REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE NO 1

FORUM ON THE NSW WORKERS COMPENSATION SCHEME

—

At Sydney on Friday, 15 March 2002

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PRESENT

The Hon. F. J. Nile (Chair)

The Hon. M. J. Gallacher
The Hon. A. B. Kelly
The Hon. H. S. Tsang
Sir Laurence Street (Facilitator)

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CHAIR: Ladies and gentlemen, I give you a very warm welcome to our forum and thank you very much for attending and for giving us your very valuable time. We appreciate that. Before we begin, I need to outline a few procedural announcements. I ask that you please turn off any mobile phones while in the Jubilee Room. I think all of us know how irritating that can be. Delegates, members and staff are advised that any messages should be delivered through the attendant on duty or through the Committtee secretariat, who are easily identified by their red name tags.

I welcome delegates, members of the public and media to the General Purpose Standing Committee No. 1 Forum into the NSW workers compensation Scheme "The way forward on Scheme ownership and design". Delegates have been invited to participate by the Committee and I anticipate that their knowledge and expertise of workers compensation in New South Wales will result in a very productive day's discussion.

Special thanks go to Sir Laurence Street, who brings a wealth of experience to his role as facilitator. Sir Laurence, we thank you very much for sharing in this forum and for the time you have spent in assisting with the preparation for the forum as well.

To assist in focussing the forum, a number of key areas for further consideration have been identified. These include: the role of insurers in the administration and management of the scheme; claims management; the premium rating model; financial accountability; early reporting of claims; and information technology.

The forum takes place as part of the Committee's Inquiry into the review and monitoring of the New South Wales workers compensation Scheme. To date the Committee has tabled two interim reports as part of its inquiry. The purpose of the first interim report was to set the scene for the Committee's inquiry. To that end, the Committee endeavoured to ascertain the views of a broad range of stakeholders on areas of importance to the Committee's inquiry.

Our second interim report, tabled earlier this year, idendified a lack of stakeholder ownership over the scheme as a primary problem inherent in the New South Wales scheme's design. It is believed that this lack of ownership and control by stakeholders is impacting adversely on most aspects of the scheme's design, including claims management, compliance and return to work rates. The Committee looked at workers compensation schemes in other jurisdictions for ideas on means by which stakeholder ownership could be improved. The dangers inherent in comparing different jurisdictions, because of cultural, historical, environmental and structural differences, was one of the reasons that this forum was organised.

The Committee is presently preparing its third interim report, which is due to be tabled on 17 April this year. This report will focus on elements of scheme management, including injury prevention, claims management and the relationship between WorkCover and insurers. Our third interim report will also outline a number of options for future reforms of the scheme which will form the basis for the Committee's recommendations, to be contained in the Committee's final report that we propose to table on 3 September this year. This forum is an important part of this process, particularly with respect to developing options and hopefully recommendations for Parliament. The Committee welcomes feedback on any of the options contained within its third interim report.

The backdrop to the inquiry is a decade of deterioration in the scheme's financial position. The Government has introduced significant reforms over the past year in an attempt to redress the scheme's financial problems. The full effects of these reforms will not be evident for some time. The Government remains committed to a third phase of reform to deal with further scheme design issues. Forums such as this one provide stakeholders with an opportunity to have an input into those reforms.

So again I thank you, ladies and gentlemen, for your attendance here today. I would like to hand over now to Sir Laurence Street. I am sure all of you know Sir Laurence, but I would like to put on the record some of his background in this area.

Since leaving the public offices of the Chief Justice and Lieutenant Governor of New South Wales, Sir Laurence Street has become Australia's foremost commercial mediator. He has conducted over one thousand successful mediations principally in the field of major commercial disputes. His activities since retirement include three years as Chairman of John Fairfax Holdings Limited and two years as President of the International Law Association London, of which he is currently a life Vice President. He also has wide experience in workers compensation and is very conversant with this field, for which we are grateful. It is my pleasure now to hand over to Sir Laurence. Will you give him a welcome.

Sir Laurence STREET: Thank you, Mr Chairman, and ladies and gentlemen. My role this morning is to facilitate the presentations and then the dialogue this afternoon. The way in which the forum has been structured is set out in the booklet, but I will briefly just touch on the main concept.

This morning is going to be devoted to individual presentations from those who have been good enough to accept the invitations from the Committee, and those presentations will occupy about ten minutes or thereabouts. Any written material that a delegate may wish to provide will be welcomed, as I understand it, by the Committee.

After we have had this morning's presentations, which I would ask you to allow to proceed without interruption, we will break for lunch and then this afternoon in a closed session with the delegates and the Committee there will be a free flowing dialogue for about a couple of hours, from about two to four, while ideas are thrown around.

The dialogue can be a cross dialogue amongst delegates. It will be essentially focussed however on matters which will assist the Committee to prepare a report of what are seen to be the significant issues, and what may be the options to be looked at.

I have been particularly gratified to play a part because I believe that the whole worker's compensation field is an essential element of our social structure. It is recognised throughout the world that all civilised countries have some form of worker's compensation legislation. It is a very difficult field. The economics of it are appalling, I should say frightening, but the Auditor-General will be speaking to us about that. The problem of how societies fund these schemes is very difficult, and it is one which affects all of us.

As I see it, this is not a partisan political process, it is a process in which we should draw together the varying points of view so our Parliament can enact legislation which will meet this social requirement.

Today's forum is significant in being able to draw upon the views and the wisdom that are present amongst the delegates.

I will fulfill the unpopular role of timekeeper. There is a sequence of speakers listed on page 6 of our little booklet, and we will follow that sequence through. We will break at about 10.30 am for a cup of coffee and resume at 11 am, and then we will break at 12.30 pm for lunch. I repeat, this afternoon's session will be a closed session with the delegates and the Committee members for a dialogue.

I will introduce each delegate very briefly in inviting him or her to speak, and then I will give a little bell - I will probably tap a cup – at about nine minutes to indicate the time is running down. There is a little bit of leeway slippage, but if we could try, ladies and gentlemen, to keep to the 10 minute concept we will be sure to cover the whole field before the lunch break.

So without more ado I will introduce our first speaker, Miss McKenzie. There is a bio note for Miss McKenzie on page 11. She is the General Manager of WorkCover NSW and of course is a professional in the field. I won't read the bio note out, it is there, and it is an impressive basis upon which she will found her views. I will pass over to Miss McKenzie.

Ms MCKENZIE: Thanks very much, Sir Laurence, and good morning everybody. It is a pleasure to be here for what we are hoping will be a very constructive discussion about the scheme in New South Wales. I will begin by doing a little bit of scene setting for the day, going back to the origins of the 1987 scheme, which is the current scheme in New South Wales.

It was established in 1987 to provide immediate assistance to injured workers without having to prove that someone was at fault. Since the mid 1990s claim numbers in the scheme have been falling but there have been increases in costs. Even though claim numbers are falling, injured workers are staying off work for longer. This development has coincided with extensive delays in the system, increasing levels of litigation and dispute and an increased focus on lump sum compensation. These trends have led to large increases in costs since the early 1990s and to the current not very satisfactory financial state of the scheme. Since 1991 premiums have been insufficient to meet scheme costs and since 1996 premiums have been capped at the relatively high rate of 2.8 per cent, including GST, but even at this rate the amount of premium the scheme has collected has not been sufficient to cover the costs of the scheme. The shortfall has led to a deficit estimated at $2.76 billion as at June 2001.

In the face of this, obviously action was required. The scheme was not delivering the kind of outcomes that a well designed scheme should produce. Whilst 1998 reforms attempted to produce some better outcomes in injury management, it is looking like that has not been sufficient to turn the scheme around and there are still significant problems.

In June 2000 the Special Minister of State announced the Government's plan for fixing these problems and for delivering a fair, affordable and efficient scheme. The key reforms complement the recent OHS initiative, and I think it is always very important to bear in mind the importance of the occupational health and safety side of this debate and the contribution that employer attention to occupational health and safety can make to the improvement in the rates of injury to workers and therefore to the financial health of the scheme, a point that is often forgotten unfortunately.

The main key directions were: identification of further measures to increase the focus on injury management and early return to work; review of dispute resolution processes and structures and improved dispute prevention measures; development and implementation of medical treatment protocols; development of market incentives to reduce workplace injuries and encourage insurer and employer participation in injury management and early return to work programs; development of strategies to meet scheme participants' need for accurate and timely information, enabling them to fulfill their obligations; also additional measures to control professional fees and ensure the scheme and its participants were getting good value for money; development of mechanisms to gradually remove existing cross-subsidies within the premium rates; assessment of the use of industry-based schemes and self-insurance to achieve better outcomes; and development of strategies to target compliance. As you can see, it is quite a comprehensive list of potential reforms to the scheme. A number of those have been progressed and are being implemented currently. A number of them still require further development in the future. In addition, the Minister also signalled the need to have new corporate governance arrangements and a review of the scheme's design.

I think other important key initiatives - and I just might run through in a bit more detail - relate to issues like premium reform. Premium reform is something that in the current round of reform we have not yet touched in any major way. The way that premiums were structured is meant to encourage employers to better understand the link between injury prevention and management and the cost of injuries. We have introduced some initiatives, such as the premium discount scheme. That offers premium discounts to employers to improve their occupational health and safety and injury management performance; a small business strategy that offers similar incentives to small employers who similarly invest in improved occupational health and safety and injury management; and we have also introduced a new industry classification system that once again addresses the cross-subsidisation issue and tries to match premium rates more closely to an industry's OHS performance or claims cost experience, including caps on increases and decreases that we introduced as part of that to try and stop too much immediate impact on premium levels.

On the dispute prevention and resolution side, there have been major activities during the course of last year. We put in place a comprehensive program aimed at preventing unnecessary arguments and enabling disputes to be resolved in a more timely and efficient way. That includes the introduction of provisional liability and streamlining claims processing and management to ensure that payments and treatment commenced in most cases within seven days; a claims assistance service that provides advice to injured workers and employers to help them to navigate the system to ensure that what are often quite small problems do not turn into major disputes just because people have nowhere to turn for information and assistance; new impairment guidelines which are aimed at ensuring consistent and fair assessment of impairment for lump sum payments, common law and compensation; and a new Workers Compensation Commission, which is providing a new integrated dispute resolution service, and hopefully will be reducing the number of disputes and hear them in a much more timely way. On most of the initiatives, it is very early days. A lot of those things commenced on 1 January, so a lot of effort from the authority's point of view will be going into this year keeping a close eye on how those initiatives are panning out.

Moving on to compliance initiatives, compliance initiatives are targeted at reducing employer non-insurance and under-insurance and decreasing fraud by claimants and service providers. On that front we have introduced new broad fraud offences with penalties up to $50,000 and/or two years imprisonment; introduced director liability for uninsured corporations who provide false or misleading information; on the spot fines for employers who do not insure; and we have also issued a compliance green paper canvassing further options for legislative change to target non-compliance, and we are reviewing the responses to that green paper at the moment with a view to hopefully, some time during the course of the year, making further recommendations on legislatively improving compliance.

Moving on to injury and medical management, initiatives are under way in this area to improve injury medical management, including injury and medical management pilots. That is a series of pilots that we have run to test not just legislative change, but other improvements that could be made to improve the medical management of the scheme. The medical management pilots are aimed at best practice treatment and we are running a program now dealing with low back injuries, which are the most frequent injuries in the scheme, trying to make sure that the treatment that people get for those sorts of injuries is best practice, and to help doctors and patients to make decisions about appropriate health care. We will be rolling out shortly an education program for GPs across New South Wales to try and make sure that we get some penetration of those best practice guidelines.

Service provider performance. Under this topic we have undertaken a number of initiatives to encourage service providers to improve their performance, including the new insurer remuneration arrangements, and John Walsh would know more detail about that than I do. This is a new package that we introduced last year to provide insurers with a better financial incentive to improve their claims management and injury management performance. We have new legal professional remuneration arrangements to give legal representatives fair and reasonable remuneration for legal work and to provide incentives for early settlement.

There is still a lot more work to do. Consolidation and review of the scheme's design is something that we are concentrating on at the moment. We have introduced a range of significant reforms over the last 18 months and I think we are forming the view at the moment that it is going to be very important to bed down those recent reforms and let the scheme stabilise before we rush off into too much major reform.

It is within that environment that today's discussion needs to occur. I would not want to think for one moment that we have done everything that needs to be done to the scheme, but I think we do have to be realistic about how much change a scheme like this can cope with at once. We would be certainly happy and grateful for interesting new ideas that might come out of today's forum, but I think we do need to take care that we do not rush off in too many different directions at once.

International and Australian studies indicate that there are some really worthwhile objectives for workers compensation schemes and I think in the papers that people have brought to the forum today there are various different descriptions that people have engaged in, but I think that

going back to fundamentals, everybody would agree that the fundamentals of these schemes are: that they prevent workplace injuries; that they ensure that when injuries occur the injured worker receives health care for maximum medical improvement or return to pre-injury health; that the scheme maximises the opportunity for an injured worker to return to full employment; and that the scheme provides injured workers with income security until they are able to return to work.

These schemes also have to recognise both economic and non-economic loss of permanently impaired workers; have to ensure that contributions to the system fully cover the cost of liability for injuries and illnesses arising out of current employment; ensure that the cost of the system to employers preserves the competitiveness of business in a competitive world market; and ensures the system achieves these goals efficiently and effectively.

An underpinning principle that we would see as very relevant to any future work in terms of scheme design is always remembering to go back to the principles of good regulation. I think we have sometimes forgotten those in the scheme, but regulatory design principles can provide quite a lot of guidance as to how we can achieve the objectives of the scheme. We should always, in developing these initiatives, try to design reforms that reduce the cost of regulation for business, while maintaining appropriate levels of community protection; that we have clarity of objectives; that we have objective analysis of the costs and benefits of any new proposals; and a demonstration that alternatives to regulation have been considered; and more attention to regulatory design with a presumption against the traditional "command and control" forms of regulation in favour of the use of economic and other commercial incentives where these are feasible and effective. These principles have underpinned what we have been doing in the last little while, particularly in relation to our relationship with insurers. In the past we have very much gone down the path of a very prescriptive model of regulating insurers and it has not really yielded the sort of results that we want from either side. I think it has had the effect of squashing innovation amongst the insurers, and because it has been so prescriptive and there has been no reward for good performance, there have not been a lot of incentives to the insurers to address the scheme outcomes that we would all like to see delivered.

