

**REPORT OF PROCEEDINGS BEFORE**

**GENERAL PURPOSE STANDING COMMITTEE No. 1**

**INQUIRY INTO PERSONAL INJURY COMPENSATION  
LEGISLATION**

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**At Wagga Wagga on Monday 23 May 2005**

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**The Committee met at 10.30 a.m.**

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**PRESENT**

Reverend the Hon. G. K. M. Moyes (Chair)

The Hon. R. H. Colless

The Hon. R. M. Parker

Ms L. Rhiannon

The Hon. E. M. Roozendaal

The Hon. I. W. West

**CHAIR:** Welcome to the second public hearing of General Purpose Standing Committee No. 1 as part of the inquiry into personal injury compensation legislation in New South Wales. The Committee previously resolved to authorise the media to broadcast sound and video excerpts of the proceedings. Copies of the broadcasting guidelines are available. In reporting committee proceedings the media must take responsibility for what they publish, including any interpretation placed on evidence before the Committee. In accordance with these guidelines, while a member of the Committee may be filmed or recorded, people in the public gallery should not be the primary focus of footage or photographs.

Under the standing orders of the Legislative Council, evidence and documents presented to the Committee that have not been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by a Committee member or by any other person. Witnesses, members and their staff are advised that any messages should be delivered through the Committee clerks.

**DONALD KEITH PEMBLETON**, Risk Analyst, Wagga Wagga City Council, P.O. Box 20, Wagga Wagga, sworn and examined:

**CHAIR:** In what capacity are you appearing before the Committee? Are you representing the council or are you appearing as a private individual?

**Mr PEMBLETON:** Representing the council.

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

**Mr PEMBLETON:** I have read the terms of reference.

**CHAIR:** If you should consider at any stage that certain evidence you wish to give or documents you may wish to tender should be heard or seen only by the Committee please indicate that fact and the Committee will consider your request. Would you like to start by making a short statement and then we will go to evidence and questions?

**Mr PEMBLETON:** I did issue a written statement. Would you like me to read that?

**CHAIR:** If you would like to make some points from it that would be helpful.

**Mr PEMBLETON:** In the terms of reference, the first item that you are addressing is the impact on employment in rural and regional communities. We find it very difficult to single out the legislation sweep and the impact it is having on things locally. I do not have any first-hand evidence of impact on communities but I can speak on behalf of the council there. Local community activities and community groups—again, I do not have any first-hand information on that. Impact on insurance premiums—I can provide some statistics there that are applicable to the Wagga Wagga City Council and the trend that we see there. I do not really see that I can address points four or five.

**CHAIR:** We will now open for questions. Would Government members like to start?

**The Hon. IAN WEST:** Not at this stage.

**CHAIR:** Ms Rhiannon?

**Ms LEE RHIANNON:** No, thank you.

**The Hon. ROBYN PARKER:** What does a risk analyst do?

**Mr PEMBLETON:** I have been employed by council for approximately three years now. My main duty is to advise the management on implementation of risk management programs in accordance with the Australian standard. I also have a role in advising them on insurance programs.

**The Hon. ROBYN PARKER:** As part of the role you comment, am I correct, that you are yet to see the effects in total of the legislative changes?

**Mr PEMBLETON:** Yes. That refers mainly to the civil liabilities legislation. We are part of a mutual group, Statewide Mutual, and we have been a part of them for nine or so years now. They represent probably 95 or 99 per cent of the councils in New South Wales. The situation with their claims is they have only just got back into the black in the last couple of months I understand. So we have not seen any relief from the contributions we make to that scheme.

**The Hon. ROBYN PARKER:** So your contributions have not gone down?

**Mr PEMBLETON:** No, quite the opposite.

**The Hon. ROBYN PARKER:** They have gone up?

**Mr PEMBLETON:** Yes. We anticipate they will go down next year.

**The Hon. ROBYN PARKER:** What leads you to that conclusion?

**Mr PEMBLETON:** Just the limited quantum and number of claims that have been made since the civil liabilities legislation was enacted.

**The Hon. ROBYN PARKER:** So you directly attribute that to the changes in civil liability?

**Mr PEMBLETON:** I do, yes. As I say, I have been with the council for three years. My first probably two months I was seeing something like about six statements of claim a week and since that date I think I have seen two.

**The Hon. ROBYN PARKER:** So what has happened to them? Have they gone away or do they just not see it as worthwhile?

**Mr PEMBLETON:** It is hard to say. I think it is a bit of both.

**The Hon. ROBYN PARKER:** What about some of the community groups that use your facilities, such as community halls or running small events, how are they going in terms of insurance coverage?

**Mr PEMBLETON:** That is a bit of a mixed bag. We have had situations where people who use our facilities have not been able to access any liability insurance, so the council manager has had to come to me for advice on that, and it has ended up going through a risk management process with the community groups and, in some cases, agreeing to accept the project without them being insured, which is contrary to our normal guidelines.

**The Hon. ROBYN PARKER:** So you are not actually covering them, they are just taking the risk that they will not have a claim?

**Mr PEMBLETON:** The Statewide Mutual group that does our liability will only insure council and committees of council. They will not extend it to any other body.

**The Hon. ROBYN PARKER:** Have you had community events in Wagga Wagga being cancelled because they cannot get insurance?

**Mr PEMBLETON:** There is only one that immediately comes to mind, because I dealt with it just in the last couple of weeks, and that was a group of railway enthusiasts using trikes on a section of State Rail land. They are required to have public liability insurance, and they cannot operate because they cannot get that.

**The Hon. ROBYN PARKER:** Do you see that as a problem council could take on board or not?

**Mr PEMBLETON:** They do, but we do not.

**The Hon. ROBYN PARKER:** In spite of not being able to come to a range of other conclusions, you still make the conclusion that you encourage the Government to maintain the legislation in its current format?

**Mr PEMBLETON:** That is correct.

**The Hon. ROBYN PARKER:** Even though the premiums have not gone down and you are unable to access a range of other things, why is it that you have come to that conclusion?

**Mr PEMBLETON:** The premiums or contributions have not gone down yet because of the long tail nature liability of insurance claims. As I said, the Statewide Mutual fund returned a small surplus this year. It is about to renounce that, so we anticipate the premiums will go down next year and, hopefully, they will maintain at a reasonable level subsequent to that.

**The Hon. ROBYN PARKER:** So it is based on the hope that premiums will go down that you make that conclusion?

**Mr PEMBLETON:** That is correct.

**The Hon. ROBYN PARKER:** Before you worked in this role in the council what was your previous role? Was it within local government?

**Mr PEMBLETON:** No. Immediately prior to this I was a skipper of a yacht in the Whitsundays. Prior to that I was an insurance broker.

**The Hon. RICK COLLESS:** Was that a risky business?

**Mr PEMBLETON:** It was, actually. I ran aground at a place called Frying Pan Creek and I spent three days waiting for the tide to come in.

**CHAIR:** I am concerned about the fact that, because of insurance premiums, council has allowed some organisations to hold their functions while they have been uninsured. At the same time council is only insured for those activities organised by council or its direct committees.

**Mr PEMBLETON:** That is correct. The nature of claims in the past has been that where, say, particularly an injury has occurred, the plaintiff's solicitor normally lines up everybody who is involved and issues a statement of claim against them and allows the court to make a decision on the degree of negligence, if any. Obviously there is no point in suing somebody who is uninsured and who has no assets, so council is normally the one that carries the can on those sorts of things.

**CHAIR:** As an individual who has advised council does it not leave you exposed if you allow a function to go ahead uninsured?

**Mr PEMBLETON:** Yes, it does. Under the recent changes to the Local Government Act there is a section entitled "surcharging" under which it is possible for the Department of Local Government to surcharge an individual employee of council if the actions of that employee have led to a loss to the council.

**CHAIR:** Do you have any suggestions or recommendations on the better handling of that situation?

**Mr PEMBLETON:** It is a big problem. Obviously it would be far more attractive if they could access reasonable insurance and we did not have to rely on the exposure. Is that the type of thing that you are talking about?

**CHAIR:** Yes. It concerns me that in doing your job well in point of fact you take the risk upon yourself?

**Mr PEMBLETON:** That is correct. It concerns me too.

**Ms LEE RHIANNON:** Have you discussed your concerns with your superiors within council?

**Mr PEMBLETON:** The surcharging?

**Ms LEE RHIANNON:** Yes.

**Mr PEMBLETON:** It is discussed throughout all levels of council. There is some concern about it.

**Ms LEE RHIANNON:** And about the risk that you are carrying yourself?

**Mr PEMBLETON:** I suppose that being a risk management consultant I can apply the risk management principles to what I am doing. I think I can get it to a stage where it is a manageable risk.

**CHAIR:** There is no risk that is always manageable.

**Mr PEMBLETON:** That is correct, but I have my private affairs organised so there will probably be no point in surcharging me.

**Ms LEE RHIANNON:** Is it something that you just decided you were going to live with in your present job?

**Mr PEMBLETON:** I retire in July.

**Ms LEE RHIANNON:** If a young man were coming into your job what would be your advice to him?

**Mr PEMBLETON:** I would probably recommend that he go into private enterprise.

**Ms LEE RHIANNON:** Considering that councils need to have this work undertaken it appears as though it is not sustainable at the moment.

**Mr PEMBLETON:** It is a concern, but we have an assurance from the Minister for Local Government that the surcharge rules will be used only in certain circumstances. That is a comfort.

**The Hon. RICK COLLESS:** Do you think from a legal perspective that that undertaking is worth the paper it is printed on?

**Mr PEMBLETON:** It is a verbal undertaking, so it is not printed on paper.

**The Hon. RICK COLLESS:** If it is verbal it is even less likely to be enforced.

**Mr PEMBLETON:** Yes.

**The Hon. RICK COLLESS:** Does council accept that that is the case?

**Mr PEMBLETON:** The general manager is most concerned about it, yes.

**The Hon. RICK COLLESS:** With all these concerns you have been expressing, how can you say that council still encourages the Government to maintain the legislation in its current format?

**Mr PEMBLETON:** The current legislation I think will make liability insurance particularly more available to community groups. Once the claims decrease these community groups should be able to access their liability insurance. In my case, the one that we just addressed, that will no longer be a risk.

**The Hon. RICK COLLESS:** How many small communities are in the Wagga city council area?

**Mr PEMBLETON:** I have no idea. Small community groups?

**The Hon. RICK COLLESS:** No, small communities or villages like the Rock.

**Mr PEMBLETON:** There would be about six villages.

**The Hon. RICK COLLESS:** Do those villages still hold community events such as agricultural shows and the like?

**Mr PEMBLETON:** I do not think many agricultural shows are going now. The insurance has certainly had an impact on that. The Wagga agricultural show still proceeds. Most of our villages are probably too small for that anyway. I think the Rock has one. That is in Leichhardt shire anyway.

**The Hon. RICK COLLESS:** What are those villages within the Wagga city council area?

**Mr PEMBLETON:** The names of them are Rosewood, Tarcutta and Uranquinty. They are all very small villages, with only a couple of hundred people.

**The Hon. RICK COLLESS:** Does Tarcutta have a show?

**Mr PEMBLETON:** No, not to my knowledge anyway.

**The Hon. RICK COLLESS:** This has had the biggest impact on small communities like that. As a result, agricultural shows across the State have found it very difficult to get insurance cover as a result.

**Mr PEMBLETON:** That is right, yes.

**The Hon. RICK COLLESS:** Are you aware of any other communities outside your council area that are having difficulties? Are you aware of these problems?

**Mr PEMBLETON:** None of which I have first-hand knowledge.

**The Hon. IAN WEST:** You indicated that since you started three years ago the number of claims had reduced.

**Mr PEMBLETON:** In legal liability, yes.

**The Hon. IAN WEST:** In which area are you talking about? Do you have them cut up into different areas, for example, workers compensation?

**Mr PEMBLETON:** I was not talking about workers compensation; I was talking about legal liability claims. Most of them would come from slips and falls in the main street, road faults allegedly causing car accidents, faults in council's assets or sporting grounds.

**The Hon. IAN WEST:** Are you able to supply us with the numbers over the past 10 years?

**Mr PEMBLETON:** I do not have the information with me now, but I can access it.

**The Hon. IAN WEST:** Would you supply that for us?

**Mr PEMBLETON:** Yes.

**The Hon. IAN WEST:** You indicated that there had been a reduction in your time?

**Mr PEMBLETON:** In the past three years or 10 years did you want?

**The Hon. IAN WEST:** Your time is in the last three years.

**Mr PEMBLETON:** I can get that for you.

**CHAIR:** When you get us that information can you indicate whether they are minor claims or major claims? I imagine you would have had quite a fall off in minor claims.

**Mr PEMBLETON:** That is correct. Fortunately, I think there are only one or two major potential claims. It is very hard for me to give you an indication along those lines. It is really up to the judiciary. The investigation stages are still proceeding.

**The Hon. IAN WEST:** I ask then that you break it up into insurance parlance—incurred but not reported [IBNR] claims. I am assuming that you are assessing the reduction.

**Mr PEMBLETON:** Yes. I can give you that information. The estimates for IBNRs are normally allocated by the insurance company. They would need to be confidential.

**The Hon. IAN WEST:** They can be confidential.

**Mr PEMBLETON:** I will have to send that information through.

**The Hon. RICK COLLESS:** Schedule on page 1 of your submission refers to insurance premium increasing from \$175,000 to \$485,000 a year over that period. That is a 177 per cent increase on the 1999-2000 figure. I think you stated that you believed those premiums would begin to decrease as the tail thinned out?

**Mr PEMBLETON:** I am led to believe that that will be the case, yes.

**The Hon. RICK COLLESS:** What are your actuaries telling you about how far that premium will come back?

**Mr PEMBLETON:** Council does not employ actuaries; the actuaries are engaged by Statewide Mutual.

**The Hon. RICK COLLESS:** What is your advice then on how far those premiums will decrease?

**Mr PEMBLETON:** I am sorry; I do not know that.

**The Hon. RICK COLLESS:** Are you just making an assumption that they will decrease?

**Mr PEMBLETON:** The Statewide people have informed us that premiums will start to fall after this year if the claims situation remains as it has been in the last three years.

**The Hon. RICK COLLESS:** Instead of increasing at about \$40,000 a year, in some years it has been a lot more than that. Are they expecting that the premium will reduce, or will the rate of increase reduce?

**Mr PEMBLETON:** I have been led to believe that the premium will reduce in dollar terms.

**The Hon. RICK COLLESS:** We will wait and see, will we not?

**The Hon. IAN WEST:** You indicated that there has been a reduction in the claims over the past three years?

**Mr PEMBLETON:** Yes.

**The Hon. IAN WEST:** Why is it that premiums have increased over the past three years?

**Mr PEMBLETON:** Legal liability claims often take five or more years to settle. So we are still dealing with the claims that came prior to the civil liabilities legislation. Some of those have been multimillion dollar ones. This is not against the council but against the fund. I think they put in a submission to the Committee and they nominated three claims that were in excess of \$3.5 million, from memory.

**The Hon. IAN WEST:** So it might well be that your premiums will increase over the next three to four years?

**Mr PEMBLETON:** It is possible. I do not expect it will, but it is possible.

**The Hon. IAN WEST:** Have you made any projections as to the 2006-07 premiums?

**Mr PEMBLETON:** My advice to my budgeting people is to maintain the same figures we are paying now, that is, half a million dollars. But I am conservative.

**Ms LEE RHIANNON:** Just going back to the comments you made earlier about community events, if I remember correctly, you said that you thought some of them had ceased. Are you able to quantify whether they are big events and small events? Obviously it is a matter of interest.

**Mr PEMBLETON:** I cannot think of any large events. I cannot quantify it to the degree that you are asking. I deal mainly with council managers who deal with the people who are doing these things. I walk them through the risk management process. If the organisers of the event cannot establish that they are a risk minimal event, I assume they do not go ahead. But I do not have that information with me.

**Ms LEE RHIANNON:** Do you think anybody in the council would? Can we ask you to obtain that information from other council officers?

**Mr PEMBLETON:** I can circulate the managers, yes.

**Ms LEE RHIANNON:** I think that would be useful. Are you aware of any people who have been seriously injured on council property who have not received any compensation?

**Mr PEMBLETON:** Since the civil liabilities legislation has come in?

**Ms LEE RHIANNON:** Yes.

**Mr PEMBLETON:** There are none that come to mind. We have one claim pending at the moment for a young fellow who was a postal contractor. He alleges that he hit a rut on the side of the road and came off his motorbike and broke his leg. He is getting around all right now. Is that a serious injury? I do not know. I tend to think of serious injury as someone who is a quadriplegic or a paraplegic. So I would answer no.

**Ms LEE RHIANNON:** In his case did he receive compensation? I guess not.

**Mr PEMBLETON:** His case is pending.

**The Hon. IAN WEST:** How would you define "serious injury"?

**Mr PEMBLETON:** Paraplegia and quadriplegia, or something like that.

**The Hon. IAN WEST:** That is a very harsh definition of "serious injury".

**Mr PEMBLETON:** There are degrees, and I think the legislation covers the degrees of injury. I cannot give you much information on that. They have worse case scenarios and work back from that, and quadriplegic and paraplegic are considered worse case scenarios.

**The Hon. IAN WEST:** As things stand at the moment, Wagga Wagga has a very good record.



**Mr PEMBLETON:** We have our problems, but I am comfortable with our record.

**The Hon. IAN WEST:** You are being advised that the problem lies elsewhere; that claims made elsewhere have caused your premiums to rise.

**Mr PEMBLETON:** Yes. The big claims certainly have had an impact on our premiums.

**The Hon. IAN WEST:** But those big claims arose elsewhere, not here in Wagga Wagga.

**Mr PEMBLETON:** We had one year when we had more than \$1 million in claims.

**The Hon. IAN WEST:** Yes, in 1999.

**Mr PEMBLETON:** I think I have that here.

**The Hon. IAN WEST:** In the last three years, while you have been at the helm, there has been a marked reduction in claims, and you have not had any serious claims. You have not had any quadriplegic or paraplegic claims?

**Mr PEMBLETON:** Certainly none that I am aware of.

**The Hon. IAN WEST:** Where were these serious injury claims that caused your premiums to rise?

**Mr PEMBLETON:** Three were mentioned in the statewide submission. One was *Swain v Waverley Council*. I cannot remember the name of the council involved in the second one, but it was up north somewhere. A young fellow in a car skidded on gravel and seriously injured himself. The third one does not come to mind.

**The Hon. IAN WEST:** They are the three you are talking about?

**Mr PEMBLETON:** Those are three that have had an impact. I only know that because that was in the statewide submission. Perhaps you should take evidence from the statewide people on that.

**The Hon. ROBYN PARKER:** In your submission you mentioned council's pro-active OH&S processes as being a contributing factor in the reduction in claims. When did that proactive approach begin?

**Mr PEMBLETON:** I do not actually handle the OH&S side, but I know it occurred well before I was recruited to council. I think it probably occurred around about the time the OH&S legislation was enacted.

**The Hon. ROBYN PARKER:** So it might well be the reduction in claims is attributable to the legislation and people working in a safer environment and being more safety conscious.

