CORRECTED

REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE No. 1

REVIEW AND MONITORING OF THE NEW SOUTH WALES WORKERS COMPENSATION SCHEME

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At Sydney on Tuesday 2 July 2002

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The Committee met at 10.30am

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PRESENT

Reverend the Hon. Fred Nile MLC (Chair)

The Hon. Michael Gallacher MLC
The Hon. Greg Pearce MLC
The Hon. Janelle Saffin MLC
The Hon. Henry Tsang MLC
The Hon. Dr Peter Wong MLC

DANIEL ALLEN TESS, Actuary, PricewaterhouseCoopers, 201 Sussex Street, Sydney, affirmed and examined, and

MICHAEL JAMES PLAYFORD, Actuary, PricewaterhouseCoopers, 201 Sussex Street, Sydney, sworn and examined:

CHAIR: In what capacity you appearing before the Committee?

Mr TESS: As a director of the PricewaterhouseCoopers actuarial practice.

Mr PLAYFORD: As an actuary who has experience of workers compensation in New South Wales.

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

Mr TESS: I am.

Mr PLAYFORD: Yes.

CHAIR: If you should consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee will be willing to accede to your request that we go in camera. The Committee sent out various draft recommendations that it was considering, and I gather that you want to make a verbal response to one or more of those recommendations.

Mr TESS: I would like to just make some general points. We have a statement we would like to make and in that statement we will restrict ourselves to the recommendations where we think we have particular experience and expertise. That experience and expertise, for us, lies in two areas. The first area is as actuaries with extensive involvement in the scheme in New South Wales. The second area is to do with our being finalists for the scheme review which has been put out to tender and which is under consideration right now. With respect to the scheme review, we have two general points we would like to make about the recommendations. The first point is that we recommend that this Committee discuss with the scheme review committee any recommendations which would expand or change the scope of the scheme review relative to the request for tenders which was released for that review.

The Hon. GREG PEARCE: Can you run that past me again?

Mr TESS: Yes. If any of your recommendations would in any way change the scope of the scheme review relative to the request for tenders that was released, we recommend that you consult with the committee running the review just so that that expansion of scope is clear. There are a couple of places in the recommendations where we believe such a scope expansion exists. Our second general point is that we would generally advise against any recommendations which at this time would pre-empt a comprehensive, thorough and impartial review of all the options for the underwriting and insurance arrangements of the scheme. In particular, your recommendation No. 2 was that the scheme not be privatised. We would argue that that is pre-emptive moving into a full scheme review from our viewpoint. We are not able to take that kind of opinion into an impartial and thorough review.

The Hon. GREG PEARCE: That is important.

Mr TESS: We would also like to address other of your recommendations with our actuarial hat on as opposed to a scheme review hat. I will pass over to Michael to talk about some of those.

CHAIR: You made a reference about the scheme review. You are not doing the scheme review, though, are you?

Mr TESS: The scheme review has been put out to tender, and we submitted a tender to conduct the review.

CHAIR: No decision has been made yet as to which company will conduct the review.

Mr TESS: Finalists have been decided upon and we have been chosen as a finalist. We have presented to the scheme review committee and it is under consideration. We simply want to point out to the Committee that in

terms of your recommendations that have something to do with the review, we are here as people who are candidates to perform that review.

CHAIR: Thank you for making that clear.

Mr PLAYFORD: The first recommendation that I would like to make comment on is recommendation 5, which is to do with the appropriate target period in which the scheme funding could be achieved. The first comment I would like to make is: What do you mean by fully funding? If you are talking in terms about the premium that you are charging to fund the current years claim costs, we believe that that should occur immediately. The scheme should be aiming to do nothing else but fully fund the current year from the current year's premiums. However, if you mean fully funding to mean to fund the outstanding liabilities and the existing deficit of the scheme, that is a bit more complicated.

Our view is that choosing the time period is a political decision and what is more important is to have the strategies in place to make that happen. It is clear that WorkCover already has a number of strategies in place to improve the claims experience of the scheme, such as revising the insurer remuneration arrangements and benefit the changes that happened last year, the premium discount scheme which is aimed at improving occupational health and safety for employers, operational changes such as provisional liabilities and the claims assistance service, and dealing with disputes via the commission. What is important is to try to form a view of what the success of those strategies is likely to be and will it be enough to achieve full funding over whatever period politically the deficit is aimed to the eliminated in.

CHAIR: Just to clarify that, we did mean including the deficit.

Mr PLAYFORD: We had hoped to have a look at the work done by Tillinghast, which was the scheme actuaries, and their view of what was happening in terms of the scheme funding.

The Hon. GREG PEARCE: They were the scheme actuaries.

Mr PLAYFORD: They were the scheme actuaries. I guess we should make it clear that PricewaterhouseCoopers has become the scheme actuaries from 1 July. As that was only yesterday, we have not have a chance to get up to speed yet. I had hoped to look at the December evaluation report by Tillinghast, have a look at what its view of the scheme funding situation was, but I understand that that has not been released yet. Usually those reports include a projection of what the funding position is likely to be over the next five years.

The Hon. GREG PEARCE: That evaluation has been released.

Mr PLAYFORD: Certainly, I have not received it or been able to get a copy at this stage. I guess that limits the ability for us to answer the question in technical terms. Given that we cannot answer from a technical point of view because we did not know the method that previous actuaries applied to work out what they believe the funding position is and what the potential for changing that outcome might be because of the recent reforms and strategies that WorkCover has put in place, it is difficult for us to comment on what that will do to the funding position over the next few years. When that report comes out or if it is in there, that provides a baseline so you can say, "Will that achieve what we want to achieve?" If it is not, thought needs to be given to what additional strategies need to be put in place to improve that funding position. I do not know if WorkCover has put any thought into what plan B might be if plan A, the current strategies—

CHAIR: Do you agree in principle that there should be a target date set as an objective, even if you do not know what the target date would be?

Mr PLAYFORD: Yes. I think a target date should be set. In terms of responsible financial management of the scheme, that is a reasonable thing to do.

CHAIR: But you are not prepared to say what period that would take.

Mr PLAYFORD: I think it is a political decision. That said, other schemes in Australia which have made decisions about wanting to eliminate deficits have usually been able to achieve that within a five-year time frame. My personal view is that if you go much beyond five years it starts to become meaningless because you do not have the focus on trying to achieve it within a reasonable period of time.

The Hon. Dr PETER WONG: Knowing the huge deficit that we are supposed to have, is it realistic that reforms to WorkCover will stabilise the scheme and wipe out the deficit in five years?

Mr PLAYFORD: I think it is achievable. Certainly, it would be quite hard and would require some tough decisions to do that.

The Hon. GREG PEARCE: Are you aware that the WorkCover targets mainly achieved approach, which is meant to re-fund the deficit, had a 15-year time frame? WorkCover was working on a 15-year time frame.

Mr PLAYFORD: No, I was not.

The Hon. GREG PEARCE: You would not agree with that because you suggest five years is the time frame you would need.

Mr PLAYFORD: Other schemes in Australia have been able to achieve it in five-year time frames. Whether their deficits were of a comparable magnitude relative to the size of the scheme, I do not have the evidence to do that but 15 years is a pretty long time frame in my view.

CHAIR: You have not come down firmly on five years—you are saying that five years has been a pattern in other situations—because you do not have all the figures available at this stage to make a concrete period.

Mr PLAYFORD: That is correct. In particular, I have not been involved in any costings that were done based on the recent reforms so I am not aware of how the financial position of the scheme has changed since the introduction of those reforms. That might have a very big bearing on just what the size of the deficit is at the moment. I am not aware of what the deficit is. That is why I would be interested in seeing the 31 December report.

CHAIR: What other observations do you make about the recommendations?

Mr PLAYFORD: The other one on which I want to comment is recommendation 19 regarding structured settlements. I have some interest in this area because I have been involved in an Institute of Actuaries Committee that helped in the lobbying for the introduction of structured settlements. My views on the relevance of structured settlements to New South Wales workers compensation is that it is probably not that relevant. I will put that in context. Last year there were major reforms to restrict the utilisation of lump sums in the workers compensation scheme of New South Wales. As well, Common law settlements in future will only include an economic head of damage so that will reduce dramatically the volume and size of future lump sums awarded in the New South Wales scheme.

The Federal Government also imposed some minimum conditions on the structure of structured settlements. In particular, there is a requirement that a structured settlement must be able to provide a minimum periodic benefit equivalent to the old age pension. When you do the mathematics behind that, and look at life expectancy of these typical claimants, it equates to lump sums of the order of at least $600,000 or $700,000.

It is only the very largest lump sums which would meet the Federal Government's criteria to be eligible. I also see difficulties in a significant structured settlement market developing in the near future. It does require life insurers to be interested in establishing the market. Life insurers in recent years have not been proactive in trying to expand into an annuity market at all. Most annuities that they do sell are to older people, mainly retirees. They will find there are larger risks associated with them selling annuities to younger people that have potentially impaired mortality. I think they will be less interested in being involved in this market than perhaps governments around Australia would wish. It is also less attractive in an environment where lump sums are being costed, using the 5 per cent discount rate.

The reality is that life insurers can only achieve real rate of return, based on the sort of assets in which they invest the money of 3 per cent or 4 per cent per annum. The manner in which they would cost a structured settlement would make it less attractive in the eyes of a claimant compared to the lump sum that they would achieve. That is all quite negative. I do support structured settlement legislation because I think for social policy reasons it is actually very good. It is about trying to protect the claimant from the risks associated with mortality and investment. It is good social policy legislation, but I do not think that it is going to take off in a big way in the near future in Australia generally. But I also do not think it is particularly relevant to the New South Wales workers compensation scheme.

CHAIR: The Committee's recommendation specifically related to seriously injured workers—quadriplegic, paraplegic—would your remarks still apply to them?

Mr PLAYFORD: Your recommendation is in respect of, "Will it impact on the scheme's finances and the behaviour of claimants in that scheme?" Because it is only such a few claimants that would meet those criteria it will not have a significant impact on either the financial state of the scheme or the behaviour of the wider scheme.

CHAIR: You say that if a structured settlement is voluntary, they will not go for it and their solicitor will not advise them to accept it either? It would have to be compulsory?

Mr PLAYFORD: It would probably have to be compulsory but also the numbers are so small once you allow for the fact that there is a minimum criteria in place, you have already taken out a lot of the heads of damage from the lump sums. There just will not be many claims that are eligible.

The Hon. GREG PEARCE: What about commutations for self-insurers?

Mr PLAYFORD: The average commutation is about $50,000 in New South Wales. Again the vast majority of commutations would not meet the minimum criteria to be eligible for a structured settlement.

The Hon. Dr PETER WONG: Did you comment on the behaviour of claimants? Is a lawyer likely to obtain more or less?

Mr PLAYFORD: For the vast majority of the scheme, it will have no impact at all because it is only so specific to such a small volume.

The Hon. Dr PETER WONG: For those that have?

Mr PLAYFORD: For those that have, some lawyers will press for a structured settlement because they believe it is good social policy for that claimant to receive periodic benefits. Other lawyers would probably advise them to accept a lump sum. I really do not know.

The Hon. Dr PETER WONG: Does the taxation factor come into it?

Mr PLAYFORD: It will come into it What will also come into it is: if the claimant might want to use the money; the attractiveness of the alternative lump sum, depending on what discount rate is used to calculate that lump sum; and the circumstances of the claimant, for example, are there dependents to look after he or she?. For example, if the claimant was a very young person with severe disability and did not have carers in the family to look after, it may be that the lawyer would suggest a structured settlement more than a lump sum in that situation.

The Hon. Dr PETER WONG: Do you say overall it would not make much difference at all?

Mr PLAYFORD: I do not think it will make much difference to the New South Wales scheme.

Mr TESS: My understanding of this issue is in line with Mr Playford's. What seems to be out of whack on this is that the tax laws seem to work against what is generally accepted to be good social policy. The tax laws make it unthinkable that you would accept a structured settlement today: it would just be stupid. There are some reasonable arguments for changing the tax laws so at least financially it is a mutual decision. That is not to suggest that everybody is then going to choose structured settlements.

CHAIR: The laws have changed in regard to motor accident cases now. The Federal Treasurer has started to move to some softer policy on that issue.

Mr TESS: But the tax laws have not been changed for worker compensation.

The Hon. Dr PETER WONG: On the other hand, it has been argued that even when you receive a lump sum, the interest derived from the lump sum is taxable anyway. In some ways it is not much different from a structured settlement in which you are taxed on the annuity rather than the lump sum.

Mr TESS: Most people take the lump sum and invest it in ways that it is not taxable, such as in their house. I think that is really the argument.

Mr TESS: We have some comments to make in relation to recommendations 12, 13 and 14 together that have to do with employer excesses. In general we feel that the issue of employer excesses is important, and that it ought to be studied in its own right and that all three of these questions really should be subject to further specific study in a New South Wales context. For example, our practice has recently done a similar study for the Victorian

scheme as part of a premium review project that was undertaken this year. We would suggest that a similar study would be a good idea in New South Wales.

Recommendations 15 and 16 are generally related to self-insurance. We would urge caution with respect to self-insurance recommendations. There are some very good arguments for making self-insurance more attractive but we think we ought to point out that self-insurance is not a panacea. We also think we ought to point out that although it may be good for self-insured employers to adopt a self-insurance approach, and if they pursue it well, there may be some negative impacts on the scheme. More specifically, I am talking about a pretty well documented phenomena of anti selection. The people in the scheme that would be most likely to go to self-insurance are your better performing employers: They have the most to gain. Employers that are left in the scheme will be in a different financial position as a group. It is going to make things like a deficit be harder to dig out. You should be aware of those sorts of pros and cons. Self-insurance is not cut and dry.

The Hon. GREG PEARCE: Do you support compulsory subsidisation by the good employers? You are saying good employers are being forced to subsidise the bad ones.

CHAIR: Perhaps it is to subsidise the high-risk industries.

Mr TESS: It is a difficult issue.

Mr PLAYFORD: You could take it to an extreme in which case insurance does not work any more and you are left with a very small pool of employers whose experience is so bad that may be they should not be employers.

Mr TESS: It is linked back to recommendation 5 about which I want to make a couple of comments. What kind of a time period should you be thinking about for funding the deficit? As Mr Playford said, there are two ways to think about full funding. You can talk about your deficit or you can talk about your premiums. We want to make this point for a reason, that is, although, yes, you do have a deficit for all years, it is large, it is a financial problem, you are not currently fully funding your premiums. I would advise you to consider that as the first issue.

Before you think about how you should start funding your deficit for old years, it seems to me that you would be well advised to figure out the policy issues around this year's premium funding. The premiums that employers will pay this year will target 2 .8 per cent of wages. That is not enough: That is not what the scheme actuary has thought, for a number of years now, would be a fully funded rate. That means that you will make the deficit worse this year, not better. That policy point must be worked out before you can rationally address the issue of how to solve the old year's funding deficit.

CHAIR: Do you believe someone should calculate the potential outlay and set the premium for that particular year and it would be self supporting for that one year?

Mr TESS: Our professional position as actuaries is, yes, that is how a normal insurance mechanism would work. Your scheme actuary has always, as part of the standard work product, estimated what the fully funded premium rate will be each year. It has been the policy of the scheme not to charge that fully funded rate for a number of years. That is a fundamental problem that must be addressed before you can realistically hope to address the prior year deficit problem.

CHAIR: Apparently the break-even rate was calculated at 3.06 per cent.

Mr TESS: It is more than what you are going to charge. There is a policy in place at present that you will charge 2.8 per cent a year.

The Hon. GREG PEARCE: It is the Minister's decision, not the scheme.

Mr TESS: I do not know how the decision-making process works.

CHAIR: You are saying that, if you want to do the right thing, you should charge 3.06 per cent on average?

Mr TESS: We would say that that is the basis of sound financial management in an insurance scheme. There are many such positions behind that statement. One of them is that a stable and viable financial system adopts full actuarial funding as the financial management methodology. It is not clear right now whether that has been adopted in the New South Wales scheme—in fact, I would say it is clear that it has not been adopted. I am

trying to say that I think that issue should be nutted out before you can realistically try to solve your prior year deficit problem. It is a simple problem and it still exists.

The Hon. Dr PETER WONG: Can you argue that in light of the recent reforms a 2 .8 per cent increase would be adequate?

Mr TESS: It could be argued that way. I think Michael's point was that we do not know whether it has been argued that way by your actuary because we have not read the most recent actuarial report. I do not know the actuary's estimate of the reforms.

CHAIR: It is almost as though if you do not set the premium somehow you want the actuary to come up with a good result, but he cannot.

Mr TESS: No.

CHAIR: That is the pressure operating in the system.

Mr TESS: I do not have any other preprepared issues that we want to draw to your attention, but we would be happy to answer any questions about specific recommendations.

