CORRECTED

REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE No. 1

INQUIRY INTO WORKERS COMPENSATION

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At Sydney on Wednesday 10 October 2001

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The Committee met at 9.30 a.m.

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PRESENT

Reverend the Hon. Fred Nile MLC (Chair)

The Hon. John Jobling MLC
The Hon. Amanda Fazio MLC
The Hon. Greg Pearce MLC
The Hon. Janelle Saffin MLC
The Hon. Henry Tsang MLC

During this hearing comments were made by Mr Andrew Ferguson, NSW Secretary, Construction, Forestry, Mining and Energy Union, which the Committee believed may have had possible adverse reflections for the organisations mentioned.

The Committee resolved to write to these organisations informing them of the hearing provide a copy of the draft transcript and inviting response. The correspondence received from these organisations has have been added to the end of this transcript and can be identified as follows:

- Appendix 1 - Trazmet (NSW) Pty Ltd
- Appendix 2 - Prestige Cranes Pty Ltd
- Appendix 3 - The Department of Public Works and Services

The Committee encourages these responses to be read in conjunction with the transcript.

Steven Carr
Director

MARY LOUISE YAAGER, Workers Compensation and Occupational Health and Safety Officer, Labor Council of New South Wales, 377-383 Sussex Street, Sydney, sworn and examined:

RITA MALLIA, Senior Legal Officer, Construction, Forestry, Mining and Energy Union, Locked Bag No. 1, Lidcombe, New South Wales, affirmed and examined:

CHAIR: I welcome the media and members of the public to this hearing of General Purpose Standing Committee No. 1 which is inquiring into the review and monitoring of the New South Wales workers compensation scheme. I advise that under Standing Order No. 252 of the Legislative Council evidence given before the Committee and any documents presented to the Committee that have not yet been tabled in Parliament "may not, except with the permission of the Committee, be disclosed or published by any member of such Committee or by any other person". Copies of guidelines governing broadcasting of proceedings are available from the table by the door. I acknowledge that the Hon. James Samios is representing the Hon. Rick Colless and that the Hon. Amanda Fazio is representing the Hon. Tony Kelly. Ms Yaager, are you conversant with the terms of reference of this inquiry?

Mrs YAAGER: Yes.

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

Mrs YAAGER: As a representative of the Labor Council of New South Wales.

CHAIR: I should also advise you that if you should consider at any stage during the course 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. Do you wish to make a brief opening statement to the Committee?

Mrs YAAGER: I have prepared a presentation, copies of which have been provided for members of the Committee. I apologise for not having a laptop presentation. I thank the Committee for providing the New South Wales Labor Council with the opportunity to give evidence before the Committee. The presentation I am about to make has been endorsed by the Secretary of the Labor Council, John Robertson. John apologises for the fact that he was unable to make the presentation himself. He had to attend a WorkCover board meeting this morning. As I go through the presentation my colleague, Rita Mallia, may wish to add some comments of her own.

In terms of the scheme deficit, we have just been advised by WorkCover actuaries, through our positions on the Workers Compensation Advisory Committee, that the scheme deficit has blown out to more than $1 billion in the past 12 months. We believe that that is due to a number of factors—the goods and services tax [GST], undercollection of premiums, loss of return on investments and a shift in claims experience. I would like to make an important point to the Committee that the deficit does not have to be paid tomorrow. The deficit has been projected 50 years into the future. Therefore, in terms of radical reforms to the scheme, we need to keep that in mind when we are looking at how we might reform the scheme.

We should also keep in mind that all schemes would be experiencing a loss at the moment because they rely on the return from their investments. It would not only be the New South Wales scheme that is experiencing this loss. I believe that as interest rates continue to fall and as a result of the effects of the terrorist attack in the United States of America, interest rates will continue to fall. As a result we will continue to inter a loss in the scheme. We have to be mindful that it is a 50-year projection.

The concern of the unions is that the pressure should not be entirely on benefits. Every time the deficit has blown out in scheme, pressure has always been to reduce benefits. It never has been increased premiums; it has always been a reduction in benefits. That has been consistent since 1995. The deficit has blown out in the past. It blew out in 1997, at the time that Grellman conducted an inquiry. At that time the New South Wales Government established a Workers Compensation Advisory Council to oversee the scheme and make reforms. That Council made a number of reforms to the scheme. They were not aimed at reducing benefits or increasing premiums, but at scheme design and how we could introduce measures to reduce the ongoing deficit.

The advisory council proved at the time that that actually worked because the deficit did come down. With the scheme going forward and the claims experience going forward, the deficit did start to reduce. Premiums have been capped at an unrealistic rate of 2.8 per cent and the unions are now of the view that pressure on the scheme

should not just be applied to benefits; that the Government needs to consider making employers pay the true rate. I believe that Grellman, in his findings, said that the employers in the New South Wales scheme should pay premium rates of around 30 per cent. In relation to the scheme data, the Workers Compensation Advisory Council was always provided with data. That is no longer the case. The council's actuary, David Zaman, used to provide an analysis of the data, which is provided to WorkCover by the insurance companies. He used to inform the advisory council of the scheme trends and he was often in line with WorkCover and Insurance Council actuaries.

The concern we have now is how can there be public confidence if there is no transparency in the data? The council is not getting the data, and I do not know if this Committee is getting the data. I hope that that data is made available to the Committee and to those bodies to enable them to properly analyse the data. We believe this is now a "trust us" approach to the scheme management and it gives WorkCover total autonomy. We request that once again the advisory council be provided with the data. The advisory Council actuary, David Zaman, has said that he will continue to analyse the data for us at no cost. That will not result in any additional expense to the scheme.

Compliance is an area that we believe requires a complete overhaul. The unions are continually critical of compliance, in respect of occupational health and safety and also premium avoidance. We believe that the Government has responsibility to ensure that the contractors who carry out government-outsourced projects comply with occupational health and safety and workers compensation standards. We have the recent example—Rita may wish to elaborate on this—where the contractor on a Roads and Traffic Authority [RTA] project in Wollongong had only a $1 workers compensation policy to cover the workers and was avoiding paying the true workers compensation premium.

What we are asking for is that the Government establish a compliance project committee to oversee government projects that are outsourced, to make sure that they comply with occupational health and safety and workers compensation standards. Recently, I was involved with a project with the Roads and Traffic Authority. What the RTA does now is to accredit all of its contractors. I would like to see a similar situation with government contractors being accredited and obliged to meet certain requirements in order to carry out government work. We would ask that the Committee consider this recommendation and, if such a committee is set up, that Labor Council representatives have a position on that committee.

With regard to occupational health and safety, the unions certainly welcome the new occupational health and safety Act and the regulations as being a positive step towards improving occupational health and safety. However, we are very concerned at the poor standard of safety, particularly in the construction, transport and rural sectors. The Workers Compensation Advisory Council receives fatality reports relating to the rural sectors, and the incidence of fatalities in that sector is alarming. The Worksafe Fatality Study that was undertaken showed that in 1992 there were two deaths per week on the Australian farms. Really, this is unacceptable. The thing is that these employers are killing or severely injuring family members. We have to focus on improving safety in that respect.

We are also concerned about the number of prosecutions by WorkCover. The prosecution rate has dropped, we believe by half. We do not know why that is so but we believe, in relation to some of the prosecutions, that WorkCover may also be out of time in running those prosecutions. The unions are certainly concerned about that. We also believe that WorkCover should adopt a more strategic approach and increase its compliance division. Even though it says it has the largest inspectorate in the country, we believe that needs to be substantially increased.

The unions are very critical about the recent WorkCover advertisements and the advertising campaign. The unions believe that WorkCover is branding itself or trying to get recognition for the organisation in regard to the "Watching Over You" commercial. We have written to the Government asking that the campaign be withdrawn and suggesting that the Government consider adopting a campaign that targets awareness of occupational health and safety and workers compensation issues, not WorkCover itself. In regard to some of the new reforms that went through Parliament in June, there are some positive things about the new Workers Compensation Commission, including the process for disputes relating to return to work and late payments. The unions certainly welcome the opportunity to start arguing those disputes.

There has never been a mechanism for that in the past. That is one area that causes blow-outs in the scheme, people not returning to work. We certainly welcome that reform. However, we are concerned with a number of other areas in the commission. We are concerned about the appeals process. We are concerned that the rules are to be written by WorkCover. They have not yet been written but are about to be given to the Workers Compensation Advisory Council. We can thank the Upper House for ensuring that that amendment was included, to make sure that regulations and guidelines go back to the council for consultation. The commission will not be in operation

until January 2002. When that committee is up and operating, we will be providing this Committee with submissions in relation to any adverse effects that it may have on injured workers.

Ms MALLIA: We continue to have some concerns about how the commission is going to operate. There are issues of procedural fairness—whether people will have the right to be heard, whether the matters they bring before the commission will be fully acknowledged before determinations are made and issues about the expertise of the people who will be making those decisions in the commission. Our view is that the appeal barriers that the Government has placed in the amendments will make it very difficult for many people to appeal decisions that they are unhappy with. Tat makes it all more important to have arbitrators and decision makers who are experienced in this area.

There was much criticism of the Workers Compensation Court, but they were very experienced in the operation of the workers compensation legislation. It is not simple legislation and there is a concern about you need to have experienced people dealing with people's rights. We were very concerned about the unfettered guidelines and regulation-making power in the Act as it is now. It was basically a framework. We have not seen the detail and there is a concern that the commission may not be a very independent body, especially as the Act contains references to the commission having to take into account the economic viability of the scheme when making its individual decisions. As I said there are very real concerns and we have not yet seen the detail about how the commission will operate on how those issues will be addressed.

Mrs YAAGER: We will certainly be seeking to have it updated in regard to any concerns that we have about its operation. I will move on to the Justice Sheahan's inquiry on common law. The unions welcome the recommendation for increasing the statutory benefits. However, we have some concerns about some of the recommendations. We think the 20 per cent whole-of-body threshold is too high and that a number of seriously injured workers will not make it over that threshold. Professor Michael Fearnside, one of the doctors that the Labor Council has nominated to work on the development of the WorkCover guidelines, provided oral evidence to the Sheahan inquiry. The professor recommended a 10 per cent threshold. He understands the guidelines that are being developed and he suggested 10 per cent would be a much fairer threshold. He was really concerned about 20 per cent and 15 per cent and said that most seriously injured workers will not get over that threshold. I tender the transcript which contains part of Professor Fearnside's oral submission to the Sheahan inquiry.

Document tabled.

We are also concerned about the finality of medical expenses. We are concerned that a seriously injured worker—a quadriplegic, for example—who went down the common law path and accepted a settlement would not be able to go back and claim medical expenses. People with such an injury require care, often for the rest of their lives. That is the major concern we have with that recommendation. In respect of the recommendation that there be only one gateway to common law, we are concerned that the guidelines may not cover every single injury, and that therefore some workers may miss out. In particular some of those with psychological injuries may miss out. Other injuries, such as Q fever may not be addressed in the guidelines.

Ms MALLIA: The unions are concerned about the recommendation to abolishes access to common law, certainly for the most seriously injured. We cannot see our most seriously injured person would go down the common-law path and give up continuing medical care. There is also the issue about how the statutory scheme is going to be able to provide what has been lost by bringing the general damages component into the statutory scheme. There is so much encapsulated in common law damages. For example, limiting it to economic loss in the way that Justice Sheahan recommended removes many things from that component, such as the increased cost of having to take holidays if you are seriously injured. They are things that the statutory scheme will probably not be able to provide for and they are probably going to be lost. There is no analysis in the report as to the impact—who will miss out and how even the most seriously injured are going to be compensated; and also the deterrent to common law basically means that the right is lost.

The Hon. JANELLE SAFFIN: Has there been any gender analysis conducted associated with of issues your have been talking about—the different impacts, if there are any, on women?

Mrs YAAGER: No.

Ms MALLIA: No, there has been no basic analysis of the impact at this stage. Also, we do not know how the statutory scheme will operate. We have not seen the Government's formula. We have not seen the guidelines. While the report talks about increasing the statutory benefits to $250,000 for sections 66 and 67, we do not know

whether anyone will get anywhere near those maximums, because we have not seen how the guidelines and the formula in the statutory scheme will operate to make those comparisons. They are recommendations that we are not in a position to fully assess, because we have only half of the information.

We are very concerned about the loss of the second threshold or the second gateway, which, as you might know, is a monetary threshold. If general damages exceed, I think, $58,000, you can bring in a claim for common law damages. There are people who will not get above the 20 per cent threshold while the effect of their injuries, brought about by the negligence of their employers, is devastating. People do not return to work. Injuries for people like myself, such as office workers, may not be devastating, but building workers or police officers who suffer serious physical injuries possibly will not get over them. The advice to us so far is that 20 per cent is too high. They will not get over the 20 per cent threshold yet will not be able to bring claims for common law negligence. That concerns us greatly.

We are working in a bit of a vacuum as to the impact of the recommendations, because we have not seen fully how the statutory scheme will operate. Whether things like *Griffiths v Kirkmeyer* will be compensated to the same extent as they are currently by the District Court we do not know, and these other elements of general damages, how they can be incorporated into the current pain and suffering provisions, we do not know. So, we have grave concerns about shifting everything over to the statutory scheme at the expense of possibly the most seriously injured workers.

Mrs YAAGER: Basically finishing off with the last couple of slides, the medical guidelines, as Rita just alluded to, have not been finalised. The amount of compensation for each injury has not yet been determined. The formula for calculating these injuries has not been developed. We are waiting for all of these, and the unions are still very concerned with the psychological guidelines. In terms of the future of the scheme, I do not believe that the path the Government is taking is the correct one. Probably my colleagues the employers on the advisory council will agree with me that in any workers compensation scheme the focus has to be on early intervention. You have to get people back to work. You have to stop injuries occurring in the first place. It is not looking at the tail end, once somebody has been injured and is compensated, how we can reduce that amount. It is getting the system right in the first place.

One of the most important things we have recognised is involving the general practitioner in the whole process. We had plans on the advisory council to roll out an education program for GPs. It is also about the insurance companies managing claims properly, and some sort of body overseeing to make sure they are doing the right thing. We ask this Committee to recommend to the Government to establish a body again to oversee the scheme, a body like the advisory council. I do not believe the current advisory council works. It is too big. There are service providers and other interests on the council. It should go back to being a council of just employers, employees and government representatives, so that somebody can actually oversee the scheme.

Every single workers compensation scheme blows out and grows tails, and they have to be continually monitored and improved. As decisions come through that might have adverse effects on the scheme, that is when you have to change legislation. The model that I hold up is still the advisory council in Wisconsin, that continually monitors its scheme. Its scheme has never blown out, because it has a stakeholder body that oversees that committee with powers, and it makes recommendations and changes the legislation every couple of years to make sure the scheme works. I think I will finish on that note.

The Hon. JAMES SAMIOS: In relation to the Sheahan inquiry, the inquiry into workers compensation common law matters conducted by Justice Sheahan has recommended a 20 per cent impairment threshold for recovering damages at common law. What is the Labor Council's view of this recommendation, given your well-known objections to the Government's original proposal of a 25 per cent impairment threshold? Have you found the Minister and the Government willing to discuss the recommendations of the Sheahan inquiry report with the Labor Council and has the Minister given your an undertaking to take into account the views of the Labor Council before proceeding further with any legislative changes in this area?

Mrs YAAGER: Firstly, what the Labor Council has relied on is the doctors that we have nominated to work on the guidelines to give us advice as to where the threshold should be set. As I previously alluded to, Professor Fernside has said 10 per cent in his view. So, the Labor Council believes that would be a threshold that we would want to see or try to negotiate with the Government. In terms of the Government's position at this point in time, it has not indicated it will reduce the 20 per cent threshold.

The Hon. JAMES SAMIOS: You found the Minister and the Government willing to discuss the recommendations of the Sheahan report with the Labor Council?

Mrs YAAGER: There has been one meeting but there is a meeting of all the unions on Monday and I think from that meeting we will request a meeting with the Government to further discuss the recommendations.

The Hon. JAMES SAMIOS: Has the Minister given your an undertaking to take into account the views of Labor Council before proceeding further with any legislative changes in this area?

Mrs YAAGER: Not at this point in time.