**Mr PEMBLETON:** It certainly has an impact. It is difficult to quantify the impact it has.

**The Hon. RICK COLLESS:** Mr Pembleton, outside the areas of council's responsibilities, but within this community, have organisations like sporting clubs, football clubs, cricket clubs, et cetera, had trouble finding proper cover? And have they had any major claims that you are aware of?

**Mr PEMBLETON:** I do not know of any major claims made locally. They have had trouble obtaining proper cover, which I know is much more expensive now. I am aware of only one sporting club—because one of our conditions of hire is that they provide liability insurance—that did not provide that evidence of cover last year.

**The Hon. RICK COLLESS:** Did the club continue to operate without it?

**Mr PEMBLETON:** I am not quite sure whether they did not have it, or whether it was an administrative oversight on our part.

**The Hon. RICK COLLESS:** If that was the case, and there was a major injury, would council be liable?

**Mr PEMBLETON:** That would be for the courts to decide.

**CHAIR:** Thank you, Mr Pembleton. You have been most helpful.

**(The witness withdrew)**

**JOHN ANTHONY BATCHELOR**, Director of Corporate Services, Leeton Shire Council, 23-25 Chelmsford Place, Leeton, sworn and examined:

**CHAIR:** In what capacity are you appearing before the Committee, on behalf of the council or as a private individual?

**Mr BATCHELOR:** On behalf of council, and I have also been asked to represent the wider region of councils known as RIVROC [Riverina Regional Organisation of Councils].

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

**Mr BATCHELOR:** I am.

**CHAIR:** Would you care to make a brief statement before Committee members ask you some questions?

**Mr BATCHELOR:** The submissions that both Leeton Shire Council and RIVROC have made are centred around the impact of liability insurance on community groups and their activities. We have made some general comments in respect of our experiences with claims, et cetera. Generally, we have confined it to the impact on the community.

**CHAIR:** Did you wish to say anything else?

**Mr BATCHELOR:** I would precise the submission. We are finding that a lot of community organisations that would like to hold events are struggling to find appropriate levels of cover, and as a result they are looking to council to do a lot of the organising of those events, basically to have them approved under a section 355 committee under the Local Government Act. If council agrees to form a section 355 committee to run a particular event or activity, we then need to follow through to the statewide mutual scheme to have that event or activity endorsed as an activity of council. That is generally what is happening in a lot of smaller communities. The further out west you go, the smaller the towns, the more reliance there is on the main organisation, and usually that is the council.

**Ms LEE RHIANNON:** You said some communities are struggling to hold events. What sorts of events would they be, how big are they, and in what areas?

**Mr BATCHELOR:** A couple come to mind. Council has what is called the Sunrise Festival, and last year part of the program was to conduct camel races. Traditionally, that had been something that council had not even thought of as part of the Sunrise Festival concept. It had originally been organised and conducted by the local Australian Rules football club, which did not want to conduct the event because it did not know what the outcome might be and the cost of public liability insurance to conduct it. In their mind, the coverage fee was excessive and as a result they pulled out of the actual organising of it. Council formed a committee of experienced people who had run the camel races previously, to be part of our Sunrise Festival committee, and the event was able to be organised. Mind you, there were a lot of issues that had to be sorted out with the insurers to do that—not only practical things, but all the emergency planning that had to go into it in the event of something going wrong on the day. In the end, it was a quite worthwhile exercise, and the event did go ahead. It was well supported. Out of that, we basically have a blueprint for the event if it is to be held again.

**CHAIR:** A sceptical mind might think that council is using the section 355 provision as a ruse to enable local organisations to run lots of events, such as a camel race or whatever; that it was never intended to be a council function but, because of insurance issues, the council has provided an umbrella to cover those events. Do you find you are placed in a situation where, in order to keep good faith with your local people, council is under a lot of pressure to take something under its umbrella of care, when in point of fact it would never otherwise have considered doing that?

**Mr BATCHELOR:** I agree. Community organisers approach quite approach council wanting to hold an event on a council oval or in a council facility. If they are not incorporated, and do not have public liability, the question they pose to council is: Can we be covered under your insurance?

**CHAIR:** These are good organisations, holding events to try to raise funds for the local ambulance service, so you would be very reluctant to say no.

**Mr BATCHELOR:** Our rule of thumb is that we do require a public liability certificate of currency. With organisations that are well structured and have some history of operating in the community, more often than not they are incorporated or do have a certificate of currency. An example is in the use of our halls. We are currently looking at a range of issues, for example, the use of a hall in a small village for the purposes of—

**CHAIR:** County Women's Association pumpkin scone competitions?

**Mr BATCHELOR:** Yes, or even where someone wishes to run aerobic classes and things of that nature, which are good for the community. But they need to charge a couple of dollars, and effectively are using that facility without their own public liability. Council certainly has not approved it for that purpose. We are looking at ways to ensure that these sorts of activities can continue without the organisers coming down to council and being told: Look, you don't have public liability cover, and we do not approve of that activity. The consequence might be that a group of 15 to 20 people who meet regularly for a worthwhile purpose will not be able to use the facility.

**The Hon. RICK COLLESS:** Mr Batchelor, you made the comment at the first page of your submission that some parts of the legislation, as it is, is good for local government and communities in that it makes individuals more responsible and aware of risks they are facing, and in the next paragraph you make the point that community groups are finding it increasingly difficult to obtain public liability insurance. What do you consider to be the right balance between encouraging people to be responsible for their actions but, by the same token, when an accident does occur, ensuring that people are properly covered and also ensuring that community groups can get the cover they need? I think at the moment I would see it as an education process. At the moment our main use of facilities would be ovals and halls. The ovals are particularly a problem because the sporting organisations that use those ovals are incorporated to have their own public liability. Casual hirers are able to effect a casual hirers' public liability policy that council has in effect and we make a charge on those particular users.

The area where I see the biggest problem for us is the small not-for-profit organisations or community groups that meet for no other purpose than for social interaction. They are the ones that we need to say, "Okay let us just have a look at how you operate", and we have actually done that with one of the organisations that we were having difficulty with just to see how they operate, what risks are there, can we minimise them, how can we minimise them, make them aware that they are using a facility and that we would expect a certain format to be undertaken prior to use of that facility on any given day. The issues that we are talking about that are still not resolved will be the subject of a report to council to, I suppose, get an endorsement of the position for these particular organisations, but it will be an educational process and an awareness process and it is something which a lot of community organisations in, I suppose, the rural areas probably have not had to deal with too much before.

**The Hon. RICK COLLESS:** How many small communities does Leeton Shire have within the council area?

**Mr BATCHELOR:** We have got villages. We have got the townships of Whitton, Murrumbidgee; we have got small, localised villages of Wamoon and Stanbridge, and obviously Yanco is a bigger town than those and sort of basically joins up with Leeton. They are the main ones.

**The Hon. RICK COLLESS:** Do any other small communities have local shows?

**Mr BATCHELOR:** No.

**The Hon. RICK COLLESS:** Did they ever?

**Mr BATCHELOR:** I am not aware of whether they may have at some point in the past.

**The Hon. RICK COLLESS:** I am just wondering whether any of them have dropped off since, say, the year 2000?

**Mr BATCHELOR:** I am not aware that there have been any shows in those towns which would normally have been held since 2000.

**The Hon. RICK COLLESS:** Leeton would have a show, I gather?

**Mr BATCHELOR:** Yes.

**The Hon. RICK COLLESS:** And Yanco?

**Mr BATCHELOR:** They had basically a combined one.

**The Hon. RICK COLLESS:** You mentioned the Leeton triathlon in your submission. How long had that been running and how many people did it attract to Leeton?

**Mr BATCHELOR:** There is quite a strong, or used to be quite a strong triathlon club in Leeton and they used to run a regular annual event. I know they still form as a club but they no longer have licensed or lighter competition arrangements where they might be the organising body. I think there is just a group of interested residents who will get together on a regular basis to do their bike ride, do their swim and they run, and generally where they ride and run are generally confined to areas that are quite a good network of a bike track that also doubles for running and we have got our pool as well. But then I have only been at Leeton for a bit over two years now. There has not been one in that time, but I know previous to that they were running annual triathlon events.

**The Hon. RICK COLLESS:** And did that bring a lot of people into town, into the community?

**Mr BATCHELOR:** I would imagine that it would have. The numbers I could not tell you.

**The Hon. RICK COLLESS:** So just that one event alone, the fact that it is not being run must have a financial impact on the town as well?

**Mr BATCHELOR:** Any event which we have not been able to hold would have a financial impact. One of the ones which I think I did mention in my submission there was the Sunrise Festival. Traditionally they have always had a street parade, and to get a street parade last year was really unbelievable, the lengths to which we had to go, because basically the insurance for it, the participants in the parade—I might go back a step. The RTA would have to be involved because the parade actually runs up the main street of Leeton, which is a main road. We were also then requiring each of the floats that were participating to have their own public liability insurance. That in itself was an issue because some float owners could not get extensions of the public liability.

There was also the issue of participants in the parade, what capacity were they going to be; if they were riding on the back of one of these floats. Eventually we were able to come to an arrangement with a public liability insurer, Statewide, to effectively have all those participants in the parade sign on as volunteers and sign off as volunteers at the end of it. With that in itself there were quite a number of issues that we had. We had to have someone at the commencement of the parade advising float owners of their requirements and responsibilities; we had to also have people signed-on as volunteers to say they understood what their capacity in the parade was and what they could and could not do. So it was those sorts of things which brought multitudes of people to the town in the main street just to see what people have put into the parade and the floats. To lose those sorts of things, and Leeton would not be alone were it to lose those sorts of things and activities, would be very detrimental to a lot of towns.

**The Hon. RICK COLLESS:** Just quickly on the markets. The \$480 per annum for the markets, do most of the people who present themselves to the markets or participate in the markets go to markets in other towns as well?

**Mr BATCHELOR:** No. The people that you refer to there are basically locals, local residents at Yanco, and your next witness will detail a lot more than I can tell you, but basically they do it to raise funds for the hall because they pay a stall holder's fee. If they can provide a table on the day it is just one extra attraction that passers-by might see something, might want to buy something. It is an issue. A lot of the locals do not have the public liability. There was a scheme put forward too, which I think I may have mentioned in my submission.

**The Hon. ERIC ROOZENDAAL:** Yes you did, the community care underwriting agency.

**Mr BATCHELOR:** Yes, that is it, the community care underwriting agency. I tried quite a few times to see what we could do through them but they were inundated with that many applications that they had to go back and rethink how they were going to put things together. So, effectively, that was not available. There was one available through our insurance brokers and that is the one that I have quoted there which, to me, it is far too much to try and encourage people to take a table. So hence we went back to the management committee and they have dealt with it at their level. I am sure the next witness will tell you about that part of it.

**The Hon. ERIC ROOZENDAAL:** You mentioned in your submission that Leeton's insurance premium was \$75,000 in 2004-05. Has the council experienced any reduction in its premiums since the new legislation, or is it anticipating any reductions?

**Mr BATCHELOR:** We have not experienced any reductions. Our current premium for this year has been estimated to be \$88, 000, of which there will be a discount come back to us. We have got to participate in a public liability audit that the Statewide Mutual scheme do each year. Last year we were able to attract a discount—and we are still to be advised of that—based on achieving a compliance rate of somewhere around 80 per cent.

**The Hon. ERIC ROOZENDAAL:** Is that audit of any cost to the council? Can you tell us what is involved with that?

**Mr BATCHELOR:** It is at no cost to us. The cost to us is to put in place practices in a number of important areas. It deals with things like accident investigation, incident investigation, gathering information for claims, for evidence at court. It also looks at a lot of other issues where public liability claims may or have in the past been rising predominantly, and we talk about footpaths with trips and falls; we talk about trees and tree roots; we also talk about roads. So they are issues we are looking at. In the audit itself we need to have in place documentation; we need to have in place processes so that, for instance, if the question comes up do we have an adopted policy on our position on footpaths, we need to be able to say yes, we do. We do the most traffic areas; we inspect once a month; we carry out maintenance once a month; for some of the outer lying areas we might do those on a three-monthly basis, and for the footpaths that are natural footpaths, as in grass, obviously we will be looking at those on a list basis. But it is at no cost to us.

**The Hon. IAN WEST:** In complying with this 80 per cent philosophy in the audit I understand they appear to be defining 80 per cent as something to do with best practice—whatever that is—and I understand that your particular council has no public liability claims in 2002. Can you advise me, seeing as you have got no reduction in your premium, how it is that you have not been able to reach the 80 per cent?

**Mr BATCHELOR:** Probably the main reason is that there is a resource problem internally, but that is being and has been addressed over the last 18 months as in a designated person to look after a lot of the occupational health and safety issues and also take in the area of public liability. That is one area. The other part of the reason why premiums may have increased is not a reflection on our claims history but more a reflection on the fact that Leeton is a member of the Statewide Mutual scheme and hence if there are bigger claims lodged by other councils or against other councils, as a member our premium may in fact rise.

**The Hon. IAN WEST:** However, taking that into consideration, in terms of Leeton's very good record, it does seem unusual that you would be unable to meet that 80 per cent criteria to enable a reduction in your premium but, leaving that aside—

**Mr BATCHELOR:** Sorry, I should just mention that that 80 per cent that you talk about was taken out of the public liability audit; it was not an overall result, it was based on sections of the audit, that they wished to come and do a compliance audit so that they actually came on-site and wanted to know what documentation we may have had and what our procedures were for three or four different areas. Achieving that 80 per cent compliance in those particular nominated areas meant that we were eligible for a reduction of up to 10 per cent of our premium as a discount.

**The Hon. IAN WEST:** As a lay person looking at this, or not being an expert in this area, but trying to just assess in terms of the various councils around the State of New South Wales, if Leeton is unable to attain an 80 per cent rating with your very good record, I am trying to understand what councils have attained that magical 80 per cent for that 10 per cent reduction in premium. That is probably not a question you can answer but perhaps you can answer this one: can you give us some advice as to what Leeton's record was prior to 2002?

**Mr BATCHELOR:** Unfortunately, I have not gone back that far in the claims history. I could certainly get that information for you. My understanding of the Statewide public liability and the results that it has published is that Leeton is ahead of the State average. Overall, our last audit was at 70 per cent. I suppose that Statewide wants to address all the issues within the audit. So that councils, to have a chance of defending themselves within a court situation, really need to be upwards of 80 per cent, otherwise our insurers will look at the evidence, look at what we have, and make a judgment as to whether in their opinion it is a case that we may win or we can defend.

**The Hon. IAN WEST:** But you have no redress or ability to question whether or not the insurer, who is the one who determines whether or not you get a reduction in premium, has assessed the good citizens of Leeton fairly and equitably?

**Mr BATCHELOR:** The audit itself is really about council processes, what processes we have in place to minimise risks to the public. That can range from swimming pools to sporting ovals, to playgrounds. Those are the issues that we look at as part of our public liability audit and also for ongoing maintenance and for the purpose of ensuring that those areas are safe.

**The Hon. IAN WEST:** Are you saying that those areas are not up to scratch, even though you have not had a claim since 2002 or beyond that?

**Mr BATCHELOR:** I am saying that although council may not have had a claim since 2002, our public liability audit rating at this stage suggests that we can put in place better processes.

**Ms LEE RHIANNON:** On page 2 of your submission you refer to the problems that many community groups are having. We know that community groups come in all shapes and sizes. Is it placing much of a burden on council staff—people like you and others—to give these groups advice about how to hold and cover a community event? Does council pick them up or do they come under the umbrella of another organisation? Is that adding to your workload?

**Mr BATCHELOR:** Yes.

**Ms LEE RHIANNON:** Significantly?

**Mr BATCHELOR:** As I was saying before it is an educational process. It is reasonably significant in that a lot of the people who approach us are approaching us because they are unsure of what they need to do. They do not have the expertise or perhaps the contacts to find out whether to go for public liability insurance if we cannot help them. They are also looking to councils for expertise, even if they find appropriate liability insurance. They are then looking to us to say, "How do we go about answering this risk assessment? What are the risks in holding this event?" They are looking for guidance from us to try to steer them through what they need to do for the insurance company to give them the green light for their activity. Certainly more responsibilities are coming to council to provide that sort of educational information.

**Ms LEE RHIANNON:** Do you anticipate that that will be ongoing? Do you expect that the corporate knowledge of community groups will start incorporating an understanding of how that

works? If we take into account the fact that personnel and community groups change regularly, will this be an ongoing task for council workers?

**Mr BATCHELOR:** I think it will be ongoing. I think it will be something, as you say, where executives of community organisations change. When you get new people they might need a bit more information or they might need to be provided with a better understanding of the insurance liability area for their activities. I certainly do not see it decreasing.

**Ms LEE RHIANNON:** I refer to section 355 committees. To what degree is that picking up on a lot of these various community groups that have problems? Is it solving most of it, or have a lot been left out and they are giving up?

**Mr BATCHELOR:** There are still a lot of organisations that we would not be able to include under a 355 committee structure. Basically, they need to have some association with the activity that they wish to run with council. A number of organisations rely on us to get them in under an umbrella. At the end of the day we can only do that by taking it to council, discussing it with our insurers to see whether it is an appropriate committee and whether it wishes to endorse the activities that it is undertaking. We have to be consistent with council's overall core activities.

**CHAIR:** It seems that councils are not responsible for just roads rates and rubbish. They now have recreation as a core piece of business. I thank you for your very clear responses on those issues.

**(The witness withdrew)**



**HUGH JAMES MILVAIN**, President, Yanco Hall and Progress Committee, Yanco, sworn and examined:

**CHAIR:** In what capacity are you appearing, as a private citizen or on behalf of the Yanco committee?

**Mr MILVAIN:** I am appearing on behalf of the Yanco Hall Management Committee.

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

**Mr MILVAIN:** I am addressing the second paragraph of your terms of reference.

**CHAIR:** We have received your submission. Would you like to speak to it?

**Mr MILVAIN:** I must admit that what I put in that submission has only been recently completed. The Yanco village markets have been functioning now for approximately 23 years. To date, we have not had any insurance claims or liability claims made against us. We now have about 60 regular stallholders each market, which we operate on the last Sunday of the month, January through to November, and then the second Sunday in December. On average, 500 visitors come through our front door each month. We are generating approximately \$800 a month from entry fees, which is 50¢ an adult and an \$8 stall hire fee, which consists of a table that is 1.8 metres long and three-quarters of a metre wide. We have a range of products on the stalls, from books, needlecraft, woodwork, cakes and jams, jewellery items, donuts, clothing, glassware, plants, music records—the old 78s—beauty and make-up products, homemade soaps and lavender products. They make up the bulk of the items that stallholders have on their stalls.

Up till now, the Leeton shire's public liability insurance policy afforded us cover for all activities at the hall. It is only in the past six to nine months that we have had a problem with having no liability cover for the market. John Bachelor and I have talked to numerous large, reputable companies in the insurance game. Though we approached them, they were not interested in doing business with us. I have negotiated a policy with the Melbourne-based broker at a cost of \$27.50 per year, with an excess of \$1,000 per claim. That policy starts effectively from Sunday. The only hassle is that we run a canteen that has hot and cold foodstuffs for stallholders and visitors and that is not covered by the policy.

