WorkCover's figure and not yours, whereas the whole of this report presents your work, your descriptions, your limitations, your analysis. What we really know now is that you have just adopted WorkCover's figure.

Mr FINNIS: Okay. Page 3 of the—

The Hon. GREG PEARCE: No. Just deal with Appendix A first.

Mr FINNIS: Well, Appendix A first then. That describes the Target's Mainly Achieved scenario and assumes that the reforms operate as intended and are effectively implemented so that the targets and objectives of the reform process, as established by WorkCover, are mostly met. The scenario is a compromise between the target's fully achieved scenario and the moderate scenario. The assumptions underlying the scenario will form the basis of performance targets for implementation and monitoring of the report, as I have just tried to say.

The Hon. GREG PEARCE: I understand it now.

Mr FINNIS: In implementing the reforms, WorkCover will be aiming to equal or better those targets. Again, we specified what our best estimate was, and our best estimate was below that figure.

The Hon. GREG PEARCE: So how do you then read page 37 at 7.3, "Expected Impact", which states:

> We expect the one-off reduction in the deficit due to retrospective claims to be in the order of $810 million and $1.33 billion for the moderate and high positions respectively.

Where are all the qualifications? That is your expectation. That is your opinion.

Mr FINNIS: I am sorry, which page is this?

The Hon. GREG PEARCE: Page 37, at 7.3, in the introductory first paragraph titled "Expected Impact".

Mr FINNIS: That is for the moderate and high positions respectively.

[2] Please refer to clarifications on page 77 ~ *Mr David Finnis, 13 Mar 02*

The Hon. GREG PEARCE: I am addressing the plain English which states, "We expect the one-off reduction"—and I assume that the "we" means the authors, being yourselves—

Mr FINNIS: Yes.

The Hon. GREG PEARCE: —"in the deficit due to retrospective claims to be in the order of $810 million and $1.33 billion for the moderate and high positions respectively."

Mr FINNIS: That is the point—for the moderate and high positions respectively.

The Hon. GREG PEARCE: And you think that people are not going to misunderstand that. You think that people are not going to see that that is your opinion and that they will understand that that is actually WorkCover's target.

Mr FINNIS: I am hoping very strongly that they do not because we do make it clear in other parts of the report that our best estimate was the $810 million figure—

The Hon. GREG PEARCE: Okay.

Mr FINNIS: —and that we were doing a service for our client in illustrating that figure. I think that is probably the best way to look at it.

The Hon. GREG PEARCE: You were doing a service for your client, were you not, in delivering a report that indicated very substantial savings when you did not believe that that was the case, and you locked away in appendix A your qualifications that that is not the case.

Mr FINNIS: I disagree.

The Hon. GREG PEARCE: But your words stand there.

Mr FINNIS: And again, I am afraid I disagree.

CHAIR: So you stand by the figure of $810 million as being your estimate?
Mr FINNIS: Our central estimate, as clearly explained in the report.

CHAIR: And that the $1.3 billion is WorkCover's target.

Mr FINNIS: That is right. It is our attempt to illustrate the effect of WorkCover applying a monitoring process and achieving the targets they want to achieve. That is the service we are giving to them. We are not saying that this is another estimate of the deficit. Our best estimate is clear.

CHAIR: And that is $810 million.

The Hon. TONY KELLY: How was that figure of $1.3 billion arrived at? Were you involved in that?

Mr FINNIS: Yes. We calculated the figure. Certainly our original range of potential scenarios included targets mainly achieved as within the range. It was not outside our range because our range took in WorkCover's target's fully achieved aim.

The Hon. TONY KELLY: So it was not just a figure that somebody at WorkCover plucked out of the air to make a good press release.

The Hon. GREG PEARCE: Hold on. That is not what you said. You said that you calculated the figure. That is not your opinion, though. This is where we are getting a bit confused.

The Hon. TONY KELLY: He said that he calculated it.

The Hon. GREG PEARCE: Yes, based on what WorkCover told him to calculate.

CHAIR: Let us go back one step. Did you provide the original $1.3 billion figure as an estimate, and did WorkCover adopt that as a target? Is that the process, in answer to the Hon. Tony Kelly's question?

Mr FINNIS: That is pretty close. I think it is fair to add that we provided four original scenarios. As I say, one of those scenarios was, if you like, more optimistic than the targets mainly achieved. WorkCover discussed those with us and they selected their aims from that range, and their aims were between the targets fully achieved and our best estimates.

CHAIR: And they chose the best estimates?

Mr FINNIS: And we came up with the best estimate first and then they chose their aims. That is the point.[3]

The Hon. TONY KELLY: That is the point you were trying to make right from the start but you were chopped off.

The Hon. GREG PEARCE: But it is their aim, it is not the one-off.

The Hon. MICHAEL GALLACHER: At what point in time, following your evidence in November last year, did you decide—and I take it from what you have said that it was your decision, or was it a discussion with WorkCover to reassess and look at the five scenarios?—leading up to Christmas that you would introduce this new five-scenario concept, bearing in mind that you did not give that evidence in relation to this in November?

Mr FINNIS: Bearing in mind that you were not provided with a full, if you like, audit trail of our 18-month dynamic interactions with WorkCover, I agree. But those five scenarios were already established well before 21 November.

The Hon. MICHAEL GALLACHER: Why did you therefore not give that in evidence or at least allude to that in evidence: that there would be some reassessment using these five scenarios following the evidence that you gave in November? I know you said that you were disappointed. Is it any wonder that you were disappointed, as I suspect the Government was disappointed, at some of the evidence that was given during those hearings.

Mr FINNIS: I guess my view is that I answered the questions that were given to me in the best way I could. In retrospect, maybe I was ambitious in trying to pass over as much information as I did. So, trying to extend the answers to those questions to five scenarios may have confused matters even more perhaps.

The Hon. MICHAEL GALLACHER: So what you are saying is that the evidence you gave in November to the best of your knowledge was true and correct at that time?

Mr FINNIS: Indeed.

The Hon. MICHAEL GALLACHER: Can you therefore explain to me why you sought in very strong terms for the draft report that was given in November to be removed from the face of the earth in January when it really was the basis for the evidence that you gave? And if you could legitimately argue the differences between the two, why did you therefore seek for it to be expunged from the second interim report?

Mr FINNIS: The evidence we gave on 21 November—I am referring to page 8, section 5.1 of our report today—was based on our understanding of the reform package as it stood as at 20 November, the day before our hearing. There were a number of changes to the reform package between 21 November 2001 and the date at which the final reform package was completed. That was in late December 2001 that the package was completed. The changes to the reform package subsequent to 21 November had a material bearing on the overall potential financial impact. It was for this reason and this reason alone that we indicated in our 14 January 2002 report that our 26 November 2001 draft report had been superseded.

The Hon. MICHAEL GALLACHER: Would it not have been proper, based on the evidence that you had given in November, to have sought that it be included and to give additional information rather than pretend it did not happen? It does look a bit sinister. You must agree that it looks a bit suspect if someone gives evidence on one day and then over Christmas comes up with a whole new parameter which changes the face of the earth that we saw in November.

[3] Please refer to clarifications on page 77 ~ *Mr David Finnis, 13 Mar 02*

Mr FINNIS: That is an interesting point of view. My genuine point of view from professional reporting was that it would be confusing to leave that draft report—

The Hon. MICHAEL GALLACHER: It is more confusing now because your evidence stands there without any qualification.

Mr FINNIS: But we have finalised our report now, and the final report is on the final reform package. That is a bit that we are trying to reduce confusion about.

The Hon. MICHAEL GALLACHER: If I might make an observation, your disappointment may well be based on the fact that you said that it is somehow detrimental to the name of your organisation. I think the fact that there was such a solid effort from both yourselves and WorkCover to remove from that second interim report. That report that was given leading up to November has probably added to your consternation about the good name of your organisation. It may well be that your own actions rather than the Committee's interpretation of what we were told under evidence and what we saw in January—

Mr FINNIS: I repeat: the sole reason we asked for that report to be removed was that the reform package had changed and we wanted to reflect those changes and not cause confusion later to the original draft report.

The Hon. MICHAEL GALLACHER: When you say that the reform package had changed, the package had not changed though because the legislation that was presented up until that time was the legislation that you were involved with. The bottom line on that legislation had not changed, just your interpretation of the impact.

Mr FINNIS: Can I give you a description of the way we thought? I can understand the question. Our evidence that we gave—again this is referring to the report we have given today, on page 9 section 5.3—to the standing Committee regarding the impacts of the reforms on the deficit does appear to be a source of confusion. To understand our position it is necessary to recap on our earlier advice regarding the scheme deficit. As part of our 30 June 2001 valuation we did estimate that the scheme deficit of $2.76 billion at 30 June would deteriorate to approximately $3.13 billion at 31 December on the assumption that no reforms were implemented. That is a deterioration of $0.37 billion.

As part of the valuation report at 30 June 2000 we concluded that the reforms passed into legislation in July 2001 would have a minimal retrospective effect on the scheme deficit. That is confirming to you that, if you like, we did an accident year approach. We looked at the deficit effects as at 30 June based on the initial set of reforms. We have estimated that the impact of the reforms as they then stood at 20 November 2001 would have been to reduce the deficit at 31 December by approximately $0.34 billion. That is, as now looking back and saying, knowing what we know now, what would we have said then.

The Hon. GREG PEARCE: As at which date?

Mr FINNIS: That is at 21 November 2001—when we gave the evidence at the hearing.

The Hon. GREG PEARCE: So on 21 November you thought that the impact would be $340 million?

Mr FINNIS: We are now saying that that is what we would have estimated, being consistent with our valuation basis. We had not done that work at that time. This estimated reduction would have had the effect of merely offsetting the June 2001 valuation projected deterioration, which we have been discussing, over the second half of 2001. It was in that context that we gave evidence based on the reforms proposed as at 20 November 2001. It would be difficult to see how these reforms could have a significant effect on the deficit within a short period of time. In other words, the estimated deficit as at 31 December 2001, after allowing for these proposed reforms, would have been materially of the same level as at 30 June 2001, as we understood at the time.

So using the scenario most closely aligned with our anticipated 31 December 2001 scheme valuation basis—again, we are referring to Tillinghast's best estimate—we have estimated that the additional elements introduced to the reform package subsequent to 21 November would further reduce the scheme deficit at 31 December 2001 by approximately $0.47 billion, $470 million. Combined with our estimated $0.34 billion for deficit, that then reconciles with the $0.81 billion total estimated impact on the scheme deficit which is included in our 14 January report, and the $809 million January letter as well.

The Hon. GREG PEARCE: Can you give us a quick breakdown of how you got the $470 million? What are the components of that?

Mr FINNIS: The two main components are the effects of the commutations, which occurred prior to our 26 November draft report, which, as you say, no longer can be referred to; and the effect of the introduction of the legal cost regulations in December. If I can explain that a bit more, I think it is fair to say that we took a conservative view of the potential reduction in legal cost regulations because throughout the process for the reform package that we had seen to that date we had seen no real evidence that those changes would be passed. So I guess when they were passed and when we got evidence of that on 19 December, I think, we said that that was evidence enough for us to include that in our valuation.

The Hon. MICHAEL GALLACHER: Have you now factored in what appears to be occurring or has already occurred so far as the large number of common law claims that were filed during last year? Have you factored that into this $800 million?

Mr FINNIS: Yes, again I think that is in our additional evidence.

The Hon. MICHAEL GALLACHER: I have not seen it.

Mr FINNIS: No, and I do not expect you to have seen it. Thanks for your question. I just want to make it easier for you to refer to it again when you go away and consider it.

CHAIR: On what page is that?

Mr FINNIS: Page 10, section 5.8. In our view it has been at best extremely difficult, perhaps almost impossible, to determine a reasonable estimate of the total one-off impact of the deficit prior to the implementation of the reforms which introduced lump sum cut-off dates; our prior experience in these sort of reforms has shown that the surge of applications, a result of claimants and their advisers avoiding the more stringent conditions following implementation of the reforms. That surge is unpredictable for lump sum claims but does happen. Common law and commutations are the obvious examples.

We believed that the proposed reform package at 26 November 2001 would result in such a surge of applications, resulting in any attempt to assess the retrospective impact of the proposed reforms being highly uncertain and, in our view, of limited value at that time. As a result, the scope of our draft 26 November report expressly stated that we did not assess that retrospective impact. We were basically waiting until we saw those common law statements of claims, those commutation applications, which we have now seen and which we have now allowed for in our $809 million-$810 million estimate.

The Hon. GREG PEARCE: I want the dollars, though. Of that extra $470 million, what do you allocate to commutations and what do you allocate to legal costs?

Mr FINNIS: Can we take that one away? I have got a figure in my head but I would prefer not to give you wrong figures.

The Hon. MICHAEL GALLACHER: We have played that one before.

Mr FINNIS: Yes. We do have those figures calculated.

The Hon. GREG PEARCE: So $470 million is essentially retrospective savings brought about by the reforms?

Mr FINNIS: Correct, deficit effect as at 31 December, as you say.

The Hon. MICHAEL GALLACHER: Can I get a layman's interpretation of 5.8. Is what you are saying here that it is near impossible for you to ascertain the impact of this large increase in the number of common law applications towards the end of the year?

Mr FINNIS: Before the event. As soon as we get evidence of that surge—it can be quite dramatic, as you may imagine—we can then estimate how many of the claims we were expecting to be still outstanding as at 31 December have been brought forward.

The Hon. MICHAEL GALLACHER: So I can take it, therefore, that the $800 million that we have been talking about this morning is under a cloud depending on the surge?

Mr FINNIS: It is certainly more uncertain. But we now have a view of that surge, and that is included in that $810 million. It is an early view of the surge, but it is a reasonably strong view, whereas prior to 26 November our view of the surge would have been very uncertain.

The Hon. MICHAEL GALLACHER: Can you explain to the Committee what sort of numbers you would be looking at indicative of the potential impact on that the $800 million figure? As you have looked at this early surge, as you have just discussed, what is the likely impact of various scenarios in terms of the increase in the number of claims?

Mr FINNIS: We have modelled that and I would be very happy to answer a specific question on just that issue. If you were to say to me, "Suppose the surge was this much, this much, this much" we could show you how our model predicts the effects of them.

The Hon. MICHAEL GALLACHER: Do you mean right now?

Mr FINNIS: I am looking at Sally. Within a reasonably short period. The model is in existence so it would be a matter of putting those figures into the model and seeing what the output was. We can take that on notice.

CHAIR: To clarify that, in spite of the surge you stand by the $810 million as still being within the realms of possibility.

The Hon. GREG PEARCE: No, he has already said that that is not going to be the final figure.

CHAIR: I thought he said that it would still stand.

The Hon. TONY KELLY: Check the *Hansard*.

CHAIR: You tell us in your own words.

Mr FINNIS: I agree that it can be confusing. The process was that prior to 26 November we had a very uncertain view of the surge. Post 27 November and when we got the data as at 31 December we had an early indication of that surge, the statements of claim for common law and the commutation applications that came in earlier than they otherwise would have. Using the early indication, we have projected our $810 million figure. Sally has just corrected me slightly. When we produced the $810 million figure we had an estimate of the surge but it was not based on the final 31 December figure. When we do our valuation we will have that data.

The Hon. MICHAEL GALLACHER: When is that done?

Mr FINNIS: We are in the middle of it now. Stage two was the $810 million figure. We now have a better feeling for the surge. We factor that into our full valuation approach and therefore the reform effect will come out at a different figure because we are looking at a better feeling of what the surge effect will be.

CHAIR: Would it be dramatically different from the $810 million? You gave the impression it would be around that figure.

Mr FINNIS: I will take that on notice. One would hope it would not be, and we have estimated pretty well what the surge will be. In Victoria a couple of years ago the last minute surge was so extreme that it was very difficult to measure at all.

The Hon. MICHAEL GALLACHER: Did you tell the Government of the impact of this surge prior to it announcing the $1.3 billion one-off saving?

Mr FINNIS: No, but we certainly discussed the surge impact with WorkCover.

The Hon. MICHAEL GALLACHER: So WorkCover was fully aware prior to making its announcement of the $1.3 billion one-off saving that there could be a differential in that figure, based on a surge in common law claims?

Mr FINNIS: They were aware that the surge could be either higher or lower than the surge we had included in the estimate. There was an allowance for the surge in the estimate, but it was an early estimate. Hopefully I have made it clear.

CHAIR: Now you are saying that it could have been below the real figure?

Mr FINNIS: It could have been below.

The Hon. TONY KELLY: He said that it could be either way.

Mr FINNIS: It is a very uncertain figure.

The Hon. GREG PEARCE: From where do you get the figures? Have you audited the figures or do you rely on the information supplied by WorkCover?

Mr FINNIS: We rely on the WorkCover information, and that information is audited by the Audit Office.

The Hon. GREG PEARCE: The information on which you based this extra $470 million and $810 million was audited?

Mr FINNIS: Eventually it is.

The Hon. GREG PEARCE: Is it audited when you form your opinion, or is it just figures that WorkCover have given you?

Mr FINNIS: The historical data we use, in other words the data as at 30 June 2001, which was the main basis for that initial estimate—

The Hon. GREG PEARCE: You might have got the point by now that the Committee is not really interested in that, we understand it. We are interested in how you got the $810 million. You got the $1.3 billion, because that is what WorkCover told you to put in put to our now asking you where did you get the $810 million, did WorkCover tell you to put that in as well?

Mr FINNIS: No. The $810 million was based on figures. We had seen trends in common law claims in the past, and our view at the time of how much effect the surge would have on those trends, so effectively we increased that trend for the surge effect.

The Hon. GREG PEARCE: So it is for your own work?

Mr FINNIS: It certainly was not influenced by WorkCover. It was based on the data that WorkCover gave us, but our assumptions were our own.

The Hon. MICHAEL GALLACHER: What is the surge you calculated in coming up with the figures you have given to the Committee?

The Hon. TONY KELLY: He said that he would take that question on notice. He said that he had a figure in his head, but he did not want to tell you what it was at this stage.

Mr FINNIS: I will take it on notice; we do have the data for that figure now and will provide an answer to that question.

CHAIR: The cover of your report states "WorkCover Authority of New South Wales: Response to Standing Committee", and at the bottom it states your company name. Is this your report?

Mr FINNIS: Yes. The intent of putting "WorkCover Authority of New South Wales" was because that is our client, but it is our report.

CHAIR: Did WorkCover get a copy of this report?

Mr FINNIS: No.

CHAIR: Do you plan to give WorkCover a copy?

Mr FINNIS: With your permission, yes.

CHAIR: WorkCover will get a copy if the Committee makes it public.[4]

The Hon. GREG PEARCE: At page 41 of your January report the projected savings are broken down into various initiatives, including restructured dispute resolution system and processing common law claims. Are those figures your calculations, your assumptions and your opinions, and not WorkCover's?

Mr FINNIS: Correct.

The Hon. GREG PEARCE: Paragraph A.5 of the response that you produced to the Committee today states:

- A target of additional $50m to improving statutory benefits for workers with a permanent physical loss.

And you have $50 million in your report, for the same thing. Appendix A at A.5 states:

> In March 2001 WorkCover provided us with a copy of the Workers Compensation Legislation Amendment Bill 2001 (Draft), which included:
>
> … A target of an additional $50m to improving statutory benefits for workers with a permanent physical loss.

Is that the same $50 million?

Mr FINNIS: No.

The Hon. GREG PEARCE: How did you get the allowance for better return to work outcomes, $40 million? That was not included in the earlier report. Where did that come from?

Mr FINNIS: I can explain further. The $50 million was in March 2001, and it was an eventual saving.

The Hon. GREG PEARCE: You had either $92 million or $72 million.

Mr FINNIS: It was an eventual saving that we evaluated as having a $50 million annual saving effect. Maybe that is coincidental.

The Hon. GREG PEARCE: Just good luck.

Mr FINNIS: There were a lot of offsetting factors. So, yes, it was coincidental.

Ms WIJESUNDERA: There was a lot of development.

The Hon. GREG PEARCE: Is the $50 million that you referred to that WorkCover gave you in March the same $50 million?

Mr FINNIS: No, but I am trying to explain that the changes that were foreseen in March were not the changes that were put into the final reform package. But it had a similar effect.

The Hon. GREG PEARCE: That is why I would be more concerned if you had adopted the $50 million figure.

Ms WIJESUNDERA: No, we did not. The $50 million was based on an extensive modelling, it was a target that WorkCover aimed at. The formulas for payment impairment have varied so claimants now get an extra $50

[4] Please refer to clarifications on page 77 ~ *Mr David Finnis, 13 Mar 02*

million worth of benefits. That was the target. Part of the work that we have been doing is to understand the impact of that.

Mr FINNIS: The best way to put it is to say that WorkCover asked us how they could get $50 million, and they had an idea at the time. We came up with an answer which was different from their idea, but still ended up with the $50 million saving.

The Hon. GREG PEARCE: So you just put in the figure that WorkCover gave you, $50 million.

Mr FINNIS: But we have now based it on different changes, different reforms.

The Hon. GREG PEARCE: You have proved it up now, have you?

Mr FINNIS: No, there are different reforms that they originally suspected, and supported that $50 million. It is our estimate of that.

The Hon. GREG PEARCE: It is your estimate of how you get to the figure? A bit like the $1.33 billion.

Ms WIJESUNDERA: There is a range of variables.

The Hon. GREG PEARCE: They can give the desired result!

Mr FINNIS: I am not sure that there is much point in debating this further.

The Hon. GREG PEARCE: I am sure that there is.

Mr FINNIS: I will try again. WorkCover asked us "What reforms do we need to achieve this target". We said "You need to change the impairment formula in this way to achieve that $50 million". That work was independent of WorkCover. They had their ideas of what they needed to do, but we did the work to achieve the $50 million. Those changes were different from what WorkCover originally thought would be needed.

The Hon. GREG PEARCE: WorkCover said to you "We want $50 million in savings"?

Mr FINNIS: Yes.

The Hon. GREG PEARCE: You went away and worked out how you could come up with that, and you were able to do that by using formulas and assumptions, et cetera. What I thought you had done, and what you said you had done, was that you took the package that the Government and WorkCover gave you, analysed it and came up with this figure by yourself.

Mr FINNIS: That is a misinterpretation. There was a consultative process. We were not handed the final package. Throughout this 18-month period we were consulted on a whole range of matters and this is one of them. One matter was: We are not sure what the final package should be, we would like to get $50 million savings. You tell us what we have to do to get that. In other words we were not being directed as to what the reform should be, but we told them what the reforms needed to be to get that $50 million. That is a different matter.

CHAIR: You have two different roles, you have an actuarial role and a consultative role. And that is where you acted as a consultant, advising WorkCover on how to make a saving.[5]

Mr FINNIS: Absolutely. It is important to stress that role because it has changed over the past 10 years from an actuarial perspective. Certainly 10 years ago there was a perceived position that the actuary would be handed the reform package and asked to cost it. That is no longer the case, not in the work we do. We have that consulting role as well.

CHAIR: I assume that is because you have developed so much knowledge, and that is superior to WorkCover's internal procedures.

Mr FINNIS: Perhaps. We are hoping that that is the reason that we are being asked.

[5] Please refer to clarifications on page 77 ~ *Mr David Finnis, 13 Mar 02*

The Hon. GREG PEARCE: Earlier I asked you how you worked out this $40 million allowance for better return to work outcomes, and what that is. Would you comment further on that?

Mr FINNIS: That is the effect of the changes in the system that we are assuming on balance will cause a better return to work outcomes and that, in itself, will reduce benefits to workers. We are expecting on average that workers will get back to work quicker than previously they would have done. Again there is a range of possible outcomes and one of those outcomes may be an increase in the cost of benefits to workers. At the moment we are saying that the midpoint of that range is a saving of around $40 million per annum. It is something that you would have to monitor and test quite closely as reforms are being implemented. We have already talked to WorkCover about putting that sort of monitoring report in place.

The Hon. GREG PEARCE: It is a bit of a pluck out of the air.

Mr FINNIS: It is an uncertain figure.

The Hon. MICHAEL GALLACHER: In a retrospective way we have been looking at evidence given in the past. Evidence you have given this morning was of working with the Government for the past 18 months to bring about reforms. What is the status of your discussions with Government and estimations on the third tranche of the reform scheme design?

Mr FINNIS: It is very rare that we talk directly to the Government, the Minister or his representative. We work with our client, WorkCover. I am aware of the meeting to be held later this week but at this stage we have not discussed with WorkCover any involvement in that process.

The Hon. MICHAEL GALLACHER: When the Government has asked you what savings can be achieved and asked you to work with it to achieve those savings, what issues has Tillinghast raised that could fall into the area of scheme design?

Mr FINNIS: We have provided some thoughts on the matter as part of the evaluation reports. I remember specifically a comment in the December 2000 valuation report. My memory is not 100 per cent and I would like to confirm what we said in that report because it is almost a year since we produced it. We certainly discussed the effect on commutation and we talked about other benefit levels such as the common law claim cost and how to reduce that. We talked about the effects on regular benefits.

The Hon. MICHAEL GALLACHER: Have you provided the Government with any estimates as to when you will see the scheme stabilise?

Mr FINNIS: No. We would talk directly with WorkCover.

The Hon. MICHAEL GALLACHER:, Now that the calculations of the $800 million are firmly in your mind have you given WorkCover any advice as to when we could expect the scheme to be stabilised?