CHAIR: Has there been any indication from the Government that it will let you see the draft legislation before we could have a confrontation on the legislation?

Mrs YAAGER: It has not indicated that it will show us the legislation prior to it being introduced into Parliament. I hope the Government will provide us with the draft legislation prior to it being put in legislation.

The Hon. GREG PEARCE: But the Labor Council would have asked for it?

Mrs YAAGER: We certainly will.

The Hon. GREG PEARCE: What has the response been?

Mrs YAAGER: The Sheahan recommendations have only come down. We have not asked whether there is a bill. We have not into those negotiations. We are still discussing the recommendations.

The Hon. GREG PEARCE: So, you have not asked whether the Labor Council will be consulted before the Government—

Mrs YAAGER: Yes, we have.

The Hon. GREG PEARCE: What is the answer to that question?

Mrs YAAGER: The answer has been yes, that the Labor Council will be consulted.

The Hon. JANELLE SAFFIN: You talked about the council used to be provided with data from the WorkCover scheme. What sort of data was that?

Mrs YAAGER: It is the data off the insurance companies databases. Like, how many people are on weekly benefits, the cost of claims, medical expenses, physiotherapy expenses, all of that data.

The Hon. JANELLE SAFFIN: Did that include things like the breakeven rates, the wages for each policy year?

Mrs YAAGER: Well, the actuaries calculate the breakeven rates from the data. They have a model and they feed numbers into their model and work out their projections based on the data they are provided with, the claims experience data.

CHAIR: To clarify something you said in your opening remarks, you used the words "the scheme deficit has blown out to over $1 billion in the last 12 months". What do you understand the actual deficit to be now, just in case anyone thinks it is only $1 billion?

Mrs YAAGER: It is over $1 billion.

CHAIR: What do you understand it to be?

Mrs YAAGER: It is $1.1—we are actually getting a presentation at the advisory council by the WorkCover actuary this morning.

The Hon. GREG PEARCE: It was $2.1 billion last December.

Mrs YAAGER: Sorry, this is a further $1 billion. It was $2.1 billion, so it is $2.7 billion.

CHAIR: What do you think it is?

Mrs YAAGER: It is a $2.7 billion.

CHAIR: No, it is more than that.

Mrs YAAGER: Is a $2.7 billion? Can I take that question on notice?

CHAIR: It was $2.1 billion. It went up a billion. It is $2.7 billion, $2.8 billion. It is heading up to $3 billion.

Mrs YAAGER: Yes. When I was talking about the $1 billion, that has blown out a further $1 billion.

The Hon. GREG PEARCE: There is one small typo in your presentation. Thank you for your presentation, but the scheme operates from January 2002, is what view of meant to say. Presumably that question of the threshold for common law has to be determined before that date. We have a number of weeks of sitting before Christmas that effectively finish in November. It would seem to me that if the Government was going to introduce a threshold it will have to be in the next few weeks. Do you agree with that?

Mrs YAAGER: I think so, yes.

The Hon. GREG PEARCE: What sort of time frame are you anticipating and what sort of interaction will the union movement have with the Government in negotiating that legislation? Will it be another march to the front gate?

Mrs YAAGER: I doubt that. Like I said to you, the union movement is meeting on Monday and we will work out the unions' position or the Labor Council's position from that meeting. I think the Government's time frame is certainly in the next few weeks to put legislation through.

CHAIR: That is what I was getting at with my questions, whether you see that draft legislation being drafted now. It probably is.

Mrs YAAGER: We will certainly ask for the legislation.

CHAIR: As you know, governments do not like to change legislation once it has been presented to Parliament. It is more difficult to change it by amendments. It is possible, but more difficult.

Mrs YAAGER: Yes.

CHAIR: You mentioned in your evidence that the Labor Council believes employers should pay the real premium rate of 3.1 per cent. Have you had any reaction from employers on the council body that the employers have ever discussed the 3.1 per cent?

Mrs YAAGER: The employers' view is that they should not pay any more than 2.8 per cent and, if they do, certainly a number of employers will go out of business. I think that remains the employers' view on the council. But certainly in terms of compliance the employers' view is that all employers should pay their fair share and that employers should not be allowed to avoid premiums.

CHAIR: It could be that if all those ones who are avoiding premiums or virtually involved in fraud it would actually increase the income?

Mrs YAAGER: Yes.

CHAIR: So it may be able to stay at 2.8 per cent if there was a better system of surveillance?

Mrs YAAGER: Certainly if there was compliance, yes, definitely.

The Hon. JAMES SAMIOS: Going back to the fatalities study, you expressed your concern at two deaths per week on the farm and that the prosecution rate had dropped by half. What representations did you or the union movement make to the Government to express your concern over that?

Mrs YAAGER: The secretary of the Labor Council addressed the WorkCover executive and put all our concerns to WorkCover in terms of its strategic direction. We flagged to them that we are concerned about the level of prosecutions.

The Hon. JAMES SAMIOS: Did you receive a reply to that?

Mrs YAAGER: Not at this stage.

The Hon. JAMES SAMIOS: Have you pursued that?

Mrs YAAGER: We will be pursuing that.

The Hon. GREG PEARCE: I am interested in how you see the practical reality of this scheme starting in January, which is now only 2½ months away. Assuming you have your meeting next week and you agree a position with the Government, a position on the threshold at common law, I suppose it could bring in the legislation in the next couple of weeks sittings and we could have that by the end of October or something like that. But it still has to do the guidelines, and practitioners, employers and the unions have to get this new material. How do you see that rolling out?

Mrs YAAGER: I believe the guidelines are almost completed. I understand we have the last meeting with the doctors and WorkCover next Tuesday night, and we are going to get formula and the completed guidelines in the next couple of weeks.

The Hon. JAMES SAMIOS: Including the psychological guidelines?

Mrs YAAGER: Including the psychological guidelines.

The Hon. GREG PEARCE: So, the common law threshold has to be resolved in the next couple of weeks then?

Mrs YAAGER: Definitely.

CHAIR: Again just to clarify your earlier evidence, would you say compliance is the key weakness in the scheme? Would you put that at the top, compliance?

Mrs YAAGER: Compliance and return to work, and the employers would agree with return to work.

The Hon. JAMES SAMIOS: Early intervention?

Mrs YAAGER: Yes. If you talk to anybody in any scheme in the United States, they are all looking at having systems to make sure early intervention works. If you do not get somebody back to work and they remain on the scheme, that is the No. 1 cost driver, people not returning to work.

CHAIR: The Wisconsin scheme you have mentioned, you have a copy of it, or can we get that from our own sources?

Mrs YAAGER: I can do some research and provide you with some information, but it is on the web site.

CHAIR: From what you said, that scheme does not have a deficit?

Mrs YAAGER: It does not have a deficit. It has had an advisory council since 1911. It was enshrined in legislation in 1951. It has a workers compensation court with judges. I think it has 19 judges. It is a scheme pretty much the same size as New South Wales'. People will tell you there are cultural differences. But that scheme has been operating at around 3 per cent. When all of the other schemes in America blew out—New York, Texas, California—Wisconsin is the only one that remained stable and viable.

CHAIR: You also mentioned in your evidence that the WorkCover scheme data is no longer being provided to the council. Was any reason given for that?

Mrs YAAGER: We have been asking for the data. It just has not been provided. We have tried to get hold of the common law register when we were making our submission to the Sheahan inquiry, because we had an actuary assisting us, and that was refused.

CHAIR: By WorkCover?

Mrs YAAGER: Yes.

CHAIR: Have you asked the Minister to overrule WorkCover and provide it to the council? Has he been involved at all?

Mrs YAAGER: Yes. Well, perhaps we have not been formally to the Minister to say that we want this data. Maybe that is what we should do.

The Hon. GREG PEARCE: That is part of the data that we asked for from the WorkCover representatives.

Mrs YAAGER: I understand that this Committee has its own actuary, so you will be asking for the data as well.

CHAIR: We will get it in the future. I am just wondering why it happened then.

Mrs YAAGER: We have not had any data since September.

CHAIR: Is WorkCover concealing information from you?

Mrs YAAGER: I just cannot understand why we would not be provided with the data so that we can have intelligent debate and so that it is transparent. I understand that this Committee has its own actuary.

CHAIR: Yes.

Mrs YAAGER: You understand the importance of being able to analyse data.

CHAIR: Of course. You also recommended that the council be trimmed back to stakeholders. That seems to be an obvious improvement. What would you do with the other people, such as the service providers? Could they be some sort of subcommittee or an adjunct, to have some input into the system?

Mrs YAAGER: In the past as we needed to talk to stakeholders, Garry Brack and I went out through the Austrian Medical Association [AMA] and conducted focus groups with doctors, we talked to rehabilitation providers, or we talked to lawyers. As you need to do in any research, you go out and talk to the providers and not just have one person represent all of that body. You actually get the different views.

CHAIR: That seemed to be a good system.

Mrs YAAGER: Yes, it was.

The Hon. GREG PEARCE: Towards the end of your presentation you spoke quite a bit about the need to properly oversee and manage the scheme. What is your perception of the way that WorkCover merges the scheme in the context of injury prevention and those other issues you were talking about?

Mrs YAAGER: We do not have a great confidence in WorkCover. The union certainly does not. Back in 1997, when the Government established the advisory council, we were able to direct WorkCover to do certain things. The advisory council, if you look at its record, the deficit it had at the time was being reduced by our strategies and the scheme going forward was trending downwards—all of the measures that we put in place. But what happened was that they took our powers away. We really have not had the same co-operation from WorkCover, and they are not in the same position to influence or direct.

Mr PRICE: Did you have a chance to have a look at the transcript of this Committee's evidence from WorkCover?

Mrs YAAGER: No.

The Hon. GREG PEARCE: My perception in listening to it and hearing it was that WorkCover was distancing itself from any sort of management role at all, and in answer to a number of questions they basically said that it is really the insurers job and that they really do not do any of that. Would that be your experience?

Mrs YAAGER: Everyone hated us. They probably particularly hated Garry Brack and me, but we would make insurers accountable. When we had a redemption strategy in place we questioned them about what they were doing. Now it seems like the insurance companies are doing what they want to do with commutations, and we are hearing from actuaries that they are commuting every single claim. There is a problem with commutations because there is no strategy in place and nobody is overseeing and making sure they are doing the right thing.

CHAIR: What is your view on commutations? Are you happy with that happening?

Mrs YAAGER: You need commutations. In my research in any scheme, in California or any scheme, you certainly need commutations. However, you have to make sure that they are properly targeted. You just cannot allow open slather. That is part of the problem now, that there is a blow-out in that area.

CHAIR: Who would make that decision?

Ms MALLIA: How it works now the power is in the insurer to provide or not provide a commutation. Workers can ask for them, but at the end of the day they have no binding standing. It is the insurer that decides whether to give them. One of the problems has been that strategy was introduced to try to bring the tail down, recognise that there are some claims that you just have to finish that are not really costing the scheme more than the benefits being given to the worker. But there are things that you have to close off in the system, and that is really what the approach was. But from our understanding, insurers are not targeting, or are not even following that sort of approach. They are just commuting anything that comes their way in a bid to close off claims. I do not know if that is related to the way that WorkCover remunerates. I do not know.

It seems that you need to have the facility there to bring claims to an end. They do work for the benefit of workers, too. Some people do not want to be on a drip system forever. There is a recognition that rehabilitation is not going to work and they are not going to return to work. You have to bring some closer to it. It is a horrible system for injured workers. Insurance companies do not process claims in a very fair or efficient manner. People really feel like they are second-class citizens. Once you are beyond that six months, that 26-week mark, you are beholden to the insurance company to send the checks on time, to remunerate you for your expenses, to provide you with your medical care, it can be a really horrible system. People want out of the system, and we would be very concerned if that facility were not available in the circumstances that justify it.

Mrs YAAGER: Just to conclude on that, there are certain claims that you can identify that you can say this type of claimant can redeem if the person has been terminated, has gone through every avenue of rehabilitation and will not get back to work or is of a certain age. There are certain types of claims you can select. Other claims you would say no, they are not to be redeemed.

CHAIR: You may need another person, a referee so to speak, who looks at the interests of the worker rather than the insurance companies.

Mrs YAAGER: I would not give it to WorkCover, either. I would probably prefer that to go to the commission, even though we have—

Ms MALLIA: That was one of the things we were concerned about in the bill, because the court played that role. Before a commutation was given the person came before the court and the court asked particular questions about the reasons why the person is taking a commutation, aware that it finishes the person's right in total to come back against that employer and that insurer ever again. There was that protection, and that safety net has been taken away. There is some provision in the new commission for these agreements to be registered, but there is not really a facility for the injured workers rights to be completely taken into account before a commutation is finally granted.

The Hon. GREG PEARCE: Assuming the Government fully implements the Sheahan report and brings in the legislation in the next couple of weeks, what will the union movement do? Will you conclude that that is the end of the game and go along with it, or do you have some other strategy if so, what is it?

Mrs YAAGER: The unions were probably a bit devastated after the last round of reforms going through. If the unions were going to do anything, the unions would probably embark on a campaign where they want to ensure the health and safety of most employees. That is probably the tactic we will adopt. Workers do not put themselves at risk and make sure that employers have appropriate programs in place. That is part of the campaign that we will embark on.

The Hon. GREG PEARCE: But you would accept that it is game set and match for the threshold?

Mrs YAAGER: We do not know. There is an upper House that, hopefully, we will lobby with some of the people from the medical profession to try to get them to look at the threshold to reconsider the threshold, certainly.

(The witnesses withdrew.)

ANDREW JAMES FERGUSON, New South Wales Secretary, Construction, Forestry, Mining and Energy Union, 12 Railway Street, Lidcombe, affirmed and examined:

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

Mr FERGUSON: Yes, I am.

CHAIR: If you should consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee will be willing to accept your request and go into camera. Would you like to make an opening statement?

Mr FERGUSON: I would like to pass around some documentation and then talk to that.

Documents tabled.

I am aware of the terms of reference and, in particular, the efficiency of the scheme. I would like the opportunity to focus on compliance. We are greatly concerned about the level of non-compliance. We certainly have a lot of knowledge about non-compliance in the building industry. We have raised this issue with the Government for the past four years. Our position is that the problem is only worsening. We have done a lot of audits on building sites to check its contractors have workers compensation policies. We have notified WorkCover when we have found breaches. We have raised it with the State Government in formal correspondence, and we have made submissions to try to highlight the concerns. But, as I said, the problem is only worsening.

CHAIR: You mentioned audits. Do they include any document you have given to us? Would it be a list of companies, sites or dates?

Mr FERGUSON: Page 13 of the response document headed "Workers Compensation Non-Compliance in the Construction Industry". It provides some sort of explanation as to the cause of non-compliance. It says "Crisis" and it is an attachment to the response document.

CHAIR: You have given examples in there, but I was referring to an actual audit.

Mr FERGUSON: That document is a good explanation of how people are not complying with the Workers Compensation Scheme, and then there is an appendix giving examples of companies that we have audited. That is on page 28. We have deleted the names, but there are 49 examples of non-compliance. I would like to summarise the way that people rip off the system, for want of a better word. Many companies do not declare to the insurance company the correct industry they are working in. It is an honour system. They go to an insurance company and make a declaration about the type of work they are performing and, as you are aware, if you work in a high-risk industry there is a higher cost premium as opposed to a low-risk industry.

We have found companies on building sites that have declared they are involved in imposing and exposing machinery when they are, in fact, operating machinery on building sites; they are involved in retailing ceramic tiles from retail outlet as opposed to fixing ceramic tiles. We have found people on building sides who claim that they are involved in financial services as opposed to working in the building industry. If you do not have the word "construction" in your company, if it is XYZ Pty Ltd, it is pretty difficult for an insurance company to immediately identify that is maybe an area of inappropriate declaration of the type of work. We find that to be a very common problem.