A lot of companies were willing to cover the individual, but not the organiser and stallholders in a blanket cover. The reason we were seeking blanket cover is that we have a number of age pensioners who do needlecraft work. Doing that work keeps their fingers and joints supple, but they may not sell enough of their work to meet their \$8 a month stall hire fee. To put an extra \$200 burden on them we felt was beyond their physical means. From memory—and I will have a better idea after the weekend, when we have our next market—we have something like 10 or 15 who have their own personal public liability coverage because they are professional market stallholder who traverse the circuit. Until now, all the moneys generated from the markets have gone back into hall improvements and maintenance. With the impost of the \$27.50 per year policy, council will lose out in a big way, because we then have to put a minimum of \$1,000 aside to cover any claim that may arise. As I said at the outset, in our 23-odd years we have never had a physical claim made against us.

When the OH&S regulations came into operation there was quite a lot of information in the market and fairs magazine, and as a result about four years ago we put together a list of rules and circulated those to the stallholders. One required them to move their motor vehicles away from the entrance, or out of the yard when they finish unloading. No items of sale were to go in any walkway; they had to be contained within the stalls and under their tables. There have been only two stallholders that I have had to talk to and ask them to toe the line. The rules have been well adhered to. Certainly, there has been a reduction in income for the Leeton shire. I am president of the Yanco Hall Committee, which is a section 355 committee of council, and we answer to council. There is a group of five people running the markets, and we have been quite successful to date.

**CHAIR:** That is a very important contribution to the life of the community.

**Mr MILVAIN:** It is a social event on the calendar for not only the Yanco community, because we draw visitors from Narrandera, Leeton and Griffith. From what the professional market roadies have told us, we have one of the best markets in the Riverina.

**CHAIR:** I can believe that. Not only that, I get the feeling I would like to go.

**Mr MILVAIN:** They are on this coming Sunday.

**The Hon. ROBYN PARKER:** I share the Chair's view. My husband increases speed when we sight a market! I wonder what the future will be for these markets. How do you see this playing out? Are you going to be able to keep going?

**Mr MILVAIN:** At the moment, given that we have quite a good following as far as stallholders are concerned, I think we can keep going. But, as I said in my submission, council will be the loser. It is not going to have this money, and we will have to rely on council to help us with the maintenance of the facility.

**The Hon. ROBYN PARKER:** You have spoken about the professional market roadies. What do other markets do?

**Mr MILVAIN:** They are insisting on individual public liability cover. Without it, the stallholders are shown the gate and told, "Do not come back until you have got it." I know of a couple of market areas that have physically shut down simply because they have insisted on stallholders having public liability cover. The Rotary markets at Leeton, which are on the second Sunday of the month, have blanket cover for the whole of their organisation. That covers them outside the metropolitan areas and for a certain number of stalls. That affords cover for their stallholders who do not have cover. The Yanco Hall Committee is an incorporated body within the realm of the council.

**The Hon. ROBYN PARKER:** Do you have an option to expand?

**Mr MILVAIN:** We cannot expand any more. For the October, November and December markets, it is a crowded house. We have people knocking at the door wanting to come in, but we cannot let them in because we do not have the space. In some cases we have a waiting list, and of a Saturday night we might ring them up and say, "There is a space available; if you wish to have it, you are welcome to come." We put the regulars in their usual spot each month, and the casuals fit into the system wherever it may be, whether an internal market site or an outside market site.

**The Hon. ROBYN PARKER:** Is your blanket cover for however many market days you open, so that if in December you had three market days to cater for the Christmas rush it would make no difference to your annual cover, or what is the position?

**Mr MILVAIN:** The policy fee covers us for 12 markets. The application for a policy had about 15 pages of questions I had to answer, indicating what products would be marketed, how many stallholders had their own private insurance, how many stallholders were without insurance, when did we have the stalls, and how frequently, is there a permanent cleaner, and is there a permanent security officer on deck. Every third or fourth question came back to security and cleaning, and that surprised me. I filled in the application and sent it to the company, and they sent me back a quote, along with about six questions they required to be answered before they would accept us as a policyholder. It had to be in writing. I could not ring them up and say, "We accept it, because of this, this and this." It had to be in black and white before they would accept us as a policyholder. Once we got that, they sent us the invoice with the policy.

**The Hon. ROBYN PARKER:** It is a lot of extra work for a volunteer. You obviously do this for a reason, obviously community spirit.

**Mr MILVAIN:** Pride of community.

**The Hon. ROBYN PARKER:** Are you afraid that will be lost if individual stallholders have to take out individual cover?

**Mr MILVAIN:** We would very quickly lose our more senior people.

**The Hon. ROBYN PARKER:** Then you would just get the professional stallholders?

**Mr MILVAIN:** Yes.

**The Hon. RICK COLLESS:** Mr Batchelor, you spoke about the burden of \$200. Is that what it is costing each stallholder per year?

**Mr MILVAIN:** That is roughly the cost if they wanted to take out \$10 million in public liability and \$10 million in product liability cover. It is around the \$200 mark.

**The Hon. RICK COLLESS:** What sort of cover are you giving them under this policy that you have negotiated?

**Mr MILVAIN:** We have \$10 million public liability cover, and \$10 product liability cover, and we have another \$5 million incidental cover.

**The Hon. IAN WEST:** The actual cover that you have got in terms of the insurance, you indicated that it covers the stallholders and the organisers of the market. Has the insurer given you any breakdown as to what you are actually covered for in terms of being an organiser?

**Mr MILVAIN:** They have put down a heap of exclusions which would knock out a contract with council to run the market; it would knock out individual claims as an organiser; it took out the hot food stalls, even though we have only got the one, basically the canteen with hot food—doughnuts are cooked on the site but I know the doughnut maker has his own private cover because he circulates the other markets through the Riverina. But there were something like eight or 10 exclusions put into the policy and it covered the individuals within the organising committee as a body corporate, as such.

**The Hon. IAN WEST:** But you are not an incorporated body?

**Mr MILVAIN:** We are an incorporated body as the Yanco Hall Management Committee.

**The Hon. IAN WEST:** So in terms of the cover that you had prior to six or nine months ago—

**Mr MILVAIN:** Which was under council's cover.

**The Hon. IAN WEST:** Under council's cover and now what you have got under the cover given to you by the Melbourne broker, are you able to give us a rough idea of the differences in cover and what you are covered for?

**Mr MILVAIN:** Policy-wise—all I know is—and we asked the question previously in past years—yes, you are covered by our public liability cover. Then about this time last year, or a bit later, they said, "Hey, you have lost it because that is not a recognised activity that would be meeting the insurer's requirement". So we have had to look through the system to find an organisation that would give us cover.

**The Hon. IAN WEST:** And after you obtained information on the actual premium and what you are actually covered for in terms of the stallholders and the incorporated body organisers—and I assume they are two different categories of cover—did you revisit the council at all as to what the council was prepared to offer in terms of comparison?

**Mr MILVAIN:** I did have a talk with John about it. He felt it was the best we could do and to go with it as such.

**The Hon. IAN WEST:** And the thousand dollars excess that both offered, even with that thousand dollars excess, council could not match through Statewide Mutual anything similar?

**Mr MILVAIN:** No.

**The Hon. ERIC ROOZENDAAL:** Can you give us an idea of how many insurance companies you approached?

**Mr MILVAIN:** I approached three local representatives of major companies and they went cold turkey; they did not want to talk to us. The moment I said "public liability cover" that was the end of the line.

**The Hon. ERIC ROOZENDAAL:** I just want you to clarify the hot foods issue. Are you serving things like cups of tea and coffee at the canteen now or not?

**Mr MILVAIN:** Yes. We have got tea and coffee, and, again, bacon rolls, steak sandwiches.

**The Hon. ERIC ROOZENDAAL:** And are they covered by your policy or not?

**Mr MILVAIN:** No.

**CHAIR:** That was part of your exclusion, was it not?

**Mr MILVAIN:** That is the exclusion. If we wanted them covered it was another, I think, \$500.

**The Hon. RICK COLLESS:** Have they got their own cover?

**Mr MILVAIN:** They were about to take out their own cover because they have gone into other market areas as well. So they are looking at taking out their own cover. They are fully aware that they are not covered by our cover. I have discussed it with the head lady of the group that is doing it. All of her staff are covered by the safe food-handling category. Some of them have done the full course; others would have done part of the course.

**Ms LEE RHIANNON:** What needs to change so you would not feel under threat, so you can get on and do what you are out here to do?

**Mr MILVAIN:** I think personally at the moment the way the system is running it is, "We won't take care of ourselves, we will let somebody else look after us". I think that mentality has got to change where the individual takes full responsibility for his own actions rather than relying on somebody else to take care of his actions for him. I might be wrong in saying that but that is the way I can see it going. Being an ex-government employee and being involved in worksafe practices, it was quite obvious that a lot of our occupational health and safety factors were, "Forget about the others. We won't worry about ourselves, we will let somebody else worry about it", and to me that is the wrong attitude.

**The Hon. IAN WEST:** But you have not had a claim for 23 years.

**Mr MILVAIN:** No, because we have insisted on a strict stallholder tidiness policy. We are making the stallholders be responsible for themselves and their actions by asking them to confine their non-display goods to the table they have got.

**CHAIR:** You did have a good risk management process even though you may not have called it that. You had a tidiness, cleanliness—

**Mr MILVAIN:** We had to. When the changes within occupational health and safety came into being four or five years ago we even found we had to go down that path because a lot of the inside stallholders used to sit things on the floor outside their table area and that became a logistical nightmare when you had 400 or 500 people wandering around the inside area because the alleyway is probably only the length of this table wide between the groups of stalls.

**CHAIR:** Mr Milvain, you have been most helpful and we appreciate that. Country halls, villages, markets—it just sounds absolutely desirable. We wish you well, thank you.

**(The witness withdrew)**

**CEDRIC FRANCIS PRIEST**, Self-employed, P.O Box 4040, Ashmont, sworn and examined:

**CHAIR:** In what capacity are you appearing before this committee? As a private individual or representing Tumba Rail?

**Mr PRIEST:** I am the immediate past president of Tumba Rail.

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

**Mr PRIEST:** No, but I am learning fast.

**The Hon. ERIC ROOZENDAAL:** Can you give him a copy of the terms of reference?

**Mr PRIEST:** I have the terms of reference here.

**CHAIR:** Do you wish to make a statement first of all? Having read a little bit about Tumba Rail, it sounds a very intriguing situation. You might like to enlighten us all and then we will ask you some questions.

**Mr PRIEST:** Tumba Rail is a group of dedicated enthusiasts that have got access to a little railway station on the original Tumbarumba line called Ladysmith. It is a little village about 14 kilometres from Wagga and there we have restored the railway station back to its original state and we are working on the other buildings in the precinct of the railway yard. We have been doing that for some nine years now. Our ultimate aim was to get things known as trikes, or section cars as they are known in other places, as a means of rather than having a static display to have the trikes available for people to see how the workmen actually got to and from work in the early days of the railway.

**CHAIR:** Are these both the hand-propelled ones and the motorised ones?

**Mr PRIEST:** Both, hand-propelled and motorised, yes. We went to a lot of trouble; we put into place a lot of risk management plans, plans with regard to the storage and use of chemicals and then a set of plans that had to comply with the Department of Transport to get the vehicles to the stage where they had been passed by inspection by the Department of Transport to be able to be used then to convey people backwards and forwards across the 1.8 kilometres of line that we have for travelling backwards and forwards.

This worked very well and we were just starting to get going and people within the district were just starting to look to Tumba Rail as something different as far as the community and as something for the traveller to come and see something different; we had just got operational and we were just starting to go very nicely with a reasonable income stream, and then our insurance ran out. No way were we able to get anything to be able to cover us, to be able to do anything. So all our operations on the line ceased immediately, and that was virtually the end of us. We are still there working in the precinct of the railway station and the yard trying to keep it in some sort of order in the hope that one day we might be able to get some more insurance so that we can start running again.

**CHAIR:** I notice that one of the small communities, I think in western Victoria, have these trike races along the rails, with people pumping up and down.

**Mr PRIEST:** Yes. That would not be possible in our—

**CHAIR:** You are a single line?

**Mr PRIEST:** We are only a single line.

**CHAIR:** So the reason for the vast increase in insurance was not that you were engaged in racing trikes?

**Mr PRIEST:** Absolutely not. In fact, part of our safety features is we have put a speed limit of 10 kilometres on our movements. And 10 kilometres, even though it might not sound fast, you try and keep 10 kilometres up on a push trike for any length of time and see how long you can do it.

**CHAIR:** Apart from falling off a trike, are there any other particularly obvious dangers that you would see?

**Mr PRIEST:** None, to my knowledge, because we have modified the trikes and we have actually put gates and fences around the trikes so that the people have to sit on the thing. When you stand up the fence usually comes up to around about your waist, so that there is no way you can get off the trike.

**The Hon. ROBYN PARKER:** Can you get run over by one?

**Mr PRIEST:** If you are on the trike there is no way you can get run over. But there are safety things that we have in place, There are two people on the trike, a driver and a guard, and the maximum number of people that the trike can hold is six. So one is a guard and one is a driver. They both operate under the same conditions; they are both very much aware of looking out for safety purposes, and we are at a total loss as to why we cannot get any insurance cover.

**The Hon. RICK COLLESS:** What was the reason they gave you then if they declined it?

**Mr PRIEST:** They did not decline us, I am sorry, they said they could give us cover at \$45,000 a year.

**The Hon. IAN WEST:** Who is "they"?

**Mr PRIEST:** That was the insurance company that we had, Woods—I am sorry I do not know which broker group it was that did it, but the brokerage also covers the Roundhouse at Junee and because we are a subcommittee from the Roundhouse at Junee we came under that insurance policy. The policy still stands at Junee but because they have not any movements, everything is static, that policy still stands. But it all seemed to happen at the time of twin towers and HIH and all the other things. We all just seemed to be a terrible danger to the whole of the insurance business.

**CHAIR:** You do not have any static displays at all? You do not have any locomotives that you fire up or anything like that?

**Mr PRIEST:** Nothing like that, no. We do have static displays that we take out, but under the terms of our lease we are not allowed to put them on the rails.

**The Hon. IAN WEST:** In that 2002 quote that increased from \$1,500 to \$45,000, I am assuming that you went to a number of other brokers?

**Mr PRIEST:** We did. We went to three other brokers and the other brokers were not interested in covering anything that mentioned railway. The difficulty that I think we did have is that because the vehicles that we are using were used by the railway department for the exclusive transport of workers to and from work sites, they are not written in any insurance policy. So as soon as we mentioned railway and trains, all the insurance companies immediately thought of full-blown trains, and they could not perceive what we were talking about. They were not interested in listening because we were so small.

**The Hon. IAN WEST:** However, prior to 2002, that information was well known by the broker?

**Mr PRIEST:** Yes.

**The Hon. IAN WEST:** And you got cover for \$1,500?

**Mr PRIEST:** That is right, which also included the static displays at the Junee roundhouse.

**The Hon. IAN WEST:** Prior to 2002 for what period did you have insurance with that broker?

**Mr PRIEST:** That insurance policy has is still in place with the Junee roundhouse. In fact, it is covering us at the moment for the static display that we have to have.

**CHAIR:** But not the trikes?

**Mr PRIEST:** Not the trikes.

**Ms LEE RHIANNON:** Do you know when it started?

**Mr PRIEST:** Right from the day that we started operations. Forgive me, I cannot give you the exact date that we started operations but it was either 2000 or 2001. There was never any query about it. From my understanding; I cannot say this for sure, but I have spoken to the other track operators at Tenterfield, Guyra and just out of Goulburn.

**The Hon. IAN WEST:** Narellan?

**Mr PRIEST:** No.

**The Hon. IAN WEST:** So universally at that time in 2002 you could not find an insurer to cover you for less than \$45,000?

**Mr PRIEST:** That is right, yes.

**The Hon. IAN WEST:** And that was just one insurer who quoted you \$45,000? The others were not interested in giving you a quote?

**Mr PRIEST:** No. I believe that the Guyra and the Tenterfield group have suffered in exactly the same way.

**The Hon. IAN WEST:** Did the organisation at that time take a view as to what may have caused this change?

**Mr PRIEST:** We were at a total loss as to what would change the attitude of the insurance company to take the attitude and do what they did because we just could not comprehend what had happened or what was likely to happen to have caused them to change their attitude.

**The Hon. ROBYN PARKER:** Have you approached other organisations to group together to do something? You have spoken about the roundhouse but what about some of other railways?

**Mr PRIEST:** We looked at that but because we are quite specific in our trike operations are concerned, we do have a liaison with the other groups. But we are still not big enough to take out a group insurance thing to make it worthwhile. We only operate as our rides. It is one Sunday a month. So at \$45,000, that is an enormous amount that you have to cover for insurance. It is just beyond any comprehension so far as we are concerned.

**The Hon. ROBYN PARKER:** There was a group that spoke about not for profit. Their name escapes me

**Mr PRIEST:** The community insurance thing?

**The Hon. ROBYN PARKER:** Yes. Have you spoken to them at all?

**Mr PRIEST:** Once again, they could not comprehend what we were talking about and the way we were operating. We tried them. One of the other sticking points that we have with it, and this is what stopped the community insurance group, was the railways insistence that they be mentioned in the policy as a co-insured. I believe that the way it operates is that the policy, if we took one out, would cover the first \$10 million, and then the railway then has another policy that covers from



\$10 million to \$250 million. But before that policy can be activated in the event of something happening over \$10 million, they have to be written onto the policy. The other companies just were not prepared to write the railway on the policy. You can understand why.

**The Hon. ERIC ROOZENDAAL:** Is that because they own the railway still?

**Mr PRIEST:** They still own the line, yes.

**CHAIR:** They own the track and probably also the whole infrastructure.

**Mr PRIEST:** The whole infrastructure belongs to the railways still.

**CHAIR:** The person being injured on the station could possibly sue the railways.

**Mr PRIEST:** Yes.

**The Hon. RICK COLLESS:** Mr Priest, the Sundays that you operated, that went for two years, did it?

**Mr PRIEST:** Yes.

**The Hon. RICK COLLESS:** How many visitors would you normally get?

**Mr PRIEST:** From our last set of records, for the two years we operated we carried 1,800 passengers. That is according to our ticket sales that we had.

**The Hon. RICK COLLESS:** What were you charging them as their fee?

**Mr PRIEST:** It was \$5 a ride, and half price for children.

**The Hon. RICK COLLESS:** So you were generating a reasonable amount of income?

**Mr PRIEST:** We thought we were doing very well. Even though we were not making lots of money, we were all prepared to put our time into it. We spent hours and hours out there preparing it, getting it ready and making it go, and cajoling other people who had qualifications to use them out of hours to get our qualifications with the Department of Transport and the Rail Infrastructure Corporation. We had fellows who worked for the group coming out and saying, "Yes, this is what you need to do." We had so much support.

**CHAIR:** Perhaps we could get Tumba Rail to run CountryLink.

**The Hon. RICK COLLESS:** Absolutely. They could not do any worse, that is for sure. Where were those visitors from? Were they mainly local people?

**Mr PRIEST:** All over. We had people from all over. We had local people, but the community was just starting to get to know that we were there. It was the tourist information centre. We had busloads of people coming at there at one stage. People travelling around the countryside who had heard about it would ring up. Because we were all volunteers and a percentage of us were retired, we could go out there at the drop of a hat. So we were getting calls from buses in Goulburn who were on the way out, who had heard from Crookwell—that was the name I could not think of when I suffered a seniors moment—and Goulburn saying, "Is there any chance of us seeing Tumba Rail?" We would say, "Yes." They would say, "How much?" and we would say, "\$60 or something for the busload." They would say, "Is that all?" We would say, "Yes" and they would say, "We will be there in 2½ hours." We would go out and get ourselves prepared and they would come out and say, "We have never struck anything like this before. It is so unique."