The Hon. TONY KELLY: Are you trying to work out when you should campaign, fair dinkum, to get government?

Mr FINNIS: The closest we have come to that advice is actually the advice you have seen in the 7 January letter on the scenarios you actually sent us. As part of our 31 December valuation report we also include similar projections. Of course, we have not done that at this stage. Our previous projections of that type would have all been pre the bulk of the reforms and, therefore, I think not particularly relevant at this stage.

The Hon. MICHAEL GALLACHER: Have you given WorkCover any actuarial estimations to a point when it can look at reducing premiums?

Mr FINNIS: No.

The Hon. MICHAEL GALLACHER: Are you the only one that would supply that information to it, based on stability of the scheme?

Mr FINNIS: I think that I cannot talk for WorkCover. As the actuarial adviser, one would hope it would listen to us fairly carefully, yes. But, no, we have not been asked that question.

The Hon. GREG PEARCE: But the conclusion in your 7 January 2000 to letter was "that the impact from the scheme reforms under the low-savings scenario was not substantial enough in itself to reduce the deficit without the aid of further premium increases or reductions in the break even of the scheme". That is the conclusion, is it not?

Mr FINNIS: That is our best estimate.

The Hon. GREG PEARCE: That is your best estimate when we get rid of WorkCover's best estimate of $1.33 billion?

Mr FINNIS: Correct.

The Hon. GREG PEARCE: So we have gone through all this pain for nothing?

Mr FINNIS: Well, the position has been improved. So, I would not say all for nothing. Certainly it does not solve the whole problem.

The Hon. MICHAEL GALLACHER: Improved depending on the plight from common law claims, which could cause some problems too?

Mr FINNIS: Yes. That could have an effect that we have not fully modelled.

The Hon. MICHAEL GALLACHER: So it might be a little bit premature to say improved? There is significant anecdotal evidence.

Mr FINNIS: It might be a bit premature given the range of potential outcomes, but at this stage we are assuming that the majority of the potential outcomes would save the scheme a significant amount.

The Hon. GREG PEARCE: Like all those injured workers going back to work early?

Mr FINNIS: That is one of the outcomes.

CHAIR: The Government released a statement based on your report, and it gave you the credit for this view, that the savings would "set the term of the scheme from a major financial headache into a self-funding operation within 15 years." Would you say that was your advice to the Government? Would you stand by that? Or is that a wrong interpretation or an exaggeration of what you were saying?

Mr FINNIS: I think that is one point I would like to clarify totally. I am pretty sure, I think we can be certain, that it was based on the WorkCover scenario that that outcome would be, the targets mainly achieved in other words—the $1.33 billion effect on the deficit plus the ongoing savings of $400 million or more per annum.

The Hon. GREG PEARCE: So that is WorkCover making up its figures and you conveniently putting them in your reports and allowing the Minister to then claim that that is what you are reporting?

CHAIR: It gives it more authority if it was you telling WorkCover.

Mr FINNIS: Well, we told WorkCover very clearly what the scenarios were. How it reported it to the Minister is a matter for it. My understanding and my workings with WorkCover is that I am sure they would have reported in the same way we reported it to them because they have always been—

The Hon. MICHAEL GALLACHER: It is apparent that you have some concerns about how WorkCover has reported your findings?

Mr FINNIS: Well, yes. If that is the interpretation, then I would have concerns. I am saying now I doubt whether that would be the interpretation.

The Hon. GREG PEARCE: You obviously saw the media reporting of it because you had your opening statement about it. So, you cannot be too confused about?

The Hon. MICHAEL GALLACHER: You were used as the legitimiser of the $1.33 billion. Do you think that has put your organisation in an unfair situation?

The Hon. GREG PEARCE: What we are looking at here is public officials—

CHAIR: Are you still trying to answer that earlier question?

Mr FINNIS: I will try to answer that question Mr Gallacher. We are concerned that the figure of $1.33 billion is not being appropriately described as it was in our report.

The Hon. MICHAEL GALLACHER: Have you raised those concerns with WorkCover?

Mr FINNIS: Yes.

The Hon. MICHAEL GALLACHER: What was its response? They are the client?

The Hon. GREG PEARCE: You are under oath.

Mr FINNIS: I honestly do not remember what the response was.

The Hon. MICHAEL GALLACHER: Was the response in writing or was it verbal?

Mr FINNIS: It was verbal. Sally is making the point at the newspaper did point out the two scenarios, but I accept your point that they were not a range of scenarios around our best estimate; they were our best estimate and the WorkCover estimate.

The Hon. MICHAEL GALLACHER: So the WorkCover authority in passing information on to the Government cherry-picked?

Mr FINNIS: I think you will have to take that up with the WorkCover Authority because again I am not sure how it reported our figures to the Government. I can only go on my dealings with it and there has been no pressure, if you like, put on us from the WorkCover Authority in terms of—

The Hon. MICHAEL GALLACHER: So there has been no written correspondence from you to the WorkCover Authority to the best of your knowledge since the announcement of the $1.33 billion was made public, is that correct, on that aspect?

Mr FINNIS: I would like to check that, but my understanding is that there was no written correspondence. But we will—

The Hon. MICHAEL GALLACHER: Do you find that unusual? It is a serious discrepancy and the media reports now, going by your evidence today, really have been a misrepresentation of your position in the sense that it did not give that full range and you are telling the Committee that everything was done by telephone.

The Hon. GREG PEARCE: You went to the trouble to prepare this for us to set the record straight yet you are telling us that you did not write to WorkCover or complain to it. This is nice, but I would have thought—

Mr FINNIS: There is a range of interpretations to the media reports and, obviously, you have one. Maybe other people have another interpretation.

The Hon. MICHAEL GALLACHER: The Committee was not happy when it saw it because it was out there before the Committee even had a chance to see it.

The Hon. TONY KELLY: Parts of the Committee.

CHAIR: The point we are trying to get clear is whether the media reports accurately represent your company's position?

Mr FINNIS: Well I think first of all—

CHAIR: You seem to be saying that you have broad reservations about how it was presented?

Mr FINNIS: I think that is a reasonable way of putting it; potential reservations.

CHAIR: But you did not enter into any further debate yourself?

Mr FINNIS: Not in a formal way.

CHAIR: You never issued your own statement to clarify?

Mr FINNIS: No, we have not done.[6]

The Hon. GREG PEARCE: I want to focus again on the allowance for better work outcomes and how you got to that $40 million. Was that a figure WorkCover put to you or was it a figure you worked out using your past trends and things? How did you get to that?

Mr FINNIS: It certainly was not given to us by WorkCover. It was worked out by ourselves based on our understanding of the effects of changes such as these on the long-term benefits of a scheme like this. So, it is drawing on our past experience of similar schemes to project the likely outcomes.

The Hon. GREG PEARCE: Did WorkCover have a target for that category, better return to work outcomes?

Mr FINNIS: Not to my knowledge, no.

The Hon. GREG PEARCE: So in the $1.33 billion it did not have a target for that?

Mr FINNIS: Sorry, in the $1.33 billion?

The Hon. GREG PEARCE: Sorry.

Mr FINNIS: This is an annual estimate. Just picking you up on the deficit effect, you may be interested to know that the improvement element in there is very small. It is certainly less than the annual affect, if you like, by quite a significant margin.

The Hon. MICHAEL GALLACHER: When will we see the next calculation by you in terms of the scheme?

Mr FINNIS: Well, I guess the WorkCover board will see our initial results on the valuation of the scheme at 31 December in its meeting on the last Monday of the month, which I think is 25th. The last Monday of this month.

The Hon. MICHAEL GALLACHER: By the evidence you have given this morning, I take it that the potential impact of common law claims will not show in that other than the suggested point earlier you saw the early trends? There will be nothing substantial in terms of the final trends or the trends we have as of today?

Mr FINNIS: We will have further developments than we had in our $810 million estimate, but certainly we will not have a final position if you like—

The Hon. MICHAEL GALLACHER: When do we see the next calculation after that?

Mr FINNIS: That would be a valuation at 30 June, which would be produced in September, the September board meeting.

The Hon. MICHAEL GALLACHER: Just in time for the interim report of the Committee.

Mr FINNIS: Yes.

[6] Please refer to clarifications on page 77 ~ *Mr David Finnis, 13 Mar 02*

The Hon. MICHAEL GALLACHER: So the Committee probably will not get a chance then to come back and look at the final calculations?

Mr FINNIS: Well, I guess the Committee could request.[7]

The Hon. MICHAEL GALLACHER: We cannot if we are wrapped up by September and you do not have these figures publicly available by September.

Mr FINNIS: That is the current timetable. The board meeting of the end of September will have the 30 June valuation.

CHAIR: In annexure A12 to your report you have a reference, "In October 2001 WorkCover provided us with a summary of the key reforms as they had evolved to that date". Do you have a copy of that? Is that a resource paper or a single sheet?

Mr FINNIS: Personally I can not answer that. Can we take that on notice. We need to get back to you on that.

CHAIR: So that the Committee is quite clear on the information you have been receiving on which you base your reports, in your annexure A13 you state again that WorkCover provided you with the proposed amendments to the Workers Compensation Legislation Further Amendment Bill 2001, and then in annexure A14, on 26 November it provided you with what appears to be the same document unless at that point it was a printed copy of the bill. Earlier you received a draft and then a copy of the bill, but it has the same title. Would you check that for us? And then in annexure A15 you state you were provided with a copy of the regulation, Workers Compensation (General) Amendment (Cost of Claims) Regulation 2001.

The Hon. GREG PEARCE: When were you actually instructed to prepare the 14 January 2002 report?

Mr FINNIS: When were we instructed to prepare it?[8]

The Hon. GREG PEARCE: Yes? What is curious to me is where are your instructions?

Mr FINNIS: The reason I am struggling a bit is that I guess the way I looked at our reporting was as a series of iterations. Certainly the 26 November report was an iteration, perhaps driven to an extent by the Committee, agreed, and 14 January would have been as soon as we were aware of the full effect of the reforms we would want to produce a report on that full effect in the quickest time available.

The Hon. GREG PEARCE: Who instructed you to prepare the 14 January 2002 report?

Mr FINNIS: Well, it would be effectively WorkCover. I do not remember specific instructions on, "We are finished now, you must produce the report."

The Hon. GREG PEARCE: You just go off and produce this by yourself then? Did you get paid for it?

Mr FINNIS: Well, perhaps not yet. But it is part of our contract with WorkCover.

The Hon. GREG PEARCE: To prepare this report?

Mr FINNIS: Yes, as part of the reform process it is one of the ad hoc elements.

The Hon. MICHAEL GALLACHER: Was that request verbal or in writing?

Mr FINNIS: I certainly do not remember a written request to produce a specific final report on 14 January.

The Hon. MICHAEL GALLACHER: So again it was done verbally?

Mr FINNIS: Yes.

[7] Please refer to clarifications on page 77 ~ *Mr David Finnis, 13 Mar 02*

[8] Please refer to clarifications on page 77 ~ *Mr David Finnis, 13 Mar 02*

The Hon. MICHAEL GALLACHER: Who normally would you interact with at WorkCover? Would it be Mr McInness or Ms McKenzie?

Mr FINNIS: Mainly Mr McInness, occasionally Ms McKenzie.

The Hon. MICHAEL GALLACHER: Do you have any recollection of the two who asked you to prepare the report 14 January?

Mr FINNIS: I do not have that recollection.

The Hon. MICHAEL GALLACHER: Do you keep a diary?

Mr FINNIS: Yes.

The Hon. MICHAEL GALLACHER: Would you have recorded in a diary who made a request from a certain time and a certain date?

Mr FINNIS: If it was made of me, yes. It is possible that it would have been requested of one of my colleagues.

The Hon. MICHAEL GALLACHER: Could you ask your colleagues here whether it was made of them?

Mr FINNIS: Can you recall, Sally?

Ms WIJESUNDERA: Not a specific request, no.

CHAIR: If it asked you to produce something, you would obviously record that request, even if it were a telephone message, would you not?

Mr FINNIS: Yes. That would be in our correspondence file.

CHAIR: You would have to record that request as an instruction, would you not?

Mr FINNIS: Yes. I guess I am not clear on the reasons for the question.

The Hon. GREG PEARCE: Take an executive summary report: "WorkCover engaged Tillinghast to estimate the savings to the financial impacts of the intended effects of the reforms." Who gave you the instructions? Where are the terms of the engagement? What were the instructions?

Mr FINNIS: The instructions as they stood would have been actually given to us at the start of the reform process. Obviously, changes to those instructions based on the way the reform package developed would be given on an ongoing basis.

The Hon. GREG PEARCE: For example, in making the decision to report this on a settlement-year basis, who would have instructed you to do that? Is that in your instructions?

Mr FINNIS: Yes. We cover that in section 5 of the report we have given you today. If that does not fully answer your question, perhaps you could get back to me on that issue.

The Hon. GREG PEARCE: What I would like to see is your terms of engagement, your instructions, or whatever, if you could produce that.

Mr FINNIS: The contract?

The Hon. GREG PEARCE: Yes.

Mr FINNIS: No problem.[9]

[9] Please refer to clarifications on page 78 ~ *Mr David Finnis, 13 Mar 02*

The Hon. MICHAEL GALLACHER: Mr Finnis, going back to the conversation/correspondence between yourselves and WorkCover over the January report, will you provide to the Committee any correspondence between yourselves and WorkCover from 21 November leading up to 14 January requesting you to prepare such a report?

Mr FINNIS: Certainly.

The Hon. MICHAEL GALLACHER: Are you happy to take questions on notice from the Committee? We have a substantial number of further questions that, unfortunately, we have not had an opportunity to ask today.

Mr FINNIS: We are happy to take those questions on notice.

(The witnesses withdrew)

KATHERINE MARY McKENZIE, General Manager, WorkCover New South Wales, 400 Kent Street, Sydney,

BRIAN GEORGE RUSSELL, Director, Strategic Operations Group, WorkCover New South Wales, 400 Kent Street, Sydney,

SIEW KIANG, Director, Insurance Service Delivery Group, WorkCover New South Wales, 400 Kent Street, Sydney, and

MARY HAWKINS, Manager, Workplace Injury Management Branch, WorkCover New South Wales, 400 Kent Street, Sydney, sworn and examined:

CHAIR: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

Ms McKENZIE: Yes, I did.

Mr RUSSELL: Yes, I did.

Ms KIANG: Yes, I did.

Ms HAWKINS: Yes, I did.

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

Ms McKENZIE: Yes.

Mr RUSSELL: Yes, I am.

Ms KIANG: Yes.

Ms HAWKINS: Yes.

CHAIR: As witnesses would be aware from previous hearings, if you 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 your request and go into camera.

Could you outline issues pertaining to claims management, injury management, occupational health and safety and give a brief summary of WorkCover's approach to managing these areas, how the management of these areas is structured and the responsibilities of insurers, employers and WorkCover as well as key programs relating to these areas. Also, how does WorkCover differentiate between claims management and injury management?

Ms McKENZIE: I will do my best because it is a big question. Starting with injury management and claims management, we would not necessarily differentiate between them in the sense of regarding them as two separate things. We would say that injury management should be an integral part of claims management. In more common parlance, the distinction that people tend to make is that claims management tends to be the term that is used for the more basic processing end, the actual paperwork involved in receiving a claim and making payments under the claim, whereas the injury management aspect of it is now what we would expect from insurers in terms of a more sophisticated approach to that. The injury management aspect assumes a higher level of expertise and knowledge about the nature of injuries and what amounts to appropriate treatment of those sorts of injuries.

A lot of emphasis has been placed in the last three or so years on this area, by trying to get insurers to move away from the basic claims processing and not making extra judgments concerning what is the best outcome for the injured worker, in an attempt to move away from that towards a more sophisticated approach where insurers are looking at the nature of the injury, what kinds of injuries need more serious and more focused interventions and what sorts of treatments will be appropriate for those sorts of injuries—that end of the spectrum. In terms of what we have been doing about it in recent times, there is a whole chapter in the 1998 legislation that deals with injury management, which in the last few years is where this sort of emphasis began, with a whole lot of statutory

requirements about early notification of injuries and better contact between the parties, and requirements relating to development of plans of action and injury management plans, where necessary.

They are not necessary for all injuries. Some low level or straightforward injuries would not require that process but where there is a complex, serious injury, certainly the expectation is now on the insurers to make sure there is contact at an early point in time after the injury and that a proper plan is put together for the management of the injured worker, with the aim of speeding their recovery, getting their claim processed as rapidly as possible and, wherever possible, returning them to work as soon as they are recovered. In terms of the occupational health and safety end of it, I guess that is a difficult area to give a short answer to in terms of the overview of what we are doing on that front but, as the Committee would be aware, we introduced a new Occupational Health and Safety Act and regulation, which commenced on 1 September last year and that, I suppose, is our framework for the future management of the prevention side of the organisation's activities.

Underpinning all that is now the adoption of a more modern risk management approach to the prevention of injuries in workplaces. Underpinning that new legislative regime there is a whole lot of internal things that we have done to support the implementation of the regime. We divide our activities into a number of areas, including information, assistance, compliance and enforcement, so that encapsulates the whole range of case management of poor performers, the provision of education and information to employers so that they have a better prospect of knowing the right thing to do in terms of preventing injuries in the workplace, and also the prosecution role where we have repeat bad performers who do not seem to be open to improving their performance. We have a prosecution role built in there as well.

This is underpinned by 300 inspectors and about 100-odd project officers, who provide support to that side of the operation and are divided up into industry teams. That is a recent innovation we have only had in place for the last few years. It is aimed at improving our focus. We begin with data analysis of where the major risks appear to be and, therefore, where the most impact can be made in terms of preventing injuries for the future, and the industry team structure supports that. They focus on hazards for their particular industry and divide their work program amongst those different types of intervention and try to do this in the most targeted and focused way that we can so that we have proactive work going on targeting particular types of injury and illness in particular industries, as well as response type work, which is still a large part of the business, which is responding to complaints and issues that are raised with us about particular workplaces, as well as the advice and support function that we provide out of that part of the organisation.

CHAIR: Who manages injury management processes and systems—WorkCover or the insurers?

Ms McKENZIE: The insurers, because it is an integral part of the claims management process and they are the claims managers and they are the injury managers as well. Some of them do not do it all in house. Some have separate contracts with external providers to help them with the injury management side of it, but certainly it is the responsibility of the insurers. We provide the framework and the overarching rules but they do the actual injury management.

CHAIR: Has WorkCover undertaken any surveys of workers, employers, employees or insurers regarding their views on the success or otherwise of the current injury management processes and procedures?

Ms McKENZIE: There are no formal surveys as yet. We are planning some for the future. In terms of the scheme, this is still relatively new so, I guess, we always take the view that you have to let these things settle down for a little while before there is much point in doing formal data analysis of what is out there, but certainly informally we get a lot of input such as letters to the Minister and feedback from complaints. Our claims assistance service that we as established on 1 January is beginning to gather data about how this is going. We do reviews with providers of these services to see how they are going and certainly the IRGs are a good source of intelligence for us about how things are going out there. But I guess out of all of those forums some of it is anecdotal type evidence and there are some inconsistencies in what you hear back about how these things are going. So until we get into the business of doing the more formal work, we really do not have too much objective evidence about how it is going.

CHAIR: We understand that one of the main ways in which WorkCover oversees injury management is by receiving the injury management plans and the injury management programs as developed by the insurers. For example, can you briefly explain WorkCover's approach to injury management? In other words, can you please outline the key elements of how injury management occurs in New South Wales?

Ms McKENZIE: I guess there are two levels: the injury management programs we require the insurers to give to us—which is really the higher level document that sets out what their approach is going to be—and how they are going to do this in their own organisation. We would not see the individual injury management plans of individual workers, but we certainly do have a role in looking at what the insurers are aiming to do, which is spelt out in their injury management programs. I guess essentially the approach to injury management, as I think I said in the introductory comments, is focusing on trying to get notification of the injuries at an earlier point in time, earlier contact with the parties, better communication between the injured worker, the employer, the medical provider and the insurer to try to minimise delays. We know that the more time it takes for those contacts to be made, the more difficulty there is in managing the injury. Those relationships can very easily fall apart, to the detriment of improved health outcomes for workers and, in the cases where it is necessary and appropriate, the development of a plan of action about how that injured worker is going to be managed at the earliest sort of practical or feasible point in time.

CHAIR: We understand that WorkCover initiated four injury management pilots in January 2001. Can you explain what these pilots have been about and what they have involved?

Ms McKENZIE: Fundamentally, because there are a whole range of differing views about how you get the best results from an injury management program, the aim behind the pilots was to test a number of different approaches to injury management with the hope that, at the end of that pilot period, we would be able to make some judgments about what appeared to contribute to the injury management and what did not, so that we could formulate some views out of those experiences on what should or could be rolled out across the scheme in terms of driving some further improvements in injury management in the scheme.

Two of those pilots were contracted to external parties. One was based in the central west of New South Wales and that was run by Central West Injury Management Service and the other was based on an injury, the private hospitals and nursing home injuries, and that was run by Warranjki Care Integration. There were also insurer-based pilots, one run by QBE and one run by EML. At this stage we are still gathering together the data from those pilots. We have contracted an external party to do an evaluation and that is Monash University's School of Econometrics and Business Statistics.

Ms McKENZIE: They are gathering all the data that came out of that pilot with a view to providing us with a report in April that tells us what lessons there are to be learned from it. The regional pilots mainly tested injuries and injury claim management and whether it could do that more efficiently from a local basis rather than from a head office type of model. It was one which got a professional case manager involved from the start of a claim to the end of the claim with backup from claims staff but essentially an additional case management person to manage complex or serious claims. The focus was on involving employers in providing suitable duties and in trying to focus on getting the doctors and the other providers to work together towards better return-to-work outcomes.

The industry pilot—the private hospitals one—we actually terminated the contract for that one in August 2001. It failed to deliver what the contract had originally specified. We are actually in arbitration with the people who conducted that pilot at the moment, so it is probably best if I do not say too much about that at the moment. That was a great disappointment from our point of view but it was a pilot program that did not deliver what was meant to deliver and I think we probably will not learn to many lessons from that one, except lessons about what not to do again.

The QBE pilot employed four health professionals as case managers and trained them in claims management as well. They were mobile; they went out to workplaces and used case conferencing with all the parties to try to resolve difficulties, particularly in cases where, for example, there had been a breakdown of a relationship between an employer and employee and disagreement with a doctor about what should or should not be happening with a particular worker. They were using a case conferencing model to try to resolve those difficulties. It was focused on the southern and south-western parts of New South Wales. EML had claims and injury management staff working in a team structure. They focused on Sydney-based employers. They set up a medical network and a web-based notification process for employers to try to speed up early notification of the injuries. They gave a rebate of $500 excess if the employers reported on time and they also wrote a sorry-you-missed-out letter to the employers who did not get the $500 rebate.

The idea behind that was just to encourage employers to pay attention to those things and give them some sort of reward for doing the right thing and letting them know what they had missed out on if they had done the wrong thing. They also developed a software program which enabled them to conduct a critical review of cases after six weeks to see that they had correctly classified particular claims and that the right steps were being taken judged, I guess, on the seriousness of those claims, and how much effort had to go into the future management of them. As I

say, the data from all those pilots is currently being looked at by Monash University and we are hopeful that when we get the report back we will have some conclusions to draw about which of those things appear to have contributed to improvements, from the point of view of injury management and outcomes for injured workers.

CHAIR: When is that report due?

Ms McKENZIE: In April.

CHAIR: Is it on time?

Ms McKENZIE: I think it is on time at this stage. We have not had any indications to the contrary but obviously once that report is available we will be looking at it closely and engaging in some dialogue about what lessons are to be learned from that process.

The Hon. GREG PEARCE: When you appeared before the Committee on 14 February, I asked you and Mr McInness about WorkCover's targets as they were referred to in the Tillinghast report. You could not tell us what they were at the time but undertook to provide us with those. When will we get those targets?

Mr McINNESS: By the date due. I think the date was the twenty-first.

Ms McKENZIE: We will try to have the answer to those questions to you by the due date, which I understand is the twenty-first.

The Hon. GREG PEARCE: Would it help you if you knew that Mr Finnis this morning told us that the targets were in fact the scenario in his report which delivered an expected high-range saving on the deficit of $1.33 billion. Are you aware of that?

Ms McKENZIE: In general terms, yes.

The Hon. GREG PEARCE: In general terms? You have read his report, have you?

Ms McKENZIE: No.

The Hon. GREG PEARCE: You have not read his report?

Ms McKENZIE: No. I have no idea what is in his report.

The Hon. GREG PEARCE: The report of 14 January?

Ms McKENZIE: Oh, the report of 14 January.

CHAIR: Sorry, yes.

Ms McKENZIE: I thought you were talking about some other report. Sorry.

The Hon. GREG PEARCE: No. We had another report from him this morning.

CHAIR: He did advise us that he has not yet presented that report. This is a report to our Committee but he has not yet given you a copy of it.

Ms McKENZIE: No.

The Hon. GREG PEARCE: You see, the point we were making this morning was that, in relation to savings on the deficit, Tillinghast's view is that the best estimate is the $810 million saving.

Ms McKENZIE: Well, I think, as we said last time, they are always going to be on the conservative side.

The Hon. GREG PEARCE: Of course.

Ms McKENZIE: So it is probably not surprising.