Universal scheme design features, once again these are canvassed in a number of the papers that the participants have got before them today, but some of the obvious features of international and Australian scheme designs include issues related to coverage within the scheme. I think there is a range of views around the world about the benefits of social welfare type schemes as opposed to market based schemes. There is a lot of variation about service provider involvement and the various aspects of that; debates about the benefits or otherwise of national schemes versus State based schemes, and we have certainly seen some comments in the media recently on that topic; funding of the scheme and how it is funded; scheme costs and premiums; and governance.

From a New South Wales point of view not all of those areas are areas where we would see a lot of benefit and concentrated effort, and I think the areas that are of particular significance to future review of the New South Wales scheme are: scheme service provider involvement and premiums. I think further focus at the moment for us is a concentration on information technology and data management, which has been problematic for the scheme in recent years; and the role of self-insurance in the scheme.

When we talk about service provider involvement, I think in this context medical services, and their role in the scheme, there is still work to do in that area to ensure that we are always getting the best treatment for injured workers and that health outcomes are not compromised by them being caught up in the scheme. We have seen some evidence of that occur in the past. Claims management processes that incorporate managing medical services as well as claims processing and injury management and rehabilitation; just to make sure that all the systems in the scheme are getting value for the money that is being spent on those services; the management of policies, incorporating processing assessment and premium collection. Once again, I think there is some further work required on that area to ensure that there are the right incentives in place to ensure that premiums are being properly selected. Other areas for focus include the investment of premiums and conciliation and dispute resolution.

In theory, premiums are meant to serve two objectives. They are meant to cover scheme costs and provide a financial incentive for reducing the incidence, severity and duration of workplace injuries. For premiums to work effectively as a prevention mechanism, they should be closely aligned to the true risk and fully cover employer or scheme costs. Most schemes include mechanisms to ensure that there is a balance between true risk premiums and risk pooling, and I guess that is the challenge in this area, to strike that right balance between providing an incentive to reduce the incidence of injuries on the one hand and not too much volatility in the premium rates that are being charged, and on the other hand not moving too far away from the principles that the premium prices that they are paying is for real risks, so that you do not lose the capacity to have premiums provide an incentive for improved occupational health and safety performance, and further work is still required in that area I think.

Information technology and data management. We are currently launching into a major program in this area. There is a need to integrate information technology and data management systems throughout the scheme. This has become quite acute. We have got a number of strategies which we are developing at the moment to achieve this objective. Customer contact investment in new modern communication infrastructure and customer contact systems focused on customers needs, allowing easy access to WorkCover services and electronic lodgement and follow up of claims; reporting channels investment in enabling technology that supports decision-making, business intelligence and makes management information accessible. Typically this strategy involves establishing an enterprise wide data warehouse giving WorkCover analytical processing and data-mining facilities. In the recent past we have had a proliferation of data bases created inside WorkCover. We have got problems with the accuracy of those data bases and we have got problems with turning that data into useful information, and a large underpinning principle of the information technology strategy that we are just developing is trying to address that.

The third strategy is business operations, investing once again in modern integrated, administrative and business operations systems that support a single inquiry view of information stored on enterprise platforms. Turning that into English, I guess what we really mean is that we are having a fundamental look at all our business processes so that we do not end up just putting inefficient paper based systems on a computer and saying that somehow that is more efficient. We are actually going back to square one and having a look at what information we need, whether all the business processes that we have in place are still relevant and necessary, and making sure that that work happens at the same time as the development of the infrastructure plan.

Infrastructure business continuity and Gosford relocation - investment in modern technology infrastructure to support our business functions and assist in business continuity as the organisation moves to Gosford later this year. We are also replacing our insurance systems to a new central data warehouse. This is going to be a one-stop-shop of all insurer information and will involve electronic exchange of information with all insurers. We have got a big forum next week with all of the insurers in the scheme to try and advance the strategy in conjunction with the insurers.

The central data warehouse will provide management reporting at all levels and improve our capacity to monitor what is happening with the scheme. It is also able to provide portals of information for all of the stakeholders in the scheme, including insurers, arbitrators, approved medical providers and the general public. All systems will embrace the internet and allow the public access to information and to relevant workplace legislation. This is a three year plan. It is going to take some time to roll out, and once again, I think any input from this forum about what other issues we should be looking at in that context would be welcome.

Moving on to self-insurance, New South Wales employers can apply to become self-insurers and group self-insurers provided that they can demonstrate that they can meet their financial and social policy obligations. This arrangement relieves the employer of the obligation to pay insurance premiums in a managed fund; they allow the employer to carry their own underwriting risk; and they allow the employer to take control of their own claims administration, injury management and return to work programs. I guess we have taken the view in the recent past that these are arrangements that should be encouraged to the extent possible because they offer quite a lot of incentives when the employer is managing their own injured workforce.

I would say, however, that the regulation of these arrangements needs to be carefully designed to ensure that the self-insurers are financially viable and strong in order to minimise the possibility of insolvency in the future which could potentially have an adverse impact on workers; that they are covered by adequate by reinsurance arrangements that are appropriate for their workers compensation risks, and that is certainly an issue for us at the moment with problems in the international reinsurance market; that they are covered by securities that are adequate for their outstanding liabilities in the event of their insolvency; and that they are able to demonstrate that they have the capacity to undertake a Workers Compensation business, including experience in underwriting policy administration; and subject to the above, that they are able to conduct their business and operations with minimal restrictions and intrusions.

Whilst we have encouraged the self-insurance take-up in the last 18 months, I think that there is an added caution that needs to be mentioned here in that this is a long-term business. Some of these claims might not occur in 40-50 years, and out there in the business world businesses often do not last quite that long, so there is a big challenge for regulators to ensure that in allowing those arrangements to go ahead there are adequate arrangements in place to keep track of mergers and acquisitions and liquidations of these companies to ensure that the money is always there.

So in conclusion, in the above discussion I have covered some of the issues - it is difficult to be comprehensive in 10 to 15 minutes - but some of the issues which need to be considered regarding the scheme's design have been outlined.

Some features of different scheme designs both in Australia and abroad can be useful to us and provide alternatives when considering reform of the NSW scheme. We have included a brief outline of some of those arrangements in the paper that we have given to the Committee.

Care does need to be taken I think not to over simplify the issue. There is a complex interplay of issues to take into account when you are looking at things like scheme design, and to try and transport into the NSW scheme a successful feature from another jurisdiction with a different history and culture, could be problematic, often these things do not translate. You have to be looking across the border, a comprehensive set of arrangements that hang together rather than choosing a bunch of things that end up providing a completely different answer to the one you thought you would get.

And we do need to think about transitional arrangements, changes to the scheme's current design that may significantly impact upon existing rights and obligations of employers, workers and other individuals in the community. Any more major shifts in this area are going to have to be implemented in a safe and smooth fashion.

That is all I have to say. Thank you.

Sir Laurence STREET: Thank you Miss McKenzie. I should explain to delegates that we deliberately started a little early this morning in order to provide some extra time. It was felt it would be very valuable for Miss McKenzie to lay out the canvass of the whole field, so that we could have an understanding of how WorkCover recognises the various problems, so I did not enforce the time constraint on Miss McKenzie for that reason.

This morning's discussions or presentations are being recorded for Hansard, and we thought it would be valuable to have on public record the full presentation Miss McKenzie had come to present to us. So that is my explanation for having been not very firm with the time constraints there, but we still do have a little time up our sleeve, as the Chairman started earlier so we would have extra time.

I should add, ladies and gentlemen, that, if we happen to finish early by the time each delegate has made a presentation, I had in mind to go back to the first speaker to see if there are matters raised by later speakers upon which he or she might wish to comment. So if we do have some time near the end of this morning's session delegates may have an opportunity to respond to

those who have spoken after them, presenting any further thoughts.

We now move to the next speaker, Mr Howard Harrison, partner in the law firm of Carrol O'Dea, a firm which has been very prominent in the field of personal injury both in the worker's compensation field and in the common law field. Mr Harrison's brief bio note is recorded in our handbook on page 10, and I will not read it though apart from saying that he is an acknowledged expert in the profession of which he and I are both members.

Mr HOWARD HARRISON: Thank you, Mr Chairman. I welcome the opportunity to speak at this important forum. The first thing I would like to acknowledge is that as part of a comprehensive exposure to all aspects of the system, I come here I suppose wearing two hats, firstly a legal hat as a practitioner who has been very fortunate to have practiced in this important area for a number of years, and secondly as a legal practitioner who has practiced mainly on behalf of the injured workers.

I think our WorkCover scheme in New South Wales is fundamentally a very good scheme. It is an important part of the social fabric, as Sir Laurence has acknowledged. We have always had a very progressive arrangement in New South Wales so far as a no-fault scheme for the protection of injured workers, and a concurrent healthy common law system which is I suppose more of a traditional approach to legal rights and litigation, and a system which is subject to fairly substantial criticism around the world at this time.

I think the scheme that we have is definitely a better scheme for the reforms which have occurred over the last two years, and in particular I tick off the occupational health and safety initiatives which have been achieved, the injury management initiatives, the arrangements for provisional liability, many aspects of the proposed way in which the new Worker's Compensation Commission would work with the use of ADR. All these things are undoubtedly substantial improvements on top of what has historically been, notwithstanding the economic waxing and waning of the scheme, a pretty good and robust scheme which provides a good level of protection for injured workers, I think in the past closure, where that is necessary, and affordable outcomes for employers.

We certainly strongly support the government's initiatives in clamping down on advertising in terms of the trend that was seen following the introduction of arrangements allowing for legal advertising. We do not believe that the American style of ambulance chasing advertising is the way to go, and we strongly support those initiatives.

Having made those comments, I would say thought that there are some aspects of the changes, Mr Chairman, which do cause us some concern, which the first part of my paper briefly deals with as issues which this Committee should to monitor, in our respectful view.

Very quickly, just going though some of those points before we come to I suppose more relevant matters for today's forum, in relation to commutation we are concerned that it is very hard to have a healthy financial scheme if there is no mechanism for enabling insurers and workers to finalise matters so files can be put away for good, and you do not have actuaries having to cost or allow for matters which may come to life in due course, with all of the problems that kind of actuarial process can cause.

Secondly, from my own experience acting for injured workers, I am strongly of the view that in many cases injured workers do need closure with a capital C, and that can range from very serious injury cases to relatively minor cases. Philosophically I have no problem with an injured person in appropriate circumstances being given some resources and taking responsibility for their own future, shutting the door on the matter and going forward. I can think of so many cases where very seriously injured people and their families are sitting in front of me and really, from an early time, wanting to know when this business will finish, how long will it take, when can we move forward so there are no more doctors, no more letters from lawyers, no more processes.

So in relation to commutation changes we think they go too far and stop the ability to get

closure in too many circumstances, and we would be concerned that the ADR provisions which are central to the operation of the new Worker's Compensation Commission cannot work to settle or resolve cases in the way that it must to deliver the outcomes that are required, unless there is a mechanism which allows parties to settle and put the matter behind them, in other words, a mechanism for compromise.

The second concern that we have, Mr Chairman, is that the baby has been thrown out with the bath water in terms of the effective complete abolition of the Compensation Court. The court has been the subject of criticism and I understand the need, or perceived need, to look at an entire cultural change, and the establishment of a new body to run dispute resolution, and we support and will participate enthusiastically in the new Worker's Compensation Commission with the emphasis on arbitration and early settlement.

But there will still be cases which involve serious issues, legal issues, insurance complication, fraud allegations, perhaps a worker with issues under the Commonwealth scheme, under the State scheme, where in our respectful view you will need to have the more traditional, full bottle legal approach, with transcript, with counsel preparing arguments and crystallising issues.

You have to have a legal matter which can find its way to the Court of Appeal if appropriate, so that the Court of Appeal has before it a fuller range of information and evidence, and can meaningfully review and make a final determination on that matter.

We have to have a system where incorrect decision making down below can be properly exposed and corrected, so that justice is done in a particular case and so that high standards occur in relation the decision making. If we have a system where we have robust, fast decisions being made with very few rights to appeal, we would see a number of cases where that would cause micro and macro problems, and we have got some serious concerns about that.

Mr Chairman, we would suggest that the President of the Commission should have the capacity to refer on to the court, which will still exist in a limited way, matters which he judges to be ones which require a more traditional full bottle legal approach, and of course barristers are not to be a part of the new Commission. Even on appeal I think the new costs arrangements only allow for two hours of fees at $300 an hour for the most complex of matters. So barristers of course are a part of traditional court structures, including the Compensation Court, and matters which might be referred to the court would have counsel and those more traditional legal processes, with the checks and balances, and something which can then find its way through to the appeal system with a more comprehensive outcome.

As I have said, we would suggest that the President of the Commission should be the gatekeeper in respect of which matters would go through to the court in that way.

On the issue of legal costs Mr Chairman we do, as I have indicated in my paper, have some concern about the new scale, which is a fairly restrictive scale. What is not allowed for in this event based scale is not paid. Workers come to lawyers to act for them when they are in dispute with an insurance company on a no win no fee basis. The lawyer is paid if the case is successful.

The new system puts much more responsibility on to solicitors. When you start a case you have to include all of your material in the case. Any document that is not included at the outset cannot be admitted into process later on without special order. Barristers are not to be there to assist the solicitor. So if you have got a cost scale, which for example in my own practice, we do a lot of work for people in country New South Wales, there is no allowance for travel as I understand it, or time away from the office.

It is a fairly restrictive cost scale, and our concern is that insurance companies and employers will have the capacity to have internal legal departments and a very considerable degree of corporate wisdom and skill and knowledge and expertise, and that the costs scale which excludes counsel imposes a lower regime, and an inflexible regime, where if it is not there it is not recoverable even if you win, is something which we are concerned may cause inequity and injustice, having

regard to the imbalance of power between an injured worker, whether they are represented by the union or not, and a large sophisticated insurer or WorkCover.

I think that is just about the end of my comments about the legislation. Except for one final important issue, Mr Chairman, the common law arrangements. There is a new, very high, threshold of 15% which you have to overcome as an injured worker to be able to sue. You can only sue for damages for loss of income, you cannot recover damages for medical expenses or future care. The verdict or settlement will finalise all of your rights for the future, so that you have no cover through the statutory scheme.

We very seriously complain that it is not a proper use of policy to single out people who have got very serious injuries, brain damage, quadriplegia, whatever it might be that gets them over that 15%, and then say that your damages award can only include allowance for loss of income, subject to caps and ceilings and restrictions, you cannot get any compensation for future medical expenses or care, but the verdict will still see your rights under the statutory scheme closed off.