**Ms LEE RHIANNON:** You said how there were other set ups doing similar things to yours. Have any of them ever had an accident?

**Mr PRIEST:** No. Nobody. There have been no accidents at all through every group that we have been in touch with, or every group that we know of. There has never been an accident.

**Ms LEE RHIANNON:** What about in other States? Are they still operating in other States?

**Mr PRIEST:** They are operating in other States under different conditions because of the attitude of the railway department in the other States is totally different to New South Wales railways.

**Ms LEE RHIANNON:** Could you outline that? That might give us some idea how we can get you back on track.

**Mr PRIEST:** I would like to say yes, but because we are locked in with what we are, we have not taken a great deal of interest apart from the fact that they are operating. As soon as ever you, say, go to Victoria or go to South Australia, you will see there is a different set of conditions. We have more things to do with our time than worry about what somebody else is doing, knowing full well what the difference is.

**Ms LEE RHIANNON:** Chalk and cheese.

**Mr PRIEST:** Yes, just totally different from State to State.

**The Hon. ERIC ROOZENDAAL:** Are there any operators in New South Wales that are still running the trikes?

**Mr PRIEST:** No, none. We all finished on the date that our policies ran out in that one year. There were people that were much bigger than us and they had more clout than us. The Tenterfield group was run and organised from the Tenterfield council. If the council could not get insurance, I did not think we had much hope at all.

**Ms LEE RHIANNON:** Has anybody in Tumba Rail talked to anybody in the railways?

**Mr PRIEST:** We spend half our lives trying to talk to the railways, trying to find out the rules and regulations and the whys and wherefores. The railways have a wonderful network. They keep an eye on us. We are absolutely staggered. We thought big brother was out there at one stage. Last year we had an open day. We had the veteran vintage car club that came out. It was doing a rally in Wagga. Because the local paper could not come out, we sent them a transcript of what we did and what happened. They dug into their archives and got a file picture out of something that had happened out there a couple of years before, and they then published it in the paper as local activities. You would not want to know: Within two days the railways was ringing us up and wanting to know who gave us authority to put the trikes on the track. We said, "Nobody did." They said, "There is a picture two days after in the local paper in Sydney." They rang up and said, "There is a picture in the local paper with a trike on the track at Tumba Rail." I said, "If you have a close look at that you will see it says 'file picture' underneath it." The railways people have a network of some description. I do not know what it is, but they are keeping an eye on us, I tell you.

**The Hon. RICK COLLESS:** Is Ladysmith within the Wagga city council area?

**Mr PRIEST:** It is, yes. We have been to Wagga Wagga City Council to see whether we can be covered under their public risk policies. It cannot.

**The Hon. RICK COLLESS:** I find that outstanding. We had a witness here earlier representing Wagga Wagga City Council. He told us that he was virtually unaware of any impact on community events and community groups. But this is obviously one group within Wagga Wagga City Council area that this legislation has had a huge impact on.

**Mr PRIEST:** I am not sure how long he has been on the council in that position. One would think there should be some files somewhere on it. But I have been to the council. Because it is what it is, they just said that there was no way that their insurer would have any part of insuring rides, especially when the railway department insisted on it being named as a co-insured on it.

**The Hon. IAN WEST:** Across the State of New South Wales, just so that I understand exactly what happened in 2002, organisations like yours universally were advised that their insurance premium had skyrocketed?

**Mr PRIEST:** Yes.

**The Hon. IAN WEST:** Universally across the State in 2002, all of a sudden insurance premiums were astronomical and unaffordable?

**Mr PRIEST:** That is right, yes. In fact, ours was the last one. We finished on 30 April. Most of the others had their insurance finish at the end of the year. So we were still running up until the end of April and some of them were a bit jealous of us because we were still running. They thought we somehow or other had obtained some insurance when in actual fact our policy was terminated in April rather than at the end of the year like all the others had been.

**The Hon. IAN WEST:** A single person might think that that seemed very strange that it all seemed to happen all at once?

**Mr PRIEST:** Yes, it happened, just like that. We were at a total loss. We found the insurance companies that were covering the policy, that the broker had chosen, we found it impossible to get to and talk to the company itself. They just did not want to know or did not want to talk to you. As I said, we had looked at putting a consortium together of all the groups of railway operators or trike operators to see whether we could go to them as one, but it still did not cut any ice with them at all.

**The Hon. IAN WEST:** I would assume that the trike operators around the length and breadth of New South Wales and in other States would have done some fairly intensive investigations trying to find appropriately priced cover?

**Mr PRIEST:** Absolutely. They have all spent a lot of time and local money and put a lot of effort into restoring the railway infrastructure so that it would be usable. The fellows at Guyra are absolutely devastated, because they are not even allowed to go out and spray the line to keep the weeds and grass down. As a result it is getting worse and worse along the line. In some areas trees have started to grow between the lines. So if and when they do get insurance the job of restoration will be almost as daunting as it was when they first got access to the line.

**The Hon. ROBYN PARKER:** I assume you have your trikes put away in a shed somewhere.

**Mr PRIEST:** Yes.

**The Hon. ROBYN PARKER:** If someone were to break into those sheds and injure themselves by skylarking with the trikes on the track, whose insurance would cover that?

**Mr PRIEST:** At the moment we do not have an access agreement, so that would have to be covered by the railway.

**The Hon. ROBYN PARKER:** Do you think the railway has cover under its policy?

**Mr PRIEST:** It would have to. Because the railways have fingers out all over the place, they would have to have some sort of policy to cover even people who are illegally on their premises. That would devastate us, because at Ladysmith we have restored the gang shed to its original glory and wonderful beauty, and we have all our materials stored in the shed. It looks as if it has been there since 1923, when it was first built. We have gone to a lot of trouble to make it look original.

**The Hon. ROBYN PARKER:** Anecdotally, Richmond Vale, a railway near my area, closed because of insurance issues, but I understand it is running again. Have you had contact with them?

**Mr PRIEST:** The Canberra group is still running. In fact, I was talking to them last night. This is a full-blown railway group, with access to the main line, and takes trains to Melbourne and

Sidney. They had to pay \$63,000 for insurance. That group is big enough, and its cash turnover is substantial enough to be able to afford that sort of premium. Initially, they too did not have the money to pay for that level of insurance, but they asked their members to chip in to the tune of \$1,000 a head to pay for the policy. They lent the money to the society knowing full well that their prices would have to be jacked up a bit, and the members were paid back for the first year. But they raised loans from within their organisation to get going. When I was speaking to them last night I was told that their policy cost them \$33,000 and they have just renewed it. As a matter of fact, I asked them to talk to their insurer on our behalf. I have here a proposal with out details on it that will go to their insurer to see whether they can do something for us.

**The Hon. ROBYN PARKER:** You would think that, having done a good service to the community in maintaining property of State Rail, which would have a policy to cover adverse events and presumably public liability, State Rail would find some way to extend its policy to cover you on these weekends.

**Mr PRIEST:** The same problem occurs: because we are not employees of State Rail and are treated as a contractor, it is up to you as the contractor to have your own insurance. That is the way they treat us. That is the way things are, and there is little or nothing we can do. We would like to say we all work for State Rail, so that everything could fall into place. But we are treated as contractors and subcontractors, and that is the way it is.

**CHAIR:** I think our time has come to an end.

**Mr PRIEST:** On behalf of the people of Wagga Wagga, and especially Tumbarumba, I would like to thank you all for taking an interest in the subject and coming down to speak to us. We hope that in the not too far distant future we will come to some satisfactory conclusion, so that you could—

**Ms LEE RHIANNON:** Go for a ride.

**Mr PRIEST:** Yes, go for a ride. We will be more than happy to take you for a ride.

**CHAIR:** In the United States of America triking on branch lines is a very big business.

**Mr PRIEST:** It is.

**CHAIR:** It is a huge tourist attraction.

**Mr PRIEST:** Yes.

**CHAIR:** As is trike racing and so on. We wish you well.

**Mr PRIEST:** We have a fairly good rapport with the Queanbeyan group. We actually take our trikes over there and run them on the line out to Michelago.

**CHAIR:** I have been on that route.

**Mr PRIEST:** If you think it was good on the train, you should try it on a trike!

**CHAIR:** They call that train "The Rabbit", don't they?

**Mr PRIEST:** Yes. It is absolutely wonderful. Out there, all the speed restrictions are gone, and we can go for our life and do whatever the trike can do.

**The Hon. ROBYN PARKER:** The Wagga Wagga City Council gentleman said that he would recommend that there be no change to the current insurance legislation. What is your view on that?

**Mr PRIEST:** It is the other legislation within the system that is causing all the problems. The way the railway system operates, to try to get something done in the railway is an absolute

nightmare if it is not written in the guidelines or in the legislation under which the railway operates. We get on well with the people who administer this sort of activity. A girl by the name of Jacqueline Irwin, who was an administrator in the Rail Infrastructure Corporation, was great. She understood the legislation on what could and could not be done, and she would tell us in plain and simple terms what could and could not be done, and what needed to be done to be able to operate. She used to get into trouble with other politicians who would ring up and try to organise certain things.

When David Hill was chief executive of the railways he would want to get things done from the top. So down the line would come these ideas and Jacqueline would say, "I am sorry, but the legislation will not let you do that." So it worked both ways. The railways were administering the way the legislation and rules were written, and nothing could be done. The only thing that could change that was an Act of Parliament. The Parliament appears to be so busy that it does not have time to worry about little people in the bush who want to go out on their trikes and do things, or else the railway is bogged down in its mainstream functions.

**CHAIR:** Mr Priest, thank you very much, and we do wish you well.

**Mr PRIEST:** Thank you very much.

**(The witness withdrew)**

**ROBERT JOHN HAY**, Secretary, Wagga Wagga Junior Rugby League Inc., 16 Hinchke Avenue, San Isadore, sworn and examined:

**CHAIR:** In what capacity are you appearing before the Committee, as a private individual or on behalf of an organisation?

**Mr HAY:** On behalf of an organisation.

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

**Mr HAY:** Yes.

**CHAIR:** Do you wish to start by making a general statement?

**Mr HAY:** On behalf of my organisation, I thank you for the opportunity to address the Committee. I do not know how relevant it will be to your inquiry. We have a few concerns about the cost of public liability insurance for our organisation increasing year by year. We are primarily a organisation that relies almost solely on volunteers, and the demands on volunteers to be insured and eligibility requirements for insurance tend to have the adverse effect of driving our volunteers from the organisation. That makes it difficult for us to operate. The other matter is that we have no clear guidelines on what insurance we should have. We just seem to get bills from different people, and we pay them, without any really clear understanding of what we are paying for.

**CHAIR:** Mr Hay, how many young people are involved in junior rugby league in this area?

**Mr HAY:** In Wagga Wagga alone we have between 600 and 700 registered this year. We play in a competition that spreads throughout the Riverina, and we would have about 2,000 young people between the ages of 7 and 15 who are playing.

**CHAIR:** Are you aware whether the issues that you are facing are faced by other junior competitions, such as Australian Rules football, Rugby Union, girls netball and so on?

**Mr HAY:** I believe that is right. I have spoken to friends and colleagues who are involved at administrative levels in Wagga Wagga, and it seems to be a recurring issue that there are demands on workers. These are all volunteer organisations, and the demands on them to be insured and to be eligible for insurance, in terms of having qualifications and so on, seem to be part of a recurring theme. I do not know about netball, but certainly with soccer and Australian Rules in Wagga Wagga there are similar issues.

**The Hon. IAN WEST:** And, I would imagine, sports like hockey and cricket?

**Mr HAY:** I think so. I do not think there is a sport that is not played in Wagga Wagga.

**The Hon. IAN WEST:** Nor is there a sport that is played here that has not resulted in Wagga Wagga having representatives in State, Australian and other representative teams. I do not know whether it is something in the water! When did the problems start?

**Mr HAY:** It is hard for me to say. I was involved for a fair while, and then I got out of it, and I have just become involved again. I would say it was in the mid-90s that things started to get out of hand with demands on people to have first-aid certificates, qualified coaches and so on if they wanted to be involved. That makes it very difficult. The problems have been escalating right up to this point.

**The Hon. IAN WEST:** Do you see the problem easing at all?

**Mr HAY:** No. It is hard to get people to volunteer at the best of times, then we have to go and say to them, "That is great if you are going to volunteer but now I need you to go off and do this course. You need to go and spend 20 hours getting a coach's certificate", and then every year you have got to front up and get reassessed for your first aid or something. People are doing that on a volunteer basis and then you have got to keep putting extra demands on them like that; they have probably only

got so many hours to volunteer and you are asking them to chew up some more of their time to do something else. I guess there are plenty of people willing to go through that but a lot of people say, "I don't mind helping out but if I have got to go and do all this extra stuff to help out then, sorry, I can't, you will have to find somebody else".

**Ms LEE RHIANNON:** Are you down on the number of volunteers that you need?

**Mr HAY:** For sure, yes.

**Ms LEE RHIANNON:** To what degree?

**Mr HAY:** We have five junior rugby league clubs in Wagga. The club that I am involved with personally, we have a good bunch of people at the moment, and it does go up and down but I know that the other four clubs really struggle. We rotate like canteens and duty days down at our football ground on a Saturday and a lot of times you will get two or three people who will put their hand up to help out in the canteen and we are trying to drag in referees because referees have got to be accredited; they cannot referee unless they have got a ref's thing. And there is a high turnover of those people. There is a high turnover of coaches. Coaches tend to be primarily the parents of the kids, but then you have got to get them accredited and you wear them out in two years and then you have got to find somebody else to replace them. All that stuff adds to cost too because to get people accredited so that they are covered for insurance you have got to pay for them to do their courses and that. So the cost is increasing. So not only are you paying for your insurance but then you have got to pay for people to be eligible to fit under your insurance.

**The Hon. RICK COLLESS:** Wagga Junior Rugby League does hold its own insurance policy at present though, is that correct?

**Mr HAY:** We are covered under Country Rugby League. We pay fees to Country Rugby League so yes, we are covered under Country Rugby League's insurance policy. That is what I was saying before, it is a bit grey. We also play on a council ground so I believe we are covered under council as well. I do not know if anybody is double dipping there: we pay fees to council and we pay fees to Country Rugby League.

**The Hon. RICK COLLESS:** How much do you pay to Country Rugby League for your insurance?

**Mr HAY:** I got a bill this morning for \$250, that is for our club. There are five clubs in Wagga.

**The Hon. RICK COLLESS:** Times five for the Wagga clubs?

**Mr HAY:** There are 18 clubs in our competition in the Riverina.

**The Hon. RICK COLLESS:** Do you know whether that has gone up or down over the past few years?

**Mr HAY:** It has gone up. I believe it was \$210 last year, so there is a \$40 increase on that fee this year alone.

**The Hon. IAN WEST:** Have you ever had to use your insurance policy to make a claim?

**Mr HAY:** Not that I am aware of, no, I do not believe so, and I have been involved probably for four or five years. Not within Wagga, I am not aware of anybody within the last five years that has made any public liability claim, certainly not the personal injury sort of stuff.

**The Hon. RICK COLLESS:** The premium that you pay to Country Rugby League, does that include cover for spectators and parents on the sidelines as well as the players, or only the players or only the spectators?

**Mr HAY:** I am not too sure on that. I believe it is only to cover your voluntary workers.

**The Hon. RICK COLLESS:** So it is not players insurance?

**Mr HAY:** No, that is separate. We pay players' insurance but that is a separate thing altogether.

**The Hon. RICK COLLESS:** Are you aware of how much you pay for players' insurance?

**Mr HAY:** Yes. We pay to Country Rugby League \$32 per player.

**The Hon. ERIC ROOZENDAAL:** Is that per year?

**Mr HAY:** Yes, which covers them for a full 12 months. There are some real issues with that too because that \$32 only covers you for Medicare or what your private medical does not cover you for. You cannot claim that gap between what they cover you for and what it ends up costing you.

**The Hon. RICK COLLESS:** What happens if a young player has a really serious injury? I mean a really serious neck injury or ends up a quadriplegic or something like that?

**Mr HAY:** Fortunately we have not had any serious injury.

**The Hon. RICK COLLESS:** I certainly do not wish it on you, but it does happen from time to time in any sport.

**Mr HAY:** Yes, for sure. The biggest complaint we have with all this personal injury stuff is they say when a child gets injured—for example, a kid was seriously injured on Saturday, he dislocated his elbow quite badly—the insurance company gives you a form, an A4 sheet of paper; they make it that hard for you to actually follow it through that the average punter just looks at that form and goes, "I'll just pay the bloody 20 bucks and be done with it", and throw it away because it is just that hard for you to actually go and claim that insurance. And when you do, the biggest complaint is you have got to go to your doctor just to get him to sign the form, sort of thing. That costs you money and you cannot claim that back.

So it covers you for things like physio and that, but if your kid has sprained his finger or something and you just want to take him to the doctor to get it checked out, that costs you money and that is not covered by your insurance. That is with the bulk of the people getting injured through these minor injuries: you might like a doctor to look at it but realistically the insurance is not doing anything. So there seems to be a lot of payout for insurance that does not really cover you for much unless you are, I guess, fairly seriously injured. I don't know, we have not been down that path yet.

**The Hon. IAN WEST:** Have you got any ideas what you are actually covered for in terms of your voluntary people?

**Mr HAY:** No. Whether that is our governing organisation not passing the information back down to us I do not know, but it is very grey about what you are covered for. I do not know whether that is our governing organisation not passing that information on to us or whether they do not know. It is certainly not distributed down the chain to the people. I get asked questions quite regularly about, "Is this covered under insurance?" We say, "Ring Country Rugby League" or "Ring the insurance company", whatever they are, SLE or something.

**CHAIR:** We think the work that you are doing is very important and would encourage you with all those up and coming young champions that we will see on television one day. We are sorry that you have got difficulties that we are trying to work through to come up with a better system for you. We wish you well. Thank you.

**(The witness withdrew)**

**(Luncheon adjournment)**



**TERENCE ANTHONY O'RIAIN**, Solicitor, 526 Swift Street, Albury, affirmed and examined:

**CHAIR:** In what capacity are you appearing before this Committee, as an individual or as a representative of some group?

**Mr O'RIAIN:** I am appearing as an individual.

**CHAIR:** We have read your submission. If there is any evidence you wish to give or documents you wish to tender that should be seen or heard only by the Committee, please indicate that fact and we will consider your request. Would you like to make an opening statement?

**Mr O'RIAIN:** My opening statement is that I have been moved to put in a submission and back it up with a supplementary submission because I feel that the system in New South Wales has been altered drastically in favour of insurers, very much to the detriment of the injured and the general public of New South Wales. It has been a bit of a con about the premiums. That is all I have to say.

**CHAIR:** In your statement you have been fairly explicit, and you have given us some good examples. We will now question you on your evidence.

**Mr O'RIAIN:** I will be pleased to answer your questions.

**The Hon. RICK COLLESS:** You just made the comment that it is all a bit of a con. Who is the architect of the con? Who has conned whom?