Another common problem is a loss of liquidity for the scheme. People make a wage estimate at the start on the policy period of what their wages will be for a 12-month period. If they put in a low wage estimate, they obviously pay a low premium. Many of those companies go bust and the end of the 12-month period and do not do any reconciliation or pay an increased premium from a reconciliation of the estimate and the actual, so that is one area of major fraud. The best case scenario for the scheme is a very low wage estimate. It is often fraudulent and, for example, the wage estimate may be $100,000 for a 12-month period whereas in fact the actual wages at the end of the 12-month period might be $1 million. The employer has had access to enormous amounts of liquidity while the scheme is paying out claims to workers without getting a premium in. That report goes through all sorts of issues.

Another big problem in the building industry is cash money. If they do not have workers on wage books, they are paying cash. They are definitely not declaring wages to an insurance company or paying a premium. The

other document that I thought would be helpful to illustrate the issues a little bit better is a document with correspondence dated 4 August. That is some correspondence that was posted to me recently. The person sent that to the union with the hope that could be referred to the building industry royal commission. The building industry royal commission will not be looking at issues such as WorkCover non-compliances. Its terms of reference do not embrace that issue, unfortunately. I deleted the name of the company from the correspondence because, if the Committee looks at the second line of the letter, it states:

> You will appreciate that this information can only be given anonymously for obvious reasons, namely, the possibility of great harm befalling on me.

The Hon. JANELLE SAFFIN: Where is the letter?

CHAIR: It is the first one on the front page.

Mr FERGUSON: One would assume it is a former employee of that particular company. That is only a letter. There is a lot of documentation that went with this that I have actually forwarded to the tax department, the Office of State Revenue and WorkCover.

CHAIR: It sounds like the accountant or somebody.

Mr FERGUSON: I will not respond to that. That person is giving some evidence of just one company and how it rips off the WorkCover scheme. For the year ended 1984 the actual wages paid by the company were $2.1 million. The company declared to the insurance company $742,000. The 1990 period shows actual wages of $4.8 million and the company declared to the insurance company $1.2 million. This is not unusual. This is very widespread and common in the building industry. You see the actual wages and then you see the wage estimate of a wage declaration and there is very substantial divergence. In addition to that, there is a reference there to cash money. This company is also paying cash money which is not part of the actual wages or the wages estimate. That is another $100,000 or $150,000 a year that is not declared for workers compensation purposes. That is a very good example of what a building company does.

This is an honour system: It does not work. That particular contractor was the largest contractor that worked on the Conservatorium of Music project that is just down the road. It is a State Government building site but there is no compliance whatsoever in what is going on. The principal contractor has no obligation to check whether or not the subcontractors it engages has a workers compensation policy. It is quite extraordinary, but nobody has the obligation to check. The builder was Walter Construction, and it got the job from the Department of Public Works and Services. Companies tender for the job—for formwork, concreting, bricklaying or stonework. Generally, whoever puts in the cheapest price gets the contract. That is often the case. It is a very competitive industry. If the company is not paying WorkCover costs, which are 10 per cent of labour costs and is not paying payroll tax which is another six per cent, that represents a 16 per cent labour cost saving. That is what is happening on sites. That is a good illustration for the Committee.

The Hon. GREG PEARCE: What you are really alleging is fraud.

Mr FERGUSON: There is massive and increasing fraud taking place, and the Government is doing nothing about it.

The Hon. GREG PEARCE: And the allegation or example you have given us is massive fraud on the Conservatorium of Music site.

Mr FERGUSON: It is on every State Government building site in New South Wales. I have some more examples. The next item is an audit. It is an employer inspection report on another building company. We do audits of companies in the best way we can with limited resources. That company is called Prestige Cranes which had a lot of publicity recently. It has an association with a leading Sydney crime figure. We did an audit on that particular company. Everything required attention. There was nothing that that company complies with. If the Committee goes through some of the details, that will give an idea of some of the audits we do which are not being done by the Department of Public Works and Services, WorkCover or anyone else. That particular company is not paying payroll tax. The company was working on the construction of Concord hospital, for example—the Hansen Yuncken Pty Ltd project. It paid no payroll tax, it was breaching the workers compensation laws and there were all the issues about workers entitlements.

A few pages further on there is an article from a newspaper about phoenix companies and the tax office sites. It is an article from the *Australian* newspaper. Phoenixing is when people set up legal entities, trade, go out of business, and the next day set up a new legal entity. When they go out of business, invariably they leave massive debts to other businesses, which may be a hardware shop, a sand supplier or a worker. The most significant debts they leave behind are to the Australian Taxation Office [ATO], the Office of State Revenue, and WorkCover. WorkCover never knows what the debt is that has been left behind because there has only been a wage estimate provided by a company that is fraudulent anyway. WorkCover never sees the actual declaration of wages so it never knows actually what it has lost, let alone actually retrieves the money. I know one director in the building industry that has had 26 different legal entities.

The largest contractor that worked on the Campbelltown Hospital project—I will come to that because there is some correspondence in the folder—is a company by the name of Emerson Formwork. He is a bankrupt. I do not know how he got a contract as a bankrupt. He got the contract and he subcontracted the work to his wife's company. He did not even have a bank account. They had no workers compensation policy. They had no payroll tax registration or payment. The husband's company had the initial contract but had folded up two previous companies that left behind $1 million each owing to the tax department. The contractor that got the work on the Campbelltown Hospital, which was the wife's company, went bust recently, leaving workers being owed money. No money was paid to payroll or WorkCover and $1 million was owed to the tax department.

The Hon. GREG PEARCE: Does not the Department of Public Works and Services or somebody like that check?

Mr FERGUSON: Public works does nothing. There is a crisis in terms of compliance. There is a need for an inquiry into what is going on. Tax phoenixing is a very major problem. It goes hand-in-hand with workers compensation fraud and payroll tax non-compliance. We believe that workers comp non-compliance is 40 per cent on building sites and that payroll tax non-compliance is 50 per cent plus. People will generally have workers comp policy because if they do not have a policy and a worker is injured, they might get sued. They generally have a piece of paper and a policy, but it is never a correct declaration of wages for all workers. They might cover one worker rather than 20 workers. They generally have a policy. The problem is not non-insurance; it is fraudulent, underinsurance.

The Hon. JAMES SAMIOS: Is this endemic to the industry, or it is it just a recent development?

Mr FERGUSON: It is worsening. We have been very robust in trying to get the Government to do something about the problem, but it is most definitely worsening. I have some correspondence here from employers, many of whom have now gone out of business because of what is going on. That is the tax phoenixing problem. People just set up legal entities and go bust.

The Hon. AMANDA FAZIO: This inspection report on the crane company, who actually is Construction Accreditation Services, and how do they actually go in and report on a company like that?

Mr FERGUSON: The union has a legal right to do audits of workers' entitlements and when we believe that there is fraud taking place, we seek that the company should go to an audit company that is nominated by the union, one in which we have confidence—that will do a thorough job to reveal what is going on—as opposed to the company telling us, "Don't worry about the payroll tax. We are doing the right thing." We arranged for that audit. We have done probably 250 audits in the past two years showing the extent of the non-compliance and the tax evasion and we are getting no response from either the Federal or State Government about problem.

CHAIR: Just for example, how many audits have been conducted by WorkCover itself? Does WorkCover conduct audits?

Mr FERGUSON: WorkCover inspectors are very poorly trained. I will give you one example. I had a union official go onto a building site last week in Coffs Harbour. The WorkCover inspector had previously been on the site. One of the contractors had no insurance on the job at all. I have the name of the company and so on and that company had no insurance whatsoever. That was not checked by WorkCover. The inspectors do not check and their skill base is very poor. Insurance companies do some audits. They get paid for it. They are not passionate about it. They do not want to offend their clients because, generally, insurance companies have the workers comp policy but then there is motor insurance, fire insurance and public liability. There is no passion to try to get compliance at all.

The Hon. JANELLE SAFFIN: Who pays for that?

Mr FERGUSON: The WorkCover scheme pays insurance companies to audit their own clients.

The Hon. AMANDA FAZIO: So who would have paid for the Construction Accreditation Services audit?

Mr FERGUSON: The employer, and the union requests that in a very vigorous fashion. When we believe that there is fraud, we seek that the employers submit to an audit to prove their bona fides.

The Hon. AMANDA FAZIO: What would happen if the employer did not co-operate?

Mr FERGUSON: If we have a genuine belief that there is fraud taking place, we would be in dispute with that company. We have got to try to make a contribution the best way that we can to try to clean the industry up. We are not succeeding but we are trying to get the job done. We are desperate for some State and Federal Government action to try to support our concerns.

CHAIR: May I interrupt you just for a moment. We have had a motion to accept the documents but we have not actually have a motion to publish the documents. Are you happy for them to be published?

Mr FERGUSON: Yes, I am.

Motion agreed to that the documents be published.

Mr FERGUSON: That press clipping there is "Migrant's $7m scam". That contractor was the largest supplier of labour on Sydney's Eastern Distributor.

The Hon. JANELLE SAFFIN: Which document?

Mr FERGUSON: It is a press clipping from the *Sunday Telegraph* which states "Migrant's $7m scam". That contractor worked on the Eastern Distributor which is, again, a Government building site. He is one who has landed in gaol. Generally they do not get caught, but he ran a $7 million tax scam. There was no workers compensation compliance and this is the Eastern Distributor we are talking about here, not some block of units at Rooty Hill or something. These are strategic, high-profile State Government building sites. No payroll tax is paid, there is no workers compensation compliance, and $7 million has been stolen from Australian taxpayers on a Government building site.

CHAIR: You may not have this at the moment, but have you done a calculation on non-compliance? If non-compliance is so massive, what percentage of the deficits, the $2.7 billion or the $2.8 billion, would you say is related to non-compliance? Is it half, a quarter or 10 per cent?

Mr FERGUSON: It is very hard to make that estimate but I certainly base it on my experience in the construction industry. The level of compliance is worse in contract cleaning in the rural sector. There is definitely hundreds of millions of dollars which is revenue, but the far more important issue from our point view is fair competition and a level playing field. Companies that comply with the law either break the law to survive or will go out of business, and it is just so unsustainable for the Government to allow what is going on.

CHAIR: So the corrupt companies are the ones that do well.

Mr FERGUSON: They get an advantage.

CHAIR: And it is the honest companies who are the ones who suffer.

Mr FERGUSON: Building contracts are lost on a 1 per cent or 2 per cent margin. We are talking here just on WorkCover and payroll tax about 16 per cent and other companies that run cash operations steal another approximately 25 per cent of group tax that should be remitted to the Australian Taxation Office.

The Hon. JAMES SAMIOS: You mentioned that 250 audits have been conducted. How long have you been conducting audits?

Mr FERGUSON: In a more systematic and professional fashion from our point of view, probably about two years. There is a lot of resistance from employers to it. They believe it is an intrusion into their affairs. Nobody else checks. Nobody else cares.

The Hon. JAMES SAMIOS: Having achieved these audits, presumably you have made representations to the Government?

Mr FERGUSON: An enormous amount of union resources goes into liaising with State Revenue, WorkCover and the ATO, but very little gets done. Once the company has been identified as being involved in fraud it will fold up business, set up a new legal entity with new directors or even in the same directors the next day, and nothing is done. The largest building site in St Leonards was shown on the television news last week when a crane collapsed and crushed a vehicle. On that site the biggest contractor is doing formwork, Trazmet, which owes $800,000 to the tax department. They will not get caught. As soon as the ATO moves on them they will fold up. But that $800,000 decided who got the contract.

The steel-fixer on the job, Barry Knight, is a bankrupt. I have no difficulty naming him, and he now operates as a sole trader. Even if you are disqualified from running a business you can operate as a sole trader, and engage labour. He owes a quarter of a million to the tax department and is not paying payroll tax. I tell this to all government departments on a regular basis but by the time they get around to doing something, it is all over.

The Hon. GREG PEARCE: In your package you have enclosed a letter dated 9 August to the secretary-elect of the Labor Council which states that you had met with the State Treasurer.

Mr FERGUSON: Definitely. I have met the Treasurer and sent numerous correspondence, but things are getting worse not better.

The Hon. GREG PEARCE: You asked for a meeting with the Premier, has he agreed to that meeting yet?

Mr FERGUSON: Through the Labor Council we have arranged for a meeting tomorrow. I have had previous meetings with the Premier and senior Government Ministers. The problem is worsening.

The Hon. GREG PEARCE: Have you told the Premier about the level of fraud and the loss of payroll tax and State government revenue?

Mr FERGUSON: Yes.

The Hon. GREG PEARCE: And the problem continues?

Mr FERGUSON: Yes.

The Hon. GREG PEARCE: And it is going on in government building sites?

Mr FERGUSON: One would hope you could at least get State Government building site compliance with the workers compensation premium and payroll tax. It is not much different from the private sector.

The Hon. JAMES SAMIOS: Has the Government indicated that it is undertaking an initiative to deal with this obvious cancer in the building industry?

Mr FERGUSON: It had a working party looking at workers compensation compliance. A lot of advice comes from WorkCover, where there is gross incompetence. We raised the issue of workers compensation fraud three or four years ago. They said that there was no problem with workers compensation fraud, it was about 5 per cent, and it would not be cost effective to pursue the issue. They now accept that there is a serious problem. As to a solution, the WorkCover people were advising them, and that advice was very poor and will not solve the problem. They were talking about having computers tracking people. The solution would be different from that. We raised a matter with the Labor Council about Campbelltown hospital, which had a bankrupt builder on that site. Two previous companies owed $1 million each to the ATO. The work is sublet to the director' s wife in a labour-hire arrangement with no workers compensation or payroll tax.

The Hon. HENRY TSANG: In answer to the Hon. Greg Pearce you said that the Government put all contracts out to competitive tendering. They actually went to private builders, it is not the Government or the

Department of Public Works and Services that subcontracted and built all those public buildings or the Eastern Distributor. The contracts went to tender, to the private sector. That fraud did not necessarily involve the Government endorsing the practice. It was private enterprise which did not to the right thing, not the Government subcontractors. I wanted to clarify that point.

Mr FERGUSON: With due respect, I put all the blame on the State Government. There is no system in place to ensure compliance. Giving out a contract knowing that it cannot comply with the law, and not checking, is scandalous.

The Hon. GREG PEARCE: You told the Premier and the Treasurer about this level of fraud?

Mr FERGUSON: Most definitely. I have provided evidence to the Premier and all senior Ministers—and the problem is getting worse.

CHAIR: You mentioned 250, so were your audits mostly on Government projects?

Mr FERGUSON: No, both private and public sector, and it tends to be the larger commercial market as opposed to the domestic sector.

CHAIR: So it would be roughly half and half?

Mr FERGUSON: I would say probably a larger percentage would be the private sector in the marketplace. I do not know the percentage of Government work in the marketplace, but if I had to guess I would say 25 per cent Government sector and the balance being private sector.

The Hon. JAMES SAMIOS: And I take it that most would be in the Sydney Basin?

Mr FERGUSON: Predominantly, 95 per cent Sydney based. We have also raised this issue with Tony Abbott, the workplace relations Minister, to try to get the terms of reference for the building industry royal commission to include this problem. I will not be bipartisan; the response from Tony Abbott was that he does not believe that there is any serious tax evasion problems in the building industry. With all due respect, he would not have a clue about what is going on on building sites. My package includes a report from the National Crime Authority for this year that makes reference to $1 billion worth of tax evasion taking place in the building industry. It is phenomenal and it is increasing.

I have included a letter from a company called Endeavour Scaffolding, which has now gone out of business. It sacked its workers and has pleaded with the union to try to get help for this crisis. In particular, the company blames non-compliance as the reason for sacking the employees. The companies that are rorting the system get the contracts. Good businesses go to the wall. Boral has done a labour cost analysis and its chief executive officer sent me that report, it did not come off the back of a truck. Boral is a major supplier and placer of concrete in the building industry. The reference to "DMG" is De Martin and Gasparini, one of the major concrete companies in Sydney. I would like to go through that analysis with the Committee.

CHAIR: Unfortunately, we are out of time.

The Hon. JAMES SAMIOS: I seek an extension of time. This is a very important issue, Mr Chairman.

CHAIR: We can continue for another 10 minutes.

Mr FERGUSON: The labour cost analysis was provided by the chief executive officer of Boral two months ago when he came to see me. He was desperate about what is going on. Boral has sacked 150 workers; they are on the scrap heap because that company cannot compete. Under the column headed "DMG" that is the Boral company, and it shows wage rates. The average base rate in that company for a concrete worker is $17.05. The next column is headed "Compliant Competitor", and that means with the law, payroll tax and workers compensation, and the rate is $16.60. The difference is because when the union negotiates we tend to get a better wage outcome for workers as opposed to some competitors.