So Mr Chairman, either you have a scheme where you get a verdict for the loss of income but you still have cover under the statutory arrangements for care, medical treatment and the like, or allowance should be made in the verdict for future care, future medical treatment. We are talking about very seriously injured people in circumstances where an employer has been negligent, and we do not think it is smart or appropriate policy to select that group out and say that "if you sue you carry your own burden for the future", and a negligent employer has that responsibility shifted off them. We strongly ask the Committee to look at that issue.

Mr Chairman, in relation to governance, we need one strong body at the top of the whole system, the buck stops there. That body should have the capacity to run the WorkCover scheme as you would run an economy. We believe that WorkCover has done a terrific job in many respects but that in the long term there are too many players, there are too many Committees, there are insufficiently clear arrangements for governance, and as suggested in my paper, we would suggest that in the long term the complexity of managing the WorkCover scheme needs to be acknowledged and that you need a small robust group with significant responsibility and accountability and significant power.

In relation to ownership of the scheme Mr Chairman we feel that there is a strong case for private insurers being allowed back in to do what they do well, against a strong regulatory background, and the reasons for that position are set out in my paper. Certainly Mr Chairman in terms of the experience since 1987 we think that, in terms of the provision of capital and allowing the market to have a role, the scheme should allow for claims management aspects and other aspects to be in effect powered by private insurers who have got a substantial incentive to reduce financial outcomes, with a strong leadership group sitting at the top, taking responsibility for outcomes, and against a clear cut and strong regulatory background.

We are talking about insurers who have got significant standing, the expertise and skills to come in, get down there, who are street smart, have the capacity to settle cases, but we think that the scheme should be opened up to them to come in to do what they do well.

In summary, Mr Chairman, we think the changes made are significant, and very real improvements on the system. We have some reservations about going a bit overboard in relation to the abolition of the court completely and attempting to not have traditional court processes really at any part of the scheme. We think that will cause problems. Having said that, we totally support the use of the Commission in the bulk of relatively straightforward cases.

We have got major concerns about some of the common law changes. In respect of governance we think that the current structure is unclear. There are too many players, insufficiently clear lines of responsibility, and to some extent we are proposing a move back to the old days where the Worker's Compensation Commission not only resolved disputes but set premiums and did everything. The buck stopped there, and clearly a need for accountability to the Minister for governance.

Finally, in terms of layers of bureaucracy and replacing incentives we do believe that a good part of the scheme should be powered by private insurers, with the well known financial incentive, accredited, competent, tough, prudential and regulatory arrangements, but let them do what they do well. Let the market come back in in a controlled way, to try to short circuit some of the bureaucratic duplication that we have had since 1987, and some of the lack of ownership and responsibility which is feature, in our view, of the existing arrangements.

Sir Laurence STREET: The next speaker will address a topic of some historical interest. I recall in the old days the Workers Compensation Commission ran their own budget, and they furnished themselves with magnificent premises, all funded by the insurers and the premiums, and the rest of us in the judicial system looked on with some envy and despair at the lavishness of their lifestyle I think it is a very healthy thing that the Auditor-General and more rigid accounting policies have now been introduced, so that public accounting methods are attended to with a due degree of fiscal discipline, and I think, Mr Harrison, that last point that you made has set the stage very happily for our next speaker, Mr Bob Sendt, the Auditor-General.

Mr Sendt's brief bio note is set out on page 13 of our booklet. He has had a long career in Treasury and has been involved in a number of activities that I know will make his contribution particularly relevant. So I now invite Mr Sendt to come and speak to us.

The wisdom and experience of our Chairman in starting early has made my job very easy as timekeeper. We do have one more speaker apart from Mr Sendt before we break for morning tea. That is Dr Parry. So I will be elastic on the time between now and the morning tea break. Mr Sendt.

Mr SENDT: Thank you, Sir Laurence. Mr Chairman and members and delegates.

Enron, HIH, Ansett, dare I say New South Wales Grains Board, they are all terms that strike fear into the hearts of auditors. They appear almost daily in our media, replaced only by terrorist action and footballers' indiscretions. Now much of the media commentary on these matters, that is the corporate collapses, centres on the role of auditors, and I thought perhaps I should briefly cover what I see my role is in relation to the Parliament generally and this Committee and the forum today.

My role as Auditor-General is set in legislation and involves providing independent assurance to Parliament that Government and Government agencies are operating and accounting for their operations in a way that promotes public accountability and promotes informed discussion about their operations. That is a wider role of course than the private sector auditor, whose role is largely limited to the audit of financial statements and financial reports, but that wider role has been confirmed by recent amendments late last year by Parliament to the Auditor-General's legislation.

However, of course, there is always a limit to any role and the limit to the Auditor-General's role is that the Auditor-General and the Audit Office do not comment, positively or otherwise, on Government policy objectives or Government policy proposals. That is a common and understandable limit on the role of Auditor-Generals, otherwise the Auditor-General may be commenting on an action that maybe he or she had contributed to in terms of policy development.

I make those remarks not to be unhelpful. We welcome the opportunity to be a participant in the forum today, but I should really say that we do not comment on or propose policy changes as such. We will make observations, and I will come to some of the observations that we are making to Parliament. We will make observations on what we see as fundamental features of good scheme design, not in a detailed policy perspective, but in terms of public accountability issues, but we are constrained from going further.

What we have pointed out in recent years to Parliament in our reports is of course the changing financial position of the statutory funds. Our concerns have been both with the deteriorating financial position, but also the accountability for the scheme. I think it is acknowledged by all involved in Workers Compensation, and in this Committee, and going back to the Grellman report and many others in between, financial accountability is a very important aspect

of effective workers compensation scheme design. That lack of clarity was an issue that was reported as far as back as 1997 in the Grellman report. But that issue still remains outstanding.

The consolidated financial statements of the New South Wales Government presented to Parliament do not include the results of the scheme's operations for the year, nor its accumulated deficit, which, as you would all be aware, last June was about two and three quarter billion dollars. Because of the size of the funds, and their net financial position, and the fact that the Treasurer's Financial Report did not recognise those amounts, I have qualified my audit opinion on the Treasurer's report for the last two years. I have reported that to Parliament, as well as some of our views on why that non-recognition is a breach of accounting standards.

New South Wales Treasury in advising the Treasurer is clearly of the view that the statutory funds are not controlled by the State. My response to that is: Who does control them then? Who has financial accountability? In answering that question I think it is important to look at the substance (as auditors do) of the transactional arrangements, not merely the legal form. And I will refer to that matter later.

We also need to distinguish the concept of control of the scheme with the concept of who pays, who may ultimately pay the deficiency. One of the suggestions that has been made from time to time, which my paper addresses, is that including the scheme's results in the total State sector accounts would have an adverse effect on the State's financial standing and the perception of that standing by ratings agencies. As my paper said, I think that view is totally incorrect. From my previous role in Treasury and sitting across the table from ratings agencies year by year, I can advise you quite specifically that that understanding is false. The ratings agencies are very interested in what is happening in workers compensation, as they are in a whole range of issues with the State. They certainly take account of the WorkCover scheme, its financial results, as well as progress that has been made on changes to the scheme. They take those factors into account in determining the State's credit rating and they do question Treasury and other offices at the time of their annual visits on what is happening.

As my paper refers to, there was an article in the Financial Review last week that indicated Standard & Poor's, one of the two major rating agencies, has reconfirmed the triple-A rating for New South Wales, but did make some specific reference to concerns they had with the deficit of the scheme, but as I said, they continued to confirm the triple-A rating. What they would worry about, or worry more about, is if they saw that deficit continuing to grow, if they saw that deficit reaching the position where they saw that the risk of ultimately addressing that deficit, and ultimately it is a cost that will have to be met, if they saw that that deficit had reached such a size that it transferred the risk to the Government - and by that I mean implicitly at the moment it is a scheme that is funded by employer levies, contributions, plus investment earnings. There was a proposal to impose a levy on top of the normal insurance premium to redress that deficit. That proposal we understand is no longer current. But if they saw the deficit continuing to grow to such a point that it could no longer be wound back simply by annual surpluses over a period of time, they may form a view that there was no option but for the Government to take over the responsibility of meeting that deficit. I am not suggesting that that is the case. I am not even suggesting that we are close to that situation. That would be a subjective judgment the rating agencies would make. But that is a risk that does need to be taken into account.

We have also covered in our reports to Parliament the financial viability of the scheme. It was reported in our last report, on the June 2001 results, the last seven years accumulated deficits, the underwriting losses and the investment income. We have provided some comment on the possible causes of the losses and on scheme reforms undertaken over this time.

One of the limitations, I guess, on our ability to comment, and it is an issue that the actuaries faced in assessing the scheme's viability, is that the vast number of changes that have been made to the scheme over the past five years or so have meant that any data set is contaminated, if you like, by those continual changes. So it is very difficult to make an assessment of what the underlying long-term position of the scheme is, and I can sympathise with Dr Parry in the work that he has to

provide for Parliament later this year or next year on the scheme.

However, our reports do not include prospective assessments on the effectiveness of the reforms or other options to those reforms. As I said, they would be outside my mandate. They would also be outside our area of expertise. I feel somewhat humble today in the face of so many experts in the room, people who have an active daily involvement in the workers compensation area. We are in a sense one step removed as auditors of the WorkCover Authority, and within the WorkCover Authority reports by way of the notes to their financial statements, they are very large and they include the WorkCover schemes, the financial statements, and hence as auditors we are obliged to audit those, and like any auditor, we have to have an understanding of the client's business, but it certainly does not extend to the level of understanding that the ladies and gentlemen around this room would have. So I do feel somewhat hesitant apart from any constraint on expressing any views.

In the first two reports of the Committee to date I have noted the conclusion that has been drawn that there is a need to establish clear ownership responsibility for the scheme, and I think it is important to distinguish between the accounting recognition and the issue of stakeholder ownership of the scheme. The former, the accounting recognition, might excite accountants and auditors, but it is clearly the latter which that is more important. If Treasury and the Treasurer were to decide tomorrow to change the Consolidated Financial Report of the State to include the statutory funds scheme's results, I think very little would probably change. It might give some greater prominence in the eyes of the Government to continuing reforms of the scheme, but I suspect that matter is on the agenda anyway. So the issue of recognition in the financial reports of the State is certainly important to us, it is an important issue, but I think a far more important issue is resolving the issue of stakeholder ownership of the scheme, and I think in this partnership arrangement, as this undoubtedly is, it is important that all parties understand their roles, that risks are understood and assigned to the parties that can best manage them. I think if there is one key principle of scheme design that is most important, I would say it is proper stakeholder recognition of their roles in the scheme.

Without those accountability aspects of the scheme being clear, then the various parties may operate in ways that are inconsistent with the long-term financial stability involved in the scheme.

I have not been given the nod yet, but I gather my time is drawing close, so I will just make one observation. One of the papers that is being presented I think commented that many small employers may only face a workers compensation claim every ten to fifteen years. I found that quite mind boggling. I accept it is correct. I do not have any reason to expect otherwise, but I guess that is clearly an issue when many of the main parties to the scheme, the employers and the employees, have such a tangential involvement with the scheme, other than perhaps employers paying the premium each year, and that clearly makes scheme ownership and participation of those parties in the scheme in a tangible way very problematic.

Well, Mr Chairman, despite the limitations I referred to earlier, again we are very grateful for the invitation to participate today. We certainly will contribute to the best of our understanding and ability, and once again, defer to the expert knowledge around the table, but I hope at least my remarks at the moment and this afternoon will provide some assistance to the Committee. Thank you.

Sir Laurence STREET: Thank you, Mr Sendt for that overview of the financial aspects. I cannot help remarking that when you said that you felt a little overawed by addressing this group you are sitting right beside Miss McKenzie, whose accounts you audit, and I thought that the question of who is overawed by who is substantially in your favour. Miss McKenzie's accounts come under the spotlight of your office, I know, on a regular basis, and access to that awareness I think gives a particular weight to your comments.

Our next speaker, ladies and gentlemen, is a distinguished academic from the field of commerce and business both in Australia and on the international stage. We are very fortunate to have Dr Tom Parry with us. He is the Chairman of the Independent Pricing and Regulatory Tribunal, but he does have a background with is noted in our booklet on page 12 which gives

particular weight to his comments.

Dr TOM PARRY: Thank you Sir Laurence, Chairman, members and delegates. Bob and I did not really caucus, but I have similar caveats in terms of what I could say. However I thank the Committee for inviting me here.

In one sense I am probably speaking to you about twelve months too early, because IPART's involvement with WorkCover will really start later this year, and we are due to report to the Minister and Parliament and to the Legislative Council after 27 April 2003. So for similar reasons we have not really turned our minds to the task that will be before us, apart from today's forum.

It clearly would be inappropriate for me to form any view at this stage without having gone through the process that we will go through later this year, but nevertheless I hope to make some observations largely about what our review might look at, and some high level general observations about the WorkCover arrangements.

I think our review is an interesting review because it is a little different in a very important respect from what the Auditor-General does, because the first part of the review that has been given to us under s.248A of the Workplace Injury Management and Worker's Compensation Act 1988 as amended, the first part of the review that IPART has been asked to assess, is whether the policy objectives of the legislative amendments remain valid. So we have been quite explicitly asked to comment on policy, unlike the Auditor-General, and unlike our usual IPART reviews.

So part of what we will be doing when we commence this as soon as possible after 6 December this year, as set out in the legislation, will be to form a view about whether the policy objectives of the legislative amendments, which is essentially almost the entire legislation, remain valid.

The second part of what we have been asked to do by parliament is to assess whether the terms of the 2001 legislative amendments remain appropriate for securing those objectives. So firstly whether the objectives remain valid, and secondly whether the terms of the amendments, which is essentially the legislation, remain appropriate for securing those objectives.

Looking at the question of whether the legislation in appropriate, I think inevitably we must form at least some view about whether the implementation of that legislation has been appropriate. We will not be able to really form a view and report to parliament about whether the legislation remains appropriate without forming a view about whether the actual implementation of that legislation has done certain things.

In that I think we face obvious difficulty and constraint, and that will be the relatively short period of time that will have elapsed with the legislation in its current form and its implementation, before our review is completed.

So again without prejudging what our review might conclude, it would not surprise me if in part our review forms one conclusion, which was we need to do some more work, if the parliament so wishes, when more time has elapsed and more information is available, in order to assess the things that have been asked of us.

With respect to whether the objectives remain valid, the first and I suppose the most important part of that exercise is to determine what are the objectives of the legislation. We can only be guided by what government has said with respect to the objections of the legislation. Obviously we will be taking views on that, but one would look to the Minister's statement and statements with regard to what the objectives of the legislation are.