The Hon. GREG PEARCE: But the problem that has arisen is that Tillinghast in its report also included reference to the $1.3 billion scenario and somewhere in the communications the Minister seemed to not understand that that was in fact WorkCover's target, not Tillinghast's target.

Ms McKENZIE: I am not sure that I would agree with some sort of suggestion that there was one set of targets that were our targets and one set of targets that were the Tillinghast targets. In the end, the only thing that we know for sure is that none of those numbers will be correct.

The Hon. GREG PEARCE: That is certainly true.

Ms McKENZIE: So what they did is look at a range of scenarios. Our view was that the more likely outcome was the more optimistic scenario and they, as actuaries are wont to do, took the more pessimistic view of what they thought the outcome is going to be, but that is not to say that somehow we had different targets.

The Hon. GREG PEARCE: Well, it is.

Ms McKENZIE: No, it is not, because this is just about a range of scenarios.

The Hon. GREG PEARCE: I know.

Ms McKENZIE: I think it is actually quite misleading to have so much of a focus on that bottom-line number. It has to be read in the context of that entire report that talks about a very large number of variables that have to be factored into this. We will be able to get more accurate over time, as we did between the November report and the January report, about what the most likely outcomes are. No doubt during the course of this year, as the implementation of all our new initiatives and reform programs come into play, once again experience will develop and that will enable us to give more accurate predictions in the future. But basically they are only predictions and I think it is a bit of a waste of the Committee's time, quite frankly, to be focusing too much on a bottom-line number that is nothing more than a range of scenarios about possible views of the future which will become more accurate as time goes by.

The Hon. GREG PEARCE: What the Committee was focusing on was WorkCover's communications to us. Michele Patterson, the acting general manager, wrote to us on 7 January sending us the actuary's projections which, she said, had the effect that there will be a one-off reduction of the deficit of up to $1.33 billion.

Ms McKENZIE: Of "up to"—very important words.

The Hon. GREG PEARCE: Yes, that is right. But it was presented to us as the opinion of the actuary and the actuary has told us—

Ms McKENZIE: As far as I am aware, that is the opinion of the actuary.

The Hon. GREG PEARCE: Just wait one second. The actuary told us this morning—and he says that it is very clear in his report—that in fact there are two different scenarios: one is targets mainly achieved, which he was at pains to explain to us and assure us was understood by WorkCover, and that is, to use his report this morning, WorkCover's expected estimate; the other is the moderate position, which he says in broad terms is consistent with the actuarial valuation basis and therefore is Tillinghast's actuarial best estimate. The point is that the $1.33 billion is WorkCover's figure, according to the actuary.

Ms McKENZIE: I do not know what evidence Mr Finnis gave this morning. I was only here for about the last five minutes of what he had to say, so I cannot comment on what he had to say, but certainly—

The Hon. GREG PEARCE: He says that that is in a report and that WorkCover understood it—a report of 14 January.

Ms McKENZIE: I think it is just a misleading description to say that somehow there were two completely different bases for calculating this. At the end of the day, this was just a set of scenarios with the best information that was available at the time about what the likely outcomes would be. I do not think there is any inconsistency there. I think that both Mr McInness and I, when we appeared before the Committee the last time, said, yes, we would agree that out of the range of scenarios and possible savings that we would get out of this reform program,

there would be a range of different views. If you asked a different actuary, you would probably get a different number.

You know we did also say that the actuaries, not surprisingly, are always going to err on the side of conservatism and give us less credit until they see development, over time, of how these reforms roll out. Once again, as we said last time, there are a lot of factors at play here. We are trying to take account of cultural change that we are achieving here and a whole range of different reforms, and how some of them will pan out is a bit difficult to predict until we have some experience. In that sort of context, the accuracy of any bottom-line number is not something that should be focused upon.

The Hon. Dr PETER WONG: Mr Chairman, I would like to know at this point what evidence that $1.33 billion is based on—what estimations or what data. Do you have an actuarially supported figure, or is it plucked out of the air?

Ms McKENZIE: That is all spelled out in the actuary's report of January.

The Hon. TONY KELLY: He told us that this morning.

The Hon. GREG PEARCE: You see, what we have, though—I thank you for answering a different question from the question I put to you.

The Hon. TONY KELLY: That is because it was not exactly what Mr Finnis said this morning. They were slightly different words.

Ms McKENZIE: It is a bit awkward for me because I do not know what he said this morning.

CHAIR: The witness cannot comment on a previous witness' evidence, so we need you to just ask a straight question.

The Hon. GREG PEARCE: What I am trying to clarify is that WorkCover's acting general manager wrote to the Committee, to Reverend the Hon. Fred Nile, on 7 January, enclosing a letter from the actuaries and telling us that, based on the actuaries' projections, the scheme reforms would generate a one-off reduction of the deficit up to—I accept "up to"—$1.33 billion. The point I am making to you is that while the actuary's report was used to clothe that claim in some sort of legitimacy, the actuary tells us—and refers to various parts of the report—that that was not his opinion and that the $1.3 billion was merely a target established by WorkCover—a target I asked you about on the last occasion you were here and of which you disclaimed any knowledge, or at least dissembled around about and promised to deliver.

The Hon. TONY KELLY: He told us here this morning that he actually produced that figure.

Ms McKENZIE: That is right. That is not our figure. We did not produce it. The actuaries produced it and my understanding is, as far as he is concerned, these are all possible scenarios. They mean nothing more than that and we will only know in the light of experience—

The Hon. TONY KELLY: When you see *Hansard* you will see that there was an attempt made this morning to try to make it appear as though it was not his figure, but yours. He made that quite clear.

The Hon. GREG PEARCE: No, that was what he said.

The Hon. MICHAEL GALLACHER: No. My recollection of this morning was that he was given a figure.

The Hon. TONY KELLY: He said it was his figure and these were his scenarios.

The Hon. MICHAEL GALLACHER: No. My recollection of what he gave this morning was that he said, "We want to effect $1.3 billion worth of savings. How can we do it?"

The Hon. TONY KELLY: No. You are talking about $50 million.

The Hon. MICHAEL GALLACHER: I want to clarify that.

Ms McKENZIE: Can I just say that I think that is a little bit unfair. I do not know what he said this morning. I cannot comment on something I do not know anything about. Sorry.

The Hon. GREG PEARCE: That is fine. Do you agree with his conclusion in his letter to us of 7 January 2002 that the impact from the scheme reforms under the low savings scenario is not substantial enough in itself to reduce the deficit without the aid of further premium rate increases or reductions in the breakeven cost of the scheme? When he is talking about the low savings scenario he is talking about the Tillinghast best estimate.

The Hon. TONY KELLY: The $810 million or the ongoing savings?

Ms McKENZIE: I think it is always dangerous to take these comments out of context. It really is important to read this in the context of the whole report because it is very easy to give a misleading answer when you are not looking at it in context.

CHAIR: In view of the evidence we had this morning it would be better that the questions were put on notice for WorkCover, referring back to the *Hansard* so that WorkCover can look at what he said in detail. Is WorkCover happy with that?

Ms McKENZIE: If the Committee is happy with that I would much prefer to do it on that basis because otherwise I would be very concerned that I would say something misleading without intending to. It is very difficult when you are getting into these—

The Hon. GREG PEARCE: That is fine.

The Hon. MICHAEL GALLACHER: What has been the average over the last couple of years in the number of common law matters filed in the District Court? What sort of figure are we looking at?

Ms McKENZIE: Once again, I do not have those figures off the top of my head but I think it is in the order of about 1,500. I would have to go away and check that.

CHAIR: We will take that on notice.

The Hon. MICHAEL GALLACHER: That is fine.

The Hon. TONY KELLY: You are talking about the average for a couple of years prior to the last year?

The Hon. MICHAEL GALLACHER: Yes, prior to the reforms.

Ms McKENZIE: I know that it has varied over time and it has increased gradually over the last couple of years but I should go away and check the accuracy of the number.

The Hon. MICHAEL GALLACHER: What figure is WorkCover anticipating to see in terms of the number of matters filed in 2001 prior to the passage of the legislation?

Ms McKENZIE: Just so I am clear, your question is: If we had made no changes to common law—

The Hon. MICHAEL GALLACHER: No, what I am after is—

The Hon. TONY KELLY: The surge.

The Hon. MICHAEL GALLACHER: I do not want to start verballing Mr Finnis but, to give you an idea of where I am coming from, he spoke about the $800 million saving. He said that they factored in a surge in common law claims prior to the passage of legislation of people wanting to avoid the legislation.

Ms McKENZIE: And we certainly did get a surge.

The Hon. MICHAEL GALLACHER: And it is still growing.

Ms McKENZIE: No, the cut-off date was 27 November when the bill came into the Parliament. So we had a two to three week period where there was something like—once again, I would like the opportunity to go away and check the accuracy of this figure—2,000 claims lodged.

The Hon. TONY KELLY: So over a year's worth?

Ms McKENZIE: A whole year's worth of claims.

The Hon. MICHAEL GALLACHER: But are you aware that the District Court has put a process in place to assist what it believes will be up to 5,000 claims put before the District Court.

Ms McKENZIE: It is talking about the entire bank of common law claims that are now in the system. I think it is more like 6,000 claims that are currently in the system. They are claims for injuries that occurred over a number of years. They are at different stages of development. So there are that number of claims still in the system that will be dealt with according to the old rules.

CHAIR: So the surge is not 6,000; that is the total number?

Ms McKENZIE: That is the total number of common law claims.

CHAIR: The surge is something like 2,000. Is that within your estimate? Is that higher or lower than you anticipated? I know that it is impossible to be accurate.

Ms McKENZIE: That is probably something you need to ask Dave about, exactly what number he included. We certainly did anticipate that there would be a surge. Quite what number he factored into his report I am not sure.

The Hon. TONY KELLY: We asked him that on notice.

The Hon. MICHAEL GALLACHER: But the District Court has put in place a risk management process to assist those matters to be processed. It is expecting more than 5,000 to be filed in 2001 alone. Is that as big a surge as you were expecting?

Ms McKENZIE: The 5,000 relates to the whole bank of common law claims in the system.

The Hon. MICHAEL GALLACHER: No, they are saying more than 5,000 claims filed in 2001 alone. That is in addition to the ones that had been in the system before.

Ms McKENZIE: My information is that at the moment we have about 6,000 common law claims all up in the system. So I am not quite sure what the 5,000 number is. If it is some subset of the 6,000, well, I do not think they would all have been lodged in 2001. That would have to include ones that were lodged in previous years. But in terms of the court's management of it, that is probably reasonable enough, because that is about the right volume of claims that they will have to deal with. Whenever they were lodged for whichever accident year, those claims will all have to be managed in the system.

The Hon. MICHAEL GALLACHER: What were your actuarial projections on the impact of those 6,000 or more?

Ms McKENZIE: I do not know the answer to that question. You would have to ask Dave exactly what numbers he put in. But, generally speaking, I would say that did not come as a shock to us. That was the sort of ballpark number that we would have been expecting.

CHAIR: Did David do the estimate himself or did you supply some data on which he bases that decision?

Ms McKENZIE: We would supply them with data, which we would get from the District Court to say this is how many claims were lodged and therefore—

The Hon. MICHAEL GALLACHER: But the data that they have been given, as we have been told this morning, was only the first preliminary wave of data—

Ms McKENZIE: Because that is all we would have had at the time. The point I was trying to make earlier is that these things develop and your capacity to be accurate about it improves over time. All we can do at a frozen point in time is use the best data we have available at that point in time to make these estimates. Sure, it is going to change over time.

The Hon. MICHAEL GALLACHER: The point I am trying to make is that if he has formed his actuarial opinion based on the interim figures that he was given of the number of matters filed before the District Court and the likelihood now is that we are looking at something in the vicinity of 6,000 or more claims before the District Court, as I put to him, could the calculation of the positive impact of the scheme be somewhat premature, to which he answered yes. He has not had the access to the 6,000 claims and he was not in a position to give the Committee any indication as to the total number. Do you agree there is a likelihood that if the number is much greater than he has projected in November of last year we are looking at a substantially different figure from the $800 million to $1.3 billion? Do you agree with me on that?

Ms McKENZIE: No.

The Hon. MICHAEL GALLACHER: Why?

Ms McKENZIE: Because I think it is too simplistic an analysis of what is going on here. It is difficult for me to give a specific answer because I do not know what number exactly Dave used in calculating that figure the last time he did it. He will obviously be able to give a more accurate answer next time he does it. But even that answer will not be 100 per cent accurate because many of those common law claims will not be well developed enough for us to be able to tell what the future will hold for them: whether they all evolve into large payouts, whether some of them disappear, whether some people have whacked in a common law claim on spec—without wishing to get too colloquial about it—and some of those things just fade because they are not really legitimate claims.

We just do not know that yet because none of them are well developed enough. In some cases all we have is initiating proceedings. Over a period that will begin to sort itself out and as it does we will be able to be more and more accurate in predictions about what it will do to the costs of the scheme. But all you can do at a particular point in time is, based on the best available data, give your most accurate estimate. And you know it is going to be wrong, you just do not know how wrong.

The Hon. MICHAEL GALLACHER: Has it not been a traditional practice—please correct me if I am wrong—in calculating the unfunded liability to look at and consider the number of claims that are in the system?

Ms McKENZIE: Yes. Dave would have done that. I do not know exactly what numbers he used. That is a question you would have to ask him. At the time we knew the number of claims in the system. As you know, a lot of work was done on the common law claims. We had a research report done by Pricewaterhousecoopers, which they have had access to and which did have some information about levels of activity and trends, which he would no doubt have factored into his valuation report. In the light of experience as it develops those numbers will change over time.

The Hon. MICHAEL GALLACHER: What I am trying to get a clear understanding of is: If traditionally we had used common law claims as a significant factor in determining the unfunded liability of the scheme—

Ms McKENZIE: It is just one. It is not that single—

The Hon. MICHAEL GALLACHER: We were told that as of December last year the unfunded liability was approximately $3 billion. If we have had a massive spike in the number of claims lodged—and the District Court has produced correspondence to this effect, that a lot of this was pushed through quickly because of the advance notice that was given of the legislation, to avoid the legislation—therefore it is fair, not simplistic as I was told earlier, to expect that we will see a further deterioration in the unfunded liability based on the spike, the increased number of common law claims currently going through the courts.

Ms McKENZIE: We may or we may not. We will not know until we see the further development of those claims—whether or not they are all legitimate, whether some are not, whether they are all going to—

The Hon. MICHAEL GALLACHER: That will take years to work out.

Ms McKENZIE: Absolutely.

The Hon. MICHAEL GALLACHER: You have worked out the unfunded liability in the past based on the claims in the scheme, not their legitimacy—

Ms McKENZIE: But always based on a frozen point in time and the best information we have at that frozen point in time. Because of the long tail nature of these schemes, that is true, over the years the information changes.

The Hon. MICHAEL GALLACHER: I agree with you on that. You are actually backing up what I am saying.

Ms McKENZIE: Okay, then we are in violent agreement.

The Hon. MICHAEL GALLACHER: We are in agreement in the sense that when the unfunded liability has traditionally been calculated it has not been of the legitimacy or otherwise of future claims. They have used a certain actuarial figure.

Ms McKENZIE: There is an estimate, yes. That is how actuaries do their work.

The Hon. MICHAEL GALLACHER: But if we have had a significant increase—and I think you gave evidence that it was about 1,500 claims and if we have been told by the District Court that 5,000 were lodged in 2001 alone—that is a significant spike and therefore it must have an impact on the actuarial calculations of the unfunded liability. It must, irrespective of your reforms.

Ms McKENZIE: How it fits in depends a lot on what numbers Dave included in his January report and in his November report, and I do not know the answer to that question. It also depends on how those claims develop, how dramatic an impact that is. Many of those claims would have been claims in the system already. They would have been included for some purposes in claims estimation. They may not have been identified as potential common law claims, but they still would have had a case estimate attached to them. So to the extent that they are legitimate, serious injury claims they would have already to some extent anyway been factored in, assuming that we did not have a sudden rush in the rate of injuries, which I suspect we did not. You cannot automatically assume that this is going to have a one-off dramatic impact. It might, but it might not.

The Hon. MICHAEL GALLACHER: That is not what the Minister said publicly in January this year when he said it was going to be—

Ms McKENZIE: No, I am not talking about the reforms; I am talking about the impact of the surge of common law claims on the calculation of the deficit.

The Hon. TONY KELLY: I do not think the surge makes any difference, or it should not, unless you have got a lot of shonky claims or shonky solicitors trying to get shonky claims in. If that did not happen, it should not make any difference. If you have 1,500 a year—a pending deficit of three point something billion—and it is a best estimate for 20 years time, that has assumed that you have to get 1,500 a year for the next 10 to 15 years. So the surge is only one or two years dragged forward and then chopped off. So they should already be in the system.

Ms McKENZIE: That is right.

CHAIR: We might clarify some of the matters relating to injury management. No timeline is stated in the legislation, that the injury management plan undertaken by the insurers must commence by a date. On average, how long does it take from the time of injury to when an injury management plan is finalised by an insurer?

Ms McKENZIE: It would only be finalised when the worker actually returns to work or ceases to be involved in the workers compensation system. Once again, it is a dynamic process. So the plan would develop over time. The development of the plan should start as soon as the early contact is made. I am not sure that I can give you an accurate answer about—

CHAIR: Is it possible to give an average?

Ms McKENZIE: As part of the new insurer remuneration package we have set as a benchmark that they should be in place within a month. There is also a process to be gone through about deciding for which cases you

need an injury management plan as well, because it will not be for all the claims that come into the system. For some of the low-level claims, which is the bulk of the claims, it will not be necessary. I cannot give you an accurate number but at the moment there would be some variable performers. Some insurers get this together earlier; some get it together later—and how well they perform. All we can do is give them an incentive to do this more swiftly and better.

CHAIR: You aim at a month, but some are less and some are more?

Ms McKENZIE: Yes. If you asked the insurers they would tell you that some of this is not necessarily in their hands, because it comes back to communication between the parties. You can really only get an injury management plan together if you have the doctor, the worker, the employer and the insurer agreeing on the future for the worker. Sometimes that is not an easy task.

Ms HAWKINS: We have made the benchmark the twentieth working day post notification of injury. That is the new industry benchmark.

CHAIR: A recent report in Western Australia raised concerns about insurers being too closely associated with workers compensation injury management, so there is a conflict of interest. The report states:

> Apart from the issues of return to work and safety, the interests of the worker, employer and insurer tend to diverge as the worker tends to maximise compensation payments and as the insurer employers attempt to minimise, obviously, the expense and payout. In addition, the strategic interests of the worker in attempting to claim compensation payments often conflicts with the same worker's rehabilitation interest.

Is there a conflict in New South Wales along those lines?

Ms McKENZIE: I am not sure that I would paint it as a conflict. If the insurers are thinking sensibly about it, it is not in their interests to minimise payments in that crude way. During the private underwriting debate the insurers were quite keen to focus on injury management, because they took the view that an investment in that would save them money over time. Injured workers hanging around not getting adequate treatment and not returning to work, cost more money. If insurers are smart they should want to invest in those sorts of things, because it leads not only to better outcomes for injured workers but also to cost savings in most cases. When injured workers get the treatment they need they can rejoin the workforce, with a bit of extra effort and energy.

CHAIR: Your current incentive arrangements give the insurer an objective to resolve the matter as quickly as possible?

Ms McKENZIE: That is what we are trying to do.

CHAIR: Is it working?

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

CHAIR: Can you estimate when you will have a clear idea that it is working? Would it be in three months

Ms McKENZIE: Probably more than three months. It is very frustrating for the Committee, and people always want instant or quick results. The harsh reality of these schemes means that it is likely to take longer than that. I think we need at least a year's worth of data to make any preliminary estimate of how it is going. We have to look at a range of factors including the speed at which things are happening. It is not necessarily a question of throwing a lot of money at treatment; sometimes that leads to worse outcomes. We need to be more strategic and we need to have skilled people who understand the right kind of treatment for a particular worker.

The Hon. MICHAEL GALLACHER: Who supplies money for rehabilitation in the overall scheme?

Ms McKENZIE: It comes out of the scheme funds.

The Hon. MICHAEL GALLACHER: How much money is set aside for rehabilitation?

Ms McKENZIE: It does not work in that way. We do not set a particular budget, it is up to the insurers in the process of developing their injury management plans and going through the process to work out who needs a rehabilitation provider. Basically whoever needs one, gets one.

The Hon. MICHAEL GALLACHER: It is not the insurers' money that is being spent, it is the scheme's money and, therefore, if we were to progress this argument of scheme ownership—and we on the Government side believe that currently it is the Government that has ownership of the scheme—it is the Government's money that is being spent on rehabilitation.

Ms McKENZIE: It is not the Government's money; it is the statutory trust's money, which is made up of employers' premiums. Certainly we monitor trends on rates of expenditure and that kind of thing. We run programs to try to move the service providers in the scheme towards more outcomes-based processes so that we can measure the value we are getting out of the provision of some of the services. There is a whole range of services including provision of rehabilitation and return to work.

The Hon. MICHAEL GALLACHER: Do you know how much money you have spent on rehabilitation?

Ms McKENZIE: We have figures on that, but I do not have them with me.

CHAIR: Someone on your staff would monitor that?

Ms McKENZIE: Yes.

CHAIR: It is not a bottomless pit.

Ms McKENZIE: No. The principle is that we try to set the framework for people making sensible decisions about whether this is necessary. At the end of the day it is up to the insurers to decide when that is necessary. There is a legislative framework that covers treatment being provided when reasonably necessary. In the end, that relies on the skills of the claims management and injury management staff to get it right and to not provide it when it is not necessary. They make sure that it is provided to people who genuinely need it because of the nature of their injuries.

The Hon. MICHAEL GALLACHER: Has any consideration or analysis been given by the Government following the reforms that have gone through to an increase or decrease of the money to be claimed for rehabilitation?

Ms McKENZIE: In recent years the trend has been for amounts to go up. Probably down the track we could to a little more work on exactly what value we are getting for that money. As with any other area of service provision in the scheme, we have to keep an eye on it. There have been no dramatic developments such that we are terribly concerned at the moment. However, there has been increased utilisation of rehabilitation and we do not really have good enough data to be able to say at this stage how much value that has added to improve outcomes.

The Hon. MICHAEL GALLACHER: We constantly hear advertisements and the Minister and everyone involved in the process talk about a better outcome for workers are getting back to work early. There has been a move away from commutation. Surely you must be expecting a massive increase if you are seriously focusing on getting them back to work rather than giving them a payout?

Ms McKENZIE: Yes, and in recent years we have seen an increase in the consumption of rehabilitation services. That is perfectly consistent with those aims. Probably in the not too far distant future it would be useful for us—and it is something we have talked about but not quite developed—to look more closely at how much value some of those services are adding. In some of those cases we get into difficult questions about whether they are really helping, whether they are doing things appropriately. As with other areas of service provision some people are really good and some are not so good.

The Hon. MICHAEL GALLACHER: I am surprised to hear you say that it is something that you are going to look at "in the not too far distant future". I would have thought it was one of the most important issues in preparing for the reforms that have gone through already with the expectation of getting workers back to work, and

the message from the Government is that it is now committed to that more than at any other time. That means that you have to put your money where your mouth is in rehabilitation.

Ms McKENZIE: Yes, and that is fine. There is nothing to stop that from happening. The framework is already in place to allow that to happen, and it is happening. But as that rolls out we will need to have a close look at whether it is delivering what it is meant to deliver, and that is extra consumption of services.

The Hon. MICHAEL GALLACHER: What you have just said is reactionary. If you were going to turn around the scheme, as you have, you would have looked at it proactively and been prepared.

Ms McKENZIE: But, in what sense? All we can do is make sure that it is available to people who need it. And that is what we are doing.

Ms HAWKINS: Already work is going on in the range of service providers and the manner in which they deliver services. For example, we have commenced a large training program for physiotherapists, chiropractors and osteopaths, because they are the primary treating practitioners early in the life of a physical injury, which is the majority of injuries. We have developed an outcomes-based training program commissioned through the University of South Australia. It commenced in February and will run throughout the entire year. It will ensure that those practitioners who are treating injured workers within the New South Wales workers compensation system understand outcomes-based treatment, evidence-based practices, the amount of reasonably necessary treatment and their approach to treatment practices.

That program will be adapted for use by the rehabilitation providers. Sometimes that is given the label of rehabilitation, but in truth it is a whole continuum. It starts from the time that the worker presents to a general practitioner and goes right through to the return to work. That type of work is already under way.

The Hon. MICHAEL GALLACHER: Would you report to the Committee on the money that is factored into the scheme for rehabilitation, so we know exactly how much it is?

Ms McKENZIE: Yes.

The Hon. MICHAEL GALLACHER: Would you advise how much is in the Treasury-managed funds as well as the public sector?

Ms McKENZIE: You should address that question to Treasury rather than us. We do not operate that scheme.

Ms HAWKINS: In the main, rehabilitation is a claims cost. There is a separate fund and maybe you are referring to section 53 vocational rehabilitation and re-education. Money is available in that fund for access to the work trial scheme and formal retraining, where necessary for an injured worker.

The Hon. MICHAEL GALLACHER: Do you know how much is available in that fund?

