CORRECTED

REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE No. 1

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

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At Sydney on Thursday 22 November 2001

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The Committee met at 10.00 a.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. Janelle Saffin
The Hon. Henry Tsang
The Hon. Dr Peter Wong

RICHARD GEOFFREY RAYMOND WILLIAMS GILLEY, Managing Consultant, RiskNet Group, P.O. Box 186, Wahroonga, New South Wales, sworn and examined:

CHAIR: I welcome media representatives and members of the public to this hearing of General Purpose Standing Committee No. 1 as part of its inquiry into the review and monitoring of the New South Wales compensation scheme. 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 in Parliament may not, except with permission of the Committee, be disclosed or published by any member of such Committee or by any other person. Copies of guidelines governing broadcasting of the proceedings are available from the table by the door. I welcome Mr Richard Gilley. Thank you for giving us a valuable time today. Are you conversant with the terms of reference of this inquiry?

Mr GILLEY: I am.

CHAIR: If you should consider at any stage during your evidence that in the public interest certain evidence or documents that you may wish to present should be heard or seen only by the Committee, the Committee will be willing to accede to your request.

Mr GILLEY: I do not think that will be necessary.

CHAIR: Do you wish to make an opening statement? We have received your submission.

Mr GILLEY: With your permission, I would like to distribute some documents that I have prepared. They include a copy of the slides that I hope to show you—there is an opportunity to write notes as we go through if you wish to do so—two editions of a newsletter that my organisation publishes, which I think some Committee members may have seen already; and a briefing sheet about the organisation that I represent.

CHAIR: There being no objection, I order that the documents be tabled.

Mr GILLEY: In giving evidence this morning, I propose to run through a series of slides that I have prepared and allow for an interplay of questions as they may suggest themselves to you. If I am unable to answer a question because I do not have the information to hand and you require a response, I undertake to provide it at a later date.

I propose to touch on this morning injury management and occupational health and safety, scheme management, scheme ownership and aligning financial incentives. In its annual report the New South Wales workers compensation manager, the WorkCover Authority, said that new major claims declined by 5.3 per cent from the previous year. This represents the fourth consecutive year in which the number of injuries has declined. I have contrasted that statement with a quotation from the Workplace Relations Ministers Council, which says that all statements such as that have only a grain of truth. I am alluding to the fact that the best way of managing workplace injury is to prevent it from occurring in the first place. A number of misleading statements have been made to the public at large about how well we are doing at preventing injuries. I believe quite the contrary is the case, and I hope to demonstrate that today.

The statistics that you may see can be aberrations in that they represent not what is truly happening in the workplace but what is happening in the compensation system. Over the past three or four years a number of changes in our compensation system has reduced the number of workers compensation claims going through the system. However, that is not the same as reducing the number of injuries in the workplace. The largest impact on the number of injuries is the 6 per cent threshold on hearing loss. Bear in mind that hearing loss claims represented about 74 per cent of all male diseases in our system, so by changing the threshold we have impacted significantly on the raw number of claims in the system. We have not stopped the injuries from happening; we have stopped those injuries becoming claims.

As to stress claims, it is no longer possible for medical practitioners to describe an injury as being due just to plain stress. They must take steps to diagnose it as a psychological condition. That has also cut out some claims. Changes to the New South Wales scheme have influenced the number of claims but not reduced the incidence of injury in any great way. You may have seen these statistics already, which come from the workers compensation statistical bulletin. Some 3.1 people are killed every week—there was a sad event yesterday when a worker was crushed by a falling wall—and 275 workers are permanently disabled each week in New South Wales. There are

120,000 claims per annum and one in 26 workers claim compensation in New South Wales. One in 56 workers had a claim greater than five days and one in 500 had a serious claim. The average claims cost in the scheme is $15,393 and the average lost time per claim is 11.1 weeks.

The Hon. MICHAEL GALLACHER: How does that compare with Victoria, for example?

Mr GILLEY: I am not trying to dodge the question, but it is very hard to compare the two schemes because in Victoria they have a 10-day deductible, which means that injuries in the first 10 days are not collected in the statistics.

The Hon. TONY KELLY: But you would have figures about the number of workers who were killed.

Mr GILLEY: If you bear with me, I will show you a slide in a moment that compares the States' fatality rates. The other point is that these are workers compensation statistics and up to 30 per cent of workers in New South Wales are not covered by a workers compensation scheme. They are sole traders, self employed and so on, and they are not reflected in these statistics.

The Hon. TONY KELLY: Is that different in the other States?

Mr GILLEY: No. You must be a worker to be covered by workers compensation.

The Hon. TONY KELLY: So the figures would still be comparable between the States?

Mr GILLEY: Yes, except that you must be careful about what is collected. We collect data on five days and over and Victoria collects it on 10 days and over. So there is a difference to start with. As to fatalities, you can see that New South Wales performs very well at killing people at work compared with some of the other States. That is raw data for fatalities excluding commuting injuries and diseases.

The Hon. TONY KELLY: Is that the number of people killed per annum?

Mr GILLEY: That is data from the Workplace Relations Ministers Council document.

The Hon. TONY KELLY: Was the number not greater on the previous slide?

Mr GILLEY: This figure excludes commuting accidents and diseases. This is the number of people killed in the workplace.

The Hon. TONY KELLY: And the previous figure was not?

Mr GILLEY: That figure showed all fatalities, as will the next slide. That is the trend in New South Wales over the past decade as far as fatalities are concerned. As you can see, there has been no remarkable decline in the number of people killed. People will say that that is because of exposure shifting upwards—in other words, there are more people in the work force. However, the counter argument is that we have had a shift of people moving from high-risk to low-risk occupations, so there should be a generalised trend down if we are as good as we think at preventing people from being killed at work.

The Hon. Dr PETER WONG: What are the high-risk industries?

Mr GILLEY: Injuries in the manufacturing industries used to be quite prevalent in New South Wales.

The Hon. Dr PETER WONG: But not any more.

Mr GILLEY: Those industries have shrunk and people have moved into lower-risk occupations.

The Hon. TONY KELLY: Are the numbers percentages or bodies?

Mr GILLEY: They are bodies.

CHAIR: New South Wales has the largest population so it would have more deaths than Tasmania, for example.

Mr GILLEY: There is no rate shown. This is just raw data.

The Hon. TONY KELLY: Those figures are bodies. Whilst you say that the numbers are not decreasing they are staying static, significantly more people are employed now than there were ten years ago in New South Wales?

Mr GILLEY: Yes. The 1999, 1992-93—

The Hon. TONY KELLY: My point is that if you had done your statistics on per head of population on a relative basis they would actually drop because there are a lot more people employed in New South Wales now than they were ten years ago.

Mr GILLEY: Yes, I accept that but, as I said earlier, there has been a shift in employment from higher risk industries into lower risk industries in New South Wales.

The Hon. TONY KELLY: Their employment in the workplace is safer than it used to be. Nobody who gets out and works in the workplace would say it is as bad as it was ten years ago.

Mr GILLEY: I am not saying that. I am just saying that if we are saying to ourselves as a community that we are doing better than we previously were, the figures would belie that.

The Hon. TONY KELLY: My point is that if figures were done on a per head of population or on a percentage bases rather than bodies, and we are talking about the increase in people actually employed, it would actually show a drop?

Mr GILLEY: But if you took the number of people who have shifted out of high-risk industries where people used to be injured significantly into lower risk industries where people are not so exposed to falling off buildings or being crushed in machines and those sorts of things, you would expect to see better—

The Hon. TONY KELLY: Have you got statistics on that?

Mr GILLEY: No, I have not.

The Hon. Dr PETER WONG: You cannot say that if you have no statistics to prove it. It is inadequate until you show the rate and not the bodies and you must compare with other States to see if New South Wales is doing better or worse. It means nothing whatsoever.

Mr GILLEY: Shall I move on? To get a feel for the number of prosecutions and the average size of fines compared with the fatality incidents in New South Wales, it is starting to ramp up in the past two or three years in terms of numbers of prosecutions and the average fines until 1999 were still relatively moderate. I do not think anybody can deny that.

The Hon. TONY KELLY: What is the typical offence for which these fines would apply?

Mr GILLEY: They would range. It is a mixture. Some of the prosecution guides that WorkCover Authority use are severity of injury, the number of possible times the employer has been previously prosecuted, whether there is a particular push in a particular range of industries to make a point—there are too many influencing factors. Too much from that other than it would appear that a workplace injury is not seen in the same light as perhaps somebody caught drink driving a couple of times. It is more a slap on the wrist until very recently than a really substantial penalty.

CHAIR: Do you have an explanation for the almost 100 per cent increase in prosecutions in the 1999 period?

Mr GILLEY: I do not have one. You may be able to put that to the WorkCover Authority who actually lodge the prosecutions.

The Hon. TONY KELLY: It is a 100 per cent increase in the average fine but actually a decrease in prosecutions. So the fines have gone up more than double. They have probably tripled.

Mr GILLEY: Yes.

The Hon. MICHAEL GALLACHER: In relation to the prosecutions, are they individuals, individual companies or is one person given a number of charges?

Mr GILLEY: The source data is the WorkCover annual report and it does not break down to that level. Again that is something you would perhaps need to put to the WorkCover Authority. I referred in a written submission to the first tranche of evidence before the Committee to the rating bureau in 1998 or 1999 provided to the WorkCover Authority. In the New South Wales Workers Compensation Scheme there are 436 employers who consistently performed at a level 20 per cent or worse than their industry in terms of claims costs. If we were to deal with that number of people now in a risk management sense, in other words the worst performers, and target them we would have a significant impact on the scheme. As you can see the average loss ratio from memory is 201 per cent of those industries. In some industry reference groups there are large numbers and in others there is only a handful.

It should be quite feasible to develop some form of case management mechanism to find out what is going wrong with these organisations and put them right. That is something that should be done. The response the Committee had from WorkCover was noncommittal. It did not say that it had even looked at one, let alone 400.

The Hon. TONY KELLY: Is that just for one year?

Mr GILLEY: The characteristics for getting into the 400 were that you were a poor performer consistently for three years. Generally speaking there are about 1,000 employers each year who are, if I can use the term, poor performers. They perform badly in terms of the rest of their industry. We looked at how many of those appeared three years running.

The Hon. TONY KELLY: Are there particular industries that pop up or is it just that you get poor performers in every industry?

Mr GILLEY: You do. In some of the industry reference groups, I cannot tell you which ones—for example, industry reference group five, and I do not recall what that is, has 96 of them.

CHAIR: Does WorkCover increase premiums for the 436?

Mr GILLEY: No.

The Hon. TONY KELLY: Yes, if you have a bad history they will.

Mr GILLEY: No, your history is related to your claims' experience, that is all. It is not an increase. It comes off a formula. It runs off a statutory formula. There is no penalty applied. It is a statutory formula.

The Hon. MICHAEL GALLACHER: Would you clarify that matter because premiums go up.

Mr GILLEY: They do but, as I said, it is not a penalty. There is a statutory formula, which depending on how big you are, influences the cost of your premiums. If you pay less than $3,000 in premium it does not matter how many claims you have. No penalty at all. If you are paying $10 million in premium then there is a significant effect on premium by having claims but nobody has said "You are a poor performer, there is going to be a premium malus applied to you." We are going around at moment giving premium bonuses to people who supposedly do well if they meet some benchmarks that are set out but we are not saying to the poor performers "Not only are you going to pay an increased premium because of your claims but we are going to put a penalty premium on top of it".

CHAIR: Who would set a premium penalty? WorkCover or the underwriting insurance company?

Mr GILLEY: It would have to be WorkCover because the scheme is not underwritten. There are no underwriters in the scheme.

CHAIR: Do the people who are managing the policy recommend an increase?

Mr GILLEY: No, but guidelines could be developed if that were the direction you wanted to go. As I said, one of the ways to improve our poor occupational health and safety performance is, for example, I can go out tomorrow morning and buy a 40-year-old metal press, rent a garage in Marrickville or wherever it might be and set up a metal stamping business. I might have to satisfy the local council that I am working in that business but that is all I have to do. I do not have to get a sign-off from WorkCover that my premises are safe. There are 300-odd inspectors at the moment at WorkCover and 300,000 policies for businesses so for them to try to cope with visiting every business is obviously impossible. I contend that if a business wanted to start up and had to have a sign-off that it, at least, met basic safety standards that would be a good way to start minimising the number of injuries at work. The only time that WorkCover would come to one of these businesses was when somebody loses his hand in the press.

The Hon. Dr PETER WONG: Or if the council rings up and lodges a complaint.

Mr GILLEY: Yes, if the council rings up because it is too noisy but not because it is unsafe.

The Hon. MICHAEL GALLACHER: Who would you suggest do that? Would you be looking at current inspectors or through councils?

Mr GILLEY: It could be done through the locals councils and get them to go around with a check list, or you could get private consultants. It becomes a requirement of starting your business that you have an occupational health and safety tick-off. It does not have to be a massive exercise.

The Hon. Dr PETER WONG: Usually local government does not get involved until a neighbour complains. They also do not have enough staff to go around.

The Hon. MICHAEL GALLACHER: Do councils sign off on a development application to allow a business to commence?

The Hon. Dr PETER WONG: Not on work safety.

Mr GILLEY: No, we could just introduce that.

The Hon. TONY KELLY: At that stage they would not know what plan they were going to use and they would be pretty reluctant to get involved unless someone was going to pay them for it.

Mr GILLEY: When a director of a company is prosecuted, what happens to the director of that company? Sometimes he will be prosecuted as well, but most of the time the organisation is prosecuted. In my view, if an organisation is prosecuted, there should be a legal requirement that the directors of that corporation undertake some recognised safety course, rather than just pay out the money. In the same way that we apply community service orders to certain offences, we could do exactly the same with directors of corporations. We could make them go along to TAFE and do a certificate in occupational health and safety.

The Hon. TONY KELLY: So if there is an action against Coles we would send Nick Greiner off to do an occupational health and safety course?

Mr GILLEY: I suppose that you would tier it. If you are going to be looking at that sort of level you would tier it to be the manager most responsible. In the same way, if there is a prosecution against Coles, we do not prosecute Nick Greiner.