DMG is paying 3.2 per cent of its labour cost and a non-compliant competitor pays one-third of that. On payroll tax, it is 2.03 per cent of their labour cost and a non-compliant competitor pays 50 per cent of that. Some simply do not pay, some pay some payroll tax. The next company is Betterform. We did a wage audit and found that

contractor on the NIDA construction project at Anzac Parade, Kensington. I do not know whether that is State Government or Federal Government funded. We did an analysis of that company and most things were unsatisfactory. That company was not paying any payroll tax and were behind with their group tax. I rang the ATO and said that as that company owes the department a lot of money, how about it intervene and try to sort it out. I will be even-handed with my criticism of government and say that the ATO negotiated with that contractor on an agreement to pay off the arrears of tax. That company has now broken two agreements with the ATO. The company is still trading.

The Hon. JAMES SAMIOS: How much tax is owed?

Mr FERGUSON: Currently it is $450,000 owed in tax to the ATO. Payroll tax non-compliance, workers compensation non-compliance. The solution is that principal contractors, the builders, will look for the most competitive price they can find and we support that system of free enterprise to get the most competitive price, as long as it is not premised on someone breaking the law. At the moment the principal contractor has no requirement to check a workers compensation policy, or check whether someone is registered for payroll tax, or whether they are paying their premium or their payroll tax. In fact, a lot of builders deliberately find companies that do not pay payroll tax or workers compensation, because the price is 25 per cent cheaper than a compliant competitor.

CHAIR: They make a bigger profit on the job?

Mr FERGUSON: Yes. And the day you make the principal contractor responsible for the system is the day that you will stop people running around and chasing fraudulent companies, and the buck will stop where it stops. The Hon. Henry Tsang said that the Government gives out contracts, fair enough. But whoever gets the contract should ensure that there is compliance with the law. Where it is no compliance there should be sanctions and systems to ensure compliance. At the moment the incentive is to find a cheat. If you have sanctions and responsibility the incentive would be for the principal to be hit with non-compliance, and if that were so the principal would start caring about the system. It will solve itself. WorkCover is not impressed by the idea of principal contractor responsibility but it has a pretty poor track record in finding a solution for anything.

The Hon. AMANDA FAZIO: My understanding is that if the Department of Public Works and Services puts out a big contract it checks on the principal contractors. Do you see that as a major problem? If the contractor does not have a proven track record of completing projects and does not have a reasonable financial backing, the contractor cannot get an initial contract with Public Works.

Mr FERGUSON: Yes.

The Hon. AMANDA FAZIO: You are saying that you would like to see that spread down to the subcontractors?

Mr FERGUSON: Yes, what you a saying is true. But the principal contractor does not employ anyone; principal contractors employ 0.05 per cent of the workforce in the building industry. It is all subcontracted out to cheats that rip off the system. A lily-white builder gets the advantage of fraudulent behaviour. You have to stop the rot there.

The Hon. GREG PEARCE: When you see the Premier tomorrow and tell him this again no doubt there will be a flurry of announcements. But will anything change?

Mr FERGUSON: I am not convinced that there will be a flurry of announcements. We are extremely annoyed and disappointed with this incompetence. Will keep pushing the issue to try to get some proper behaviour. Perhaps this Committee can be helpful. I am willing to provide information on a regular basis that can be raised in State Parliament about fraud on government building sites. The system is in crisis.

The Hon. GREG PEARCE: The Opposition might ask the Treasurer a few questions next week.

CHAIR: One point you are making is that the principal contractor has to do the checking as to whether the subcontractor is genuine. He would sign some document, but that would be after he has tendered because he has to hire the subcontractors.

Mr FERGUSON: Yes.

CHAIR: There needs to be a system, but how could that be done?

Mr FERGUSON: The contract between the Government and the builder would state that the builder needs to ensure that there is compliance with the law on this project. The builder needs to ensure that his people have a workers compensation policy and he needs to check it. They do not do that now. The builder needs to check whether they are eligible for payroll tax and are registered, and that they are paying it. Our union has recovered more workers compensation premiums and payroll tax that have all government departments combined.

CHAIR: Is there some way out when the contract is signed, and they are supposed to do that, but they present a report stating that they have checked that all the subcontractors have fulfilled the requirements. Even if it is in the contract, he still may not do it.

Mr FERGUSON: I know. But the day you tell him that if fraud is found he will be financially responsible for the extent of that fraud, because he has the commercial advantage of it, that is the day they will start paying attention. They will sign all the pieces of paper in the world. You need a sanction, a fine and the unpaid workers compensation premium or payroll tax. They will very quickly start paying attention and clean up the system. At the moment the incentive is to find fraud. This same issue applies to contract cleaning. A principal contractor who gets a massive contract with Coles sublets it all out to people that break the law. And nobody does anything about it.

CHAIR: This will be an ongoing issue for the Committee. We want to help WorkCover to become efficient and to reduce the deficit. Non-compliance is a major factor in the blowout.

Mr FERGUSON: I do not know whether there is any possibility of getting a government inquiry into this issue. I gave the case of payroll tax for one company being over a quarter of a million dollars. That is a pretty substantial amount of revenue for roads, schools and hospitals.

CHAIR: The inquiry will be running for 12 months and we may get you back to find out whether they have been any improvements and what action has been put in place to prevent fraud.

Mr FERGUSON: I would be pleased to have the opportunity to monitor what is going on.

The Hon. GREG PEARCE: You heard the previous witnesses, who indicated that if the January 2002 start-up for the changes to the workers compensation scheme is going to work we have to get the threshold sorted out, the guidelines, the common law and all the other material. I gather the union is having a meeting on Monday. We will probably have legislation in by the end of October or the first or second week of November. Do you see that as the timeframe? If you do, and the Government does adopt the Sheehan report and implement that by the first week of November, will the union accept that that is the judgment that has been made and go along with it, or what will you be doing?

Mr FERGUSON: I would have to take that issue to our decision-making bodies for determination.

The Hon. GREG PEARCE: What about the timetable?

Mr FERGUSON: I would have to speculate. I am not in a position to know the timetable of the State Government.

The Hon. GREG PEARCE: How do you see it in terms of its being operating by January 2002? Can you see it extending beyond that sort of timeframe?

Mr FERGUSON: I would have to speculate. I just do not know the timetable of the Government.

The Hon. JAMES SAMIOS: So you are saying that the Government is not dialoguing with you in relation to the timetable?

Mr FERGUSON: The Government is dialoguing with the Labor Council of New South Wales. We received a report from the secretary. I think there is a meeting, as you said, on Monday about that.

CHAIR: We appreciate what you have had to say. The Committee will probably get progress reports from you while we are working on our interim reports. We will prepare one soon. We will pick up some of these issues and follow them through. Hopefully, there will be an improvement before we finish.

(The witness withdrew)

JONATHAN FOWLER, National Spokesman, Small Business Association of Australia, Post Office Box 285, Drummoyne, sworn and examined:

CHAIR: What is your occupation?

Mr FOWLER: Retailer and national spokesman for the Small Business Association of Australia.

CHAIR: In what capacity do you appear before the Committee?

Mr FOWLER: As national spokesman for the Small Business Association of Australia.

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

Mr FOWLER: I have read them.

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 heard or seen only by the Committee the Committee would be willing to accede to such a request. We go into camera and it is confidential. Would you like to make an opening statement?

Mr FOWLER: I come representing the association but I have also seen 15 years as an insurance broker. It has distressed me to see the way workers compensation has been demolished in the last 10 to 15 years. It also worries me that people ring me every day looking for workers compensation and sometimes they cannot get it because there are not as many underwriters for workers compensation as there used to be. Since 1980 or 1985 there has been a decline in the number of insurance companies. Twenty years ago we used to ridicule that there were about 240 insurance companies in Australia. At that time I could go out and see you tonight and write your car, your contents, your household, your superannuation, your workers compensation and your fire and life policy. You would be my client. I might have six companies and 12 quotes. In other words I would have two quotes on each risk. Then we would look and decide on Vanguard Insurance, Traders Prudent, this company or that company as having the best policy. You would then give me a cheque and I would send the money off to the insurance companies. Today trying to get insurance is like trying to win the Lotto. It is a joke.

It all started way back in the days when Neville Wran—I think it was at the 1981 elections—decided that he would take over workers compensation premiums. At that stage there was a fight going on between Victoria and New South Wales and one or two other States about getting their sticky fingers, government-wise, into the workers compensation bucket. Ever since then it has gone down the drain completely. Overnight I lost $770,000 in premium. That probably sounds a lot of money but the commission rate on workers compensation was about 1.5 per cent. That gave me about $10,000, which was enough to pay my rent. We had all these insurance agents and brokers out there who in many cases were trained and knowledgeable and the system was good. Today every Tom, Dick and Harry without any experience writes workers compensation to some degree. There are hardly any agents out there. It is a problem to get an agent to give you advice.

As an agent I found that I only worked when you rang me and said, "I have got a client, a member of staff, who has had an accident." I would go out straight away. If you rang me at 12 I would be there at 1, the claim form is filled in at 2 and at 3 it is in the insurance company. That does not happen any more. I think that is wrong. The lurks that people get up to in underquoting and underwriting cheaper premiums are unbelievable. I will come back to dishonesty and tax in a moment. It has been going on for 25 years and the governments of New South Wales have done nothing about it. I am referring to plural governments. They just roll on. Listening to Mr Ferguson talking I thought: It is still going on and it has probably even got worse.

That is the sort of service I would give. I earned my 1.5 per cent commission when there was a claim. I chased the claim up and made sure that it went through and that the worker was fixed up. Sometimes when I have filled in claim forms I have known that the claim was spurious. One day I went out to a factory to collect some premiums. One of the blokes said, "I am getting fired at lunchtime today." When I asked why he said, "I don't know why but I am getting fired. But I'll get back at 'em." Whilst I was there collecting the premiums there was an accident. He had stuck his finger in a guillotine. So he then went off on workers compensation.

In fact, I was rung the other day by an insurance company that wanted me to go back 14 years for the insurance details on one of my clients. The one that you throw out after 14 years—which is double the time of

seven years—was what was wanted. This particular guy 14 or 15 years later was wanting to make a back claim because of the poor work conditions he had when he worked for this company. That just rolls on all the time. I believe that the crisis is because the rates are too dear. If you work in a retail store the rate, according to the book that I received a week or two ago, is 3.45 per cent. Working on $300 week you can see that it is a reasonably sized premium. But the rates that have been in for 10 or 12 years have meant that people working in the retail side and the two fellows working in the storeroom at the back of the shop and the woman in the office who never gets out on the floor all have the same rate. That woman used to have a rate of 0.4 per cent. The people in the storeroom might be on 7 per cent. People on the retail floor would be at 3.45 per cent. So the woman in the office who was on 0.4 per cent is now on 3.45 per cent. She never gets out into the shop; she does nothing but type and answer the telephone.

CHAIR: Because she is under the category of retail?

Mr FOWLER: She was under the category of an office worker. The new rates that came in meant all the people working in the one shop—people in the store room, people in the office and people on the floor handling customers all day—were at the same rate. This is what has ruined the system. That is why people are avoiding it. The woman in the office does not get out on the floor, lift a box or do anything like that. This is where the discrimination is coming about. It does not mean very much in retailing, although there is a 3 per cent difference in wages, and on $25,000 a year that is a lot of money.

But in the building industry if she is in the office answering the telephone she would be on the building rate, which is 12, 16, 18 or 22 per cent, whatever. It goes up and down, and it goes up and down like escalators. It is disgusting the way it is. She is working in the office. She does not even pick up a screwdriver. But she is on 22 per cent if that is what the rate for the building industry is. A cranesman or a truck driver is on the same rate. This is where the thing has fallen apart and become worse. I sit down and read through the screeds that come to me from WorkCover. I find that it is the greatest load of crap and misinformation that I have ever read. But then the whole thing is structured the wrong way.

CHAIR: So you are recommending that it should be based on identifying the worker's role to set the rate?

Mr FOWLER: That is exactly right. Then I would pay the appropriate rate instead of saying that the woman earns $400 week and I put in $200 to reduce the premium. I think we have to be honest. But nobody has ever gone around and policed workers compensation. Mr Ferguson suggested that there should be someone to police it. In the building industry there is a head contractor and by law he should be required to sight the workers compensation policy, the payroll tax structure if it is required. Remember, the threshold is half a million dollars, and a lot of small businesses, particularly builders, may not have wages to the tune of $500,000. These should be there and they should be written down and the policy numbers and the due dates should be part of the contract that the government or any other major firm sees before approving it. And the major builder of the building must pay the contractor on time. He must also make sure that his subcontractors are paid on time, and that is where it falls apart. So these are the sorts of problems you have in the industry, particularly in the building sector.

As to dishonesty, I know one fellow in Drummoyne who had one office and another office for the accountant. A taxation department official went through the company. It was a normal proprietary limited company. We, as an association, recommend that you become a proprietary limited company with $500 in paid-up capital. Having come from a finance company background, I know that if you presented a $2 company, with shareholders' funds and with reasonable profit in the business, I would lend to you. But this was a $2 company that owed the tax department $180,000. The tax department could not get that money.

However, this fellow happened to be driving around in his new Mercedes as a big-note builder. Having worked for a finance company, I know that the first thing that fellows who are doing reasonably well want to do is buy a nice red Mercedes or some other prestige car, but I would knock that back because you knew they did not have the capacity to keep operating on that scale. But if that customer could go to another company and get the finance, and if that customer went bad then it was not on my loss register. These are the sorts of things that have been going on for years. The accountant was talking to me. I said, "Oh, you had some heavies in today." He said, "Yes, they're from the tax department." The tax department was owed $180,000 but could not get a cent out of that company.

This fellow then closed the company down, structured another company up the road, moving from Drummoyne to Gladesville, and is probably still in business. The tax department, where it has a bill of $180,000, should be empowered to sue the directors. We are led to believe that those running a proprietary limited company

are responsible, as directors, for the losses of the company. But there are ways in which they can get out of it. The structure is wrong. These people should be paying. There should be a register or blacklist of such people. In this day and age we cannot do that any more. When I worked for United Dominions, if you came to me wanting to lease something I would ring the bank manager for a reference and ask, "Can Reverend Nile afford to pay $140 a month for three years?" He would come back and say, "A well established customer, secure, meets his payments and pays on time."

So you then have a word picture of the sort of person you are when it comes to paying bills. With all this discrimination garbage, that has gone out the window. You cannot get bank references any more. You cannot even get a proper work reference any more. If you have worked for me for five years, I just have to say that you have worked for me for five years. I do not have to say what you have done. You could have been the worst, most rotten employee I had or the best employee. In times prior to the present climate you could read things from the reference and gain some knowledge from it. Sometimes set phrases told you that the person was a bit of a ratbag, or was unreliable and so forth. The whole thing is wrong.

CHAIR: If I could come back to WorkCover, because we are not investigating tax, although I know it indicates that companies may be corrupt.

Mr FOWLER: Tax is a part of it, and we need to be able to show the picture. No-one, be it government or a major builder, Lend Lease or whoever it may be, is making demands of the person they are giving the contract to, and the contractor is not doing anything about checking with those who are on the subcontracting list.

CHAIR: Are you aware of what WorkCover calls its new business strategy?

Mr FOWLER: No.

CHAIR: Say you are unable to give an opinion on that?

Mr FOWLER: No. They do not send out small business information to you. You hear of it via someone who rings up. Somebody rang me today and asked me about a small business award presentation today. I made seven phone calls before I came here today, and there is no small business presentation award today. You are not kept informed. The Workers Compensation Commission used to run reasonably well, but WorkCover today I think is a joke. It is unfortunate that people are claiming workers compensation and insurance companies are just paying them out. They say if they have a claim for $20,000, pay the $20,000.