In terms of whether they remain valid, there obviously will be some interesting questions about that. Having identified what the objectives are, as stated by government in terms of what the policy is designed to achieve, from the literature that I have had a quick look through there do seem to be at least potentially some objective criteria in relation to worker's compensation and what

worker's compensation schemes are designed to achieve, and much of that has come from this Committee's deliberations and reports, which might assist us with regard to that assessment of whether the objectives remain valid.

In terms of the question of appropriateness, and that is both whether the legislation and its amendments, which is essentially, as I say, most of the legislation, remains appropriate and the implementation of that, that argument will be a large part of the work we need to do.

The major changes, the major reforms in the statutory scheme from January of this year fall in a number of areas, and these are the things that we will need to look at in terms of forming a view about whether the legislation remains appropriate in terms of those objectives.

Firstly, and in no particular order but in order of the notes that have been given to me, the re-establishment of the Worker's Compensation Commission which largely replaces the pre-existing legal involvement of the compensation court, that is obviously a major change in the legislation and one that we would need to look at in terms of whether that remains effective in securing the identified objectives of the legislation.

Again, one of the difficulties of that will be that as I understand it the compensation court will continue to hear claims lodged before 1 January this year, expecting to complete its work by December of next year. So there may well still be a backlog of claims being dealt with by the compensation court under the old system, and it may well be that by the time of our review we will not have sufficient range – again I don't know, it is really too early to say – of the operations of the Worker's Compensation Commission in respect of the operations of the statutory scheme, in particular the way in which the Worker's Compensation Commission deals with dispute resolution including the operation of medical assessments under the new legislation and the operation of statutory benefits, again always bearing in mind, as we will, whether that meets the objectives of the scheme and the legislation.

The commutation procedures have changed under the new system. As we understand it, the commutation agreements are now negotiated, as compared with the previous operation of the compensation court which was required to approve compensations. The costs associated with the commutation procedures under the old scheme - one of the many issues we will look at is how the new scheme of commutation operates with respect to a number of criteria that I will come to in a moment.

The establishment of WorkCover Assist which under the legislation is designed to provide a free service providing workers and employers with assistance with respect to worker's compensation, again seeing how that fits in with the objectives of the legislation and making some assessment about whether that indeed has been achieved.

The guidelines for permanent impairment which have already been mentioned, under the new system there are assessment guidelines which have been changed with respect to the way in which permanent impairment will be dealt with under the statutory scheme. Again one of the things we will be required to do in terms of assessing the legislation and the way it achieves its objectives is to compare the new arrangements with respect to the old arrangements with regard to some criteria that I will come to in a moment.

The total disabilities has changed. For example, I am advised that there are now psychological and psychiatric injuries in the table which previously did not exist.

The new legislation also has requirements with respect to time periods. It is designed to ensure that weekly payments commence more rapidly, within 7 days, and with some resolution of accepting or disputing liability within 21 days. So the time limits of arrangements under the new legislation, compared with previous arrangements, is also one of the aspect we would need to assess with regard to the terms of reference that parliament has given us.

Again I stress we have not formed any views. These are preliminary thoughts about the

sorts of things we would be obliged to look at in terms of what parliament has handed over to us, but some of the key issues that may be relevant to the assessment under s 248 of the legislation, would include things like the effect of the legislation, changes to the scheme, and the cost of the scheme.

Clearly one of the objectives of the legislation has been related to the cost of the scheme, including the costs associated with the disputation and the management of disputes under the scheme. Costs of administration of the scheme would also, one would imagine, be one of the aspects that we would be looking at as part of our review.

Costs to employers by way of premiums again would be one of the issues that we would be looking at in assessing or addressing those things I mentioned previously. Cost to taxpayers in terms of the unfunded liabilities that will ultimately be paid by taxpayers.

We would also be interested in terms of assessment of the amendments and the indirect assessment of implementation. We would be interested in the nature of incentives, and whether incentives are better aligned under the new legislation compared with the earlier form of worker's compensation. Incentives with respect to all of the stake holders, agency principal incentives, incentives with respect to employers, incentives with respect to other stake holders involved in worker's compensation.

We would be looking obviously at things which I have noted in my paper, very briefly in one page which is a reproduction of the legislation. We would be looking at things like changes in accidents and injuries to see whether the new legislation had any effect on presumably one of the more important aspects, which is the question of incentives to minimise claims through better occupational health and safety. Whether it changes any rehabilitation practices both in respect to the speed with which and the way in which workers re-enter the workforce, and incentives on stake holders with respect to rehabilitation.

Changes in the nature and the way in which benefits accrue to injured parties, including the commutation issues which I mentioned before, as well as other aspects of benefits to injured workers, which undoubtedly must be one of the prime focuses of the worker's compensation scheme.

Changes in the incentives and actual compliance with the scheme, in terms of employer compliance, incentives in relation to enforcement.

They are the sorts of things that we would no doubt be seeking to look at in terms of discharging our obligations under the review that will commence later this year. As I foreshadowed, and as I suppose is fairly obvious, the great difficulty, as I mentioned at the beginning, is that this legislation and the implementation of this legislation will have only been in place for a short period of time. In order to deal with the sort of assessment and undertake the sort of review that we would normally wish to undertake, we really would want a longer time period, but what that is we cannot say. We certainly would require a degree of information and data that we are about to start to talk to WorkCover about, in terms of ensuring that at least we start collecting that information.

As IPART always does, we will do our best. We will deliver a report to the Minister and parliament, and hopefully that report will, if not provide a final answer in terms of the assessment of the new legislation and its appropriateness and effectiveness, will at least provide an assessment on the basis of the best information available, and perhaps some pointers towards some future monitoring of the legislation.

So I thank the Committee for inviting me. I apologise, as did the Auditor-General, for not being able to say very much more, partly because I am also a new boy on the block, but later this year we hope to be, indeed we must be, completely immersed in what is more than an interesting area, obviously of great importance to those people whose lives are affected by this legislation. Thank you.

Sir Laurence STREET: Thank you, Dr Parry. I have just been conferring with the Chairman. We are five minutes ahead of time, and perhaps it might be appropriate if we were to break for morning tea now, and we can start at 5 to 11. So with the Chairman's concurrence we will

break now.

(Short adjournment)

Sir Laurence STREET: With Mr Chairman's concurrence, I will start the second session this morning. The first speaker in this session is Mr John Walsh, a partner in PriceWaterhouseCoopers, and his bio notes are on page 14. PriceWaterhouseCoopers as a firm, and Mr Walsh in particular, have had a long association with the Parliament in relation to matters that include the funding of workers compensation and other compensation, accident and sickness schemes, and we are very fortunate to have Mr Walsh with us.

In point of timing, ladies and gentlemen, I do not need to have the ten minute light blinking. We can probably spin out to about 15 minutes a speaker, because we have until 12.30 for the presentations that follow now before we break at 12.30 and we will be resuming at 2 p.m. It was thought that an hour and a half might be of value to any of the delegates who might want to touch base with their offices. Mr Walsh.

Mr WALSH: Thank you, Sir Laurence, and thank you Committee members for inviting me to speak today.

My paper has been forwarded to the Committee, so what I would like to do today is really just go through quickly the things that are addressed in that paper and then spend a little bit of time talking about what I see are the improvements that have been made to the scheme and the risks that continue to exist in the scheme going forward.

My perspective of the history is that the 1987 Act was introduced in the New South Wales system in response to a situation which in many ways is not unlike what we have at the moment, that is an escalation over a number of years in lump sum utilisation, common law and commutations to the extent that the average premium rate had gone up to approaching four per cent in 1987. So the 1987 Act was introduced, and while it was financially successful for a few years, it did not really address the underlying problem of the adequacy of benefits to injured workers, and inevitably leaks were found, the scheme became litigious and we got back two years ago to the situation which existed ten years previously, namely, a very heavy lump sum utilisation scheme, a litigious scheme and one in which the stakeholders were not accepting responsibility.

In particular, I think the underlying problems are those of poor ownership of the mutual responsibilities in the workplace on the part of the employers to recognise that workplace injury is a part of doing business and they need to accept that and they need to take care of the workplace safety and the injured worker when a claim occurs, and on the part of the claimant, to recognise that the main responsibility is to address their injury and get back to work, rather than to seek a maximum in terms of financial compensation. From my point of view, those dynamics are the underlying problems of the scheme, and still remain that way.

I think the amendments in 1998 were positive, but I think by that stage the scheme was in such dire financial straits that the initiatives were too late almost and the 2001 amendments became necessary, and, while I think they will be helpful in financial stability of the scheme, they still may not address the single problem of mutual responsibility in the workplace.

Just quickly, the key issues that I think that have been poor all round through the 1990s are:

Stakeholder ownership basically did not exist in the scheme up until the Grellman review. I think the idea of the advisory council and the empowering of employer groups and workers groups was a good move, but I think the scheme was in such difficult straits that the representatives on the advisory council had to give away too much from their constituencies to achieve what was necessary, so it just fell over.

Financial ownership in the scheme I think has been non-existent. The Government has distanced itself from recognising the deficit in the accounts, and until recently has not taken the

legislative steps necessary to satisfy the requirements. Employers really have not, I think, accepted responsibility to manage claims properly, and insurers, because they have no financial incentives in the scheme, probably have not done the job as well as they should.

Finally, the incentive structures in the scheme, I think, have been been poor, mainly fee for service, which really just encourages more service, and that means on behalf of providers repeat consultancies and on the part of insurers a process driven rather than an outcome based solution. On the part of employers, the experienced premium creates diverse incentives to reduce the claims experience and the claims cost to a point in time and then really have no interest after that point in time and not carry out their responsibilities to injured workers.

In terms of the specific points raised in the Minister's background paper, the focus on injured workers I think has been more a focus on litigation and compensation, rather than injury management and return to work. I will come to what WorkCover has done to try to address these issues, but at the moment let us just again talk about the background.

The adequacy of benefits in the scheme I would regard as mid-range. The scheme offers benefits that are more generous than the Queensland system, but less generous than the South Australian system. So, while there are long-term statutory benefits available, they are at a level that would be regarded by injured workers and their representatives as subsistence only and really not very different from social welfare, and I guess because of that, the cost of the scheme has been driven up through claimants seeking lump sum compensation to address the inadequacy in the long-term weekly benefits.

Safe work practices - as I said before, basically a fundamental issue in safe work is co-operative partnership of the workplace, before, during and following the injury, and an ongoing responsibility for return to work by both parties, and I do not believe that is the case, particularly for small employers where there are particular difficulties with suitable duties.

I should also say that these issues are not germane to New South Wales. These are issues with workers compensation worldwide, and I guess because New South Wales is the California of Australia, when things go off the rails here they go off the rails in a big way and are much harder to get back on track.

Prompt medical treatment - I think there is a problem with the way the Australian health system is funded and delivered, in that we have a universal Medicare insurance system and private insurers who deliver and are paid for benefits independently of workplace involvement. So there is no real incentive for employers to create a nexus with their injured workers until an injury occurs, and as we have heard this morning, this can be once every ten or fifteen years. So there is no incentive to ongoing think about workplace safety and health.

Equitable apportionment of costs - while there have been measures taken in the most recent round of legislation, there are still significant cross-subsidies in the premium system and perverse incentives to employers to minimise premiums.

Finally, information and data - I think it is improving but it has been a chronic problem with New South Wales WorkCover and it probably is germane to New South Wales. Some of the other systems have centralised data bases which provide far more information than can be extracted from the New South Wales system.

So what has been done recently to help these things? Over the last 12 months or so, the insurer remuneration structure has been introduced, which should provide a risk sharing approach, and an opportunity for insurers to be remunerated based on how well they do their job. The injury management pilots of last year hopefully will teach some lessons on how to create the continuum of injury, to report, to treatment, to return to work. The premium discount scheme does or should provide incentives for employers to improve their workplace safety through a direct discount on their premiums, although my feeling is that employers are more interested in achieving the discount than achieving a safe workplace at the moment. The ANZSIC based industry rates provide an opportunity

for reduction in cross-subsidies in the premium system. The Workers Compensation Commission hopefully will go a long way towards addressing the litigious and dispute driven nature of the scheme, and alongside that goes the impairment guidelines, the absence of which has been a major problem in the scheme over the last decade or so; and, finally, I think the benefit structure review has been necessary. The scheme was in dire financial straits and needed to address the issues of common law and a lump sum driven scheme. Hopefully, that can be addressed in reverse when the scheme gets back onto a stable financial position.

Not withstanding the fact that those improvements provide a platform for what I would regard as a positive outlook for the scheme over the next few years, there are ongoing problems and risks that I think need to be considered in the implementation of these initiatives. The first one, which really is a cultural problem more than anything else, is the ongoing one of mistrust and a litigious approach between injured workers and their employers, especially small employers, where if an injury occurs at work there is no real opportunity for suitable return to duty, and the fact that because small employers do not expect an injury, they do not have the systems in place to know what to do in terms of referral to providers. In my view there are a few opportunities to at least think about this, but they are systemic opportunities that can only take place over probably a decade or more and only in conjunction with the Commonwealth and the other jurisdictions, and those sorts of things are: a re-look at the way the Australian health system provides funding, particularly in the primary care basis and the way in which employers are included in that funding; to recognise the fact that Workers Compensation really is about a short-term window where an injury occurs, where the workplace safety should have in some cases prevented that injury; where co-operative injury management and return to work can get the person back on the rails quickly, but when it happens that an injured worker is off benefit for three or four or five years, really the problem is more of a social welfare nature, in that there is no realistic opportunity for return to work, and the system at a higher level needs to recognise that fact and think about its structure accordingly; and, finally, I think the premium system needs to be linked directly to the nature of hazard management at the workplace. Research has been done in other parts of the world about this, and while it is not an easy thing to do, I think it is necessary to promote this culture that I have been talking about.

The second risk, I think, is the fact that, notwithstanding the positive nature of the recent reforms, the scheme still has a major deficit, $2.75 billion last year, maybe $2 billion after the reforms, I am not sure what the final base numbers are, but still a long way to go before the scheme can take stock of itself and start rebuilding in a positive way. A major contributor to that problem is the 30,000 to 40,000 long-term open claims that are in the system at the moment. I do not know the exact numbers. It is of that order. Most of these claimants will have been off work, or on benefits at least, for at least 12 months. Most probably are orphaned now from their employer, so they have no nexus with which to return to work, and to my way of thinking, the only way that those claims are going to be managed is by some means of a creative solution by one or more insurers, possibly intense vocational rehabilitation in some cases, and possibly further down the track when the scheme has stabilised a bit more, a targeted and selective commutation approach to buy individual claims on a culpable basis for the scheme.