The Hon. TONY KELLY: I am sorry, I thought that that was what you were saying.

Mr GILLEY: No. Should we increase the deductible in the same way that Victoria did so that instead of just paying for the first five days of costs we would be paying for the first 10 days? We should deal with poor performers by using that risk management approach. In other words, you knock off the worst ones and bring in a new lot underneath them. There is an employee excess on workers compensation if there is non-compliance with safety rules. I do not think there are any construction sites outside Parliament House. How many times do you go past a construction site where there are signs stating, "Hard hats must be worn", and you see people wandering around without helmets on? Does that happen on a daily basis? I see it happening all the time.

One of the safety rules is that workers should wear hard hats. However, if a brick lands on a worker's head, there is no doubt about the fact that you will have a workers compensation claim, but there is no accountability for not wearing a hard hat. In every other form of insurance there is a deductible. If you drive a car and you have an accident you pay for the first $300 yourself. If you allow somebody else to drive your car—someone who is not licensed to drive it—there is a deductible. There is no accountability on individuals within the system. Sure, they can be prosecuted, but that is not what I am talking about.

I refer now to scheme management and insurers issues. I should declare an interest here, in that I have been involved, in various capacities, in the insurance industry since 1978 and it has been very kind to me. In 1995, 13 insurance companies were offering workers compensation cover in New South Wales. There are now eight. As you can see, the market is significantly concentrated in the hands of three insurance companies. From a competitive perspective that is definitely not a desirable position to be in. It gives you a feel for the way that the market is concentrated in various areas. I think there is no doubt that the insurance community has a significant role in the way in which the WorkCover system operates. A large proportion of the deficit that we are now facing is due to poor performance by insurance companies.

CHAIR: That gets back to a question that I asked earlier about calculating the premium. You have on that slide the figures for insurers calculating and collecting premiums.

Mr GILLEY: They calculate it from a formula which nobody can change. It is a prescribed formula which is published in the *Government Gazette*. So, effectively, all that they do is plug in the variables, press a button, and out comes a premium. They are not going out assessing the risk. That is already done. The risk is assessed actuarially. So if you fit in a particular industry you pay a particular industry rate plus anything extra you may have for claims experience. If you are a brilliant performer in that industry, you still pay a premium just to be part of the system. There are no discounts for good performance, in the same way as there is no malus for poor performance.

CHAIR: So how we do we change that? Do we change the formula?

Mr GILLEY: You would need to change the way that premiums are calculated.

The Hon. Dr PETER WONG: You would have to do more than that. You would need to change the management of WorkCover, not just the formula.

Mr GILLEY: The whole process has to be changed, you are right.

The Hon. JANELLE SAFFIN: It is a broad policy issue.

Mr GILLEY: Yes, it is. So insurers do all these things on behalf of the WorkCover Authority, for which they are paid fees. This slide shows the fee package—about 8 per cent of premiums. There are too few claims officers in the workers compensation system in New South Wales to effectively manage the claims. I am paraphrasing this slide presentation to speed it up a little. As you can see, the highest ratio of claims to claims officers is 286:1. That means that, on average, individual claims officers are handling 286 claims. The lowest ratio in a claims office is 146:1.

The Hon. TONY KELLY: Per week or per year?

Mr GILLEY: That is at any one time. It is calculated at any one time. If we take out the compliance time that claims officers have to spend complying with WorkCover Authority guidelines, their available time is estimated to reduce by about 10 per cent. So that makes the ratios even higher. In America, where workers compensation is underwritten in a different way, the maximum number of claims, American underwriters advise, is 150:1. So, effectively, we are putting a massive claims load on people who do not have the time to manage the claims properly.

CHAIR: Under the new remuneration system will that staff ratio improve?

Mr GILLEY: I suspect not.

CHAIR: That is why they are getting it apparently.

Mr GILLEY: Let me go through this slide, and I will show you. As you can see, the workers compensation fees paid to insurers has trended downwards over the last decade. WorkCover's own costs have trended up. I refer

now to return on expenses to insurers. These are the points about which you need to be cognisant. The slide shows the amount of money that businesses are making out of managing workers compensation in New South Wales. These are the sorts of figures, the returns on expenses, that you would want if you are in a low skilled organisation or if you are in, say, a professional services company. A minimum 20 per cent on expenses return is what you would be looking for.

In workers compensation, the return on expenses averages at 4.3 per cent. That is because the fees are not available to them. If you look at the American underwriting experience, you will see that I have coloured some of the numbers because those are numbers that are added together and they are what are known as the claims management expenses. Those are: defence and cost containment; adjusting and other expenses; other acquisition, filing and collection; and general. If you add those four together you get a sum of about 32 per cent. In America, where they have a much larger and diverse workers compensation system, they are, on average, setting aside 30 per cent of the premium to manage claims. They are still not getting a fantastic outcome.

The Hon. TONY KELLY: How do you get 118 per cent?

Mr GILLEY: If you add all those things together you will find that they are actually making an underwriting loss of 18 per cent. But, as I will show you in a minute, when we get further on down the track they are actually making a profit. This slide gives a simplistic cost breakdown. You have 30 per cent of costs in the pie which are spent on managing claims, and 70 per cent on claims costs. Where will you get the best return if you are going to spend efforts at cutting down costs? Are you going to get a better return from taking 10 per cent off 30 per cent, or 10 per cent off 70 per cent? I think it is a simple argument. You do not cut down insurers' fees, because all you are doing is taking away their ability to properly manage the claims. The more you screw them down in the amount that you pay them, the less able they are to provide the services that you need.

The point that I am trying to make out of this exercise is that insurers are not being paid enough to manage the system properly. I am using the American system as a comparison where 30 per cent is compared to 8.75 per cent. So, yes, they are responsible, but it is not their fault. I refer now to private underwriting verses managed fund. I understood that you took evidence yesterday from Richard Grellman, who prepared a report for the Government in 1997, in which a number of recommendations were made. The one that has not been implemented, which probably would have had the most impact on the scheme, is underwriting in a private sector system.

Back in 1998 I was involved in discussions with WorkCover, setting up the new legislation. One of the big concerns of employers in those days was that if we introduced private underwriting we would be paying more premiums. What are they doing now? They are paying more premiums. There has just been a shift in the way in which premiums are assessed in the Australian and New Zealand Standard Industries Classification [ANZSIC]. Over the next three years everybody will be moving towards full ANZSIC ratings. A large number of employers are paying more premiums. So they have not avoided that. What we have is a privately underwritten system in which financial incentives are in line—

The Hon. TONY KELLY: But are a lot not paying less? The average has not changed.

Mr GILLEY: The average is an artificial peg. The average is pegged at 2.8 per cent. You have already heard evidence to the effect that—

The Hon. TONY KELLY: It is still a real figure.

Mr GILLEY: It is a real figure that is pushing us further and further into debt.

The Hon. TONY KELLY: But you are saying that everyone is paying more.

Mr GILLEY: I am not. I am saying that a large number are paying more.

The Hon. TONY KELLY: But there must also be a large number paying less, if the average stays the same?

Mr GILLEY: Yes, but should that not be the case? If you are not having the claims, should you be paying for them?

The Hon. TONY KELLY: I thought you were saying that the premiums had gone up and that people were paying more anyway.

Mr GILLEY: No, I was not. What employers are trying to do—

The Hon. TONY KELLY: I do not want to argue with you, but you said earlier that, if you go to private underwriting, you will be paying more premiums. You then said that people are paying more premiums anyway. Then you said that it is pegged at 2.8 per cent, but they are actually paying more anyway. My point is that that is an average that is staying the same. A lot of people are paying less.

Mr GILLEY: Let me clarify this issue. The concern of some employers was that they would be paying more premiums, which is the reason why they did not want to change the system back in 1998. They are now starting to pay more premiums.

The Hon. TONY KELLY: Some?

Mr GILLEY: Some. In three years, unless the Government continues to peg the rate artificially at 2.8 per cent—which, as you all know, is undercollecting what is actually required—all employers will be paying what they should be paying, which is exactly the same as what you would have under the private system. So I am saying that the introduction of private insurance should have happened two years ago. If that had happened we would not be faced with this massive debt that we have.

The Hon. Dr PETER WONG: Let us say, for argument's sake, that the Government allowed premiums to go up two years ago. Would that not have happened whether or not there was private underwriting?

The Hon. GREG PEARCE: With private underwriting the scheme would be much better managed, there would be competition, and premiums would be lower.

The Hon. TONY KELLY: Mr Gilley said that they would go up.

The Hon. JANELLE SAFFIN: We get the argument, but we do not necessarily agree.

Mr GILLEY: This next slide is a carry over from one that you have already seen. Mr Kelly picked up the fact that there was a premium discrepancy—in fact, an underwriting loss. In other words, the underwriting equation came out with a minus figure in the American States. That is quite true. Their underwritten profit is, in fact, a loss. But when you take into account the use of the funds, the investment and all the other things that they do with the money, at the end of the year they are able to say to employers in America, "Okay, we are quite happy to make an underwriting loss. In other words, you are getting cheaper premiums than you should be paying, but we can still make a profit to satisfy our shareholders."

Aberrant behaviour: These are some of the things that have happened in the scheme. I think you are probably aware of them. The premium calculation takes into account an employer's claims experience over a three-year period. This encourages an employer to minimise the cost of claims for three years, and some of them do that very effectively by bringing people back to work and keeping them at work for a three-year period. After three years the incentive goes, because that particular year of accident drops out of the premium calculation. One of the problems we have in the system is that I number of employers are quite happy to sit on employees, providing them with alternative duty and then, at the end of the three years when they no longer impact on the premium, no more alternative duty; employee chucked out into the street—with an existing injury. The system does this. It causes this aberrant behaviour.

The 2T rule: There is a rule that says you cannot pay more than twice basic tariff premium if your premium is less than $112,000. What do large corporations do? They split themselves into smaller pieces so that they can take advantage of the 2T rule. Trusts: There is a mechanism in the corporations law that allows organisations to set up a trust by which high-risk employees can be allocated to the employer, but all of the low-risk employees—such as management, staff, salespeople and so on—can be diverted and employed by a trust, which is not rated the same as a corporation. All of these are aberrations in the system and they are little things that people have found their way around, because it is a prescribed system. In a privately underwritten system that would not happen because no insurer would allow that sort of thing to happen. They would be charging a premium that is appropriate.

What this slide proves, I think beyond any sort of doubt, is that the smaller business, the small-to-medium enterprise—you can see the breakup there—represents large numbers of policyholders; small amounts of premium , comparatively, but large proportions of the claims costs. We are doing nothing to deal with small business. Average claims costs are nearly twice as high as the larger end of the market, where there is a financial incentive to minimise costs. At the small end of the market if you pay less than $3,000 in premium, there is absolutely no financial incentive whatsoever to reduce claims costs.

The delivery of rehabilitation services over the last decade has obviously—I will rephrase that—in my view is not delivering what it was originally set up to do. This in itself probably requires a separate investigation. As you can see, rehabilitation payments over the last 10 years have risen significantly. The average number of employees of long-term benefits has risen significantly and, compared with other States, injury frequency where there is more than 60 days off work per million man hours—this is a comparison. This is not just numbers; this is a comparison with other States—New South Wales as you can see is significantly higher across those three years, prepared with Queensland or Victoria, our two major competitors.

The Hon. TONY KELLY: That proves the point I was trying to make earlier. Do you see how it is dropping? See how it is dropping now that you have you something that is relative? Your previous slide just showed it is a straight line—it has gone 3.5, 3.2, 2.8.

Mr GILLEY: Yes. What are we doing differently to Victoria and Queensland? Why are they so low? Why are they so much better than us that us? That is the question. We are spending all this money on the provision of rehabilitation, on injury management, but it is not having the impact that it should.

The Hon. TONY KELLY: Sorry, but I cannot I cannot agree with that. I have just pointed out 3.5, 3.2, 2.8. It is dropping.

Mr GILLEY: Yes, it is dropping, but, compared with Queensland—

The Hon. TONY KELLY: The statement you made was that we are spending all this money on occupational health and safety and rehabilitation and yet it is not dropping. It is not having any effect. It is having an effect

Mr GILLEY: It is not having the effect that it should do.

The Hon. TONY KELLY: That is a different thing to what you said.

Mr GILLEY: Should it not be dropping further that that, faster than that?

The Hon. JANELLE SAFFIN: Look at the comparative rate of dropping in each one. We should not be dropping to be as low as Victoria, Tasmania or wherever just yet. If you have a look, they have been going down, so have we.

Mr GILLEY: I would not be satisfied with that, frankly.

The Hon. TONY KELLY: Who said we are satisfied? I have just picked up the fact that you said it was not having any effect. It is having some effect.

Mr GILLEY: Minimal effect.

The Hon. TONY KELLY: I dislike having figures put up that proposed inaccuracy.

CHAIR: You are saying that you want it to have a greater effect.

Mr GILLEY: Of course. I would like to know what we are doing so differently to our sister States for us to be so different.

The Hon. HENRY TSANG: The legal fees are also interesting. We are also paying a lot more than Victoria.

Mr GILLEY: I hope that will be fixed, given the current changes that are going through.

The Hon. Dr PETER WONG: I am not sure about that.

Mr GILLEY: No, I am not sure, either. I noted in the interim report that you had evidence that the legal fees were still growing at the rate of 10 per cent per annum and the actuarial models have been adjusted to take that into account. The point there is that figures have been bandied around and I do not know what the exact figure is. But it is something in the region of $400 million a year. That could be going to compensate injured workers.

The Hon. TONY KELLY: As you said, the legal fees are going up at the rate of about 10 per cent per annum.

Mr GILLEY: No, it is the evidence already presented to you.

The Hon. TONY KELLY: As a percentage of claims is that increasing or decreasing?

Mr GILLEY: I do not know.

The Hon. GREG PEARCE: It is much more complicated than that. It relates to claims and commutations and common-law and all that sort of thing.

Mr GILLEY: If we assume that the system has undercollected, through fraud or whatever it may be, 10 per cent per annum over the past eleven years, if we adjust that across every year, the sum of that adjustment needs that we have undercollected $1.333 billion. In the construction industry the industry itself says that it undercollects by 30 per cent. In the fishing industry it says it could be as high as 90 per cent. I do not by what figure is. I think I am being conservative in saying that it is 10 per cent. If we apply that to the current deficit. If we collected all that extra premium all the way through, the current deficit would not be $2.5 billion or $2.7 billion, it would be $1.43 billion.