If you object and want to go to court, they could be up for $150,000. We had an upper limit of $100,000 on workers compensation claims prior to 1981, the year of the Neville Wran election. You could jack that up to $200,000. That, I think, was where the whole thing fell apart. These astronomical payments for injury, back pains and back pressures are the greatest load of cons. Also, if the medical professionals are not sure they will give the necessary health declarations. It really has gone from bad to worse in the last 15 years.

CHAIR: If I could clarify another point. You are giving a lot of your own personal experiences, but you are the national spokesperson for the Small Business Association of Australia. How many members are there of the association?

Mr FOWLER: We have 5,500 members across Australia, and I would handle 30 telephone calls a day from people all over Australia who are wanting to start a business, wanting information about that.

CHAIR: But the views you are giving you believe represent those 5,500 members?

Mr FOWLER: They represent all of those people. The biggest problem these days is that people do not know that they have to take out a workers compensation policy when they employ someone. In other words, no-one is advising them on the policies that they should have, such as public liability. These are things that they should be aware of. They will say, "Where do I get a workers compensation policy from?" I think, "Goodness, these people are going into business!" So many people have no knowledge of what it takes to be in business, I just think it would be a good thing. Then the insurance company representative comes along and says, "We will pay you this much money if you can give this fellow some advice on how to run a business." So I go out and spend three or four hours teaching the gentleman how to run his business.

Then, if the insurance company is happy with that, it will pay out the premium. We are talking about a fellow who wants to be in cleaning but knows nothing about cleaning, or the fellow who wants to drive a truck but does not have a C-class licence. All of these sorts of things are going on. We have these conversations where the insurance company fellow says, "I'm going to get $70,000, but we've got to have some small business training." You cannot in five minutes train a fellow to run a business. So the insurance companies, to my mind, are a little at fault because they are wanting to get it off their books, instead of maybe paying the fellow properly for the next three your four years until he is medically okay. That is another angle, but I do not know whether it has come up in conversation.

The Hon. AMANDA FAZIO: You are the national spokesperson of the Small Business Association of Australia and you deal with inquiries from across the country. What aspects of the New South Wales workers compensation scheme do you consider to be deficient in comparison with systems in some of the other States? Have you got that sort of detail?

Mr FOWLER: I think the whole of workers compensation across Australia is in tatters and is a disaster. It has been allowed to fall away. This is the thing that really upsets me. I have seen it happening in the past 25 years. It used to be a good, tight industry that you could earn a living from. Today, it is a joke. Each State is just as bad as the others. There is no State that I think has an excellent workers compensation structure.

The Hon. JANELLE SAFFIN: What has changed that has made you come to that view?

Mr FOWLER: Because there are no longer any trained people out there to advise you, to help you with your policies. When the old structure was in place there were lots of insurance agents or brokers. Firstly, they were trained to be aware of the policies. They were trained to have a knowledge of life assurance and superannuation as well as general branch insurance. Workers compensation is within general branch. Public liability is in the general branch. So they were trained and they had knowledge. Today, you could walk into the Westpac bank and talk to somebody behind the counter about a workers compensation policy because the bank is an insurance company, but those people have no knowledge and no ability, and they are not prepared to give you any help or advice. I think that is disgusting.

It is a real problem that we no longer have brokers out there. Today we have people who are financial consultants. That is another piece of State legislation that is a joke. You have people who could not finance a dead duck on a hot day. These people come to me. I ask them one or two questions, and they have not got a clue. But it is in the financial bracket. The criteria to be a financial consultant is knowledge of the stock exchange and buying and selling of shares — not insurance, not superannuation or any of the other contingent liabilities involved in the course of the business, but a working knowledge of the stock market. So, suddenly, we have all the stockbrokers becoming insurance agents. I had to pass an examination on the insurance Acts of Australia before I became an agent.

The Hon. AMANDA FAZIO: Earlier you mentioned the reduction in the number of insurance companies that are operating. Do you think that the amalgamation and taking over of insurance companies has reduced competition?

Mr FOWLER: Yes. There is no competition. It ruined it completely. You have only got to look now at Mercantile Mutual, now the man with the orange hat, ING insurance. National Mutual is now owned by AXA. All insurance companies in this country are owned by overseas companies. I have a letter from the Treasurer of 1978. I wrote to the Federal Treasurer about the policies on overseas companies buying out Australian insurance companies. The Federal Treasurer in 1978 wrote back and said that he believed when Manufacturers Mutual was bought by the South African company, then bought by the Dutch and then by somebody else, we were heading for an era of keen competition in insurance premiums. Who was the Federal Treasurer at the time? You are all politically aware, so I do not have to mention the name. It is the Prime Minister.

The Hon. JANELLE SAFFIN: John Howard.

Mr FOWLER: This is the crap that he dished up to me in 1978, saying that we were going to have competition in the insurance industry. Since then the insurance industry has gone right down the gurgler. That is wrong. The Chairman of the National Insurance Brokers Association of Australia every second year shall be the representative of an overseas insurance company. What a load of garbage! I have been fighting that for years. People say, "Are you still pushing that?" I say, "Yes, because it is not right for Australia, because we are being bought out by overseas insurance companies, which take the premiums and screw this country premium-wise.

The Hon. JANELLE SAFFIN: Is that a requirement written into the Federal Insurance Act?

Mr FOWLER: No, it is written into the Insurance Brokers Association.

The Hon. JAMES SAMIOS: Mr Fowler, in relation to the training of insurance agents in the days when you were involved, what was the formal training? Would it be difficult to reintroduce that now?

Mr FOWLER: I do not think so. The big problem is that in those days we had 33 life assurance companies and about 240 general branch insurance companies. I think we still have 33 or 35 life assurance companies in Australia and we have 20 or 30 general branch companies—not something like 200. It may be difficult, because they are not organised these days to train staff like they used to do. We were all trained in general branch and we were examined of the Commonwealth Insurance Act 1945. If we did not pass we went back and sat a few more exams until we learnt about it. We all have a working knowledge of the Act. Then, of course, you have your experience and training for general branch underwriting. That is what we used to have. I think it would be great if we could go back to it.

The Hon. JAMES SAMIOS: Would that first examination be conducted at the end of a six-month or 12-month period?

Mr FOWLER: After 12 to 18 months training. Quite often the training was ongoing and that was good. In the event of an amendment to one of the Acts, be it workers compensation or otherwise, everyone came in for a two-day seminar. You then came back after a month of the hassles and drama of implementing those amendments and were retrained. It certainly was a good system but it just does not work any more.

The Hon. GREG PEARCE: Are you generally aware of the amendments recently introduced by the Government to the New South Wales Workers Compensation Scheme?

Mr FOWLER: I do not have a working knowledge of it. We hardly get any information. Occasionally I get a brochure or two. I received a screed the other day containing a book that outlined the rates. It was nice to receive that, instead of having to ring up and speak to four or five people. I received a rate book the other day and then your letter came and I was able to quote what some of the rates were.

The Hon. GREG PEARCE: You would not have any expectation that those amendments are likely to reduce premiums?

Mr FOWLER: No, I have not heard that. One, I have not had any notice of each; two, I have not read about it; and, three, it has not become general knowledge. The dissemination of that information is perhaps in need of reform.

CHAIR: Is it possible information could have been sent to the president or secretary of your association?

Mr FOWLER: I am the national spokesman also the national president.

CHAIR: You should have seen that information, if it had been received?

Mr FOWLER: It should of come to me. Of course, getting on the mailing lists half the battle. We are listed in quite a number of trade magazines and other general association magazines.

CHAIR: Thank you for appearing before the Committee and giving us the benefit of your experience and a combination of experience in both small business and in the insurance industry at the grassroots level. It has been helpful.

Mr FOWLER: These things have to be said. Members of the Committee should know about these things. Some of you may know about it but most of you are probably not aware of it. Trying to unscramble the egg may be a problem but I believe we could go back to better instructions and better education in some form or other.

CHAIR: If you have any other ideas the Committee would be grateful to receive a written submission. Perhaps you could discuss that with your executive.

The Hon. JAMES SAMIOS: Insurance for politicians, vis-a-vis defamation actions, seems to have disappeared or become a problem over time. You have any comment to make about that?

Mr FOWLER: In other words, when a newspaper defames a politician?

The Hon. JAMES SAMIOS: Yes.

Mr FOWLER: I had to believe that the freedom of speech in newspapers and their derogatory comments in the last few years have been in many instances rather scurrilous.

CHAIR: That issue does not fall within the Committee's terms of reference. Perhaps you could discuss that between yourselves.

The Hon. JAMES SAMIOS: One of our colleagues found that it was virtually impossible to pursue.

(The witness withdrew)

(Luncheon adjournment)

GEORGE KATSOGIANNIS, New South Wales Workers Compensation Manager, QBE Insurance, 39 Banksia Road, Greenacre, affirmed and examined:

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

Mr KATSOGIANNIS: Whilst I am an employee of QBE Insurance Group, I am not here formally to represent QBE or the industry. I am here personally to give you my views on the New South Wales workers compensation scheme.

CHAIR: In a personal capacity?

Mr KATSOGIANNIS: Yes.

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

Mr KATSOGIANNIS: Yes.

CHAIR: I need to advise you that 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 is we will go into camera with no public present. You can do that at any time during the hearing or in answer to a particular question.

Mr KATSOGIANNIS: Okay.

CHAIR: Do you wish to make an opening statement?

Mr KATSOGIANNIS: Not at this stage, but I am happy to field questions.

CHAIR: Do you have anything you wish to say at all? If not, we will go straight to questions.

Mr KATSOGIANNIS: I guess there are no quick fixes when it comes to the New South Wales workers compensation scheme. What needs to happen is that all the key stakeholders need to work very closely together. They need to compromise on some key issues and, hopefully, if we are all to achieve the common objective of getting injured workers back to work as quickly as possible and as cost effectively as possible, we all need to work together. Probably the three key issues, as I see them, from the scheme point of view are reducing disputation. Early reporting is also a key issue. We know there is a direct correlation between early reporting and returning to work, as well as focusing on scheme outcomes rather than processes.

The Hon. JOHN JOBLING: I would just like to clarify that you have indicated you are appearing in a personal capacity before us today, is that correct?

Mr KATSOGIANNIS: That is correct.

The Hon. JOHN JOBLING: Did you advise your company that you would be appearing before this Committee?

Mr KATSOGIANNIS: Yes, I did.

The Hon. JOHN JOBLING: Did your company ask you to appear as a private witness rather than on behalf of the company?

Mr KATSOGIANNIS: A private witness.

The Hon. JOHN JOBLING: But your company asked you to appear as a private witness?

Mr KATSOGIANNIS: Yes.

The Hon. JOHN JOBLING: Any special reason for that?

Mr KATSOGIANNIS: No particular reason, I guess, other than I am not on the QBE Board of Directors and I am not the chief executive officer. I am the New South Wales Workers Compensation Manager and I do not have that authority to represent the QBE organisation or group.

The Hon. JOHN JOBLING: Are you aware of Ms McKenzie's statement to this Committee on 24 September basically to the effect that the acceptance of provisional liability by insurers will not prejudice the insurers' ability to cease payments if it is later found that a worker was not entitled to compensation?

Mr KATSOGIANNIS: I am aware of it. The exact statement I have not heard, no.

The Hon. JOHN JOBLING: But you are generally aware of it?

Mr KATSOGIANNIS: Generally aware, yes.

The Hon. JOHN JOBLING: Do you agree with the comment?

Mr KATSOGIANNIS: I do, because the way I read the legislation is that you have to make payment within seven days and have up to 12 weeks to investigate the claim, and put into action whether you are going to dispute the claim and, if you are, as long as it does not stop you disputing, it does not prejudice you. So, in effect, I agree with that statement.

The Hon. JOHN JOBLING: Could you advise the Committee what you perceive the likely cost to the insurance industry will be of the recovery of incorrectly paid claims and what procedures that you are aware of that your company would have put in place to make those recoveries?

Mr KATSOGIANNIS: I cannot quantify that at this stage and I have not seen any statistics from any actuaries to suggest that there will be overpayments. But I can say that it does cost the scheme money when you dispute a claim. So, by accepting a claim up front you will save a lot more money than disputing the claim. So, you need to take that into consideration.

The Hon. JOHN JOBLING: Can I look more specifically at the recovery of incorrectly paid claims. They are going to happen. In other words, how effective in such an arrangement to recover incorrectly paid claims?

Mr KATSOGIANNIS: At this stage, because the regulations and guidelines have not been set, our organisation has not looked at it. We are waiting for the guidelines from WorkCover and the regulations before we know what the detail is.

The Hon. JOHN JOBLING: You have not done any preliminary work?

Mr KATSOGIANNIS: No.

The Hon. JOHN JOBLING: The company is sitting back waiting to see what happens?

Mr KATSOGIANNIS: For the detail.

The Hon. JOHN JOBLING: At that stage, when that becomes available—

Mr KATSOGIANNIS: When that comes in we will put a strategy in place to address the issue.

The Hon. JOHN JOBLING: Will that be a generally available piece of information or will it be peculiar to QBE as far you are aware?

Mr KATSOGIANNIS: It depends what the guidelines are and whether WorkCover request that information to become available to them. Sometimes they do and sometimes they do not.

The Hon. JOHN JOBLING: From your perspective, what could you perceive would be the major problem that you would anticipate in recovering such payments? What would you see would be the major problem and how would you try to make it effective?

Mr KATSOGIANNIS: I do not see it any different than when you make an overpayment to an injured worker. We have to go through a process to recover a payment by writing to them and going through the proper process. I do not see it as any different. Whether there will be more I think is questionable, and how much more I am not quite sure.

The Hon. JOHN JOBLING: You would expect that process, though, to be in general terms an effective way of dealing with it or would you offer to the Committee an alternative process?

Mr KATSOGIANNIS: No, I do not have an alternative process. I have not given it a lot of thought at this stage. It may be an issue; to what extent I do not know.

The Hon. JOHN JOBLING: Perhaps it is something we should watch and wait?

Mr KATSOGIANNIS: I think we should watch and wait. Anything knew that is introduced you do need to watch and wait and see what the extent of it is. Hopefully, as we are moving forward disputes will be minimised and therefore negate that issue to a certain extent.

CHAIR: What do you consider the role of insurers in the workers compensation system to be? What do you see as their role?

Mr KATSOGIANNIS: Purely a service provider. No different to any other service providers. We get paid a fee to manage the claims, the underwriting and collecting the premiums. So, I see us as a service provider.

CHAIR: You are probably aware that the Grellman report identified a lack of incentives for licensed insurers to implement best practice injury management practices. Has this situation been rectified? If not, what options do you suggest, and do you agree with the Grellman report?

Mr KATSOGIANNIS: I agree with the Grellman report. However, since then there has been a new remuneration package negotiated with the industry, WorkCover and an independent consultant. I believe that has gone a long way toward addressing the financial issue to insurers.

CHAIR: So the industry is reasonably happy with that?

Mr KATSOGIANNIS: Reasonably happy with that.

CHAIR: There is always a debate about the method of conducting workers compensation. Do you believe that private underwriting of the scheme is a realistic alternative to the current system? If the scheme were to be privately underwritten, what effect would this have on premium levels?

Mr KATSOGIANNIS: As you know, the scheme at the moment, has an average rate far too low for the cost of claims. The average tariff/premium rate, which is 2.8 per cent, is too low to meet the claims costs. If we were to look at it purely on historical information, you would have to say that premiums would rise to a certain extent. I am not quite sure to what level. However, if legislation were to be introduced that could address and stop the flow of claims then that could be a different scenario.

CHAIR: Looking at the current system, you would say that it is not sufficient. There has been some suggestion that it should be nearly 3.1 per cent?

Mr KATSOGIANNIS: That is what I have heard as well, and looking at the current statistics I would agree. We are looking at a $2.76 billion deficit, so most of us would agree.

The Hon. JANELLE SAFFIN: How would you stop the flow of claims?

Mr KATSOGIANNIS: It is not so much the flow of claims. The statistics I have seen indicated the claims reported have reduced. It is the average cost that has increased.

The Hon. JANELLE SAFFIN: The average cost per claim?

Mr KATSOGIANNIS: Yes, has increased.

The Hon. JANELLE SAFFIN: But the actual claims have decreased?

Mr KATSOGIANNIS: That is right, the actual claim numbers.

The Hon. JANELLE SAFFIN: Because you have that evidence.