Ms HAWKINS: Yes, traditionally we budget $2 million a year, but that is only one aspect of the work. The payments through rehabilitation providers are made as a claims cost against each individual claim.

CHAIR: The Committee is also inquiring into the psychological injury assessment. That seems to have developed into controversy because of arguments between psychiatrists and psychologists. In response to a question, WorkCover stated:

> Four psychiatrists who develop the PIRS were part of a 12-member working party representing psychiatrists, psychologists and WorkCover.

How many times did that working party meet? Was the scale developed by the working party, or by the four consulting psychiatrists and then presented to the working party? How many of the 12 members registered their concerns about the proposed scale? What were their concerns? How were those concerns addressed?

Ms McKENZIE: The working party formally met three times. As I indicated earlier it became difficult to get that group to work, because there was such a divergence of views. It is important to understand that the PIR scale already existed before that time, so the working party did not develop the scale. The scale was developed for

the motor accidents scheme. The working party was set up to determine whether it was appropriate for the workers compensation scheme and what, if any, adjustments needed to be made to make it appropriate for the workers compensation scheme. Effectively the scale already existed. As I said previously there was a range of diverse views expressed among the members of that working party ranging from a ringing endorsement to a lack of support for the scale.

CHAIR: Did you have a subcommittee of four people?

Ms McKENZIE: No, as far as I am aware there were no subcommittees of that group.

Ms HAWKINS: We were aware of the PIR scale developed for motor accidents. The psychiatrists who developed that were invited to be members of the working party, as was the College of Psychiatry. We discussed its composition and people tried to familiarise themselves with it. Psychologists were then introduced to the working party as a result of the intervention of the Labor Council. We then had a much larger group that tried to come to grips with the PIR scale. The psychologists, who represented the Australian Psychological Society, had developed another scale that they wanted to be considered. That was done and we sent both scales out for a range of opinions to different practitioners to garner analysis for our consideration. Part of the process was at the working party level, and part was from independent experts, externally.

CHAIR: The Committee was told that at one stage the psychiatrists were happy and the psychologists were unhappy, because of a turf battle. Are you aware of any different opinions among the psychiatrists?

The Hon. TONY KELLY: Is that a union demarcation dispute?

CHAIR: That is with the psychologists, but with the psychiatrists we are finding there is a difference of opinion.

Ms McKENZIE: During the course of this we got a whole range of opinions expressed about the merits or otherwise of various aspects of the PIR scale. So, there probably was not just a completely neat split along demarcation lines between psychologists and psychiatrists, that is true.

CHAIR: Could you explain briefly the roles of the professionals who fall into the category of allied health, that is, psychologists, occupational health workers et cetera, in these three areas in, first, assessing the injured worker under PIRS, second, assessing the disputed PIRS assessments and, third, providing assistance in the rehabilitation process?

Ms HAWKINS: First of all, the PIR scale itself will be administered by a psychiatrist. Like the whole of the impairment rating system, that is all to be done by medical specialists. So, psychiatrists clearly is the group that will deal with people with mental and behavioural problems. The other allied health practitioners, such as occupational therapists and psychologists, will do their own individual assessments and that will contribute to the overall level of assessment that is done by the psychiatrist. Now, that is just in relation to permanent impairment. In relation to treatment, rehabilitation, return to work, those allied health practitioners will undertake their normal activities, that is, assessment of need, development of a program to meet those needs and then assistance of treatment or actual practical assistance in relation to occupational therapists in getting the person back to work.

CHAIR: From what you have just said, obviously if psychiatrists do the assessment there is no provision for psychologists to do it?

Ms HAWKINS: Not on the use of the PIRS because the PIRS is the instrument. The same as it would be in the spine chapter of the AMA—the neurosurgeon or orthopaedic surgeon utilises that scale, does the assessments and comes to their decision. But they will take account of the physiotherapists assessments and reports.

CHAIR: We understand that under the Motor Accidents Authority's PIR scale that appropriate allied health professionals, such as psychologists, are allowed to assess an injured person when the original assessment is disputed. Is this the case with the workers compensation psychological impairment assessment system?

Ms HAWKINS: No, it is not the case in motor accidents either. Motor Accident confines the impairment assessment disputes to medical practitioners, but they do have other allied health practitioners to review disputes about the level of treatment being provided or the type of treatment being provided. Whilst Motor Accident has theirs under its medical assessment process, we actually have a similar system whereby we have independent

physiotherapy consultants actually appointed to review cases where there are some concerns about either the level or type of services being provided. That is being extended across other disciplines in the near future.

CHAIR: Could you explain what instructions and/or terms of reference were given to the independent experts and consultants who developed the PIR scale on behalf of WorkCover?

Ms HAWKINS: Basically we were interested in getting a scale for psychological and psychiatric conditions that would be similar to the scale for people with physical injury. So that was the basis of what we were after, which is the work that was done for Motor Accident and resulted in the PIR scale. So, the terms of reference were, broadly, are we going to be able to have an impairment rating scale that will assess people with those conditions in a similar way to people with physical conditions so that you get a whole person impairment rating at the end of the day.

CHAIR: So did you relate it back to the motor accident scheme and gave that as a model you wanted them to develop?

Ms HAWKINS: That actually is the basis for what has become the PIR scale in the WorkCover guides.

CHAIR: But did you direct consultants to develop it—

Ms McKENZIE: We did not really have consultants. By the time this came along there was already a scale in existence that the psychiatrists had developed. What our working group was trying to do was have a look at that scale, say, is it going to fit in with the whole person impairment that we were wanting to introduce across the board and, therefore, is it possible for us to include it as part of the new consistent approach to measuring permanent impairment in the scheme. They did not write a whole new scale.

CHAIR: They started with that?

Ms McKENZIE: Yes.

CHAIR: And you asked them could they adapt that for WorkCover?

Ms McKENZIE: Yes.

CHAIR: Were there any great changes to the way in which it is used by Motor Accidents compared to how WorkCover is going to use it?

Ms HAWKINS: Basically as a result of the feedback we got from those independent experts that we sent it out to we actually clarified a lot of issues and improved the descriptions of the actual categories. And we also improved the way in which the assessor gets to the rating at the end of the day. We think it is an improvement anyway. It certainly is more clear.

CHAIR: The next area is physical injury assessment. Could you explain how the assessment of physical injuries has changed under the new WorkCover medical assessment guidelines?

Ms HAWKINS: I suppose we have gone from a totally unregulated environment into one where we expect there to be systematic and consistent assessments and reporting of the level of permanent impairment. So, it is kind of going from chaos, if you like, into a quite orderly system.

Ms McKENZIE: If you keep that in mind, the reason we wanted to go down this path was to add to the dispute prevention reforms. We are trying to develop a system where you can get a reasonably consistent and straightforward answer. Even if 10 different people look at the same person, they should come up with the same answer because there is now a clear framework that says this is the process that you have to go through, these are the things you have to measure, here is the way you weight these things. Previously we did not have any of that guidance, so we got these vastly differing results just because people applied different sets of judgments to measuring people's levels of impairment. So, really a lot of the reasoning behind it was to try to get something that was more consistent that would lead to a lessening in the number of disputes between different doctors about what the real level of impairment was.

CHAIR: You have chosen the AMA guidelines as the basis for the WorkCover's permanent impairment guidelines?

Ms McKENZIE: Yes.

CHAIR: Was there a simple reason for doing that? Is that part of the answer you had just given because it gives certainty to the measuring process?

Ms McKENZIE: The AMA guides certainly are an accepted worldwide standard. There are different versions of the AMA guides, but they are used in some form or another in most jurisdictions around Australia—Victoria, Queensland, Tasmania, New Zealand. I guess they are just the obvious instrument to pick because there is pretty well worldwide acceptance that it is the best thing available, not perfect possibly.

CHAIR: Will these changes have any big impact on the number of injured workers able to access common law and the amount of compensation through common law and savings or costs of the scheme?

Ms McKENZIE: Well, the guides by themselves are not aiming to do that. The guides by themselves, all they do is give you a more consistent and accurate way of determining people's levels of permanent impairment. I guess following on from what I said before, what we are hoping that will mean is that there are less disputes and, therefore, less people going to court because you will have a clear answer up front about what your level of impairment is and, therefore, what amount of money you are entitled to under the legislation. As you would be aware, the way that works is you get your percentage of impairment, but it is actually the formula that was included in the legislation that was passed last session that converts that into a monetary entitlement, if you like, to lump sum compensation. It is not the guides themselves that do that.

Ms HAWKINS: If I could just add to that, the guides do allow a larger range of conditions to actually be assessed for permanent impairment and we really do not know the impact of that because it is not something we have any history with.

CHAIR: In evidence presented to this Committee last year by Mr Daniel Tess from Pricewaterhousecoopers he told the Committee that on average $A9,000 is spent on medical payments to each injured worker in the United States of America and that figure in New South Wales is only $A4,000. Mr Tess said also that they could not find any distortion between the two jurisdictions, which may give rise to this figure. He indicated that the difference spent may be impacting on early return to work rates in New South Wales. Has WorkCover analysed what would happen if the funds available to injured workers for medical treatment were increased thereby allowing access to improve treatments?

Ms McKENZIE: I guess it is actually a bit puzzling to know what the real explanation is for the difference in the amount. It could be all sorts of things and not having studied this closely I do not quite know what that is attributable to.

The Hon. TONY KELLY: The Australian dollar?

Ms McKENZIE: It could be.

CHAIR: We have converted it to Australian dollars. The only possibility in the back of my mind was that medical costs in America are a lot higher for a similar operation here. So, it could be double the same medical costs.

Ms McKENZIE: I guess in terms of what happens in our system, the only constraint in your access to treatment are the reasonably necessary provisions that are included in the legislation. So it is not as though we say you cannot have this treatment because it costs too much money. We tried to move towards a more outcomes-based approach to this so you get whatever treatment you need to recover as quickly as possible. It is not as though we say, "You cannot have an operation because it's too expensive." That is just not part of the way we—

CHAIR: You do not have a cut-off level?

Ms McKENZIE: No. I guess that is the short answer. We would not want to say, "We're going to have a target for how much money we want to spend." That would be stupid because that may well drive you in the direction of spending money on something useless that is not actually going to add to the improved health outcomes. What we have tried to do is say the reasonably necessary test is supposed to be pushing down the path of

saying, "Whatever you need to improve your health outcomes and to recover more quickly, that is what you get." We are not going to foist on you a whole lot of services just for the sake of spending money if they are not going to help you recover.

CHAIR: You mentioned earlier that you are looking forward to the insurer remuneration arrangements giving greater efficiency. Have these new arrangements in their entirety been finalised and signed off by the insurers? In what ways do these arrangements hope to improve claims management and injury management by the insurers?

Ms McKENZIE: They have been agreed to by the board and the package did commence on 1 July. But I should say that is not the end of the work because once again this is an evolving process. Included in that package are some longer-term measures, which we are still doing work on, but they are things that will not kick in for a while yet. We are still going through the process of picking auditors to audit these arrangements. So, to that extent I guess I would say the job is not finished, but certainly the package has been signed off on by the insurers and by the board and we are rolling it out and implementing it as we speak. I am sorry, I have forgotten the second part of your question?

CHAIR: In what way is do these arrangements hope to improve claims management and injury management by the insurers?

Ms McKENZIE: I guess once again, effectively what we have done is put in a much more sophisticated set of performance measures and we have linked remuneration much more closely to those performance measures. Whereas before the performance fee component of payments that went to insurers was only 7 per cent of what they got paid, under the new package it is potentially almost 50 per cent of what they get paid. And because of the way it is structured, they will not be able to cherry-pick; they will have to lift their performance across the board to be able to be eligible for the increased level of payments.

So I guess that we are hoping by doing that they will not be able to just sit on their hands and rest on their laurels; they will have to be constantly improving their performance if they want to get access to the larger amount of moneys that are available under the new package. But it really is very much based on moving away from such a dependence on base fees where they just get paid. You have to have some element of that, obviously, because they have to be able to get a certain amount of fee to pay their staff and that kind of thing, but moving away from that kind of approach to an approach that is much more dependent on the performance.

CHAIR: Leading into another area, the Australasian Faculty of Occupational Medicine and the Royal Australasian College of Physicians have made the contention that people who have injuries for which they can claim as distinct from those who cannot claim compensation do not recover as quickly as those who cannot claim. Are you aware of those studies?

Ms McKENZIE: Yes.
CHAIR: Does WorkCover have concerns about this?

Ms McKENZIE: Yes. Certainly we are aware of those studies. We jointly funded those studies with the Motor Accidents Authority and obviously are very concerned to hear an outcome like that, that somebody who is in the compensation scheme is getting poorer health outcomes. Obviously that is the complete opposite of what you would want to have happen. However, the more difficult aspect is trying to understand more clearly why that is so and what it is that drives the poorer health outcomes. That research work, I think, attempted to start to unravel some of those reasons, and certainly we are talking to the college about doing some further work in the future to try to unravel a little more what the contributing factors are to those outcomes, and trying to look at how we can improve those health outcomes.

Until we get to the point of being a little more clear about what those contributing factors are —some of them we will not be able to influence. Some of them that they talked about in that report were things like cultural factors, which from a scheme's point of view is very difficult to be able to influence. But some of them are things about the speed that people are dealt with and cared for, and certainly those are the sorts of areas that we would want to be increasing our focus on and trying to improve. As I have said, we are hoping that we will be able to do some further work on that with the college.

The Hon. Dr PETER WONG: At the moment there seems to be an incentive for people not to get better.

Ms McKENZIE: I guess that is partly what that report is concluding: that built into the system is some incentives for people not to recover. Obviously, you have to try to design those out to the extent you can.

CHAIR: We know that there is a comparison between normal insurers and self-insurers. It seems that often self-insurers are effective or efficient. Have you done any comparisons on the early management of claims in those two areas? If so, what have you uncovered?

Ms McKENZIE: I think we do not have a lot of hard data in this area, so it makes it a little difficult for us to give a clear or complete answer.

CHAIR: Do you have anyone looking at that?

Ms McKENZIE: I do not think so, at the moment. The problem is that some of what we understand about why some of the self-insurers perform better than the managed scheme are things that are very hard to roll out across the managed scheme because it is just the nature of self-insurance. In a self-insurance arrangement there is effectively one less party because the employer is also the insurer and therefore they tend to be much closer to their work force and, compared to the managed fund's scheme, are more able to manage more actively in that environment.

I do not think we should get too carried away about that either. To the extent that we have data because of the way we regulate self-insurance, there is some variability in their performance too —they are not all marvellous, some are a lot better than others, and some of the tools they use to manage would not necessarily be things that we could roll out across the whole scheme anyway. As I say, in the end some of it just comes down to the nature of self-insurance and the fact that it is a smaller arrangement where there is no separate insurer; there is just the employer and employee managing these arrangements.

Ms KIANG: And you also find that the injury and claims management is also meshed up with the HR management practices and there is a close relationship simply because they are the employer. A lot of self-insurers are large organisations, and they have a better ability to provide alternative duties. So there are quite significant differences between self-insurers and employers under the scheme.

The Hon. MICHAEL GALLACHER: Is it not the case, though, that by removing the ability for the commutations to be used by self-insurers, their options in terms of their management of the claims are limited?

Ms McKENZIE: Yes, that is true. And I think that was a deliberate policy decision on the part of the Government, because the research we did last year indicated that commutations were being used in quite inappropriate circumstances and people were being paid lump sums in circumstances where they were not really entitled to them. In the end, a view was formed that you should not have a distinction between self-insurance and the managed funds scheme about the circumstances in which they should be available.

Commutations are meant to be a wrap-up of your future entitlement to weekly benefits. So if you have no entitlement to weekly benefits, you should not be getting a commutation. The rules that we have now put in place say that to be eligible for a commutation you have to have exhausted all of your injuries management possibilities and your return to work possibilities. I think that is quite important. Otherwise, I think the temptation is to give somebody a bucket of money and get rid of them, and I do not think we would be saying that is a good outcome from the social policy objectives of the scheme's point of view.

The Hon. MICHAEL GALLACHER: Even if it did meet the interests of the injured worker and the employer?

Ms McKENZIE: I think at some point in this conversation you get into some fairly subjective judgments about what is in people's interests and what is not. But there is certainly quite a lot of research to support the fact, including the material that the College of Physicians has been working on, that people might, in the short term, think, "$40,000 in a commutation is a lot of money and I'll take it, and I don't care if I've got no job after that." But in two years or three years time, when the money has disappeared and they are unemployable, they might take quite a different view about whether that was the right choice for them to make. I think there are very difficult questions of judgments there that you have to be very careful about: people being attracted by the short-term attractiveness of a lump sum when, in the longer term, that might be absolutely to their detriment in terms of their continuing to contribute to the work force and the general community.

The Hon. MICHAEL GALLACHER: But equally, we would all be aware of cases in which it would be the complete opposite, where the lump sum commutation has given an injured worker an opportunity to perhaps set up their own small business and kick on from there.

Ms McKENZIE: Under the current rules, those sorts of arrangements would still be able to be entered into. And there are still occasions when you would say a commutation is the appropriate outcome. But, in terms of what was happening until the changes at the end of last year, there was a lot of evidence to suggest that it was not being used just in those circumstances, it was used in a quite inappropriate way and much more often than should have been the case.

The Hon. TONY KELLY: What sort of controls do you have for self-insurers? We have spoken about the $3 billion actuarial figure, but what about the private companies? What guarantees do workers have that they are going to be around in 20 years, if they have an injury and they just happen to be working for Ansett, for example?

Ms McKENZIE: I think that is a genuine issue with self-insurers: that this is long-tail business and companies come and go and there is a big challenge in terms of trying to make sure that financial viability is maintained, that the money is there for the injured workers going forward. In terms of monitoring them, we review all the self-insurer's financial viability annually, and we review their injury management programs, relying on self-audit results of injury and claims management. We also review their prevention performance. We have now developed an audit tool that we use to measure whether they have systematic prevention in place in their workplace to prevent the injuries from happening in the first place. We do confirmation audits periodically, and we would target those according to who seems to be travelling well and who does not. We review their reinsurance arrangements annually, and we also review their annual actuarial reports on their outstanding claims liability and make sure that they are adjusting the security that we have in place over time, to make sure that that is adequate to cover the cost of claims.

CHAIR: If the company goes broke, before it goes broke does it set aside funds to cover injured workers?
Ms McKENZIE: Yes.

CHAIR: Do you ensure that there are funds to cover those injured workers?

Ms KIANG: Yes. We try to adopt an upfront approach, which is prevention. That is why we monitor the financial viability. But, obviously, we do recognise that in today's commercial world things are uncertain, and companies acquire, purchase and change ownership. So we do take security. Currently, the security is based on an annual actuarial assessment of the outstanding claims liability. So we take that, we add a 30 per cent buffer, and that is the amount of the guarantee, which is updated annually. The security can take two forms: it is either in the form of a bank guarantee or deposits. Most self-insurers would take the option of a bank guarantee. We take a non-standard bank guarantee that we have specially drafted, which is an irrevocable bank guarantee payable on demand to WorkCover.

Ms McKENZIE: So that the money is always there to pay the claims.

Ms KIANG: But we would see the use of a bank guarantee as a safety net last resort. Our best assurance is the financial viability of the organisation, as you say, to be around for the next 10 or 20 years.

CHAIR: Self-insurers do not take out another insurance for that kind of thing?

Ms KIANG: They have reinsurance for disaster cover. Currently we allow them a retention of normally around $0.5 million or $1 million, which is acceptable, depending on the size of the organisation and its financial position. But they have reinsurance cover for anything on top of that, so that in the event of a disaster they do not get wiped out financially and they are still able to survive that.

CHAIR: When a large company such as that goes into liquidation, do you make any investigation as to the impact on injured workers and so on?

Ms KIANG: Ansett is not a self-insurer, so it is just covered under the WorkCover scheme. In terms of workers compensation claims, they are not really affected by the collapse of Ansett.

The Hon. MICHAEL GALLACHER: Mr Russell, are changes being considered to the occupational health and safety responsibilities that you carry so far as the building sector is concerned with the unions and their ability to have a far greater say in occupational health and safety matters?

Mr RUSSELL: Each of the sectors, whether it be the building sector, the manufacturing sector or other industry groups, have a part to play in contributing to occupational health and safety. In that sense, there is engagement with the stakeholders to identify key issues of concern in the industry and work towards that. If you are referring to a greater involvement by the trade unions in terms of powers that they may have on site to initiate action with respect to occupational health and safety, the answer to that is no, there is no intention to move down that path. In fact, this was an issue that was discussed at the former Occupational Health and Safety Council in the drafting of the occupational health and safety regulation with respect to the provision of powers to trade unions to issue improvement notices on site. That was an approach that was not accepted by the council and is not being considered at the present time.

CHAIR: How have you informed the employers about the new occupational health and safety regulations?

Mr RUSSELL: That has been a multifaceted campaign basically. There have been three key levels to do that. The first level we have been looking at is to provide appropriate guidance material and support documents so that employers are aware of the issues that arise from the regulation and how to deal with those issues. In fact, the Occupational Health and Safety Council, in working on the regulation, was strongly of the view that the regulation needed to be supported by a whole range of guidance material. WorkCover has met that requirement, and in releasing the regulation in September of last year produced 16 codes of practice and 14 guidance products specifically targeting key areas within the regulation, to provide employers with greater assistance and greater understanding of what those regulatory requirements were.

In addition, we rolled out an information and awareness program. That involved a series of 30 seminars throughout the State. Through those 30 seminars we attracted a significant number of people from both employers and workplaces to provide them with greater explanation about the regulations and how to apply the provisions of the regulations in their workplace. The other element of support that we are providing is a specific program called a WorkCover Assist program, which is a special funding program providing financial assistance to employer associations and employee associations to work through the legislative reforms that have been introduced. It provides direct assistance with respect to understanding the principles of risk management and adopting those principles in the workplace.

The Hon. MICHAEL GALLACHER: Ms McKenzie, you would recall that on 14 February you gave a commitment to provide to the Committee all correspondence between Rod McInness and Tillinghast. As yet the Committee, to the best of my knowledge, has not receive that correspondence. Do you know where that is?

Ms McKENZIE: I think our due date is not up.

The Hon. MICHAEL GALLACHER: When is that?

Ms McKENZIE: The twenty-first.

The Hon. MICHAEL GALLACHER: Of what month?

Ms McKENZIE: Of this month, so no doubt we are still in the process of putting that together.

CHAIR: Has the regulation been fully implemented now or is there anything outstanding?

Mr RUSSELL: There are two transitional phases within the regulation and that was purpose-built to ensure that people had an opportunity to adjust to the new provisions. The first transitional phase lasted 12 months from the commencement of the regulation on 1 September last year until September this year. That was an exemption from all new requirements in the regulation, so businesses had an opportunity to understand what those issues were, to come to terms with them and address them. The second transitional phase of the regulation is a further 12 months beyond September 2002 for small businesses in order to be able to adopt the risk management provisions of the regulation in their workplace. There are two transitional arrangements that are currently in play, but apart from that, all the provisions of the regulation have been implemented.

The Hon. MICHAEL GALLACHER: Do the witnesses agree to accept questions on notice once we have had an opportunity to look at the transcript?

Ms McKENZIE: Yes.

The Hon. MICHAEL GALLACHER: There are a few outstanding questions also.

Ms McKENZIE: Yes. We will endeavour to have those all in by the due date.

(The witnesses withdrew)

(Luncheon adjournment)

ROBERT JAMES THOMSON, Manager, Workers Compensation, Insurance Council of Australia, Level 3, 56 Pitt Street, Sydney, sworn and examined:

CHAIR: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

Mr THOMSON: Yes, I did.

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

Mr THOMSON: Yes, I am.

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 seen or heard only by the Committee, the Committee would be willing to accede your request and go into camera. Do you wish to make an opening statement?

Mr THOMSON: Yes. I am the Manager, Workers Compensation for the Insurance Council of Australia [ICA] and I am a member of the Workers Compensation and Workplace Occupational Health and Safety Council New South Wales, representing insurers on that council. It is important to highlight that ICA is a representative body not a regulatory body. It represents the eight managed fund insurers operating in the New South Wales compensation market and does not manage or have any control over the insurers or their operations. The insurers are the agents of WorkCover and are responsible for managing policies, claims, premium collection and the investment of the scheme's funds, and have been responsible for those activities since 1987 when the scheme changed from private underwriting to its current state.

The ICA's role is to represent the industry in the discussions and negotiations with WorkCover and any matters that may involve them, and we obviously also have discussions with various stakeholders and key providers within the scheme. The views that I will attempt to give you today representing the ICA will be regarded as the views of the majority of the industry but may not necessarily be the specific views of individual insurers who are members of the ICA. By way of background, it is important to note that within the New South Wales environment there are approximately 1,700 staff employed in dealing with workers compensation matters of which about 80 per cent are involved in claims or injury management, so there is a significant work force employed by the insurers in dealing with this class of business.

I think it is fair to say that the mix of staff employed over the last two to three years has certainly changed in the claims area. There has been a significant increase in health professionals employed by the insurers to assist in injury management resulting from legislation that came in in 1998 and the changes subsequently, so there has been a change in the type of people employed in the industry to manage the scheme.

CHAIR: Is that New South Wales?