The Hon. MICHAEL GALLACHER: Daniel, in your opening comments you raised the issue of the need to expand the scope of the review. Can you explain what you mean and why you have come to the conclusion?

Mr TESS: What I was trying to convey is not quite what you have taken from my words. I will try to restate it.

CHAIR: I took it that you were saying that if we did things to expand the review that would upset the tendering process.

Mr TESS: I do not think that is really true: It does not upset the process. We recommend that you liaise in some way with the steering committee for the review so that any expansion you recommended was clear and the committee would make that expansion clear in its terms of reference as the review is taken forward.

CHAIR: So there is flexibility in the review.

Mr PLAYFORD: Yes, otherwise your expectations of what will come out of the review may not be met.

CHAIR: We thought there may be some restrictions in that you have tendered based on how many hours of work would be involved in the review and if we expanded the review it would upset the tendering process.

Mr TESS: I do not think it is the primary issue. I think it is more about how you design the work. It is not so much about whether we get the right fee but whether we are set up with the appropriate team to address the substantive issues that need to come out of the review. I will give an example. Your recommendation No. 7 is that the scheme design review consider whether the WorkCover Authority ought to be separated into two bodies, performing regulatory functions and workers compensation management functions. My reading of the request for tender is that this recommendation, although it addresses the scheme review, is not currently in the terms of reference for the review. Therefore, it could be interpreted as an addition to the scope. If that is what you want to recommend, I think it would be a good idea for you to liaise with the steering committee for that review to ensure that what you want the terms of reference to be is what they become.

CHAIR: I think the problem is that the terms of reference were set separately from our committee. We still have not finalised our final recommendations. That is why we are at cross purposes at present.

Mr TESS: We do not see any cross purposes in any of your recommendations. We are simply aware of a couple of items that are not particularly contained in the terms of reference. We do not think they are particularly bad ideas but you would want to do something to ensure that the terms of reference are adjusted according to what you would like.

The Hon. GREG PEARCE: Which items?

Mr TESS: No. 7 is an example.

CHAIR: If we wanted to include those in the scheme's review and we advised the Minister that they should be included in the terms of reference, do you see any problem with that?

Mr TESS: I do not. I think you could advise the general manager of WorkCover, who I believe is chairing the steering committee for the review. I also believe that committee would be very receptive. I believe it has made a statement to the effect that it would be very receptive to what you suggest the terms of reference should be. It will not be a problem.

The Hon. MICHAEL GALLACHER: Do you believe there is anything lacking from the review?

Mr TESS: Not in my opinion. There is a whole lot in the review.

The Hon. GREG PEARCE: Mr Playford, I notice that you are one of the co-authors of the report to Treasury on tort law reform of public liability insurance. Many similar questions arise here. I did not find in that report any indication of the quantum of public liability premiums and claims on an annual or an overall basis. Given that we have had so much work on the financial condition of WorkCover, I am interested that your report did not seem to have any quantum at all.

Mr PLAYFORD: We were not asked to say explicitly how big the market is. As a general comment, about 5 per cent of insurance premiums in Australia are in respect of public liability insurance. But I do not know exactly what the volume would be for New South Wales.

The Hon. GREG PEARCE: Do you have any idea what sort of figure it would be?

Mr PLAYFORD: I would be better off taking the question away and sending you a reply.

The Hon. GREG PEARCE: I am interested in the premium levels, the annual claims and the tail.

CHAIR: You commented earlier that the premium should be realistic. We made recommendation No. 11 that IPART be responsible for setting target premium rates so that the decision is separated from the political arena. Do you have any comments about that? Is IPART the appropriate body to set premium rates for New South Wales workers compensation and should IPART's recommended premium rate be mandatory or advisory?

Mr TESS: The review that we have been talking about in which we may be involved would certainly consider that but we would not want to pre-empt that review considering all the possibilities.

The Hon. GREG PEARCE: The issue is whether IPART would be qualified to conduct that exercise.

Mr PLAYFORD: In terms of qualifications, it would not currently have any workers compensation experience and it would have to build up that expertise to be able to do it properly. It is complex in that it is not just about funding issues; there are also issues of creating a premium methodology that creates the right incentives for employers to focus on their claims experience. There are issues of equity and cross-subsidy—we have already alluded to cross-subsidy between good and bad employers. It is complicated and it would have to do something in terms of its capability.

CHAIR: If it were not IPART does any other body come to mind that would have that knowledge and experience? Would we have to establish a special premium board or committee?

Mr TESS: WorkCover and its actuary have that experience and perform that function at present. The question is whether there should be some higher level of supervision or regulation of that policy-making process. This recommendation presumes that we will stay with some sort of underwriting mechanism where there is government underwriting of the scheme. That is more of a presumption than we want to make at this time because we do not want to pre-empt what the review would consider.

The Hon. GREG PEARCE: The Government says it does not underwrite the scheme; it does not own it.

CHAIR: Are you of the understanding that that review has the option of coming down on the side of privatisation? We understood that that was not an option.

Mr TESS: Not only is it an option but the review is required to consider the full range of underwriting and insurance options that could be implemented in theory and to consider a wide range of factors relative to each option, including national competition principles.

CHAIR: So it will consider the privatisation option?

Mr TESS: If we are involved with the review we will certainly consider it.

The Hon. MICHAEL GALLACHER: What about commutations? Would you revisit that in the review if you were to do it?

Mr PLAYFORD: The benefit structure is outside the review.

CHAIR: The Government's policy has influenced the committee's approach to not proceeding in the privatisation area. We felt restricted to that degree.

Mr TESS: The review that is being commissioned is an independent review. The mechanism they are using involves keeping an open mind and documenting the reasoning behind the range of options. It may be that some people in the Government feel that it is a fait accompli that the review will produce a negative opinion or position on private underwriting, but that is certainly not our position going into the review.

CHAIR: Good.

The Hon. GREG PEARCE: I have question about APRA and how the funds are secured. We have a bunch of insurance companies that are agents in the workers compensation scheme. They are bound by APRA, reserve levels and so on for their other business but not for their workers compensation bundle of money. What security is there for that bundle of liabilities? If we had another HIH—if another one goes—what security is there for the tail of the workers compensation portion of each agent?

Mr TESS: Two pieces of security are explicit. One is that, as part of the actuary's valuation of the scheme in New South Wales, a provision is included for future claims handling expenses. If one of the insurers were incapable of performing those duties, the reserve for claims handing expenses would still exist and the duties would simply pass to a different insurer. Before that would happen there is an additional provision in that in New South Wales each of the agents has to have an audited cash fund for the daily payment of claims. I believe the cash fund is trued up monthly with WorkCover. I think it is of the order of $500,000. There is a certain cash flow security built into the operation of the system.

The insurers that do the claims handling are independent of the ultimate financial liability of benefits under the scheme—that is the deficit we are talking about; it is not part of the insurer's financial responsibilities. So the real issue is whether the insurers that handle the claims will continue to be able to handle the claims and whether you have funds put aside to ensure that somebody will be able to handle them. The arrangements seem appropriate.

The Hon. GREG PEARCE: But other than that $500,000 or so there is no security that funds are put aside in the current system.

Mr TESS: No, there is security. The insurers invest the funds of the scheme in separate accounts that are independently audited and the performance of those accounts is measured regularly by WorkCover as one of the functions under the scheme.

Mr PLAYFORD: And they cannot use those accounts for any other purpose but for paying workers compensation.

Mr TESS: They are custodians of the accounts, they are not the owners.

The Hon. GREG PEARCE: So if HIH had $600 million proportion of the workers compensation scheme—

Mr TESS: Which would be about right.

The Hon. GREG PEARCE: —when it collapsed, what would have happened to cover that $600 million?

Mr TESS: That actually did happen and the claims handling operation of HIH was simply picked up by another one of the insurers in the scheme. There was an unbroken continuity of claims administration and there were no real issues. The funds for which HIH acted as custodian were passed over to the new operational owners and no hiccups really occurred. I would not think that that is unrepresentative or lucky in some way. I think that is pretty much how the scheme has been set up.

The Hon. Dr PETER WONG: Earlier on you talked about bad employers. What options would you suggest for rehabilitation? Would it be to increase premiums or to impose stricter work safety and other measures?

Mr PLAYFORD: It is not necessarily that simple. I think all those things are being done to an extent already.

Mr TESS: Could you refer us to the recommendation number?

Mr PLAYFORD: Or are you asking about it in general?

The Hon. Dr PETER WONG: You mentioned bad employers as being one of the key problems in this field. Obviously, you would have some idea how to treat bad employers?

Mr PLAYFORD: All the things you recommended such as increasing the premium rates—that is an incentive—and the premium discount scheme is about rewarding people for improving their occupational health and safety. A number of measures are already in place to try to do that. I am not sure what additional measures would necessarily be helpful. I would have to think about that.

CHAIR: There was an additional recommendation that the department recommend the New South Wales Audit Office conduct a performance audit of WorkCover New South Wales.

Mr TESS: Who would conduct that?

CHAIR: The Auditor-General would conduct a performance audit of WorkCover. He has had a lot more to say about WorkCover in recent times.

Mr TESS: I would not be qualified to give a helpful answer on that issue. Frankly, I do not even know what are the current audit provisions for WorkCover, although I am sure there are well-defined and extensive WorkCover current audit provisions.

The Hon. GREG PEARCE: The Auditor-General has a program of conducting performance audits across New South Wales government and we were trying to bring it forward and make it a priority.

(The witnesses withdrew)

GREGORY JOHN McCARTHY, Executive Director, Workplace Injury Management Services, 15 Robinson Street, Cronulla, sworn and examined:

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

Mr McCARTHY: Yes.

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

Mr McCARTHY: Thank you.

CHAIR: I make it clear for the record that you are appearing before the Committee in your private capacity, is that so?

Mr McCARTHY: Yes. I am from Workplace Injury Management Services but I was asked originally to come in my private capacity, so I am not representing the company that I work for.

CHAIR: You have received a copy of our recommendations. Do you have any matters to which you would like to refer?

Mr McCARTHY: Nothing specific. I have been through it. I have to confess that I have just returned from a month overseas so I have not had time to make a formal response, although I can do so over the next week or two if the Committee would like that. I have had a chance to read through the document and have made some comments along the way.

CHAIR: Could you proceed to the recommendations. Obviously, some are not relevant to your own field but please make whatever comments you wish?

Mr McCARTHY: The comments that I have made are generally in relation to the questions that have been asked at the end of some of the recommendations.

CHAIR: If you would please give us the number of the recommendation to which you refer?

Mr McCARTHY: I will go through each of them. In relation to recommendation No. 1, I have no specific comments made about that. Recommendation No. 2, the question for stakeholders was asked: Are the Committee's suggested criteria for consideration of privatisation appropriate? I think the answer to that is yes, I do agree with what is being outlined in recommendation No. 2, which I can go through if the Committee would like but I understand everyone has a copy. I can elaborate on any of these as we go through if anyone would like me to.

In answer to recommendation No. 3 as to whether two years is sufficient time for the impact of the 2001 legislative reforms to be established—which I think was the question for stakeholders—I think it is sufficient time for us to get a feel for whether or not the reforms will have the effect that was intended. Whether or not the work or the benefit has actually been produced at the end of two years might be a little bit early. I think it will take quite a bit of time for all that good work to come through, but we will certainly know by the end of two years whether or not the current reforms will do the job which was asked of them.

CHAIR: Do you think that there may still be some other areas that need reform? Will our recommendation discourage the Government from performing some other priority areas?

Mr McCARTHY: I think there are some areas where the scheme will require further reform and I certainly think that the scheme design review that has been commissioned should flesh a lot of that out. I would be cautious at the moment of too much more change or tinkering until we really do get a chance to see how effective the new changes will be. The danger is if you keep changing things, you never know really what it is that has brought about the change. Also, constant change can actually undo the change you have done. We have had some fairly dramatic change.

CHAIR: Do you know of any area that has been overlooked in all the reforms. You seem happy with the number of reforms to be put in place?

Mr McCARTHY: I still think there is a lot of work that needs to be done in relation to compliance, which is being looked at presently. There is a compliance report that is being released, as I understand it. Again, having only just got back from overseas I have a copy of it but I have not had a chance to read in detail so I cannot really comment on whether it hits the nail on the head or not. However, a lot of work is still needs to be done in that area and I do not think we need to wait for the two years to be up before we start to play with that. A lot of the reforms do generally address the scheme going forward.

We could spend some time looking at what to do with the tail. A clear strategy for managing the tail could be something that could be looked at in the next 12 to 24 months, quite separate from the reforms that are going forward. There is no doubt that some of the reforms will have an impact on some of the tail in respect of those that did not get their common law claims in, and so forth, but regardless of the impact, there are tens of thousands of claims sitting there that need some resolution and a clear strategy for those would be appropriate.

Recommendation No. 4, which was the question about the deficit and surplus and where should the scheme's deficit and surplus be recorded, I do not know that I have a strong view on where it should be recorded. I have a view at the moment that the legislation clearly says that the deficit belongs to the employers of New South Wales. Therefore, if there is a deficit, at the end of the day the scheme has the right to go back to the employers and ask them to fund that deficit. Whether you need to change that or not, at the end of the day the community will have to pay for whatever the deficit is because if the employers have to pay, the community ends up paying because the costs are passed on through service charges and so forth.

The scheme design is the appropriate area to review what you might do with the deficit or where the deficit might ultimately lie. I think that is all I can say at this stage. I have no strong view on where it should be recorded, other than it appears to belong to the employers of New South Wales. Recommendation No. 5 talks about the scheme setting an objective target period over which it is to be fully funded and what is the appropriate target period to become fully funded. I would like to look at that as a two-part issue. We have a tail that is unfunded and we have underwriting that is going forward. If we look at trying to fund what we have already got, if we can separate and draw a line in the sand, we have an amount of claims not funded. To fully fund those, there are only two ways to go about doing that. The first is a deficit levy, and if you were to introduce a deficit levy you would properly need to fund that over 10 years so as not to place a dramatic burden on those people who are expected to fund it. The other way, in terms of having a tail management strategy to more effectively manage and settle those claims, is that you could reduce the deficit to an extent that it either disappears or there is less that needs to be funded by those people who are ultimately responsible for the deficit.

When you look at underwriting the business going forward, I think you need to be looking at moving to a situation where the premiums that have been charged on business being written this year are fully funded. At the moment that is not the case, the scheme is being subsidised. I am not sure of the actual levels, I think it is a 2.8% premium rate which is not sufficient to fully fund the claims that we will incur this year. So I think you need to separate those two issues out and you can move fairly quickly, depending on the state of the economy, I guess, to try to get a fully funded premium. But the fully funded premium can come about in two ways: obviously charging more premium or, obviously, having reform issues that bring about the ability to manage claims in a more effective way as well so the liabilities drop and the premium that is being charged may be sufficient to cover that. I do think you need to separate the two issues out at the tail and the underwriting years going forward. Again, I can elaborate on that further if people would like.

Recommendation 6 is about publicly releasing the reports. I am not sure what is publicly released now. I thought the actuarial reports were but they are not publicly released. So I have not actually got a strong view on that because I really was not sure what was currently publicly available in relation to the financial capabilities of the scheme and what was not. I would like to take that question on notice. If people would like me to further consider it I could, but at this stage I need to try to understand what was publicly released and what was not.

Recommendation 7 talks about the scheme design review: Consider whether WorkCover Authority should be separated into two bodies performing regulatory functions and workers compensation management functions. I go hot and cold on this one. There are times when I do think it should be separated into two areas. I probably lean more towards WorkCover being split into two areas between what I will call the old occupational health and safety inspectorate area that used to be handled by—I am going to show my age here—the old Department of Labour and Industry [DLI] and what I call the insurance or the workers compensation component. I think it is a little bit difficult when you have got the inspectors and so forth that on one hand are the enforcement officers and, on the other hand, supposedly risk managers. I do not think it augurs very well for good risk management and, at the same time, good policing of safe workplaces and so forth.

I think it depends a little bit too, regarding WorkCover in relation to workers compensation insurance and scheme regulation, as to whether or not you privatise. If the scheme was ever to privatise then I think WorkCover would have to take on a completely different role to the one it has today. Today you have to say that WorkCover is actually the insurer. So on one hand it is acting as an insurer, or should be acting as an insurer, and, on the other hand, it is acting as a regulator as well. There is a bit of a crossover. I think the scheme design should look at that. What the actual answer is I am not really quite sure but I do think it is a question that needs to be asked and challenged.