Mr KATSOGIANNIS: That is correct.

The Hon. AMANDA FAZIO: To what do you tribute the additional cost per claim?

Mr KATSOGIANNIS: One component is, obviously, common law, which is escalating dramatically in terms of frequency and average costs. I believe commutations may have contributed to that. If you look at a pie chart, commutations would be the biggest slice of that pie chart followed closely, from memory, by weekly benefits, and common law about 16 per cent. They are the three components that have, obviously, contributed to escalating costs. The question is whether the commutations are eroding the tail. I believe some investigation is going on at the moment as to whether commutations are still effective and/or whether they are costing the scheme money or saving the scheme money. I am not privy to that information at this stage.

CHAIR: Are you suggesting that the commutations could be too generous based on the amount of money in the scheme, not from the workers point of view but from the—?

Mr KATSOGIANNIS: Probably not so much generous, but perhaps we could be more selective. It has been a number of years since commutations were introduced, and I think it is time, like anything, to review what we have implemented. That time is just about right to review commutations, certainly not to remove them totally but, perhaps, be more selective in our choices.

CHAIR: From the insurance company's point of view, would you prefer to focus more on weekly benefits and commutations?

Mr KATSOGIANNIS: Yes. Weekly benefits should be the focus because the objective of commutations was to target weekly benefit claims so that the number of long-term injured workers should have been coming down. I do believe that is the case.

CHAIR: There have been reports that because of changes to legislation, lawyers are rushing claims and there has been a dramatic increase, which, again, has blown out the deficit. Have you experienced that from the insurance company's point of view?

Mr KATSOGIANNIS: Yes. I would certainly agree with that. From about March to April we have seen a significant escalation in common law claims in particular. I would agree with that. Anecdotal information that I hear is that lawyers are more up to speed. They are, perhaps, working off checklists, ticking off whether it should be a commutation, common law claim, et cetera, et cetera. They know that with the up-and-coming legislative changes they need to rush the claims through. We have seen a great increase, particularly in common law, since about March or April. Even if you were to introduce new legislation from 1 January, it would be 12 to 18 months before you started to see it bite into the deficit.

The Hon. JANELLE SAFFIN: Who makes a decision whether to effect commutations? Who has the power to do that? When you say they could be a problem, who has the power or the final say so?

Mr KATSOGIANNIS: The insurance companies and, obviously, it needs to be approved by the court.

The Hon. JANELLE SAFFIN: Maybe they need to look at it, instead of looking at it in terms of the legislative review.

Mr KATSOGIANNIS: "They" being?

The Hon. JANELLE SAFFIN: The insurers. If you are with the insurers, certainly they could take that initiative, could they not?

CHAIR: Are you suggesting you have no choice? It sounded like you were saying that it was somehow somebody else's issue to look at.

Mr KATSOGIANNIS: No, we have a choice. The area that we are supposed to focus on and that drives the main cost is what we call active weekly claims. The definition of that is a payment within the last three months. One of the problems is that some of the outcome measures that we have with WorkCover is the tail liability, which we receive a percentage of the savings that we save on the tail, if in fact we have any savings. But we do not know the methodology. There is an evaluation done at the start of the year, and there is an evaluation done at the end of the year. Basically, we cannot monitor the business like we do in an unwritten environment, where we have monitoring reports. We run them on a monthly basis at a minimum and, if there were any adverse trends, we would address them by implementing the appropriate strategies. We have not got that luxury because we do not know what the methodology of the actuarial evaluation is and that is something WorkCover is currently working on to address.

CHAIR: Is that because your insurance company is not carrying off the debt?

Mr KATSOGIANNIS: That is right that we are not carrying the debt but we are remunerated on the tail savings. We want to save the scheme money, so we get a slice of that saving. There is an incentive for us. But there is no incentive for us to overpay claims, because if we overpay claims it means we are making no savings and we do not get remunerated.

The Hon. AMANDA FAZIO: If you have somebody who has had the commutations payment in respect of a claim, how clearly identifiable is it with a range of insurers involved if that person re-enters the work force and subsequently aggravates that injury? Is there any way under the current arrangements for that person to be picked up as having already been fully compensated in respect of that injury?

Mr KATSOGIANNIS: When you redeem a person's rights, as you do under a commutation, then that person cannot come back to you for the same injury.

The Hon. AMANDA FAZIO: They cannot come back at you, so they could not come back at QBE. But if they are employed anywhere else in another capacity is there any crosschecking?

Mr KATSOGIANNIS: There is a database that WorkCover has that we can access, and we do that if necessary. Whether it is foolproof, is another matter.

The Hon. JOHN JOBLING: To your knowledge, has your company picked up any claims along the lines referred to buy our colleague?

Mr KATSOGIANNIS: Off hand, I could not recall. I recall certain matters being investigated, but I cannot recall the outcomes, to be honest.

The Hon. JOHN JOBLING: Could you come back to the Committee in that regard?

Mr KATSOGIANNIS: Sure.

The Hon. AMANDA FAZIO: In relation to the issues raised by the Hon. John Jobling earlier, his concerns about accepting liability within seven days in the case of victims, would you be able to tell us statistically how many claims you would reject, what percentage of claims you would reject under the current arrangements?

Mr KATSOGIANNIS: I don't believe the problem from QBE's point of view will be the initial rejection of a claim as most claims are accepted. At six or 12 months down the track a claim may be disputed on medical evidence or other grounds and disputes traditionally arise from what we call section 66/67, which is the permanent disability, pain and suffering component. We get notice from the plaintiff's solicitor. We organise the appropriate medicals. We make the appropriate offer. That offer is rejected. The issue, traditionally, is quantum in relation to section 66. We may have 5 per cent, but the other party may have 20 per cent. When a gap is too large it is very difficult to negotiate. If the gap is smaller, then you can negotiate.

One of the problems is that to claim for pain and suffering you need to have disability of more than 10 per cent. Whether it is coincidence or not, it always tends to be just over that 10 per cent threshold. This is one of the problems we are facing. Even if we negotiated a section 66 settlement, because pain and suffering has no table of maims, it is very subjective. If they go to the extreme of $40,000 or $50,000, and we believe it is $5,000 then that constitutes a dispute in itself. I would like to think the majority are solved at conciliation, but they should not get to

that particular point. My view is that quantum should be resolved well before conciliation. A way of achieving that could be to combine sections 66 and 67. If you resolve one then the other one is a little bit subjective.

The Hon. AMANDA FAZIO: Have you found that some of the new medical technologies available cause an increase in cost in claims? I know a few years ago there were some problems with heat imaging, and that became very popular. Everybody who had a soft tissue injury went off for the treatment. Certain specialists referred everybody they came across with workers compensation claims for the treatment. Is that sort of thing still going on? Does that add unnecessarily to the cost of claims?

Mr KATSOGIANNIS: Not really. Insurance companies monitor that fairly closely. Any new technology we treat very carefully, and we take a wait-and-see approach. We wait for one person to be treated and see what the outcome is. I am a great believer in that if you spend a little more on the medical side you will save on the weekly component side.

The Hon. AMANDA FAZIO: You do not think there is any uncertainty in that?

Mr KATSOGIANNIS: No, not to my knowledge. I do not think so.

CHAIR: You are here in a personal capacity, but I get the impression that some insurance companies are not attracted to workers compensation as a field of insurance. Is there any danger of insurance companies pulling out or only a small number being involved in this area, or of all of them pulling out?

Mr KATSOGIANNIS: I cannot speak for the industry. I can certainly speak on behalf of QBE, and we have no intention of pulling out.

CHAIR: Is it still an attractive investment area?

Mr KATSOGIANNIS: Looking at the bigger picture, if you are a national player and a national workers compensation underwriter you do not want to be in only three or four jurisdictions; you want to be in every jurisdiction.

CHAIR: You are talking about covering all the other State as well?

Mr KATSOGIANNIS: Exactly. It would not serve our purpose not to be a player in New South Wales. The new remuneration package has the potential to earn more money. Most other portfolios where you outlay capital you are required to get a return on equity on that capital. We do not get the same returns in the New South Wales managed fund environment. We do not outlay capital, but if you use our expense as capital, the return we get is no where near the return we get in other portfolios. It is not lucrative.

CHAIR: And in the other States as well?

Mr KATSOGIANNIS: Yes, in the other States.

CHAIR: More financially based in the other States? Is New South Wales the weakest area?

Mr KATSOGIANNIS: Remuneration? I am not sure about Victoria, but the other States will fluctuate, depending on what is happening in the economy, whether the market is hard or soft. The returns could fluctuate each year as well.

CHAIR: You are aware that there have been some comparisons that the money injured workers get seems to be equal to the global legal costs. There was some debate about whether they were legal costs or whether some of them were medico-legal costs. But it is an area of concern that the two amounts, like $400 million, are almost equal. There is some suggestion that some of the legal costs are pressure from the insurance side of the equation.

Mr KATSOGIANNIS: Pressure?

CHAIR: To go into court cases and so on, which would involve not settling sooner and things like that. Is there any justification for that belief?

Mr KATSOGIANNIS: No, not at all. In fact, insurers would rather settle sooner rather than later. It costs a lot more to run a claim than it does to settle on the court steps. The fact of the matter is that, speaking on QBE's behalf, we have a panel of lawyers, and we set very tight and strict cost schedules. However, that is not the case on the plaintiff's solicitors side. What you find traditionally is that the insurers costs are half or even less than half compared with the plaintiff's side.

CHAIR: You say the plaintiff's lawyers side is the one that is pushing legal costs?

Mr KATSOGIANNIS: Yes, that would be my view, yes.

The Hon. GREG PEARCE: Do you have any idea of the costs incurred by QBE in preparing for private underwriting before it was cancelled by the Government?

Mr KATSOGIANNIS: Preparing for private underwriting?

The Hon. GREG PEARCE: Yes.

Mr KATSOGIANNIS: It would have been in the vicinity of billions. I could not give you an exact figure. Yes, we were pretty well geared up. I think the first date was 1 October 1999.

CHAIR: Did you say "millions" or "billions"?

The Hon. JOHN JOBLING: "Millions" or "billions"?

Mr KATSOGIANNIS: No, "millions", I am sorry.

The Hon. JANELLE SAFFIN: It sounded like "billions".

CHAIR: Yes, it did sound like "billions".

Mr KATSOGIANNIS: It was "millions".

The Hon. GREG PEARCE: And that would have been the case across the industry, I assume?

Mr KATSOGIANNIS: I presume so, yes. I am not quite sure what happened on the industry side, but I presume so. There were a lot of start-up costs, systems, the right type of technical people, the infrastructure, and I think it was only a couple of months before implementation when—I am not sure—the Government, was it, who pulled the pin?

The Hon. GREG PEARCE: Was QBE compensated in any way for that cancellation?

Mr KATSOGIANNIS: No.

The Hon. GREG PEARCE: What is your view of the effect of the premium discount scheme?

Mr KATSOGIANNIS: I think it is early days yet, but certainly there has been a lot of interest generated from our customers, which is a good thing, and hopefully the quality of the people who have been appointed and accredited will assist those employers in reducing their claims' costs. So it has the potential, but to what extent and what sort of savings are going to be incurred, only time will tell. I believe that there have been some actuarial evaluations done but I am not quite sure what those savings are. A figure of $200 million probably is not out of the question from what I hear, but I cannot confirm or deny that.

The Hon. GREG PEARCE: How are those savings actually funded? Presumably that represents premiums that you do not collect.

Mr KATSOGIANNIS: Say that on 30 June there was a renewal. We would renew that under the current format. Six months down the track, if we get a letter from one of the external providers saying that the criteria has been met, we will go in and do an adjustment and they will get a refund.

CHAIR: Just while we are in that area of questioning, if for some reason the Government decided to go back to private underwriting, the big question would be what would happen to the $2.8 billion deficit. It obviously could not be transferred to the private insurers.

Mr KATSOGIANNIS: No.

CHAIR: That would just be sitting there and you would start off afresh from where you are now.

Mr KATSOGIANNIS: Yes, we would have to start off afresh. We could not obviously take on that sort of deficit but there would have to be a strategy involved in terms of whether you sell that off, whether you commute that to a group of insurers, or whatever the case may be. That is probably a strategy that the Government might want to take, in terms of selling off the deficit.

CHAIR: It may be hard for you to answer this question. Can you sum up the reaction of the insurance industry when the size of the deficit was heard? What was the reaction within the industry?

Mr KATSOGIANNIS: We are concerned but, at the end the day, it is not our debt as far as we see it. In fact, I am not quite sure who is accountable for that debt. Is it WorkCover? Is it the employers? Is it the Government? That seems to be one of the issues—who is accountable for this debt. I do not know.

The Hon. GREG PEARCE: Do you mean who is accountable for its arising, or if ever it has to be paid?

CHAIR: To meet it.

Mr KATSOGIANNIS: If it were an underwritten environment and we outlaid the capital, it would obviously be QBE's problem, but it is not and therefor not the insurance industry's debt. Is it WorkCover's? I am not quite sure.

CHAIR: I was trying to get you to say whether you thought it was extraordinary.

The Hon. JANELLE SAFFIN: That is a bit leading.

CHAIR: I am leading the witness.

The Hon. JANELLE SAFFIN: Do you want me to rephrase it for you?

CHAIR: You are saying that it is not your debt, so you are not terribly worried.

Mr KATSOGIANNIS: You were asking whether the industry was surprised.

CHAIR: "Surprised", all right.

Mr KATSOGIANNIS: No, it was not, particularly with the way that common law was heading.

CHAIR: You could anticipate this happening?

Mr KATSOGIANNIS: Yes. The frequency with which it was happening, we could see it. Three or four years ago, we were getting two common law claims a month but we are now getting 10 or 15 a week.

The Hon. GREG PEARCE: People are entitled to make those claims, though, are they not?

Mr KATSOGIANNIS: Yes, but I think we have to look after the seriously injured workers. I do not think anyone has a problem with that. What is happening is that injured workers, again, are just getting over that threshold. Our evidence suggests that they should not, their evidence suggests that they should. Some of the matters that we have actually run we have lost either at arbitration or at court, and it gets to the stage where we are better off trying to resolve the matter before it gets to court. I think they would be more than compensated under the workers compensation system and there is probably no need to go down the common law route. If you look at purely legal costs, from a workers comp point of view they would probably average $10,000 or $15,000 whereas under common law they would be around $50,000 to $70,000. It is a significant legal cost that I believe is not necessary on all occasions.

The Hon. JOHN JOBLING: Does the legal cost relate in any way to the outcome in the amount of compensation that the worker at the end of the day gets? In other words, is $5,000 or $15,000 likely to produce $100,000, and does $40,000 or $50,000 produce $500,000 to $1 million? Is there any relationship between those figures?

Mr KATSOGIANNIS: I think the figures of common law are obviously a lot greater than workers comp. I believe that the average common law settlement is around $200,000 or $250,000 whereas it would not be anywhere near that in the workers compensation court. That is one of the issues. If you said that everything is equal in terms of the benefit that goes to the worker if you simply looked at the legal perspective and weighed that up, it is a significant cost and, to a large extent, we do not know what the plaintiff's costs are because they are rolled into the common law settlement.

CHAIR: Just to follow up what I was asking earlier, that deficit of $2.78 billion—there is no question in your mind whether that is genuine? You have just said that that will increase common law claims and so on. Some people argue that perhaps the deficit is only $1 billion and that there has been some miscalculation in the way that it has been put together.

Mr KATSOGIANNIS: That will always be the case when you are dealing with actuaries. I have not seen the breakup showing how much is due to investment downturn, and I do not know the methodology or whether the methodology actuarially has been changed. Some actuaries use payment patterns, some use outstandings, and some use both, so it is hard for me to comment. I have not seen the breakdown of that $2.76 billion but it will always be subjective when you are dealing with actuaries.

CHAIR: Thank you very much for appearing before the Committee and for your co-operation in appearing in your personal capacity to give us the benefit of your experience as well as your knowledge of QBE.

Mr KATSOGIANNIS: That is a pleasure.

(The witness withdrew)

GREGORY JOHN McCARTHY, Director, Workplace Injury Management Services, Post Office Box 484, Cronulla, 2230, sworn and examined:

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

Mr McCARTHY: In the capacity of a service provider.