I think there is a risk that if the benefit package turns out to be overly draconian on the part of injured workers, we might find ourselves back where we were in the early 1990s, where injured workers are seen to be not receiving adequate benefits and for the scheme to be pushed into unwise benefit improvements before it is ready and before the cultural issues have been addressed in such a way that the scheme can be constructed.

Finally, the last two points: I think the move to Gosford is a major risk for the scheme. I think having a statutory scheme like this, which is so dependent on the buy-in of employers and injured workers, being located 100 kilometres from the action is going to be difficult. And previous speakers have referred to the work that is being done on information technology. It is absolutely essential in a scheme like this that close monitoring and information, as distinct from data, flows in a systemic and constructive way.

Thank you.

Sir Laurence STREET: Thank you, Mr Walsh. That was spot on the 15 minutes that you were allocated. Our next speaker, Mr Mark Goodsell, represents the body, which many of us will recognise as having its origin in the Metal Trades Industry Association and Australian Chamber of Manufactures, who are now the AI Group. Mr Mark Goodsell.

Mr MARK GOODSELL: Thank you, Sir Laurence. Our marketing advisers will be dismayed that you, like I, still have to refer to the old organisation in identifying ourselves. Thank you to Sir Laurence, and thank you to Reverend Nile and the Standing Committee for the opportunity to participate today in this proceeding and in the ongoing process of monitoring a very important area of public policy at State level.

Can I just digress for a second and say that public speakers are often warned "Don't be the first speaker after a break". I notice that the organisers made the very sensible choice of putting John on in that critical position. I think there is a lot of partisan interest in this debate, legitimately partisan interest, but of the independent observers of this worker's compensation I would just like to record that we have the view that John's independence and breadth of view about some of the issues, even though we don't always agree with the implications of what he says, stands him in good stead and we commend John's breadth of view about these issues to the Committee and to New South Wales society.

We have a difficult task in monitoring and reforming and improving worker's compensation, for a whole range of reasons. There is a lot of information already before the Standing Committee today, and in other forums, about specific performance, and my paper and my presentation this morning will not attempt to trawl over that ground.

I just want to make three general points this morning, and suggest that you look for detail in the paper that has been distributed. Those three points are put in context of what is going on right at the moment in the worker's compensation debate, our participation today and the comments that we make in the paper.

Secondly I would like to draw your attention to some things that we are doing in consultation with our membership to help them deal with worker's compensation, and thirdly some very brief comments about the governance issues, which are very important.

First, the issue about the context of our participation today and our comments in the paper. We supported the government's package that took the best part of last year to finalise and implement, and was operating from 1 January. We are waiting, like everybody else is, to see the effect of that package on the operation and the costs of the scheme. So in many senses, as has already been said today, it is too early to tell whether we have substantially the right answer.

We do have concerns, and our members have quite significant concerns, about provisional liability and how it will work, and whether its potential to undermine the other good things in your package is realised and that overcomes, or it outweighs, the benefits of the package to the point where the scheme does not improve or goes backwards because provisional liability does not work properly.

However, we understand fully the philosophy in which provisional liability was put into last year's package, and we welcome the fact that the government has shown some innovative thought in putting the package together like that. So we do not criticise the government for being innovative in that sense.

However, innovation as a process can both result in productive outcomes and risky outcomes, so we do say that we hope that the innovative package that was put through does address some of these long term problems that have previously not been able to be addressed in the scheme. But we do care that the risks that could fall out of that package are monitored, and monitored swiftly, and we will not be shy in playing a part in advising the government of any shortcomings in the way provisional liability works.

Going back to the paper we presented, that paper therefore is not a submission about a whole shopping list of further things that need to be done next week in the scheme, there are in fact watch points for us about the scheme going forward. Some of those watch points may be revealed to be real issues next week, or they may take some time to be revealed.

What we want to do is to present before the Committee and the other parties a list of some of the issues that we think are critical, so that if the package does not work as we hope it works then we have already on the table some suggested issues that could be addressed. For example, if there is an explosion of small claims such that the costs of the scheme do not improve or indeed go backwards, then obviously in our view provisional liability and how it is working really needs to be looked at.

If the trend on the length of time that people are staying off on weekly benefits, which is a key indicator of the health of the scheme, does not improve, then in our paper we make some preliminary observations of things that may have to be done in that area to realign the scheme and benefits, and benefit signals and processes, with the time lines that we understand international research suggests are critical in your average workplace injury, which really hinges around the concept of 6 to 9 weeks. That seems to be the critical point. If you don't get it done before that time then you are really turning that injury into something else, and you really are reducing the chances of somebody returning to work significantly.

But if you look at the benefit structure as it currently operates, there are no great signals around that period, you wait for 26 weeks before there is any significant benefit or process signal in relation to injury. So we just make that point, that if that still is a problem, that length of time with weekly benefits, then the solution in our view includes looking at how those benefits and benefit signals and process signals might be brought more in line with that objective assessment of injury management time lines.

Thirdly, another example of where the system may fail us is if insurers, who have a very big responsibility under this package to hold it together in a sense, in terms of injury management, if they are under performing in that role then we also have made some suggestions in the paper about the market for injury management services, which is currently a product of insurers, which might be more transparent and made to operate better.

The second issue I would like to talk about is just to bring to your attention, and I do so with a little bit more detail in the paper, some of the things that we are trying to do to work with our membership in this area. It is very easy in this kind of debate when you are representative of a partisan interest, as we are, to fall into the trap of just presenting to the debate a long list of things that other people should do to help the situation.

To broaden out the debate over the last few years we have been actively working with our membership on the concept of what can they do to help themselves. Regardless of what kind of shape the legislation is in, regardless of the systemic flaws in the system, what can employers do at any particular time to maximise their experience in the scheme.

We have been running a dual program of the traditional role of banging on the door of government and saying "Fix this, fix this, fix this", with the secondary but no less important role of educating our members how to be good injury managers, how to be good consumers of the worker's compensation insurance, because we see that whatever the state of the scheme, whatever the structure of the legislation, they can maximise their benefits by having that understanding.

It will also give us the benefit that when they advise us, through our internal processes, of the kind o things that they would like to see done to the legislation, they are better informed. We would like to think that there is a quality payback in the kind of submissions we make over time because our membership is better informed about how the system really works and what the real issues are.

On the other hand however, that process of entreating our members to become more

involved in the process of managing worker's compensation in fact adds to the cost of worker's compensation. They having to have management expertise or external hired-in expertise of how to manage worker's compensation, and encouraging them to find alternative duties wherever it is possible, those types of things are not cost free.

So when we talk about the cost of worker's compensation we need to be aware that first of all the average premium rate of 2.8% does not reflect the cost of premiums that are paid in the manufacture and construction industry, which typically rate from 3% or 4% through to about 10%.

On top of that you have got these non-premium costs that we and probably most people in this room would encourage employers to take on board in managing worker's compensation. So the true cost of worker's compensation is much higher than that average premium rate, if you look at it in that way.

The last point about that effort on our part is that we would hope that that education process of our membership would reduce their frustration, which is partly brought about by not understanding how the system works. But in a paradoxical way it is likely also to increase their frustration if they identify systemic flaws that are not being addressed. So they may become more relaxed about worker's compensation but also may become more angry about some of the things that are not right.

That could have two effects in itself. Firstly, that could create political energy amongst employers. I do not think that we would get to the point we got to on 19 June last year; I don't think Australian employers at this stage are as vigorous as French employers or French farmers in terms of their political action, but that anger, if it comes to the surface, would be manifested in some way as a political aspect.

Probably more worrying of course is that the real contribution employers make is by employing, and if that frustration is manifested in a reduction in their willingness to employ then we all have a problem.

We have very recently reasonably attractive unemployment figures in New South Wales. If you look over the last decade or so at the creation of employment in Australia, including New South Wales, the number of full time jobs involving direct employment, as opposed to contractors etc, has not varied. There are not many jobs being created. A lot of the jobs have been part time, casual, or in non-employment activities such as contracting. So if that is a worry to us, then we also have to be afraid about the costs of employment through things like worker's compensation adding to that kind of problem.

The last issue is just an observation about governance, which I think, and other speaker have suggested, is a crucial part of the glue holding a good worker's compensation scheme together. Kate McKenzie went through a few principles of regulatory design which resonated with me in terms of what I was thinking to say about governance, and the concept of good regulation balancing cost to business with social benefit.

If you look at the objectives of the scheme, as the Minister has outlined in the discussion paper on page 8, and the ones that we traditional observe in relation to the scheme, I think in a corporate sense they are probably more like mission statements then they are like objectives. I think what we need to work towards with worker's compensation is more a benchmark style of objective. I think we need to be brave enough to have a stab at saying "What is the average premium rate we would like to be looking at, what is the overall cost of the benefit package?".

You may be surprised that employers are not universally in favour of reducing benefits, they actually think a perfect worker's compensation scheme deserving payments to get all the benefits they can plus more, but we need to have a debate and we need to have some final objectives about the overall benefit package. Also, if we are serious about returning to work, what are our distinctive, measurable objectives in relation to return to work trends and profiles?

If we look at the management of the system and look at the debate over the last few years, particularly in the way the advisory council has worked, then from time to time that absence of those discrete objectives has caused the advisory council process and the stakeholder ownership process to fail itself, not because of energy of the parties, but because there was this absence of clear objectives.

If I give just one example, the advisory council process started as far back as 1997 and it is a bit disarming that as late as last year the unions were still able to say "A solution is to put up premiums". I think that as a solution should have either been implemented or excluded a lot earlier than that. The assumption was it had been excluded, but I think things like having a targeted premium rate would help us when it comes to making the hard decisions that we need to make.

I am aware that those kind of targets create political problems, and I don't mean that in the pejorative sense, you lose a bit of flexibility in balancing interests when you set targets. But if you look at it as an exercise purely of the management of the scheme, then as a participant in that management process from time to time over the last five years I can identify that lack of discrete clear objective as contributing to a failure of decision making.

I would refer you to my paper for any other details, and thank you for the opportunity.

Sir Laurence STREET: Thank you Mr Goodsell. I should apologise for going behind the AI Groups new name, but you will have to attribute that to my age.

Our next speaker, ladies and gentlemen, is Mr Robert Thomson. Mr Thomson's CV will found on page 13 of our booklet. He is the manager of the Workers Compensation Insurance Council of Australia, and that of course is a group which has an affinity with Mr Goodsell's particular field of interest, and it will no doubt complement happily what Mr Goodsell has had to say to us.

Mr THOMSON: Thank you, Sir Laurence, and Chairman and the Committee for the opportunity to be here today.

I would just like to, before I get into the meat of the subject, highlight that ICA is a representative body and industry association and represents the managed funds insurers operating within the workers compensation market in New South Wales. It does not manage, nor have any control over, the insurers operating in the market place. Its role is really to represent the industry in discussions and negotiations with interested parties and with WorkCover, the Government and stakeholders.

Insurers are the agents of WorkCover. They are responsible for managing policies, claims and investments within the scheme and have been responsible for doing so since the commencement of the 1987 Act. The views I am going to attempt to give you today, representing ICA, should be regarded as reflecting the majority view of the industry and may not necessarily represent the specific view of any individual insurer.

The industry is currently involved in developing a detailed submission in relation to scheme design and regulation of statutory insurances for the HIH Royal Commission. That is the responsibility indeed of that commission. The work has not been completed and has not been submitted to our ICA board for approval as yet. As a result, some of the comments contained in the paper that you are going to hear today may actually end up being changed to some extent when they are finally presented to the royal commission, but it gives a broad outline of what the industry believes in.

The views of the industry regarding what elements are essential for good scheme design have been covered in the papers that you have already heard and also presented by WorkCover in the paper presented on behalf of the Minister, but we just would like to highlight those as we see them as: transparency, ownership and accountability. You would have to have a scheme that is fairly transparent so people can see what is actually going on. It would have to be fully funded and stable and provide a fair return. It has got to provide appropriate and fair compensation for injured

workers. I think it goes without saying that specific focus has to be on return to work and care for seriously injured workers. It has got to have simplicity and efficiency, and I will come back to that later on about the complexities relating to the scheme. Premiums have to be affordable, that is the combination of what method is available and whether they can be funded needs to be taken into account, and stakeholder incentives should be very much aligned with scheme outcomes, and that is I think the point that Kate made. And there needs to be emphasis on prevention of injury and disease. That is also important.

Although a significant amount of change has been initiated recently which will address a number of issues faced by the scheme, we believe that there are still some other fundamental issues that need to be addressed for the scheme to turn around its financial performance. One key area relates to financial capability of the scheme, which has been alluded to already, but the Grellman Report in 1997 stated, "The Inquiry has found that no sector of the workers compensation system is legally and financially responsible for the statutory funds". The wording of that was the very key point, because without some form of ownership by the stakeholders of the scheme significant cultural change is unlikely to occur, and I think that is what really part of what today's discussion has been about, cultural change.

The industry believes that private insurance is the best placed to assess price and underwrite risk to fully fund statutory classes of insurance, but understanding the political imperatives that currently exist for the Government and the key stakeholders in the New South Wales scheme. We believe that the current deficit and balance position, we do understand it and we can see why it is being managed the way it is, however, we do believe that the Workers Compensation scheme should actually operate on a competitively neutral and commercial basis and within the regulatory framework that applies to private sector insurers as imposed by APRA.

It is openly acknowledged that all workers compensation schemes, regardless of which country or jurisdiction they operate in, go through various cycles and require constant monitoring and refinement. As people here probably know, we should continue that process with the issues that the New South Wales scheme currently has.

It has been subject to significant change over the last three or four years. There has been a lot of legislation that has been passed in that period of time, and the success or otherwise of the reform initiatives largely depends upon the participation of employers and injured workers in the notification of injuries and return to work initiatives. There needs to be appropriate incentives and disincentives initiated to apply to both employers and injured workers, and we would place the emphasis on the incentives, rather than disincentives, because without that you are not going to get the cultural shift that is required. We believe the new provisional liability provisions go some way to adressing the issue of early identification, but we certainly see there is a need to generate a significant cultural shift in this area as well as others across the scheme. I think there needs to be an extensive advertising campaign, certainly an educational campaign. I know there has been some work on that but I think more is required in that area.

One area that is a major concern for the industry, as well as for the key stakeholders, in relation to current scheme design is the amount of complexity involved in the scheme. The challenges faced by injured workers, employers and definitely insurers in administering the scheme comes back to the actual complexity. There are currently five Acts in place, the 1987, the 1998, 2000, 2001 and the Further Amendment Act 2001 that you have to operate within. You have got now in place numerous guidelines covering permanent impairment, you have got provisional liability and the claims estimation guidelines, together with a large number of regulations and guidelines which have been talked about this morning. These complexities can lead to misunderstandings and actually drive and lead to some of the disputes that are occurring in the market place. So we see the level of complexity as a major issue that needs to be addressed, and there must be some way possible of rewriting the consolidated legislation in the light of the one piece of information - sorry, Kate - but I think something definitely needs to be done to try and take some of the complexity out of the market place, and I think in doing that, one of the key things that needs to be done in any review is the practical implementation and operation of the scheme.