Recommendation 8, that the licensing arrangements between WorkCover and agents be replaced with a contract. I really have not thought about that one. It is only something that has been raised in recent times. I am not sure whether you could do this under licensing and whether you would need individual contracts, but one of the difficulties that I see at the moment with the current arrangements is that basically we have got, I think, 8 agents out there at the moment—I cannot remember exactly how many it is—who are essentially providing a very similar service to each other. There is very little room for competition. If we are going to have all the agents out there adopting a one model fits all approach we might as well have one agent doing it for everybody. We would have better economies of scale and efficiencies. On the other hand, if we could put the contracts out there and look for a range of people to offer a wide range of differentiating services, then I think contracts could probably better provide that sort of capability where someone was to come forward and say "This is what I am going to do. This is how I am going to do it" and then you offer a contract to those people. A bit like building a house; you can build them all differently.

I think the difficulty we have at the moment under the current arrangements is that insurers really are not given the capability to be terribly innovative and where they try to be innovative the licensing arrangements do not actually allow it. So I think again it is an area which the scheme design review should primarily focus on.

Recommendation 9, that the scheme design review consider separate tenders for each of the main functions. I think it is worth looking at. If you stayed in a managed funding arrangement you have basically got one insurance company, WorkCover,. It needs to make sure that it is going to get the best service in relation to premium collection, fund investment, claims management and the like, and it does not necessarily follow that one organisation is going to be the best at all of those. It does not necessarily follow that they will not be either. So I do think that it is worth having a look at.

Should non-insurers be allowed to tender? Well, assuming that they can deliver the service, I do not see any reason why they should not. This is a bit of a misnomer that we get into here where we keep referring to the insurers. They are not really insurers in this scheme, they are agents or claims handlers or premium collectors; it just so happens that they happen to be insurance companies that provide that service. I do not believe you need to be an insurance company. The difficulty we have is that the only people or the only organisations with the capability to hit the ground running with this stuff at the moment tend to be insurance companies. If you were going to allow other players into the game, I think you would need to have a lot of lead time in order for them to gear up and have the capability and understanding of what was needed to be able to provide the services and deliveries that were expected of them.

Are they the only functions that could be provided? The only other function that I could think of that you might separate out might be the actual payment capabilities in that claims and injury management is very much that and claims processing is very much a different function. So it is possible that you could get better value by having an organisation responsible for the financial transaction processing, if I can call it that. I have not given a lot of thought as to how you might go about doing it but in answering the question, is there anything else you could do, that is something that could be possible.

CHAIR: Just to clarify what you said, Mr McCarthy, you are saying it would be possible for other companies who are non-insurance companies to tender to do all the work that insurance companies are currently doing as agents handling the claims and so on?

Mr McCARTHY: Yes, I believe so. If you look around the world at the models, the American models have very clearly devolved into what they call TPAs or third party agents which are effectively what the insurers are here in New South Wales. In other words, what an insurance company does is they recognise that what they are good at is the evaluation of risk and the management of the finances behind that risk but sometimes they are not all that good at actually managing the transactions or the claims themselves, and what they do is they outsource the front-end, if you like, or the actual handling of the claims. In effect, if you look at WorkCover as an insurance company, that is what they have done here in New South Wales; they have outsourced the claims handling and premium collection to other agents. The legislation here actually says you do have to be either an insurer or a wholly owned subsidiary of an insurer in order to do that. I ask the question why?

CHAIR: So we can recommend there be an amendment to make it more flexible that other companies could apply to do it alongside insurance companies?

Mr McCARTHY: I believe that would be the case. I think that the scheme design review will see it as a major part of their challenge to investigate that. It is certainly something that I think is being talked about quite a bit at the moment. If we look at what has happened in Victoria in the recent re-licensing, there are two organisations down there that are non-insurance companies. So perhaps we could watch over the next 12 to 24 months to see how they perform.

CHAIR: I suppose under the new competition policy it should be more open then, rather than locked in with insurance industries?

Mr McCARTHY: You are not acting as an insurer, you are really handling claims and making payments and collecting premiums and managing funds. WorkCover is the insurer at the moment.

The Hon. Dr PETER WONG: Can you give an example of any function of the insurers at the moment that is not performing well and can be taken by other agents?

Mr McCARTHY: I think all of the functions currently being handled by insurance companies could be handled by non-insurers, that includes premium collection, managing the funds, managing claims. It is just that historically in Australia the organisations that are geared up and capable to do that have tended to be insurance companies. So it is not something which has typically been done in Australia. I do not see anything currently being done by insurers in New South Wales in a managed fund environment that could not be done by other organisations.

The Hon. Dr PETER WONG: In a better way, would you say? Better performance?

Mr McCARTHY: I think the only reason it would be done better is simply because a new organisation would have the ability—assuming that they have recruited correctly—to hit the ground with a very different culture than currently exists. The difficulty for insurers is that they have come out of that very traditional insurance claims environment and they have very entrenched cultures that are difficult to change overnight. I think that is the reason why we have not seen rapid turnarounds in the performance of the insurers in respect of the new injury management style approaches that have been attempted to be introduced into not just New South Wales, but into Australia in recent times.

It is very contrary to the culture that has typically existed in insurance companies and I think a new player would have the advantage of recruiting people with a different mindset. I guess the real danger is if you introduce a new player into the game—like they did in Victoria, where they picked up 10 percent of the market and one of the insurers lost their licence and basically went across and recruited all of the employees from that insurance company—you are not going to change a culture doing that. You have got to watch all of those sorts of issues. That would be one of the advantages. I think the insurers have recognised that as an issue now and some of them are addressing it quite well. We are going to see a very different level of performance out of some of the insurers in the next couple of years. It will take a little time though.

CHAIR: Are you suggesting that because of insurance companies' previous culture of almost resistance in paying out claims and so on, there is not as much compassion as there should be and there would be more compassion or consideration of an injured worker if you had other agents handling it, not insurance companies?

Mr McCARTHY: If it was handled correctly you have got the ability to change that culture fairly quickly that is difficult or slow to change within an existing organisation. I think that would be the advantage, assuming that it was managed correctly, and we simply did not just import the existing culture from one organisation to another, which is very difficult.

CHAIR: We will move on then, thank you.

Mr McCARTHY: WorkCover set up a centralised capability computer software? I think the short answer to that is yes. Again you have got one insurer. Why have you got 10 different insurance systems? It just does not seem to make sense to me. At the end of the day I would have one central computer system with the base data that everybody wants and individual insurance companies could put their own smarts on top of that. The insurers probably will not agree with me on that but the short answer is yes.

The Independent Pricing and Regulatory Tribunal [IPART] be responsible for setting target premiums? I do not really know much about IPART .I think the difficulty for any organisation either overviewing or setting their own recommended premium rates, is what expertise have they got to be doing that and, if they have not, where would they get it, and, by getting it, are we really just duplicating and/or depleting the resources that are already out there to do this sort of thing now? I am not sure about that one. I would be cautious of anybody reviewing premium rates or recommending mandatory premium rates without a real understanding of what it is they are doing and why they are doing it, because it is broader than just trying to set a premium, it is trying to understand how premium rates would drive the situation or, with particular employers, it is about getting the balance right between the various industry groupings and so forth. Without the proper experience one would have to be very cautious about something like that.

Recommendation 12 refers to the excess, I certainly think we could use the excess differently from the way it is now being used. I am not sure whether we need to increase it simply because of inflation, but we need to look at the purpose the excess serves and how can it be used to drive the behaviour that we want. For various employers excesses can be used differently to drive behaviour. The scheme design review could look at how to use the excess within the various categories of employers to really drives been behaviour. One needs to acknowledge that there are two groups of employers. Essentially, there is the small-to medium-size businesses that do not have much capability in managing workers compensation and/or knowledge about what to do when something happens.

They require incentives to be able to provide suitable duties and so forth. The excess could be structured in a way that creates incentives rather than disincentives. Larger employers are very different and the premium formula is very sensitive to the way they behave in driving up their premiums. The review could look at a much bigger excess for larger employers to get greater buy-ins, and particularly offer viable alternatives to self-insurance for employers that are big enough to take some control but not big enough to give themselves safety if they were to move out into the self-insurance environment. There is a lot to be done in the way we use excesses. As to whether we need to simply increase it because of inflation, we could leave that and look further and try to use it more dynamically within the scheme.

Recommendation 13 is the option of buying out excesses remains for small employers and the option for reduced premiums. I do not know how many employers buy out their excess, I am not sure whether it is a big issue. Again, it relates to recommendation 12 and I would put those two together and see if we could use the excess to affect behaviour in relation to managing claims. Recommendation 14 comes back to what I was saying earlier. As part of the scheme design we should really look at excess for larger employers and how that can be used to drive behaviour. As an alternative to some of those large employers that may be considering self-insurance you could have variable excess, for example.

You could give a $10,000 or a $20,000 excess if they stay in the scheme, but they are really managing claims up to the first $10,000 themselves, almost to the extent that WorkCover becomes the reinsurer. You are keeping them in the scheme, keeping control of them and not having the uncertainty about whether they were to go into financial difficulty and you would then have all the unfunded liabilities that the scheme is going to have to pick up through the uninsured liabilities system or just pick up because the self-insurer has gone broke. We need to watch what happens with self-insurers. We can use excesses as a viable alternative to that.

Regarding recommendation 15, I follow on from what I said about recommendation 14. We need to encourage more accountability with large employers. Not all self-insurance is a viable option. We could offer the alternative of a larger excess which would encourage more accountability but keeps them in the scheme so we have that safeguard about what ultimately happens to entitlements and so forth if they were to go broke. Recommendation 16 is that the Government conduct a formal and transparent review into the prudential regulation of self-insurers and specialised insurers. Specialised insurers very clearly come under the scrutiny of APRA, because they are an insurance company and a licensed insurer.

They are under the full scrutiny of APRA, and I include the Catholic Church, the guild, State Cover Mutual that looks after all local governments. They have to comply with all the requirements that an insurance company would have to comply with. The self-insurers, such as Woolworths, are a very different kettle of fish. Basically they are administered by WorkCover. Self-insurers generally need to come under some very tight scrutiny on how they are managing their scheme and the finances involved in those schemes and the financial capability of the company over time to make sure that they are strong and financially viable enough to continue.

I absolutely agree with recommendation 17. We need to provide a facility that makes it easy for the majority of employers in New South Wales to report injuries quickly and to get assistance quickly stop at the moment the scheme supports very well those employers that have those capabilities but the large majority of employers in New South Wales are small-to medium-size enterprises and about 90 or 95 per cent of employers pay

less than $10,000 in premium and they account for about 50 per cent of the claims. The boys from PricewaterhouseCoopers would know the numbers. So you have 90 per cent of employers that are accounting for 50 per cent of the claims that really have no capability and require somebody to tell them what to do. The earlier you help them get assistance and the sooner you can provide that assistance for more likely you are to get appropriate control of a claim for injury when it occurs.

A central early reporting capability, essentially using a telephone, could be set up. That is the easiest way to do things. It is a little difficult for me to say how it would function but the scheme design review should explore that is one of its core charter briefs. It would not be as difficult as most people seem to think it is, and particularly would not be difficult if we ever had a centralised computer system. The difficulty is clearly identifying whom the particular employer is insured with, when they do ring. I think that is important and I have some clear views on how it might be done. It is not something I could elaborate on in five minutes here.

The Committee noted that Victoria is considering the effectiveness of group programs. I do not understand what is happening in Victoria, so it is hard for me to comment other than to say that anything that is done differently in Australia or elsewhere and is easy to get access to should be looked at. The scheme design reform review should take that into consideration and look closely at what is happening in other States. I am a firm believer in not reinventing the wheel. If we can see things that are being done well we should latch on to them and not spend the money going through the same process.

Recommendation 19 refers to the use of structured settlements. In a privately underwritten market I am a strong believer in structured settlements, although I am not a strong advocate of ultimately giving people access to large sums of money. However, in a managed fund environment I would argue that the managed fund itself is a structured settlement. The scheme is providing a structured assessment in the way that it is paying continuing benefits to individuals that they would get if you paid out a structured settlement. I am not sure whether the scheme needs to be limiting in its liability and passing it on to someone else to administer. It seems like double handling to me in a statutory environment.

However, in a private environment I could understand why an insurer would want to limit its liability by way of a structured settlement and then pass on to someone else to administer that on an ongoing basis. I wonder why you would want structured settlements in a managed fund environment, because it essentially provides that anyway. Concerning the last three recommendations, I concur that fraud in anyway should be dealt with in a serious manner. I am not an expert in the questions that have been asked, other than to say that anything we can do to deter fraud should be done and anything we can do to bring those people to task who are detected of, and proven to be involved in, fraud we should do.

CHAIR: The Committee would be pleased to receive a written submission from you.

Mr McCARTHY: Yes, I will do that.

CHAIR: You helped put the idea into our minds about the call centre system. Could you include some explanatory material on how that would function?

Mr McCARTHY: Yes, I could do that. In conclusion, a lot of the recommendations are quite important. We should ensure that this forthcoming scheme design review really needs to take into account all those issues. It is my understanding that there are no foregone conclusions in the review and that it is very open and transparent. We need to make sure that there is an opportunity to look at all of these things in the context of one review rather than a whole range of reviews, so that we are not distracted from the end result.

CHAIR: Have the Committee or the scheme's terms of reference overlooked anything? Is there any point that we are missing in your specialised area of workplace injury? Is there anything that you believe should have been emphasised more?

Mr McCARTHY: No, I think it has been dealt with pretty thoroughly. There is a lot to be done though.

CHAIR: If you think of anything else could you include that in your response. We are happy for you to suggest any matters that should be given for the consideration. It is important that we cover as much as we can before we conclude the inquiry.

Mr McCARTHY: Yes, I would be happy to.

(The witness withdrew)

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

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

Mr THOMSON: Yes, I am.

CHAIR: If at any stage you should consider that, in the public interest, certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee will be willing to accede to your request and proceedings will be heard in camera. How would you like to proceed—by going through the recommendations, or do you have an opening statement?

Mr THOMSON: I have a brief opening statement. I guess it is fair to say that the industry has reviewed the recommendations made by the Committee. To some extent the industry has been limited by the time frame that has been available. Leading up to 30 June I must say that the industry has been going through one of the busiest times of the year, with nearly 40 or 50 per cent of all policies falling due on that date, so the availability of resources to develop the response and actually have it reviewed has been tight. Some of our responses are probably not as detailed as we would like to see them, but I have a paper to table today which is the response on all of those recommendations. It is probably not as comprehensive as we would like. I would say that in my role for the Insurance Council of Australia [ICA] representing the industry, that is, the eight managed fund insurers within the scheme, I do so on the basis that the ICA is a lobby organisation—a representative body. It does not have any control over the industry, so the views being put forward are the broad views of the industry and may not necessarily represent the views of any individual or specific insurer.

CHAIR: Thank you for that submission. You are aware that we requested submissions only from certain people?

Mr THOMSON: Yes.

CHAIR: We received one from the IAG Insurance group.

Mr THOMSON: I am aware of that.

CHAIR: That was formerly the NRMA.

Mr THOMSON: Yes, I received a copy of that.

The Hon. GREG PEARCE: Do you want to take as quickly through your submission?

Mr THOMSON: I will attempt to.

The Hon. GREG PEARCE: Just hit the high points.

Mr THOMSON: Recommendation 1—yes, the industry supports the proposal in Recommendation 1, that there is an ongoing role for the for the law and justice committee. We support that. Recommendation 2—in this area we believe that the emphasis on the recommendations or the points made by the Committee in Recommendation 2 we do not necessarily support. We actually believe that there should be a greater focus on the points highlighted in a paper which are broadly that the scheme's design is stable and supports an environment that encourages appropriate behaviours from all the stakeholders within the scheme, so that appropriate mechanisms that are effective for the management of the tail are developed; that the prudential regulation of insurance should be the sole responsibility of the Australian Prudential Regulation Authority [APRA], and with the new APRA guidelines that commenced on 1 July this year, we believe that that should be appropriate and sufficient for the control of the financial obligations of an insurer; that there be an appropriate regulatory model that supports the fundamental objectives of the scheme and ensures that there is transparency so that the various stakeholders can actually see what is going on at points in time and have access to the appropriate data; and that there are appropriate mechanisms to have approval of the rating structure, as such, on a file and write basis which works within the compulsory third party [CTP] market at this current point in time. That is what we believe the focus should be. We have some comments and I do not know whether you want me to go through the comments in relation to the points in your recommendation. If you would like me to do that, I will.

CHAIR: Yes, please refer to those.

Mr THOMSON: Stability of the scheme's finances: What do we actually mean by "stability"? We acknowledge that the tail needs to be managed and that that is a clear issue, but privatisation in our mind is the transfer of future liabilities, not the transfer of old liabilities. In saying that the scheme is stable, yes, we support that there have to be appropriate strategies and plans in place for managing the tail but that needs to be in place regardless of whether there is privatisation or not. We actually think that privatisation is about the transfer of future liabilities from incidents on policies going forward, not the past. I think that lines up with the scheme's deficit being reduced to manageable level. That is a key issue for all the stakeholders, including the insurers within the current scheme and there needs to be appropriate strategies for managing the process and ensuring that there is an appropriate focus on that. I guess if the scheme was to be privatised, there would have to be appropriate steps, incentives, controls and the like put in place.