Mr THOMSON: Yes. My comments are basically restricted to New South Wales. The industry believes in a number of key principles which apply in a managed fund environment. It is worth highlighting those. We believe there needs to be a competitive environment as this is a key driver in delivering improved outcomes. There must be sufficient incentives to actually encourage innovation, and that is sufficient remuneration on the table and sufficient potential to earn that remuneration. There is often a temptation to centralise activities and that can often stifle innovation and the way of dealing with issues. The appropriate incentives need to ensure that insurers are performance oriented in delivering the services and outcomes that the scheme is trying to achieve. There must be a clear method of actually measuring those outcomes.

From questions that were delivered a couple of days ago it is clear to me that a focus of the Committee relates to remuneration. With your indulgence it would be worthwhile if I can give a four or five minute presentation to the Committee on the broad principles of the remuneration package that has been agreed in principle with the insurers and WorkCover. I would like to table these documents to assist in that.

Documents tabled.

It is important to have an understanding of this to try to put things in perspective of how things interact within the scheme.

CHAIR: Is this the total package of remuneration arrangements?

Mr THOMSON: No. It is an extract of two pages out of the 150 or 160 page Pricewaterhousecoopers report but I think they are two critical pages, which I will talk about to give you a broad overview of how it will operate.

CHAIR: When did it take effect?

Mr THOMSON: On 1 July last year. The first page is what we call the balance scorecard. This is a concept that PWC has put forward in their independent recommendations, which tries to set out what the key outcomes for the scheme are in the first left column. With premiums there should be fair and correct assessment and timely collection of cash into the scheme and it then states that injury management should be timely and effective. It refers to claims management dealing with liability, quantum and the like, and service levels.

The base fee column is blank. It has three components to it because the insurers are paid their base fee depending on market share, which is an amalgamation of how much premium they actually manage, the number of policies and the number of closed claims from the previous year and that is how they determine the split up of the base fee. The key issue that comes out of the arrangements that are before us—and it is probably worth digressing to say, and Kate McKenzie alluded to it this morning, that up to the mid 90s the scheme was very process driven and the insurers were not remunerated a lot on outcomes. Since 1997 there has been a change towards being outcomes oriented and this package is the next developmental phase of that and moves a considerable way towards that.

When you see the service capability measures, the ones not highlighted are existing measures that are regarded more as process or licensing type measures to ensure that the basic functions of the insurers are operating correctly and in accordance with what you would expect. Pricewaterhouse did recommend that three new measures be added to look at dispute market share, complaints handling procedures and market share, and also surveys of stakeholders' views. Service capability is then used to come up with a percentage score, and I will explain that a little more in a moment, but that is the key driver to how much money the insurers can earn. You actually have to perform across those measures and if you do not perform up to an acceptable standard, you get less than 100 per cent of base fee and no performance fee, or if you perform well you get 100 per cent of base fee and a considerable amount of performance fee. It is trying to ensure that basic business performance is delivered before you actually start getting a lot of your money.

The second column from the right goes through the short-term measures, which are identified as key components to ensure that the scheme collects the correct premium and correct classifications for individual employers and cash collected for the scheme is maximised and the injury management plans and the injury management activities are done appropriately. With the two highlighted measures down the bottom, "recoveries" is a new measure to ensure there is some focus now on recovering from third parties where workers have been injured and someone else is responsible. Dispute prevention involves some modifications to one of the existing measures.

The long-term column talks about the benefit duration, which is the return to work type initiatives, injury management to assess the insurer's ability to actually get people back to work. You then have the tail management fee, which is another component that assesses the insurer's ability to try to impact and reduce the tail of the scheme and the new measure that has been proposed is a loss ratio measure, which assesses the insurer on an accident-year basis for managing that portfolio, and that goes for five years.

That is a broad overview. The table on the next page will put this into perspective. Depending on how you are assessed in the third column on the previous page—the service capabilities—you come up with a score and depending on the score, to take an example of 70 per cent, it means you are in tier B, which means you are entitled to 100 per cent of base fee but in relation to the performance fees, no matter how well you perform in those performance measures, you will only get paid 33 per cent of the dollars available in those measures. Because you have not performed appropriately across some of the base line measures, that has a financial impact on what money you can or cannot earn.

Basically, if you are going to have the ability to receive 100 per cent of base fee and 100 per cent of whatever performance dollars you can achieve, you have to get a 90 per cent SCI or above. It is trying to focus on the overall performance. If you look down tier D, you can see that if an insurer is performing at below those levels, you cannot earn any performance fees—which Kate McKenzie pointed out this morning is nearly 50 per cent of the dollars on

the table—and also the level of base fee that you earn is significantly eroded as well and basically you would not survive financially in the marketplace.

The next page seeks to give an indication of where the dollars have been allocated across the short-term measures. Within that table you can see that the correct classification is 25 per cent of the performance dollars available in that area and 10 per cent for premium collection, so you have actually 35 per cent to the premium underwriting type scenario. The remaining 65 per cent relates to injury management, soundly based decisions, return to work and recoveries. On top of that you also have percentage payments potentially if you make savings on the tail and for the loss ratio measures.

I hope that has made some degree of sense. It is not the easiest issue and I guess that is one of the problems. It is a complex area with a lot of detailed work behind it, but hopefully that gives you some idea of the concept whereby we have tried to move away from the process. There is process in there but it is a reduced amount of process and a move more towards an outcomes-based scenario to try to ensure that the insurers are focused on outcomes for the scheme.

CHAIR: It seems that some of those short-term performance measures are objective, but the one that has caught my eye is the reference to "soundly based decisions". Who makes that subjective decision?

Mr THOMSON: Actually, part of the process is that auditors have to check a random sample of files from the insurer's portfolio to determine whether the decisions made in relation to that—whether weekly benefits were accepted or declined—were soundly based, usually on the declined basis, and whether there was sufficient evidence on the file to support that.

CHAIR: It is an efficiency measure?

Mr THOMSON: It is efficiency but it also ensures that the decision process has been correct. If insurers actually deny something, they should have an appropriate peer review process in place to ensure that the peer review process has worked so that the decision-making process is valid—just checking that.

CHAIR: Thank you very much for that document. It is a big help. When you said that they would go out of business—

Mr THOMSON: Potentially.

CHAIR: —at what point are they still making a profit on the service capability index [SCI] table?

Mr THOMSON: It is probably impossible for me to answer that question because it depends on the individual costing structures of each of the individual insurers. But, broadly speaking, if you are at an SCR of 60 per cent or below, you are going to be struggling. You would have to be. You would be subsidising the business from elsewhere and you would not be making sufficient money to cover your costs. As soon as you start dropping below 100 per cent of base fee and are basically getting minimal potential return in performance risks, you are not going to survive. It has been structured that way.

CHAIR: So your base fee is equal to your costs?

Mr THOMSON: No, it is not. I think that base fees are intended to equate to about 70 per cent or 80 per cent of base costs. They do not cover 100 per cent of base costs. I think it is around those areas.

The Hon. TONY KELLY: So they would not have to sack anyone under this scheme. They would just fall off the tree financially.

Mr THOMSON: Potentially, yes. It becomes a financial incentive whereby the package and your performance will drive you out of business.

CHAIR: I move:

> That the document be tabled.

Motion agreed to.

CHAIR: I just want to make it quite clear that some remuneration arrangements have not been finalised. In your opinion, is it fair to say that?

Mr THOMSON: I guess it is fair to say that the principles and concepts have been signed off by the insurers, and the WorkCover board, as Kate McKenzie said this morning, signed off last year as well. The detailed wordings related to measures broadly between one and 12 have not been concluded. Some have, but the majority of the finalisation of those wordings still have not been concluded. In relation to the longer-term measures—being the return to work, the tail and the loss ratio—those measures are not completed. Tail and return to work probably will not be completed until around June or thereafter. The loss ratio is probably 12 to 18 months away.

CHAIR: When you say "agreement", who is the person making the agreement on your side. Is that you?

Mr THOMSON: No, it is the individual state managers for each of the insurers.

CHAIR: You cannot do it on their behalf? Each one does it on its own?

Mr THOMSON: There is a group meeting between WorkCover and the eight insurers in which I participate but the decisions sits with the eight managers in that room.

CHAIR: Do you have any concerns about the format of these remuneration arrangements now?

Mr THOMSON: I guess there are some concerns. I think the industry is concerned to some extent with the length of time it has taken to finalise some of the measures. We are eight to nine months into the year in which we are being assessed and some of the detail is not necessarily finalised. What we are trying to do with WorkCover is ensure that anything that is coming in is not necessarily retrospective so that you cannot be judged on something where you have had no ability to influence it. We certainly tried to ensure that that is the case. I guess the other issue that comes out of it is that there is a concern about certainly those long-term measures—return to work, tail and loss ratios. The time taken or required to develop those makes managing the business more difficult.

CHAIR: Who is to blame for that?

Mr THOMSON: I do not think anyone is per se to blame.

CHAIR: Is it WorkCover that is delaying it, or is the delay from your end?

Mr THOMSON: I think it is a combination. I do not think I would say it is one or the other, and there is also the fact that those three measures are also based on actuarial assessments to a large extent. You are dealing with general linear models [GLMs] and those sorts of processes to try to take out some of the volatilities that exists which are beyond the insurers' control so that you can measure what the insurers are actually managing. It is a complex issue and I guess that the issue that the insurers see as one of key factors of that is that it is complex. The degree of complexity and transparency of some of these measures is very difficult to translate, that is passing on actually what is intended to the operators at the coalface so that they understand some of the measures that we are working on. There are those issues sitting inside of it.

CHAIR: It sounds as if there are probably staff involved now just in the process of doing all these things as distinct from people who are handling claims. With the introduction of the goods and services tax [GST] and all the overheads, is there some sort of overhead situation in this administration?

Mr THOMSON: I think that, certainly in the development stage, there is an issue of process, of getting the measures to a point of actually saying that they run. I guess the process issue is the audit from the insurer's side and putting all the processes in place so that they can actually ensure that they are running their businesses in accordance with what these measures are trying to achieve. There is that factor, which is the process that is overlaying it. But in some ways I think the intent of WorkCover and insurers in coming up with the wording is to ensure that it is not running that far away from guidelines and legislation; to ensure that they actually run parallel so that it is actually in a way to be used as part of a training tool as well. I would not actually align it with a GST type of concept.

CHAIR: From what you have said, you believe that this incentive process will improve claims management and injury management by insurers?

Mr THOMSON: I think the new remuneration package certainly has that potential. I think it is a significant improvement on the past. I think that the way it has been structured now aligns their remuneration package more with the outcomes that the scheme is trying to achieve. I do not think that has necessarily been the case in the past so I actually see that some insurers are happier with some aspects than are some others. But overall I think a broad consensus would be that, yes, it does align the scheme outcomes with remuneration so that if you perform and deliver on scheme outcomes then you are likely to achieve a reasonable return for the amount of investment that you have had to put into the scheme.

CHAIR: Is there any way of knowing how the eight insurance companies are coping with these measures? Is that something that you cannot tell yet?

Mr THOMSON: I can make a generalised observation, I guess. First of all I think that the individual companies would have an idea themselves because they would have processes put in place to try to measure and monitor their performance as they are going forward. For the scheme itself or WorkCover, they would get anecdotal feedback and the like so they would have an idea. For the actual remuneration measures themselves, how well they will go will depend. If there has been a changed process in the way it will operate, some of the measures will be self-audited by the insurers but for the first time WorkCover will not be doing the spot audits.

The WorkCover board stipulated when it passed this package that those audits had to be carried out by an external firm of consultants. How that process will actually go, we are not sure. The other part that has driven this is that the board put one other requirement on the insurers—that they had to submit business plans to WorkCover each quarter which would outline how the insurers would invest more because of the extra money put on the table and to give the board some comfort that it would get delivery for the money that it was spending.

CHAIR: I will follow up some of the earlier remarks you made about being in trouble if you get below 60 per cent. You cannot say out of the eight insurers whether any one is in trouble at this stage? Is it too early?

Mr THOMSON: That is correct. I think it is. The information that WorkCover would have is usually 12 to 18 months late because of the length of time it takes to do the audit and get the results of those audits. You are always working 12 to 18 months later on data that is coming through. The aim at the moment is to ensure that all these measures are completed within six months maximum—some of the SCI-type measures—of the completion of the remuneration period.

CHAIR: Do you receive any informational guidelines from WorkCover on expenditure on rehabilitation per person? Is there any budget or any guidance given?

Mr THOMSON: No. From what I understand—I do not see all the guidelines that come out of WorkCover although I see a number of them—to the best of my knowledge I have not seen anything to that extent.

CHAIR: Remuneration has obviously been one of the main factors in trying to get an efficient system working. Is there any other proposal from your insurers' point of view or anything else that should be done that would improve injury management and claims management?

Mr THOMSON: I think there is one, or potentially a couple. I think one of the issues that the scheme as a whole faces—not just New South Wales although it certainly is involved in it—is the complexities of the scheme. You have currently got the situation where you have got the 1987 Act, the 1998 Act, the 2000 and 2001 Acts and the 2001 further amendment Act, and you have got the guidelines in relation to provisional liability in relation to permanent impairment, claims estimation manuals, legal costs regulations and a host of other regulations. The picture I am trying to draw is not just from our side but also from the injured workers' point of view and trying to know how to work within the scheme. The same applies to employers in particular.

You have actually got a heap of regulations and legislation approximately 20 centimetres high to try to work within and they are all intertwined with each other. You might read one piece here but you have to make sure that it does not counteract something else along the line. From where the industry sits, the complexities of dealing with legislation from the point of view of all the parties involved in the scheme is a serious issue and I know there has been talk about whether we can get a consolidated Act. There are potential dangers with that as well but certainly for operating within the scheme, we see that as a significant issue.

CHAIR: Do you support a consolidated Act if that could be done?

Mr THOMSON: I think it is something that would improve the position and it would get rid of some of the complexity. The concept is good because, from the injured workers' point of view and everyone else within the scheme, that is something that needs to be considered. At the moment it is a very difficult issue. The other point that leads on from that and which we see as an issue is that because of these complexities, it actually makes it quite difficult to attract the right type of people within the industry, that is, people who are prepared to come into the industry and stay within the industry. I think it is difficult these days because with the dollars that can be offered by insurers, people can get the same money and do jobs that are a lot less stressful.

I refer you to the last page in the document I tabled. What I have done there is try to put forward a picture of the sort of interactions that a case manager dealing with a claim has to consider. I am not saying that I have covered everything within that but I think that gives a picture of the complexities of the issues dealt with by a case manager, not just in relation to one claim but potentially hundreds of claims, and requirements placed upon those case managers. It is fairly onerous.

CHAIR: They would need to be fairly highly trained and therefore they should get a higher remuneration themselves.

Mr THOMSON: Potentially, but it is also the stress that some of them come under, the issues and the like, related to whether they want to remain in this sort of business. But certainly attracting, training and retraining staff is something that we see as certainly being a significant issue.

The Hon. GREG PEARCE: What is the council's view on the deficit?

Mr THOMSON: I think it would be fair to say that we see the deficit as certainly a problem. It is a major issue for the scheme and it needs to be addressed. How you actually go about addressing that I think is a question we really have not sought to address because in some respects we probably see ourselves at this point in time more as a key service provider rather than as a key stakeholder and, as that, we would probably limit our response to that extent.

The Hon. GREG PEARCE: Do individual insurance companies have targets from WorkCover as to how the scheme should operate and financial results?

Mr THOMSON: It links back to remuneration, if I can take you back to that. I think that the key areas that will influence the financial outcomes of the scheme—I can link that to the aspect of the tail as that is where I think you are heading—are the tail measures or the tail management fee whereby the insurers have an incentive measure. Depending on what their individual actuarial assessment is at the beginning of a period, they compare that after 12 months to the end of that period. If they have made a saving during that time, then they get eight per cent of those savings. So there is not per se a specific target but there is the incentive in place for the insurers to actually manage down those claims and invest in resources to ensure that they get a return.

The Hon. GREG PEARCE: And that is all done based on the actuary's figures?

Mr THOMSON: It is done on the scheme's actuary's figures, yes.

CHAIR: One of the criticisms of the insurers' injury management is that there are ineffective systems within most insurers to ensure that job seeking by the claimant is being effective. This is resulting in prolonged time off work by the injured worker. Do you think that is a fair criticism and do the new remuneration arrangements provide incentives for insurers to offer employment and training oriented programs where it is identified that this is a need of the injured worker?

Mr THOMSON: I assume that you are talking about trying to return the injured worker to work but not at the employer where the injury was sustained. Is that a fair assumption from the question?

CHAIR: That is the basis of it.

Mr THOMSON: If that is the case—it was alluded to by WorkCover this morning that they have a $2 million fund available for return to work type schemes—

CHAIR: Vocational training.

Mr THOMSON: Yes. Some work on this is done by the insurers. It is probably not to the extent that it could possibly be done. The issue comes back to assessing how effective it is going to be and how effectively it can be managed. Even if you take it away from workers compensation for the moment and head toward, say, Centrelink, it has the same sort of tasks, to try to get people back to work. They probably have more appropriate skills and facilities available to do it. The insurers are limited in that and probably have not had a great deal of training in that. There is definitely work being done in it, but whether it is to the extent required I am not sure. It is fair to say that the broad remuneration structure picks up a component but there is no specific incentive to encourage the insurers to do that sort of activity.

The Hon. GREG PEARCE: Do you see anything in the reforms that in any way would improve the return to work timeframe?

Mr THOMSON: The reforms that came in on 1 January have the potential to have some impact. The level of that impact will depend on one of the key issues, early reporting of claims. That is probably the most significant driver within the scheme in whether the legislation—whether the old or the new—will work. The average reporting delays within the scheme for significant claims are two to three weeks, and those figures are fairly widely known. Unless those sort of claims are notified within a few days it is difficult to have a real impact on the outcomes. Provisional liability changes have potential to have impact on the way things are managed through the scheme. I would extend it a bit further than what Kate McKenzie said this morning: I think it will be 12 to 18 months before you will be able to make definitive judgments on that.

The Hon. MICHAEL GALLACHER: Do you have a view on the impact of reforms on the costs of the rehabilitation aspects of the scheme?

Mr THOMSON: It is difficult to answer that. If the reforms work as they are intended to and you can get early notification you can get the communication and dialogue between the various key parties—being the nominated treating doctor and the injured worker and the employer—the potential is there to see some significant benefits and to get the worker to focus more on rehabilitation initiatives and activities and injury management activities rather than worrying about whether they will be paid. That has potential to achieve improved outcomes for the scheme.

The Hon. MICHAEL GALLACHER: You are speaking for the Insurance Council in the context of the eight providers. Do they have any problems with getting access to the money for rehabilitation within the scheme?

Mr THOMSON: It goes as a cost of claims so to that extent they just manage the claim. If they believe it is the appropriate course of action they can authorise that and it will be paid. I do not see that as an issue.

CHAIR: It seems that this remuneration package is necessary. Insurance companies receive their remuneration of X dollars and under the new scheme it will now be X plus what? Will they go from $1 million to $2 million or $10 to $20 million?

Mr THOMSON: It is a difficult question to answer. I am not trying to be evasive. Because you do not know per se what potential payout there will be from the tail—the likelihood of payments from the tail is small—an individual insurer may get a payment where the others may not. The same issue applies also in relation to return to work. Commenting on the old measures as compared the with the new measures, which links in with what you are talking about, one of the issues in place with some of the actuarial assessed methods is the degree of fluctuation in the results that have been achieved by insurers. In one quarter they might get 0 per cent return and in the next quarter they are getting 100 per cent of remuneration and then they drop back to 20 per cent. They may not have changed their practices; it may just be the way the various actuarial models are picking up and using data. So there is a lot of fluctuation and uncertainty.

The change of actuaries has meant a change of models, and that has created additional uncertainty in relation to the measures. I could probably put a rough indicator on it but I cannot really tell because, even with the loss ratio measure, if you look at the 2001-02 period you are assessing the insurers' ability to manage the claims that come in in that period and the results that are delivered five years out when the final payment is made based on the savings that are or are not determined on that relevant to the actuarial assessment with the target level set. So it is very hard to make an overall comment but I think it is fair to say that the new package certainly puts on the table a 50 percentage increase in the amount of money available for performance dollars. The tail measure is basically sitting at around the same percentage figures. The new measure on top of that is the loss ratio. I would find it difficult to quantify that.

CHAIR: In the back of my mind is whether it would increase the deficit if it were overgenerous.

Mr THOMSON: I do not think it has the sort of dollars attached to it to do that. If it had a significant payout it would mean that the scheme has achieved a lot greater saving than what the insurers would. For savings on that the ratio today is something like one in six: if the insurers were paid $1 there would be a $6 saving to the scheme. So the scheme is going to be a lot better off for the insurers to participate.

CHAIR: You mentioned a problem in having trained people. What training programs do the insurers have in the area of injury management? It seems to be an important area.

Mr THOMSON: It is an important area. I cannot comment specifically about individual insurers because each insurer has its own training programs in place. Some have more sophisticated systems than others. The one comment I can make in relation to training for injury management is that last year a joint training program was developed by WorkCover and the insurers in relation to medical issues. That was rolled out across all the people in the claims areas across the industry. That is one area where initiatives can be taken so that there is a more consistent theme across the industry. But all the insurers have their training programs in place and they vary across the companies. I probably cannot add any more than that.

CHAIR: Would you like to see WorkCover do more so that there is uniformity across the eight insurers?

Mr THOMSON: I see opportunities to have joint initiatives like that. WorkCover has certain skills and there are skill sets that the insurers have and a blend would be useful. It is also worthwhile because it can cut across the self-insurers and the specialised insurers, which it has done in the last six to 12 months. That is of benefit for the scheme. There is potential for work to be done in areas which are targeted and thought through properly.

The Hon. MICHAEL GALLACHER: You will be a participant in the forum coming up shortly, where no doubt the Insurance Council will, through you, put forward its views in relation to the scheme, the missing link in all this reform. Does the Insurance Council have a view on other issues that were not addressed in the earlier two tranches of reform that do not necessarily fall within the scheme designed component? We have yet to find out what the scheme designed component is, but we suspect that it is towards private underwriting and those sorts of things. Are there any other areas within the scheme that you believe are yet to be addressed properly?

Mr THOMSON: It is a difficult question to answer. The two reform packages that have been passed do address a number of the issues that the scheme was facing. In relation to how that fits in with the paper for the meeting on the 15th, we are still assessing our position, so I cannot make much comment on that. I would like to take that question on notice because I would like to give it more time. I probably cannot do justice to it here today.

CHAIR: One aspect of the reforms was to reduce legal costs. Has there been a similar saving within the insurance companies? Obviously, they have their lawyers. Are you happy that some pressure has been taken off the insurance companies to have the assessment process and so on?

Mr THOMSON: I am not sure that it has actually taken pressure off the industry.

CHAIR: Financial pressure.

Mr THOMSON: The legal cost regulation has mixed implications for the insurers because to some extent the major legal cost driver was probably not coming from the defendant side. The legal cost regulations have tightened things up. To some extent they have inhibited the insurers' ability to obtain pre-declinature advice and issues like that in assessing whether the decision made is appropriate. They are a reasonably complex regulation in themselves, which will not necessarily assist either. But broadly they are in line with a number of the cost structures that the insurers were dealing with anyway. But there are certainly aspects of the cost regulations that will give some concern as time goes on. At the end of the six-month period they will be reviewed and there will be an opportunity for some of those issues to be revisited.

CHAIR: Have you been able to reduce your legal departments in the insurance companies?

Mr THOMSON: I do not think so. The insurers' legal departments are not costed into the scheme like that; that comes out of the insurer remuneration. The legal costs that go through to the cost of claims are factored in to the actuarial assessments. They are actually the costs where we involve third party legal providers to assist in the

process. Companies that have solicitors on their staff – their cost is absorbed as an administrative cost and worn by the base fee and performance fees.

CHAIR: So there have been no savings there?

Mr THOMSON: Broadly, I would suggest, no.

CHAIR: In evidence presented to the Committee in November last year by Pricewaterhouse it was claimed that early management of claims is not handled well in New South Wales compared with in other Australian States and overseas, that there are significant reporting delays. Do insurers feel that there is a problem with early management of claims?

Mr THOMSON: I assume that your question about early management of claims is mainly in regarded to early reporting. There are certainly issues with early reporting within the scheme. That is the key catalyst: if you can get early reporting then injury management initiatives should work reasonably well. There are significant delays in reporting within New South Wales, as there are within other schemes. A point I would bring out is the issue in relation to smaller employers. There are 360,000 employers in the scheme and 90 to 95 per cent of them pay less than $10,000. They probably have a claim every 10 to 15 years. Forty per cent of new businesses that open are closed in six months. The issue really is: how do you get the message through to those employers what they do with a claim if they get one? We have talked about the complexities, of the size of legislation and the rest that go with it.

If you put that together with all the other Federal and State regulations for employers to try to deal with, workers comp probably is not one of the higher priorities for some of the smaller employers when they get a claim once every 10 to 15 years. We have to get the message across that if they get a claim they have to report it, to create the appropriate channels so that it is easy for them to do so. Provisional liability has made a step in the right direction by reducing the amount of information that required. It is not necessarily incumbent on the employer to notify; it can come from another source and then you can link back through to the employer. I think that will assist the process. But the next issue that comes with that is engaging the employer and getting the employer to recognise in some instances that by being proactive, offering suitable duties, getting engaged in the process, it can be less costly than the other outcome. We certainly agree that early notification is definitely an issue. The new measures will go some way to fixing that.