Leading on from this, we actually see that the scheme has been to some extent overly prescriptive and regulated in the past and there have been insufficient funds available for service providers to suggest innovative solutions. In the past the emphasis placed on insurer performance was to a large extent process oriented which was not cost effective and did not deliver the appropriate scheme outcomes. Since 1998 there has been a move away from that and the new remuneration arrangements that have been put in place go even further, but whether they are sufficient and whether they are actually going to achieve the appropriate results and deliver, perhaps time will tell. I think we are certainly heading in the right direction, but it is a bit like the legislation, provisional, the link with the remuneration arrangement is quite critical.

Just touching base on the insurer remuneration arrangements, they have been developed in conjunction and consultation with the insurers and they have focused to a large extent on scheme outcomes and they have been defined in various remuneration measures. We believe that this approach needs to be expanded to cover some of the other service providers within the scheme so that their involvement is actually assessed on scheme outcomes and judged on that, so that they get a base fee for performance of certain aspects of their work, but then the other component of it is actually dependent upon the scheme outcomes they finally achieve.

Engaging employers in the process we see as another key area that needs to be looked at to determine whether changing the system will actually assist. There are no simple answers in this area and it has already been alluded to, but picking up the point out of this paper, about 90 per cent of employers are regarded as small and they pay probably less than $10,000 in premiums and they do only have one claim every 10-15 years. So actually engaging them and trying to make them aware of what their responsibilities are if and when a claim occurs is a significant issue, and we also think that you to need to take that into account with the complexities of the regulations in this scheme, plus also the other regulations at a Federal and State level that they have to deal with in relation to Government activity. I do not think for a lot of them workers compensation is a high priority. How you change that to get them to understand that when a claim occurs something has to occur is a real issue for which I do not think there will be any easy answers available.

The next issue is trying to arrange realistic return to work duties, and that links in with what I just talked about, engaging the employer and the employee in the process so that they can both see that the benefits of an early return to work is critical, and that comes back to effective communication. We see that the provisional liability response will assist in that process and will take the focus off whether you are actually being paid to return to work. That really is in line with the appropriate incentives and disincentives of the key stakeholders within the scheme, so they can actually participate in an appropriate manner.

Questions do need to be asked about whether the current premium methodology is appropriate, and that has been touched on by other speakers today, and whether we are sending the right messages to encourage the right behaviours from the employers. For obvious reasons, linking back to what I said, there appears to be little ownership of the scheme by small employers and it is fairly evident that there is in some instances fairly little insurance cover being provided for the larger employers within the scheme. We have to become more experience based. I think it does need to be reduced to the appropriate alignment of what the premiums are and what sort of behaviour is actually driving it.

I think there is one fear that the industry faces, and I think it is important that we do have a look at the industry and what it is facing as being a key service provider within the scheme, and that is actually maintaining the right levels of service delivery, and the real issue there comes back to being able to attract the right quality type people to manage the business inside the insurers. There have been turnover rates and quite a change in focus in the types of people that the industry has employed within the scheme. There is a diagram I would just like to put up, because I think a lot of the issues in trying to get people in the industry and get them to want to be innovative and take an appropriate approach to the industry is the complexities, and we have talked about the complexities. To try and get some idea of this we just put up a diagrammatical outline of the issues that a case manager operating in the scheme has to actually deal with, not just - well, it is day-to-day, not just for one claim but for all the claims, the 100 or 200 claims that they actually manage, and the

complexities in there are quite significant. That is an issue in service delivery, being able to attract and train staff appropriately and retain them in the industry. I think certainly some of them can find similar levels of remuneration in positions that do not have this level of complexity to deal with in their day-to-day operations.

The industry has certainly been trying to attract staff with different skill sets to assist in meeting the changing requirements of service delivery. I think in terms of engaging a number of health professionals within the organisations, and they have also I think developed a number of very significant training packages to try and deal with the issues that we are currently facing.

The industry is changing and we believe it is important for people to focus on what is being delivered in the future in a more positive, constructive and collaborative environment. We would certainly support Kate's point in that area and move on from the way that things have been managed in the past, and given the opportunity in time we will find that there is potential for realistic rewards for investments made and the opportunity that the insurers can play a key role in the development of a scheme that is close to the workplace but actually delivers on what it is trying to deliver on given the right incentives.

I will just make a couple of key comments about the Minister's objectives if I can. Injured workers should be the focus of the scheme. I think that is definitely the case and I think provisional liability would significantly assist that process. I think that is starting to occur. I think a number of industries are currently attempting to deal with some of the issues and the objectives that the Government is trying to achieve. They are set out in the paper and for the sake of time I will leave it there.

I would say that the industry welcomes the opportunity to speak today and looks forward to some positive outcomes.

Sir Laurence STREET: Thank you, Mr Thomson. Our next speaker, Mr Gregory McCarthy, has had a professional involvement with worker's compensation for many years. Relevantly, particularly this morning, he is the Chairman of the WorkCover Advisory Council, the group that synthesises views held within the industry in general. So I have much pleasure in inviting Mr McCarthy to talk to us.

Mr McCARTHY: I would like to say that this morning I will try to focus on some of the issues that I see as impediments within the scheme that may be addressed in the short to medium term. I certainly have the view that there may be some more, broader, significant scheme reform required. However, I do think there has been significant reforms accomplished over the last twelve months or so, but I think we do have to show some patience to see how effective that is going to be before we move into any future significant reform of the scheme.

If we move to the first slide, I have tried to focus on five key elements that I think do contribute impediments or barriers to improve scheme performance. Those five key elements I have seen are early reporting of claims, which I see as a clear target management strategy going forward and an inequitable premium system, no underwriter focus, as I will call it, and I will describe it a little further on, and IT or computer systems.

I think as we move through this presentation you will think I have plagiarised John Walsh' presentation, so apologies for that John. I think we are trying to make some of the same points as we move through.

If we look at early reporting, I think early reporting is fundamental to any scheme's success. As John pointed out in his slides, and I think Rob Thomson touched on as well, the vast majority of employers in New South Wales are small employers. They probably have claims once every few years, in some cases never, in some cases for ten to fifteen years, in many cases they don't ever think they are going to have a claim.

There are probably less than 500 employers in New South Wales who truly have the

capacity and the knowledge to quickly respond to an injury when it occurs in the workplace. I think we need to look at a system which can assist those other several hundred thousand employers out there. If they can respond quickly to their needs in how to manage that workplace injury both for that employer, and just as importantly for the injured worker, and I also think just as importantly for the people providing the treatment as well.

So I think with early reporting there needs to be a system provided to make it simple. I have suggested something as simple as the telephone system, "If you have an injury just ring this number", and then experienced people can move in to take control and in giving directions to mobilise management to take place.

I have also suggested that there should be, I have said community based in my slide but I really mean centrally based, and not individually based with each insurer. It could be a collective run by agents or insurers. I think the reasons for that are it is much easier for a central body than I guess WorkCover or its agents collectively to advertise to the community on a continuing basis "When you have an injury just ring this number" so that people can respond and be aware of what to do. It makes it easy.

I think it is also cost effective. At the end of the day the scheme has got to pay for these systems, whether it be individual done by the insurers or elsewhere. I also think it enables the message to be consistent, it doesn't vary between the different organisations.

The next area that I see as important in terms of a focus for the immediate future would be what I see as the tail management strategy. As John Walsh has rightly pointed out, and I didn't realise it was that many, but thirty to forty thousand claims probably fit into the twelve months or more category. I think particularly with no commutations at the moment that there needs to be a clear focus on what are the steps without commutations.

That is not to suggest that I am necessarily a fan of commutations in the way in which they were previously administered, but they certainly were the way the tail was managed, predominantly. That is no longer there, and I do think we need a very clear strategy, and I think that John's strategy could be one of more innovative approaches delivered by the agents or insurers, and it does need to look at things like vocational placements and the whole range of other activities in terms of what we are going to do with these people.

I think it needs very specific remuneration focus. It is very intense in terms of what is required. It also needs to have a key focus on recoveries. I will not elaborate on that other than to say that there are people besides employers who also are responsible for some of the injuries that occur to our workers, and we should be actively pursuing those opportunities to recover probably both from the Motor Accidents scheme and also for those people who have been able to get public liability insurance, from the public liability insurance as well.

I think there are some major issues that are going to confront the scheme in respect of public liability being probably the only opening unfortunately for people to get the sort of treatment they were used to, so that could cause problems for the scheme into the future as well.

I see it as needing its own key design point, and it needs to probably look at reconsidering the notion of the expressions of interest perhaps that were called for before, which I know most of the insurance agents responded to.

The premium system: again I think this has been touched on today but I do think that, like any internal model that is developed, over time they lose their robustness, and I think the premium system in the New South Wales scheme has done exactly that. I no longer think it is suitable for what I call the "one model fits all", and I think we do need into the future to be looking at a different model for larger employers versus smaller employers, so we get the right sort of incentives into the scheme.

I know Rob Thomson was talking about incentives, the sort of things that need to take place

in workplaces. I think the larger employers too easily can take advantage of the new premium system, which certainly causes leakage, and it certainly creates at the moment I feel inequalities between employers, between the large and the small. It certainly at the moment does lack the sort of incentive that would drive behaviour, particularly of the smaller employers. It is actually much more cost effective for a smaller employer to leave an injured worker sitting at home than it is to invite them back into the workplace for a transitional return to work program. There is probably not time to go into the details of why it does.

I certainly support the initiative of the green paper and I think that should be encouraged. As I think Kate McKenzie said herself of the current WorkCover IT systems, where that is heading will make this a lot easier, and I have been encouraged by what I have seen through the Advisory Council in respect of what is happening there.

WorkCover's role: we are probably coming at this a little bit differently to other people when they talk about lack of ownership of the scheme costs. You can take the boy out of the insurer but you cannot take the insurer out of the boy, as they say. I am used to looking at any class of insurance in the way an underwriter would look at it, and I think that is something that could be introduced more specifically into the New South Wales scheme. Whether it is as a monopoly insurer or whether it is a return to private underwriting, I do not think it matters. I think somebody needs to be looking at the way the scheme operates the way an underwriter would, and I know there has been some discussion recently in WorkCover about how they might do that, and I am also encouraged by that. I think they need some support to continue to do that.

I also have some personal doubts about the role of WorkCover in respect of issues such as the OH & S inspector. Does it belong in the WorkCover or DIR, a debatable issue, but I put that on the table.

I also think the relationships with agents going forward is probably a longer term issue and not something for the immediate future, but to get value out of the scheme I think it is often appropriate to look at people who are experts in a particular area, not Jacks of all trades, so to speak. So as Bob Thomson alluded to, the insurers do collect premiums, they do invest monies and they do manage claims. Is it appropriate that they do all of those things, or should we be looking for experts in each of those individual areas? I think this is something that should be at least debated.

Lastly the information technology. As I said earlier, I am encouraged by what I am seeing. Again if we take the view that it is going to be a centralised managed fund, in my view that is one insurer and as one insurer we should have one central computer system to administer that. Certainly the agents could have their systems that sit on top of that.

I think the current technology issues are actually creating barriers to entry into the scheme in that it really does require very large significant organisations to put up the capital to move in, where a lot of that is about everyone having their own computer solutions. So I am very firmly of the view that it does require a centrally based system, and as I said, the agents could have their own front end integrated with that electronically.

It has been said that the better computer system is the better warehousing of data and access to data by all stakeholders. Certainly it is from data that you can learn where many of your problems are occurring, and until you can identify problems it is difficult to fix them. Thank you.

Sir Laurence STREET: Thank you, Mr McCarthy. Ladies and gentlemen, we have had a number of presentations from people who are very experienced in the actual working of our workers compensation system and it will be I think a refreshing change to hear from somebody who is at the coal face of dealing with the human problems of the injured people.

Professor Fearnside's brief bio note is on page 9. He is a Clinical Associate Professor in Neurosurgery at Sydney University and the Western Clinical School.

Professor FEARNSIDE: Reverend Nile, Sir Laurence, Committee members, delegates,

ladies and gentlemen, thank you for your invitation to participate in this forum this morning. My paper is included in the documents and the aim of the paper is to provide some ideas for discussion at the forum today and later on this afternoon.

In his background paper the Minister has noted that there are six principles which it is considered are fundamental to an ideal workers compensation scheme, and I think it is important to note that the first of these is that the injured worker should be the focus of the scheme, and a number of speakers have alluded to that this morning. I will speak principally to this point and the majority of my talk will be about people.

With health, it is not only good physical health and freedom from pain and suffering, but it is about emotional wellbeing, together with the social and economic positions in which a person lives. It follows from this that an ideal scheme will have not only regard to the physical attributes of the disease, but also provide support where necessary for psychology injury that occurs and will also have regard to the environment or the context in which the patient lives. It is important not to forget the huge disruption that such injuries cause to the family, the parents, partners, children, and I think that any ideal management plan must include the carers and those who compose the family unit around the injured person.

Broadly, there are a number of clinical objectives of an ideal scheme. These are: to diagnose and treat physical and psychological injuries; to note the social context in which the person lives and works; to provide high standard cost efficient care; and to provide advice to relevant authorities on an injured person's return to work, and if that is not possible, then for their retraining; it is vital that both horizontal and vertical communication among health providers, case managers and third parties is prompt and efficient, and I might say that this has improved a great deal in workers compensation over the last few years; and, finally, it also critical to have ongoing training and continuing professional development for all the health workers who are involved in these areas.

We have talked a lot about dollars today and how they go round and I thought it would be helpful for the Committee to place this all into some sort of perspective as to the size of the problem. WorkCover data was available in the year 1999-2000 and the incidence of work-related injuries was in the order of 40,000. Of these, 0.2 per cent were fatal; a permanent impairment occurred in 22 per cent; there was a temporary disability in excess of six months in 10 per cent and a temporary disability in less than six months in about two thirds. Of the body areas injured, the spine, not too surprisingly, was the most frequent at almost a third, and, again not surprisingly, the upper limb just over a quarter. The lower limb, head, trunk, multiple injuries, and that wonderful category of "other" follow. "Other" would be injuries to the chest or abdomen. The sorts of mechanisms of injury by frequency were those involving manual handling, first of all falls, either from a height or from the floor to ground level, and, finally, being hit by a moving object was the very highest mechanism of injury.