**Mr O'RIAIN:** Who has conned whom, yes. I feel that when the campaign about tort reform first started coming out, there was a lot of anecdotal evidence—well, not evidence— but there were a lot of anecdotes about people making unjust claims and ridiculous claims being made. For someone who has been around the courts for 19 years—I was a registration clerk then a tipstaff in the Land and Environment Court, then a District Court associate and as a lawyer—it upset me a lot because I would listen to the stories and I would say, "Look, I have dealt with these sorts of matters and I have never heard of cases like this being run or getting up. Why are they saying these things?"

I used to play rugby with Michael Hawker who is now the chief executive officer of IAG and I remembered some of the things he would say about people suing at the drop of hat. I had a go at him a couple of times when I had a chance to see him, but things like the spin about people getting unjust amounts of money when changes had already taken place in the Motor Accidents Act 1999 or the Motor Accidents Compensation Act, I have given you an example about how a young fellow has had his life taken away from him and he got nothing for the pain and suffering. They talked about personal responsibility yet you could not get a more responsible attitude than what this fellow took. He was driving his drunken mates home and just by a mishap he ended up losing his life, not literally his life, but the life that he had.

The con? Well, who did it? In 2002 the New South Wales insurance industry spent \$4 million on publicity about the need for insurance reform. The Premier was only too ready and willing to listen. We had a situation where Betty and Bob Barbeque, the general public, were willing to believe that that was what was going on. There have only been a few of us who have been able to say. I probably suffer more than most. I tend to suffer more in my heart. I am not a wealthy practitioner by any means. I tend to do it a bit hard. I cannot handle it when people are just telling stories that are not true.

**The Hon. RICK COLLESS:** Do you think that the insurance company has conned the Government?

**Mr O'RIAIN:** We believe sometimes what we want to believe. As I said in my submission, I think Samuel Johnson once said, paraphrasing him, between the stormy sea of the courts and the rugged and jagged rocks of Parliament you need a pretty good helmsman to steer you through these times. I think in these days when we are under a lot of pressure, both in the criminal law and the civil law generally, the individual needs more than ever to have these people available to guide them. I just do not think it really suits governments at the moment, it does not matter what colour they are, to have

people who are able advocates available to the public, generally. I said that in my submission that if you are a wealthy person you can have it funded by somebody else, and you will have no trouble getting legal access. But if you are just an ordinary person who does not particularly have a lot of money, we know every contest these days is a battle. There are no easy cases. You are just making it even harder and more impossible.

**The Hon. RICK COLLESS:** So the people who are the losers in the whole thing are those on lower in comes in the more remote areas of the State?

**Mr O'RIAIN:** Yes, I believe that very much. Access to duty solicitors, to solicitors who are generally interested in doing litigation, and that includes Legal Aid and family law and so on, the District Court would pretty much fund those sorts of cases. You feel like doing them, to be frank. When you feel well paid in the other matters, when somebody from the police rings up at 8 o'clock on Sunday morning and says, "We have a guy down in the cells here. Can you come down and do his bail application?", you do not feel so bad about going down when you know things are going all right in other ways.

**The Hon. RICK COLLESS:** Do you think though that there was a need for some type of reform in the industry at the time that these reforms were put in place?

**Mr O'RIAIN:** The scheme in the Civil Liability Act and for the assessment of general damages or non-economic loss, which have been in place in the Motor Accidents Act since the end of the 1980s was a pretty good halfway mark. It knocked out quite a lot of matters yet made it possible for people to get a fair go. I do not believe that there was any need. There was already quite a tough system where people had to be put to a pretty strong test as to whether or not they had a successful case. The premiums, as I understand it when I was working at the GIO back in the late 1990s before they privatised or just when they privatised, I understand historically the premiums when they spiked two or three years ago were not as high as the premiums back then. It was not being abused. There were just a few high profile cases that got people excited and they were very unusual. I think I have seen it written as anti-intuitive sorts of cases in that you think, "Why would he get compensation for that?" But just like anything, when you hear the whole story, you might understand what it is. Unfortunately, if you just take a slice of what the case is about, it might sound pretty outrageous.

**The Hon. RICK COLLESS:** It is always going to be a challenge, though, is it not, to make sure you weed out any of those fraudulent cases, but still give proper cover to those that genuinely need it.

**Mr O'RIAIN:** Well, there is fraud and there are anti-intuitive cases. I can tell you that in my practice, the only person I ever thought was a fraud disappeared any way. They got me to go out and doing an engineer's report and then disappeared, so the case never proceeded. I think they are pretty rare. I also said in my paper if you specialise in this law, if there is so much at stake, you learn—I mean, I have paid for it big time—that unless you are hyper critical and hyper vigilant about what makes a good case and what makes a fair case. You weed out the fraudulent cases. Then you have to look at how hard is this case going to be to win?

I have never had to run a catastrophic injuries case. Sometimes I think about this, and think if I were a young guy or a young woman who faced the rest of my life on a breathing tube or something like that, and the injury had occurred in circumstances where liability was going to be hard to prove, I would be prepared to take that gamble. But on the other hand, if somebody came in and they had broken their ankle on the surf at Bondi, I would be saying, "Forget it" because, really, an ankle is a very nasty injury to have, but it is nowhere near the same as breaking your neck or suffering those sorts of consequences. That is a balancing exercise. If you want to say, apply the market ideal to it as filters to what is going to be a case that is going to be run or not, you did not need to do anything.

People are going to work out what the lawyers who run these matters are going to have to look at them critically and not say, "Throw it up against the wall and see whether any of it sticks and we will see if we can get a settlement out of it." You cannot run cases on that basis any more. I do not think you ever could. When you have heard hundreds of cases as an associate and you have been involved with them working for an insurance company as well as doing it for plaintiffs, you start to think that most of them have got a bit in them.

**CHAIR:** Mr O'Riain, at a previous hearing we heard from five members of the Australian Lawyers Alliance. Part of their evidence was that about a third of lawyers engaged in litigation of personal injury compensation have had dramatic losses of income. Would that be your experience of lawyers in the community between Wagga Wagga and Albury?

**Mr O'RIAIN:** Yes. I also do some work for defendants, and I was doing all of the GIO's work from Wagga Wagga to Albury to Deniliquin and Griffith, but I do not have that work any more because nobody's cases are achieving the thresholds set by the AMA guides. On the plaintiff's side, my income last year was \$58,000. I have five children to support, one with a lifelong disability. That is not fabulous money. It is very satisfying work though. I think you will find that most practitioners generally like their clients and get good satisfaction from being able to do that sort of work. But it has been hard. It would be nice to think that I could take on an articled clerk, a young lawyer who wanted to live in Albury or Wodonga, and be able to build up the practice and so on. But I am running a pretty tight ship at the moment.

**The Hon. ROBYN PARKER:** You say in your submission that the reduction in the work of solicitors means there are less training opportunities for young lawyers. Should that be a concern for this Committee when looking at the legislation?

**Mr O'RIAIN:** If you are going to be a lawyer, you do not think, "Great! I'm going to be sitting around and doing conveyancing, leases and things like that." I still think that, to make a regional centre work, you need a mix of people. One of the great things about New South Wales is that the Solicitors Admission Board course can be done externally, enabling you to stay in your home town. That is a great thing. That keeps bright people in the town. For the reasons I gave before, it is a matter of concern that the legal aid system would break down if it were not for those who are doing duty work, if it was not for people prepared to do bail courts and accept legal aid matters.

Legal Aid New South Wales simply cannot meet the needs of the whole of the State. It is only because people are willing to take on that work that the system works. I was greatly influenced by the book by Harper Lee "To Kill a Mocking Bird". I think a lot of people are. They read it and think, "I want to be like Atticus Finch," who does a bit of this and a bit of that, but at the end of the day he is there to act for somebody who really would not otherwise have a hope because he feels that it is his duty. That is why my colleague John Potter and I like working in country towns. We feel we have a connection. We are there to step in. I think you will find we are like most people; we generally like most of our clients. With some, it is a bit of hard work, but often their injuries have got a lot to do with that. I feel the current system is causing problems with access to justice generally, it is causing particular problems for injured people, and it is creating a lot of hardship.

**The Hon. ROBYN PARKER:** What would you change to make it a fairer system?

**Mr O'RIAIN:** I think your colleague Dr Chesterfield-Evans wrote a pretty good paper on the AMA guides and how unjust they are. The guides book itself says at the start of it that they are not to be used for the purpose of assessing access to compensation. Sometimes they have the most unbelievable outcomes. People with drastic injuries come up with zero impairment. Dr Chesterfield-Evans said it very well, so I would urge you to look at his paper. That is what I would do—get rid of the AMA guides.

**The Hon. ROBYN PARKER:** Are they not the American guides?

**Mr O'RIAIN:** Yes. They are called the American Medication Association Guides to Impairment, and there have been a number of different editions. In New South Wales, we do not even use the one edition; we use the fourth edition for motor accidents, and we use the fifth edition for workers compensation. That can result in very different outcomes. Victoria used the guides for a while, but even down there a whole branch of law has developed around whether they are properly used or not. So, in a way, it has created its own little branch of litigation. If we stayed with 15 per cent being the bottom threshold to get over, and that applied across the board to medical negligence, public liability, motor accidents, workers compensation and what have you, I think we would come up with a fairer result.

The other thing that I would invite you to consider is the approved medical specialist regime in workers compensation. Recently, I acted for a fellow who was injured in one of the local abattoirs. Someone dropped a pig's head through a chute and it slammed into him between the shoulder blades. He worked on for some years, and it was accepted that there was no problem of liability. The insurer, QBE, said, "No problem, we will pay this fellow." He was invalided out of his job. So I said, "It is time to get you assessed for your lump sum." His doctor did an assessment. The only argument we had from QBE, even though he had the injury back in 1987, about eight years ago, was, "We don't think his condition has stabilised." So we sent it off to the approved medical specialist, and out of the blue the approved medical specialist, in total disagreement with all other doctors who had ever had an involvement in the case, said, "Yes, he is totally genuine, and he has this disability, but I don't see how it is connected with a pig's head slamming between his shoulder blades."

The result was that he was told that on Christmas eve his payments were to stop. He was the sole carer for his two children. I felt I was living out a bad soap opera. His wife had walked out on him with his best mate and left the children, and the approved medical specialist had come up with this perverse result. The system gives the specialist too much power. I cannot do anything about that because that is how the legislation is. I would rather run it before a judge, because the judge would say, "Oh, come on! Commonsense says this fellow is genuine, and he has had these symptoms since this time, so they have got to be connected with the injury."

**CHAIR:** As part of your evidence, you indicated that not only does the new law impact upon lawyers and others acting for plaintiffs, but that it may in fact impact the whole community if there are not sittings of various authorities, because there will not be bookings in local motels and so on. Have you been able to quantify any of that?

**Mr O'RIAIN:** When Kim Cole was the president, I wrote and begged her to get that sort of information together. I am a micro practitioner, but I would say if there are three weeks of sittings you will have five or six barristers in the town.

**CHAIR:** And senior counsel would no longer come.

**Mr O'RIAIN:** That is right. The local restaurants, which only see a handful of people throughout the year otherwise, like to have customers who want to go out for the night and will spend a bit of money. That money flows through the community. One of my clients spent her payout and bought a house before the market spiked in Albury. It was the first house she had ever lived in that was not rented and bought a local business that now employs two or three people and is running that successfully. That is a really great result. I feel proud every time I walk past that lady's shop because that is what her payment was able to do for her. She is off the workers compensation treadmill. It has been a tremendous result.

It would be great to know how much money the current system has taken out of the community. The Workers Compensation Court no longer travels. It appoints a local arbitrator, and generally does not bring the court here. The Workers Compensation Court used to bring a lot of money to different towns. It has impacted local car dealers. I would often caution my clients about how they spend their money. But, then again, sometimes they were driving a clapped-out car that needed replacement, and they might replace it with a quite modest vehicle. The fact is that they could go in with cash and pay for it.

**CHAIR:** Does that not create support for commentators such as Alan Jones, who talks about ambulance-chasing lawyers and so on?

**Mr O'RIAIN:** That is a big leap. Sometimes my kids ask me about that, because they see something on the news, and I say, "I am proud to be an ambulance chaser, if that is what you want to call me. I am proud to be a common lawyer."

**CHAIR:** Because of what you are doing to help the person who hurts?

**Mr O'RIAIN:** Yes. I know I am doing the right thing.

**Ms LEE RHIANNON:** Earlier you spoke about access to justice, and I appreciate the significance of that issue in terms of rural and regional areas. I would like you to elaborate on that, because obviously there is a lot of difference between Wagga Wagga and the other side of Broken Hill. Wagga Wagga is close to the coast, but remote rural areas are much further along the spectrum. I was interested in how you see all that.

**Mr O'RIAIN:** This is a huge country, and New South Wales is a huge State. But places like Dubbo are a long way from the coast, as are Deniliquin and Wentworth. Bega, although close to the coast, is a long way from Sydney, and I used to practise at Bega and did duty courts at Eden. I do not practise in Wagga Wagga. If you are making a decent living, you do not mind going along and doing that sort of matter. As I set out in my paper, it literally costs you money to do legal aid. The rate at the moment is \$120 an hour. That is a big improvement on the rate of \$60 an hour when I started, but your overheads are going to be over \$100 an hour for doing these cases. They only pay for the time you are in court. You have to apply for approval if you want to prepare the case. The rate itself is inadequate, and they do not actually pay for anything outside that. A lot of it is done for the love of the job and wanting to help.

**Ms LEE RHIANNON:** Does that mean there are a lot of people around who are just not getting legal representation?

**Mr O'RIAIN:** I think a lot of people are giving up, particularly on workers compensation. A young bloke this morning was saying he wanted to give up because it was going to be hard. But, say, if you are on workers compensation and your payments are being slow in coming, whatever, what always seems to go in hand with injuries are things like depression, and depression is like you might as well have your hands tied and your mouth taped shut sometimes. Unless you have got a spouse or a partner who is a really good advocate, who is good at getting on the phone—and remember, because it is all now through the workers compensation commission and through WorkCover it has all got to be done in Sydney, you do not have any local access, you have got to have somebody who is prepared to be on the phone, press the buttons, hang on, wait, wait, wait, and do that all the time and keep on making a nuisance of themselves.

I could tell you about the one where the fellow got the pig's head slammed between his shoulders: I have done \$5,000 worth of work on that file trying to get him back on his benefits and I am not going to get paid for it, as well as \$1,200 for a medical report. I paid for the medical report because I thought it was going to be a doddle, and it should have been a doddle because nobody says he is a fraud. Yes, I think people are missing out on legal representation because they are ringing up and saying, "Do you do legal aid?" And people are saying, "No, we don't".

**CHAIR:** I seem to recognise something of Atticus Finch there. I wish you well.

**Mr O'RIAIN:** Thank you for listening to me and I wish you the best.

**CHAIR:** Keep going.

**(The witness withdrew)**

**GEOFFREY JOHN POTTER**, Partner, Commins Hendriks Solicitors, P.O. Box 25, Wagga Wagga, sworn and examined:

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

**Mr POTTER:** As a private individual and on behalf of the firm with whom I am a partner, Commins Hendriks.

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

**Mr POTTER:** Yes, I am.

**CHAIR:** Is there something you would like to say this morning by way of general comment and then we can ask you some questions?

**Mr POTTER:** Firstly, I would like to apologise for the lateness in my submission being received in written form. I would like to thank the Committee for receiving that submission and for the opportunity for me to give evidence today. I regard this Committee's inquiry as a very important examination of the nature and effect of the changes to personal injury law in New South Wales and it is appreciated that the Committee is prepared to sit in Wagga to take evidence. Obviously it is important that the effect of this legislation on rural and regional communities and the impact of it on community events, activities and community groups are fundamental to this Committee's terms of reference.

In examining the operation and outcome of the legislative changes that have occurred, I have in my submission endeavoured to illustrate in a very practical way the effect that the legislative changes have had on the community generally and also on injured persons whom I represent on a regular basis. It is also necessary to examine the effect on the sectors of the community associated with those types of matters which involve compensation to persons who are injured in a variety of ways. It is my view that the examination of the impact and effect of the legislative changes must go beyond an assessment of whether the budget is balanced.

The impact of these changes extends to the lives of many members of our community. On an increasing basis we see in our community a user-pays society and any system which is in place needs to reflect this situation to a certain extent. For this reason I believe it is important to understand, for example, that in the event that an injured person does receive compensation, there exists a charge upon any payment to them to repay monies paid by the community in respect of that person to date of finalisation of the claim. In particular, I am referring to the obligation to repay Medicare and the obligation to repay Centrelink. So there is a positive obligation on people who do receive compensation to reimburse the public purse.

In the event that no claim is possible, obviously these payments remain a burden on the community at large. Further, in the event that an injured person is unable to bring a claim, then the only safety mechanism that the community provides is the general welfare system and, thus, a burden on the taxpaying community as a whole. The thrust of my submission is an acceptance of the deficiencies in the pre-1999 system. However, there is in the submission a rejection of the need for the wholesale changes which were sought and obtained by the insurance industry for the reasons set out. I believe these reasons are based on a grass-roots knowledge and understanding of the various compensation systems which have existed over the past 25 years and the needs of injured persons of all kinds and in all circumstances whom I have face-to-face contact with on a daily basis.

Living and working in a country environment such as Wagga provides a legal practitioner with exposure to a wide variety of work and situations. Further, it imposes on a legal practitioner an obligation to participate in and be involved in community organisations of various kinds, and creates an awareness and understanding of the impact upon such organisations of things like the so-called insurance crisis. The legal profession always labours under the criticism that opposition to changes in personal injury legislation which have occurred since 1999 and before are solely motivated by self-interest. Obviously, there is an element of self-interest in any of those sorts of arguments. However, in my opinion, it is the legal profession who are in the best position to understand the wants and needs of

persons injured through negligent acts in our community, and for that reason it is the legal profession that needs to be a voice representing those injured persons when clear injustice and inequality exists, as is set out in my submission.

In particular, I have brought before the Committee three case studies which clearly indicate difficulties facing injured persons as a consequence of the legislative changes. These case studies are not fictitious, and each of the persons referred to in those case studies is before the Committee today sitting behind me. The Committee can put a face to the names referred to in the submission and see the impact that the legislative changes under review has had on them and the real effect it has had on their lives and the needs of real people who have regarded this issue so seriously to have travelled up to 150 kilometres to Wagga today to attend before the Committee.

My submission points out, and I believe that it is clear, that there has been an overreaction to the so-called insurance crisis and there needs to be an adjustment in the various pieces of legislation which currently affect and determine the lives and futures of injured persons in New South Wales. In this regard you will see that I have broadly adopted the recommendations of the Law Society of New South Wales in respect of those changes. I trust that the matters raised in my submission might give the Committee a country perspective on the matter which is the subject of this inquiry in a way which illustrates the flaws in the arguments which generated the reviews, without consultation, which commenced in 1999. I would also hope that the case studies illustrate clearly some of the most significant deficiencies that exist.