Let us assume that there was an equal amount of fraud in claims, through exaggeration or whatever it might be, 10 per cent on one side, 10 per cent on the other, we would have required less premium to fully fund the system. If we then combine the extra premium that we could have collected a take away the premium that need not have collected because of the fraud, combine those two together, and we would not have a deficit of millions, we would have a deficit of $370 million—based on the current level.

The Hon. Dr PETER WONG: At the moment is there are a penalty for employers who underpay their premiums, once they have been discovered?

Mr GILLEY: Oh, yes. There are massive penalties. For avoidance of premiums there is six months gaol, double the premium that was avoided, any cost of claims plus a $22,000 fine. That is for an employer.

The Hon. Dr PETER WONG: At the moment know no-one is policing it.

Mr GILLEY: It is starting to get better, I hope. There is a green paper out at the moment to look at compliance issues.

The Hon. HENRY TSANG: In terms of fraud relating to exaggeration, would not be possible to deal with that when paying out the compensation lump sum?

Mr GILLEY: No, you cannot. It is so difficult to detect exaggeration in a claim. These are just some thoughts for making the system work better as it is. If you reported a claim late—this is particularly for the smaller end of the market, small business, because you will find that all insurers are saying that it is up to 90 days before some small businesses report they have injury. How can we possibly start to manage them, given that lag? What I am suggested here is if you report a claim late to your insurer, the insurer automatically applies in excess on that claim. Very quickly the culture in small business would change because it would understand that if they do not get the claim in on time they are going to have to pay the first $1,000, or whatever it is. I believe that within a couple of years the culture would understand that and respond accordingly. It would become a matter of course to report the claim quickly.

Get rid of these aberrations in the way that "employer" is termed for premium calculation purposes, so if you break yourself up into little pieces, it makes no difference. You are still regarded as a major corporation, so that all related corporate sectors are taken as one. A premium malus: For the 400 poor performers until they get back down

to their average level. Make them pay an extra premium on top of what they already have calculated. Truth in sentencing: If people are avoiding premiums. Employee measures: Again, a late reporting of claims excess. If you do not report your claim, expect to pay an excess on it. If you have an injury at work, it becomes a requirement that you actually report it quickly. At the moment the Act is fairly non-specific about that. It says, "as soon as possible". You should set some time limits on that.

The Hon. TONY KELLY: I think the proposal is seven days.

Mr GILLEY: If you think of the injury management situation, that is still too late. You have to have three-day response. I do not know, but there has to be some better way of managing it than at the moment.

The Hon. Dr PETER WONG: One of the reasons is that the employer knows that once he lodges a claim there may be a penalty. The worker and employer often negotiate—should they claim, should they not? It depends on how the worker progresses within that seven days. I agree with you that that is unacceptable.

Mr GILLEY: The excess on the employer would work against that. Enforce section 52A: That is the section of the legislation that effectively says that if you have been on alternative duties for more than a year, and the reason why you have not found a job is purely because of the labour market and not because of your injury, then you are not entitled to compensation any more. That is already in there but it is not enforced. Territorial limitations for partial incapacity benefit payment: If you move up to Queensland with an existing injury it makes it almost impossible to manage that claim, yet you still continue to be paid. I am talking about the limits to where you can go. Of course, you can go on holidays, but if you are transferring out of the State, you should have your claim settled before you go.

CHAIR: We are running out of time.

Mr GILLEY: Private underwriting: Tie remuneration to durable outcomes; allow premium discounts for employer-funded claims management. In other words, if the employer wants to buy better services from an insurer, let them go and make a personal arrangement with that insurer to buy better services and pay for it. Set lower market share as a licence condition: At the moment market share is 3 per cent. Set it lower and allow regional insurers to be set up.

You could have an insurer that deals in the Dubbo catchment area, rather than an insurer in Sydney that is supposed to deal with the Dubbo catchment area. You are getting a number of industry bases throughout New South Wales, which are all serviced, in the main, from Sydney. Have you seen the 1993 guidelines for the management of employees with compensible low back pain? I am happy to table the document.

CHAIR: That will be accepted as an exhibit.

Mr GILLEY: They were introduced in 1993 in South Australia and 1996 in Victoria. We still do not have them in New South Wales. There should be binding medical protocols of evidence-based medicine. For example, you do not get paid if you prescribe a back brace because there is no evidence for a back brace being any good for the management of back injury. I am not necessarily saying that that is what is in here. Back injuries have remained static at 30 per cent of the total number of injuries for the past decade in New South Wales. Introduce binding medical panels. We have binding medical panels for section 66 and 67, pain and suffering and permanent impairment, but we did not get them for fitness to work. It was there in the draft of the original legislation. Somehow it was taken out. I do not know why.

A higher fee structure: At the moment there is a view that we are going to control the costs of medical services in the system. Do you know what that is going to do? It means that we will get all the doddery old buggers—pardon the expression, medical practitioners—coming into the system because the ones who are really good will not work in workers comp because it will not pay them. So get medical practitioners registered as workers comp specialists as the lawyers do with personal injury specialists. You pay them a higher fee structure and expect more from them.

Compel the use of employer interviews in injury management planning: It was originally meant to happen; it does not happen at all. The doctor sees the patient. He should ring the employer to ask, "Have you got alternative duties?" They never do it. They are paid to do it if they want to but they do not. They take an occupational history. In other words they just take what the worker tells them. So compel that. Lawyer issues: If you are going to have lawyers in this scheme, three quotes—

The Hon. TONY KELLY: Do we have an option?

Mr GILLEY: No, we do not, and I am not saying that we should. But at least let us have them compete for business in the same way that everybody else is supposed to. There should be three fixed quotes. As I understand it, there are at least 50 regulations or guidelines required to make the latest changes to the scheme operate. So is very difficult to say whether we are going to get this or more of the same. I note Peter McCarthy's comments in the first tranche of evidence that suggest that since the mid-1990s no legislative provisions that have been introduced to workers compensation have had any impact on scheme costs. I suspect that we may be facing that same situation here. I hope I am wrong. Commutation: There is a view that commutations are going to be axed. That is wrong. Commutations should be allowed in the scheme but in a controlled way, not taken out.

Common law access restrictions: Again, I am hoping that that is going to be one of the ones that will bring the cost of the scheme down. We are half way there. We now have a $3 billion deficit. We are moving towards a $5.5 billion deficit in three or four years time, in 2006. The concern that I think any government should have is that at the moment rating agencies are ignoring that. I cannot see how they will be able to ignore it if it goes up to $4 billion. Then we start to risk the rating of New South Wales.

The Hon. Dr PETER WONG: We always have the same question: Who owns the debt?

The Hon. JANELLE SAFFIN: The Crown Solicitor has a view about that. It is not rated.

CHAIR: There will not be time for questions. Committee members who have questions may be able to provide them to you for you to answer on notice.

Mr GILLEY: Certainly. If anybody wants to talk to me at any time just give me a call. I have another document that I could table for the Committee.

CHAIR: That also will be accepted as an exhibit.

(The witness withdrew)

ANTHONY JOHN HAWKINS, Chief Executive Officer, WorkCover Queensland, 280 Adelaide Street, Brisbane, on teleconference link:

CHAIR: We would like to swear you but because you are outside the State of New South Wales you cannot be sworn in. Therefore, you are not covered by parliamentary privilege. You will need to bear that in mind if you refer to individuals.

Mr HAWKINS: Okay.

CHAIR: Mr Hawkins, are you conversant with the terms of reference of our inquiry?

Mr HAWKINS: I am.

CHAIR: Can you briefly give us an overview of the management structure of the workers compensation scheme in your State?

Mr HAWKINS: The board of WorkCover Queensland reports directly to the Minister for Industrial Relations. The board is responsible for WorkCover's commercial policy and management, that is, the WorkCover insurer, and also the regulation of the Act and the scheme, that is, the regulator Q-COMP. The board also provides advice to the Minister on legislative policy matters and board members are appointed by the Governor-in-Council.

CHAIR: Can you briefly outline the role of Q-COMP and WorkCover?

Mr HAWKINS: The role of Q-COMP is separate from that of WorkCover. Q-COMP is within the legal structure of WorkCover. It is not a separate entity in its own right. It is an operational part of the corporate entity. Q-COMP's role is to provide advice to WorkCover board. It is a regulator. It provides scheme-wide services in the area of review and appeals, medical assessment tribunals, self-insurers licensing and self-insurance compliance, workplace rehabilitation, and overall scheme development.

CHAIR: In your opinion what have been the successes and failures associated with separating the functions of Q-COMP and WorkCover?

Mr HAWKINS: I guess the successes are a the use and the marketing of a different name for the regulator—that is, Q-COMP—and the customer satisfaction associated with that formal separation with the impartiality created. Customers, injured workers and employers, view the impartiality as being there. It is not so much a failure—we have overcome that—but we possibly could have done it a bit earlier than we did. But we have done it. So I do not believe overall it has been a failure.

CHAIR: However, Q-COMP and WorkCover are still overseen by the same board, are they not?

Mr HAWKINS: That is correct, at this point in time. The Government has undertaken a national competition policy review and the Government has officially endorsed a formal separation of Q-COMP from WorkCover.

CHAIR: If they are separated, WorkCover directors would be appointed by the Minister.

Mr HAWKINS: How the separation will occur has yet to be determined. A recommendation has to go to the Minister very shortly. It will obviously have some working parties together. But it would be expected that there would be two separate organisations and therefore two separate boards. If history is any indicator, they will equally be appointed by Governor-in-Council.

CHAIR: In WorkCover you also have a review council that monitors the performance and outcomes of the review process and medical assessment tribunals and then makes recommendations to the board. Do you feel that this council has been useful in providing ideas and feedback on the management of the scheme? If so, in what way?

Mr HAWKINS: The review council has made a number of recommendations to the board and I think that the board has implemented the vast majority of those recommendations.

CHAIR: Our advisory council seems to have a lot of tensions as though there are competing interests. Have you had that situation on your review council?

Mr HAWKINS: I personally do not sit on the review council. The chairman of the board of WorkCover and a general manager of Q-COMP—or the chairman and two representatives—sit on that. The general manager of Q-COMP is the person that follows that through. But to my understanding there are obviously issues that arise in any issue between employers and injured workers. However, those issues have been mutually agreeably resolved.

CHAIR: What incentives do insurers have to try to finalise claims and ensure that employees are returned to work, where appropriate? How successful have those incentives been?

Mr HAWKINS: There is only one insurer of the scheme in Queensland, and that is WorkCover. Of course, there are self-insurers. So we are the sole insurer of the scheme. We underwrite the risk as do individual self-insurers. Basically the incentive to finalise claims is directly driven by reducing the costs as opposed to what I believe happens in some other States where there are third party claims managers.

CHAIR: Although WorkCover is the insurer, do you still have agents that act on behalf of WorkCover?

Mr HAWKINS: No, not at all. We do all our own underwriting, premium setting, claims management and case management in-house, within WorkCover.

CHAIR: What are the three most important aspects of your scheme which makes it successful? And why

Mr HAWKINS: Success is dependent on how you measure it. I have been involved in WorkCover for only four years. When I came into the organisation the issue was that it was $326 million unfunded and the prime criteria put to me as the CEO by the board of that time, as was the board's directive from the Minister, was to work towards eliminating or reducing that unfunded liability. That has been achieved and the fund now has 20 per cent solvency of outstanding claims liability with a 15 per cent prudential margin in that outstanding claims liability. In addition we are maintaining an investment fluctuation reserve. From a financial perspective we have been exceptionally successful.

We also have the lowest average premium rate of any State in Australia. From an employer perspective, our rates are very competitive when compared to our counterparts in other States. From an injured worker perspective, we have unlimited common law benefits and very generous lump sum benefits.

CHAIR: You said that the fund is solvent. In New South Wales there is a problem with what is called the tail of WorkCover. When a calculation is done of payments that may have to be made in 40 or 50 years, what is your figure? Have you covered that? Do you have no potential deficit?

Mr HAWKINS: Capital adequacy. We have an outstanding claims provision of $1.75 billion and that is sufficiently adequate, including a 15 per cent prudential margin to pay for outstanding liabilities as and when they fall due.

CHAIR: How do you carry out your case management within WorkCover? How is it structured?

Mr HAWKINS: Obviously we have two elements of claims management; we have statutory claims that are the normal weekly benefits, and we have common law that are, of course, the longer lump sum type benefits that accrue over a longer period. In relation to normal weekly benefits, we assess the claim and either accept it or reject it. In the event of a rejection, which is very small only about 3 per cent on average, the 97 per cent of cases that are accepted a fair number of those do not have any case management, they just happen. They might be an incident or an injury that will heal up in the course of events, and there is very little case management associated with it.

However, about 25 per cent of those claims that have been accepted have a longer term duration, of which we apply case management. We have case managers located in Brisbane and at 15 or so other locations around the State. They deal directly with injured workers and their associated medical practitioner, or whoever. They work out a case management program to get an appropriate return-to-work outcome. In some cases they work out suitable alternative duties.

CHAIR: What is your premium level?

Mr HAWKINS: On average, it is a 1.55 premium rate.

The Hon. GREG PEARCE: You said that when you were engaged in your current position the scheme was facing a $326 million deficit.

Mr HAWKINS: Unfunded liability, yes.

The Hon. GREG PEARCE: We call that a deficit. What steps did you take to reverse that? Was any legislative change made?

Mr HAWKINS: When I came in January 1998, the legislative changes to that by the Liberal-National Coalition had been made as an outworking of the Kennedy recommendations. WorkCover was formed on 1 February 1997, so the legislative changes had been made by the time I came in. In terms of turning it around, we set the premium at an appropriate level and we were very fortunate that in the years ending 1997, 1998 and 1999 we received very good investment income return from our investments with QIC. They were a great fillip to the scheme and created that financial viability[1].

CHAIR: What is the total amount that you have invested?

Mr HAWKINS: Approximately $2.5 billion.

The Hon. GREG PEARCE: Could you outline the principal legislative changes that took place in 1997?