CHAIR: I suppose employers would not like to have a penalty for late notification. Is there any way that that type of measure might encourage prompt reporting?

Mr THOMSON: It was alluded to this morning by Kate McKenzie, the EMI pilot which provided an incentive that if they reported within time they got the rebate of the excess. Providing an incentive rather than a disincentive produced reasonable results in that pilot. Whether the scheme can afford that across the board, transported across the broad spectrum, may be an issue. I tend to think that an incentive rather than a disincentive approach might be more appropriate.

The Hon. MICHAEL GALLACHER: Would you be agreeable for a number of the outstanding questions to be taken on notice?

Mr THOMSON: I am more than happy to deal with them in that way.

CHAIR: Do insurers believe that they are managed by WorkCover?

Mr THOMSON: No, I do not think so. WorkCover certainly has an influence over the way that insurers operate and it is responsible for issuing the guidelines and to a large extent influencing the remuneration arrangements and, therefore, the measures on where they are focusing. The way that insurers take that into their business, and implement, manage and operate it, is the insurer's role. WorkCover does not do that aspect of it.

(The witness withdrew)

COLIN FAGEN, General Manager of Workers Compensation, QBE Insurance, 82 Pitt Street, Sydney, affirmed and examined:

CHAIR: Did you receive a summons issued under my hand in accordance with the Parliamentary Evidence Act 1901?

Mr FAGEN: Yes.

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

Mr FAGEN: Yes.

CHAIR: If at any stage you want to give evidence in camera the Committee will be happy to accede to your request. Do you wish to make an opening statement?

Mr FAGEN: No.

CHAIR: Do you have anything you wish to highlight to the Committee or bring to its attention, relating to the terms of reference of this inquiry?

Mr FAGEN: Nothing in particular.

CHAIR: Does QBE have any concerns about the new remuneration arrangements with WorkCover?

Mr FAGEN: I think the new remuneration arrangements are definitely a step in the right direction; they are starting to align the outcomes of the scheme and appropriate insurer behaviour. It would have been advantageous if they had been completed prior to the beginning of the current period. However, there are various reasons for that not happening. A current weakness is that as a manager trying to improve a business it would be good if we had longer-term certainties over the remuneration areas, not necessarily certainty in the value, but certainty in the structure.

That is something that could possibly operate over a three-year period or a rolling three year period. In that way we would know with some degree of certainty the potential outcomes and then we would know where to invest in business and direct business. Over the preceding few years it has been constantly renegotiated with a number of changes. As a manager of a business, I am trying to progress the business, but it stilts the decision-making to some degree. There are areas of significant expenditure for improvements in parts of our business, and when making the decision of way to invest or recruit what type of skill sets are needed, that could slow down the decision-making, because there is such a degree of uncertainty.

In our other businesses throughout Australia and the world we have more of a degree of certainty about the measures and methods that can be used over a longer period. As such it is relatively easier to direct investment in those businesses and improve and project them. That factor, that comparative lack of certainty in some components of the remuneration, has stilted innovation in New South Wales to some degree compared to some of the other jurisdictions. To have it structured over a longer time would assist us in managing that business and assist us in investing and innovating in the correct areas with a degree of certainty. That is what it lacks at the moment.

With respect to them not being finalised prior to the current period, there have been significant changes in the methods. As such, some of the data required was not readily available. Both parties were investigating the possible outcomes and repercussions. There has been a degree of conservatism. But to have them over a longer period would assist us in innovating and investing. Some areas involve considerable capital expenditure and we have started some innovations and investments in them. In other areas we are trying to ascertain the outcome and effects of changes. It is definitely a step in the right direction

CHAIR: Is it possible to compare it with any other remuneration system in other States or countries? Or is what you have fairly unique?

Mr FAGEN: Yes it is, unless you want to lump the four underwritten jurisdictions in Australia together. They are starting to head towards that type of measurement, and there is a definite claims cost incentive. Ensuring that you get people back to work as quickly as possible is the outcome that is wanted to potentially maximise

income. It is a very simple equation. The cheapest claims are people who are back at work. Ensuring that the structure of the remuneration is set up to get people back to work as quickly as possible, perfectly aligns them. That is the role of insurers.

CHAIR: WorkCover's 2000-01 annual report stated that one of its core roles is to administer and enforce compliance with injury management regulations. Is QBE satisfied in the way that WorkCover has regulated this area recently? In what way would QBE like to see it improved?

Mr FAGEN: Again, it is a step in the right direction. One of the factors that is often missed is that injury management revolves around early collaboration with injured workers, doctors and employers. At the moment it is ineffective in only one party is being regulated, and that is ourselves. We are trying to be as effective as we can as a conduit between those parties to bring them together as quickly as possible to ensure proactive management of injured people. We spend time going through some of the minor process areas that restrict our effectiveness. As such, we need to ensure that we are allowed to be as flexible as possible in maximising the injury management, which is basically a subset of claims management.

We were one of the organisations involved in the pilot schemes in the past 12 months. We found that being extremely flexible in the injury management process and allowing us to innovate and treat individual injured people as individual cases has increased the effectiveness of returning people back to work at an early stage. The problem is when regulating for a whole scheme the regulators tend to establish rules for the lowest common denominator. As such that restricts organisations that may be more innovative or above that base line. To ensure that we are complying with the process components is probably a poor use of resources.

CHAIR: WorkCover needs to have a more flexible approach?

Mr FAGEN: Possibly, some of the remuneration measures that measure outcome are the correct way to go. We are there to return people to work, and if we do that the scheme is financially well aligned. Is a pretty simple equation. Being measured on those components and being left to some degree to be innovative and treating individual cases on an individual basis would be slightly more effective.

CHAIR: Would you explain the difference between an injury management plan and an injury management program?

Mr FAGEN: The plan is individualised for the injured person. The plan covers the work situation, the home situation, et cetera. The program is an overall structural statement on how QBE, for example, will manage the injury. Basically it is about setting guidelines and structures on how we manage our business. The individualised plan is how we assist injured people.

CHAIR: How does QBE involve employers, medical practitioners and employees in the development of the injury management plan?

Mr FAGEN: That is one area we are changing as a result of the pilot. We found that we are much more successful in having external case conferencing. Basically we are employing people with different skill sets, allied medical backgrounds, different tertiary qualifications, industrial relations management, et cetera. People bring the parties together face to face and try to speed up the process. A number of individuals in the process are not acting speedily or with any degree of urgency to handle an injured person's claim. What happens in the first three to four weeks basically sets the process for the next five years. We are ensuring that we are acting in a timely manner by getting out and bringing people together in collaboration and communication.

QBE will have approximately 46,000 claims in the next 12 months, and I suggest that is 44,000 people going through a brand new experience. They will feel very uncertain. We need to be with them and bring them and their employers into the process. As Robert Thomson suggested this is a brand-new experience for a lot of small employers who may not have had a claim before. Probably less than 5 per cent of the general practitioner's business involves workers compensation. So we have three parties who are, for want of a better description, uneducated and inexperienced in the process. Our role is to bring them together quickly and establish the expectations and goals.

Our role is to keep them informed as to how the injured person should be dealt with. They do not know what is happening in this extremely complex process. A number of us will never experience this. Our role is to get them together as quickly as possible, give them goals and expectations and to assist and monitor it. Various parties do not see that as a priority. A small business employing only three people will lose 33 per cent of its workforce if

one is injured. It would be suddenly diverted to looking out for something else. Our role is very much as a conduit for bringing the parties together, assisting them and getting the process moving quickly. Whenever I review our older files I have found that whatever happens in the first couple of weeks determines what happens later, including provision of information to various parties.

CHAIR: You mean the case manager does that?

Mr FAGEN: Yes. I suggest that this area has improved a lot in the past couple of years but there is still a large scope for more improvement. This is very central to the outcome.

CHAIR: Do you find that the case managers get co-operation from the groups that are involved?

Mr FAGEN: Usually.

CHAIR: You said that the employer may be busy or struggling. Would he ignore the phone calls or letters?

Mr FAGEN: Sometimes it is just purely difficult to track down people within certain time frames. It can be more difficult if there has been a conflict between the injured worker and the employer. Also doctors have businesses to run and they may not want to see you in a timely fashion. Our role is to try to establish a priority order. Generally people do not sit around trying to think of how they can slow down a workers compensation claim or ensure that someone is off work for a long period. But I do not think it is necessarily a higher priority for some people. Our role is to try to bring them together and get it moving.

CHAIR: You need incentives for all the parties to proceed faster?

Mr FAGEN: It would assist, but QBE has a philosophical belief that more regulation does not necessarily get results. In New South Wales one of the dulling factors in recent times has been the premium rating model and how premiums are not adjusted accurately on the basis of claims. A small proportion of employers continually have claims well in excess of their premiums. But when we go through this period they lose that tool to advise an employer as such. If there are numerous lump sums in the scheme the incentive is not necessarily there to get people back to work to recoup their wages. There are various incentives acting on every party and interacting at the same time.

The Hon. MICHAEL GALLACHER: Looking at the compliance aspect, what is QBE's attitude to or how does it address complaints by employers of fraud or exaggerated claims?

Mr FAGEN: We try to communicate with clients, with employers, on the basis of the scheme. We discuss the issues with them, but keeping in the forefront of our mind is that it is a no-fault legislation and as such, if there is any uncertainty in any part of the scheme, basically the claim is accepted. That is what workers compensation was established for; that is the doctrine of no-fault legislation.

The Hon. MICHAEL GALLACHER: Do you understand that that is the bane of nearly every employer?

Mr FAGEN: Very much so.

The Hon. MICHAEL GALLACHER: They see it as no fault in the sense, okay, they may or may not be necessarily responsible, but they know that at the end of the day they are going to pay for it.

Mr FAGEN: Not necessarily.

The Hon. MICHAEL GALLACHER: If the matter is accepted?

Mr FAGEN: In a deficit, no they are not.

The Hon. MICHAEL GALLACHER: Most of them recognise that if a claim is accepted there is going to be an adjustment made to their premium the next year or the year after that.

Mr FAGEN: If they are a business of reasonable size. Small business is not adjusted on the back of claims cost.

The Hon. MICHAEL GALLACHER: What does QBE do if an employer or, indeed, another employee rings up and says, "Johnny or Mary is working on this building site?" What do you do?

Mr FAGEN: We have to potentially investigate the matter.

The Hon. MICHAEL GALLACHER: What do you mean by "potentially"?

Mr FAGEN: Well, there is not an across-the-board rule, as such. Every individual case is dealt with on an individual basis. We discuss the facts, the perceptions, with the various parties to ascertain if we think there is any truth in the matter.

The Hon. MICHAEL GALLACHER: Validity?

Mr FAGEN: Yes, that is a fair word. We have to weigh up everybody's opinions and values in the process. We are there to look after injured people, we are there to look after employers. We are a stakeholder in the process.

The Hon. MICHAEL GALLACHER: A lot of these allegations I suppose would always involve a lot of people doing something that they are supposedly incapable of doing?

Mr FAGEN: Yes.

The Hon. MICHAEL GALLACHER: Is the normal practice to speak to the injured worker as well?

Mr FAGEN: Not necessarily. But the use of surveillance is not particularly effective in getting an end result if there is any disputation in the process. So, we are actually going through a stage of trying to reduce the use of it because we do not believe it is an expenditure that actually provides that much value at the end of the day.

The Hon. MICHAEL GALLACHER: Why is it not worthwhile?

Mr FAGEN: Because if you are going to dispute a claim you end up in the court system and the court will fall back on the doctrines of no-fault legislation and will always make a decision, if you want to draw a line down the centre, in favour of the injured worker if there is any doubt. That is what the scheme was originally established for. As such, expenditure in those areas is often wasted, unfortunately, and that is the realities of what happens when you go through the system. So, as such, expenditure in the areas can often be wasted. I have seen very few successful uses of surveillance in swaying a judge in a decision.

The Hon. MICHAEL GALLACHER: Whose expenditure is it that would be used in surveillance?

Mr FAGEN: In New South Wales it is claim cost.

The Hon. MICHAEL GALLACHER: Therefore I suppose going by your earlier intimations, you too would understand the frustration that is being experienced by the business community?

Mr FAGEN: Oh, extremely. Yes.

The Hon. MICHAEL GALLACHER: Do you think it is something that should be addressed or do you think it is something we have to learn to live with?

Mr FAGEN: I think there are ways to improve the whole system to minimise those aspects and to actually reduce the level and use of disputation as such. The opening aspects of a claim can minimise and reduce that, and that is the area to be focused on. What happens at the start of a claim drives the process of how a claim evolves over the next ensuing periods. So, what we do in those first few weeks, and that is all parties when I say "we", is the most effective. Even if you believe that there is a fraudulent activity or an exaggeration, having a person back at work still minimises the costs. It is as straightforward as that.

The Hon. MICHAEL GALLACHER: What is the role in your mind from QBE of the 301 WorkCover inspectors with regards to fraud?

Mr FAGEN: It depends how they use them and the effectiveness of it. We have not been that heavily involved in the work they have been doing. It would be interesting to see if it is successful.

The Hon. MICHAEL GALLACHER: Everything seems to be about compliance by employers. We never hear anything of compliance by employees in the language that is used.

Mr FAGEN: I would suggest that probably the language is built around that. Legislation started in the 1870s in Europe and evolved since then and has always been built on no-fault legislation in favour of injured workers, from the history of it, from the common law that developed in the 1830s out of England, and has always being interpreted once they got past the initial common law disputation system in the 1830s to establish legislation in favour of injured workers. To try to combat it or change it by the courts is generally unsuccessful. As an insurer, that is the way we believe society has perceived the legislation.

The Hon. MICHAEL GALLACHER: Do you know off the top of your head how many fraud investigations QBE has commenced in the last 12 months?

Mr FAGEN: No, I am sorry, but I can check that out if you wish.

The Hon. MICHAEL GALLACHER: Would you take that on notice?

Mr FAGEN: Can I ask you for a definition of "fraud investigation"? I am not trying to be clever.

The Hon. TONY KELLY: If you want to give us any of this information in confidence, do it that way. It is entirely up to you.

The Hon. MICHAEL GALLACHER: You are one of the first insurers that I have had an opportunity to actually ask.

Mr FAGEN: I was not trying to be clever.

The Hon. MICHAEL GALLACHER: No, I understand that. There is a distinction between "fraud" and an "exaggerated claim". We are all fully conscious of that. But, for example, where an employer or someone has called to lodge a complaint, do you have a formalised complaint process within QBE?

Mr FAGEN: No, it is not formalised. It is decentralised to some degree.
The Hon. MICHAEL GALLACHER: Could you explain how it is decentralised?

Mr FAGEN: It tends to be via the different branches.

The Hon. TONY KELLY: Regions—Dubbo or wherever.

The Hon. MICHAEL GALLACHER: But how do they record it?

Mr FAGEN: On the files.

The Hon. MICHAEL GALLACHER: Is a central register kept within QBE?

Mr FAGEN: That is something we have just been working on in recent times. So, I do not think I would have historical information that would probably satisfy you, from what you are saying. But we can investigate it from an easily defined record.

CHAIR: What is your definition of "fraud" then?

The Hon. MICHAEL GALLACHER: I think he would understand the difference. The fraud is a complete false claim and an exaggerated claim—

CHAIR: I meant when there was an investigator.

The Hon. MICHAEL GALLACHER: It is allegations of fraud or exaggeration by persons to the company of injured workers, whether they keep a record of that. He said that they have now introduced something like that. I was interested to see whether they have such a central register in place.

Mr FAGEN: More a general complaints register.

CHAIR: Is it clear to you what is required?

Mr FAGEN: I believe so. Fraud claims are assessed at less than 4 per cent of total claim numbers. That is a generally held statistic on research done overseas.

CHAIR: Do you ever notice a pattern? For example, whether there seems to be many claims from one employer or employees in one area of industry or people associated with families, for example, there may be the father and then the two sons with back injury problems?

Mr FAGEN: We have not noticed any real trends in the managed fund, but we have noticed trends from employers going back to the 1980s that now new claims are coming through from the pre-managed fund with certain employers. We still get approximately 10 claims per month from pre-managed fund claims pre-1987.

CHAIR: As far back as that?

Mr FAGEN: Yes. We would have approximately 10 new claims a month and approximately 12 reopened claims per month pre-1987.

CHAIR: How do you cope with those?

Mr FAGEN: We have to manage those as well.

The Hon. MICHAEL GALLACHER: Have you seen an increase in some of these older claims in the last few months?

Mr FAGEN: Only in asbestos. In the general nature and conditions claims, they are slightly dropping, but not at a very fast rate.

CHAIR: They could still be genuine claims, like asbestos, because they took a long time to have an effect on health?

Mr FAGEN: Yes, but we separate in our data the asbestos claims from the other types of injuries as such—nature and conditions type injuries and things of that nature.

The Hon. Dr PETER WONG: What is the percentage of workers being managed by company doctors as against general practitioners?

Mr FAGEN: I am guessing to some degree. For my experience, without any hard data, I believe it would be a very small proportion because none of your smaller employers has the frequency of claims to establish those relationships with GPs and as such it tends to be some of your bigger employers who would do that. Not all of the larger employers have done that either.

The Hon. Dr PETER WONG: Is there any statistical data that those managed by company doctors have an earlier recovery and earlier return to work?

Mr FAGEN: I am not aware of any studies or statistics in those areas. There is nothing for us to identify whether an employer has a relationship with a particular doctor as such.

The Hon. Dr PETER WONG: I ask that because earlier it was brought to light that workers who receive WorkCover have a lot slow recovery rate than those who do not receive. I am saying the same thing. I am also a GP. Either way, GPs really do not have the incentive to encourage a worker to return to work earlier because of the financial incentive in some way. What is your comment on that?

Mr FAGEN: Purely financial. My understanding is that doctors will be paid more in New South Wales if they were dealing with a worker's compensation claim as against a normal injury. I think also doctors have a client relationship and their belief sometimes is misfounded in the early stages of a claim on being conservative in respect to the treatment of an injury. But the unfortunate side effect of that is that you have an employer who needs to fill a position at a place of employment and you have an injured person becoming used to not working. So, you have

these factors. So, in fact by keeping the person off work trying to look after their long-term position is actually often counterproductive as such. Equally, GPs do not necessarily know a lot about the workplace. So, as such they are talking only to the injured worker who is couching the functions of their role in a certain way.

That is why I hone in on communication in the early stages. Equally, you cannot have an employer necessarily sitting in front of them saying, "I can change that role" or "I can't work with you in that way." We do not necessarily see them at fault as such as bringing them together so they can sit there and outline each other's position, the GP saying, "I am worried about a particular function exacerbating the injury" et cetera and an employer saying, "I think I can cater for that. I will have to make some changes" et cetera to bring people back to work. But it does not surprise me at all that statistics of injured people, if you match their injury type, have a longer period. One of the poorest correlating factors in managing average claim costs is injury type.

The Hon. Dr PETER WONG: Therefore, it would be appropriate to proffer an incentive to the GP to encourage workers or to help to bring about the worker's return to work earlier?

Mr FAGEN: Yes.

CHAIR: You mentioned the injury management plan. Could you give us an idea on average how long it takes from the time of injury to when the injury management plan is finalised?

Mr FAGEN: The median measure is 25 to 30 days before we actually receive notification of a claim. We target to have the injury management plan finished within two to three days after that period. Sometimes you cannot get all parties together or on the phone to establish the plan, but our target is to have the injury management plan finished within two to three days.

CHAIR: Is your injury management program a confidential document or can we have a copy of it? Is that commercial in confidence?

Mr FAGEN: Generally it is a commercially sensitive document. We are actually changing it all as we speak as part of a new process. I would be happy to give you the one that is currently with WorkCover.

The Hon. MICHAEL GALLACHER: When HIH collapsed did QBE pick up any of the workers compensation work that was carried out by HIH?

Mr FAGEN: Not in the managed fund in New South Wales. The only portfolio that we are involved with in respect to workers compensation is excess of loss covers for self-insurers, which is very small.

The Hon. MICHAEL GALLACHER: What happened to HIH?

Mr FAGEN: NRMA has acquired that business.

The Hon. TONY KELLY: They bought it.

The Hon. MICHAEL GALLACHER: Did others bid for it? How was it bought?

Mr FAGEN: I do not know if I am the correct person to answer that. I would be only speaking on hearsay. I believe it went through a normal purchase process with NRMA.

The Hon. TONY KELLY: With the administrator of HIH, was it not?

Mr FAGEN: Yes. I was just trying to think whether it was before or after the date of administration, because a few portfolios changed hands before that date.

The Hon. MICHAEL GALLACHER: What percentage of the market did HIH hold at that stage?

Mr FAGEN: I would estimate that it was approximately 16 per cent of the market.

The Hon. MICHAEL GALLACHER: That gives NRMA Holdings how much?

Mr FAGEN: I would guess that NRMA currently has 17 or 18 per cent of the market.

The Hon. MICHAEL GALLACHER: NRMA only had about 1 per cent prior to the collapse of HIH.

Mr FAGEN: They had only recently set up before that period. I think they had acquired a licence 12 months before.

The Hon. MICHAEL GALLACHER: It was fortuitous that NRMA just happened to be there to pick up that part of the market.

Mr FAGEN: I think they have had a long-term strategy of moving into commercial insurances, for diversification.

CHAIR: The 25-day delay before the injury is reported probably creates problems about how to quickly deal with the injury.

Mr FAGEN: Yes, significant problems.

CHAIR: Is there any way that that can be sped up?

Mr FAGEN: I heard Robert's words earlier. I would suggest that there is a mixture of incentivisation and disincentivisation. The suggestion of paying back excesses if claims are reported within a certain period I think is a very positive idea. On back of the envelope calculations, I would suggest that it is cost effective, but equally I think in a disincentivisation if there is too long a delay, particularly delays around rating periods.

CHAIR: Do you think there is some confusion, perhaps that the worker thinks that the boss has reported the injury, that they are not too sure about who has of the responsibility of reporting it, or they should all be responsible?

Mr FAGEN: That is possible for a small percentage of cases. I just do not think it seems a high priority for small businesses.

CHAIR: You think the employer is the problem?

Mr FAGEN: No, I think it is both. I think it is both parts of the process.

CHAIR: Who reports to you normally?

Mr FAGEN: It could be either. Until recently there were two separate claim forms, which have now been consolidated. It could be either party. It could be a worker ringing us and saying that they have had an injury in their workplace, and we can react to that.

CHAIR: Which are the majority of reports to you?

Mr FAGEN: The majority are employers.

The Hon. Dr PETER WONG: There are usually a few factors. First, the worker may have what they thought was a mild injury and they do not go to see their GP until two or three weeks later. Second, usually the GP has to write out the WorkCover claim straightaway in order for the worker to have a claim number and to receive treatment. Often it is the case that either the worker received the certificate but did not send it in straightaway or the employer is too busy to send it in.

The Hon. TONY KELLY: Particularly if it is a small employer.

Mr FAGEN: Yes, that is very true, and if they do not know the process. Equally, some big businesses have internal processes where it is handed off among departments and there is an internal delay.

CHAIR: We understand that until 1996 there had been a rapid increase in the number of claimants still on weekly benefits from 26 to 52 weeks. According to figures presented to the 8th Accident Compensation Seminar, the percentage of claimants still on benefits for this length of time has stabilised, until June 1999. Has this same trend been experienced by QBE, and will the new incentive arrangements help QBE to set up systems which reduce the number of claimants on benefits for lengthy periods?

Mr FAGEN: We are still seeing a slight deterioration in claims reaching those time periods. I think the new methods will help incentivise both ourselves but equally take some of the conflict out of the process of new claims management, which is one of the lead factors in creating claims that go from 26 to 52 weeks. We will still always have the significant injuries that have those sorts of time periods before people have mended, but we think that it will definitely assist.

CHAIR: Do you think the insurer remuneration arrangements will be the main way to improve that return to work rate?

Mr FAGEN: I think that would be of great assistance. We have a number of disparate parties at the moment that all need to be aligned. At the moment we tend to have one regulated.

CHAIR: Do you have any further suggestions as to how to improve that return to work rate?

Mr FAGEN: Very much the reporting time period, and ensuring that claims are received as quickly as possible so that we can action them as quickly as possible. We are also undertaking some major changes in our business and have started this probably about six months ago, where we have changed the recruitment profile, bringing medically qualified people into our business—in various qualifications, not just pure medical and not GPs as such but allied fields.

CHAIR: Could you give us an example?

Mr FAGEN: In response to your question, I had to look at how many staff we have in New South Wales with different qualifications. We have 81 out of a touch under 300 tertiary qualified people.

CHAIR: Physiotherapists?

Mr FAGEN: Yes. Various health sciences, chiropractic, physiotherapists, OTs, and various people in different areas. I heard you speaking to Robert Thomson. We only have about five lawyers in our business in New South Wales. It is a very minor proportion of our business as such, and the costs of legal are outside the internal aspects of our business. It is a huge component of the claims cost, for the inside of our business.

We are also bringing more staff into our business, so we are bringing down claim numbers per person so that we are able to spend more time on the collaborative efforts at the beginning of a claim. All claims are not equal; 40 to 50 per cent of claims are driving the claims costs. We have to make sure that we are spending an increased amount of time and effort on those claims as such. That is probably what I am referring to, to some degree, when I am saying we need to be given a little more area for innovation and also less responsiveness just filling in the paperwork, to make sure that we are actioning those claims in a timely manner and are actually getting a return for that, getting claims costs down.