Financial capabilities of the insurance industry: We believe that this relates to the earlier point. If it is appropriately regulated and controlled through the APRA requirements—and the new APRA requirements that commenced from 1 July are fairly stringent—certainly in long-tail classes, it puts much more responsibility on insurers and we believe that that should be sufficient to deal with that particular issue. The managing agents' operational capabilities have improved. We actually believe that in a lot of the issues—potential, in the past and going forward—that actually relates to how you incentive-ate and try to encourage performance within the scheme. It is actually the structure and the way the remuneration arrangements are designed that will actually motivate people's behaviour and how they operate within the scheme. To that extent, we would see that as being a more heavy focus in the process over the past number of years. It is changing more to outcomes but there is still a need for probably a greater focus on outcomes going forward more than process based. Whereas the number of managers and agents in the insurance industry has been good and stable, some of our comments previously probably apply to what I have just said.

If the industry was to privatise, there is the potential that other insurers would be encouraged or may see the opportunities as viable and may want to enter the market, and others who are currently in the scheme may not want to necessarily continue their participation, so that the actual make-up and mix of agents within the scheme, if it was to be privatised, may be quite different from what it is now. It may or may not, but I think it comes back to financial assessment and how people perceive the risks, given that sort of environment. There may be changes to that, and to that extent you may end up with a different mix so that the performance of some of the previous agents becomes irrelevant.

CHAIR: Do you think that there would still be nine or 10 insurance companies who would like to be involved in it?

Mr THOMSON: It is pretty hard to say. I would not like to comment about how many would or would not. It depends on the structure of the scheme, the way it is proposed to go forward, and what the environment is. There are a lot of considerations that would come into account and individual companies would have to determine whether they have the financial capital and whether the capital is available to support privatisation. In the current environment with September 11, there may not be as much capital available as was previously the case. The appetite may not be as great but in a couple of years time, it may be different. It is hard to say.

CHAIR: It does seem as though insurance companies are withdrawing from certain areas where they have been involved in the past.

Mr THOMSON: That is right.

CHAIR: A question which would come out of what you have just said is that there would need to be negotiation by a government with the insurance industry before the rules and regulations for a privatised scheme are put in concrete, in case it finishes up in a vacuum.

Mr THOMSON: Yes. I think there would have to be an assessment to ensure that there is appropriate capital to support privatisation of the scheme. If you cross that barrier and at least the upper requirements going forward, then, yes, I think you have to develop the appropriate regulatory and operational framework around that to give the stakeholders, the Government and the other participants comfort that the scheme will work appropriately.

I refer to recommendation No. 3. I guess the issue here—whether there should be any changes to the legislation—depends on the outcomes that are delivered within the scheme in the short term. The issue that needs to be looked at is whether two years is appropriate. You are dealing with long tail business. Whether that is sufficient time to assess how things are tracking I think is an issue. We contend that it should be a longer period of time. Some issues might come up that clearly need to be addressed in that time. The only other observation we make is that you

probably need to broaden the areas that need to be assessed to include the Workers Compensation Commission, the Claims Assistance Service and other providers within the scheme to see how they are performing. I think we would see that as being limited because of the way the recommendation is framed at the moment. We think that it should be broadened.

CHAIR: So we should expand that recommendation to include not just the things that you have listed?

Mr THOMSON: If you are going to look at it, I guess it comes back to the scheme. The scheme is a broad and complex arrangement. It needs to be reviewed in the light of how all the various component parts interact. You could potentially change one area and that would have an impact in other areas which may not have been considered at the time. So you need to consider all the areas and the way in which they interact. I refer to recommendation No. 4 and to the question of the surplus deficit. The industry's view broadly is that this is an issue that the Government should determine in conjunction with stakeholders. I leave it in that area. We believe that that is where a decision has to be made.

CHAIR: You believe that the Committee should look at the review of the scheme and make recommendations in relation to that issue?

Mr THOMSON: It could be included in the Committee's terms of reference. You need to determine the implications of who owns or who does not own the deficit. I think you should consider that issue. I see no problem with that. The next recommendation was: That the scheme set an objective target period over which the scheme was fully funded. We would like to obtain some clarification about who you are referring to as the scheme manager. That would assist us in being able to assess this question. But allowing for that, to ensure that there is an appropriate target for the scheme to be fully funded, you need to look at a number of factors.

CHAIR: We regard the scheme manager as WorkCover.

Mr THOMSON: I assumed that, but I wanted that matter clarified as it needs to be fairly clear. The issue we then come back to is: How much of an active role should the scheme manager be playing in the management of the scheme? We raised a number of points under our response to the recommendation which refer to the issues that need to be assessed in determining how you can get the scheme to be fully funded, which include continuous improvement in insurer performance; the impact of legislative change; what the target average premium rate should be; benefit levels; and whether there is any appetite to introduce a reduction of the tail or the deficit. I refer next to recommendation No. 6.

CHAIR: I need to clarify your statement relating to getting the scheme fully funded. I understand that the Committee is looking at a reduction of the tail and at the current deficit.

Mr THOMSON: Are you defining the funding so as to meet the current financial obligations of the scheme or, say, under the financial obligations of the APRA scenario that would apply to private markets? The issue is how you define what is fully funded. In a privatised market the APRA requirements would mean that the deficit would be significantly higher. It comes back to what you define as being fully funded.

The Hon. GREG PEARCE: Because of prudential ratios?

Mr THOMSON: At the moment it is based on a central estimate with no prudential margin. It allows for capital requirements and the like. Those are the issues that must be considered. What is your definition of "fully funded"? WorkCover publicly released reports on the actuarial information and what should be made available. Industry supports greater access to data. It is a complex scheme. There must be an air of caution over what information is released and how it is released. Various information has been released in the past and it has been interpreted in different ways. There must be a clear understanding of what information people need and how it is or is not interpreted. It must be sent out in a form that is easily understandable so that it cannot be misconstrued. It also has to be sent out on a timely basis and against predetermined benchmarks that have been set for the scheme as to how it should and should not perform in certain areas so that people have some means of trying to assess its performance against predetermined targets.

There is another issue that we raise. If you go down to the level of, say, the Australian and New Zealand Standard Industries Classification, care would have to be displayed in relation to what information can be released. If one industry or one employer in that industry dominates there could be some privacy issues about how much information you give out as it could reflect too closely to that specific employer. There should be an air of caution in relation to that issue. I refer to recommendation No. 7—whether or not WorkCover's functions should be split. We

do have some concerns that at times some people are dealing with operational and functional issues and that they are the same people responsible for dealing with licensing type issues and performance remuneration issues.

Overall, we think there is probably some benefit in reviewing WorkCover's role and how it is functioning, but we are concerned that, by splitting it into two, you may just be adding additional layers of bureaucracy. How would you ensure that there is appropriate interaction and appropriate communication between the two that delivers additional benefit to the scheme without it significantly adding to the costs being borne by employers? There are some issues that need to be considered. How would you actually do that? We are probably not supporting that concept as strongly as others may be. But we do have some issues with it. Care must be care taken to ensure that the outcome is appropriate.

Before any action is taken in that area, you should review where the functions have been split in the past in other jurisdictions or in other areas, to assess the benefits or detriments that may have been achieved and at what cost. So we fully support the suggestion that consideration must be given to how those sorts of things are done. I refer to recommendation No. 8—disadvantages of the current licensing arrangements for insurers being replaced with contracts. To a large extent we believe that there is not a significant difference between the two. It really comes back just to a functional issue of how you are going to be managed and the like. We believe that there should be a greater focus on establishing clear scheme outcomes; linking the performance of agents to those outcomes and to regulator objectives; and ensuring that there are clear accountabilities for both the regulator and the insurers operating within the marketplace.

It comes back to the clarity of the scheme manager issue, what the role of the scheme manager is, and how active it is. You must have in place appropriate objective-based measures to measure the performance of insurers against the scheme outcomes. So at this stage we really do not see there being a major difference between the two and the way that they would potentially impact on the scheme. I now refer to the scheme design review recommendation where it considers separate tenders for each of the main functions for agents as they are split into premium collections, fund investment, claims for injury management, and tail. This is one area at which we need to have a serious look at and we should consider the implications of it. If you split it up, the potential disruption and the messages being sent out to employers and to other participants in the scheme may be to the detriment of the scheme.

You must rely on what you are trying to achieve with the outcomes that will be delivered. It comes back to the complexities of the scheme. The scheme is very complex as it is. It is difficult for some of the participants to know who they should or should not be dealing with at various times. If you split it up into too many component parts there is the potential that it will become more complex and the outcomes that will be achieved will be even less. So we have concerns about this issue. From the employers' side, in particular, there is a nexus between premiums and claims, whereby you can motivate employers to initiate risk management and occupational health and safety activities by discussing premium claims and the interaction between the two. Without that there is a potential for the wrong messages to be sent to employers, leading to wrong behaviour in the workplace. It would also increase the complexity of regulating and managing the scheme. The level and quality of the resources required to do that would be increased significantly.

CHAIR: Are you positive in your response to the suggestion that no new insurer should be allowed to tender, or are you saying that that is covered in your earlier remarks? Relatively speaking, the population in Australia is so small that the more specialised you become the more difficult it is to control it?

Mr THOMSON: It comes back to looking at the long-term objective of the scheme. If the long-term objective of the scheme is not to privatise at any point in the next five to 10 years, there might be a role for agents who are not insurers if they can demonstrate that they have appropriate resources and capabilities and that they can add value to the scheme. But if the outcome that you are seeking is privatisation in three years or five years, there would be little value in having new entrants to the market in that sort of environment. That will not assist you in your end game. The Industry believes that, if new agents come into the market, we can compete adequately with them. There is no problem about that. But you need to ensure that what they bring to the scheme will increase the value provided. You have to determine whether they have the capacity, the resources and the capabilities to deliver what is required to be delivered.

CHAIR: Are you suggesting that, if privatisation were considered down the track and insurance companies were replaced by non-insurance companies and you suddenly wanted to bring them back in again, it could create some problems?

Mr THOMSON: If any new agents or non-insurer agents who were coming into the scheme knew that the objective was privatisation in five years time, they would have to look at their plans and say, "Is it worth us

coming into this scheme and investing resources, capital, et cetera, for a short period, knowing that eventually we will not be in the game?" You have to look at those sorts of issues in context. I refer to recommendation No. 10—a centralised WorkCover computer system. Industry's view is that it may, but it is unlikely. It has the potential to do that but we believe that the result could be achieved through other means, for example, by having a centralised data warehouse.

The key issue is: What is available in the marketplace to provide for a centralised computer system? South Australia is attempting to develop one at the moment. The costing of that system has gone from an initial estimated cost of $20 million and it is heading towards the $100 million mark. One of the key issues for the scheme in New South Wales is: Does the scheme—excluding the insurers in this—have the business knowledge and the skills to be able to specify and deliver the system? At the moment the business knowledge is sitting inside the insurers. WorkCover and the scheme do not have it. That is a key issue as to how you come up with it.

No off-the-shelf product is available in the market that would be able to be used for a centralised scheme. Industry fully supports the need for appropriate data to be available to scheme participants and on a more timely basis. We believe that that can be delivered by way of a centralised data warehouse. WorkCover is currently in the process of putting strategies in place to ensure that it happens. If data is provided to that warehouse on a more regular basis than monthly—be it weekly or on a real-time basis—as technology is heading that way it can be delivered. A fair bit of work will be required to ensure that the insurers' systems deliver that to WorkCover, but that is quite feasible within a reasonable space of time.

I think the potential benefits for the scheme in the short term are greater from that option, than from trying to aim for a centralised system. A centralised system has some attractions, but it limits innovation because you are forcing people to use it. But if you want to have innovation and competition in the marketplace, having individual systems enhances that and encourages it. So we believe there are a number of significant issues that need to be considered in that area.

CHAIR: Are you suggesting that it is so expensive in South Australia, at $100 million, that that would occur here, or it may even be higher, if WorkCover were to somehow supply insurance companies with computer systems?

Mr THOMSON: I think it is linked to a number of issues. Firstly, South Australia is going about developing its own system. I do not believe there is any off-the-shelf product that you can just pick up and purchase. There are a lot of legacy-type systems that are fairly old and would need a lot of investment. Whether they have the capacity and capabilities of running the whole of the State's scheme is an issue. It would need a very detailed feasibility study to assess the practical implications of introducing such a system. It also links back to privatisation. If you are going to privatise a scheme five years out again, can you run a privatised scheme on one centralised system?

CHAIR: With a centralised system, would you also have to supply all the computers?

Mr THOMSON: Not necessarily the computers. It is having a system that provides the functionality to allow the business processing to process a policy, produce the premium documents on the underwriting side, interlink with the claims so that it has an interactive injury-management, claims-management type system that produces payments, allows for EFTPOS transactions, and so on. It is enormous.

CHAIR: Why does it become so expensive? What is the explanation for the $100 million? What are you paying for?

Mr THOMSON: The complexities of the workers compensation system relative to a lot of other insurance systems is extreme. It has an enormous number of transactions and interactions with it. It is a very complex system. The system you have in one State does not necessarily reflect the system in another State; because of the legislative changes and requirements, you have variations across the theme.

CHAIR: Would a computer company charge a fee of $100 million to devise a centralised scheme?

Mr THOMSON: I am not saying that it would cost $100 million. It would potentially cost a significant amount of money to develop a centralised system for New South Wales.

The Hon. GREG PEARCE: There are quite a few examples of computer software development contracts that have gone absolutely berserk.

Mr THOMSON: I think one of the key issues is business knowledge. WorkCover does not have the business knowledge to specify the requirements of the scheme. The operational business knowledge sits inside insurance companies.

CHAIR: And WorkCover is trying to do it?

Mr THOMSON: If you have a centralised system, WorkCover has to own it, and it therefore has to do it. So WorkCover is going to have to buy that knowledge or acquire that knowledge somehow, in a very limited market.

Recommendation 11 is that IPART should be responsible for setting premium rates. We would not support this because, to the best of our knowledge, they have little or no expertise or experience with workers compensation. In setting workers compensation rates, our belief is that it is not that you just look at a set of numbers and come up with a rate; you have to have some knowledge of the risk that is involved with each of the industries and the like and be able to assess the various classifications and the way to interpret the data.

In setting the rates, you also need to understand the interactions with the rest of the premium formula. You are not just setting a rate. It is how that rate then reacts through the formula, with experience adjustments and the like, to come up with the premiums that are required. You need to have a detailed understanding of the scheme and how the premium formula works, and also be in a position of some transparency—whether IPART would be able to provide the transparency to the employers to explain to them how they have developed and assessed the rates in the first place.

CHAIR: We were not necessarily locked into IPART. I think our thinking was that there should be some independent body, and IPART was one that was suggested. Do you think there should be an independent body setting the premium rates?

Mr THOMSON: There may be a role for an independent body to review. Whether they actually set the rate, I am not sure; I would probably have to think about that a little further and take the question on notice if I may.

CHAIR: I think some of the other States did have that independent premium setting, and a board or committee was set up.

Mr THOMSON: Yes. I think you need to review and assess the merits or otherwise and what you are trying to achieve.

CHAIR: Is there no other body you could suggest?

Mr THOMSON: Not that exists in the New South Wales environment at the moment, I would suggest.

CHAIR: It would have to be set up specially?

Mr THOMSON: I would suggest so, yes. With regard to recommendation 12, it comes back to what you are trying to achieve with the excess: What is its purpose; what is it trying to drive at? I think that needs to be clearly understood before you can determine what level should or should not be used.

The industry believes that one of the biggest issues facing the scheme at the moment is early notification of claims and the commencement of injury management initiatives. At the moment the average reporting delay is about three weeks, on average, and for smaller to medium and employers it is probably even greater than that. The excess potentially encourages a further delay in the reporting of injuries to the insurer. It comes back to whether employers are encouraged to put them on sick leave and the like, and how they want to deal with them. We think that you need to consider what purpose it is trying to deliver. It also needs to be considered in the context of the whole premium formula and the way it works and what message you are trying to drive through the scheme.

As a result of the Employers Mutual injury management pilot, they tried a different approach in relation to excesses. They notified all the employers in their scheme and said, "If you report your injury within the appropriate time frames, we will rebate the excess; we will actually give it back to you." So they got the excess back if they reported within the desired time frame; they used it as an incentive rather than as a disincentive. But for those who did not report within the time frame, they sent letters back to the employer saying, "You have missed out on the ability to achieve. You will not get your excess back." We probably have not expressed it in the paper, but I can say

that they did it in two levels. They sent it to the financial controllers of the organisations, which quite often has a different impact within the organisation.