Mr HAWKINS: In 1997, as a result of changes to the WorkCover Act, there was a change to the definition of "injury" and a change to the definition of "worker". The definition of "worker" was essentially the PAYE model at the time; therefore, if you were a PAYE payer you were covered. In the change of definition, it was to the major contributing factor.

The Hon. GREG PEARCE: Were other people, who were not what we call workers, claiming on the scheme beforehand?

Mr HAWKINS: I cannot comment on that, because I was not here. People would have been claiming for two reasons: they were claiming under a different definition of injury, which was a significant contributing factor, and they were claiming under the definition of PAYE, which was a far more stringent one that had been the case.

CHAIR: Off the cuff can you give a figure of how many people would have been covered previously? Under the new definition did that drop by 10 per cent or 50 per cent?

Mr HAWKINS: I am sorry, I do not know that. I could get back to you.

CHAIR: Would you take that on notice and advise the Committee in due course?

Mr HAWKINS: Yes.

The Hon. GREG PEARCE: I guess you are quite familiar with the New South Wales scheme?

Mr HAWKINS: No, I am not.

The Hon. GREG PEARCE: From what you have said, the fundamental difference really is that your WorkCover is the owner of the scheme and the real insurer, whereas in New South Wales we have an agency situation. Do you agree with that? You have ownership in Queensland of your scheme, effectively you are the insurer?

Mr HAWKINS: Certainly we are the insurer and the underwriter and we retain the liability. My understanding of the New South Wales scheme is that insurance agents handle the claims management but the New South Wales workers compensation scheme, in its own right, still has the liability on its books.

The Hon. GREG PEARCE: Yes. If you were to go into a deficit, that deficit would be covered by the State?

[1] Clarification from Mr Hawkins provided on page 33 (*)

Mr HAWKINS: It would be covered, it is indemnified by the State, yes.

The Hon. GREG PEARCE: You mentioned that you have unlimited common law rights. Off the top of your head, do you have a feeling for the level of legal expenses and whether you have satisfactory legal expenses, or otherwise?

Mr HAWKINS: Off the top of my head, of all the benefits paid out in common law, approximately 25 per cent goes to the legal fraternity.

The Hon. GREG PEARCE: Do you consider that satisfactory in your scheme?

Mr HAWKINS: Obviously we would prefer to see more dollars go to the injured worker.

The Hon. GREG PEARCE: Of course, we thought you would say that.

The Hon. Dr PETER WONG: Mr Hawkins, how does changing the definition of "injured worker" enable you to cut down the unfunded liability?

Mr HAWKINS: There were a combination of things. There was a change in the definition of "worker" and "injury" at that time. Quite clearly less claims were made and certainly less potential for some people to move to common law, which is a high component of your unfunded liability.

The Hon. Dr PETER WONG: In Queensland, is the legal cost going up as it is in New South Wales at about 10 per cent per year, or maybe more?

Mr HAWKINS: I said that that was probably a bit higher than we would like, but in relative terms our legal costs have come down fractionally.

The Hon. GREG PEARCE: Do you have provision for commutations? Do you understand that terminology?

Mr HAWKINS: Yes, I know what commutation is. No, we do not have a provision for it.

The Hon. GREG PEARCE: Do you think it would be useful in the management of your scheme?

Mr HAWKINS: It is certainly not relevant to our scheme, because we do not have a long-term disability scheme. We have some lump sum opportunities for the seriously injured.

The Hon. GREG PEARCE: Can you explain what you mean by not having a lump-term disability scheme? Is there a point at which you make a lump sum payment to everyone?

Mr HAWKINS: We do.

The Hon. GREG PEARCE: When is that done?

Mr HAWKINS: Whenever the injury is deemed to be stable and stationery.

The Hon. GREG PEARCE: You have almost an obligatory commutation?

Mr HAWKINS: I guess at some stage you have to be suitable to come back to work, or not.

The Hon. GREG PEARCE: Do you close out all your claims?

Mr HAWKINS: We attempt to. The legislation system is for that, there is cut off at five years.

CHAIR: That is why you have no tail. You mention changing the definition of "injury". Here there is a claim level of 6 per cent. Did you cut out a lot of injuries so they could no longer be claimed under WorkCover? Is that how you reduced the number?

Mr HAWKINS: I am not quite sure what you mean.

The Hon. GREG PEARCE: Threshold of impairment?

Mr HAWKINS: Yes. For example, with industrial deafness there is a 5 per cent limit.

CHAIR: Do you have similar limits in other areas of injury?

Mr HAWKINS: No, we do not. That definition of "injury" and "worker" was effective from 1 February 1997 under that reform, but there was a change of government in 1998. The Labor Government was elected to power in Queensland and from 1 July 1999 the definition of "injury" reverted to the old definition. From 1 July 2000 the definition of "worker" effectively changed back.

The Hon. Dr PETER WONG: Do you offer compensation for psychiatric or psychological injuries? Is there a threshold at all? If you do so offer, what is the threshold?

Mr HAWKINS: We do offer it. If it satisfies the requirement of an injury and the person satisfies the definition of worker, it is paid. There is no threshold other than the normal statutory maximum and at the end of five years.

The Hon. Dr PETER WONG: What do you see as a role for privately-owned insurers or underwriters? Is there any role for them in cutting down the unfunded liability, or do you think that would compound the matter or make it worse?

Mr HAWKINS: It is a bit hard for me to answer that question because, first, we are not unfunded; we are 20 per cent solvent. Secondly, there has been an independent National Competition Policy review undertaken by an independent party which recommended to the Government the retention in Queensland of the public monopoly scheme, on the basis that they do not believe that a private underwriter could do it any more efficiently than WorkCover Queensland could.

CHAIR: Earlier we asked about the classification of worker, and you said it is based on the PAYE system.

Mr HAWKINS: It was back in 1997. It is changed now.

CHAIR: What is it now?

Mr HAWKINS: It is now a contract of service.

The Hon. GREG PEARCE: What sort of impact is that change likely to have on the scheme financially?

Mr HAWKINS: It was costed back in 1999, when the Government had the legislative change. It was approximately $6 million to $7 million per annum.

The Hon. GREG PEARCE: So, percentagewise, it is very—

Mr HAWKINS: Very, very small in the overall scheme. We pay statutory claims in the order of about $220 million per annum.

The Hon. GREG PEARCE: Have you had enough experience to see whether that level has been what has resulted?

Mr HAWKINS: As I said, it came in on 1 July 1999. We have only been going a bit over that two years, of course. It has impacted. It has cost the scheme at least that much, but I think it is a bit too early to tell what the long-term ramifications of that change will be. But, based on the actuary's advice, it would appear to be about the right sort of number.

The Hon. Dr PETER WONG: Do you think that four years ago one of the major factors in fixing the problem was an appropriate premium being charged?

Mr HAWKINS: Yes. We changed from what was called a merit bonus system to an experience based rating [EBR], which, to put it quite simply, was a user pays concept. In other words, those who had poor claims experience paid — bearing in mind you take the whole scheme on balance. But the premium being set, we have in fact for each of the past four years reduced our premium levels.

The Hon. GREG PEARCE: But you set your premium level to cover the costs of the scheme. You do not dip into your investment return to do so.

Mr HAWKINS: Yes, we do. We take into account the investment return in setting the premium. So the ability to remain solvent is the sum of investment return plus premium income over and above whatever are the necessary claims costs and associated administrative management.

The Hon. GREG PEARCE: Is your background in the insurance industry?

Mr HAWKINS: I spent 15 years in the insurance industry in Sydney and Brisbane. Prior to that I spent 15 years in the coalmining industry.

The Hon. GREG PEARCE: Does your board have members with insurance and funds management experience?

Mr HAWKINS: The board is a mixture of people, from the business itself, from businessmen who are by nature employers; we have two union representatives; we have a self-insurance representative; and we have a representative from the legal fraternity.

CHAIR: From what you have said, Mr Hawkins, the employee area, such as the unions, are happy with the system operating in Queensland. They make no criticism of it.

Mr HAWKINS: We are trying to achieve a balance — with the balance being the best possible benefits for injured workers, accompanied by the least possible premium for a pay employers. That is what our vision and our objective is, and we think we are successfully achieving that. Inevitably, in any scheme where you are trying to achieve a balance there will be somebody who says, "You have not given us enough benefits," and, equally, someone who says, "You have not reduced the premium enough." However, in any initiative undertaken on a recommendation by the board or by the Government we try to ensure there is an appropriate balance between those two issues.

CHAIR: From the point of view of the premium, do you have a system, as in car insurance, where the employer who has a higher level of accidents, injuries and so on pays a higher premium?

Mr HAWKINS: That used to be. It was more the other way under the merit bonus system: if he did not have the accidents, he got a merit. But, as I said, back in 1997 that was changed to what was called experience based rating. Implicitly, those who have higher claims — which is analogous to your comment about motor vehicle accidents — will pay proportionately higher premiums.

The Hon. Dr PETER WONG: How can you close your cases in five years without major complaint? What would be the complaints with cases longer than five years?

Mr HAWKINS: We have an average duration for any statutory injury that is around about 30 days. So within four weeks, on average — and we have 75,000 statutory claims per year — they are back to work. There are a very small number who go past, say, two years, and clearly there will be complaints if they are ceased. But they will only be ceased if they are stable and stationary.

CHAIR: When you say "stable and stationary", the injuries still continues, such as a loss of limb, but they would be given a lump sum payment at that point?

Mr HAWKINS: That is correct.

CHAIR: So they continue, with their injury, on their own?

Mr HAWKINS: That is correct.

CHAIR: And you cease to have any responsibility for the injured worker?

Mr HAWKINS: Yes. But they have some recompense to get on with their lives in some other way, shape or form.

CHAIR: I suppose it is hard to say what the average payout would be in five years. Would it be $250,000, or is there a ceiling on it?

Mr HAWKINS: There is a statutory maximum, which is currently $150,000. It has just recently been put to that.

CHAIR: Do you have a system of incentive for employers to improve their workplace safety, their occupational health and safety?

Mr HAWKINS: Again, I think that is tied in very much with the experienced based rating formula. If you improve your workplace health and safety, by inference you reduce the number of injuries that you have. If you reduce the number of injuries, you reduce the claims costs. If you reduce the claims costs, that reduces your premium.

CHAIR: So that is the incentive for the employer. That then gives the employer the incentive to put in place those occupational health and safety measures.

Mr HAWKINS: That is true. Of course, it should be remembered that, unlike in a lot of other States, WorkCover, though its name is the same as in a lot of other States, has no link structurally with workplace health and safety. That is a separate arm of government through the Department of Industrial Relations.

CHAIR: So you are not involved with regulation or fines, or inspectors?

Mr HAWKINS: No. We are solely the insurer and the regulator of that insurer.

CHAIR: So you are really a big, government-run insurance company?

Mr HAWKINS: A government insurance company, yes.

The Hon. GREG PEARCE: And a good one.

Mr HAWKINS: We believe we are.

The Hon. Dr PETER WONG: Obviously, prevention of injury is very important.

Mr HAWKINS: Yes.

The Hon. Dr PETER WONG: Since you are not involved in that, who is responsible for that? Is it very well done, and in what way?

Mr HAWKINS: In terms of prevention, as I answered before, we do not go out and inspect or regulate. However, we believe the incentive that we have offered through experienced based rating — as is being demonstrated by those organisations that have taken a very proactive and positive attitude to injury prevention — has demonstrably been proven in that their premiums have reduced. The bottom line for a lot of businesses is quite clearly the dollar that they fork out for expenses in running their operations. So that is a very tangible benefit to them. Equally, there are less serious injuries in a lot of those instances. Let me say it has not precluded the fact that there are, unfortunately, some deaths and some serious injuries in businesses all around Queensland, as there are in other jurisdictions.

The Hon. Dr PETER WONG: Does that mean that you are operating on some sort of a no-claim bonus system?

Mr HAWKINS: As I said, we used to have a merit bonus system, which was replaced by the experienced based rating. Implicitly, it is an incentive or bonus to have good claims experience.

CHAIR: If I could clarify a point made earlier about the ceiling being $150,000 at the end of that five-year period. Even if they go to common law, the court cannot award a higher figure than $150,000?

Mr HAWKINS: I am sorry?

The Hon. GREG PEARCE: I thought you said it was unlimited at common law.

CHAIR: The ceiling is $150,000. What happens if they go to court under common law?

Mr HAWKINS: There is no cap at common law.

CHAIR: So, for example, the seriously injured worker could still get $1 million or $5 million for long-term permanent care?

Mr HAWKINS: That is correct, based on their future economic loss.

CHAIR: It seems that Committee members have concluded their questioning. Do you have any further comment or any advice you would like to give to the Committee in regard to its recommendations to the New South Wales Labor Government?

Mr HAWKINS: I think you will probably give that advice more appropriately than I would.

CHAIR: Thank you very much, Mr Hawkins. We appreciate you giving us your time and participating in the teleconference this morning.

(The teleconference concluded.)

(The Committee adjourned at 11.45 a.m.)

(The hearing resumed at the Land Titles Office via video conference.)

WILLIAM RAYMOND MOUNTFORD, Chief Executive Officer, Victorian WorkCover Authority, 222 Exhibition Street, Melbourne, examined by video conference:

CHAIR: Mr Mountford, you will not be sworn to give evidence because we cannot give you parliamentary privilege. In what capacity are you appearing before the Committee?

Mr MOUNTFORD: I am appearing before you as the Chief Executive of the Victorian WorkCover Authority.

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

Mr MOUNTFORD: I am.

CHAIR: Would you briefly give us an overview of the management structure of the workers compensation scheme in your State?

Mr MOUNTFORD: The Victorian WorkCover Authority is governed by a board of management which comprises seven part-time directors, a chairperson and one full-time director, who is me as the Chief Executive. This board, which effectively is called a board of management, delegates to me the responsibility for managing and controlling the affairs of the authority in accordance with the policies of the board. That is the overview of the authority. Underneath me in the organisation we have two business units. One of these is our health and safety business unit, which runs our health and safety operations. The other is our rehabilitation and compensation business unit, which runs the insurance side of the operation. We also have a number of support functions or support divisions, which comprise public affairs, marketing, corporate affairs, human resources and information technology. They are the service providers to the two business units. That is basically how we are structured.