The other thing I wish to emphasise is that these various schemes are having a huge impact on the lives of individuals, some of whom, as I have indicated, are before the Committee today. There needs to be a review of the extent to which these people's rights have been affected by changes that were made in a frenzied fashion and which were made without consultation with the community at large and which affect many interest groups. I say this particularly given that there is no real evidence, in my opinion, and in my personal involvement in the community, that there has not been any positive reduction in insurance premiums. What we have seen is a reduction in the rights of people to make claims, but no counterbalancing savings to the community. They are the opening comments I wish to make.

**CHAIR:** You say in your recommendations that as a result of a survey, 92 per cent of community groups had experienced rises in premiums or perhaps no change at all. Have you got any comments about what has this resulted in when many of those community organisations might have been just struggling to exist?

**Mr POTTER:** I think there have been a variety of reactions to that issue. One has been an acceptance by a lot of community groups that they do need to have insurance and they have engaged in fundraising, part of which I have been involved in, to ensure that they have the funds to adequately obtain appropriate cover so that their activities can continue. The second thing that I have noticed quite frequently is that there has been an amalgamation of a lot of community groups with larger parent organisations who have had the benefit of being able to obtain more cost-effective insurance and there has been an umbrella-type effect because of that.

There are few voluntary committees or associations in this area that I am aware of who have ceased to operate because of changes. They have done what people in the country tend to do best, they have found a way to deal with it and they have got on with things. I think that the newspaper reports about the inability to obtain insurance in the early days when the so-called insurance crisis was on foot were exaggerated, to my mind, because those groups that came to need assistance, we were able to, I think in all but one case, obtain appropriate cover at a reasonable cost for them through referring them to brokers with particular expertise.

**CHAIR:** So you do some mediating on their behalf?

**Mr POTTER:** Yes.

**Ms LEE RHIANNON:** With some of the people with the case studies, and from your experience, what is the big obstacle to these people getting their lives back on track? Because what we have heard from some of the earlier evidence is that people who are in similar situations to what you

have outlined are continually chasing up benefits and because they do not get that lump sum that they are never able to move on with their lives or it is much harder. Is that the experience that you and your clients are finding?

**Mr POTTER:** I think there are probably two answers to that question. I think what you say is perfectly correct in terms of people having difficulty dealing with insurance companies on a day-to-day basis. Generally, without any ill reflection on them, a lot of the people who are the subject of workers compensation claims are not well-educated people; they do not know how to argue with claims officers in an insurance company and they are locked into a system which means that they have to justify everything they do to an insurance company. The change that occurs in circumstances where they have access to a lump sum is that they take control of their own future; they can get on with their lives; they can pay out the mortgage; they can know that they have got somewhere to live; they do not have to worry about the insurance company cutting them off; they are in a finite position. They feel they can get on with their lives and, more importantly, that they have control of their lives.

**Ms LEE RHIANNON:** Would you perceive that as being the biggest downside with the changes in the legislation—the obstacle that people like your clients are facing?

**Mr POTTER:** I think that is one of the obstacles. I would not say it is the biggest or the only obstacle.

**Ms LEE RHIANNON:** Could you outline the others?

**Mr POTTER:** The difficulty that arises in obtaining compensation for non-economic loss or pain and suffering is very significant and there are examples set out in the case studies of people who are very severely affected by an injury and are left with restricted access to compensation, which restricts their ability to do the things that they need to do. Probably the most unfair situation is in the workers compensation area where, if a worker brings a common law claim, they are asked to forgo the benefits that they would otherwise be entitled to for continuing medical treatment, for domestic assistance and for things like prosthetic aids, wheelchairs, wheelchair replacement—those sorts of things. It creates a huge disincentive for them to do that.

As lawyers we have to say them to them, "Look, it might not being your interest to bring this claim. You might do better to stay on the drip system which confines you but at least it means you have some access to the absolute essentials." But it does not give them the account access to the ability to take control of their lives again. I keep coming back to that. That probably emerges as the most significant practical problem that we see injured persons have: They cannot take control of their lives.

**Ms LEE RHIANNON:** With the vagaries that we hear that people are up against when they have to deal with insurance companies, is that a common experience that you are seeing yourself? Do you find that people sometimes stop chasing insurance companies?

**Mr POTTER:** Absolutely. Not only is it a common problem I see myself, it is a common problem I have myself because very often people do not have the capacity or the means. Telephone bills from the country alone, STD calls to Sydney when you might be left on the phone for 45 minutes, are prohibitive so we often step in and try to play that role, which is something for which we are never paid, but we adopt that role because otherwise that person or their family is without any source of income, for example, for the next two weeks or a month because a medical certificate has not turned up, or something of that kind. They have a real difficulty in doing that, so very often they need somebody who can step in and communicate the issue and the problem, and try to get some understandable response from the insurer.

**Ms LEE RHIANNON:** To what degree can you quantify those sorts of problems out of the cases that you have—workers compensation cases where you have such problems with insurance companies? Is it the norm?

**Mr POTTER:** I would say it is the norm. Rarely is there a case—I am not saying that it is the norm with every case every day, but my experience is that during the conduct of a case at some stage, there will be a problem. With some cases, it is a problem every two weeks. With some cases it



might only be a problem twice in two years. But it is the norm. There tends to be a pattern in my experience where, for the first period of a claim, insurance companies are easy to get along with. They are hopeful that an injured person will get back to work and get on with things. When or if it becomes apparent that that may not happen, that is when the screws are turned and things are tightened up, and payments may be withheld, and a stricter application of what is required might be engaged in.

**Ms LEE RHIANNON:** You also spoke, as did the previous solicitor, about often doing work you are not paid for. How common is that? Again, can you give some sort of estimate?

**Mr POTTER:** I think in country communities, it is very common. I do not think there would be any solicitor in Wagga that does not do a considerable amount of unpaid work. It goes with the territory. It is very common.

**Ms LEE RHIANNON:** And more common in workers compensation cases? Could you make an estimate like that, or is that too hard?

**Mr POTTER:** Probably. You could probably say that it is exaggerated in workers compensation cases because the fees that are ultimately paid are at a very reduced level in any event. But I would not say that it is more common to those. It is part of the job if you live in a rural community. If you do not get a call in the office, you run into the person walking across the street and invariably you get stopped and are asked a question.

**The Hon. ROBYN PARKER:** The public sense at the time that these changes came into being was that there were people not taking responsibility for their lives and their own actions and getting big payouts, millions of dollars in some cases, and living a life of luxury, some of them being malingerers, and there was less publicity about those who genuinely injured. Have you found that the changes to the legislation have changed the type of claim that you are seeing now, the type of injury or the person coming to you?

**Mr POTTER:** Generally, I think not. I do not think that situation, fully understood, ever existed. I do not think there has been any change in the nature of injured people that we see because, as I said, that situation just did not exist. I conceded in the submission that I made that I have no doubt there is an occasional claim which might be fraudulent. There is an occasional claim that might be exaggerated, but they are very rare. My argument is: Do not take away the entitlements of those people who are genuinely entitled to compensation because of the odd claim that might fall through the net.

**The Hon. ROBYN PARKER:** Also in your submission you mentioned the American Medical Association guidelines and your issues with those. What sorts of guidelines would you prefer to see other than those guidelines?

**Mr POTTER:** I think the guidelines set out in the Civil Liability Act, which involves an assessment of the individual person as compared to a most serious case, is a real guideline; it is a subjective guideline; it deals with the person with all of the components of that person taken into account. As I said in the submission, when I suggest to people that their entitlement to any sort of compensation will be determined under the American Medical Association guidelines, you can be certain that they have never heard of them, and as I also state in my submission, when they were first introduced many doctors—I guess I can talk about both Sydney and Wagga in relation to doctors—many of them were unfamiliar with the guidelines. They knew they existed, but if you examine the intricacies that have to be involved in an accurate assessment that can be maintained under the American Medical Association guidelines, it is very difficult, very time consuming and very hard work. It is a much more objective assessment and it does not into account that the person being assessed might be a slaughterman at the local abattoirs as opposed to a businessman work working in Elizabeth Street in Sydney.

**The Hon. IAN WEST:** In trying to assess that intricate balance, which I assume needs continual tinkering, between cost effectiveness, however one might define that, and the wish to put somebody in their pre-injury position, what would you see as, say, a floor, a starting point, in trying to come to grips with that delicate balance? Would you see the Civil Liability Act as a starting point, as a floor from which one might start to try to come to grips with that balance?

**Mr POTTER:** I think it would be true to say that the Civil Liability Act, while it might have its own inadequacies, provides a suitable starting point. I think there are two other things that are relevant to that question. They are these: There was a reaction, prior to the introduction of this legislation, from the judiciary to community pressures concerning these sorts of cases. Before the introduction of the Civil Liability Act and the other pieces of legislation, things were much tighter, much more difficult, and verdicts were on the slide. They were on the way down. There is no doubt about that. That is why I say in my submission that a lot of injured persons have been subjected to a double whammy. They have the judiciary on the one hand tightening things up, then they have the legislative changes tightening things up further. They really copped it both ways, but I think that while the Civil Liability Act is not the perfect solution, I think it has a part to play in moving forward with a system that is acceptable to both the community at large and the insurance industry.

**CHAIR:** Mr Potter, would you like to invite any of your witnesses to come up and tell us their story?

**Mr POTTER:** Certainly.

**The Hon. RICK COLLESS:** Before we do that, I have a general question. There is still concern among the community, and can I use the case of the person who jumped into a sandbar on Bondi beach. It is something that probably could have happened to any one of us, as we jump in and out of the surf at different times during holidays, particularly persons who are not used to normally swimming in the surf. In your opinion, why should that person not take responsibility for his or her own actions? There are plenty of cases where these things happen. Do you have any thoughts about that, about where we draw the line on where compensation should be paid liberally and perhaps not so liberally in other cases, due to the person's own negligence?

**Mr POTTER:** I think I do not have an extensive knowledge of that case, but the knowledge that I have of it is this. The argument that that injured person had was that he went in to the surf in a spot that was defined by two flags. It was a narrowly defined area and it was said on behalf of the governing organisation "That is a spot which is safe for you to surf in today." Now it is a popular beach. There are a lot of people there, and that particular injured person took the view that if the relevant authorities said that that is a safe place to go and swim, then it could be assumed that that was a safe place to swim. This was not a beach that was unmanned or not a popular beach and that sort of thing.

On the face of it, if it was a beach halfway down the South Coast that had five people on it, I could understand the difficulty people have with saying, "There is no any obligation to that person", and there would not be any obligation on that person under the law at any time over the last 25 years. But in that particular case, people were invited to swim, as it were, in that particular area because it was a defined area that was said to be safe. Now if the local authority says that it is safe and it has not carried out appropriate investigations to determine that it is safe, and it is a member of your family that is injured because of that, that is why these people come to seek legal advice because they say, "Look, we were told that was safe". If they are told nothing, I do not have a problem with that. If they are told nothing, there is no claim.

**CHAIR:** I think you have made the point quite clearly. Could you call the first of your witnesses?

**Mr POTTER:** Certainly.

**CHAIR:** Sir, may I say that we are giving you the option; you do not have to do this.

**MICHAEL LOGAN**, 116 Broadway, Junee, sworn and examined:

**CHAIR:** What is your occupation?

**Mr LOGAN:** I am an owner-operator. I own a café in a small town just out of Wagga Wagga.

**CHAIR:** Are you speaking here as a witness on your own behalf?

**Mr LOGAN:** Yes.

**CHAIR:** Would you like to tell us your story, briefly?

**Mr LOGAN:** I think it was in 1986 I caught an airborne virus called Q fever. Over the years, the Q fever has eaten a hole in my heart. I had to have a valve replacement, and it has basically turned my life upside down. I now cannot do anything with my children, I cannot do a real lot outside, and my life is not looking too good for the future. That is an outline.

**CHAIR:** Thank you. Does any member have a question for the witness?

**The Hon. IAN WEST:** Perhaps Mr Potter could give us some outline of the judicial process.

**Mr POTTER:** If I could say this. The reason I thought Michael's would be an interesting case study is that he is in the workers compensation system. It has been recommended that within the next five years or so he will have to go onto a heart transplant list. His workers compensation payments, which are the weekly payments that we talked about before, are not sufficient for him to maintain his current business. He cannot work in the business; he has to employ substitute labour. He says: I ought be entitled to bring a claim for a lump sum.

The difficulty he faces is this: If he does claim a lump sum—and I should indicate that he is one person who would satisfy the workers compensation threshold—he forgoes his right to medical treatment and faces the huge expense involved in a heart transplant in years to come and the costs associated with that. So he is faced with this dilemma: Do I lose my business now and go into some rented accommodation and try to support my family as best I can, or do I save my business now and try to ensure that the family has some income and forgo my right to medical treatment? Tragic though it is to say, he is well aware that if he does not have the medical treatment foreshadowed, that is, a heart transplant in due course, he will die.

**CHAIR:** And the medical treatment might cost him \$200,000.

**Mr POTTER:** Precisely.

**CHAIR:** That, sir, is not a very good choice.

**Mr LOGAN:** No, it is not.

**The Hon. RICK COLLESS:** I fully appreciate Mr Logan's situation from his brief statement and also what we read in the submission. In his case, as I see it, it is black and white: he should be eligible for a lump sum payout. It was through no fault of his own, but through his daily employment, that he incurred this injury. That is substantially different, is it not, from the situation where someone through his own negligence causes himself some injury?

**Mr POTTER:** Yes, it is different. But he is in a situation where, because the injury was not caused by his negligence, he has an entitlement.

**The Hon. RICK COLLESS:** I do not question that.

**Mr POTTER:** No. I understand the question is: Had the injury occurred through his own negligence, he would be left with the workers compensation system. But, as he sits here, he says, "This was not caused by my fault."

**The Hon. RICK COLLESS:** That is right.

**The Hon. ERIC ROOZENDAAL:** If he seeks a lump sum, does that take into account future medical expenses?

**Mr POTTER:** No. The only lump sum benefit he is entitled to is in relation to future economic loss.

**The Hon. ERIC ROOZENDAAL:** Only for future economic loss?

**Mr POTTER:** Yes.

**The Hon. IAN WEST:** That is if he goes down the common law route?

**Mr POTTER:** Yes.

**The Hon. ROBYN PARKER:** What is the comparison with what he might have achieved previously?

**Mr POTTER:** Previously, he would have satisfied the necessary threshold, and there would have been allowance in a common law claim for his future medical treatment; he would not have been asked to forgo that.

**The Hon. ROBYN PARKER:** Plus a lump sum?

**Mr POTTER:** Yes.

**The Hon. IAN WEST:** Could I put a hypothetical question to you, Mr Potter? If you cannot answer it, you will say so, obviously. If Mr Logan was covered under the civil liability legislation, what would be the situation?

**Mr POTTER:** The situation would be that, under the Civil Liability Act, he would receive a lump sum, and he would receive future medical treatment.

**CHAIR:** A medical benefit?

**Mr POTTER:** Yes.

**CHAIR:** Thank you, Mr Logan. We appreciate your being with us here today and telling us your story.

**(Mr Logan withdrew)**

**CHAIR:** Mr Potter, is there someone else you would like to ask to give evidence?

**Mr POTTER:** I am in your hands, Mr Chairman.

**CHAIR:** We are making time. These folk have travelled a long way, and if they wish to say something then we would be happy for them to do so.

**Mr POTTER:** Thank you.

**JOHN SYDNEY NAPIER,** Farmer, sworn and examined:

**CHAIR:** Mr Napier, what was your occupation?

**Mr NAPIER:** Farmer.

**CHAIR:** You do not have to give your address. Would you like to tell us your story? I assume, Mr Potter, this is case study 2.

**Mr NAPIER:** It is.

**CHAIR:** Please tell us your story?

**Mr NAPIER:** On 19 July 1997 I was operating a post-hole digger when my jacket got tangled on the power take off shaft that operators on the tractor. That severed both of my arms. I was transferred to Wagga Wagga, and they put my arms back on. Then I went to Melbourne for 11-odd weeks. I lost the other arm, after an infection, some weeks later. All up, I spent about 16 weeks in hospital, then had rehabilitation at home. Today, I am still dependent on my wife, et cetera, because I lost two-thirds of my upper arm, which had to be replaced by other muscles from my body, and it does not function very well.

**CHAIR:** Is there anything you can do around your property at all?

**Mr NAPIER:** I manage to do some things, just to keep busy and stop me going mad, I guess.

**CHAIR:** It is an accident that has impacted on not only you but your wife and family?

**Mr NAPIER:** Yes.

**The Hon. RICK COLLESS:** Mr Napier, when the accident occurred did the PTO have a safety cover on the revolving shaft?

**Mr NAPIER:** No.

**The Hon. RICK COLLESS:** It was unguarded?

**Mr NAPIER:** Unguarded.

**The Hon. RICK COLLESS:** Did you realise the potential danger of that? Had anyone warned you about the potential dangers of using unguarded PTOs?

**Mr NAPIER:** It was our neighbour's unit. If I recall correctly, it was manufactured before that sort of rule came into being.

**The Hon. RICK COLLESS:** I have to say that I have one exactly the same and it has an unguarded shaft. It is one of those things I have been intending to do, to throw that old shaft away and get one with a proper guard on it. I understand that a lot of farm equipment still has that sort of unguarded mechanism. You of all people would now realise how dangerous it is.

**Mr NAPIER:** Yes.

**Ms LEE RHIANNON:** Do you get fortnightly payments? What is the arrangement with the insurance company?

**Mr NAPIER:** I settled. I got a lump sum. I bought a few assets and put the rest in superannuation and have organised myself to be paid a wage.

**Ms LEE RHIANNON:** You would have heard the stories of how hard it is to get that full payment. Do you have a preference?

**Mr NAPIER:** It is not having to deal with the insurance company all the time. I listened to what John was saying earlier about how hard the case officers can make your life sometimes. It is just incredibly hard.

**Ms LEE RHIANNON:** Did you experience that?

**Mr NAPIER:** Several times, but particularly in the six months before I went to court. I got the distinct feeling that they wanted me to be as broke as possible before we got to the court door.

**Ms LEE RHIANNON:** Broke financially?

**Mr NAPIER:** Broke financially, yes. I could get a new case officer and they would stop your payments all of a sudden because they would say they do not know whether your circumstances had changed. They are not going to change. It was just of silly things. It was very emotionally draining.

**Ms LEE RHIANNON:** So, by the time you got to court, you were feeling quite drained from the whole process, were you?

**Mr NAPIER:** Yes. I was pretty emotional, I guess. Whenever you spoke to them on the phone you were always made feel that you were some sort of criminal. I did understand that they had a job of making money, and it was only their job, but it was very difficult.

**Ms LEE RHIANNON:** When you got the final lump sum payment, was that a shift in your life? Could you then move on? How was it for you and your family?

**Mr NAPIER:** It took probably six months to settle into a new life. It was like: What do I do now? I had a few good investment advisers and stuff like that. But you do feel you are in control of your own life.

**The Hon. IAN WEST:** Mr Potter, in regard to the legal dichotomy that you face when advising Mr Napier now as to his choice of one of the two options that are set out in your submission—whether or not to accept the \$800,000 or \$900,000 lump sum or remain in the workers compensation system—how do you approach the position of what advice you would give?

**Mr POTTER:** The determining factor would be the amount of future treatment required and the amount of future care required.

**The Hon. IAN WEST:** If there were ongoing medicals, and you made some hypothetical assessment of what they may be into the future, it may be that staying on workers compensation could be the better choice, but there is the thought of not knowing whether or not you have picked the right box until some time further down the track.