I think there needs to be a review about what you are using the excess for and what behaviours you are trying to drive. One of the dangers with a number of the recommendations here in relation to excess is that they are appropriate at times, but they have to be assessed as to when and how they are used, so that you generate the right behaviours from them and you are not impacting on early notification, which is one of the key issues that needs to be addressed within the scheme.

CHAIR: You are saying that if the excess were too high, such as $1,000, an employer with a small staff could delay reporting it, so that he does not have to pay the excess?

Mr THOMSON: That is right. Or they could say that it would be easier to just deal with it as sick leave, and if it blows out later, they then report. The average reporting time within the scheme is at least three weeks. For smaller employers, I think it is more like four or five weeks. When you get a claim at that point of time, it is very difficult to have any impact on that claim with any injury management initiatives you take, because the claim has already got to a point where it is a little difficult to do much with.

Recommendation 13 talks about the option of buying the excess for small employers and a reduced premium for higher excesses. Some of the comments I have already made affect that. Our view is that the option to buy up the excess—and I do not think it has been used a lot—comes back to what you are trying to achieve and the impact it has on the employer in their behavioural approach. There are issues relating to higher excesses and reduced premiums. It comes back to who is going to manage the claim. If you let an employer have a $5,000 excess, who takes responsibility for managing the claims within the excess? Is it the employer, or does it become the responsibility of the insurer? Then how do you fund and administer the financial arrangements within the excess and the administrative arrangements? So you need to clearly understand what you are driving, how you are going to drive it, and what you are going to achieve from it.

With regard to recommendation 14, this comes back to the comments I have already made. It is not how much financial impact it is going to have. If the employer only gets one or two claims every five or 10 years, the size of the excess is really not going to drive their behaviour. The size of the excess will drive their behaviour if they are having significant numbers of claims and they can potentially see a financial benefit in wearing that, rather than having excesses and claim costs impacting on the premium.

In a private environment, if insurers were to assess each risk on a one-on-one basis and were to make decisions after considering what occupational health and safety issues the employer has in place, what capabilities they have for managing the claims or impacting on getting people back to work, can they offer return to work duties, then they would assess what level of premium discount you would provide at that point in time. Within the managed fund environment that becomes more complex because you end up with more standard-type answers, and at the moment you do not have that flexibility to do it with individual-type rating within the scheme; it is not structured so that it handles that.

Recommendation 15 is that self-insurance for large employers be encouraged. We believe that self-insurance does have a very positive role to play within the New South Wales scheme, but it needs to be managed and reviewed carefully. In the majority of cases the employers that go this way are the better performing employers; they have a strong commitment to OH&S, they have the appropriate systems and strategies in place, and they link their approach to managing the claims with their human resource issues. So they can clearly interlink the two and get the benefit out of this.

The danger of letting too many of the better performing employers go out of the scheme is that you can end up with the scheme having the poorer performers left in the scheme with smaller employers. I know you are not trying to maximise cross-subsidisation, but you are creating issues and tensions within the scheme as to how much cross-subsidisation may or may not exist.

In relation to the financial position of self-insurers, there is a need to ensure that there is appropriate protection. I think the existing guidelines issued are probably quite reasonable. The point we would raise comes back to the actuarial assessments undertaken in relation to some self insurers. In our recommendation we suggest that the actuarial assessments currently undertaken for self-insurers be periodically reviewed by the scheme actuary or an actuary appointed by the WorkCover authority to ensure that there is veracity in the assessments being undertaken at the moment. I do not think anyone can really say whether they are right or wrong. I think there is concern about whether they are appropriate or not.

Recommendation 16 relates to whether the prudential regulation of self-insurers needs to be strengthened. Mr McCarthy made the comment that specialised insurers are subject to APRA. It is my understanding that only three of the six specialised insurers are subject to APRA regulation, they being the Catholic Church, Guild and StateCover. The other three, being North Ltd, the Harness Racing Board and the Joint Coal Board, are not subject to that regulation. I think the Joint Coal Board in particular is not subject to State or Federal regulation in relation to financial matters. Our view would be that for those that are subject to APRA regulations, there is no need to do any more because the Federal legislation, especially that which came into effect on 1 July, should be sufficient. There may be cause to consider the issue in relation to those specialised insurers that are not.

Recommendation 17 relates to whether there should be a centralised call centre to facilitate early reporting. The industry believes that a centralised system would support a lot of the initiatives that are currently going on, but we would not see the need to have a call centre as being the only mechanism. It should be one of a number of mechanisms available within the scheme. In a lot of cases, there is already very timely and appropriate reporting between employers and insurers. Forcing that system to change, where you force them to go through a centralised system and then back out to the insurer, actually delays the process; it does not improve it.

As a means to facilitate and improve the reporting for small and medium employers who have only the occasional claim I think the industry would support it in principle, not that it should be necessarily managed by WorkCover. It could be managed by the insurers quite easily or by another body, for that matter. Certainly, as long as it is there to support the broad thrust of the scheme, that is reasonable. It is fair to say that experience in Germany, where are they pay doctors to report through a centralised system, it does not generate reports coming in at appropriate times, even though they are paid to do so. So, centralised reporting in Germany does not produce the result that it is intended to produce. That came out of a worldwide congress in March 2000, where those comments were made.

CHAIR: There is no clear reason why it did not work?

Mr THOMSON: I think potentially it is just administrative issues with doctors and the like. Their own administrative eye for detail is not exceptional in some cases. To get them to achieve that in the short term is an issue. The other issue is that a lot of general practitioners in New South Wales at this stage are not computer linked or on the Internet and a lot of that work is done offline, out of hours. That even comes back to call centres and Internet reporting. A lot of small businesses are not geared for that. They may have a system but they turn it on an 11 o'clock when they do their books. So, there are all those sorts of issues. To support the process, yes, but not to be the only mechanism.

Recommendation 18, how can WorkCover assist small employers to get claimants back to work? There needs to be some work to do understand why there is a reluctance by employers to provide return-to-work opportunities. How much do we understand what small employers are faced with to find those alternative duties. In a lot of cases they are on very tight budgets. They have short timeframes into what they need to do and to have someone come in and do something additional when they have already had to pay to have someone replace that person to keep the work going, there needs to be some understanding of that before one can understand the behaviour that is occurring.

A number of approaches have been used in Australia and overseas, and I think there is justification for the scheme review that will commence soon to see what benefits can be gained. Our view would be that the potential is that geographically there is scope for getting alternative duties from employers, but on an industry base the issues are likely to be, where the worker got injured in this place, to try to replace him in another the issues will be exactly the same. So the likelihood of there being synergies is limited. I think we should always be open to looking at and reviewing what other people are doing to see whether it can work in the New South Wales environment.

In broad principle the insurance industry supports structured settlements, but the issue when it comes to workers compensation the main reason why workers compensation was not included in the structure settlements arrangements that have just been agreed to is taxation. A significant component of any lump sum within a workers compensation scheme is a weekly benefit component, and the Australian Taxation Office gets its tax out of that component. It is how you deal with that issue. That is one of the clear reasons why, compared to other areas, structured settlements were not applied to workers compensation. Until that fundamental issue is dealt with it will be difficult to see any movement in that area. In principle, the industry supports the concept but until that barrier is dealt with I do not believe there is any room to do anything with it.

CHAIR: The Federal Treasurer was lobbied to make that change and I understand he has made it in the motor accident area. Did the insurance companies lobby him to apply it to workers compensation?

Mr THOMSON: Our recommendations went forward excluding workers compensation. I can check that, but I am pretty sure that is how things went, specifically because of that issue. We were aware of the issue with the tax law and the discussions. There were a lot of discussions leading up to the final paper but I believe our paper specifically excluded workers compensation. That is my answer without knowing for certain.

CHAIR: That is the impression I got. I just wondered why you did that.

Mr THOMSON: It is that issue. It is the specific issue about taxation and through the discussions and negotiations that took place before the final paper was presented. In relation to item 20, which talks about fraud and the like, you have to understand how much fraud there is or is not within the scheme and clearly understand what we mean by fraud. A lot of people have the view that if someone has a claim and a person has made a fraudulent claim, there is no real justification for the perception that the claim is or is not fraudulent. We need to understand that and to reassess that appropriately. In dealing with it, the issue of why within the scheme it is difficult to get a fraud case is that the onus of proof is so strong for the insurers to succeed. One of the suggestions we have considered that the Committee and even the scheme review might consider is if you look at the recent changes that regulators like APRA and ASIC to define things within civil and criminal breaches. You can be specific and change the onus of proof around. You need to consider those sorts of options if fraud is deemed, after a review, to be a significant issue and how it needs to be addressed.

The Hon. MICHAEL GALLACHER: So you are saying there is still some merit in it, it is just a matter of determining how you apply it?

Mr THOMSON: I believe fraud is occurring and is occurring probably in all areas. The extent of it is unknown and has not been quantified. WorkCover is having some success in getting some prosecutions in certain areas but it would be made easier if you specifically prescribed, looking at the way APRA and ASIC have tried to do things in keys areas where fraud is occurring, if you legislated along those lines. It then changes the onus to some extent and makes it easier to implement and produce an outcome. That would send a stronger message through the community. I think that probably picks up most of the issues with 21 and 22.

CHAIR: Would you be able to send us a proposition on how that could be done, what you just said, about the onus of proof ?

Mr THOMSON: I am happy to get some information for you on that.

(The witness withdrew)

(Luncheon adjournment)

GARY JAMES BRACK, Chief Executive, Employers First, 313 Sussex Street, Sydney and

GREGORY PATTISON, General Manager, Labour Market Services, Australian Business Ltd, 140 Arthur Street, North Sydney, sworn and examined:

CHAIR: Mr Brack, in what capacity are you appearing before the Committee?

Mr BRACK: As a representative of employers and as Chief Executive of Employers First.

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

Mr BRACK: I am.

CHAIR: Mr Pattison, in what capacity are you appearing before the Committee?

Mr PATTISON: As a representative of employers and Australian Business Ltd.

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

Mr PATTISON: I am.

CHAIR: If either of you should consider at any stage during your evidence that, in the public interest, certain evidence or documents that you may wish to present should be heard or seen only by the Committee, the Committee would be willing to accede to your request and would go into camera. I understand we have not received a written response from you at this stage. Do you wish to make an opening statement, or would you like to proceed by going through the recommendations one by one?

Mr BRACK: That is fine by me.

Mr PATTISON: I am comfortable with proceeding that way.

CHAIR: I notice you have a document. Is that a submission that you would wish to table at the end of your evidence?

Mr BRACK: No. In due course we will lodge a submission.

Mr PATTISON: We are in a similar position. I would hope our submission will be to you by early next week.

Mr BRACK: Likewise.

CHAIR: We will commence with recommendation 1.

Mr BRACK: Firstly, let me say I think the notion of an annual review is worthwhile. It should be public. It would no doubt provide another opportunity to evaluate scheme performance amongst all participants, including WorkCover, the commission, insurers, other service providers, employers and employees. So, from that point of you, I would support an annual review. Also, importantly, it should review the underlying assumptions that actuaries make or have when they review the scheme. Depending on the assumptions that they make, you can get widely differing views about likely scheme performance. I think everybody recognises that the actuary's job is an impossible one: 50 per cent is based on data before them, and the other 50 per cent is based on their assumptions about what might happen to the data in the future. So, any review like this I think should focus on those things.

However, I think the reality is that, to understand what is happening to a workers compensation scheme, one needs at least monthly, detailed oversight of the data and debate concerning key issues that arise. Many issues now arise from the Advisory Council's monthly meetings which would not surface, in my view, in an annual or even six-monthly review, and you need that information. Hence, in our view, you also need the Advisory Council to continue with its role—although I must say I am not particularly satisfied with the role that it has currently. And the powers and structure that the Advisory Council previously had should be restored.

Mr PATTISON: We would certainly agree with Gary's position on transparency and review of the scheme, and the need for it to be under constant review. Our only difference on that particular position is that there

is a lot of review going on at the moment. We have the scheme review coming forward from the Minister by the end of next year. We think the whole Government's overview structure should be seen within the context of that review.

CHAIR: Mr Brack, you said you would like something every month. Would that monthly review of the Advisory Council be sufficient?

Mr BRACK: The Advisory Council already meets monthly, but a whole series of other committees meet under the aegis of either the Advisory Council or WorkCover in which members of the Advisory Council are involved. So it is not a question of adequacy. It is a question of necessity. In my view, you have to have that ongoing oversight. Of course, if nothing of substance goes to that council, nothing of substance will come out of it. The question of the kind of substance that goes in is important, and WorkCover's responsibility for providing that kind of information and the necessary ingredients for that kind of detailed discussion are fundamental, just as they would be in any review that the Standing Committee were to conduct.

The problem with the Standing Committee doing a review annually is that that is not sufficiently frequent. You do not get the buildup of the discussion. You do not get the month-by-month subtleties and nuances of the small changes, which then lead to questions being raised. And then you do not have the opportunity and the framework of that review to get to the bottom of all those things. Whereas, if you have the Advisory Council doing that stuff all the way through, then the review you might conduct will be, in my view, on a foundation of a much better data set, a much better understanding of what is going on and going wrong and going right. I see that as a fundamental foundation to any review that might be conducted by this body.

CHAIR: Recommendation 2.

Mr PATTISON: We have had a long, hard look at this, Chairman. I guess, in summary, our view is that we should now not even contemplate any prospect of private underwriting; that the time has come to walk away from that. Our concern with the recommendation as it stands is that, in leaving open the prospect of private underwriting at some future date—and we recognise the recommendation acknowledges that it is likely to be some time away—we may in fact be limiting other options in future scheme design that may be more beneficial.

The Hon. GREG PEARCE: Such as what?

Mr PATTISON: If you remain with the prospect of private underwriting, does that mean that perhaps providers have to remain private insurers? Does that limit the ability to bring new players into the market, new skill sets, new cultures and new approaches? We see that as, perhaps, being part of the future. With alternative providers we may start to get some of the cultural and service delivery changes that we need. Despite an extensive legislative program since the mid-1990s, we would need to acknowledge that we still have not put the rubber on the road in terms of service delivery to employers and injured workers. We still have a challenge to deliver an effective post-injury management system. Part of the future solution, in our view, is to bring new players into the game.

The Hon. MICHAEL GALLACHER: Are you on the new advisory council?

Mr PATTISON: Yes, I am.

The Hon. MICHAEL GALLACHER: Are these views about the future for private underwriting consistent with the overall views of the council, or are you a lone ranger on the council?

Mr PATTISON: I would not presume to speak for the rest of the council. Some of us are talking about it. It would be wrong of me to suggest the position of other organisations. I do not know them formally. There would be some informal discussions.

The Hon. MICHAEL GALLACHER: You were on the previous council?

Mr PATTISON: Yes, I was.

The Hon. MICHAEL GALLACHER: What is the difference between the working of this committee versus the previous committee in getting that message across to government in regard to, say, private underwriting?

Mr PATTISON: My recollection of the history was that at the time we started to move and contemplate private underwriting, which would have been in 1996 or 1997, there was, perhaps, some scepticism and concern that that move could come about. Quite a lot of work went on. The message that went to government at that stage was qualified support. Certainly, I know that the position of our organisation was qualified support. I think that would

be true of other employer organisations as well. In fact, we went to great pains publicly to ensure that people knew that our support was conditional and that government knew our support was conditional on the service providers delivering service improvement, which ultimately did not occur. Hence the change in position. In terms of the message about private underwriting to the current Government, it is not something that we have formally yet tabled with the Government or had any detailed discussions about. It is part of the proposal that we have put forward as part of our own organisation's Business Priorities 2003 that has only recently become a public document, as you would be aware. We have not had a chance to follow up on those discussions.

CHAIR: You are not supporting privatisation?

Mr PATTISON: No, we are not.

CHAIR: Would that be the view of the employers in general?

Mr BRACK: There is a lot of good sense in what Mr Pattison says. If I could just pick up on the preceding question. I negotiated the deal with, curiously enough, Rodney Adler, on behalf of insurers to get them to come in to take over private underwriting, but only on the basis that, by the time it was to be introduced in October 1998, they would have had a year in which to demonstrate the particular, and I mean particular, behaviours that they would adopt to demonstrate what they would do in a private underwriting environment. By the time we got close to that implementation deadline we had come to the conclusion that they had not demonstrated them, and there was little likelihood of their behaving in a way that would be satisfactory for the scheme. Obviously, we are strong supporters of private sector involvement in a whole range of areas, but we are not supportive of it philosophically. We are supportive of it only if it produces effective outcomes.