The industries most at risk are first and foremost the mining industry, the coal industry particularly, with an incident of 38.2 injuries per one thousand wage and salary earners per year; second, agriculture, forestry and fishing with 33.8; third, transport and storage at 26 per thousand per year, and the road transport industry had the highest incidence; and, finally, the manufacturing industry, with the beverage and tobacco industries the highest overall at 23.6 injuries per thousand per year.

WorkCover maintains a data base of body regions of diagnoses which is available to statistics. The diagnoses are characterised as strains, fractures, open wounds, crushes, burns, et cetera, and this is recorded against a variety of observations, including time off work, costs and payments made.

I think it would be helpful if particular modules were added to the data base with regard to treatment and treatment efficacy. By and large, occupational diseases as distinct from injuries are pretty well covered I thought in terms of data captured and the data base looks comprehensive, but again I think that treatment efficacy could be an issue that needs to be considered.

Who provides the services? There was another study in the year 2000 of injured workers with back pain, and there were 5,000 or 5,500 services or near enough. Not too surprisingly, about two thirds of the services were delivered by general practitioners, about 20 per cent by specialists, 6.9 per cent by radiologists, and independent medical examiners were 6.4 per cent. Independent medical examiners provide advice to the workers compensation system and I think they are an important component of assessment and efficacy, in that they provide a second opinion and should allow some control, where used appropriately, over any over-servicing and costs overruns, but I think it is important for those commissioning independent medical examiner reports to be quite certain as to the questions they want to ask of their examiner and the information they wish to derive.

It is recommended that consideration be given to expanding the WorkCover data base with regard to further refining of diagnoses, because the instruments used are really pretty blunt when you are looking at sprains, fractures, open wounds, et cetera, and there are very much better categories available now which could refine the diagnoses and make the data much more meaningful.

It is also recommended that a standardised reporting process be instituted, and it is very important to agree on the reporting process initially, such as the data which is captured can be prospective, which will add validity to the data and to any inferences drawn.

What questions do we want to ask the data base? We want to ask it: What injuries are occurring? I think that is done pretty well at the moment but it can be refined. I think we need to go further than that and we need to ask: What are we doing about the injuries? And most importantly, for efficacy and indeed governance issues, we need to ask ourselves how well we are doing the treatment. I think that data capture is of a sophistication now where those sorts of questions need to be addressed and we should ask the questions.

Impairment is assessed now using the American Medical Association's guides to the evaluation of permanent impairment (5th Edition) and a number of thresholds have been derived to allow a person to enter a particular pathway. For common law 15 per cent; for exit commutation, 15 per cent; and for pain and suffering 10 per cent. My own personal view is that the threshold of 15 per cent is somewhat high and I think that a fairer threshold would have been 10 per cent.

It is important to realise that there is a difference between impairment and disability, and I think this is one of the problems of the system. Impairment involves the loss of use of a body part, for example a hand or a finger, and, using the AMA guidelines, that is a quantifiable amount in terms of a number. That now - and this is the value of using the 5th edition rather than the 4th edition - is a little bit academic, but it is an important point, because the 5th edition of the guide has been modernised to a degree and does take into account a person's ability to carry out the activities of daily living, whereas the 4th edition did not do so, and the 5th edition also gives the examiner some small amount of discretion in terms of the severity of the injury.

Disability, on the other hand, is an alteration to the capacity of a person to respond to personal or social or occupational demands. Assessment of impairment does not take into account any matter regarding the occupational or vocational capacity of a person, whereas the disability does, and this is an important distinction that needs to be borne in mind certainly by arbitrators and the judiciary. For example, if the loss of a hand or finger has the same impairment in terms of a number, that will clearly have a different disability among different people with different skills and needs to use their hands or not.

I want briefly to illustrate by a patient of mine some of the problems this man had in negotiating the system. He was 36 years old when I met him in 1996 and he was a plumber by trade but he was working as a courier driver for a large transport company at the time. He had a history of having lifted about 30 cartons weighing 40 kilograms each when he was loading his truck about three weeks before I met him on one Sunday morning and he was an enthusiastic worker. He is a very nice man. He had worked for another three weeks with severe back pain and pain in both legs and over that three weeks his bottom had gone numb, his legs had gone numb and he was finally dragged along to the hospital one Sunday morning by his wife because he could not pass urine.

We admitted him and confirmed that he did have quite severe compression of the nerves going to his bowels and bladder and legs and he had a huge disc prolapse in the low back in the lumbar region. It was surgically treated. Not too surprisingly for this sort of an injury, his neurological problems continued post operatively, and although we got him out of hospital, he needed to self-catheterise himself fourth hourly and he was really very disabled.

He exercised and stayed at home for quite a long time. He attempted to return to work at the end of 1997. He was put straight back into his job, which was a shift of ten hours and he needed to load and unload the truck and drive the truck, and quite obviously he was unable to do that, so after a week he went off work again. At the time, he had no idea of how to access all of this compensation system, so I told him that he should do that and he did, and his claim was immediately rejected. So he came back to see me and I advised him to get a lawyer, which he did.

I could not obtain any physiotherapy for this man because the public hospital said that he was a workers compensation case, after private physiotherapists said he wasn't a workers compensation case because he did not a claim. So he learnt to swim and he did a lot of swimming and walking. He had a personal fitness and accident policy. The insurer sent him to an independent medical examiner who said he could drive a truck, so he was fit to work, but did not take into account the fact that he could not load or unload, and the policy payments to him were decreased to 40 per cent of what he was entitled to.

Notwithstanding all this, he completed a real estate course and a financial management course at TAFE and in April 1998 he married his fiancee. He has had severe ongoing pain in his legs. He does still self-catheterise. He has full bowel control and he is not able to have sexual intercourse. He is married, as I noted, but sadly there have been no christenings in the family to date. He was unable to obtain any employment because of his injury, and he did what a lot of people do who have some training, he went into self-employment where he could work at his own rate and he now works as a plumber in a self-employed capacity, and, indeed, he recently replaced my hot water system at home when it exploded.

So the issues in this, not to bring any condemnation on any particular group, but there is a lack of worker education. He is an educated man, he is a qualified plumber, an eloquent person, and yet no idea of the system or how it worked. I think that is a problem for the unions, to provide education for their members. Secondly, he had great difficulty in accessing the workers compensation system, where to my simple mind it was basically pretty clear. He had a denial of treatment, we could not get him adequately treated and there was an appalling failure of communication with the rehabilitation providers until the year 2000 when I finally got some correspondence from the Commonwealth Rehabilitation Service after his claim was accepted, but I thought that Joe did really very clearly emphasise the tenacity of the human spirit under adversity.

Specifically then, the medical attributes of an ideal workers compensation system are: The focus, as the Minister has indicated, should be on the injured worker. There needs to be an early definition of goals and what needs to be achieved, together with a prompt assessment of liability, and I think that the provisional liability provision will go a long way to assisting this. There needs to be a prompt assessment and return to work following a trivial injury, and the majority of injuries are less than six months. There needs to be a good assessment and referral of the more serious injuries for treatment. On top of all this, the pathways which are available to workers and the health care professionals need to be simple, with a number of well publicised access points for information for everyone. The systems need to be transparent and accountable in respect of governance and there needs obviously to be a facility for review and feedback when the systems are not working, such that the resultant program is fair and just for all participants in it, the claimants, the insurers and the employers, where there is a balance between the resources available and social policy.

I firmly believe that there needs to be a positive emphasis on ability in this system, the ability of an injured worker, rather than disability, and here, as Rob Thomson has explained, the case manager is the pivotal person in this system. They need to be experienced and well trained, because on them is the co-ordination of the whole system. All too often I have seen early optimism of an injured worker and his family fade into depression and futility and loss of self-esteem with resultant

family stress and marriage break-up when the injury drags on, and I think that additional resources need to be diverted, if necessary, to deal with the later problems, because they are a different constellation to the early problems, and in this way provide some support for family and carers.

As I indicated earlier, I think that WorkCover needs to examine its diagnostic and therapeutic data base, because it is very important now that we get a little more sophisticated and start to track treatment and treatment efficacy.

It is absolute critical to remove the disincentives to return to work, for example, the repetitive valueless treatments, three years of physiotherapy or acupuncture would benefit only during the treatment process.

John Walsh mentioned the adversarial attitude which develops between employer and worker, and I absolutely agree with him that particularly in a small company where an employee may have worked for many years, often 15-20 years, when the injury occurs there is a fall-out, and it has been my view that the work environment, where it has been a happy one, has also acted as a sort of family support unit, and particularly some attention should be given to smaller companies and support for them to get their injured workers back to work, and the point about them having fewer work injuries is a valid one and education could perhaps be directed to that area.

Thirdly, the pot of gold mentality needs to be discouraged, and we look to the Workers Compensation Commission to address this issue, because there is no doubt at all that it encourages abnormal illness behaviour when people attempt to maximise any residual impairment.

Finally, there needs to be ongoing worker and health care professional education, not only in occupational and health and safety matters, but also in services provided by WorkCover.

Finally, Mr Chairman, for the health providers an ideal scheme should promote access to information which should be simple to navigate. It should allow clinical independence to make treatment decisions, but there does need to be a monitoring aspect to this to prevent over-servicing. Where approval is necessary, we need prompt decisions. We need regular education about the system and its services and changes to the services, and I think it is important to emphasise the issue of providing incentives. There needs to be incentive for doctors and physiotherapists and health care professionals to be involved in the scheme, not in an ownership sense, but to be a part of the scheme and to be proud to serve it. And, finally, it would be really really helpful if all those forms could be simplified and the paperwork could be minimised.

I have attempted, Mr Chairman, in this paper to comment on some of the medical aspects which I think would make an ideal workers compensation scheme. Of course, this has been reiterated by each of the speakers. Such a scheme operates in a regulated financial environment with cost pressures and resource restrictions and we recognise that the cost is a major factor, but the fundamental objective is to deliver and to target the limited resources where they can deliver the greatest benefit.

Sir Laurence STREET: Thank you, Professor. That was, if I could just speak subjectively, a most moving human reminder that we are dealing with real people. The case history of Joe does us all good by reflecting that these are the people we are dealing with. I particularly took on board your comments that we should not be thinking about injured brothers and sisters as disabled, but about what are their abilities after they have been injured. That is a very appropriate thought on which to finish the morning. Almost finished, I am sorry.

There is a change in the next speaker: Mr John Robertson, the Secretary of the New South Wales Labor Council is out getting the buses on the road again. I gather there was an argument between him and Nancy Carl this morning as to who would do the buses and who would do this presentation, and Ms Carl obviously won out and Mr Robertson is getting our buses back into service. So here is Ms Nancy Carl of the Labor Council.

Ms NANCY CARL: Thank you, Sir Laurence, Mr Chairman, members of the Committee,

delegates and ladies and gentlemen. I would like to apologise on behalf of John Robertson, the Secretary of the Labor Council. However, he has been unavoidably detained and has asked me to present this paper for him.

The Minister's issues paper touched upon some details about schemes in countries overseas. The Labor Council really only has a very basic understanding of most of these schemes, and it is not our intention to speak about them in any great detail. However, there is one scheme that we would like to speak about just briefly, and that is actually the United States scheme, specifically Wisconsin.

We understand that the United States actually has mixed arrangements, and that all of the States in the Unites States have arrangements for different benefits and administrative arrangements. Some are privately underwritten and others are government administered. Washington is government covered, however the claims are administered by a one stop shop, which is similar to the way the GIO was organised in New South Wales.

The majority of the United States schemes blew out in the early 1990's. This is the experience of all worker's compensation schemes. One scheme however which did not experience these types of activities is this scheme. In this State worker's compensation is currently enjoying role model status. Other United States states turned to that system with problems in their own systems. Premium rates in the Wisconsin system are in the bottom third of all United States states, and benefits for workers are equivalent to or higher than benefits elsewhere in the United States.

The Wisconsin system has a structure that provides long term stability and viability. These are a highly desirable feature, and one lacking in most Australian systems. The Wisconsin system is one where the stakeholders, that is employers and unions, have total ownership and control of that scheme.

They have had an Advisory Council since 1911, and this was legislated in 1950. The Council consists of five employer and five worker representatives, insurance representatives, and is chaired by the administrator of the Worker's Compensation Division. When reform was being considered to the New South Wales scheme in 1997 at the time of the Grellman enquiry, the reforms were very much based on the Wisconsin system.

In relation to coverage the unions oppose any move to alter the definition of "worker". A number of employers have entered into casual arrangements, and the growth of this and the labour contracted industry, is a direct result of employers trying to opt out or transfer the risk of paying worker's compensation premiums and other benefits.

The labour hire industry is now experiencing increases in their worker's compensation premiums. This has led to a high level of non-compliance with OHS and premium manipulation.

The unions also totally oppose any exclusion of the coverage of different classes of workers, for example agricultural workers. It should be noted that the rural sector has approximately two deaths per week in Australia.

A national versus State based scheme: Other Australian states have significantly reduced worker's compensation weekly benefits. This has led to an increase in the number of injured workers being forced to claim social security. In certain circumstances certain individuals may not be entitled to claim social security if their partner is employed. This results in a very heavy burden being placed upon the family of an injured worker, and the injured workers themselves.

New South Wales has recently introduced the Fifth Edition of the American Medical Association Guidelines for assessment of injured workers. All other states, we understand, are still using the Fourth Edition. The unions oppose a national worker's compensation scheme because of the concern of reduction in benefits and limited access to benefits.

OH & S and injury prevention: The unions welcome the new OH & S legislation. We say that New South Wales is at the cutting edge of OH & S, and it is the only jurisdiction to integrate

OH&S and worker's compensation. We welcome the new OH & S safety legislation which was introduced in September last year. The feedback has been extremely positive, particularly in relation to the new provision of the duty of employers to consult. Union members have concluded that this has been an area where the legislation was void, and often employers would not even speak to injured workers until there had been a serious injury or accident.

The new risk management requirements seem to be changing employer's culture towards risk management. We see this as a very positive step and we believe that this, coupled with education programs which are now being delivered by unions in consultation with the WorkCover authority and employers, will lead to a genuine reduction in accidents.

The unions have in the past been very critical in the area of compliance, particularly relating to prosecution. Whilst we accept that WorkCover has a role in advising industry, we believe that their core function should be in the area of enforcement and enforcing compliance with the legislation, not only in OH & S but also in worker's compensation.

The Labor Council produced a submission in response to the Green Paper which has been spoken of today. This paper was issued by the WorkCover Authority and related to issues relating to compliance. We request that recommendations contained in our paper be implemented in this session of parliament.