CHAIR: Are you happy with the structure and has it been successful?

Mr MOUNTFORD: Yes, I am happy with the structure. We have been working with this structure now for probably a year. It has provides clarity and focus around the key accountabilities in the organisation.

CHAIR: How long have you been in your position?

Mr MOUNTFORD: I have been in my position about 18 months.

CHAIR: Where you involved with the Victorian WorkCover Authority before then?

Mr MOUNTFORD: No, I was not.

CHAIR: What is your background?

Mr MOUNTFORD: Before joining WorkCover I was a partner with Arthur Andersen in the business consulting operations. My immediate past experience is as a consultant, both with Arthur Andersen and before that with another firm called Australian Consulting Partners. In that sense I have been a business strategy consultant and organisation change consultant for the last 10 years.

CHAIR: We understand that a review of workers compensation premiums in Victoria has been undertaken. What were the outcomes of this review and what recommendations, in particular, is the Victorian WorkCover Authority intending to implement?

Mr MOUNTFORD: At the moment we are in the course of the third phase of our premium review. The first stage of the premium review occurred last year when we looked at the premium arrangements in North America. We were looking at a number of jurisdictions there to identify lessons or best practices that we could pick up. In the second stage we looked to see what changes we could implement for the current premium year, that is, 2001-02. Clearly these were limited because of timing and, particularly, technology limitations. We did focus in the second stage on doing two things. One was to improve our communication so as to simplify and clarify the way in

which we communicated with employers. The second thing we sought to do was to stabilise the premium system for the year.

In doing that we introduced premium stability, whereby we said to employers with remuneration up to $1 million per year, "Your premium will be absolutely stable. Your premium rates will be the same as last year." For employers with more than $1 million in remuneration we said, "The system will continue the same as last year." The reason for this was that we have an experience rated system. In that system, employers with remuneration of less than $1 million have most of their premium rates set by the industry rate, which is the rate of the industry they are in. Employers with remuneration of more than $1 million get rates more from their own experience. We wanted to ensure that larger employers who had improved got the benefit of the improvement and, similarly, those who did not improve did not get the benefit or got the reverse.

That was put in place while we conducted the third phase of the review, which takes a more fundamental look at the premium system. We are in the process of doing that right now. The second phase was designed to provide stability, a bit of a holding operation, until we are able to implement the outcome of the current review. The review began in October. We expect that we will have an outcome of the review between now and the middle of next year, with a view to implementing the outcome in full in the financial year 2003-04. We anticipate that we will have to do quite a bit of technology work to implement the outcome of the review. That is basically where we are at.

We are trying to continue on with the third phase with three things. We are trying to increase the incentives for small business to improve their performance in the premium system. At the moment under our experience rated premium system—you are probably aware of the principles—the majority of employers premiums is predominantly determined by the industry rate. There is no direct reward or punishment for their individual performance. We want to find a way to provide more direct financial incentives for them to improve their health and safety performance. The other thing we are doing is we want to simplify and clarify the system. In that context the system is looking at the premium collection process, the workplace classification system and the way we communicate the premium system.

CHAIR: Apparently you have been successful in reducing the workers compensation deficit in Victoria. We have a problem with that in New South Wales. What was the deficit at its highest point and how did you achieve a reduction?

Mr MOUNTFORD: As at December 2000 we had unfunded liabilities of about $1 billion. That was based on the valuation of our assets and liabilities as at December 2000, which was done by two independent actuaries. As at June 2001, the most recent valuation, those liabilities had come down to $683 million. We have had a reduction, as you can see, of a bit over $360 million. How did that come about? Essentially you could say there were two real components. One, which we had some control over, was a reduction in our common law liabilities. These are the liabilities which the actuaries have put into our balance sheet to allow for what they expect to be our payments on common law settlements. We had about $130 million reduction there. The rest was as a result of an increase in our assets from our investment strategy. Those two components drove the reduction, the differential, in the unfunded liability.

How did we get the reduction in the common law liabilities? We achieved that by effectively strategically managing those liabilities. As you might be aware, in our scheme there was access to common law remedies by those who passed a serious injuries test. That access to common law was closed in 1997 and people had until the end of August 2000 to lodge a claim. We had a surge of claims in August, something like 3,000 common law writs in the month—which is what we typically expected in one year. That was the reason for the increase in our liabilities in December. We have engaged a small team of senior law years to strategically manage our common law. They will work to ensure that we get better preparation of cases, a focus on the important cases—in other words, those that have a potentially highly impact on our liabilities—and consistency in the way in which we defend our cases across the various lawyers and common law firms who work with us.

We have also been able to be more effective in the way in which we work with the panel of law firms, the plaintiff law firms and our stakeholders to seek to put some management in an area where there was not management in the past. The number of cases that got through the threshold, with the granting certificate—that is, the granting of access to common law—has reduced as a result of those efforts.

CHAIR: Did that involve trying to get settlements before going to court? Through that arrangement how did you reduce your financial liability?

Mr MOUNTFORD: We had settled and continued to settle. Some go to court and some do not go to court. The difference in the outcome has really been a change in the proportion of claims that actually are accepted. Of those that are accepted, the average settlement level, whether it is settled before it goes to court or after, is pretty much the same.

CHAIR: So you reduced the number of cases going to common law. Did you have a threshold of the injury level?

Mr MOUNTFORD: Under the old scheme we had a threshold test and a narrative so with access to common law under the main two guides, there is a threshold test in terms of whole person impairment, and the old gateway to common law is what you would understand in other jurisdictions is called the narrative, which is basically a description of some other description which you need to meet in terms of other criteria. What has happened is that frankly the organisation historically had not played its part in defending the writs, so in that context, if you do not effectively defend the writs, common law of its nature is an adversarial system where you need the best outcome.

The appropriate outcome is arrived at by way of the challenge of two sides. What happened in our case is that historically we were a very weak side. We did not manage and defend cases effectively. The impact of that was that our common law liabilities blew out. The reason for that was primarily more people got access to common law, got through the granting rate, if you like, than was intended under the legislation because there was no tension in the system. We have not changed the law but managed the common law so that the people who get through the system are the people it was designed and meant for. We are not looking to deny common law rights to anybody for whom there is an entitlement. We are simply ensuring that it is going to the people who are entitled to it and not those who it is not meant for, and this is what happened in the past because the authority had not managed the defence of common law effectively.

CHAIR: Does that mean you are more active in defending cases, again with the purpose of reducing the final award that the court would determine? Were you successful in bringing down the awards as well?

Mr MOUNTFORD: No. The average level of settlement has not really changed. What has happened is that cases that in the past would have gone through to get a settlement have actually been effectively defended and rejected as not meeting the criteria for which common law is intended. When you say more active, we have a panel of law firms who actually prepared the files to defend the cases and then they in turn instructed barristers. Our small team of some nine or 10 senior legal counsels, senior legal people, a partner level, experienced in common law, do a couple of things. First, wherever one of the panel law firms wants to basically grant a certificate or grant access to common law, one of our people peer review it to say, "Is this right? Let us discuss it." It is not a question of overruling it but just talking it through and looking across because we can look across all the files whereas each of our panel law firms only gets the small picture because we deal with about eight or 10 panel law firms.

We peer review the files to ensure that we were making the right decision as to whether to grant or whether to fight the claim or not and at that level we are not looking in that case to deny files where clearly people have access but rather to ensure that we do not agree to common law access where it should not be done, where we do not have a reason to. In the past, without that peer review and without that consistency, I would suggest that we ended up where more people got access to common law than was ever intended under the legislation.

CHAIR: So the action was more in regard to the screening of the applicants for common law rather than being tough in the court itself with genuine cases?

Mr MOUNTFORD: Yes. We consider it is about being more strategic and about identifying those claims that are really at the edge and also which potentially could open up new liabilities that are not intended to be there and to really get a focus on those which are straightforward, to settle them quickly and not to fight them because I think we ended up fighting cases we should not have fought and let cases through that we should have challenged. I think we have a much better handle on that now.

CHAIR: The Victorian WorkCover utilises a Group Involvement Rebate program [GRIP]. Can you please explain this program to us and outline what you perceive as its successes and failures?

Mr MOUNTFORD: We do not actually operate a group involvement rebate program at the moment. We certainly are looking to implement it.

CHAIR: And that is back to setting premiums, is it?

Mr MOUNTFORD: Yes. I mentioned that the first stage of our peer review was to look at some best practices in North America and one of the things we saw there in a number of States was what they call the retrospective rebate program. These programs were to basically provide for small employers, under an experience rated system, essentially for their premiums to be determined by the rate of people in their industry and they cannot affect it by their own performance; it allowed them to form groups. These groups typically were sponsored by an employer association. They would form a group with a charter to improve the health and safety and return-to-work performance of this group and work together to improve their performance.

At the end of each year the insurance agents would basically treat this group of small employers as if they were one big employer and in doing that they can give them effectively more of their own experience. I do not know whether you have delved into experience rating and the scoring factor between how much your premium is determined by the industry rate versus the individual employer rate.

The Hon. MICHAEL GALLACHER: What rating mechanism do you use in Victoria? We have the ANZSIC rating mechanism in New South Wales.

Mr MOUNTFORD: We do not use ANZSIC but we have 580 workplace industry classifications [WICs] so we classify firms into a variety of industry groupings. The key to the system is that we have an experience rated system and the premium rate is determined by either your own claims experience, in other words what your costs are so that for the very largest employers in our States who are in our system there is very little insurance in the scheme, that is, the premium is determined by the costs that they incur with their claims; it is fundamentally their costs. If they have high claims costs in their firm, then they will get a high premium because we will set a premium that is essentially driven off the costs that they incur as result of their operations.

Clearly, you cannot do that for a small firm, so for the small firm you get the industry group, but also some industries have higher claims experience than other industries. The meat industry typically has a high claims experience and, therefore, a high premium. Therefore, a small meatworks premium would be determined by the industry, and in the meat industry you would get that premium. This is what the actuaries call a problem with credibility. It is a bit like house insurance or car insurance. They will ask what neighbourhood you live in because in order to determine the risk for your particular house it does not pay them to work out exactly what is the risk in your particular household; they actually say that the best indicator of your risk is the area you live in so the premium is determined by the area you live in.

Similarly for a small firm, the risk of injury is really linked most closely to the industry you are operating in. The premium is determined by that because they are so small that there is not enough experience or credibility to set a premium just for them.

The Hon. Dr PETER WONG: What happens if a certain small business has a record that is so bad that is out of kilter with the general business industrial premium? Do you penalise that person or give him a warning?

Mr MOUNTFORD: Under the premium system a small employer who has a poor performance in terms of claims experience will get some of that claims experience in their premium but because they are small, they will still be predominantly driven off the industry rate. So, from the insurance side of the operation that is basically all we do. What we would expect is that our agents may well then be involved in working with them to improve that performance and we may also pick them up in our health and safety operations from a prevention point of view.

The Hon. Dr PETER WONG: So there is a cross-subsidy within the industry but not across the industry.

Mr MOUNTFORD: That is right. Inevitably with insurance there is always a cross-subsidy. That is the nature of insurance, but what would happen then is that the cross-subsidy would be within the industry classification, not beyond it. The group program is really designed to try to provide more financial incentive to small firms to improve their performance by grouping small firms together so that you can treat them as if they are a big firm for insurance purposes.

CHAIR: Could you clarify for us your relationship with your insurance agents in Victoria. Earlier you said you file cases in the court, not the insurance agents. In New South Wales the NRMA, the insurance company, would file the claim.

Mr MOUNTFORD: Our agents are under agreement so we have an agency contract with them, which is typically three to four years in length. We currently have 10 agents of whom the majority are the general insurers in this field from other jurisdictions in Australia. We are currently, as you might be aware, implementing a new claims management model, which will still involve agents managing our files but, essentially, they manage them as our agents and we are reviewing the terms of that arrangement. Essentially, they are responsible for collecting the premium and for managing the claims in that area. However, they are responsible in common law for identifying the claims that have got a potential for common law and for helping to prepare those cases.

But what happens is that if there is a common law writ, typically the employer has the choice in our system to identify the law firm from our panel that they want to use to defend that writ, but then we ultimately, as you know, are the ones who pay the common law so our group works with those common law panel law firms and we appoint them so that they have an incentive to work with us because ultimately we determine who is in the panel law firms and we also have a more active role now in determining which files should go to which panel law firm, so we have some oversight of the defence of the common law writs.

CHAIR: So insurers do not have a role in selecting the lawyer or the legal firm?

Mr MOUNTFORD: No, the insurers do not determine who the barristers are going to be who are used in a case. That is determined by the solicitors with our advice. I am not sure exactly—the agents may be able to make a choice, or influence the employer's choice of which of the panel law firms to use, but they can choose only from the panel law firms that we have conducting our case and work for us.

The Hon. MICHAEL GALLACHER: Mr Mountford, just on the group improvement rebate program that you are talking about, I have to make just a couple of points in relation to that. What do you do if you have a number of small businesses in a group? I do not know what sort of number you would be looking at or whether you are talking in tens or hundreds, but if you have, say, 50 in a group and you have two or three who are clearly underperforming and are piggybacking the good performance of the other 48, how do you deal with that in the context of that group? I will come back to another question in a second, if you could just answer that first.

Mr MOUNTFORD: Yes. First, one of the advantages of the group scheme is that we do not have to do anything about it because the group will be the ones who will do something about it. Under these schemes, essentially the extent to which their group will get a rebate or a discount on their insurance is governed by their overall performance. If they have got a couple of people letting them down, then you can be sure that the rest of the group will be hammering those people to improve their performance, I would expect.

CHAIR: Or kick them out of the group. Do they put them out of the group?

Mr MOUNTFORD: Yes. As I said to you, we are actually investigating this. We have been investigating it for a little while with a view to seeing whether it can be implemented with our system. We think it has some merit but we have not finalised it yet so in answer to the specific question you raise—can they kick the others out—of course the problem is that in some schemes they can, and in others they cannot. The problem is that if you let schemes just kick people out if they perform poorly in one year, the group will always do well and you will always just be kicking out people along the way. It does not actually really address your objective which is to get everybody's performance up. It essentially ends up as a group of only good performers.