We are not dealing with an insurance market at all. You cannot have an insurance market where you set the premiums and the benefits, then say to insurers, "Go out and be insurers" because they cannot be insurers in that context. It is virtually impossible. This environment is altogether different. It is about injury management and claims management. A whole range of other things that are not typically the things that insurers do when they try to adjust the loss in the field of insurers are more relevant, like motor vehicles and goodness knows what. If you get your house burgled and something disappears they come out and negotiate an amount of money and they say, "There is your money". Next time around they set the premiums to take account of the differences in this suburb or that, or this type of vehicle and another. They do not have that type of redress with workers compensation insurance.

Return-to-work strategies do not fit easily with the sorts of skills they have, and they do not fit the conventional insurance model. There is no evidence that insurers behaving like true insurers can effectively operate an early intervention return-to-work scheme. However, having said that, as you will know several pilot studies were carried out, two of which—EMI and QBE—demonstrated that they can do things in a non-conventional insurance environment to improve their management of injury, that is in a return-to-work, early intervention kind of environment. Some of the innovations were very good. There is very strong debate about whether the innovations are economic in the sense that the amount of resources they had to apply to the return-to-work model was significant. Whether you can write those cost effectively in the overall scheme is yet to be resolved, but nonetheless it is demonstrable that they were quite innovative. Therefore, there are things worth looking at.

I think it is true that insurers, as part of a wider system not as part of an insurance market, could, themselves, behave in a way that was consistent with the scheme guides and the scheme objectives of getting people back to work, getting early intervention and vetting all of this stuff. But there are a number of other things that do not work well in their favour of trying to be insurers in a normal insurance market. The subrogation model, in my view, does not work well in the workers compensation field. Far too frequently insurers do not talk to, or properly listen to, employers. That is a problem for us. Employers, as a result, are disfranchised because you take a typical insurance model. They stand in the employers' shoes.

The employer has no capacity, effectively, to influence what happens with the claim and a whole variety of other things, even though the whole nature of the scheme essentially is about the employer ensuring, importantly, return to work. As a result of this disconnection between the person in managing the claims and the employer who has responsibility to employ, there is too much rorting. The employers lose faith in injury-management strategies. Insurers approve claims that should not otherwise be approved. That happens all too frequently. Employer premiums rise and scheme costs blow out. All of this happens. Therefore, we do not, either, support a private underwriting model. Unless you can show us that there is something that would make a conventional private underwriting model work, we do not support it.

Injury management needs to be central, but only for claims determined to be legitimate. If, first, you do not determine the legitimacy of claims then the whole scheme falls apart because there is no discipline. Therefore, you

need two fundamental things in whoever is the agent of WorkCover in managing these claims. First, you need the determination of legitimacy and, second, you need to have someone who can manage the claim and the injury effectively. That means that you may have insurers in there doing those things, but not as insurers per se. They could be in the area along with other providers. You talk about splitting up and having separate tenders. It is possible that insurers could be in there tendering for that work.

Mr PATTISON: I would like to clarify our position, which is similar. We are not saying that insurers should be excluded from the market. We are saying that the underwriting model should not be a private underwriting model. Insurers could be providers, and should be providers in that model.

The Hon. GREG PEARCE: You are very much approaching it from the service-delivery point of view and those sorts of objectives. But a lot of the support and thinking about private underwriting relates to the financial condition of the scheme and future financial outcomes. What solutions do you see to those issues?

Mr BRACK: If the question about having private underwriting is that if it were private underwriters' own money they would behave efficiently, force the pace in the scheme and force people back to work and force employers to introduce the right kind of safety strategy, otherwise your premium goes through the roof. All of those things are okay, except that you do not actually have that degree of control in the marketplace if you are going to define the benefit level. If you define the benefit levels then inevitably the premiums will be fixed in relation to those benefit levels and then you will add on top of that a margin for employers who are good risks or bad risks. Therefore, employers will end up paying premiums that are going through the roof because claims costs are rising, even though claims numbers are falling. The history, since the late 1970s and perhaps beyond that, has been of falling numbers of claims, but rising average cost of claims.

It is a bit of a hope and a prayer to say that if it were their own money they would handle it effectively and we would not wind up with a problem. We have been down that track. We went through a period of significant discounting and, subsequently, the whole scheme fell to bits. I do not think the case is proven that the private underwriting model will produce the right kind of premiums. They may, indeed, fall in a period but then we might be left with the backwash, as we have from the early 1990s onwards, to try to fix up the mess. We do not know, except on a hope and a prayer, that that will actually work. It may be that they do all the right things, but once you define all the things that need to go into it, a lot of the tools that insurers could use are not available to them.

CHAIR: We need to move on to some of the other recommendations so that we get your responses to them.

Mr BRACK: I take you to Recommendation 3. You say no reforms for two years. Our view is that you have to watch everything that happens in the scheme every month so that if there is a commission or court decision tomorrow, which is a "bad decision", then you need to legislate within a period of a few months to send out the clear signal that that decision was wrong and inconsistent with the whole goals and aspirations of the scheme. We are going to reverse it. If you leave that for two years, by the time you have two years it has been entrenched and the scheme is going down the drain backwards. Then no-one has the political capacity to reverse it down the track. Our view is that although the notion of stability may be a good one generally, you cannot set it up as a precondition, even though you have said numbers of claims, or claims experience should be an excepting factor. Our view is that it is not just claims experience costs, but also the costs might be rising even though you might have the same number of claims.

Mr PATTISON: We would see the future for successful management as probably being more frequent but less dramatic interventions. We would also be uncomfortable about no changes for two years.

Mr BRACK: You need to be able to reintroduce commutations as a potential tail management strategy. Self-insurers should have that right now. They may have made that submission to you. They are right on top of their own claims experience, and the absence for the scheme is problematic enough, but for them it is demonstrable that, in my view, commutations capacity should be available to self-insurers.

The Hon. MICHAEL GALLACHER: Mr Brack, is this the first occasion you have had a chance to speak to the Committee on workers compensation reform?

Mr BRACK: Yes, that is fair to say.

The Hon. MICHAEL GALLACHER: With the leave of the Committee, some of your views may slightly digress beyond the Committee's questions and you may put other salient points onto the record which we have not had the opportunity to hear from you in the past.

Mr BRACK: Perhaps. Most of the comment I have is in relation to the questions. You will get that in print in any event. I know our time is limited today, and I thank you for the opportunity.

CHAIR: In your written submission, you may want to cover other matters that we have not included in our questions.

Mr BRACK: Yes. The question about recording the deficit worries me. "We are on a promise" from the Government that the 2.8 per cent average premium cap expires at the next election, or, to put it more precisely, is only certain until the next election. That worries me because of this question about where you record the deficit. If you simply say it is an employer liability, the premium average cap runs out at the next election, we are moving to ANZSIC and we are moving to a system of some external agencies setting the premiums, as per one of your other recommendations, employer premiums will go through the roof and there will be mayhem all over the place.

In our view, that kind of instability in any context is unacceptable, especially in the current context where interest rates are set to move rapidly, where inflation is going to take off, where a number of union claims are in the wings—which are going to lead to significant costs—and where the Australian dollar is rising in value. Some people say that is an improvement; I say it is a detriment because it is wiping out our exports hand over fist. In that context that would be a disaster, in my view. So great care needs to be taken about where to record the deficit if it carries with it any of those other possibilities or implications. I can understand the government being worried about its triple-A rating, and that is certainly an issue to take into account.

Mr PATTISON: I think similarly to Gary. Part of the argument about giving the deficit a home, if you will, is to concentrate on questions of financial accountability. I did note the Auditor-General's comments in the third interim report. Perhaps it does need to find a home, but if you are going to put it with government we would perhaps get a bit concerned. It might be fine from our perspective for government to take up the deficit, but what happens with surpluses? Do they get alienated in the future? We would also have similar concerns.

The Hon. GREG PEARCE: What do you think is going to be done with the deficit? Is it going to continue to be shoved off into the never-never? Someone some day will have to fix it.

Mr BRACK: I will take you to the next question because that raises this issue squarely about the target period to achieve a full funding. The 2.8 per cent cap—which I negotiated with the unions, Jeff Shaw and others in 1996—was precisely to give us an opportunity to try to get the costs down. Our proposal all the way through, and the employers generally, was to get the cost of the scheme down to the equivalent of 2.5 per cent but to leave 2.8 percent as the actual premium. In other words, there would be a loading to take premiums up to 2.8 per cent. That .3 per cent of a buffer would be used to pay off the tail over a period of about 10 years.

The Hon. GREG PEARCE: You have been let down, have you not?

Mr BRACK: The fact is that the average cost of the scheme going forward fell to close to 2.8 per cent. Maybe it is now a bit above that, but it is not far above. That does not allow you to pay off the tail. But if you now say, "We are going to set three years"—or whatever it is—"as the finite period", our concern is that everyone will be focusing on that three years and premiums will be rising. You say, "Give to the fund manager the responsibility for achieving it." Does that mean that premiums will then go through the roof and we do not get the opportunity to pay it off over 10 years? It is easy to say, "Raise premiums". It is perhaps more politically difficult to say, "Let's cut the guts out of benefits." As soon as you do that, you have an easy solution but not an acceptable solution.

CHAIR: Do you have a suggested target period?

Mr BRACK: I say the whole scheme should be designed to lower the average cost of claims. Theoretically that is what we have got now. Theoretically we do not know whether the outcome is going to be there. I am worried very much about the provisional acceptance arrangements. Let us assume that claims costs fall. When they get below 2.8 per cent that gives you a buffer. If they get to 2.5 per cent, I say that 10 years from there is your target for achieving full funding. That allows you to pay off the tail, as long as you are managing the cost of the scheme going forward. That should be the target. You should not set a finite period now. Rather you should set a target of getting to 2.5 per cent and using the buffer, and then say within 10 years and making sure the costs stay at 2.5 per cent. It is too easy setting a target period right now. It is tougher, of course, but more sensible in my view, for those who are beneficiaries and those who are the payers of the bills to set the target at 2.5 per cent and then work your way up.

Mr PATTISON: I have a similar view to Gary's. Certainly I would not envisage a period of less than 10 years. The key has to be to get the scheme premium break even rate below 2.8 per cent and then gradually work

down the unfunded liability. That has always been the dream or the plan from about 1997-98. That is still a valid strategy. Whilever we have an annual break even rate of 2.8 per cent or lower—and we need to get it lower—one could argue there is no absolutely pressing imperative to reduce the unfunded liability in any precipitant way.

Mr BRACK: I take you to question 7—separate WorkCover. I strongly agree. WorkCover will not advise employers. WorkCover sets about drafting regulations on the basis of maximum prosecutability. I say that on the basis of discussions with a person who was originally employed by WorkCover and who indicated quite clearly that was a goal. The impracticability is clear for anybody who understands the way legislation is drafted and the practicality of delivering the occupational health and safety outcomes that are in the regulations. Codes of practice are being drafted, but on the basis that they are going to capture employers. Guidelines are being issued that are so broad in their possible risks that you could never be right as a employer—and I mean never be right.

Very large, powerful, well-financed companies can afford to employ an occupational health and safety specialist with no other duties at every operating unit, whose job is to cruise around all day making sure that nothing goes wrong—and even they cannot get right. For small businesses without those resources and the financial capacity even to buy in expertise, it is not possible to deliver. WorkCover has to be put back in the role of the practical adviser; not one where an officer goes out today and tomorrow an inspector comes to the employer and says, "That is wrong, that is wrong, that is wrong." How did the inspector know? Because the guy advising the employer yesterday said he saw those things. It is a Catch-22. The employer gets the advice, but the next day someone comes out to hit him over the head. It is important to separate the roles and put the WorkCover officer back in the role of friendly adviser. Of course there are employers who should be hit over the head. We do not deny that, nor do we shie away from the need to do it. But not in the circumstances in which it is done now. It is interesting to look at some of the material from Alberta, Canada, from the department of the person coming out to talk to us in the safety summit. They take a much more practical approach than is even contemplated here.

Mr PATTISON: We would support a change in the structure of WorkCover. In fact, in our submission to the Committee we will be suggesting that a separate statutory authority should be looking after the scheme. Taking the issues of accountability, when you talk about programs for running down deficits and performance, perhaps some of those programs could be dealt with by performance agreements, which are open and transparent, between the statutory authority and the Minister. We would certainly support the notion of a reshaping of WorkCover.

The Hon. MICHAEL GALLACHER: When you say "reshaping" and splitting it up, are you talking about hiving half of it outside of WorkCover to a separate body?

Mr BRACK: Yes. I would not send it to the Department of Industrial Relations. Perhaps others would, but over a period of years I know the kind of recruiting that has gone on in the department, and I know what kind of proclivities a lot of those people have. That is on the record. I would be worried about that. There should be some separate agency altogether that has in its name "the practical occupational health and safety implementable regulation advisory body who will help employers".

The Hon. MICHAEL GALLACHER: It would create an electoral problem for the Government if it were to take the knife to the new WorkCover building in Gosford in terms of staffing.

Mr BRACK: I do not mind if it is done after March next year.

The Hon. MICHAEL GALLACHER: It would probably have the same view.

Mr PATTISON: Question 8, we would not disagree with changing from licensing to contracts. Certainly we believe that providers need to be driven on a much more commercial management basis.

Mr BRACK: On that question, WorkCover has always had a problem with trying to define outcomes to be achieved by the insurers as agents. They have been very much bound by bureaucratic red tape: "Tick this box, When did you open the envelope? When did you send the letter? When did you do this or do that?". They are not asked: "When have you got the person back to work? Is the person fully fit? " Those outcomes should be the focus. There is a new remuneration scale, but no-one has seen it. We do not know what it is in it or whether it is practicable.

The Hon. GREG PEARCE: It is still not finalised.

Mr BRACK: We were told that too. I do not know. Question 9, separating tenders. That is okay, except for the question of premium calculations, depending on who gets their hands on them. I would be worried about our not having some involvement in that question. There is a whole debate about the formula, and wrapped up in the formula are fundamental questions of policy about the number of multiples of existing premiums that you can

get through claims experience, about how much you can move in any one year, about the amount of money you have to pay out of a total claim. It is now currently $150,000 maximum claim exposure, even though the claim might be for $10 million. It actually gets awarded by the court and you cop $150,000 out of that. If you change all of those underlying assumptions built into the formula, you fundamentally change the distribution of costs. That is not something that ought to be done by somebody to whom it is subcontracted.

Mr PATTISON: I do not have any difficulty with a different way of looking at the scheme. The only caution would be when arriving at new structures we do not increase the complexity of what is already a fairly complex process and make it more difficult for injured workers and employers to find their way through the maze. If I could talk about the computer software, I think we all, and Gary quite vociferously, would agree with the need for WorkCover's information technology systems to be improved. There is no argument there.

Mr BRACK: Absolutely, and it should be with the involvement of the very parties that have a stake in it, which includes the union and employers. They have a guy there who seems quite sensible in all this sort of stuff. But there is still inadequate discussion with the stakeholders. There is talk about talking to the stakeholders, but it is there in name only. Even though I think this guy is probably the right kind of guy with the right kind of head on his shoulders, nonetheless the parties need to know that it is going right.

CHAIR: You are happy with a centralised system. Do you believe that employers could relate with that as well?

Mr BRACK: There has to be a centralised system. The design of the system, down to the detail, needs to be discussed with the key stakeholders in the system.

Mr PATTISON: In relation to IPART setting the rates, we feel there would be a role for IPART or a similar body to review the rates. I am not too sure about IPART actually setting the rates, but perhaps a model would be for WorkCover, or whoever might succeed it, to come forward to a body such as IPART and submit rates for consideration prior to the beginning of the year.

CHAIR: In an advisory role?

Mr PATTISON: Yes, with the body perhaps having the right to accept or reject. If they reject, the work has to be redone—not dissimilar to a file and write system on the authority.

Mr BRACK: That leaves open the question of mandatory versus advisory. If they are advisory only, then you move back into a quasi privately underwritten system to see what the divergence is between the advisory rate and the actual rate in the market. The history on that has not been particularly flash. You need to be very careful about that before you move to an advisory system. The rules, in my view, need to be reasonably well understood. There are rules in the formula at the moment. It is a very complicated formula. If you write it down it is literally that long.

Nonetheless, the parties need to understand how that is operating so that if you have bargaining power you wind up with a good result but if you have no bargaining power you get screwed. That may be okay if you have a massive market like motor vehicles, et cetera, and there is a lot of competition out there but it is not so easy to do that in workers compensation. You need to have the parties involved and I think I would move more towards mandatory rather than advisory. But within the context of the mandatory scheme you have to have rules that allow some prodding and poking for poor performance.

Mr PATTISON: In relation to the excess, it would be our view that the excess is perhaps best expressed in terms of days rather than dollar quantum. Perhaps it would be more equitable, given the range of wages and the varying incomes between people across industries, that an excess should be expressed in a number of days rather than dollars.