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

Mr McCARTHY: Yes, I am.

CHAIR: I advise you that, should you consider at any stage in the public interest that certain evidence or documents which 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. The Parliament can override that because this is a sovereign Parliament and all Committees are subject to the will of Parliament. It would be unusual if that happened, but I want to let you know the realities. Do you wish to make an opening statement?

Mr McCARTHY: I have nothing specific to say except that I have been involved in the industry of disability insurance, if I may call it that, or workers compensation and compulsory third party [CTP] insurance for probably about 30 years. You probably wonder why. My background is predominantly from the insurance industry but within the past five years I have stepped out from that and I have worked more broadly in the community with a range of stakeholders. I guess from that point of view I have some very strong personal views about the scheme and workers compensation generally. I emphasise that they are my personal views and are not necessarily the views of others, but I guess they come from a number of years of working within the scheme, both in New South Wales and throughout Australia.

CHAIR: The services body you represent is not related to insurance companies? It is independent?

Mr McCARTHY: Yes, it is. The company of which I am an executive director—I am a shareholder in it—is actually owned 50 per cent by GIO Australia, if that is the correct way to describe it, but Suncorp is the principal. I have a shareholder called Suncorp. It is 25 per cent owned by me and 25 per cent owned by a doctor.

CHAIR: What do you basically do?

Mr McCARTHY: I provide support to a basic group of what I would call stakeholders—being employers, injured workers and insurance companies—and I work with WorkCover providing both consulting advice in respect of workers comp or disability insurance generally and also a range of rehabilitative, medical and other services related to trying to help people get better and get back to work. I think that is probably a fairly general way of putting it.

CHAIR: You are assisting all the people involved, all the stakeholders, so to speak, but you are not like Injuries Australia which just represents injured workers?

Mr McCARTHY: No. We are actually a fee-for-service provider but we work with large employers, insurance companies and specifically with injured workers as well. So there are no particular allegiances with any particular group. We have good support from the trade union movement as well as employer groups and insurance companies, so we have tried to be fairly general in that respect. I think we are seen as being in a middle of the road position in that we are not seen as being an employer representative group or an employee representative group or an insurance company group.

CHAIR: I think the Committee would like you to share your views, even if they are strong views. You have had a lot of experience during 30 years which gives you some overview of the scheme's weaknesses. Obviously the Committee's aims are to monitor the scheme and hopefully make recommendations to improve it. You may be able to assist us.

Mr McCARTHY: It is hard to be specific in such a brief time frame. I think the difficulty with the schemes over the years from what I have seen was that they have tended to be very adversarial systems and very typically insurance-based systems. Workers compensation in particular, I think, is generally seen as a no-fault system, yet it has developed into a very adversarial system. I think that there has been a failure to acknowledge over the years—

although it has been improving generally in recent times—that a lot of the support is actually needed in the workplace, if I can call it that, as opposed to necessarily in the backroom of insurance companies offices or wherever.

Many of the employers in New South Wales are in fact small to medium employers. I think if you look at the statistics on premium size in New South Wales—I might be wrong on this point but I am not going to be far out—there are probably 250 to 300 employers in New South Wales that probably pay more than half a million dollars in premium and the rest are under that, which is about 99 per cent of employers in New South Wales. It is really only those larger employers that have the capacity to employ people specifically with the expertise to deal with an injury when it occurs in the workplace whereas the vast majority of other employers really only have a couple of claims a year, one every four or five years, or never really know whether they will have one at all. So, when an injury occurs they are not very well equipped to deal with it immediately in a way that creates a strong bond between a worker, an employer and those providing treatment.

The scheme has lacked the ability to provide that support at an early stage. The Grellman report acknowledged that and sought to introduce mechanisms that might overcome those weaknesses. I do not know that it has being as successful to date it as it could have been. People have learnt along the way as they have tried to implement the sorts of solutions that might address those issues. The ability for small- to medium-size employers to be able to pick up a telephone and have someone do something for them immediately would be a significant step in the right direction. However, the financial capabilities of the people required to provide that service has not always been adequate. It is not a cheap exercise.

CHAIR: You mentioned adversarial problems. Are you aware of the new legislation that attempts to remove or reduce that commission? Do you have a view on that?

Mr McCARTHY: Yes, I think all of the steps that are designed to try to take out the disputation are steps in the right direction. I listened to the previous witness and I agree with a lot of what he said. Anything that can take away the disputation in the system will help to alleviate the expense that is incurred. A lot of the disputations come about through people's lack of understanding at the early stage as to what is needed to bring about the right sorts of outcomes and the recognition that some problems are not always clean cut. Problems will not always be resolved by the introduction of good medicine. Good medicine is important but it is not always the only solution to a problem. For example, someone can be genuinely injured but have other conflicts within the workplace. Unless that is recognised and dealt with early, there will be conflicts. It is necessary to have the right resources at the coalface as quickly as possible after an injury that can manage people through those circumstances.

The Hon. GREG PEARCE: You are saying that the disputation is in part because the resources and support are not there to help smaller businesses in particular?

Mr McCARTHY: Yes. At the smaller end there needs to be a recognition that if you have someone who has been injured, the way you move forward is to sit down with that individual and probably the employer and talk through where to go from there.

The Hon. GREG PEARCE: Who is the "you" that you referred to?

Mr McCARTHY: Someone needs to facilitate a meeting between the injured worker and the employer and to bring the treating doctor into the process, although not necessarily by physically meeting with them at the workplace. There needs to be an understanding of what has happened, where we need to go from here, and what will get in the way of achieving that outcome. We cannot safely assume that simply because they have been to the doctor that within a week or so they will be back at work.

The Hon. GREG PEARCE: Who is the "someone" you referred to that will be the facilitator?

Mr McCARTHY: That is the big question; there needs to be someone, perhaps an appropriate person from within the workplace. Large employers and self-insurers effectively supply a competent case manager who will grab hold of the situation from the outset and look at what needs to happen and communicate clearly with the people involved as to the expectations.

CHAIR: Is that before the lawyers are involved?

Mr McCARTHY: Basically from the moment that someone is injured. That is what happens in best practice models. Remember that the vast majority of employers in New South Wales are not large employers, they may have only one claim a year or one claim every five years. When someone has an injury, he will ring up and have a claim form sent out. That claim form will be sent in perhaps two or three weeks later. Unless the employer is equipped at the workplace to support that injured worker with what needs to happen next, nothing will happen until it gets to an appropriate place where that intervention can take place.

The Hon. AMANDA FAZIO: How would you like to see the role of a case manager or a rehabilitation manager for claimants fulfilled, disregarding the current circumstances in which no-one will pay? Should it be part of the insurance package that people buy?

Mr McCARTHY: It can be done in a number of ways, it is a question of which is the most appropriate. I like the old user-pays adage. The large employers have employed a full-time person to look after injured workers, that is a user-pays model. The other extreme is the smaller employers who think that they will not have a claim against them and will not pay in advance for something that they may not use. However, in theory, they probably feel that the insurance premium they pay should provide that service. There are two components to the pricing of workers compensation, first, the administrative expense and, second, the experience expense.

A person could be mobilised to go to the workplace within 48 hours of someone being injured to provide that service. There are two ways that that could be paid for. The first way is that it could be paid for out of the premium. The second way is that it could be paid for as a claim costs, so that it is a specifically put against a particular employer's policy. Either way would work. The downside of paying for it as an administrative cost is that in effect all the people who have good risk management never have a claim, perhaps through good luck, or manage a claim well and therefore do not need that service. In effect, they pay for it through a claim in any case because it is spread through the administrative loading in the premium. However, if you move it up to the next level, the experience level, that is the claim costs level, it effectively affects only that particular employer or that particular industry when it uses the service. It is a question of which of the two methods is the most acceptable.

The Hon. GREG PEARCE: At the moment we have a de facto situation with the common law. On your analysis, are those costs being managed as an administrative cost?

Mr McCARTHY: No, they are mainly claim costs in a sense that the lawyers are claim costs.

The Hon. GREG PEARCE: For the plaintiff?

Mr McCARTHY: Both are claim costs. The legal costs incurred by an insurer are claim costs as well. The experience cost for that service is generally borne by the employer. In the case of the smaller employer it would be spread through the industry grouping. A sizing factor is built into the premium formula that is driven by the total wages that an employer pays. In effect, a small employer would have a small sizing factor built into the premium, and that means that the amount of the claim cost that drives that premium is very minimal. The employers would probably feel very little of that experience cost at the premium level, but it would be reflected in the industry experience.

On the other hand, a large employer such as Woolworths—which is now self-insured—would have a very high sizing factor. Woolworths was the largest employer in New South Wales. For every dollar paid on a claim, they would have paid a couple of dollars in premium over the three years of the premium formula. There is a very strong financial incentive to do things themselves. However, at the smaller level the incentive is to provide that service externally. This is all about understanding the drivers and who can afford to do what and at what level you need to introduce the service from an external point of view and where it can be provided internally. It is cheaper for a large employer to provide the service internally and not outsource it to a claims cost, because of the way that the premium formula works.

The Hon. AMANDA FAZIO: Are you aware of any studies that show that having a claims manager or a rehabilitation manager reduces the claim long-term?

Mr McCARTHY: Nothing specific in Australia. However, if you look at the organisations that adopt that practice you would find that their experience is good. Worldwide there is evidence that suggests that the case management model is far more successful than the case monitoring model. The case monitoring model was dealt with in one of the inquiries. A case monitoring model is basically where you monitor the costs, for example should

the MRI be paid for, and if the employer is off work for three weeks should the employer be paid. That is about containing costs not about investing in a claim to get the right outcome.

That perception of case monitoring often gets picked up by a claimant. On the other hand a case management model is more about managing the parties together, to set goals, and to look at a possible outcome. It is far more intensive, far more costly up front. But like any investment in life, if you do not put in the effort up front you will not get the return at the end. One of the difficulties is about containing costs, not necessarily about investing in that cost to get the outcome.

CHAIR: You mentioned some studies, could you sent copies of those studies to the Committee?

Mr McCARTHY: I think they were mentioned in the Grellman inquiry. I will see what I can find for you.

The Hon. JOHN JOBLING: How effective do you consider that WorkCover's management of the scheme has been?

Mr McCARTHY: Obviously in the past it has not been effective. Anyone involved in the scheme would have to take some responsibility for the current situation. There needs to be an acknowledgment within the New South Wales system that there is one insurer. I hear people talking about insurers but the reality is that there is only one insurer, called WorkCover. From what I have seen in recent times WorkCover is starting to see itself needing to monitor the scheme the way an insurer would, because it is the insurer. Organisations referred to as insurers are agents that have a monopoly on being agents in New South Wales. They are not insurers in this scheme.

The Hon. JOHN JOBLING: In view of your interesting answer, I invite you to look at the future and suggest where you would like to see specific improvements introduced.

Mr McCARTHY: I would like to see more of an insurance focus on the scheme. To a workers compensation scheme I can see three components. First, there is the regulator component and that has been quite significantly in place over time. Second, there is the provider or third-party agency in the environment of claims administration. Perhaps that is the best way to describe it. What has been missing is the focus that an insurer would place on the system in monitoring the performance below scheme level.

I ran an insurance company as a national general manager that provided both workers compensation and CTP. As the previous witness said, you would be looking for bad-performing employers. You would be drilling down. In the past I am not sure that that has been done as effectively as it could have been. Recently there has been a recognition that it needs to be done. Hopefully, once the current reforms are out of the way any future scheme reform will address those issues. They have certainly been spoken about. Whether or not the parliamentary system can allow those things to take place remains to be seen.

The Hon. JOHN JOBLING: As a former general manager of an insurance company, what would you say is the specific role that WorkCover should be fulfilling?

Mr McCARTHY: It depends on whether the scheme continues as a managed fund as it is presently. It needs to fill the role of a regulator and also be more focused on the insurance issues. I would see it being less focused on what I would call the inspectorate style of issues, the sorts of issues that would be more appropriate in an industrial relations department to get a much more clear focus on the risk management and claims management/injury management, if you want to call it that. The policing should be left to a separate body, because the policing can often intimidate an employer when you should be risk managing rather than policing. There is a role for both but they do not go hand-in-hand well together.

The Hon. JOHN JOBLING: I believe that WorkCover has undertaken injury management pilots. Am I correct in that understanding?

Mr McCARTHY: Yes.

The Hon. JOHN JOBLING: From your perspective were they effective?

Mr McCARTHY: I can only comment on one of them and I would have to say it was not.

The Hon. GREG PEARCE: Why?

Mr McCARTHY: Interestingly, it was the only pilot that was administered by someone without previous experience in the scheme in New South Wales. Of the four pilots, two were directly administered by insurance companies. One was administered by a provider that was owned by an insurance company. The fourth was administered by someone who has not had any previous experience in the scheme. That provider probably came in with a notion of injury management, if I can call it that, in the purest sense without recognising that it goes hand-in-hand with the other parts of managing a claim. You have to make payments. You have to accept liability. There is a lot of process involved. There was a gross misunderstanding or lack of appreciation of what was involved beyond simply trying to provide good medicine to somebody.

The Hon. JOHN JOBLING: I am aware of the Bathurst and Orange cases. Was the one you were referring to that was not satisfactory either of those?

Mr McCARTHY: No, it was the nursing home pilot. I cannot comment on the others because I have not been involved. The feedback that I have is that they are running okay but I have no evidence to support that that is the case one way or the other.

CHAIR: There has been a lot of criticism of WorkCover management, the people who are running it. You said earlier that WorkCover is the insurer. When people are hired to be managers at WorkCover do they understand that or do they see their role in a different way and therefore there is a confusion and lack of direction by WorkCover in the heart of the organisation?

Mr McCARTHY: There is no doubt that it sees itself as a regulator and not as an insurer. Having had discussions with a recently appointed senior executive, I know that there is a very strong view by that individual that that needs to change and that there needs to be a stronger focus on the broader issues as well. But over the years—this has led us to where we are today—there has been a strong focus on administrative process and regulation and not enough on the underwriting result. The agents, if I can call them that, are not underwriters. So someone has to be. Over the fullness of time that is what has been missing, going back through the whole 10 years of the scheme.

The Hon. GREG PEARCE: You heard the last witness say that QBE had gone through the process and spent several million dollars getting ready for private underwriting. It obviously was interested in doing it. What is your view on the impact or outcome of opening the scheme to private underwriting?

Mr McCARTHY: A number of the insurers privately—not stated publicly—when private underwriting went off the agenda would have breathed a sigh of relief. There is no evidence in Australia to suggest that there have been any real successes in relation to private underwriting of disability. Look at what happened in CTP in New South Wales recently. Neither of the major pushers for a privately underwritten scheme in New South Wales exists in this State today. They probably would if you had privatise the system because you would have given them a lifeline for the next few years. There are probably one or two insurers who could do it well at any given point in time but it is long tail business and it is very difficult to manage profitably.

It comes under pressure for cash flow in terms of setting a price today that gets the cash in the door. It is very difficult to understand what the claims costs might be in the future if the legislation changes and certain economic pressures change. We are perhaps heading into a recession in New South Wales. There will be a significant downturn for workers compensation during that time. On the other hand, I have a fairly strong view that the best people to go into business with are the ones who stand to lose as much as you do. In a perfect world I would have to say that private underwriting is probably the best solution. But it is not a perfect world and I do not think we have seen any clear examples of how it has worked successfully in Australia or, for that matter, the world.

(The witness withdrew)

GEORGE THOMAS COOPER, Director, Injuries Australia Ltd, of 34 Montevideo Parade, Nelson Bay, affirmed and examined:

CHAIR: Mr Cooper, in what capacity do you appear before the Committee?

Mr COOPER: As the Director of Injuries Australia Ltd.

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

Mr COOPER: I am.

CHAIR: If you should consider at any stage during your evidence that, in the public interest, certain documents or evidence should be seen or heard only by the Committee, the Committee will be willing to accede to your request. That means that the proceedings will be conducted in camera, in private. However, the Parliament can always overrule the Committee's decision. Do you wish to make an opening statement?