The Hon. MICHAEL GALLACHER: How big are the groups?

Mr MOUNTFORD: They vary. In some cases they can be as few as 14 up to thousands and they vary by different States. Really what you need to do—I think the criteria are twofold: You need a group that is sufficiently large in terms of the total premium base or remuneration base so that it is like a big business. There is a minimum level that you require in order to get the credibility to give them the impact of their own performance. At the same time you want few enough employers that there is a real group operating there so that they can work together because they actually form an organisation with a business plan as to how they are going to move that group forward. I think if you get up to thousands, they do not become a group any more, in my view. They are the sorts of criteria that shape the group, but, as I said, we are still working through these issues and how they operate in our jurisdiction.

CHAIR: Would you just explain who would go in a group? What would be the association? Is it service stations or hospitals?

Mr MOUNTFORD: I can give you an example of an area where we think you might see a group. It might be, for example, in the meat industry. You might have the Victorian meat works association, or whatever the employer body is here. Basically you might form a group which would consist of a number of meat works in Victoria. It might be 20, 30 or 40, depending on how big they are. They would form a group. They would come together and basically they would sign the charter which would say that they are going to work together and develop a business plan which is about how they are going to improve their performance in both prevention and return to work. Then what would happen is that we would just send them an invoice for their premium as usual each year. But at the end of each year, we would group them all together and say, "Right, did they do better than the industry?", for example. The industry incident rate or costs rate might be X and this group did better than that, then you rebate them or give them a discount in retrospect for having done better than the industry rates.

CHAIR: They get a refund?

Mr MOUNTFORD: They get a refund, exactly, and then they can choose how to use that refund and how to allocate that refund. They may choose, if they have got some poor performers in it, to distribute across the group in terms of relative performance. They may choose to reinvest some of that refund in terms of improvement of that performance. It is really a program which is probably most relevant to those industries which have got a relatively high incidence of injury and therefore relatively high premiums. It is not likely to be as attractive to those industries where their injury rate and premium rate are already very low. That is also the experience of overseas.

The Hon. MICHAEL GALLACHER: Just in relation to that, Mr Mountford, one of the concerns I have in relation to the premium discount in schemes that we have in New South Wales is that in the short term, by giving discounts, you are effectively reducing the amount of income that is coming into the scheme which is in fact part of the problem. We are not getting enough income into the scheme to maintain the ongoing costs of the scheme. How would you address that in Victoria if this was in fact a success and it went right across the State in terms of providing an incentive for companies to bring down their premium in the short term? You would still have the ongoing costs over the next couple of years, at least until the benefits started to kick in. Do you agree with that?

Mr MOUNTFORD: Look, first of all, I certainly cannot comment on the premium system or discounts in any other jurisdiction. I just do not know enough about New South Wales. In terms of the costs of the group improvement premium, were we to introduce it, there would be, or there could be, some initial costs. We have not actually got to the bottom of that yet but ultimately in any of these schemes, in the final analysis, the sustainable way that the group improvement program would improve the scheme and would reduce premium costs is by improving performance and reducing injury. Under the group program as it operates, employers in the group are not guaranteed discounts. They have got to have lower injury rates and lower costs in order to qualify for the rebate. In some schemes they can also have their premium increased if they do worse than the industry rate. There is a guarantee, although typically these schemes are effective in terms of both bringing together good performers and also improving the performance of those players, which means that their premiums are lower.

CHAIR: You obviously support that idea but you said it is not actually implemented yet. Is that right?

Mr MOUNTFORD: No. I think it makes a lot of sense.

CHAIR: What is your timetable for implementing it?

Mr MOUNTFORD: Look, I think that would be something that probably would not be implemented until the 2003-04 year. I have to say to you that I have been away the last few weeks and I have not caught up with the premium review team who are working on those at the moment. To be honest with you, I am not even sure whether the idea still has legs, as it were, but we have been looking at it. We hope it will have, but it really depends on the evaluation of the team who are reviewing the premium at the moment, and ultimately on the board, to decide whether or not the scheme will work in Victoria and can operate in a way that does not put our premium at risk.

CHAIR: Have you had any consultation with employers to see if they are sympathetic to the idea?

Mr MOUNTFORD: Yes. We have talked to employers and they are interested too. I think they see some advantages in it. Clearly they also want to see more of the detail in it before they commit themselves, but I think that certainly the response to date has been reasonably positive.

CHAIR: Did you mention the States in the United States that you were referring to particularly when you said that some of the States had this program in place? Do you recall those off-hand?

Mr MOUNTFORD: Yes. Ontario in Canada has a program which has been running for a couple of years. The Ohio State scheme runs this as well in the US. Washington State has a program and New York State fund, which is the government fund—and they also have private funds—already has a retrospective rebate program. They are all a bit different and so we are not looking to implement any one of them holus-bolus, but they have some of these common features which we think we might be able to learn from, distil and put into our system.

CHAIR: Just in another area, what incentives do insurers have in Victoria to try to finalise claims and ensure that employees return to work, where appropriate? How successful have these incentives been?

Mr MOUNTFORD: In Victoria, the way that we remunerate our insurers is that we pay them a fee that is partly based on, if you like, the volume of work—a processing fee—and we have also paid a proportion of the remuneration for the agents on an incentive basis. This is called a true risk performance ratio. This is meant to be, if you like, an equivalent to underwriting, or giving them a similar signal to underwriting. If they manage their liabilities to reduce their liabilities by reducing the incidence among the companies in their portfolio or improving their return to work rate, that is reflected in this ratio. Therefore they will get an incentive to improve. They will get more if they are essentially improving the scheme by reducing their liabilities. How effective has that been? At one level, if you look at our return to work rate in Victoria—let me just check the figures here—the return to work rate monitor for 2001 indicates that 81 per cent of Victoria's injured workers had returned to work over the time of the interview, which is seven or eight months after submitting the claim.

This was similar to the national average of 84 per cent, so we cannot say that we are doing significantly differently to the national average, but there was a decline in the return to work rate of 85 per cent in 1999-2000. I think we would say to you that that has had some impact. If you talk to our agents, they will say, "Yes, this has given us an incentive to manage claims more proactively but it has limitations." It has been a bit of a black box, if you like, and has lacked transparency. As part of our new agreement with the agency going forward, we are proposing a different set of incentives which have similarly been designed, though, to provide a financial incentive to our agents to manage their claims in a way that minimises the cost to the scheme.

The Hon. Dr PETER WONG: Mr Mountford, in Victoria, who manages the premium collected? You talk about investment strategy. Does the agent invest the premium that is collected by themselves, or are you, the WorkCover Authority, in charge of investment strategy totally?

Mr MOUNTFORD: The agents are responsible for collecting the premium. We basically print the premium notice so we set the premium, we send out the premium notices and we print them with the agent's letterhead—there are different overheads on notices. The agent is responsible for getting that premium in and there is an incentive for them which is a penalty for their performance in getting the premium in.

The investment of that premium is done by us. We have an investment Committee of the board. That investment Committee is responsible for setting the investment strategy, which is executed through the Victorian Funds Management Corporation on our behalf.

The Hon. Dr PETER WONG: How do you ensure that every employer pays the proper level of premium? For example, in New South Wales an allegation has been made that the building industry has underpaid by 30 per cent. How do you ensure that industries, such as the building industry, pay the proper level of premium?

Mr MOUNTFORD: In the past we have run an audit program where we randomly audit employers to ensure that they are paying the right premium, that they have not understated their remuneration, and that they are in the right industry classification. That is how we have ensured that the right premium is being paid.

The Hon. MICHAEL GALLACHER: Who in Victoria is seen to have ownership of the scheme? Is it the State Government, the employers, the employees or the insurance companies?

CHAIR: Particularly in relation to the deficit.

The Hon. MICHAEL GALLACHER: In particular, the unfunded liability but, indeed, the whole question of ownership.

Mr MOUNTFORD: That is a good question. In Victoria the scheme is seen to be the Government's scheme, but it is not purely that way. I would add two things. What we have been doing, certainly in the last 18

months, is seek to get more ownership of the scheme by the employers and the unions. We have done that through stakeholder forums, where we regularly meet with them and discuss what we are doing, and through programs, such as the group improvement program, where we seek to get them more actively involved. We also make a point about the people who are at the centre of the risk that we are responsible for in this State. It is the employers' workplaces and the unions' members. These are the people for whom we are concerned to minimise. They have a very strong interest and stake in the scheme. We are trying to build on that. I think we are making some progress, but it would be primarily seen as the Government's scheme.

The Hon. MICHAEL GALLACHER: In the first two phases of reform and now in your work on the third phase of reform, have you initiated a reduction levy to pull back that $680 million from employers?

Mr MOUNTFORD: The latest valuation by our actuaries has projected that we will return to a fully funded basis by 2004 on an unchanged basis. So with no change in the premium, no change in the performance of the scheme, just on a steady state, it will return to a fully funded basis in 2004. A reduction levy is not something we have looked at.

The Hon. MICHAEL GALLACHER: As to whole body impairment, do you have a percentage you apply for common law?

Mr MOUNTFORD: It is a 30 per cent whole person impairment. In the new common law it is under AMA 4, and under the old it AMA 2.

The Hon. MICHAEL GALLACHER: When you say whole body impairment, is it collectively up to 30 per cent?

Mr MOUNTFORD: Yes.

The Hon. MICHAEL GALLACHER: It includes all injuries adding up to 30 per cent?

Mr MOUNTFORD: Correct.

The Hon. MICHAEL GALLACHER: What is the situation in Victoria as to commutation of common law? Do you have commutations?

Mr MOUNTFORD: Commutations of common law?

The Hon. MICHAEL GALLACHER: I mean that a person can take a lump sum payment or take it in the form of a weekly payment.

Mr MOUNTFORD: Common law payments are typically lump sum. Our scheme has statutory benefits, which are typically weekly payments, and then access to common law, which are typically lump sum. In that lump sum will be netted off the statutory benefits that have been received.

The Hon. MICHAEL GALLACHER: Has the experience been in Victoria in the last 12 months, or even in the 18 months you have been at the helm, that commutation has been a positive or a negative to the scheme?

Mr MOUNTFORD: What do you mean by "commutation"?

The Hon. MICHAEL GALLACHER: Turning weekly benefits into a lump sum. Have you found that to be a positive or a negative in the scheme?

Mr MOUNTFORD: We have had very little in our scheme. As you might know, there is currently legislation before the Parliament in Victoria on this issue that is designed to provide for some ability to provide lump sum settlements for people who we injured during the period when there was no access to common law. That is what we call the intensive case review period from 1997 to 1999, when people could not get access to a lump sum common law payment. There is legislation now before the Parliament designed to provide people who meet that common law threshold access to a lump sum payment on a defined base.

The Hon. MICHAEL GALLACHER: Do you have access to the actuarial costings and could you tell us how that will impact upon the scheme?

Mr MOUNTFORD: It has been costed by the actuaries.

The Hon. MICHAEL GALLACHER: Are you in a position to give us a ballpark figure of the cost?

Mr MOUNTFORD: I cannot give you the specific figures. Clearly here the question the is the trade-off between what you expect the ongoing statutory benefits would be vis-a-vis the commutation payment. The proposal going forward has been structured with and approved by the board in terms of going forward to the Government on the basis that they have to meet our requirement to ensure the financial integrity of the scheme. The cost overall to the scheme would depend on the take-up rate. What we have done is ensure that whatever that take-up rate, the financial integrity of the scheme is not jeopardised.

The Hon. MICHAEL GALLACHER: Earlier you spoke of the initiative by your Government to move as close as you can towards a privately underwritten scheme by providing similar incentives that otherwise would normally operate. Is any consideration being given by the Government to take that step towards a completely underwritten scheme?

Mr MOUNTFORD: First of all, I think you are under a misapprehension. If you are talking about the group improvement rebate program, that has nothing to do with the Government. It is a management issue. Also, it has nothing to do with the private sector scheme. The group program only exists in State funds. The United States has a similar situation to us; it is all over the place. Washington State is a pure monopoly government fund. New York has a combination of private insurers and a State fund, and has everything in between. The group program is really independent of whether it is privately underwritten or publicly underwritten. Ohio, Washington and Ontario all have State schemes.

From that point of view, it is simply not accurate to say that this is about moving towards the private sector. It is about getting the right incentives for employers in whatever scheme. That is what it is about. Secondly, as I said, this has nothing to do with the Government. We have not even agreed as a management group that we are going to do this yet, let alone put this up and have the Government support it. In terms of whether the Government is looking to move the scheme to a private base, I do not know anything about that. As I understand it, it is not on the agenda and it is certainly nothing that I know about.

The Hon. Dr PETER WONG: In Victoria how soon after a worker is injured does the injury have to be reported to the authority? Is it three days, seven days, one month? Also, at what stage do you close a case? Do you have a long tail where cases can last for years or, as happens in Queensland, do you close or settle cases after five years?

Mr MOUNTFORD: In our scheme employers are responsible for the first 10 days of injury for lost time wages and the first $400 of medical costs. They are required to lodge a notice within 28 days, I think, or the insurers are required to make a decision within 28 days to accept or reject liability. Our scheme has a long tail. As to the profile of our liabilities, 25 per cent of our liabilities are five years or more. The majority are in the zero to two years range, then it might be 50 per cent in the two to five years range, and then 25 per cent in the five-year plus. Do not hold me to those figures exactly, but it is in that order of magnitude[2].

The Hon. MICHAEL GALLACHER: You spoke about a 10-day provision. Is there any evidence or has any examination been conducted in Victoria as to whether there was an increase in the amount of days being taken off by employees following the introduction of that 10-day provision?

Mr MOUNTFORD: I am not sure that I follow you.

The Hon. MICHAEL GALLACHER: In New South Wales legislation has been passed that allows for injured workers to have up to seven days off and puts in place certain provisions in regards to workers compensation. Victoria has 10 days. Have you seen any trends towards people going off for four or five days rather than taking off one or two days?

Mr MOUNTFORD: No. This is basically self-insurance. It is like excess on your car policy where you pay the first $100 or $150. Essentially employers pay the first 10 days. So the employer will not sit back quietly and see people go out for 10 days. We see no evidence of that.