Mr BRACK: That is fair enough. As to the options associated with excesses, I think it is good to consider those options. Then you have to work out how feasible they are. A lot of people want reductions in premiums because they have not had any claims for the past five years. Typically, small employers might have a major claim every five to 10 years so you can understand their angst about good claims experience but no reductions in premiums. But given that there is a lot of cross-subsidisation, the fact is that if they are exposed to their own claims experience in the year in which the tragedy happens, then you would wipe them off the face of the map so there needs to be some kind of understanding of just how a cross-subsidised system—indeed, "insurance"—actually works.

Mr PATTISON: We would also support options for employers who perhaps may not be of a size large enough to seriously contemplate self-insurance to take some of that burden on themselves through variable excesses. We think that that has merit.

Mr BRACK: In our view, the variable excess does have merit but it should be at the option of the employer. Rather than simply saying, "We will impose this excess on you", employers should be able to say, "I am prepared to accept that additional risk. I have the resources to accept that additional risk." Then the insurer has the option of saying, "Sorry, you do not foot the bill" or "Yes, we would like you to go down that path."

CHAIR: Would they get a lower premium, or what benefit do they get for doing that?

Mr BRACK: That would have to be the outcome. I think on the data which the old advisory council looked at, in order to get any significant reduction in premium you have to massively raise the excess so it may well not be particularly feasible for smaller businesses. It may be feasible for larger ones perhaps.

Mr PATTISON: On the grounds of employer choice, we would not support recommendation 14 and the mandatory imposition of larger excesses based on premium.

Mr BRACK: On recommendation 15, we support self-insurance. Whoever it is must make sure that they have the resources available and the scheme will not be stuck with paying out. If you ask, "How do we do it?", perhaps we will include some suggestions in our submission about the detail of that. The prudential regulation is part of that same question. I think if they are performing well it would not be appropriate for WorkCover to load them up with a load of bureaucratic stuff, which WorkCover tends to do. They want to come out and inspect them every five minutes and what have you. As soon as you start loading them with all that bureaucracy, you raise their costs and the very thing that they are good at is actually keeping their costs down, managing their claims well. Once they get those combined outcomes working satisfactorily it is in their interest to go down the self-insurance path which is beneficial. So do not load them up with too much bureaucratic stuff.

Mr PATTISON: I do not have anything to add to that. On recommendation 17 about the call centre, I think there is merit in simplifying the processes. The concern that we would have about a scheme-based call centre and multiple chains or means of reporting is how that loop is closed off to the employer. If we are to go down the injury management route and we want to make it work we must get the employers engaged. It is not uncommon for organisations such as ours—and I am sure Gary has had a similar experience—and for other employers to find out about claims long after the event and long after the paperwork has been lodged. Therefore they have no opportunity to get involved and engaged in the return to work strategies, et cetera. So I think there are some potential efficiency payoffs with that sort of approach but you also need to design a system that does not exclude people who need to be included.

CHAIR: So as soon as a complaint or report of an accident comes in the employer is advised.

Mr PATTISON: Those loops need to be closed.

Mr BRACK: I agree with all that. If we are out of time, I am quite happy to conclude with the written submission.

CHAIR: We may just look at recommendations 18, 20 and 21 because they relate to employers.

Mr BRACK: On recommendation 18, I think the old advisory council already recommended something to try to deal with the question of how you get people back to work in small businesses where they plainly do not have the resources to take on somebody for suitable duties. The real question is how you fund that activity. Instead of paying the employee a benefit you pay the next employer the benefit for taking them on. You have to protect that new employer against claims associated with that individual. In my view, the protection now is too short and too narrow. This is not an easy thing to do so because as soon as you start providing funding to employers it may well be that some employers would take advantage of that scheme and say they have this "injured worker" there forever and a day so the discipline in the system and the problem in it is how to keep employers honest while they are being provided with government funding. The notion of these things is certainly worthwhile examining. Whether or not the Victorian experience is transposable would come down to a detailed examination. There would certainly be some elements of that are.

Mr PATTISON: As another contribution to alternative strategies, we would certainly support the recommendation. I think we need to continue to search for alternative strategies.

Mr BRACK: Agree on structured settlements.

Mr PATTISON: That has been actioned already.

Mr BRACK: Structured settlements as they exist in the courts essentially were only about defining the compensation and dividing it up year by year and you never got any discount, even if the person went back in a year and you thought they would be off for 20. So unless you deal with that aspect of it, all you are doing is apportioning the amount over an expected period of life; you are not actually saving the scheme money because nothing else changes so you have to change that aspect of it is well.

Mr PATTISON: The extent to which it is likely to be effective will also be the extent to which it remains solely at the discretion of the claimant.

CHAIR: We gave an additional possible recommendation that Parliament recommend the New South Wales Auditor-General conduct a performance audit of WorkCover New South Wales. Do you have any views on the Auditor-General conducting an audit of WorkCover?

Mr BRACK: I do not mind that proposition. I think that should happen. However, there is a lot of politics in what the Auditor-General does. The Auditor-General will say that he or she is completely independent and they are just doing it according to wonderful principles. But, depending on who the Government of the day is, the Government gets a serve and the Opposition might like that. But when they are in Government next time round, after March, and they get a serve they will be looking for the same kind of explanations and strategies available to them. I think you have to have a long-term view about what powers you would give the Auditor-General and to what extent you are then obliged to do something about what he or she says.

Mr PATTISON: I think further contributions to our understanding of how WorkCover works and functions would be something to be welcomed.

Mr BRACK: On this final question about fraud, when you ask people whether there is a lot of fraud in the system they say euphemistically there is not a lot of fraud but there is a bit of exaggeration. In my view exaggeration is another word for fraud, and you say "well, serious fraud". I think that part of it must be dealt with adequately on all sides and we have worked long and hard now on the question of employers not paying the right premium. There is a report out on that with some good bits in it, without doubt, and some bits we would not support. Nevertheless its attention is on employers, significantly. There needs to be something about employees and it needs to be practical and those people who rip off the system need to be brought to account. If that is a criminal matter, so be at. The notion of "serious" in my view should not be set at too high a level.

Mr PATTISON: There is an issue, certainly from the employer side, as to fairness and equity in the scheme. I have no doubt our colleagues sitting behind us would have a similar view from the performance of some employers. Part of the challenge in getting engagement with the scheme goes to the question of scheme credibility. Currently, the scheme is not credible in the eyes of a number of employers. We need to be able to demonstrate that the scheme is operating fairly and equitably, and that does go to the question of publicising and letting people know what is happening to people who misuse and abuse the scheme. There is not enough of it and we need to get that out publicly.

(The witnesses withdrew)

MARY LOUISE YAAGER, Occupational Health and Safety Workers Compensation Co-ordinator, Labor Council of New South Wales, 93 Hubert Street, Leichhardt, and

PETER JAMES REMFREY, Secretary of the New South Wales Police Association, 19 Kuroki Street, Penshurst, sworn and examined:

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

Ms YAAGER: As a Labor Council officer.

Mr REMFREY: As the Secretary of the Police Association and a delegate to the Labor Council.

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

Ms YAAGER: I am.

Mr REMFREY: I am.

CHAIR: If you should consider at any stage of your evidence that in the public interest certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee will be willing to accede to your request. We will proceed by going through the recommendations. You do not have to comment on every recommendation but if you have comments we are happy to hear them.

Ms YAAGER: I have just provided a brief response to each of the recommendations and hopefully I will not be going on tediously. In relation to the first recommendation, the Labor Council continues to support the role of the Workers Compensation and Workplace Occupational Health and Safety Council. We have been actively involved in that council, particularly, the establishment of that council. The council meets on a monthly basis and it monitors the scheme on a monthly basis. We know that the committee wants to meet on an annual basis and continuously review the scheme, but we really believe that that is the role of the council. We would rather see the former powers and functions, those that were in the original 1998 Act, be restored to the council.

Mr REMFREY: The council comprises of major stakeholders in the workers compensation area—employers, ourselves and the WorkCover Authority—and we think that that is the appropriate forum for these issues to be resolved and for advice to be given to the Minister about the scheme.

CHAIR: Do you think WorkCover would report to the council, and the council would then report to the Minister. Would it become a public report?

Ms YAAGER: Yes.

CHAIR: There would be transparency everywhere?

Ms YAAGER: Yes.

CHAIR: Would you see that report every month?

Ms YAAGER: Yes. In terms of reporting requirements, probably every quarter to make it not so onerous on whoever has got to produce those reports. We thought you could have a progress report every quarter on the monitoring of the scheme. While the advisory council would look at it on a monthly basis, it is not evident every month. You would really need that quarter worth of data to report on the scheme. In relation to recommendation 2, the clear position from the union movement is that it is opposed to the move to private underwriting. This is also on the basis of the motor accident scheme which is privately underwritten and I think the unions have seen evidence during the past couple of years that that is not really a fair and equitable scheme for those that are seriously injured. Also they have not delivered savings to the consumers, in terms of a reduction in green slips. We are very skeptical about the move from WorkCover to be privately underwritten.

Mr REMFREY: It is probably fair to say that that position has firmed in recent months with the collapse of HIH and other major insurers. It is our firm view, notwithstanding that that part of the scheme does not apply to my organisation, that we ought not be privatising what is a very significant issue for both workers and employees in this State. It is something that needs to be controlled and owned in many respects by the Government.

Ms YAAGER: Also you need to look at what has happened recently with public liability and the insurers. Even though the Government has put through reforms, the insurers have not passed those onto the consumers, so there is a question mark over insurers. In terms of recommendation 3, as to whether we should put forward reforms before the two-year mark, because these schemes are very volatile and require constant monitoring and review, in terms of looking at schemes I have always looked at what happens in Wisconsin, as you are aware, and the advisory council there. The advisory council there reforms its scheme every two years. I do not know why they do it on a two-year basis. They hold public hearings and have inquiries. I suppose because it takes 18 months for a honeymoon period, if you make reforms to the scheme, that honeymoon period is over. I think you really need that two years' worth of data or two years' worth of monitoring to see where the scheme is at before making those reforms. If I were sitting on the advisory council we would certainly make recommendations if there were something happening to the scheme that became apparent to us, like a major blip or a major deterioration, for immediate reform in those areas in terms of benefits and perhaps premium increases.

CHAIR: We did not see it as an embargo on reforms.

Ms YAAGER: No, but I think that is my view. As we have been going along, I think we have been making reforms every couple of years rather than doing something every six months. You have to allow time for the reforms to settle, plus the education process is quite onerous every time you reform the scheme.

Mr REMFREY: It is also fair to say that given the extent of the recent reforms there may be some fine tuning necessary and the council is well placed to be able to identify problems that may emerge and fine tuning that may be necessary.

Ms YAAGER: Particularly in relation to the guidelines and their application because they have not been applied yet. On recommendation 4, the Labor Council does not believe that it is its role to recommend where the deficit or surplus should lie: that is up to the Government at the end of the day to determine.

CHAIR: Do you have a preference?

Mr REMFREY: It is an actuarial issue as far as we are concerned. It is not something in which we need to necessarily get involved.

The Hon. MICHAEL GALLACHER: It is an actuarial issue but it really is such a significant driver in terms of what brought about the reforms that we have seen. True it is actuarial but at the end of the day—I do not see you necessarily changing your mind—it needs to be shown somewhere. Whether the Government says it is going to be something for business or something for Government, it needs to be shown somewhere.

Mr REMFREY: Yes, it is essentially a policy decision for the Government. It does not make a lot of difference to members. It would make a significant difference to employers, but certainly from our perspective, it really does not make a difference to the people that are affected by it who we represent.

CHAIR: One of the underlying reasons that some of us thought about was to try to get the figure fixed.

Ms YAAGER: How would you do it?

CHAIR: If a figure appears in the budget papers or somewhere we could all agree on it. It seems to a shadowy figure.

Mr REMFREY: It is dueling actuaries: and it is not a pleasant place to be.

Ms YAAGER: Yes. In relation to full funding, you would have to look at the impact that that would have on employers over time, and what sort of period would you set if you were going to go to full funding. It is something that should be referred to the advisory council for them to come back with some recommendations. There are views that could look at seven to 10 years, but you would have to consider it based on what was put before you

CHAIR: Do you agree it would be a long period? Not two or five years?

Ms YAAGER: No, not two or five years but longer than that.

Mr REMFREY: It depends on which actuary you brought in.

Ms YAAGER: It depends on what the deficit is going to look like after this next quarter when the actuary does its evaluation report. I touched on reports earlier but I would say it should be quarterly reports on he progress of the scheme. Those reports should be industry based and targeted at industry to show industries how they are actually performing, where their performance is deteriorating or improving rather than the scheme as a whole. That is the path that we should be taking, given that we have industry reference groups.

CHAIR: Do you mean the building industry, for example?

Ms YAAGER: Yes, because you have the classifications. You would say that is how that industry is performing or deteriorating because some industries, particularly the rural sector, are really deteriorating in terms of scheme performance. Recommendation 7 deals with splitting up WorkCover or separating WorkCover and its functions. We would probably have to see a proposal on what has happened. Would you separate the compliance, auditing and prosecution divisions? We were not sure in terms of separating the functions of WorkCover and whether we were actually transferring the inspectorate back to the Department of Industrial Relations. We would have to see a proposal.

CHAIR: It is difficult for the WorkCover Authority to do everything: set the rules and then be the policeman. It is separating those two roles, we were not thinking of going into five or six different areas.

Ms YAAGER: You know that the unions have been very critical of the areas of compliance. We are also critical in the areas of prosecution. We believe that there has been a real deterioration in terms of prosecutions. We are concerned that they have gone from 1,000 per annum to approximately 300. The explanation given by WorkCover is that it is much harder to prosecute now. Employers are hiring silk for every prosecution.

CHAIR: You would be happy to separate it, providing it led to greater efficiency in that prosecution department?

Ms YAAGER: Yes.

Mr REMFREY: There has been criticism about the resources allocated to the inspectorate as well. They are key areas as far as day-to-day operations in which our members operate. Getting a WorkCover inspector out to a site other than a fatality is pretty difficult.

CHAIR: WorkCover has suggested in relation to the law it is hard to win the cases. Does there need to be a review of the basis of onus of proof. Should that area be reviewed?

Mr REMFREY: They are criminal prosecutions so it would be difficult to reverse the onus of proof in those situations.

CHAIR: I do not mean to reverse it, but to look at it and try to tighten it up?

Mr REMFREY: No, I do not think you can because it is a criminal prosecution.

CHAIR: If WorkCover is not efficient in collecting the evidence they lose the case. Is that a problem? Does there need to be improvement there?

Ms YAAGER: It is an area about which the unions are very critical. We have expressed those concerns to WorkCover and we are keeping a close eye.

The Hon. MICHAEL GALLACHER: What aspect are you critical of?

Ms YAAGER: Why there has been a deterioration or an absolute drop in their prosecutions.

The Hon. MICHAEL GALLACHER: Only in relation to employers?

Ms YAAGER: Yes.

The Hon. MICHAEL GALLACHER: Is there a widespread concern amongst unions that WorkCover are overzealous when it comes to investigating employees for exaggerated or fraudulent claim on workers compensation?

Ms YAAGER: I was thinking of prosecutions in occupational health and safety.

The Hon. MICHAEL GALLACHER: Employer groups say that they are being overzealous and are hitting them. Are there grounds for the committee to take note of concerns amongst the union movement that on the other side of the ledger the fraud investigative unit within WorkCover is overzealous when it comes to investigating exaggerated or fraudulent claims by employees?

Mr REMFREY: We do not have any evidence to that effect.

Ms YAAGER: Can we come back to you on that? I will take that question on notice.

CHAIR: Yes.

Ms YAAGER: The unions are cautious in the move away from licensing to contractual arrangements. We would need to see any proposal. We are not saying that we are totally opposed but we would have to see how it would actually operate.

Mr REMFREY: We would have to question whether licensing does much the same thing as the contracting. It might be more of a semantics issue than anything else.

Ms YAAGER: As to recommendation No. 9—consideration for scheme design—prior to responding, I must point out that the unions are complimentary of insurers at the moment. They believe they have seen a real shift in insurance culture since 1 January: The insurers are starting to pay claims on time and to develop relationships with the union. The GIO has met with the Police Association to build a relationship and discuss how they can work better together. I do not know whether it is the new insurance remuneration package that WorkCover has put in place or the fear of this review and the fact that insurance companies will not be operating under the WorkCover scheme any longer, but there has been a shift. In terms of the scheme design review, we think the most appropriate mechanism for looking at these issues would be in that scheme design review. However, the Labor Council would not be in a position to agree with that outcome necessarily. We will have our own views.