The number one cost driver in the scheme is employers failing to provide suitable duties. There must be financial penalties imposed and enforced on employers who fail to provide suitable duties to injured workers. There is provision in the Act for penalty, but this has not been introduced. Small employers should be offered subsidies to take injured workers back on suitable duties, certainly for the first 4 to 6 weeks.

The new OH & S laws and premium discount scheme will influence employer behaviour, however WorkCover needs to be very active in enforcement.

The current reporting mechanism we say must be streamlined. It is the union's view that there should be a centralised system, one data basis for collecting and disseminating information and maintaining information. There needs to be integration of accident reports, injury notification reports, and complaints. Currently there are a number of different systems. Statistical data is fundamentally flawed owing to the absence of a centralised process.

An area which requires strategic and innovative approaches is the area of injury management and return to work. The number one cost driver is workers remaining on weekly benefits and not returning to work, as we have touched on before.

The recent reforms have introduced a mechanism where disputes about return to work issues can be addressed. This is a very positive move forward. The unions hope that we will see a great turn around in the extent of the return to work disputes, and we hope there will be a major decline in the failure of employers to provide suitable duties.

Provisional liability: The unions see this as a bonus, as a plus to the system. One of the fundamental aspects of any scheme working properly is timely reporting and early intervention. Certainly one of the major criticisms in the past by unions and union members has been the delay in employers not only reporting injuries but certainly in the delay in payments being made to injured workers. On occasions injured workers have been forced to wait for up to six months for payment.

There appears to have been very positive impact as a result of provisional liability, and the unions are hoping that this positive step will continue.

On the question of benefits and assessment of injured workers, the unions have concern with the AMA guidelines which have been implemented. We were allowed some input with regard to those guidelines, and the unions involved eminent specialists, including Professor Fearnside who is here today. We were grateful for that involvement, however our concerns are still there in respect of

certain areas.

We have information that the guidelines seem to be inadequate for the assessment of injuries to lower limbs. There is major criticism over the instrument and methodology being used to assess psychological and psychiatric injuries. The government has recently written to the Labor Council advising that a national reference group will be established to research and develop a nationally accepted appropriate instrument for assessing psychological and psychiatric injuries. We welcome this process. We ask however that we be intimately involved in this process.

The Labor Council has established a monitoring committee comprised again of eminent specialists, and they will monitor and oversee the impact of these guidelines. The committee will be making recommendations to the government in relation to any anomalies or inadequate applications of guides in assessing injured workers.

Dispute resolution: The Worker's Compensation Commission has only been in operation for approximately ten weeks. To our knowledge there has not been a dispute dealt with by the Commission at this time. As I said earlier, it does appear that the provisional liability provisions are actually having a very positive impact in reducing the number of unnecessary disputes.

We believe that there are a number of areas in the WorkCover scheme which need to be restructured to ensure that the right incentives are in place to gain the best outcome. The insurance arrangements require complete revision to ensure that incentives are in place. The way that the current remuneration and incentive arrangements are made will not, we say, necessarily deliver the scheme's objectives.

The options to be explored include insurers handling the investment, other agents administering and managing the claims, and the exploration of one administrator for all claims.

The unions and the employers are of the view that the current worker's compensation and occupational health and safety Advisory Council is too large. We believe it should revert to its original structure. The Council should comprise of the stakeholders in the new system, that is the employers and the employees.

Parties who are not stakeholders, such as service providers, regulators, and administrative agents, we say may have a conflict and the Council would work better if it were comprised of the major stakeholders in the system.

On the issue of the WorkCover board, it is our view again that whilst the WorkCover board has very different functions from the Advisory Council, we say that the board should also comprise of the primary stakeholders, that is the Labor Council of New South Wales and the employer associations. The chairperson of the Worker's Compensation Advisory Council should also in our view be a member of the board.

It is noted that all viable schemes, including superannuation schemes, are made up of major stakeholders. In addition the board should also comprise of individuals with expertise in investment in order for relevant decisions to be made properly.

In conclusion we believe that worker's compensation scheme requires constant monitoring and review. The scheme needs timely and efficient data to enable the stakeholders, regulators and actuaries to identify any adverse trends and to act promptly, not two years after the event.

We also say that employers must pay premiums calculated at a realistic rate. At present we believe the rate of premiums should be in the vicinity of 3%. Thank you.

Sir Laurence STREET: Thank you, Ms Carl. In ending this morning's proceedings I should just indicate that I will be seeking the guidance of the Committee during the lunch break as to how the Committee feels it can best be assisted by the dialogue, but I think we have got a lot of material there. We can have a very valuable and lively dialogue between the delegates amongst

themselves and with the Committee. Mr Della Bosca will be here when we resume at two o'clock. I will pass over now to our Chairman to close the morning session.

CHAIR: Thank you, Sir Laurence, for conducting the first part of the forum. Thank you very much. We will hear from you more at two o'clock.

I would like to invite you all to have lunch in the President's dining room. That will be at 1 p.m. I will be hosting the lunch in association with the President of the Legislative Council, The Hon. Dr Meredith Burgmann. She will be attending the lunch as well. Do any of the delegates have any questions about procedural matters, not WorkCover? Thank you again. We will now adjourn.

(Luncheon adjournment)

Sir LAURENCE STREET: Chairman, ladies and gentlemen, the discussion we have had since the lunch break has ranged relatively widely, but I think one common theme that has emerged in relation to a number of the specific topics is the need for and the advantage of a greater degree of education in relation to the workers' compensation scheme, the policy, philosophies and the way in which it actually operates in the case of the individual injured worker. Education is something which, of course, extends both to the employer and to the workers and education is something which can far more readily be delivered to the big employers and to the unions than it can to the small to medium enterprises and the non-unionised worker.

Education emerged as something of significance when the group was looking at the complexities of the workers' compensation legislation, the difficulties that are experienced by those who come into contact with that field of jurisprudence in understanding what are their rights, what are their liabilities - more particularly in anticipating what might be events giving rise to rights and liabilities.

It was felt that there are a number of avenues through which education might be more effectively delivered. Professor Fearnside adverted to the availability of the medical profession to offer some educative advice right at the coalface through general practitioners when they are visited by injured workers. Professor Fearnside pointed out that such education might be included within the medical jurisprudence curriculum in medical schools that of present may not necessarily provide as much basic know-how in relation to workers' compensation schemes as might usefully be done. That there are far more widespread areas in our society where educative contributions can be made both to the workforce and to employers. The field of risk management is an area where education would play a very significantly beneficial role. That, of course, whilst predominantly the responsibility of employers, nevertheless is an area where workers would benefit from a joint cooperative effort in the workplace in achieving a worthwhile and effective degree of risk management. That is an area not just of education in relation to the workers' compensation scheme and legislation but it is an area which extends over into the broader and related social service concept of occupational health and safety because, after all, if we have a perfect system of occupational health and safety which is effective to prevent workplace injuries we will not need workers' compensation. That, of course, is not a level we are ever likely to achieve, but that should really be the goal, as I understand the discussion around the table, the goal towards which we should strive - that is a better and more efficacious occupational health and safety consciousness out at the workplace by both employers and workers and observance again out at the workplace. The workers' compensation legislation, so to speak, is almost complementary to an effective and properly structured occupational health and safety policy and implementation regime.

Flowing on from that important area of risk management where it was felt, I think, around the table that something worthwhile could be done by encouraging employers to provide an appropriate level of education is the question of how the small to medium enterprises can best be brought under the broad educational blanket. One possibility suggested by Mr Walsh was that group schemes might be formulated to cover small to medium enterprises. That, of course, would be a matter probably for industry itself to initiate, although it may well be something that would need, and could well receive, a degree of encouragement from the Government. The setting up of group

schemes which would integrate small to medium enterprises into educatable groups, cohesive groups in the handling and the processing of claims to which the members of that group might be subjected and also provide some opportunity of alternative employment from elsewhere within the group for an injured worker could well have socially beneficial overtones.

Such a group might very well take on board Professor Fearnside's comment that we should not be looking so much at the question of the disabilities of an injured worker - we should be looking at the abilities of the injured worker. That is really the social goal we should be trying to recognise and carry forward. It is getting the injured worker back to work again, both for the benefit of that particular individual as a matter of lifestyle and outlook on life and for the benefit of the employer. More widely, it is for the benefit of our society that injured people, just as are people who genetically disabled, are assisted very significantly to maximise their abilities - physical, intellectual and otherwise - for their own good and for the good of our community and, let it be said, for the quality of the civilisation that we pride ourselves on belonging to.

So the element of education could well be something which could be pursued more effectively for SMEs through some type of group scheme. That is a matter that may have attracted a degree of interest from Mr Goodsell and the Australian industry group, but I repeat that is a matter which may have to develop in the months ahead. It could be a feasible and attractive way forward.

The much debated question of premiums was considered by the group without any consensus emerging, apart from the obvious consensus that premiums need to be adequate to enable an appropriate level of compensation to be available to injured workers. At the same time, they need to be kept within a level which will not make them prohibitive, particularly from the point of view of the small to medium enterprises. We operate in Australia in a Federation and we have to maintain a degree of competitiveness with other States in the matter of premium levels. It is a difficult area. Ms Carl expressed very strongly the view of her organisation, the New South Wales Labour Council, that premiums need to be kept at a level which will afford the full measure of social justice to those who are injured in the workplace, a proposition one can not quarrel with, but this is a question which has necessarily to be addressed with a view to the economics of the whole problem of how the workers compensation scheme can be funded with due regard to public accountability and with due consciousness that the Auditor-General is in looking at how the scheme is able to be administered consistently with principles of proper accounting practice. We have moved in recent years into the area of publicly funded workers compensation, away from the privately funded schemes, and that has brought with it problems that are still in the process of being worked through.

So the premium I topic, I think it is fair to say, was recognised around the table without any specific options being put forward, other than that it is something that needs to be kept well to the forefront as we go down the path towards the implementing of the current reforms and perhaps the formulation of the next generation of reforms, which, as I understand it from the Minister, is still many months away and which will be influenced by the results or by observations of what is taking place as a consequence of the current reforms.

That led on to recognition of the importance of following the history in the months ahead of the unfolding of the benefits of the current reforms. There was a general consensus around the table that the reforms are beneficial, that they are a significant step towards improving the overall quality and justice of the workers compensation system. At the same time, the Minister has said they are very much on trial over the next few months before the Government gets to the next generation of legislation, and the need for all bodies concerned to watch relevant matters and be able to make representations in the light of them was recognised around the table.

The availability of commutation was a topic which attracted a particular degree of interest. Commutation had a respectable origin many years ago. Whether or not it is still a course that should be available to an injured worker seems to be something upon which the jury is still out. There is, as I would discern it, a tension between on the one hand the attractions of closure which were adverted to by Mr Harrison, and on the other hand, the need to get the injured worker back to work, not necessarily in the old job, but back into the workforce - a matter that was touched on a little earlier in the comments - in the interests of the whole of society. It is not just returning to the old job, but it is

returning as a useful unit in the workforce of our society. Whether commutation assists that social objective or not is a matter of debate. Some say that the provision of a lump sum will enable a new start and that used to be the basis upon which one justified applications for commutation, or whether it is simply a disincentive to trying to get back to work is, I repeat, a matter where there is a degree of tension, and it is an area of policy that I think around the table we simply had to recognise has still to be worked through in the months ahead.

There was an area then of discussion on the cultural problems that exist in bringing about effective reforms in our workers compensation system. I think that is something which was commonly recognised around the table. We have lived in an environment in which workers compensation was simply an automatic result of somebody having an injury with not a great deal of concern about the big social question of what do we do with the injured worker, how do we help them back to work. The point was made that we need to change attitudes in the workforce in placing upon the workforce responsibility and having the workforce recognise their responsibility for participating in appropriate occupational health and safety practices and minimising the workers compensation potential liability that flows if they are injured.

That flowed on to passing reference to who does have responsibility for the whole field of preventing and compensating injury to workers. It is an area in which the responsibility was seen to be shared between the employers and the workers. It is another area where it was felt that perhaps the education of our society is deficient, in that that shared ownership of the responsibility for preventing accidents and for compensating them is not sufficiently understood by those who are directly affected, that is to say the employers and the workers themselves. They are jointly engaged in this particular aspect of our society and they jointly own the way in which workplace accidents should be avoided and the way in which consequences in the form of injuries should be managed when accidents do occur. That, again, is where this question of education was recognised around the table as having a very real contribution to make.

The issue of governance was touched on relatively briefly - the structure and powers of the Advisory Council and the Board. That relates again very closely to this question of ownership and responsibility. The philosophy or the culture that big brother would take care of these matters is not really the appropriate philosophy. But an appropriately structured and empowered body, whether it is a council and/or a board, is essential at the top to control and administer the governance. Nevertheless, it should not be remote from the actual responsibilities and ownership of the workers and the employers. The matter was not developed to any further extent in our discussion, apart from recognising it.

Finally, the matter that Mr Goodsell raised, the watch points that need to be kept under consideration in the months ahead so that the Government can be assisted to formulate the next generation of proposals, was something that was left on the table for the memory, it is to be hoped, and attention of the various bodies whose representatives have been good enough to come along this afternoon.

I hope, Mr Chairman, that is a an adequate summary of what has taken place. I apologise if I have injected a few views of my own, but if I have to sum-up, perhaps I can includes some views of my own I have attempted to cover matters that emerged from our discussions after lunch and again I come back to that opening overarching element that seemed to pervade almost every topic, that is, the need for greater education which will then generate a greater awareness of the ownership by employers and workers of this very important aspect of our social structure.

Reverend the Hon. FRED NILE: Thank you, Sir Laurence.

It is my pleasant duty to thank everyone for participating today. There is no doubt that there have been major reforms to the workers' compensation scheme in New South Wales and we need to monitor those and allow them to develop. Our Committee will continue to do that and we look forward to your input as we finalise our reports which still have to be produced and our final report containing recommendations.

I would like to thank all of the delegates for coming. We know that you are all very busy people and have heavy responsibilities and your time is very valuable, so thank you very much for attending. I would like to thank the Committee members too who have participated in the forum today and also the Minister, the Honourable John Della Bosca, for his contribution as well.

I would like to thank particularly Sir Laurence. We have a gift for you, Sir Laurence, for being our facilitator and for being an excellent one. Thank you very much.

Sir LAURENCE STREET: Thank you very much, Mr Chairman.

Reverend the Hon. FRED NILE: We greatly appreciate it.

That brings the forum to a conclusion. Thank you, ladies and gentlemen, thank you staff and thank you, Hansard.

(The Committee adjourned at 4.30 p.m.)