CHAIR: You do not say that every claims manager will have 10 claims they are working on; you might say that two claims are heavy, complicated ones?

Mr FAGEN: We tend to try to bring those numbers down, but equally we try to bring different skill sets into teams as well. It is probably the opposite of what Robert said: we are not having trouble attracting people. We have been employing a large number of people in recent times. We are going into constant recruitment over the next 12 months to staff up in a different type of skill set and with more people in our business, because we found that that is more successful in getting people back to work at an early stage. Another unfortunate aspect is that insurers are not given a lot of credibility by GPs. When you are speaking to GPs and trying to suggest what the process is and what should be involved, if we do not have people with qualifications speaking to them, we are often given no credibility, even though these people may have a lot more experience in workers compensation.

CHAIR: What is your market share now?

Mr FAGEN: Approximately 17 per cent.

CHAIR: It sounds as though you are happy to increase that?

Mr FAGEN: No, not necessarily. We will not increase market share if we are not being effective in our claims management, because that is what we are there for.

CHAIR: With more efficient staff, though—

Mr FAGEN: We believe there is a pretty strong correlation between our ability to get people back to work and bringing down the number of injured people that they are dealing with, but we are still measuring hard data. We have pulled a lot of this analysis from our underwritten jurisdictions where we have significantly fewer claims per person, and we were able to get people back to work in a faster time frame, measuring duration rates across those different schemes.

The Hon. MICHAEL GALLACHER: How do you increase market share when the Government determines the—

Mr FAGEN: Provide a better service. There are competitive aspects around service: education, marketing—

The Hon. MICHAEL GALLACHER: The argument, therefore, is that the more service you provide, it bites into your bottom line—

Mr FAGEN: However, if we are returning people back to work, now there is more incentivisation to make an income to recover that expense. And that is what was not there before. It would not matter how many people we got back to work in what time frame, or how many people we required to do that, there was no income to match against that expense. So as a manager, you are frightened to spend the money and expenses, even if that would return people back to work, because you would go broke.

We have every aspiration of increasing the service; we have every aspiration of trying to get people back to work. As I said, that is what we are there for. But if you do it while going broke, you are not there for long, unfortunately. We get people back to work more quickly, and there is an income, which we have to take an educated gamble on because it is not promised by any stretch of the imagination. But we have to take an educated gamble on getting an income back that will match those expenses, and we are happy to take that gamble because we are in the business for the long term.

CHAIR: Are you happy with the remuneration claim?

Mr FAGEN: I think there are areas for improvement, but I think it is definitely a step in the right direction to align the outcomes.

CHAIR: You want to get that 90 per cent or 100 per cent?

Mr FAGEN: I am more interested in bringing down the loss ratio measure. The SCI is still to some degree process driven, but it gives you the opening window to move into loss ratio measures. I would argue strongly that if you meet the loss ratio measures but do not meet the SCI measures you should not be penalised for that, because it means that your process was not as strong or as effective. It means that the process was not as consistent, but you would have got people back to work more quickly. I think that is the way it will evolve, because it is the first step.

The Hon. MICHAEL GALLACHER: Do you think that the premium discounting schemes and the employer incentive schemes are making much of a difference?

Mr FAGEN: I think that would have been taken up more to start with. But I get the impression that it is starting to gain momentum now, so there has been a bit of a lag time with employers adopting it and seeing if it is useful.

The Hon. MICHAEL GALLACHER: Are you as an insurer promoting that as a measure by which—

Mr FAGEN: We are not allowed to be directly involved in it, but we definitely promote it and suggest to our employers that they look at that as an option.

The Hon. MICHAEL GALLACHER: There appears to be very little discussion about it amongst the business community.

Mr FAGEN: Yes. That surprises me. I was expecting a faster take-up, and I do not pretend to know the reason why.

The Hon. MICHAEL GALLACHER: Do you think that for employers who are looking at it, when they see a three-year reduction in their premiums, it might be a short-term goal but, realistically, they know at the end of the period that they go back up again?

Mr FAGEN: Potentially go back up. It depends on how the premium measures are going to be working in that time frame. I suppose it is a gamble, and because of the uncertainty at the end of it maybe there is a disincentive to investing.

CHAIR: Could you explain the loss ratio you referred to earlier?

Mr FAGEN: Basically you have to meet your SCI measures to get into the loss ratio measures. The loss ratio measures are basically a function of claims costs versus premium. As claims costs come down as a ratio of premium, it is improving. The obvious driver of that is getting people back to work, improving claims management. The SCI measures, I would suggest, are still to some degree process driven: Did you follow a process? Did you used to do things in certain time frames? Are you able to have that followed on your files via audit? I do not want to sound too critical, because I think it is an extremely good step in the right direction because it is making us change very much our mindset to claims management, getting people back to work. Our organisation is investing significantly in certain areas because that is what we want to achieve. Before, if we had invested to this level, we would have been in a significant loss position, a seven-figure loss position.

CHAIR: You are looking at the income for your company from both remuneration and profits from premiums?

Mr FAGEN: The loss ratio will not be achieved in the short term. That is a two- to three-year measure. That is making significant changes in the business, and they do not appear overnight if there is no movement in the premium side of the function. When we have businesses in our underwritten jurisdictions that have problems with respect to profitability, they take two to three years to fix and there is never only one reason.

CHAIR: What is the main way you are going to achieve that? What does your company do?

Mr FAGEN: We are concentrating on a change in the skill set and the people we are employing; changing the methods of collaboration at the early stages of a claim; and trying to minimise the use of disputation methods. We are having a rolling training program of between seven and 14 weeks for every one of our claims staff over the next year. Currently, around Australia we have 70 people under training in these new methods of managing claims.

CHAIR: And you are happy with this new system, the assessors, and so on?

Mr FAGEN: It is an improvement, definitely. There appears to be an improvement to me, if you reduce the disputation at the initial stages of a claim. What we have to make sure about is that people are getting the information.

The Hon. MICHAEL GALLACHER: I notice you are not a witness or an invited guest to the forum that is to be held next week. If you were, what would you be putting forward as areas for future reform, or indeed, areas that have failed to be addressed thus far?

Mr FAGEN: Starting at one end of the equation, the premium rating model needs to be reassessed. Workers compensation costs as a total are driven by a very small proportion of very large claims. You have employers that have a propensity to have large losses, and they are nearly predictable if you look at it over a long time. There are methods in the rating model that take away that movement being passed on to those types of employers, so that they do not pay the costs of those claims. In fact, that is a way of cross subsidisation feeding into the scheme.

CHAIR: So the premiums should reflect more closely the level of injuries?

Mr FAGEN: Yes, there should be more credibility for extremely large employers or the larger employers. It is currently designed for it to step up as it gets larger but I do not think it happens quickly enough. It is a very strong tool for getting behavioural change premium-driven, but that is a very small proportion of them. Whenever we look into this and analyse it, it is always small segments that are driving the whole component. Early reporting is extremely significant to improve reporting of claims. It does not matter if we have the best claims department in the world, if we do not know about a claim there is not much we can do about it. It is a pretty simple equation.

We must ensure that we get that reporting coming in so that it brings the parties together as quickly as possible and to deal with all the parties. They are the two most significant areas, and also putting certainty into the benefit structure so there is less disputation and less argument. Putting certainty into it would assist injured people as well, knowing exactly what they are entitled to and ensuring that it is extremely transparent.

The Hon. MICHAEL GALLACHER: What about private underwriting?

Mr FAGEN: I am a laissez-faire economist so I have a preference towards private underwriting, but I do not see it as a short-term objective in New South Wales as such. Some of the alignments which normally go with private underwriting are actually there in the new remuneration methods, and making sure that we get people back to work.

The Hon. Dr PETER WONG: Do you suggest that early reporting is to be centralised? At the moment by the time a worker sends the form back, they may not know that QBE is the insurance company and it takes time to find out that it is QBE and then the employer holds it up for a few more weeks. For example, with immunisation in the medical practice the Federal Government pays the general practitioner for reporting immunisation, and it is virtually sent off straightaway, the same day, or it is faxed through and the general practitioner is paid straightaway for the extra work. However, at the moment if I see a patient I do not know whether it is QBE or the NRMA, so there is no way that anybody can report it. If it were centralised by WorkCover or a similar authority, then that organisation should receive the claim straightaway, preferably within 72 hours rather than days afterwards.

CHAIR: So all reports would go straight to WorkCover and WorkCover advises the company.

Mr FAGEN: I do not necessarily accept centralisation but some of the best reporting systems in the world are where the doctor reports because you need that first certificate for the claim to initiate. It could be a method.

The Hon. Dr PETER WONG: There is no way the general practitioner would know which is the insurance company?

Mr FAGEN: There are other methods that insurers could co-ordinate among themselves.

The Hon. Dr PETER WONG: Unless you do it yourself, take the form to the doctor and for this you must get the worker to bring the QBE form with them.

Mr FAGEN: There is uniformity in the forms as such. There are various options—I am not saying that is good or bad, but there are various options that could cater for that among the insurers as a central body but often some of the best reporting systems are where the general practitioners are the initial ones for reporting because they are seeing the claim as advocates.

The Hon. Dr PETER WONG: At the moment there is no way for the general practitioner to know where to send it?

Mr FAGEN: If they send it to any insurer we can establish internal systems or it could be done through WorkCover.

The Hon. Dr PETER WONG: Why can it just not be sent to WorkCover then and WorkCover will let you know straightaway?

Mr FAGEN: I am not sure how many hundreds of thousands of files there may be.

CHAIR: Or whether it gets buried in WorkCover and you get it 50 days later.

The Hon. Dr PETER WONG: You are not suggesting that, no way.

Mr FAGEN: There are various options.

CHAIR: One thing that went through my mind, although it may not be practical, is whether every accident should be reported. An accident may occur on the floor that may not result in an injured worker but it would at least alert you that a claim could come in from this particular company.

Mr FAGEN: Potentially. I do not pretend to know these statistics or to what extent that would push into the system because the data is not kept properly for how many near misses or incidents occurred before an actual claim is reported, but it would have to be assessed. It is sort of trying to cater for the whole gambit to fix a percentage in the middle.

CHAIR: Just a small number. Thank you for appearing before the Committee. We appreciate your evidence and your detailed knowledge of the system.

The Hon. MICHAEL GALLACHER: If the Committee has any other questions would you be happy to take them on notice?

Mr FAGEN: Definitely.

(The witness withdrew)

KENNETH ROBERT YOUNG, Executive Officer, Self Insurers Association of New South Wales, and member of the New South Wales Advisory Council, 2 Santiago Place, Seven Hills, sworn and examined,

MICHELE FRANCO, Solicitor and Adviser to the Executive Officer of the Self Insurers Association, Level 17, 167 Macquarie Street, Sydney, and

GRAHAM FREDERICK LAYT, Workers Compensation Manager and member of the Self Insurers Association, Level 19, 20 Martin Place, Sydney, affirmed and examined:

CHAIR: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act 1901?

Mr YOUNG: Yes, I did.

Mr FRANCO: Yes, I did.

Mr LAYT: I did.

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

Mr YOUNG: Yes.

Mr FRANCO: Yes, I am.

Mr LAYT: I am.

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 seen or heard only by the Committee, the Committee would be willing to accede to your request and go into camera for confidential material. Is there anything you wish to state before the Committee? Do you have an opening statement or any matters you wish to bring to the attention of the Committee?

Mr YOUNG: Yes, Mr Chairman. My opening statement will be brief and to the point. First, I would like to thank the Committee for inviting us to appear today. We have a number of issues that are relevant to self-insurers. Number one on our list is the recent near abolition of commutations. Self-insurers do not support the abolition of commutations. We believe that self-insurers should have been exempted from the near abolition of these commutations. There is no means for a self-insurer these days under the reform to bring finality to a claim, so you are going to have ongoing costs until age 65 for workers and that increases costs all round for the self-insurer. As an offshoot from that, it will increase the number of people on the tail for self-insurers as well as the fund and you will have insurers managing claims for 20, 30 or 40 years. It is not a financial means of achievement. Perhaps Mr Franco and Mr Layt would to further comment on the commutation aspect.

Mr FRANCO: This is not the first time that commutations have been restricted in New South Wales in recent times. Prior to 1998 commutations were subject to formal approval by WorkCover. Approval was gained if certain limited grounds were satisfied and after WorkCover approval was achieved, commutations would then be subject to approval by the Compensation Court. I have been in legal practice in the field of workers compensation for 15 years and it is my clear recollection that prior to 1998 it was impossible to legitimately finalise claims. My experience at that time was that matters often resulted in continuing awards of compensation infinitum and any settlements that were effected were often done by means of admissions, findings and artificial tools which did not legally guarantee finalisation of the claim.

The concern that the self-insurers have is that no matter how much injury management or rehabilitation is provided, no matter what benefits in terms of weekly compensation, alternative duties and the like are provided, there are a percentage of cases that do not and will not result in return to work, and there needs to be a mechanism to bring those cases to an end. Perhaps the answer is restricting the manner in which people qualify for commutations but the reform that has been introduced, in the view of the Self Insurers Association, effectively abolishes them.

Mr LAYT: It is a way of crystallising the liability. As a self-insurer, the worst thing that can happen to us is a continuing liability that can go on for 20 or 30 years. If the option is available, as it has been in the past, to settle the claim and finalise it by way of a lump sum settlement, we always believe that that is in the best interests of the worker, who is the employee, and the organisation that I work for. It gives the worker an opportunity to get on with his or her life. Again, rehabilitation does not work in a lot of cases, Mr Chairman. A lot of money is spent on attempting to find people alternative duties because a lot of people are fit only for permanently modified work which unfortunately cannot be available. Therefore, one of the better ways of managing the whole risk is to offer a commutation. We find that under the current system, with the severe restrictions on commutations, it is going to lengthen the tail. Our provisions are going to increase and that is certainly not good claims management.

CHAIR: In your view, why do you think WorkCover or the Government through legislation wanted to abolish commutations, when WorkCover and the Government thought it was supposed to be a savings proposition?

Mr YOUNG: I believe it was a case of there possibly having been a lump sum mentality out in society and that people were staying off work longer to achieve a lump sum. There has always been a lump sum component in the scheme, whether it is common law, permanent impairment, loss of use, or under the old Act, redemptions. There was always a lump sum component somewhere along the way. Unless you have a means of bringing finality to a claim, you will have a tail that is going to grow and grow and grow. At the end of the day, it just adds to the cost for everyone.

CHAIR: So it is a false view that this is an economic measure.

Mr YOUNG: We believe so.

CHAIR: It is not an economy measure at all.

Mr YOUNG: It is a business decision by a self-insurer that you have to make somewhere along the way after you have exhausted all other avenues, such as a return to work and suitable duties, et cetera. You make a decision and that is an economic decision that benefits the worker and the employer.

The Hon. Dr PETER WONG: It was often argued by WorkCover that we cannot compare the WorkCover system against private insurers. Is it valid that there could be a ground for WorkCover to abolish commutations, but not private insurers?

Mr YOUNG: Under a private underwritten scheme, if I was running an insurance company I would definitely want commutations. There is no doubt about that.

The Hon. Dr PETER WONG: What about WorkCover? Could it have a valid reason under its scheme not to have one?

Mr YOUNG: I cannot see the logic behind that thinking, if WorkCover had the view that by abolishing commutations they are going to end up somewhere along the track with more people on long-term benefits. Exactly this happened in the period around 1994 when we had approximately 6,000 people on long-term benefits of greater than 26 weeks. Over the following four years, that number more than doubled to approximately 14,000 because of restrictions in tightening up the commutations. That was one element. I believe that exactly the same thing is going to happen with the tightening up that has just been introduced. The tail did get reduced by a significant number of those people being able to be commuted, et cetera, but as time goes on, we will see more people ending up on the tail, and long-term benefits are going to increase dramatically.

The Hon. Dr PETER WONG: Is it possible for WorkCover to abolish commutations, yet allow self-insurers to continue commutations?

Mr YOUNG: Yes, we believe that is possible. I mean, there is already an exemption in the system through the coalmines insurance, which has its own Act. They are still working on redemptions under the old Act so the avenue is there to exempt self-insurers from a particular aspect of the scheme.

Mr LAYT: If those severe restrictions on commutations are still in force, it just becomes a pension system. It becomes a form of welfare that is paid by employers for many, many years, with no opportunity to settle those claims.

The Hon. MICHAEL GALLACHER: Time and time again we have heard about self-insurers managing their own money and managing their own workplaces. What incentives, with the effective abolition of commutations, now exist for you to remain as self-insurers? Where are the advantages for you to remain outside the scheme, now that you are bound by what appear to be—from what you have said today—fairly restrictive moves to stop you managing? In effect, the term self-insurance does not really apply once the commutations aspect is removed.

Mr YOUNG: Yes. It is definitely a concern to all of our members. No doubt as time progresses, each member will assess their position in regard to self-insurance. One of the things that has always been a big player for us is that we generally operate at about one-third to about one-half of the cost of the alternative of being insured with a fund manager. As varying aspects of costs eat into our margin, I believe that a prudent employer would reassess its position on an annual basis to determine if self-insurance is viable and say, "Is it financially economical for us to continue to be a self-insurer?" There are a lot of additional costs that we have to absorb. There are licensing arrangements, there are actuarial costs, there are the costs of providing a bank guarantee or security deposit to cover our liabilities, there is the cost of employing people to have professional people manage the workers compensation section. There are a lot of additional costs that we have to incur.

There has to be an advantage for us. One of the big pluses is knowing the employee, having that direct link to the employee, so that we are able to make better-informed decisions on liability and payments. Every aspect of workers compensation is done professionally better and quicker than if we had been insured with a fund manager. So, yes, I believe that, as I used to do when I was employed, annually they should assess the viability of continuing to be a self-insurer. That decision then goes to management and it becomes a management decision. But I will say one thing: If you are going to be a self-insurer, you are there for the long term. It is not something that you jump into for two or three years and say that, having tried this, you will get out. You are there for the long term and if you are there for the long term, you will make savings.

The Hon. MICHAEL GALLACHER: How many self-insurers do we have and how many employees are we talking about?

Mr YOUNG: There are 61 self-insurers in New South Wales. Some are individual self-insurers, some are group self-insurers. Group self-insurers include their wholly-owned subsidiaries. It includes the Treasury Managed Fund, which is deemed a self-insurer under the Act. Also members of our association are the specialised insurers, of which there are five. They include the TRB, Guild, coalmines, and StateCover, which is a group local government scheme. The number of employees covered by all those employers would be about a third of the work force in this State.

The Hon. MICHAEL GALLACHER: What would this move on commutations potentially have cost the private sector?

Mr YOUNG: Some private sector members have said to me that the near abolition of commutations would cost them a million dollars.

The Hon. MICHAEL GALLACHER: Each?

Mr YOUNG: Each. I have not done a survey across the entire private sector. It would vary from member to member depending on the number of cases that they have. There was a rush to get as many through prior to the cut-off, but looking at the long-term, yes, for some of our members it would be more than a million dollars. It would be a potential negative impact for new companies looking at becoming a self-insurer. They would be asking what avenues they have to extinguish a claim. The bottom line is, virtually none.

The Hon. GREG PEARCE: The same as everyone else.

Mr YOUNG: That is right.

The Hon. GREG PEARCE: Were you consulted by WorkCover before these changes were made?

Mr YOUNG: Partially. We put some submissions up that we totally supported commutations and we did not want to see them abolished from the scheme. I talk about abolishment: there is a 15 per cent threshold to go to commutation. But that will restrict the numbers that can go for commutation to very minimal. You may as well say that is almost total abolition.

Mr FRANCO: If I may add to that, if an injured worker is able to establish a 15 per cent whole person impairment to qualify on one of the limbs for commutation—and there are a number of limbs—why would that person want to commute? They would qualify for common law. Why would they not sue at common law? It just does not make sense.

The Hon. MICHAEL GALLACHER: The general manager of WorkCover spoke of hearing anecdotal evidence within WorkCover's responsibilities of employers really taking advantage of self-insurance and simply getting rid of employees. Equally, there would be anecdotal evidence of employees being pleased to have access to commutation because it gave them an option. What did you recommend to Government rather than abolition, the measures that could have tightened up in the areas of concern?

Mr YOUNG: Once all the avenues for return to work, for partial or normal duties, have been exhausted there comes a point where a decision as to be made on the claim. You have discussions with the worker and you may find that it is in the best interests of the worker and the employer to allow the worker to get on with their life. They may want to move interstate. Some workers do not want to come back to work. In some cases employers may not be able to provide long-term suitable duties. That is another aspect that we have concerns with, the payment of difference play on suitable duties. But somewhere along the way you have to reach a decision on the best interests of both parties. If you do not have that option then you have a worker that is sitting at home picking up their fortnightly pay cheque. You have additional costs to the employer of employing someone, either training up or employing a casual worker to come in and replace that person for X period of time.

I just mentioned suitable duties. A number of claimants in this statement receive partial incapacity payments which are called difference pay or makeup pay. They return to work on suitable duties, pick up their difference pay to the year dot. The difference play includes overtime and standby allowances. So they are picking up the normal pay in contrast to the workers in the rest of their group or their gang that are physically there working overtime, doing the standby. You have a morale situation where you have one worker sitting at home picking up the same money for doing nothing against those who are at work doing the work. That is another avenue where commutations can be used. Potentially, that worker may never come back to work. So the option is to commute the claim, cut the costs and restore a high morale to the work group, and therefore better productivity, let the worker get on with their own life and the employer make alternative arrangements. It is another avenue where commutations can be quite usefully put to work.

The Hon. MICHAEL GALLACHER: What was the role of WorkCover with regard to self-insurers prior to the abolition of commutations?

Mr FRANCO: Prior to the reforms introduced from 27 November last year WorkCover had no role in the approval of commutations. The commutations were a matter of agreement between injured workers and the self-insurer. Once agreement was reached it was simply a matter to have that agreement approved by the Compensation Court if the settlement was in the best interests of the worker. Prior to 1998, as I indicated earlier, all commutation applications in the first instance had to be made through WorkCover and certain grounds had to be satisfied: such as that the commutation sum would be used to establish a business, or such as that the commutation sum would be used to further the rehabilitation of the worker in a manner which would not otherwise be available as part of injury management and so forth. If WorkCover gave approval to that application it was then a matter to have the settlement approved by the court.

The Hon. MICHAEL GALLACHER: How you feel about that old scheme?

Mr FRANCO: That old scheme is obviously better than what we have now from the self-insurers' perspective. It had some problems with it in that there were no real guidelines within which to govern the application of these criteria. So there was a lot of uncertainty, but that could be addressed.

The Hon. MICHAEL GALLACHER: Could we not have simply kept commutations, cognisant of the difficulties that have occurred since 1998, and looked at a reporting mechanism to WorkCover like that prior to 1998 to ensure a safety net was in place for both employer and employee? WorkCover would simply tick off that all the back to work requirements, see that they simply cannot be met for these reasons and approve the commutation? Would that not have been an easier way out of all this?

Mr FRANCO: I believe so. Provided the guidelines were reasonable and fairly applied, I do not think self-insurers would have a problem with that.

CHAIR: What is the average commutation payment?

Mr YOUNG: It is in the vicinity of $48,000.

The Hon. TONY KELLY: And that looks after somebody for the rest of their life?

Mr YOUNG: It is not intended to look after them for the rest of their life, depending on the age of the worker. It can relate to about a five-year figure. It is a cost buyout figure. That is normally used as a guide. Some workers, when they receive their lump sum payment, may apply it to their outstanding mortgage.

The Hon. TONY KELLY: They would not want to live in Sydney.

Mr YOUNG: No. Some may wish to move out of the State for whatever reasons, possibly to get a job more suitable to them with their disability. I believe that the level of commutations in the future will be considerably higher than we have seen in the past because of the tightening up. They could go as high as $70,000. Of course, there will be a lot less.

The Hon. TONY KELLY: You have given an average figure. What sort of injury would a person have to get that? What is the average injury?

Mr LAYT: It is about a three to seven year purchase of the annual gross entitlement to workers compensation. In other words, if somebody is on the statutory rate of about $296 a week, about $15,000 a year, and depending on the severity of injury such as a back injury and the age of the worker and the dependency situation, it works out to be about a three to seven year purchase. If someone is on about $15,000 a year you would be looking to buy it out for about $75,000 for a five-year purchase.

Mr FRANCO: That assumes that other entitlements such as lump sums for impairment have been paid out or are factored into the overall figure and also—

CHAIR: Part of the $48,000?

Mr FRANCO: If that is the average. In addition to that, if there are ongoing medical treatment needs an assessment is made of that and that is also factored in. When a settlement commutation goes before the Compensation Court the court goes through that exercise to satisfy itself that it is a reasonable amount. It covers the potential weekly payments entitlement in the manner that Mr Layt suggested, together with potential lump sum entitlements and future medical expenses. In addition to that, liability issues are looked at. That is often a factor that promotes some compromise on the figure. It is not an easy exercise to illustrate what is a typical commutation case because they are all different.

CHAIR: It sounds as though the five to seven years is the average period.

Mr FRANCO: For the weekly payments component.

CHAIR: So the person may still be an injured worker after seven years or not able to work.

Mr FRANCO: That is correct.