**Mr POTTER:** I think that is fair to say.

**Mr NAPIER:** Could I interrupt just to say this, it is not a hypothetical guesstimate as to what the future medicals would be. It is always good to try and determine as accurately as possible what that treatment will be and what the cost of that treatment will be.

**The Hon. IAN WEST:** However, there is no doubt there is an element of guesstimate involved in it, albeit on some fairly concrete assessment?

**Mr POTTER:** Yes.

**The Hon. IAN WEST:** And if Mr Napier were to be assessed under the civil liability legislation, what would be the situation?

**Mr POTTER:** His situation would be much closer to the result that he achieved. It would not be quite as good a result as the result he achieved, but it would be much closer than the result he would achieve if assessed under the current system.

**The Hon. IAN WEST:** The current common law system?

**Mr POTTER:** Yes.

**CHAIR:** I propose we go on to our third witness. Mr Napier, we wish you and your wife and family all the best in what has been an extremely traumatic experience for you. Thank you for being with us.

**(Mr Napier withdrew)**

**RAYMOND DARYL WILKINS, sworn and examined:**

**CHAIR:** Mr Wilkins, there is no need to give your address. Would you like to tell us your story?

**Mr WILKINS:** My son was killed at a rail level crossing at Gerogery around about 4½ years ago. My wife and I were having a lot of trouble coming to terms with the loss of our only son and with the evidence we had to go through at the coroner's inquest it came out that the level crossing was not sufficiently safe—the proper safeties were not implemented at the crossing and the road alignment to the crossing was incorrect. We were having a lot of, I suppose, mental thoughts about what actually happened at the crossing in the accident. I had actually worked for State Rail in the Countrylink division at the travel centre here at the railway station and subsequently I can't go back to work. But, in the meantime, I have worked for them for 33 years and I have not had one person call to see how I am going.

**CHAIR:** We remember the accident and we were all shocked at the time.

**Mr WILKINS:** Shocked wasn't the word; I would say devastation is more to the point. It took us eight hours to find out that it was our son, and coping with it was unbelievable. We had no help from virtually the support system that State Rail has. Being a manager I had to read all the personal procedures and what has to be done to deal with staff and the legal side of things, but I have not had one person from occupational health and safety approach me to give me a settlement or anything to do with my pay. I have been using all my sick leave, which, over 33 years of service, I have had a fair bit of accumulation there. But that runs out at the end of this week and still I have had no person ring me or ask me how can they help me. And I can't go back to work.

**CHAIR:** I think we are all appalled at that situation.

**The Hon. RICK COLLESS:** Absolutely appalled.

**The Hon. ROBYN PARKER:** I think we are all a bit speechless. I was just going to ask Mr Potter if there is an assessment that has to be on a percentage basis, that is a difficulty, is it not, with psychological trauma?

**Mr POTTER:** That is certainly right. The difficulty is, when you look at Mr Wilkins and the effect that this tragic accident has had on the lives of himself, his wife and his family, he does not meet the threshold.

**The Hon. ROBYN PARKER:** What is the threshold determined at?

**Mr POTTER:** Ten per cent.

**The Hon. RICK COLLESS:** Is there no process to determine psychological trauma as a percentage of function?

**Mr POTTER:** Yes, there is. It is in its own separate segment, but you must exceed the 10 per cent whole person impairment. It all comes back to the whole person impairment guideline: you must exceed the 10 per cent.

**The Hon. RICK COLLESS:** But whole person impairment, it is easy enough to see how that has affected the previous two witnesses you brought forward in terms of their physical capabilities and so on, but how do they determine that from a psychological traumatic perspective?

**Mr POTTER:** Just an assessment of the nature and extent of the psychiatric disorder.

**CHAIR:** My understanding is that that psychological impairment is only a small percentage of the total percentage of impairment, which would cover other aspects, and because Mr Wilkins does not have the other aspects, even though he may have total psychological impairment it is still under the 10 per cent threshold.

**Mr POTTER:** I do not think that is entirely correct. I think largely that is correct, but there are two points to be made: one is that the psychological threshold has to be met in the way that it is assessed under the guidelines.

**CHAIR:** And Mr Wilkins would have reached that aspect?

**Mr POTTER:** No. That is the point of my submission. Mr Wilkins does not make 10 per cent. My question in the submission is, who does?

**Ms LEE RHIANNON:** Mr Potter, what is the next stage for Mr Wilkins? Can you tell us what you are expecting to happen?

**Mr POTTER:** In terms of Mr Wilkins?

**Ms LEE RHIANNON:** Yes.

**Mr POTTER:** He has a couple of options open to him. One has involved the finalisation of his claim under the Motor Accidents Act, which totally excludes any benefits for non-economic loss or pain and suffering. That has been dealt with. We now have to try and deal with the remainder of his situation with his employer, which we are just commencing to deal with now. I cannot tell you in detail what that is going to lead to because I do not have all the material yet.

**CHAIR:** And in the meantime any benefits that he may have will be used up in the near, near future?

**Mr POTTER:** Because he has no ongoing entitlements, yes.

**Ms LEE RHIANNON:** What benefits are available? Does somebody just draw on their savings or rely on their family?

**Mr POTTER:** In his case he has been fortunate because he has had some other resources to call on and he has had this huge bank of sick leave, holiday leave and long service leave, which he has been using. But for most people the only recourse is to go to Centrelink and to go from a responsible well-paid job down to the basic Centrelink benefit and to try and meet the family commitments from that.

**CHAIR:** Mr Wilkins, we are appalled at the treatment that you have received, and regardless of whom your employer may have been, this resounds in the most wicked way against them. I do wish you well for your future and we will be looking at legislation covering these matters. I hope your situation never occurs with anybody again. Mr Potter, is there a final word you wish to say?

**Mr POTTER:** Not unless I can assist the Committee any further. I am grateful for the opportunity, thank you.

**CHAIR:** We are grateful for you and for each of the witnesses. Thank you for being present.

**(The witnesses withdrew)**

**(Short adjournment)**



**TIMOTHY JAMES ABBOTT**, Solicitor, Wagga Wagga sworn and examined:

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

**Mr ABBOTT:** I am.

**CHAIR:** Would you like to make an opening statement?

**Mr ABBOTT:** I do not want to be repetitive of what Mr Potter said, but I wish to make one little comment on his presentation. I am not quite sure whether you are aware that the Waterfall train crash victims were, for political expediency, given an exception to the 10 per cent rule under the Motor Accidents Compensation Act. That means that those victims are now able to obtain damages for psychological injury because they fall within the provisions of the Civil Liability Act. So it seems that the Government can, when it chooses, exempt some people from the onerous provisions of the Act and not others. You might not be aware that trains are defined as motor vehicles in the Motor Accidents Compensation Act. That is why those victims would have fallen within its provisions.

I have given some examples of the problems that are associated with both the 10 per cent rule under the Motor Accidents Compensation Act and the 15 per cent rule under the workers compensation legislation. You should be aware that actually it is not like equals like because the 15 per cent whole person impairment under the workers compensation legislation is far more draconian a barrier, not only by reason of the extra percentage but because the assessments are done under the fifth edition of the American evaluation of impairment guidelines, which is more draconian. So 15 per cent for instance might equate to 20 per cent under the motor vehicle legislation.

It is impossible in my view, almost impossible, for any seriously injured person under the workers compensation legislation to get any decent lump sum money. They are the people who are most affected by the tort reform process. In my practice, I would have something in the past like 20 to 30 common law cases for injured workers during the course of any one calendar year. Since 27 November 2001, I have had one work damages injury claim. That is the totality of anybody who has got a lump sum for work-related injury. Of course, if you think about the problems for workers they are exposed to all sorts of unsafe systems and practices that are imposed upon them by the system of work that is set by their employers. So they are in a peculiar situation in terms of being susceptible to injury, yet they for some reason have coped the worst of this so-called tort reform.

Is it not incredible that the Government passes legislation to say, for instance, "How dare prisoners receive compensation pursuant to the Civil Liability Act?", so we change it to the 15 per cent whole person impairment. In other words prisoners have the same rights as employees under the State legislation. Can you understand how ridiculous all this must sound to the average person, the average lawyer? Why is it that we except or give exceptions to some people because of political expediency? Why is it for instance that we pick on workers and give them the most raw deal? Why do we say that prisoners have the same rights as workers? Anyway, I wanted to not move away necessarily from the matters that you have already heard, and will hear more about in terms of what the Law Society and others have done in their submission, but I wanted particularly to deal with this other matter that I see so often in the country, that is, the ripping off by insurance companies of small non-profit and other charitable organisations by charging them premiums for insurance that they do not need to have, and for which there may be no insurable interest.

I see that what has happened here is that the insurers have conned the legislators and perhaps the judiciary into making all these draconian changes that affect people's rights, but on the other hand they go around and sell insurance policies to people who do not need them and should not have them and probably do not have anything that they can insure against. I think one of the things that must come out of this inquiry is the behaviour by the insurance industry in all of this that has been despicable. That is all I want to say as an opening statement.

**The Hon. RICK COLLESS:** Could you confirm what you just stated about the Waterfall victims being exempt from the 10 per cent rule?

**Mr ABBOTT:** Yes.

**The Hon. RICK COLLESS:** Does that include psychological trauma as well as physical trauma?

**Mr ABBOTT:** Absolutely. They come within the provisions of the Civil Liability Act, which means that they only have to beat that threshold set at 15 per cent of a serious case. Do not be confused about the use of that word 15 per cent in two areas: 15 per cent in work-related accidents means whole person impairment, according to the guidelines; 15 per cent under the Civil Liability Act means 15 per cent of a serious case, which is a very beatable hurdle or beatable threshold. Obviously you will not get any money under the Civil Liability Act if you have a few scratches and bruises and perhaps a little whiplash. The legislation was designed to cut out those small claims. In the case of the gentleman earlier whose son was killed in the Gerogery train accident, he would clearly get money under the Civil Liability Act for psychological injury. Those people who saw plenty of blood and gore and were terribly traumatised by the Waterfall accident, having been on the scene or having seen things, would be compensated under the Civil Liability Act.

**The Hon. RICK COLLESS:** Are you aware of any of those people who were not involved in the accident but witnessed it or were there helping?

**Mr ABBOTT:** I do not know any myself because I practise in the bush, but through my city friends I know that there are plenty of claims being brought for psychological trauma. The solicitors who are acting have been made to sign a secrecy or confidentiality agreement that they do not disclose to the press or even this inquiry the fact that their clients have some special exemption.

**The Hon. RICK COLLESS:** By whom were they asked to sign those confidentiality agreements?

**Mr ABBOTT:** By the rail authority. Of course, this is not the first time this has happened. It happened in respect of the other rail accident that happened a few years earlier at Glenbrook.

**Ms LEE RHIANNON:** You are saying Waterfall and Glenbrook: Are there any others?

**Mr ABBOTT:** They are the only two I know about but I suppose the precedent has been set that every time there is a major accident—for instance, let us assume that a Government bus goes off the road tomorrow and there is a litany of injuries. Are we going to see the Urban Transit Authority say, "Okay, because it is all over the front page of the paper, you will get an exemption here because we do not want anyone running around saying you will not get any compensation."

**Ms LEE RHIANNON:** Can I clarify that? Do you say that they deal with them under the Civil Liability Act rather than under the motor accidents legislation? That is what you are saying?

**Mr ABBOTT:** Yes, that is right.

**Ms LEE RHIANNON:** Whereas you are saying it should be under motor accidents?

**Mr ABBOTT:** That is right.

**Ms LEE RHIANNON:** Because that is how that form of transport is defined?

**Mr ABBOTT:** Yes, it is defined as a motor vehicle.

**The Hon. ROBYN PARKER:** I do not want to take you away from that, but I wish to mention the other comments you made about not-for-profit organisations getting insurance and being encouraged to be insured. I read your submission but this morning we had a number of such groups in to present to us. One group runs a market out of a small hall on market days, another group runs a little railway system, and various other groups run community activities. In your view, would those sorts of groups need to have public liability insurance?

**Mr ABBOTT:** No, provided they are not for profit and charitable, they can incorporate under the Associations Corporation Act and the Government removes the requirement for them to have public liability insurance either to come within the provisions of that Act or to renew their incorporation annually. Let us take one of my examples, the Yerong Creek Tennis Club. They have absolutely nothing—a \$2 cash tin. They were being flogged a \$400 public liability premium before they telephoned me. I said, "You do not have to have it. Why would you? You have no assets. No-one can be sued because you have the protection of the corporate veil. Why on earth would you have it?" There was another group that was being flogged directors' liabilities. Can you think of a more ridiculous than the suggestion of a charitable organisation that has no creditors, no debtors, no shareholders, nothing but a few dollars in the tin, owing a fiduciary duty to anyone? It is ridiculous.

**The Hon. ROBYN PARKER:** So they are companies, you mean, limited by guarantee?

**Mr ABBOTT:** No, just go back a step. You may recall in the old days when committees for the time being used to organise events. Committees for the time being was a loose association and they exposed themselves to being sued individually. The Government in its wisdom in 1984 brought in legislation which enabled all the not-for-profit organisations such as little sporting bodies to incorporate to come under a corporate veil to get the protection so they could not, as directors or members, be sued, only the incorporated entity could be sued. When it was brought in, the legislation required public liability, either incorporated or to renew your incorporation annually. The Government quietly removed that regulation so that you do not have to have public liability, why would you. But what I am saying is that the insurers are still going round to all these organisations and flogging policies to them.

**The Hon. ROBYN PARKER:** But as members of that incorporated entity, are they not shareholders and therefore are they not liable?

**Mr ABBOTT:** No. Take an example—

**The Hon. ROBYN PARKER:** No-one has explained that to these groups, clearly.

**Mr ABBOTT:** Let us look at the wider picture. Let us say you are BHP and you are a public company. In limited circumstances, a director might be able to be sued for a breach of fiduciary duty. You have seen that example with HIH, et cetera. Basically the corporate veil, that is the company, is the legal entity, is the person that only can be sued. So we get incorporation for small not-for-profit organisations. It is the legal entity. It is the only thing that can be sued. So if you have nothing to protect in terms of an asset in it, why would you have any insurance? I will give another example. The Lake Albert Soccer Club came to see me and they were being flogged an insurance policy. I said, "Do you have any assets?" They said, "The only asset we have is \$2,000 worth of bits and pieces, lollies, et cetera, in our kiosk, but because it has been broken into twice, they will not give us any insurance", yet they were being flogged directors' liability, products liability, professional indemnity and god knows what for the princely sum of about \$1,500. It is a huge amount of money. What for? Why?

You ought to remember that, even before civil liability came in and all but removed the rights to sue of people who are involved in sport, these sorts of claims were not brought anyway. I have practised for 25 years, and I have had a very busy and substantial personal injury practice until all this happened, and in all that time I have never sued a sporting organisation because of some negligent act on the sporting field. It was as rare as hen's teeth for those sorts of claims to have been brought before the legislation was amended, and now it is impossible. Who could bring a claim anyway? So what insurable interest is there?

**CHAIR:** Albeit, in your knowledge, these local not-for-profit groups have been forced to limit their activities because they cannot afford insurance—insurance that they do not need?

**Mr ABBOTT:** I think there is not enough knowledge out there that these organisations can still continue to operate by incorporating.

**CHAIR:** But it does cost them money to become incorporated.

**Mr ABBOTT:** I think it is fair to say that it is a pro bono thing: all country lawyers do that for nothing. Of course, there is a filing fee, but if any sporting body comes to me or our firm, and I am sure to John Potter's firm, and says, "We need to be incorporated, can you do it for us," there is never a fee; it is what you buy it off the shelf for, and it is a few hundred dollars. It is not a big deal. So they incorporate and they do not pay public liability and they can get on with their activities.

**The Hon. IAN WEST:** If I was trying to do a balance sheet and ensure cost effectiveness, whatever that may mean, probably returning somebody to their pre-injury position, would I be far off the mark if I was to say that the Civil Liability Act would be a starting point?

**Mr ABBOTT:** I think so. I heard Mr Potter's comments, and I would agree with those. I suppose there would be some resistance to that, because that is the best place to be if you are an injured person who can sue for negligence. On the scale of things, of course, the injured person gets most benefits under that Act, you get the least benefits if you are a worker, and the middle ground is for the motor vehicle accident victim. There are, of course, three tiers of compensation now, and there is much to be said for having the one common denominator. Certainly, from the injured persons' perspective, they would be much better off having their matter dealt with under the Civil Liability Act.

**The Hon. IAN WEST:** However, if I were to do that, would it not cause the sky to cave in and civilisation as we know to cease, with cost effectiveness being such that you could not really afford it?

**Mr ABBOTT:** I do not think that is so. But, then, you will appreciate that this draconian and bureaucratic Motor Accidents Assessment Service that the Government has set up does not provide the practitioners, the Law Society, Australian Lions and others with the figures on what it is costing to run. You could imagine, for instance, a situation where doctors are being paid to assess people for their whole person impairment, then there are review panels set up when people are not happy, and so three doctors have to respond. Then there are re-applications because they are not happy with the review panel, so some other doctor is paid to do an assessment. I mean, how much is this system costing? It must be a fortune.

Then we have the same problem with the Workers Compensation Commission, presided over by Mr Justice Sheahan. He has arbitrators that he is paying thousand of dollars a day, their doctors and medical assessment people who have to determine the degree of impairment of workers. We do not have the figures for the alternative dispute resolution procedure and services. We do not know what it is all costing. But it seems to me it would be a lot of money. I think the old system of using court facilities, subject to some obvious changes that need to be made at times to trim the systems and get them closer to reality, is much preferable to the system that we have now. I could leave the Committee with this book, which I bought to present to the Committee so that members can look at it at some stage when they need a bit of light reading! That is the red book called *Guide to the Evaluation of Permanent Impairment, Fourth Edition*. By the way, the preface says that the book shall never be used to measure disability—which is exactly what it is being used for. In my other hand is the white book, the Motor Accidents Guidelines, which are to be superimposed on those of the red book. I will leave those with you. I have highlighted a couple of sections.

**CHAIR:** You may be able to use that yourself in future.

**Mr ABBOTT:** I have a copy of it.

**CHAIR:** We have the red book online; it is a published document.

**Mr ABBOTT:** It is very complicated trying to work out whether people come within or without these guidelines.

**CHAIR:** Or even to understand them.

**Mr ABBOTT:** That too is very difficult. Doctors do not understand them. That is pretty clear, because I can get an assessment from one doctor of 10 per cent, another from a doctor who says 15 per cent, and another from a doctor who says 5 per cent; and I could send them off to the Motor

Accidents Assessment Service and they could come back with 6 or 7 per cent. In fact, we have had assessments that range from 5 to 30 per cent.

**CHAIR:** Are doctors known to be favourable in their assessment under the guidelines?

**Mr ABBOTT:** Absolutely. There is not a doubt about that. I will give you an example. In Wagga Wagga, if you are a victim with a bone injury that you need an orthopaedic surgeon to assess, there are only two accredited orthopaedic surgeons to assess a lot of people. Both of those doctors—and I am not being critical of them—could be called very conservative in terms of their assessments. So you know you are on a downer for starters, because you know you will get either doctor A or doctor B, both of whom would not be your pick if you were a plaintiff's solicitor and trying to organise a medico-legal appointment. These are doctors that are utilised by the insurance industry. So that is the starting point for practitioners down here. So do not break your arm, because those two doctors are the ones that are going to look at you!