[2] Clarification from Mr Mountford provided on page 33 (**).

The Hon. MICHAEL GALLACHER: What period of time applies in Victoria for insurers to notify their intention in relation to a claim once it has been brought to their notice?

Mr MOUNTFORD: It is 28 days.

The Hon. Dr PETER WONG: Do you think that a long tail is a risk that your liability may keep accumulating?

Mr MOUNTFORD: This is a long tail insurance business. As events of the last few years have revealed, it is a business where you need deep pockets because you are subject to volatility.

The Hon. Dr PETER WONG: Do you intend to cut off the long tail?

Mr MOUNTFORD: No. Our responsibility and the way we operate, from where I sit, is simply this, and we have a strategy in place which supports it: Firstly, we try to minimise the incidents of claims. That is the best outcome. In our prevention operations and insurance operations we are looking to maximise the incentives for employers and people in workplaces to improve their health and safety performance and not have injuries in the first place. The second thing is once there is a claim, in this type of insurance it is all about claims management. The other stream of our strategy is to improve the management of claims. That is why we are going through the process of implementing a new arrangement with our agents. The third thing is to do this as an organisation you need to have the capabilities, the systems and the information to manage the scheme. The third element of our strategy is to revitalise the organisation, and to improve our own capabilities and efficiency and effectiveness in managing the scheme. That is what we are about and that is the name of the game.

CHAIR: We thank you very much for being so helpful and giving us this background material. We wish you all the best with the Victorian WorkCover Authority.

Mr MOUNTFORD: This is a very challenging area of work. We are still working away, but it is tough.

CHAIR: Keep an eye on your investment income.

Mr MOUNTFORD: Thank you.

(Mr Mountford withdrew)

(Luncheon adjournment)

HENRY THOMAS NEESHAM, Executive Director, WorkCover, 2 Bedbrook Place, Shenton Park, Western Australia, examined by video conference:

CHAIR: Thank you for agreeing to provide a briefing to our Committee. We will not swear you in as you are in Western Australia and are outside our jurisdiction, which means your comments will not have parliamentary privilege.

Mr NEESHAM: I accept that.

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

Mr NEESHAM: I am.

CHAIR: Is there anything you wish to say at the beginning?

Mr NEESHAM: As a general comment, I have been directly involved with workers compensation in Western Australia since 1978. I have been chief executive officer of WorkCover Western Australia since 1982 so I have a reasonable involvement and knowledge of the workers compensation system.

CHAIR: You are a survivor?

Mr NEESHAM: Yes. I am currently dealing with my ninth Minister.

The Hon. Dr PETER WONG: What is your business background?

Mr NEESHAM: I have a commerce degree from the University of Western Australia and I am a Fellow of the Australian Society of Accountants, FCPA. In terms of my profession, I have been a public servant since 1962 and except for two years national service in 1965 to 1967, including 13 months in Vietnam, I have been a public servant. I am also involved in sport and in a few other things but I do not think that is relevant to the inquiry.

CHAIR: Can you briefly give us an overview of the management structure of the workers compensation scheme in your State?

Mr NEESHAM: Yes, the Western Australian scheme is a privately underwritten scheme and the Workers Compensation and Rehabilitation Commission is charged with the responsibility of administering the Workers Compensation and Rehabilitation Act. The Commission was established in 1982 and the structure of the Commission is that it is a seven-member board, comprising a chairman, who is a senior public servant selected by the Minister; the Executive Director, that is myself; an employer representative nominated by the Chamber of Commerce and Industry, Western Australia; a union representative nominated by Unions WA; an insurance representative nominated by the Insurance Council of Australia; the head of the Insurance Commission of Western Australia, which is the Government Insurance Office; and a medical practitioner.

The board meets monthly. It is responsible for administering the legislation and that includes all aspects of the legislation, from accrediting the various groups that require to be accredited, to monitoring the performance and advising the Government, particularly on the issue of policy. Separate to that and to assist as probably a second element, we have, supported by the Commission administratively but totally independent, a Premium Rates Committee. This Committee is separate from government and it is chaired by the Auditor-General. It also has a similar membership, with the exception of the medical practitioner, and it independently recommends premium rates based on the performance of the system. This is done independent of government.

I will give you an example. One of the issues that I think your Committee needs to consider is the fact that decisions that you make today you can expect to impact upon the system in five years time. There might be an immediate impact, but I will give you an example. In 1978 the Liberal Government in Western Australia increased benefits to workers as part of a major reform of the system. In 1983 the incoming Labor Government experienced premium increases of 28.2 per cent as a direct result of those changes. They were not balanced. Another example is that in 1993 the Liberal Government introduced significant changes to the system, including removing the legal dispute resolution process and replacing it with a non-adversarial process but, more important, changing access to common law. The initial impact expectation of that in the first couple of years was it was going to significantly reduce the cost of workers compensation and in the first couple of years clearly it did. The unfortunate thing was

that in 1997 and 1998 the cost of workers compensation just went through the roof directly attributable to common law as a result of the fact that the changes to the common law system were not effective. The outcome was that premium rates went to in excess of an average of 3 per cent.

In 1999 changes by the Liberal Government addressed the issue of common law and in some data that I will give you later the immediate impact was, and has been, a significant reduction in access to common law. It was coupled with access to redemptions of normal statutory benefits but the impact has been dramatic to the point of a 50 per cent reduction in the cost of common law in the first couple of years. From my position, clearly the issue is one of caution because until we have gone another three years we will not know the true impact of those changes. I think that most legislative bodies making changes to the system see what they want to see in the first few years, because generally the attitudinal change by the parties is immediate but then the process changes begin and the impact is felt. If you like, I will show you a graph to explain that. Am I getting too far off the subject?

CHAIR: No. We are happy with what you are doing.

(Refer to Attachment A)

Mr NEESHAM: I will go off-screen. If I do this right you will see a graph and I will give you an explanation. Concentrate on the yellow line on the graph, you will see that the graph shows the years 1991 and 1992, which is the common law graph. Common law was increasing and in 1994 there were legislative changes and you will see an immediate drop in the impact on common law.

You will then see over the next four years a gradual climb—in fact, it is a fairly steep climb. Finally in the 2001 year, your see a dramatic drop. If you look at that and translate that back to the 1994-95 picture, what I am suggesting is that, until we go out for another three years, we will not really know how effective that legislative change will be. As I say, I just use that as a way of indicating to you one of the traps, if you like, in dealing with this whole issue of workers compensation. You must project over a three to five year period to look at and assess whether any changes you make are as effective as you anticipated they would be when you made them.

I will elaborate a little bit more on the Premium Rates Committee. I think one of the major success issues for Western Australia has been that while we have a multi-insurers system, that has not been without its problems, in workers compensation there are employers at the middle to high range of salary level or size which generally have the capacity to negotiate premiums. They have various mechanisms, such as varying cost arrangements where they have an up-front premium and, depending upon performance costs, these are increased or left at the deposit premium, level as it were. But the bulk of employers are in the small employer range and they tend to have no capacity to negotiate. While the private system is intended to provide a capacity for negotiation, the reality is that the Premium Rates Committee sets a recommended rate. This rate is generally accepted as the base rate for that bulk of small employers. It reflects the true cost of the system. Obviously, within that there is scope for the insurers to load premiums, depending upon the performance of the employer, or to discount them. Generally the discounts in those areas are about five per cent to 10 per cent. They rarely go beyond that. I do not know whether that is giving the Committee a sufficient overview.

CHAIR: So that we have some background, do you have an unfunded liability? If so, what is it?

Mr NEESHAM: No, we do not. We have a privately underwritten scheme and the insurers are required to meet the full cost of the system. As a result of that, any underfunding of the system is met by the insurers through their reserves. Of course they are required to meet the Australian Prudential Regulatory Authority [APRA] solvency margins. As such, they are required to fund the entire scheme.

CHAIR: They fund it, but you set the premium levels.

Mr NEESHAM: Yes. We set the premium levels, but they are recommended only.

CHAIR: They can set their own premium level?

(Refer to Attachment B)

Mr NEESHAM: I will give you an example of how sometimes the insurance industry has a difficulty with doing exactly what I was talking about earlier, that is, understanding the market that they are in. If you just bear with me, I have a slide here which will show you that sometimes they can get it wrong and it costs them on their bottom

line. I was very carefully prepared for this but I just cannot put my hands on that slide immediately. I will use this one just to give you an example. What you have here—can you read that okay at your end?

CHAIR: No.

Mr NEESHAM: I am sorry. Perhaps I will just give you what it actually shows.

CHAIR: I will get you to send the graphs across to our office. Would you do that for us?

Mr NEESHAM: I can do that, yes.

CHAIR: That would be a big help.

(Refer to Attachment C)

Mr NEESHAM: Basically I can give you an example of what I was trying to outline to you. If you look at the top component part of the slide headed "Recommended Premium Rates", you see that the insurance industry in 1994-95, 1995-96 and in 1996-97 was discounting the market by something in the order of 30 per cent. Given that the Premium Rates Committee, in setting the premium rate, allows probably about a total of 20 per cent capacity within the premium dollar for premium profit, they were cutting themselves out.

(Refer to Attachment B)

The other slide I was going to show you indicates that, for instance, in 1995 the insurance industry in this State made a loss in the order of $16.5 million. In the next year, 1996, they made an estimated loss of $64 million and then in 1997, a loss of $96 million. You will see that they were continuously funding our employers from their reserves. I might say that of course at the present time they are discounting on average about five per cent and they certainly are driving the costs of premiums for those employers whose performance has not been satisfactory.

CHAIR: Can you come back on-screen for us now?

Mr NEESHAM: I am sorry. As I said, I am not very conversant with this. I just have to keep pushing the right button.

CHAIR: Why were they discounting so high at 30 per cent? Were they competing for business or market share?

Mr NEESHAM: The reality was that they were reacting to the 1993-94 legislative amendments. They believed that those amendments were going to actually significantly reduce access to common law. The reality was that they did not, and it cost them.

The Hon. MICHAEL GALLACHER: How many insurers do you have in the pool?

(Refer to Attachment D)

Mr NEESHAM: Just as an example, in 1981 we had 51 approved insurers. In 1991, it was down to 27 and at the current time we have 12 approved insurers. In fact I can give the Committee an indication of what has happened in this State in the last few years. You will see on the graph headed "Approved Insurers/Self Insurers" that the yellow indicates the number of approved self-insurers and burgundy or red indicates approved insurers. Over the last few years, we have had a series of amalgamations which has reduced the insurers to 12. At the same time we have had a significant increase—a doubling, in fact—of self-insurers to 24.

The Hon. MICHAEL GALLACHER: Can you just explain to me under a privately underwritten scheme the difference between self-insurers and insurers?

Mr NEESHAM: The insurer acts in the normal way of an insurer: they offer a policy of insurance. In our State, the employers' indemnity policies cover both the statutory and common law liability of employers, although our statute in fact does not specify that they are required to cover common law. However, we have always had Common Law coverage in this State. The policy was written specifically as the employers' indemnity policy. That was what was offered and so both are covered. That is what insurers offer in the market. If they are an approved

insurer, they are required under our Act to actually not refuse insurance. They can certainly price themselves out of providing insurance but they are precluded from actually refusing any employer who approaches them and seeks a policy. Self-insurers are employers who have sufficient substance and meet a series of criteria, including appropriate security in terms of a bond, and they meet liquidity standards set by the commission.

Where they meet this criteria they are approved to carry their own insurance. They are required to have common law and catastrophe cover as a separate cover but basically they operate as an insurer—that is, they manage their own risk, they manage their own claims and basically they pay the claims and generally they tend, by virtue of that, to be far more interested in injury management and in dealing with their injured workers. Their performance is generally better than the system as a whole but then within that system as a whole, clearly you have other issues where an employer—say, a small employer with five people who has somebody injured with a sore back or strain to their arm or shoulder—finds it very difficult, by virtue of its size, to place that worker back into an appropriate job. As such, for them to remain in business, they would prefer to have that employee on compensation rather than try to manage that person back into the workplace. That is clearly one of the issues.

CHAIR: Does WorkCover WA still monitor those self-insurers?

Mr NEESHAM: Absolutely.

CHAIR: They report to you?

Mr NEESHAM: Absolutely. They provide the same reports as insurers do so that we can ascertain how they are proceeding. Every claim that they have is reported to us. We charge them for our services. They contribute to a general fund which is the cost of administering the system and we review them annually.

CHAIR: You said that insurers were losing over certain years. Are they making a profit now?

Mr NEESHAM: Yes, they are.

CHAIR: I think you mentioned a figure.

Mr NEESHAM: Yes, they certainly are. The timing is difficult for me because the data required for us to be able to confirm the estimated position is a little bit early. However, they expect to make probably in the order of $80 million this year. That follows on from a series of fairly significant losses over the previous five years.

CHAIR: Those five-year losses—what would they add up to?

Mr NEESHAM: Do you want me to tell you?

CHAIR: Is it about $400 million?

Mr NEESHAM: It is $260 million.

The Hon. MICHAEL GALLACHER: What processes do you have in place or what systems do you have in place to protect consumers—by that I mean both employers and employees—under the privately underwritten scheme, as the insurance companies obviously try to claw back profit?

Mr NEESHAM: We have a limit on what the insurer can load onto an employer. There is an appeal mechanism to the Premium Rates Committee or to the Commission in relation to either the category that an employer is allocated to or the premium cost. Central to that is, if the insurer seeks to load a premium by greater than 100 per cent, then it is required to get the approval of the commission for that. We actually run the performance of the employer against an actuarial model which is the same model as used by the Premium Rates Committee to determine what the rate should be, based on the claims performance of that employer and based on their previous three years or four years claims experience depending upon the employer's situation.

The Hon. MICHAEL GALLACHER: What is in place for an employee, for example, who has a claim working its way through the system and the insurance company decides to handle that in a particular way. The company might decide to settle the claim and the employer is of the view that he wants to fight it. What appeal processes are in place for employers who are dissatisfied with the decision that the insurer takes?