The Hon. TONY KELLY: You are expecting they will reach pension age by then?

Mr FRANCO: No, not necessarily.

Mr YOUNG: They may be a 30-year-old. In some cases liability may have been denied on a particular claim, say, for a period of four weeks. The worker has since left the organisation and a year or two later you find an application for determination turns up claiming weekly benefits for the four weeks and an ongoing liability of, say, $150 a week. If you want to dispute that the time period definitely has a very large determining factor as to what you decide to do. Good business management is that you may make a decision to commute, role everything up. What you have to weigh up is that if you dispute this claim you have legal costs and investigation costs. It might cost $20,000 to go to court to dispute the case and even then you will end up with an ongoing liability, which you have to pay until the worker is 65. So you wrap it up and say that we are prepared to offer $8,000 or $10,000 to resolve the

issue. That is another means of using a commutation to limit costs, and for a self-insurer that is critical. It also takes the claim out and brings it to finality. In a lot of those cases the worker has left the employee.

The Hon. TONY KELLY: The worker leaving the employee should not make any difference as to whether it is a genuine claim. I think you are suggesting that it may not have been a genuine claim. If it were a genuine claim, would it not have been better to say "I am not paying you anything", rather than encouraging non-genuine claimants? Your suggestion is that someone is trying to pull one on. If that were the case, rather than encouraging other people by making a cash payment, not that $8,000 is equivalent to a lottery win—

The Hon. MICHAEL GALLACHER: Are you talking about unfair dismissal laws?

The Hon. TONY KELLY: No. Mr Young gave the example of someone having a go at the system. What about a poor bloke who has been asked to carry weights heavier than he should have carried, and has injured his back, he is 30 years of age and has no chance of getting another job. You are offering him $48,000. I know why you would want to pay him out.

The Hon. MICHAEL GALLACHER: That is an observation. Can you explain your interpretation of the Government's new reforms? Under the new scheme what entitlements would the 30 year-old who was asked to pick up the heavy weights have under the new State Government scheme?

Mr FRANCO: As entitlements it is hard to say. If a person cannot work again, and is not married, and for practical purposes is totally unfit, the entitlement is $296.20 per week, ongoing.

Hon. TONY KELLY: For the rest of his life?

Mr FRANCO: To age 66, to the first anniversary of the Social Security retirement age, that is assuming the level of incapacity remains the same and no employment opportunities emerge. In addition, there is probably an entitlement to lump sum for permanent impairment of the back.

The Hon. TONY KELLY: What is that?

Mr FRANCO: The way that is calculated is up in the air because it is an entirely new method of calculating, we have not had any cases on it.

The Hon. TONY KELLY: He could get $150,000.

Mr FRANCO: Not necessarily.

The Hon. TONY KELLY: But he could?

Mr FRANCO: If the person is declared to be greater than 75 per cent whole person impaired, yes, but not everyone is in that category.

The Hon. TONY KELLY: But it is a good risk for you guys to say that you will pay out those blokes at $40,000 and not have to worry about them again.

Mr FRANCO: That is a fair point, Mr Kelly. All of the commutation scenarios are different. One point that was not made earlier is that the reform to commutations discriminates against self-insurers. If we accept that commutations are effectively not available, then the self-insurer will be wearing the cost of that claim for ever. Compare that to an employer in the WorkCover Fund that wears only the cost of that claim as part of the premium calculation for three years; why should that be the case?

Mr YOUNG: Also, there is a ceiling on the claim.

The Hon. TONY KELLY: They seem to get it back in that three years.

Mr YOUNG: It depends on what estimate they put on the claim, because there is the ceiling on the estimate that appears in the calculation of the premium. At the moment it is $150,000 per claim. If there is a $1 million estimate on the claim, in other words the insurer anticipates that there is a potential to pay out at least $1 million on

the claim, the employer is going to be restricted to $150,000 and with the various factors in the premium calculation they pay a component of that $150,000.

The Hon. TONY KELLY: As opposed to $45,000? I know which I would rather pay.

Mr FRANCO: Maybe the answer to the suggestions of Mr Gallacher and Mr Kelly is that if there is further reform of commutation, a restriction should be made on those who are categorised as seriously injured. Maybe they should be left out.

The Hon. MICHAEL GALLACHER: Are you saying they cannot be bought out of the scheme?

Mr FRANCO: Maybe.

Mr YOUNG: The only problem with that is that you have ongoing management of that claim for 30 or 40 years and that includes an annual medical for the worker, investigation costs to see what the worker is doing. There are certain forms such as statutory declarations that have to be filled out and you have to assess their potential to earn. Over years there has been a change in culture. Many years ago in most families there was one breadwinner. Nowadays in most cases both parties work. Some workers may be happy to sit at home, if their partner is working, and pick up their weekly statutory benefit of $296, and be content to live on that. The incentive to get back to work is not there. That is something that we did not see in the old days. Families need income. If the breadwinner was not able to work they had to look elsewhere to try to get some money.

The Hon. TONY KELLY: In Sydney when there are two breadwinners, they need a $400,000 mortgage to buy their first home 50 kilometres from the central business district. One income of $296 will not help anyone, they need both incomes. I do not believe your argument.

Mr YOUNG: There are a lot of cases like that.

The Hon. TONY KELLY: Only if they own their own home, and not the 30-year-old that we were talking about.

The Hon. GREG PEARCE: Your Government set the figures.

CHAIR: Earlier you said that you have a saving under your system of one-third to one-half. In what way do you achieve that saving, is it through commutations?

Mr YOUNG: No, it is through proper management of the claim. The liaison that we have in each individual self-insurer getting the parties together such as the return to work co-ordinator, the supervisor, the worker, OHS personnel. We fully support minimising incidents and would love to have a zero incident rate. If we cannot have that we are certainly looking at minimising our exposure. It is only through ongoing support from individual players within the organisation that we get people back to work. The sooner we get people back to work is a plus for the worker and for us. Self-insurers go out of their way to provide suitable duties for workers, because it is no good to us having the worker off work. They are a valuable resource and we need them back on the job. If they can go back to normal duties that is great. If they cannot do that, let us get them back on suitable duties, graduated duties, starting at two hours a day. But let us get them back to work.

Mr FRANCO: In addition, self-insurers are large organisations with upwards of 1,000 employees in most cases. Who is better placed to provide suitable duties?

CHAIR: You have greater flexibility and jobs available?

Mr FRANCO: That is right.

Mr YOUNG: Some of our members have in-house medicos and legal people to give advice on particular issues. It is all about someone getting injured, so we should us rehabilitate him as quickly as we can, get him back to work, and resolve the case as soon as we can for the best interests of both parties.

Mr LAYT: While we have a better relationship with treating doctors that goes a long way for doctors playing their part in getting people back to work. Because we do not have the large volume of claims that a fund manager has we can devote quality time in managing cases. It is injury management as opposed to claims management. We look at the whole thing.

CHAIR: You are responsible for the tail that you are talking about, as distinct from WorkCover having that $2.6 billion?

Mr FRANCO: That is right. Self-insurers do not contribute to that.

Mr YOUNG: Self-insurers have never had any contribution for part of the tail, with the exception of a few recent self-insurers that left the fund scheme since 1998. About four employers have obtained a self-insurers licence since then. It was written into the legislation that any new self-insurer on or after 1 August 1998 would have to either take over their claims from the scheme or pay an adjusted premium to offset their liability.

The Hon. TONY KELLY: I have asked that question a few times but did not get an answer. I was under the assumption that all 61 had paid a contribution to the tail.

Mr YOUNG: I think there have been four self-insurers since 1998.

The Hon. TONY KELLY: Technically, if there was a deficit to the scheme prior to 1998 the self-insurers theoretically could have earned part of it?

Mr FRANCO: Not the ones who were self-insured in 1926.

Mr YOUNG: You could say that 57 of the current self-insurers have had basically no input to the current tail, current deficit.

The Hon. TONY KELLY: In 1926 there would not have been many self-insurers, would there?

Mr YOUNG: Sydney Water, EnergyAustralia and Sydney County Council. Unilever was first to get a licence in 1926.

The Hon. TONY KELLY: Woolworths?

Mr FRANCO: Woolworths have been in and out of self-insurance. They ceased self-insurance in 1988 and regained their licence about a year ago.

Mr LAYT: The ANZ bank has been a self-insurer since 1970 and self-insured in other States except the Northern Territory.

CHAIR: Do you think that there should be a loosening up of the rules so that smaller companies could become self-insurers? In other words, a shift into the self-insurance area so that there need not be 1,000 employees?

Mr FRANCO: It is down to 500 employees.

CHAIR: Do you suggest it get down to 100 employees?

Mr YOUNG: We have been pushing to have zero employees for a number of years.

The Hon. TONY KELLY: Fletchers in Dubbo have 700.

Mr YOUNG: In some States there is a zero requirement for employees, it is not a condition. Some States do not have conditions. Someone applies for a licence and it is granted, but it varies from State to State. Recently it was reduced from 100 to 500 for either a single or group licence, and we would love to see that go to zero. In the recent changes WorkCover imposed a financial figure into the licence condition. I do not know the exact figure, but it determined the difference between assets and liabilities. You are not allowed to get below a certain figure to retain the licence.

CHAIR: As distinct from any guarantee?

Mr YOUNG: No, you still have to have a bank guarantee. An actuary determines your liability on an annual basis and then they come up with what is called a central estimate, which is the 50:50 version of what your liability may be, and that includes an administration cost between 6 per cent and 12 per cent. You then add a factor of 25

per cent and that becomes your level of bank guarantee, or security deposit. Most self-insurers have a bank guarantee which they place with a bank of their choosing. Of course they are charged a fee for the bank maintaining that security.

CHAIR: Do they pay you interest on that?

Mr YOUNG: No.

The Hon. TONY KELLY: There is a cost to the companies.

Mr LAYT: It is between 1 per cent and 3 per cent.

Mr YOUNG: If you have a bank guarantee for, say, $30 million, you may pay 1.5 per cent a year.

The Hon. GREG PEARCE: Plus you have to provide security to back up the guarantee?

Mr YOUNG: That is right. It has to be in your account. So, the employer's total financial arrangements, which may be, let us say, half a billion dollars, $30 million of that will be set aside, cannot be touched. It is workers compensation liability and in the event the employer goes bust, that $30 million is secured to pay out the liability of all claims, should they fall due the next day, say.

CHAIR: I suggest that the bank should pay you interest because obviously they can use the $30 million, can they not?

Mr YOUNG: No, it must remain untouched.

The Hon. Dr PETER WONG: Earlier we were told that one of the major problems was with WorkCover's earlier reporting. Do you have any problem with earlier reporting? If you do, what is it? If you do not, why do you not?

Mr YOUNG: We strongly object to the new provisional liability payments.

The Hon. GREG PEARCE: The 12 weeks?

Mr YOUNG: Yes. The earlier reporting where the worker only has to give notification that they have received an injury. There is no requirement on the worker to lodge a claim or a WorkCover medical certificate. Provisional payments must commence within seven days and, as Mr Pearce says, they may continue up to 12 weeks. We believe that from some of the feedback from a few of our members at our bimonthly meeting last week that they are experiencing an increasing trend in reporting. The seven days is too short to make a decision on a claim in the proper manner. And you do not have an informed decision to make that decision on. I cannot understand why we have not stuck with the notification which involved a WorkCover certificate and a claim form. It gives you all the evidence that you need to make a well-informed decision on the claim.

For self-insurers, most of our members pay quickly anyway. The worker is either getting paid sick leave or some other type of leave. They are not out of pocket. We make the decision in most cases generally within a week or two. The supervisor supports the worker's claim that they were injured, liability accepted, pay. It is no big deal. If we think there is something a little bit fishy about the claim, we want to get some further evidence, maybe get some doctors' reports, send them off to a specialist, maybe talk to a few other people to see what did happen, fine. We can right that all up within a few weeks, but we need that information to make a better decision.

Mr LAYT: It is very difficult to do early intervention without a fully completed WorkCover medical certificate. I was disappointed when the changes were made that an injured worker can ring up with minimum reporting requirements, have some time off and not even go and see a doctor. If a fully completed WorkCover medical certificate were served on the employer, it would do a couple of things. It would allow us, irrespective of the veracity of the claim, to do early intervention and rehabilitation and start the claims management procedure of determining whether the claim was viable.

At our self-insurers association meeting last Thursday there was a proposed new self-insurer, who is in the waste management. They have contracts with local councils. This fellow said he was very concerned with the changes to the legislation in terms of provisional payments because he said that he had heard that the workers at this

waste management company were starting an unofficial register to see who was going to have an extra long weekend every Friday and Monday, and they do not even have to go and see a doctor. We are concerned that it could turn into another form of leave entitlement.

Mr FRANCO: There is certainly scope for abuse of provisional payments. Provisional payments are activated solely on the basis of notification. The criteria that need to be satisfied for provisional payments are modest criteria. It is open for individuals to notify of injuries, to take periods of time off work up to the maximum of 12 weeks, to come back to work without ever submitting a claim. That could go on ad infinitum.

CHAIR: So that is more lenient than sick leave provisions where, after so many days, you have to produce a medical certificate?

Mr FRANCO: That is right. In addition, the regulator does not appear to have dealt with the situation involving an aggravation. So, if an individual notifies an injury at a particular time, has a period of time off, say eight of the 12 weeks, gets back to work and another event, another injury, another frank incident occurs at work, under the Workers Compensation Act that is an aggravation. That could be classified as a new injury. That could start the 12 weeks again. There is no discussion about how that situation ought to be dealt with. It is simply not mentioned in the guidelines, but it is something that can happen on the basis of the legislation. This is a worst-case scenario obviously, but it has the potential to become another form of leave entitlement.

CHAIR: Does that apply to everybody whether they are self-insurers?

Mr FRANCO: That is right, it is uniform.

Mr LAYT: That is correct and it is going to be difficult for self-insurers to manage that situation. I would hate to think what the fund managers are going to do about it with the sheer volume of claims and incidents that they receive at any one time.

Mr FRANCO: In addition to that, as I understand part of the fund managers' remuneration package is based on keeping disputations down. So, it may follow that a lot of these provisional payments situations are simply accepted so as to not have a disputation. For the self-insurer there was never any issue about early claims management, early injury management, payment of money. It was something that happened as a matter of course on the vast majority of claims, which are genuine. If anything, because the employee is the self-insurer's employee, the self-insurer will tend to give the individual any benefit of the doubt that exists on a claim. So, for the self-insurers the whole provisional payments regime is seen as an unnecessary layer in the workers compensation system and it does add to costs because it has to be administered and complied with.

The Hon. GREG PEARCE: Harking back to the issue Mr Kelly raised, on a couple of occasions WorkCover management has indicated that the reasons for the commutations changes were savings to the scheme, and to an extent that is borne out by the actuary figures, but they also mentioned what has been termed a social agenda. It is a social agenda of deciding that injured workers should be kept on $296.20 indexed for the rest of their lives instead of having the choice. I think that was what you are getting at, was it not? You want the choice to be able to deal with those issues rather than to be boxed in by what is, frankly, a fairly dubious philosophical position?

Mr YOUNG: That is exactly right. As Mr Franco explained earlier, prior to 1998 there were severe restrictions on commutations and that is why the number that were actually going through were very minimal. As a result, as I pointed out earlier, the number of people on long-term benefits doubled from 6,000 to 14,000. So, commutations were brought in and opened up in the changes in 1998. There was a plan for insurers to look at claims from different years where they could achieve the greatest savings from those who had been on benefits then for three years, four years or whatever and were not going to return to work. They were the ones that started to go through and be processed. Now, three years later, of course you have got rid of the easy ones because commutations is an agreement between the two parties. It is at the insurer's obligation, the worker can approach the insurer, of course, but the insurer might say, "No, on this particular claim we are not interested in doing a commutation. We prefer to continue the weekly benefits."

So, the insurer has the right to determine which claims they will commute. Now, as time progresses you get into the next group, which are the middle-of-the-road ones where you are going to have to negotiate a little bit longer, a little bit tougher, maybe have to give a little bit more money to resolve those cases, and that is why the commutations level started to taper a little bit. Eventually, if it were to continue, you would have gone into the next group, which was going to be the tough ones. You may have had to spend a number of years to actually get a

commutations agreement between the insurer and the worker in those cases. There will always be a number of workers that will never be interested in a commutation.

Mr LAYT: I have those at the moment, but at least we have explored the option. The option was there. We explored it. We have written to the injured worker, asked him or her whether they are interested in redeeming or settling their future entitlement to workers compensation benefits. They have sought legal advice on it and they are happy to stay on their $296 per week and have the medical expenses paid. That is fine. I will provide for those future payments accordingly, but at least the option was there to be explored.

Mr YOUNG: Another aspect of abolishing commutations, particularly for the self-insurer, is that a claim that may have had $100,000 estimate on it, which may have included a number of payments— medical, weekly benefits et cetera—and then the possibility of a commutation in the near future, the estimates on those claims now, we could be looking at $1.5 million to $2 million. If you have someone who is 25 years old, 30 years old, you are estimating for another 30-odd years with inflation et cetera and that then increases the overall security, the bank guarantee of the self-insurer, and it means that the provisions have to be increased. So, more money comes out of the employers general fund, or whatever fund it comes out of. So, all of this adds to the cost of the self-insurer. Under the new reforms we had no way of extinguishing those claims.

The Hon. GREG PEARCE: Do you think there might be a bit of an incentive to force self-insurers back into the scheme when you have a situation, as we have, where the deficit has been allowed to blow out to the point where, even with all of the reforms that have been rammed through, it is not going to be diminished? It would be nice to have a larger pool of higher premiums coming in perhaps?

Mr YOUNG: Well, I would like to think that no self-insurer currently licensed would go back into the fund.

The Hon. TONY KELLY: That is because you would have less to manage.

Mr YOUNG: No.

The Hon. GREG PEARCE: WorkCover might have the opposite view.

Mr YOUNG: To be honest with you, one of the areas that is of major concern to us is that through WorkCover, of course, we have to meet certain licensed conditions and one of those conditions, which has just recently been approved by the WorkCover board, is what they call the occupational health and safety audit. Now the audit is a means by which each self-insurer audits its own systems and provides a report to WorkCover and once every three years WorkCover comes out and audits the self-insurer on a number of elements. What they have been able to get through their own board is that in the future self-insurers will have to achieve what they call a level 4 out of a maximum level 7 to retain the licence.

That application on self-insurers is totally discriminatory. It is an area that is not applied against any other employer in this State. If a self-insurer gave up their licence tomorrow, they would not have to reach a standard of level 4 in what they call the audit plan. As required by every other employer in this State, they would be required to provide a safe and healthy workplace and look after the welfare of up a tough their workers. This OH&S requirement should not be part of our licence. We are an insurer. Fund managers do not have that requirement placed on them, yet because we are a self-insurer WorkCover says, "You will reach a level 4, and if you do not reach and maintain a level 4 we will look at taking your licence off you." That is crazy. What about the other 750,000 employers in this State? They have no requirement like that.

The Hon. TONY KELLY: But they are paying WorkCover.

Mr YOUNG: That is right, they contribute to the fund. That is another area of major concern to us through the administration of WorkCover, and we would dearly love to see that condition in our licence abolished.

CHAIR: Are there any other recommendations such as the one you have just mentioned?

Mr YOUNG: There are two further aspects. With regard to common law, we do support the changes that have been recently introduced. At this stage we are not sure how the cost will reflect, with the reductions in the common law costs versus the increase in statutory costs, on loss of use and pain and suffering. We believe that the 15 per cent access to economic loss under common law will significantly reduce the number of claims, and, of course, as an offshoot to that, will reduce the legal costs.

In respect of legal costs, it is too early to comment on the outcome of that. But some self-insurers have in-house legal people or legal firms on a panel, and we may have to wear some additional costs in another account in the self-insurer to maintain the level of advice that we like to receive to assist us in making decisions on claims. So we will be monitoring that over the next 12 or 18 months. The only other area I would like to comment on is the payment of make-up pay. We would like to see that only paid for a period of six months. That would create an incentive for the partially incapacitated workers to get back to normal duties. If they wished to maintain a particular level of payment, they would also have the option of applying for a higher position within the employer, to maintain that standard level of income. It will certainly have a reasonable effect on reducing costs to the self-insurer and to employers that are insured with the fund.

CHAIR: I assume WorkCover made the recommendations to the Government with regard to legislation that affected self-insurers. Did anyone have any consultation with the self-insurers about the proposed changes to the legislation that affected them?

Mr YOUNG: Not directly. We are invited to make submissions generally on those things. But I think it would be fair to say that of the suggestions we always put up, very few, if any, end up in changes to the legislation.

CHAIR: Were you aware of the changes that affected you before the legislation was introduced?

Mr YOUNG: Yes. We made a contribution, and also through be Advisory Council, but in a lot of instances our advice has been ignored. Self-insurers are generally at the front of things. We know if a trend is going to occur, because we see it first. It is an avenue that we can pass on to fund managers. We can say, "Look, this trend is starting to emerge. You can start watching because no doubt it is going to flow on to you as well." It has been very good that we can have some input into that.

(The witnesses withdrew)

Motion by the Hon. Greg Pearce agreed to:

That the tabled documents be published.

(The Committee adjourned at 4.50 p.m.)

Clarifications

Mr David Finnis, Principal and Actuary, Tillinghast-Towers Perrin

Page 5 "We would like to clarify that in that exchange Dave Finnis is referring to the scenarios, not the figures. We wish to emphasis that we have calculated figures in an objective manner using our models and our modelling assumptions for the scenario adopted by WorkCover. We have not 'adopted' WorkCover's figure, as might be implied by the Hon Greg Pearce. Our report submitted to the Standing Committee discusses these scenarios (see section 5.11 to 5.17)."

Page 6 "On page 6, there was an exchange about the Targets Mainly Achieved scenario, namely WorkCover's best estimate scenario. Mr Finnis was cut somewhat short in two of his responses. We therefore wish to clarify the following.

As noted in the testimony, Appendix A of 14 January 2002 report provides a full description of the Targets Mainly Achieved scenario. However, we would like to emphasise to the Standing Committee that the Executive Summary of this 14 January 2002 report also provides a summary of the Targets Mainly Achieved scenario and Appendix F provides further details in respect of the accident year scenarios.

In addition, whilst now superseded, our 26 November 2001 draft report also described the Targets Mainly Achieved scenario in both the Executive Summary (page 2) and in the main body of the report.

We trust that this corrects the Hon Greg Pearce's assertions that our descriptions were not in the Executive Summary of the relevant reports."

Page 8 "We would like to clarify that WorkCover chose a position within the original range of Tillinghast's scenarios as their target scenario. This became the Targets Mainly Achieved scenario (which was more optimistic than Tillinghast's 'central estimate', but more conservative than our most aggressive scenario). We wish to emphasise that WorkCover's choice of their target scenario took place after we had produced initial results for a range of scenarios, including our 'best estimate' scenario."

Page 13 "With reference to our report submitted to the Standing Committee on the day of our testimony. We would like to clarify that our understanding at the time of our testimony was that were not precluded from providing a copy of the report to WorkCover, our client, as the report clearly relates to our work for WorkCover. Subsequent to our testimony, we did provide the report to WorkCover.

We would also expect the Standing Committee to make our report public since it forms part of our evidence provided in a public hearing and the report was prepared in the expectation that it would become publicly available."

Page 14 "We would like to clarify that actuarial advice in the reform process can follow two paths. One, there is a fixed set of reforms and we are asked estimate objectively a financial outcome. Two, we are given a target financial outcome and are asked to solve objectively for the reform(s) needed to achieve this outcome. A key point is that regardless of the path chosen, the actuarial advice, including the financial calculations, remains objective. The discussion in the testimony was in regard to the second path, where we were asked to calculate the appropriate permanent impairment formula (ie. reform) required, on the basis of an objective financial assessment, to provide approximately $50 million in extra benefits."

Page 18 "We wish to emphasis that it is our firm's policy not to discuss specific client matters with the media. Thus, by not responding, we have simply followed our normal firm policy and we would wish to emphasise to the Standing Committee that no particular inference should be drawn on account of our not issuing our own statement (to the media)."

Page 19 "It is important to emphasise that the 30 June 2002 valuation is just a further estimate on more 'developed' data. The June estimate will not be a final figure in respect of the impact of the reforms."

Page 19 "We wish to clarify that we did not receive an instruction to finalise our report, per se. We were asked to explicitly by WorkCover to prepare our 26 November 2001 draft report (as explained in our report submitted to the Standing Committee). Having done so, it would be our normal professional practice to finalise an earlier draft report, particularly where the background may have changed materially. We therefore sought to finalise our report as soon as possible after the legislation and regulations were finalised.

On 10 January 2002 we discussed various matters relating to the final report with Rod McInnes, but no specific instruction was sought or given at that time. This discussion centre on details of the legislation and regulations and the changes we intended to make in finalising our report.

We would remind the Standing Committee that we assisted WorkCover for approximately 18 months on aspects of the reform package. We have performed that role as part of the ad hoc services under our contract with WorkCover. We have reported to WorkCover at various stages during these 18 months and the 26 November 2001 draft report was a further iteration of our reporting, which we than finalised in early 2002."

Page 20 "Whilst we are happy to provide a copy of our contract to the Standing Committee, we require WorkCover's consent before we are able to do so. We will seek this consent separately."