**CHAIR:** Meanwhile, hypothetically, if there were a more favourable doctor at say Albury, you would probably send your client to Albury?

**Mr ABBOTT:** No, because the Medical Assessment Service sends your clients to the doctors on their panel, and the only two in Wagga Wagga are the two I mentioned. I would not call them biased.

**The Hon. IAN WEST:** There are only two medical specialists whose assessments are binding?

**Mr ABBOTT:** That is right.

**The Hon. IAN WEST:** So, it does not matter whom you would pick as a doctor, the approved medical specialist is appointed to assess your client?

**Mr ABBOTT:** That is right. Of course, we have our own medico-legal practitioner that our clients go to, but they do not take much notice of their opinions. They make up their own mind. I am not saying these two doctors are biased; they are conservative. But there are biased doctors in the system. There is absolutely no doubt about that. As soon as you draw them you think, "Oh, no! That's the end of this. I've got no ghost of a show of my client getting assessed high enough."

**The Hon. RICK COLLESS:** Are you not acting in the best interests of your client—as you should be at all times? And, are there are also doctors that are biased the other way—but not here in Wagga Wagga, obviously?

**Mr ABBOTT:** Not in Wagga Wagga. There is one plastic surgeon whose reports seem to be very good for a plaintiff, and if you draw him in a scar case you are almost a moral to get over the 10 per cent.

**CHAIR:** Because there is only one such practitioner around, I think we ought to limit our comments about that, for your own sake, sir.

**Mr ABBOTT:** It is just such a very unfair system, because you cannot test them. Under the common law process you could get the doctor into the witness box and cross-examine him and say, "You did not take into account the fact that he has leg pain," or, "You say he has no radiology in his back and therefore he is 5 per cent, rather than 13 per cent, if he is a back case," or, "Why haven't you taken account of the nerve root problem in the left leg? Why have you not mentioned that?" You can cross-examine the medical practitioner on things like that. But under the current system you have no way of testing what the medical practitioners say. There is a review system, but you have to show that technically they have made some mistake in applying these guidelines, and that is not so easy. They can slip them in somewhere and deal with those matters in their reasons.

I did not bring my client along, but one of the clients has a very severe ankle injury, with plenty of nuts and bolts and other metal in her ankle, such that she has severe degeneration in her ankle joint, a condition that will only get worse, and I think she got to about 8 per cent. She is not an

old woman. An ankle injury is a shocking injury. Every time you put your foot down it hurts, and you walk with a limp, and you cannot play any sport, and your physical fitness goes, and you put on weight, and your whole life is a misery. I think it is appalling that she did not get to 10 per cent.

**The Hon. ROBYN PARKER:** How did she injure the ankle?

**Mr ABBOTT:** She was in a motor vehicle accident. Obviously, she was a passenger and someone else was negligent, because there was no issue of liability. She had a pretty severe injury to her ankle, which required bolting and the insertion of a lot of metal and serious surgery, and now she has an ankle that is very degenerated right into the arthritic surfaces of the ankle joint, and it is only going to get worse according to all the doctors, including the medical assessor. But she does not make the threshold for non-economic loss.

**The Hon. ROBYN PARKER:** In your view, how could we best fix the system so that those sorts of people are compensated fairly?

**Mr ABBOTT:** I think Mr West's idea of bringing the Civil Liability Act across and applying it across the board would be the fairest approach. It is not fair to have three different systems, with some people receiving more compensation for the same injuries incurred through someone else's fault. That is simply highlighted by the Government exempting the Water Board people. That obviously recognises that the system is not fair. The Civil Liability Act at least brings back reasonable compensation, or some compensation—a lot more than we currently have, particularly for workers.

**CHAIR:** Is there a better system that could lead to mediation of these matters outside the court?

**Mr ABBOTT:** Yes. And there is no doubt that that is happening worldwide. Justice Jim Wood recently returned from America, where he was shown a \$20 million courthouse that was built to meet the so-called explosion in litigation that would take place over there, and the courthouse has hardly been used because everyone now mediates. So there is no doubt that compulsory mediation is one way of trying to resolve claims before they get to court. There are plenty of ways in which the current court system can be improved further. They have now brought in the uniform Evidence Act, meaning all jurisdictions will have the same forms and same procedures.

I think some trimmings could still be done in some areas of damages, for instance, in the area of domestic assistance. There are some rorts there. The legal profession has said for years that there are rorts there that ought to be addressed. The trouble is that because everyone says that we as lawyers have a vested interest in the system no-one wants to listen to us. It is a bit like saying that a funeral director, who has a vested interest in people dying, wants to talk about problems in the industry; or a doctor who is dealing with sick patients is not allowed to talk about sick patients. We are the only ones that can tell you where the problems are and what can be improved. The fact that we have a vested interest in the whole thing is not to the point, I do not believe.

**CHAIR:** That is why we are listening, sir.

**The Hon. ROBYN PARKER:** You said there are some rorts in the domestic assistance scheme. What are they?

**Mr ABBOTT:** There is a case called *Griffiths v Kerkemeyer* which enables you to obtain commercial rates for domestic assistance that is provided voluntarily by others.

**CHAIR:** How much is a mother worth?

**Mr ABBOTT:** Exactly. It has been trimmed in the sense that if you do not need the assistance for more than six hours a week, you do not get it at all. But there are many instances where you can argue for a couple of hours a week into the future, and some assessors and judges might give you ten hours a week, and it can, and does, add up to a lot of money. Where there is a genuine need for domestic handyman assistance, that is, if you are very seriously injured, then you ought to get it. But in some lesser cases I think there is some frauding, and some trimmings there could save a lot of money. That has been said by most lawyers forever, but it has never been taken on board.

**The Hon. IAN WEST:** Mr Abbott, you would not suggest that *Griffiths v Kerkemeyer* would apply to other than paraplegics and quadraplegics and people in a position where you are really assessing an assessor, would you?

**Mr ABBOTT:** My view is that it should not apply unless you are very seriously injured, but it does now apply.

**The Hon. IAN WEST:** Are you suggesting that now there are cases where *Griffiths v Kerkemeyer* applies in excessive damages?

**Mr ABBOTT:** Yes. Obviously, it does not apply for workers, because they only sue for economic loss. But you put them out of the picture because you say they have no common law rights, really. But Civil Liability Act claimants are entitled to claim under *Griffiths v Kerkemeyer*, provided they can show they need domestic assistance for more than six hours a week, and for more than six months.

**The Hon. IAN WEST:** To show that, what would you have to have as an injury?

**Mr ABBOTT:** You might get someone who has got a back injury, perhaps they do not even have surgery and they complain that they cannot do all their domestic things and they convince someone that they might need eight hours a week, in which case they get 20 bucks an hour until their life expectancy takes them off this planet. That might be, for a 30-year-old, 54 years or something. So it can add up to a fair bit of money. I am not saying the tort is there all the time, because obviously a lot of judges and others are very watchful of granting damages for that head of damage, but it is an area where you can do some thinking about. This is the sort of area where you could do some thinking to trim some damages.

**The Hon. IAN WEST:** But you are not suggesting for one moment that Griffith v Kerkemeyer is a head of damage that is a tort?

**Mr ABBOTT:** No, certainly not. Take a paraplegic where the wife has to do anything and everything. Why should she not be able to claim for her cost of doing that?

**CHAIR:** It is basically a replacement cost, is it not?

**Mr ABBOTT:** Exactly. The alternative is she goes and pays someone to do it and then it is claimable, which would cost everyone a lot more money because commercial costs are a lot more than the hourly rates that are allowed under the respective legislation. I think they allow about 19 bucks an hour for voluntary domestic assistance; the commercial cost might be 25 or 30.

**The Hon. IAN WEST:** I can think of some cases where Griffith v Kerkemeyer has been a lifesaver.

**Mr ABBOTT:** Oh yes, you probably misheard what I was trying to say. There are relatively minor injuries where people are getting it, and that is what I am trying to say, and there could be some trimming.

**Ms LEE RHIANNON:** Just going back to Waterfall, and I understand they have put them under different legislation, but are you also saying that they have interpreted their injuries in a way that gets them above the 15 per cent?

**Mr ABBOTT:** The 15 per cent is confusing because you are hearing that in two contexts: you are hearing it for a worker who has to pass that whole person impairment barrier, that is, the fifth edition of this book, to get any money at all—to even be able to sue.

**Ms LEE RHIANNON:** When they go under civil liability—

**Mr ABBOTT:** Civil liability is 15 per cent of the most serious case, and there is a scale. I think you do not get any money for about the first 20 grand. It is a bit like an excess under an

insurance policy. So to pick 15 per cent for psychological injury under the Civil Liability Act is easy. That gentleman here, I would have thought he would qualify for something like 35 or 40 per cent. And Mr Wilkins, that would give him about \$120,000 under the Civil Liability Act, where he gets nothing under the motor vehicle legislation.

**CHAIR:** Mr Abbott has brought Mr Davis with him. Mrs Davis, if you would like to come down too you are welcome.

**MATTHEW DAVIS,** and

**SUE DAVIS,** sworn and examined:

**CHAIR:** There is no need for you to give your address. Mr Davis, we do have the outline of your story. Mr Abbott, would you like to lead off?

**Mr ABBOTT:** Matthew, could you just tell us how long you were in hospital?

**Mr DAVIS:** Around two months.

**Mr ABBOTT:** What are the problems that you now have with your leg, other than the scarring?

**Mr DAVIS:** I get a fair bit of pain around the plate and there is a loss of muscle damage and muscle deterioration, and it is fairly weak.

**Mr ABBOTT:** Are you able to participate in any sports?

**Mr DAVIS:** I do participate in some sports but it is sports that do not involve a lot of running or physical endurance by the legs.

**Mr ABBOTT:** Are you very embarrassed by the scarring on your legs?

**Mr DAVIS:** I would be lying to say I am not. Yes, I am very embarrassed, I should say.

**Mr ABBOTT:** Sue, could I ask you how devastating this injury has been on Matt?

**Mrs DAVIS:** Yes, very devastating. It has changed Matt's life. He will never be the same again.

**Mr ABBOTT:** Could you just tell us in what ways it has changed his life?

**Mrs DAVIS:** Prior to the accident Matt was very heavily into scouts and all that type of thing and he had achieved his green cord in Scouts and was trying to go for his Queen's Scouts and then he was going to go for the Duke of Edinburgh award. Since the accident that just cannot happen any more. His pop was a squadron leader in the air force so Matt's dream was to be a pilot. Hence, that is why he was up in Albury doing work experience at the airport. Because of this accident that dream has been squashed from that. We have got a farm and Matt helps on the farm, but there are things that he cannot do easily, like jump on the ute, and all that type of thing, any more.

**Mr ABBOTT:** Can you tell us what effect it has had on his education?

**Mrs DAVIS:** Yes, that kind of squashed his education. He tried very hard when he got around to going back to school, which was quite some time, but he just could not catch up. The school was prepared to turn a blind eye to his failing that year, but Matt just felt like he did not want to pursue school; it was too hard for him.

**Mr DAVIS:** Could I just say, I was a 15-year-old at the time of the bus crash and it was during work experience for the school. I did miss six months of year 10, which is the start of your high school certificate. In my opinion, when you start getting into high school—and that was where it was starting to count for me—to miss six months at that time and going back on crutches—as the school is



two storeys a lot of my classes are upstairs and they also had to accommodate classes downstairs but you have kids saying really ridiculous things that sort of do not help after you have just been in an accident.

**CHAIR:** I realise that there were four people killed in that bus. Were there other people injured who, like you, have had to, say for example, walk on crutches or who have been permanently invalidated in some way or another?

**Mr DAVIS:** I only know of three people that were able to walk straightaway from the crash, and they were at the back of the bus. So, yeah, a lot of people were sort of disabled.

**CHAIR:** Mr Abbott, the insurance company is still denying liability on this matter?

**Mr ABBOTT:** Yes, they are.

**CHAIR:** And Matt, under the guidelines, has been found at 8 per cent?

**Mr ABBOTT:** That is true.

**Mrs DAVIS:** Can I just say, we have been to lots of doctors and had lots of assessments and when we first went to a doctor in Wagga Matt was up over 22 per cent whole body impairment, but when it came to MAAS now he is down to 8 per cent.

**Ms LEE RHIANNON:** Could you just say how that happened? He is assessed by one doctor at 22 per cent and then another doctor at 8 per cent. Is there something that happens in between?

**Mrs DAVIS:** There were different doctors. There was the orthopaedic surgeon, the doctor that assessed his scarring, all that type of thing, they gave him 22 per cent. Because the insurance company's doctors were less—this is the solicitor's doctors—and might I say the orthopaedic surgeon that Matt was assessed by was one of the top orthopaedic surgeons in Sydney; he is too old to operate and that is his work now, he assesses—they gave Matt 22 per cent. Then, because they cannot agree he went to MAAS. One doctor was here in Wagga and one was in Canberra. The outcome was 8 per cent. I just find it unbelievable. We are all told that we have to have insurance. Before Matt did work experience we signed insurance forms with the school and all that type of thing. Matt goes on a public bus that you think you he would be covered for and you find out there is no insurance.

**The Hon. RICK COLLESS:** Mr Abbott, when you say the insurance company still has not admitted liability, which insurance company are we talking about? Not the company itself, but is it the motor vehicle insurer?

**Mr ABBOTT:** It is the CDP insurer, yes. Because it arises out of the use of a major vehicle it must be the CDP insurer that is the defendant.

**The Hon. RICK COLLESS:** But how can they possibly not admit liability when there is an accident where four young people are killed and a number of others are seriously injured?

**Mr ABBOTT:** The bus driver had suffered an epileptic fit so they are arguing that it falls within that category of so-called inevitable accident. You may recall that badly burnt girl at the Balgowlah school; that was the argument being raised there, and I think the Government is doing something about that. The same argument is being run here. But the difficulty they have got is that there was plenty of evidence to say the bus driver ought not to have been driving the bus, that this was not an isolated incident. So, in my view, he will win his case on liability. I do not think that is ultimately going to be a hurdle; the big hurdle is what is he going to get.

**The Hon. IAN WEST:** Mr Abbott, can you explain for us the importance of the decision as to accepting liability for negligence under the motor accidents scheme?

**Mr ABBOTT:** Once they issue a notice under section 81 of the Act, which they are required to do, they then accept full liability for past and ongoing medical, rehabilitation and other services. In other words, those things have to be paid as you go. So Matthew would not have had, unless his

parents—well, Matt's parents would have had to have met all the expenses to date—he would not have had the benefit of rehabilitation that others might have were there to have been an admission of liability. That could be very important for someone like Matt who has obviously had his education messed up and now faces a vocational hurdle: "What am I going to do? Where do I go from here?" Things like psychological counselling might have been available to him and paid for. Physiotherapy does not come under Medicare and it does not come under your private health fund. So even things like that he would have had the benefit of had they admitted liability, either provisionally or otherwise, and paid the bills.

**The Hon. IAN WEST:** So if they succeed in having the situation where there is no fault on the part of the driver, there is no claim?

**Mr ABBOTT:** No claim.

**Mrs DAVIS:** It is an act of God.

**Mr DAVIS:** Can I just say, at the time, as a 15-year-old I saw three people die and I saw a lot of people injured. It sort of gives you scarring, a psychological defect, and I wasn't assessed by that, it was by scars and by broken bones.

**Mr ABBOTT:** You are probably aware that you cannot add a percentage for psychological trauma to the other percentages. If you be 10 per cent wholly for psychological injury you will get there, but if you say you are 5 per cent for psychological you cannot add that to your orthopaedic and your scarring, disfigurement case.

**Mrs DAVIS:** Can I just add to that too that when you go to the MAAS doctors, I just find that their compassion level is not very high at all. You are just another person; you just want money. Like, "Show me your scar. Show me this", and then out the door. It wasn't, "Matt, what did you experience?" or, "How did that affect you?" There was none of that. You almost feel like you are the criminal and you are trying to prove—

**CHAIR:** There is an assumption that you are trying to cheat the system.

**Mrs DAVIS:** That is right. And Matt legitimately was hurt bad.

**CHAIR:** There is no question about that. We all understand that and agree with it and we feel extremely touched by what you have had to say, Sue.

**The Hon. RICK COLLESS:** Could I just ask another question of Mr Abbott in relation to this? Just going back to this cumulative effect, the fact that the psychological trauma cannot be accumulated to the others. Let us assume that Matt had a very bad leg injury and he had lost an arm, in that situation those two become cumulative?

**Mr ABBOTT:** Absolutely.

**The Hon. RICK COLLESS:** But when he suffers a psychological trauma that is not cumulative?

**Mr ABBOTT:** It is not quite as simple as that. Let us say, for instance, that he had 5 per cent whole person impairment for an arm and 5 per cent whole person impairment for a leg. You do not say that is 10 per cent, because there is a combined value. That table is at the end of your red book. If you added 5 per cent and 5 per cent you get 8 per cent or 9 per cent; or something like that. It is true that you cannot add psychological trauma to it. If he beats 10 per cent solely for psychological trauma he gets there, but whatever his psychological status is, if it is under 10 per cent it is irrelevant.

**The Hon. RICK COLLESS:** He could have 8 per cent for his arm and 10 per cent for his leg.

**The Hon. ROBYN PARKER:** What are your plans for the future?

**Mr DAVIS:** I do not have any plans. I took up tertiary education in some field that I was not really interested in. I tried to grab an interest in it. I need to look at something ahead that I can do for a living. It is hard when you lose everything you grew up with and knew about and wished to do and then you just cannot do it. It makes it hard to get on track.

**Mrs DAVIS:** He did do a multimedia course, page designing and that type of thing.

**The Hon. ROBYN PARKER:** My question is not entirely related to this inquiry but to bus accidents. Has there been any assessment on what damage would have been caused if there had been seat belts on the bus? Would that have made a difference?

**Mr ABBOTT:** No.

**Mrs DAVIS:** They have not had the Coroner's inquest yet. That is on 4 and 5 July. About 12 months ago they sent us a letter saying that the Coroner had found that there was overwhelming evidence that the bus driver had had an epileptic fit, but they have now found new evidence so there will be a Coroner's inquest. But the mini-bus hit the tree at 100 or more kilometres an hour. When Greg hit, his foot went flat down so they went straight for the tree. The impact was so great that all the seats sheared off the floor. So up in the front of the bus you can imagine there were people, seats, people and seats.

The lady who was very kind and who stayed with Matt said that the people underneath were just going absolutely crazy because they were trying to get people off the top. Matt tried to get up and, of course, his leg was snapped in two so he just fell down again. Matt was one of the first people they took off the bus because he was near the door. When they took him out they could not take him very far because he was bleeding so badly. Kerry said that he was kicked and stood on and all that type of thing while they were trying to get people off. None of what Matt went through has been brought into it anywhere at all.

**CHAIR:** Thank you for coming. Matt, we wish you well in the rest of what has to yet unfold for you. We realise that you are still paying huge emotional and psychological costs. We wish you well in the future.

**(The witnesses withdrew)**

**(The Committee adjourned at 4.18 p.m.)**