Mr NEESHAM: The employer can go to another insurer the next time he insures. Basically the circumstances are that the insurer invariably looks at the situation and has the data coming from the employer in regard to any particular claim. At the end of the day under the terms of the policy—it is not a legislated policy but it is a standard policy—the insurer is given the role of the employer to manage the claim. Clearly in the 20 years I have been running this system that complaint—and it is not a high proportion—would be probably balanced by the number of times the insurer runs a claim hard and the employer says that maybe it should be paid. It cuts both ways.

The Hon. MICHAEL GALLACHER: I believe it is fair criticism to say that in New South Wales workers compensation is not an insurance scheme because any claims are passed off to the insured over the next few years in their premiums. You make the point that if you are not happy with the service you go to another insurer. In New South Wales you would simply get an escalated premium next year and you could not avoid paying it. In Western Australia, is it a scheme where if a claim is X amount the employer will pay that amount over the next couple of years or does it operate in a true insurance fashion?

Mr NEESHAM: For the most part it operates in a true insurance fashion. However, if an employer is a particularly poor performer, then any insurer with due diligence would take into consideration past performance. Generally, an insurer would take the employer on the basis of a premium and recognise the previous performance by providing the employer with what is called a back-end rebate. That means if the performance with the new insurer is satisfactory, depending on the level of claims, then the employer will get a rebate at the end of the policy year. Except for the small employers where there is a genuinely true pooled situation, most of the others rely on performance.

CHAIR: What is the average premium level now in Western Australia, and has it fluctuated over the last few years?

(Refer to Attachment C)

Mr NEESHAM: I will show you a slide headed "Average Recommended Premium Rates". There are two lines on the graph. The white line is the average premium based on the projections of the Premium Rates Committee. When we set the rates for a particular year, we determine at that point in time what we expect, given the all the data we have, the premium rate will be based on the rates that we have set. Against that, the orange line shows the actual rate that has occurred. We cannot show that until two years time. You will see that prior to 1999 the rate was coming down a little, then it started to go up a rather rapidly. Between 1998-99 and 1999-00 it jumped.

CHAIR: Would you quote the figures for the transcript?

Mr NEESHAM: Currently the average premium rate is 2.63 per cent based on the recommended rates. If I go back to 1999-00, the actual rate was 3 per cent, and the projected rate set by the Premium Rates Committee was 3.09 per cent. That gives you an idea of how reasonably accurate the Premium Rates Committee has been. If you look at that graph, you will see that there it is very little variance between what the system actually charges employers and what the Premium Rates Committee in setting the premiums considers the rates should be to meet the projected costs of the system.

The Hon. TONY KELLY: What changes did you make in 1997 to the common law to have that big drop?

Mr NEESHAM: The change occurred in 1999. The difficulty we had with our system is that in 1993 the Government introduced what we call a second gateway. It was an entry to common law. We had a 30 per cent disability threshold for seriously injured workers. Those workers had no restriction on accessing common law, and they had no limitation on continuing within the statutory system. Separate to that, we had a second gateway which was based on workers establishing that they had a future economic loss of the prescribed amount, which was $120,000. The difficulty with that was the creative minds of various people. I will give you a true life example. A part-time worker at a fun park earning an annual income of $14,000 determined that she really wanted to be a member of the police force on $55,000, and she achieved access to a common law. That gateway was totally ineffective.

In 1999 the 30 per cent was not changed but there was a limitation placed on those who were in the range of 16 per cent to 29 per cent whole body impairment. That is based on a disability; it is not based on the American Medical assessment tables. We have a review at the present time looking at that issue. At six months workers in that lower group are required to elect whether they stay in the statutory system or go to common law. The impact of that clearly has been quite dramatic, because their common law claim cannot be resurrected. Once they get to six

months, those people who are below the threshold cannot reinstate their common law position, unless they can establish a 30 per cent disability. That was the major thrust of the change. It was to clearly address the issue of the second gateway.

The Hon. MICHAEL GALLACHER: Is the 30 per cent threshold still there?

Mr NEESHAM: Yes.

CHAIR: Is the introduction of those changes the reason why the premium rate went down from the projected rate of 3.09 per cent to 2.63 per cent?

Mr NEESHAM: It was combined with reintroducing access to redemption of statutory entitlements. Effectively, there was a significant increase in the number of workers who elected to get out of the system, and that had an impact on weekly payments in the statutory system. People who were previously getting a make-up pay of $50 or $100 per week could take a lump sum and leave the system. It also impacted positively on medical costs. It had a triple effect in reducing the weekly entitlements and medical costs. Of course, it increased significantly the cost of redemption. As I say, there was a 50 per cent reduction in common law payments in that period. Obviously that made a significant difference to the total cost of the system.

CHAIR: Is "redemption" the same as what we call "commutation"?

Mr NEESHAM: Perhaps I can explain "redemption" and you can explain "commutation". Redemption is under what we call our first schedule, that is, our normal statutory benefits. Workers can redeem up to the balance of their prescribed amount, which is currently just in excess of $126,000. The maximum a worker can get under our system for weekly benefits is $126,000. There is a capacity to extend that by a further $50,000, but that is in exceptional circumstances. In 20 years I think there has been one extension beyond that amount. Separate to that, workers have a medical entitlement, which is 30 per cent of the prescribed amount. That is in excess of $30,000. There is an ability to extend that by a further $50,000 for more seriously injured workers, and that is often accessed and is fairly automatic. There is a separate entitlement to vocational rehabilitation. That is 7 per cent and is about $8000, which is available for use for the benefit of the worker.

In redemption, all of those matters can be taken into consideration. One of the things about redemption and part of the change was that workers who take a redemption of their first schedule then have no ability to access common law, regardless of whether they are below or above the 30 per cent level. Redemptions were taken out in 1993 to try to ensure that injured workers were more effectively rehabilitated back to work. The reality is that some people were back at work but at a reduced capacity. The system had no way then of enabling them to finalise their claim and get on with their lives. That is what occurred in 1999. Of course, it has expanded for other people who are seeking early in their injury to redeem their entitlement and go on to other things, when they believe in most cases that they are not going to their same employer in the same job.

CHAIR: Who sets the redemption amount—the court or the WorkCover board?

Mr NEESHAM: It is negotiated between the insurer and the worker, or the insurer's representatives and the worker's representatives. The outcome is lodged with our Conciliation and Review Director who assesses it to ensure the worker is not being shortchanged. It is not an in-depth assessment, but it is reasonableness test. He then registers it.

The Hon. MICHAEL GALLACHER: Is the common law capped?

Mr NEESHAM: Common law is capped for the lower group, 16 per cent to 29 per cent, at $250,000 maximum worst case. In other words, if you have 29 per cent disability, then you are at the top end of the scale. If you are down to 16 per cent, you are at the lower end. That is a worst case scenario.

The Hon. MICHAEL GALLACHER: Do you employ an assigned risk pool for employers or poor performers?

Mr NEESHAM: No.

The Hon. MICHAEL GALLACHER: What happens to poor performers? Do they get increased premiums?

Mr NEESHAM: They get increased premiums and our sister department, the Occupational Health and Safety Commission, goes and looks at their systems. In a lot of cases insurers put systems in place to assist them to improve their performance. Interestingly enough, in 20 years in any one year there would be probably no more than 10 firms in our State whose existence was threatened by their performance. There have been some that have certainly had significant premium penalties put on them for their performance. If you look at their incident rate or accident rate, they are not the sort of people you would necessarily want to work for.

CHAIR: I suppose the general question is that insurers are happy with the scheme and there are no problems because at this stage they bear profit and/or loss?

Mr NEESHAM: Yes.

CHAIR: You administer it.

Mr NEESHAM: Yes, and we actually supervise it fairly closely in terms of the financial viability and their performance. We do an audit and we verify that they actually apply their premium to the right category and claims against those premiums to the right category. That is an external-internal audit, if you like, that we arrange and they pay for it. We require them to go through that process annually. That gives us confidence in setting our premium, that we are not having a particular lot of claims that are put into the wrong industry group. We also take any complaints against the insurer from either the employer or the worker and we look to ascertain the veracity of those complaints and if the complaints are verified, then that is considered as a matter that the commission will consider in terms of the performance of those insurers. Also, we have a series of performance measures that insurers are required to meet.

CHAIR: You have been the chief executive officer since 1982? Have you found that having the board and even your other Premium Rates Committee structured in the way you said a moment ago with an employer representative and a union representative, that they have been able to work together in harmony when they have conflicting interests?

Mr NEESHAM: To some extent we have been extremely fortunate up to the present time that we have been able to get consensus on almost all of the things that have come up—and there have been some fairly tough ones over those 20 years, but basically they act in their roles, in effect, as directors. They come with the knowledge and benefit of their backgrounds and they apply themselves to the benefit of the system. Obviously, there are times when either the employer or the employee commissioner may say, "This is my position from the point of view of the system, but from the position as my constituency I must make this point."

However, it is done on that basis and it is not a situation of saying, "This is not good for the employer" or "This is not good for the worker". The positions are put quite forcefully, I am sure you would appreciate, but at the end of the day they have to look at the system and that is what they are charged with administering and whether by good luck, good selection or good judgment, the people who have been nominated and who have operated in those roles have conducted themselves in a very appropriate manner in the interests of our system.

CHAIR: Thank you for your help. In conclusion, could you sum up by saying what you think are the three most important aspects of the Western Australian scheme that have helped to make it appear to be successful?

Mr NEESHAM: I believe that is a little bit tricky. I think the fact that we have a commission that is responsible for administering the system, and that is charged with that responsibility by the Act, and that our system is balanced—that is the key issue with any of the systems. It has to be basically a combination; in our case, the statutory and the common law benefits have to be weighed and balanced to be affordable to employers. Also, the fact that the system is, in effect, audited in terms of the premiums independently of government means that nobody can come back and point their finger and say, "This has been done for a political purpose."

I believe that there is a huge benefit in the way that we have our premiums set because the government of the day can take full credit for any reduction in premium and blame the Audit-General's Premium Rates Committee, which is totally independent, for any increase. The reality is that the government of the day cannot impact upon what is the correct pricing structure for our system. I think as a final comment, legislators have a very short time horizon. In workers compensation it is critical to understand that it has a long horizon. I am suggesting that there is a need for a degree of bipartisanship in regards to workers compensation because at the end of the day a change that

is made today by one particular government or colour of government can very well be impacting upon the other side down the track.

From 20 years experience in dealing with both sides of the political spectrum that is one of the critical issues you have to understand and I would think the underpinning thing is that you must get a balance. You cannot afford a system that is not in balance and that means sometimes taking hard decisions and certainly they have occurred with both sides of politics in our State. There have been times when the system is out of balance and there is a need to correct it and get into a position where the benefits are adequate, appropriate but they are affordable.

The Hon. MICHAEL GALLACHER: Do you have a home page that has details of the scheme so that we can look at matters that have not been addressed today?

Mr NEESHAM: Yes, we have a home page. I knew you would ask me something like that.

The Hon. MICHAEL GALLACHER: I am told we have that address.

Mr NEESHAM: If you go to workcover.wa.gov.au you will get us. If there are any specific issues you want addressed, forward those and provided that those documents are in the public arena, we would be quite happy to provide those to you.

The Hon. Dr PETER WONG: Obviously, the Premium Rates Committee sets the premiums. Does it take into account the legislation of the day or do you recommend a change in the legislation when you see that there is a danger of a rise in premiums?

Mr NEESHAM: Yes, that is the beauty of the Premium Rates Committee. It considers what is the situation. In our case, we have 15 years data for the actuary to work on, so for an actuary that is a picnic because they can project fairly closely. If you look at what is projected and what is the outcome is, it is fairly good. The issue is that if there is legislative change, the Premium Rates Committee has the capacity to reflect that in the way that it interprets rates and that has been done. It is generally done on a very conservative basis, that is, if the projection of the change in legislation suggests that premiums will go down by 15 per cent, the Premium Rates Committee will say, "That is only a projection. We will only accept 10 per cent and reflect it that way", and the same with a projected increase.

The Hon. Dr PETER WONG: Do you change the legislation when you see there is a need for it rather than as a reactive way? Do you proactively advocate legislative changes?

Mr NEESHAM: That is not the role of the Premium Rates Committee. That is the role of the commission to advise government of what is happening within the system.

CHAIR: Thank you and all the best in Western Australia.

Mr NEESHAM: Thank you very much, my pleasure.

(The witness withdrew)

(The Committee adjourned at 2.53 p.m.)

(**Clarifications)**

* The Hon Greg Pearce asked me to outline what steps were taken to reverse the deficit including the principal legislative changes hat took place. My initial response was to outline one of the changes at the time to the definition of worker and injury. However, there were also other key changes including:

- in 1995/96:
  - an election provision for common law whereby those with less than 20% work related impairment had to choose between statutory lump sums and common law access than pa their own legal costs if they chose to proceed to common law
  - an employer excess of four days compensation
  - increased premium rates and a surcharge
  - statutory weekly benefit changes (initially 85% NEW and stepdown at 26 weeks)
  - a comprehensive table of injuries linked with the AMA impairment guides
- in 1996/97, significant legislative reform including introduction of self-insurance, experienced based rating, a pre-proceedings process for common law with removal of some of the court's discretion (e.g. contributory negligence), mandatory rehabilitation requirements and right of non-adversarial review of insurer decisions.

~ Tony Hawkins, 4 December 2001

** I would like to clarify some errors of fact in my response to The Hon Dr Peter Wong's question:

> 'In Victoria how soon after a worker is injured does the injury have to be report to the authority? Is it three days, seven days, one month? Also, at what stage do you close a case? Do you have long tail cases that can last for years or, as happens in Queensland, do you close or settle cases after five years?'

My answer should have been:

> In our scheme employers are responsible for the first 10 days of injury for lost time wages and the first $466 (indexed annually) of medical costs. They are required to lodge a notice of injury within 30 days, and the VWA, through its agents, is required to make a decision within 28 days to accept or reject liability for a claim for weekly payments. Different arrangements apply to other claims (ie medical only claims, common law claims, etc). Our Scheme has a long tail. As a profile of our outstanding liabilities, as at 30 June 2001, our actuaries expect that only about 21% will be paid within one year, while about 49% will b paid within 2 to 5 years, and 30% will be paid beyond five years.
>
> *~ Bill Mountford, 11 December 2001*