As to recommendation No. 10, the advisory council has been pushing for a centralised computer system or an approved data system since we were set up. I think it is vital—actuaries tell you this all the time—to get the right data so that you can monitor the scheme properly. The current system does not really allow us to do that. We collect tapes from the insurers at the end of three months when we should be looking at some sort of real-time system that provides the appropriate data immediately. We should be looking at collecting data not only from workers compensation claims but from other sources as well. According to the Worksafe fatality study that was done in 1994, there are two deaths on Australian farms every month. However, the workers compensation data does not collect those statistics or reflect that finding. Any system needs to take into account those types of statistics.

The Hon. MICHAEL GALLACHER: Are you aware of any like system?

Ms YAAGER: No, not really.

The Hon. MICHAEL GALLACHER: We were told that in South Australia there is a big investment in information technology that could run to about $100 million. Are you aware of that?

Ms YAAGER: I know Gary Brack has gone to South Australia and had a look at it. He has probably spoken about this issue. The advisory council has done a lot of work and we have made a lot of recommendations about the type of scheme or database that we would want at the end of the day.

The Hon. MICHAEL GALLACHER: Are you aware of what WorkCover is putting in place in relation to the new IT system? I cannot remember the name of it, but we were given a presentation by one of the WorkCover IT people about the new system that is being put in place. Is that the sort of thing you are talking about?

Ms YAAGER: It is that sort of thing but we want to make sure that it goes into other areas—for example, collecting data from other areas rather than being completely workers compensation based. We may come back to you about that issue.

CHAIR: One of the questions about the centralised computer system is how people can be linked to it and whether the Labor Council and unions could have some relationship to it and keep track of the number of accidents reported. Even if the relevant union were not advised of an accident, it could pick it up through the computer system.

Ms YAAGER: Yes, but we need real-time data. We should get the data immediately from the insurers and not at the end of a month on a tape. There are many errors with that data—the insurance companies make lots of errors so the data is often corrupted. We need to take all these things into account. I am certainly happy to provide you with a submission on that issue.

The Hon. JANELLE SAFFIN: A centralised IT system implies a common data set. We have had that discussion as a committee. We understand it.

Ms YAAGER: So I do not need to produce a submission?

The Hon. JANELLE SAFFIN: Save your time unless you want to highlight particular examples.

Ms YAAGER: I wanted to provide some input about where WorkCover is going with regard to IT. As to IPART, the independent body—

CHAIR: Or any body—that was just one suggestion.

Ms YAAGER: We would not oppose that idea but, again, we would like to see the details of how it would operate and the rules governing that body. Do you envisage that it would be similar to the rating bureau that was established previously?

CHAIR: We hope that it would bring some independence to premium setting; it would not be related to political practice. I am an idealist.

Ms YAAGER: I am not sure about that one. Would it deal with non-compliance and auditing?

CHAIR: No, just premium setting. Some other States have tried it.

Ms YAAGER: Again, we would have to see how it would operate. We do not oppose the idea. Recommendation No. 12 deals with increasing the excess from $500 to $1,000. The union movement has been pushing that for the past 10 years, so it feels like groundhog day. You get a big tick for that one. We are a bit cautious about recommendation No. 13 and we will have to be convinced of the merits of such a scheme. For example, what would happen if an employer were to go bankrupt? That often happens in the building industry. We will have to see the details of what it means and how it will operate. We are also cautious about recommendation No. 14. We would prefer to see an enhancement of the Premium Discount Scheme or other discount options based on an employer's occupational health and safety and injury management performance. There are systems that operate in California whereby an insurer can audit them and give them a discount. I think that is the way to go rather than the excess.

Recommendation No. 15 needs to be considered carefully. It is our understanding that other compensation jurisdictions that have gone down this path have experienced problems with too many employers opting out of the pool and becoming self-insurers. We put a question mark over that recommendation.

The Hon. MICHAEL GALLACHER: Following on from that, what is the unions' view about commutations? A supportive proposition was put to us a short time ago that we should revisit it.

Ms YAAGER: We are pushing for that. We are trying to get a meeting with the Government now to get them to consider allowing self-insurers to be able to commute claims. Apparently the actuary that works for the self-insurers is saying that they are experiencing financial difficulties: Some self-insurers' premiums will blow out by millions of dollars because they cannot have the commutation option.

CHAIR: So the Labor Council favours commutation?

Ms YAAGER: Yes, the Labor Council and the SDA entered into discussions with the Minister's office and if we do not do any good we may approach other people. As to recommendation No. 16, self-insurers definitely outperform licensed insurance, perhaps because they manage their own risk. However, some of the unions are critical of self-insurers in terms of their rehabilitation and return-to-work programs. There has been some criticism there. If you are going to look at regulation, we would be looking more at compliance in that area. We certainly support the establishment of a scheme-based call centre. We encourage the early reporting of claims, particularly by doctors. We would like to see doctors and hospitals reporting claims earlier. This relates to the way in which we collect data, and not necessarily just through workers compensation. We would support it as long as the call centre

complied with the ACTU charter for call centres and its minimum standards code. Some insurance companies have set up call centres. For example, the NRMA has a call centre and Allianz has tried early reporting. So you could investigate those operations.

CHAIR: Why is the ACTU concerned about call centres? Have workers been underpaid or exploited?

Ms YAAGER: Yes, they have minimum standards. Some call centres are good but others leave a bit to be desired. The ACTU set a minimum standard and WorkCover is developing some occupational health and safety guidelines for call centres.

CHAIR: The call centre should be in Sydney not Thailand or Indonesia.

Ms YAAGER: We hope so. In India they sent call centre workers to view the movie *The Castle* to become used to Australian culture.

Mr REMFREY: So they could get the vibe.

Ms YAAGER: To get the culture and the vibe. Recommendation No. 18 deals with helping small business to come to terms with finding suitable duties. You looked at what they have done in Victoria. The advisory council made recommendations about this in 1999. We went into a lot of detail. I think employers need some financial assistance or some sort of scheme to help them. It is not only small employers but large employers and government departments that have difficulties in this area. Peter will tell you about the police, Health and the Ambulance Service. This whole area needs proper investigation and some recommendations. I think the advisory council could come up with the recommendations and research. It is a problem not only in Australia but overseas. Read anything that the Workers Compensation Research Institute is producing: It says that its major problem is redeployment when somebody cannot return to a job or an industry. The redeployment issue is a major one for us.

Mr REMFREY: Mary is right. In our sector, for example, the approach to redeployment is medical discharge. They do not have a culture of redeployment. It is only when we start raising individual issues that they start to think about alternative duties and rehabilitation and ultimately hopefully returning people to full policing duties or, alternatively, returning to a role as a civilian and using their skills and experience in that function. Unfortunately, the culture in our organisation—which I think is fairly typical of some of the other major public sector areas—is that, if people cannot do the principal job, we exit them. That is contributing to a fairly major blow-out in our premiums. It is under the Treasury-managed fund and not covered directly by this inquiry, nevertheless I think it is analogous to a number of other organisations. I think teachers experience much the same problem.

Ms YAAGER: Teachers and nurses.

CHAIR: Large organisations such as the police or the education department should be able to find alternative positions for people.

Mr REMFREY: That is the irony of it. You would imagine that a large organisation such as ours with 3,500 to 4,000 civilian jobs would be able to facilitate the transfer of someone from a police position to a civilian position because those functions are available. You can understand that a small employer of 20 people may not be able to do that. The Police Service has a clear ability to do it. Numerous positions that were previously occupied by police but which have been civilianised over the years would be ideal for police officers, particularly those who are physically injured to the extent that they cannot continue to perform their duties. A good example is our call centre—the police assistance line. That is an ideal place to provide rehabilitation, and ultimately redeployment, for those who cannot be rehabilitated back into the job. Their background in communications, forensics and so on is vital.

CHAIR: You said it is part of the culture, but some rules must be laid down that make up the policy. How would you change it?

Mr REMFREY: We have a rehabilitation policy that is, sadly, not necessarily followed unless we beat the drum about it.

CHAIR: So the police can, in fact, sort it out themselves?

Mr REMFREY: Yes, the policy is there and it is sound. We were involved in negotiation of it but a policy is only as good as the people who are prepared to implement it and the people who are prepared to make the effort to find alternative duties, and that is a cultural change.

CHAIR: It is easier for the commissioner to discharge?

Mr REMFREY: I would not be pointing the finger at the top. I think it is throughout the organisation. The culture is medical exit and, of course, we have two schemes that are current. Mr Gallacher would know the old scheme, which provided a pension for people who exited, and the scheme after 1988, which is the same as any other workers compensation arrangement. There is still the culture of the old scheme permeating, notwithstanding that we have now got two-thirds of our police officers in the workers compensation scheme. The old culture still remains and the two-thirds are principally the front-line officers who are more prone to physical injuries in particular.

The Hon. MICHAEL GALLACHER: Without having to make the jump across to becoming unsworn personnel, is there an opportunity for them to look at positions that are not necessarily ones that need to be fulfilled by fully operational police? I think you know where I am going on this issue?

Mr REMFREY: Yes.

The Hon. MICHAEL GALLACHER: Where police can be told, "Look, you can still remain a police officer. You do not have to become a public servant." There are lots of jobs where police can go. You do not want them all to be the walking wounded but at least they would have an opportunity to go there, which would free up other fully operational police to be able to get out there and do what the community requires?

Mr REMFREY: We have had a running battle on that very point. A decision was taken by the now Chief Commissioner of Victoria some years ago to say that there were no light duties positions and everyone had to be fully operational. You can understand that to a certain point because it allows maximum flexibility for a local area command to be able to use every person in front-line duties, and it has been the recent decision by the Government and the commissioner that everyone will periodically work street duties, as it is termed in the high-visibility policing initiative.

By way of an analogy, we had a fellow who had been performing a role of intelligence officer at a country location. He was relieving in this job as a sergeant, the job came up, he won the job not surprisingly but he was denied the promotion on the basis that he had a back complaint that prevented him from being a fully operational officer, yet he had been doing it for two to three years beforehand without any problems. Essentially, it was an internal job requiring him to analyse intelligence data and a range of other functions. We won that case. We ended up having to take it to the Anti-Discrimination Board on the basis of discrimination on physical injury.

There is that capacity. It is a question of where the balance lies, but it is another alternative to full duties, rehabilitation back to the front line, rehabilitation back to a job that does not necessarily require full duties but otherwise you can remain with the powers of a police officer, or into a civilian role where you can adequately use your experience, knowledge and training to help out significantly.

The Hon. MICHAEL GALLACHER: Should not the choice be theirs: If they go to the non-operational position they know they cannot necessarily seek promotion but if they go across to the public sector they know that the sky is the limit within that area?

Mr REMFREY: It depends on the availability of those positions. We have police from the Tweed, Broken Hill to Albury and in some of those places the old light duties are not available and for many reasons you do not want to load up a station with a lot of light duties people. Also, people do not want to shift, particularly if they are in the country, but yes, there should be a range of options and that is where we are coming from, particularly, with redeployment into civilian roles. It is just silly that we do not allow that to happen as regularly as it ought to. It is within the policy. It provides people, most importantly from our perspective, with a financial future that sending them off into the wider work force with a token compensation payment is certainly not doing and, frankly, is wasting their talents.

Ms YAAGER: We have heard from actuaries who are looking at the South Australian, Queensland and Victorian schemes and they are saying that their schemes are starting to deteriorate and people are staying on weekly benefits longer. Unless we address this issue and get people back to work and off benefits, we will be continuously facing this.

Mr REMFREY: It really relates to early intervention and rehabilitation. We see so many people who are physically damaged who end up being psychologically damaged because they are left alone for a year on benefits but not otherwise wanted. Their physical injury turns into a psychological injury and we have lost them. Early intervention is crucial. New South Wales Police has been making some progress into early intervention but it needs

a hell of a lot more resources and effort to be successful. We understand that our premiums have skyrocketed this year. I do not know the figures but I think it is something in the order of sixfold or sevenfold.

CHAIR: The police association?

Mr REMFREY: The police service. I am doing all right.

Ms YAAGER: Within the Treasury Managed Fund.

Mr REMFREY: I am a relatively recent addition to the Workers Compensation Advisory Council. We now understand that the Treasury Managed Fund is not oversighted by the council or by the WorkCover and presumably they have similar arrangements internally, but that is the extent of the workers compensation blow-out in our organisation, that premiums have skyrocketed.

CHAIR: Is that because they have been paying out large claims?

Mr REMFREY: I think it is the number of small claims that are not being properly treated. Perhaps that might act as an incentive to do something proper about rehabilitation. To his credit the new commissioner has made these sorts of positive statements.

CHAIR: Do you have any further comment on recommendation No. 19?

Ms YAAGER: Just the lump sum, structured settlements. I worked for an insurance company prior to working for the unions and at the end of the day workers want that finality, so that they can get on with their lives. When you look at a lump sum, they are closing the door on that chapter and getting on with their lives. I do not think a structured settlement, as I understand it, will do that. It will pay them a certain amount. Also, structured settlements are very expensive to administer. I will let Peter deal with the last three recommendations.

Mr REMFREY: In respect to fraud, we support in principle—subject to getting some legal advice from a criminal lawyer which is necessary in this area of law—the notion that the Crimes Act might be the appropriate method for dealing with these issues. We would be especially supportive of a focus on prosecutions of employers for non-compliance, particularly in the area of premium avoidance and manipulation. Obviously, that is not something that affects me directly as secretary of the Police Association but certainly a number of other unions, particularly in the building construction industry, have constantly raised this as an issue. I think employers would be supportive of that inasmuch as those who are not complying are getting an unfair competitive advantage, particularly in the building industry, which obviously has some small margins attached to it. In principle, that is something we would support. We have to get some legal advice in terms of whether or not that is the best place for it. I suspect that it is.

CHAIR: Could you send that to the Committee?

Ms YAAGER: Certainly.

Mr REMFREY: Similarly in respect to recommendation No. 21, we would seek legal advice as to the definition of serious fraud and whether or not there needs to be some different level for providers, employers and individuals. I think it is fair to say that the union movement does not condone fraud at any level, be it workers fraud and indeed the other areas of fraud associated with non-compliance, which in many ways has great impact, given what I just said about the competitive advantage they might get over other rivals who are paying their premiums and contributing to the level of debt that the scheme would appear to have.

Our view in relation to recommendation No. 22 is that WorkCover already makes significant efforts in seeking publicity for prosecutions. I see regularly press releases coming through indicating that people have been prosecuted, both employees and employers, for various offences. We are particularly keen about prosecutions with respect to occupational health and safety aspects of the legislation. The deterrent effect of that advertising or publicity is important. Our view would be that we would not want to see any of the scheme's money going into advertisements about prosecutions, given that we are running a deficit. I think the approach they are taking now about returning to work and educating both employers and employees is a much better way of spending the limited money, rather than spending money on this area. Nevertheless, if you can achieve some free publicity through the court reporting, then that is probably the way to go.

Ms YAAGER: And they recently amended the Occupational Health and Safety Act to allow judges to order whoever has been prosecuted to publicise, so there is a mechanism in place.

CHAIR: So that the State or WorkCover does not pay for the advertisements?

Ms YAAGER: That is right.

The Hon. MICHAEL GALLACHER: Has the union a view in relation to the very expensive advertising campaign called "Working for You" or "Working with You" or "Looking after You" or whatever it was called? Does the union have a view in relation to the money that was spent on that campaign?

Ms YAAGER: Yes, we were very critical and actually wrote to WorkCover and the Minister about that campaign. We thought the money could be better spent elsewhere. It just seemed like a very expensive campaign that seemed to have a very limited life span. We do not know if the message was right.

Mr REMFREY: But to the extent that it focused on the rehabilitation aspects, which is what we have all been focusing on, and early intervention, then some of it may have been valuable but it was a lot of money. Those sorts of campaigns are not cheap. It is really a question of judgment as to whether you are getting value for money.

Ms YAAGER: And again I think it was something that the advisory council had no input into.

CHAIR: Who made that decision?

Ms YAAGER: It was not us.

Mr REMFREY: This goes back to the change in the role and function of the advisory council that we were critical of. We want to see that revert to what they had been in the past.

CHAIR: To strengthen the position of the council. Thank you for appearing today. We are still working on those draft recommendations and if there is anything you feel the Committee has overlooked, please let us know.

Ms YAAGER: Is there time for us to put forward some recommendation that we would like the Committee to consider?

CHAIR: As long as it is not a whole raft of recommendations, but if there is an area that you think has not been covered.

Ms YAAGER: Yes.

The Hon. MICHAEL GALLACHER: You could probably put them under the banner of things that in your view have not been examined under the scheme design and perhaps should be included.

CHAIR: If you could include that with your response by Friday of next week.

Ms YAAGER: Yes. Thank you for the opportunity to respond to your recommendations.

CHAIR: It is interesting that the employers said a number of things that you said and that there is agreement. It is good that there is a spirit of co-operation on the Workers Compensation Advisory Council. We hope that the Committee has helped the process of co-operation.

(The witnesses withdrew)

(The Committee adjourned at 3.43 p.m.)