Mr COOPER: Firstly, I would like to thank the Committee for hearing us. We are anxious to be heard because we believe we may be the only people representing injured workers as such. We know the trade union people claim that they represent injured workers. They do; they represent their own members, but they are only a small minority of the workforce. We would say we would have, unfortunately, more injured workers on our books than they do. But we do our lot of work for employers too. Employers use us a lot—more so at the moment, but we do not know why that is. They are coming to us for assistance, maybe by way of a telephone call, or by other means.

We would like to provide answers to the questions that the Committee posed in documentation that it put out. We are extremely unhappy with the results achieved under the workers compensation system. It is not good for injured workers. We are seeing the results now. Nothing has changed. I am sure that the Committee would be aware that since the upper House set up this inquiry another 24 people have died violently at work in New South Wales, and another 100 have died from injuries, poisoning and other work mishaps over the past two years. That is at an enormous cost to the industry. Industry is paying for these injuries. Nothing changes. We deal with non-compensable motor accident injury victims, so we are able to make comparisons on how people fare.

The Motor Traffic Act is nothing more than a safety Act. It is the same as the Occupational Health and Safety Act. Though the number of cars on our roads has doubled over the past 20 years, the death rate has been brought down 40 per cent. That is world's best practice. But we have not done the same for people at work. We know why. Our frustration is that nobody wants to listen to us, especially the Minister and the so-called managers at WorkCover. We are not here to denigrate them or oppose them; we would hope that we can always be helpful to them and that they would regard us as a user of the service. We are not a consumer. We have no consumer rights. The consumer is the employer. The employers buy the policies. We know from the consumer affairs department that we have no rights. And we have no access through the Ombudsman. Because it is an industrial relations matter, it is precluded by the Ombudsman.

Our only access is WorkCover. We are in the silly situation that the Minister does not talk to us. He does not reply to our mail. I saw in *Hansard*, Mr Chairman, that you questioned the Minister and he said that he had spoken to me. He had. He spoke to me for 25 minutes one day, privately, thanks to my local member. But, really, he spoke to me on a personal basis, not as Director of Injuries Australia. I tried to impress on the Minister how sad things are in respect of workers compensation. We have not got the whole answer. But we think that part of the answer is—and it would probably worry this Committee; we hope it would—that in the 14 years that WorkCover has been going there have been probably one million claims, some of them tiny, thank goodness, and the people have gone back to work, but never once has WorkCover pulled in the injured people and asked them if they have any clues on how to improve workplace safety. Never once has WorkCover asked, "Are you satisfied with the service that you got, both medically and socially?"

Injured workers are not invited to all the gatherings and workfests that WorkCover has put on. WorkCover does not want to know the injured workers. The injured worker industry is a multibillion-dollar industry, and it must be the only industry that precludes the people who use it. It is dumbness. If you are running a business in the world of commerce you are constantly being asked whether you are happy with the product, whether it is good, and how it can be improved. But nobody talks to us. We are the devil. They just don't want to know us. That is not our intention, but that is how it is. We have to keep trying, and that is why we are here today. We were terrified when we

read what was said in the Parliament about the last set of changes made to the legislation. We believe a whole lot of untruths were said—perhaps not deliberately—and this was misleading to members of Parliament and to the public.

I would like to point out one particular thing that the Premier said. He said there was no need for another inquiry into WorkCover because we had already had the Industries Commission inquiry, the inquiry by the heads of WorkCover and the Grellman report. None of those inquired into New South Wales WorkCover. The Industries Commission report, naturally, was a Commonwealth affair. That inquiry was Australia-wide, and it looked at workers compensation problems. That report made some wonderful recommendations. We note that not one of those was taken up by WorkCover New South Wales. We also note, for the Committee's record, that 60 per cent of the cost of long-term injuries is borne by the injured persons, their families and the rest of the community. That was in 1993. Nothing has changed.

The heads of the workers compensation insurance inquiry—put together by the Commonwealth again—were the heads of each State who came together with ideas, trying to get a standard system across Australia. We think that would be a great idea. Their recommendation did not result from an inquiry into New South Wales WorkCover. The Grellman inquiry we think was the worst thing ever. For that reason, I brought with me today copies of two reports. The report "Promoting Excellence" is the one put out by the heads of authorities. It is not quite true at all. But it has some quite good and useful suggestions. The Grellman report is a plagiarism of the "Promoting Excellence" report. Grellman charged $145,000 for his share, and his company, KPMG, got $750,000, but Grellman never once spoke to an injured person. We tried to be heard, but he fobbed us off with a couple of junior clerks. It says it is an "inquiry into the workers compensation system," but how can it be a proper inquiry if the people conducting it do not talk to those who use the system? What is going on?

The problem that we strike—and it is becoming clearer, in our mind, all the time, as we saw from the battle that took place in the Parliament over the recent changes—is that everything is about money. It is not. The New South Wales workers compensation system is about people—about employers and employees. It is about ensuring that everyone works in safe conditions, and about ensuring that anyone unfortunate enough to be injured gets the best medical attention and returns to useful employment. That does not happen. The nub of the problem is that it is all about money, money, money. As I said in my written submission, we get pages and pages of figures that are meaningless. They do not tell us about the impact on people of workplace injuries. What we are uncovering, sadly, is that the figures do not tell us about the suicides. There are about 50 a year throughout New South Wales, especially in country areas. There are probably a lot more that we do not hear about because families cover up.

But when we brought that up with the chairman of WorkCover three or four years ago he scoffed at us. He laughed. He said, "That wouldn't happen." He did not want to believe it. He did not want to know about it. I can assure the Committee that the Wesley Mission people know about it. They go around giving out excellent suicide talks, and they are well aware of the problem because they bump into it when they talk to people and are training them how to handle and prevent suicide. So how can we win when we have an organisation that is well paid to do a job—which is to see that you and I do not get hurt at work, and if we should get injured that we get back to work as quickly as possible—but just will not listen? They must listen to what we say and recognise what they have got to do. But they will only listen to the people who make money out of the system, those who charge big fees and take big money out of the system.

That is why the doctors last year had a conference at which they said they were sick and tired of doing their work but seeing the patients not getting back to work. If they had got the same non-compensable injury elsewhere, they would be back at work. Why aren't they returning to work if they are injured at work? It is because the system puts barriers in front of them, instead of assisting them. It is good to have them on the merry-go-round, because then everybody makes a dollar. The system is destroying people, who become very anguished. I have been there: I did not work for eight years. But I beat them. Most people end up with a secondary injury, a mental injury. We know from figures provided by our own people that the divorce rate among injured workers is higher than it is for the rest of the community. Bankers have told us that the highest proportion of mortgage foreclosures involves those injured in the workplace, the injured workers who cannot keep up their mortgage repayments. We know that being dumped off the system wholesale—and, looking at Centrelink figures, about 10,000 a year are put on the dole in New South Wales—is the largest single cause of unemployment in Australia. It is like closing down BHP steelworks four times a year, every year.

A lot of people scramble out of the mess, but many are destroyed. There are a lot of myths that injured people get pots of gold and so on. You do not get anything when you owe Social Security half of what you are going to get from workers compensation. You have to pay it back. Nothing is for nothing. We are hoping that this Committee will listen to what we have to say and make a recommendation that the Minister and the managers of

WorkCover realise that, as good a people the union people may well be—we were all unionists once—they are not the sole representatives of injured people. Indeed, they cannot legally or morally answer for non-union people. We want to be heard and we want people to know what we think. We have travelled the world. As a matter of fact, WorkCover paid for part of our fare to go to the International Injured Workers Conference last year. We are in constant contact with injured worker groups in other countries.

This Committee should look at the kerfuffle over the use of the American Medical Association guides on impairment. Those guides are not used in every State in the United States of America. Some States refuse to use them. They are no good. Why New South Wales has to adopt them is beyond me. We got a communication from affiliates in the State of New York. We commiserated about the people who were killed in that tragedy. Our affiliates said it was a good thing that they stood up to the Governor when he wanted to introduce the AMA guides. It was the policeman and the fireman who led the charge. They said, "Do that and we walk out, and we will take the schools and the hospitals with us." And the Governor did not introduce it. The email that we got said that the people who had been injured had now got full benefits. That injured worker group has been inundated with calls for help from more than 10,000 people. Of course, a lot of them are shock cases—the people who were working in the next building and so on.

I bring to light how hopeless, useless, unfair and totally inadequate are the AMA guides on impairment. Here is a State in the United States of America that does not use those guides, and the people are rejoicing that their State does not use them. I hope, somehow, we can reverse the position here in Australia and that if we have to have guides then the Australian Medical Association—which is as good as any—should come up with its own guides. Why should we borrow from a foreign country? I do commend the reports to which I have made reference so that the Committee can make its own judgment, and not just take ours.

I return again to the doctors, who said that they could not get what they asked for. Keep in mind that WorkCover does not want to talk to us. The doctors asked us to come and express opinions at their meeting. We did that. We gave our opinions. They invited us back to a meeting at which the Governor launched their book. I am sorry, I thought I had it with me, but I must have left it behind. In that media release from the AMA, those skilled surgeons stated, "The WorkCover system is clearly flawed when we cannot get people back to work." They cheered when they heard what we had to say. We have no argument with the medical services provided to injured workers at the time of their injury. It is world's best and far better than is provided in the United States of America. It all goes wrong once the insurance claim is lodged. That is when it goes wrong. If you look at these changes that were introduced, employers now have seven days to get a claim in and get things going.

This week I am handling one for a young man. On his first day on a construction job they put a jackhammer through his foot. He was raced off to hospital. He tried to get hold of the boss but the boss had done a runner. That was seven weeks ago. He is getting around now but he will have trouble with his foot for a long while. He has a very positive attitude—we have reinforced that—and we have put the matter in the hands of the WorkCover people who look after this side of it, but there is no great rush. He has not had any paid for seven weeks. The boss rang him yesterday and said, "Did you get the insurance claim form I sent you?" The young man asked, "When did you send it?" The boss said, "Two weeks ago." Well, that would be a month late anyway. The young man said, "No it hasn't arrived." He has had to give up his flat and go back to live with his mum and dad because he does not have any money. It is lucky that he has parents that can do that for him—parents, I might add, that will not let him go onto the dole. I told him, "You can get sickness benefit. Please use it. That's what it is there for, because you are sick. You are incapable of working until you can get going."

It makes a joke of the Minister's claim that this will fix everything up, that the baddies out there who are mucking up the system will all get caught. They will not get caught. That is why do we hoped we could introduce this to you and, with your permission, add to our submission. We have researched injured workers groups all around the world, and especially all around Australia. The majority of employers are beaut blokes. They are doing the right thing and doing their best. The people who are not doing so get away with it in New South Wales because there is no record.

In Victoria the worker does not go to the boss and say, "Give me an insurance company claim form." The WorkCover makes it available. You can even get them in post offices in country towns and it is for the injured person to fill in, not the boss. The form is in triplicate—one for WorkCover, one for the boss, the other to keep. The employer has to complete a separate form to go to WorkCover. Immediately the first form from the injured person turns up, if there is no match on the screen of an employer who has the appropriate insurance, they act. The employers know this, so there is far less twisting going on in Victoria.

In Queensland you do not approach the insurance company and ask for a proposal to take out insurance; you get one from WorkCover and you nominate the insurance company you wish to use. It is immediately lodged with WorkCover and WorkCover knows about it all along. Their records are so much better than they are here. We believe there could be as many as 50,000 injuries a year not reported to WorkCover. That is because of this circumvented way of begging the boss for a form, completing it, giving it to him and he giving it to the insurance Company. Meanwhile people are not getting paid and have used up all their holiday pay. We know what is going on, but it does not happen in Queensland or Victoria. We believe that all the WorkCover Authority has to do is look at other jurisdictions, see the good points, pull them out and put them into use straight away. There should be action straight away.

It is interesting to note that in this last round they were squeezing common-law and planning common-law for everything. When the Kennett Government did away with common-law in Victoria—you can look at the annual reports and Victorian WorkCover to see it—the death rate went up by 30 per cent. Straight up. When the Bracks Government reintroduced it last year the death rate went down by 30 per cent, mostly in the construction industry. That tells us is that there are rogue employers that are mucking it up for everyone. They say to themselves, "They can't take me to court," and they take risks with people.

This is one of the few States that has not considered or is not considering penal action people who kill other people at work. We do not wish to see anyone in gaol, but some of the things that happen to people are so bad that sometimes people should be put in gaol. I think the only thing that will make them behave is the thought that if someone gets killed they will be sent to gaol, no question. We do not like what the Bracks Government is doing. It has a system on the books at the moment that they are talking about where the employer has to approve his innocence. I think that is absolutely wrong. You cannot have that.

Queensland has already gaoled people and we think that is why the Queensland figures are so good. That is why Queensland, with one-third fewer employees has one-third more claims. It is because they go through this system, but they do so at less cost because the people are hustled up and go back to work. As we said in a written submission, have a look at the self-insurers and what they told the industries commission inquiry. It was fortunate that they were ahead of us and we heard the whole thing. Commissioner Scales asked them why did they self-insure. They said it is cheaper, more efficient and more humane and they provided figures to show how much cheaper, which was, rounded off, about half the price but they were twice as good at getting people back to work; and they do not have the number of court cases that the general insurance system has.

The injured person is looked after. There may be some settlement fixed up, but the workers are back at work and getting on with their lives and the accident has only been an interruption. What is happening to too many people in our system, of course, is that it is not merely an interruption, it is final. Finished! I will table the AMA media release, if I may, which expressed concern that people were not getting back to work after all the effort the medical profession had put into it. It was looking bad for the surgeons, as though they were incompetent. We know they are not.

Documents tabled and made public.

The Hon. GREG PEARCE: I want to ask you about your experience of the motor accidents reform process. I have been told by a number of people that claims have basically drying up the cause of the 10 per cent impairment threshold. Is that your experience?

Mr COOPER: Yes. What has happened is that people are continuing to contact us. We have an 1800 number that operates 24 hours per day. But people are going through the public hospital system, they are not going to the doctors—especially those who do not have any medical insurance. The AMA people told us that they are just not turning up in the surgery. That is perhaps why the hospital casualty wards are blowing out and probably will get worse after the introduction of the amendments to the workers compensation legislation. People are not even bothering. Those who are in a bad way do bother and we help them when we can. But you are right, the numbers have dropped off.

(The witness withdrew)

CHRISTOPHER JOHN WYNYARD, Barrister, Australian Plaintiff Lawyers Association, Level 31, 52 Martin Place Sydney,

ALLISON MARGARET ROBERTSON, Solicitor, Australian Plaintiff Lawyers Association, Level 6, l Castlereagh Street, Sydney, and

EVA SCHEERLINCK, Public Affairs Manager, Australian Plaintiff Lawyers Association, 99 Buckingham Street, Surry Hills, sworn and examined:

CHAIR: Mr Wynyard, are you conversant with the terms of reference of this inquiry?

Mr WYNYARD: Yes, I am.

CHAIR: I should also advise you that if you should consider at any stage during the course 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. Do you wish to make a brief opening statement to the Committee?

Mr WYNYARD: Yes, I would. You are aware that that it is really the first three of the four terms of reference of the Committee that we wish to concern ourselves with. My first remarks would be to (a) and (b) which relate to monitoring the position at the moment, if you like, and monitoring it when it changes over to the new system. At the risk of teaching my grandmother how to suck eggs, we are concerned that a protocol be put in place so that this Committee can most efficiently oversee the similarities between the two systems. When you come to see the new system in operation you will find that it is a very different system to the one we enjoy at the moment. The reason we submit it is important to have the systems for overseeing in place now is that under the present system you will get a lot of information from the Compensation Court and from WorkCover. The things I am about to mention to you are readily available.

Once the system changes over we are not sure it will remain as easy. So, if you have the categories you want, I would imagine the only people you will be able to get them from under the new system will be WorkCover. So, if some protocols are arranged so you can have these various headings answered, you can then see and monitor all the better whether the new system is returning the same sorts of benefits to injured workers as they were receiving before. With this caveat, of course. The life of this Committee expires in the middle of next year. As you will hear in a minute, we see no problem with WorkCover arranging things so that the comparisons look excellent until you are gone and then once you are gone the belts get tightened considerably.

One thing we would also ask you to consider is whether you can put some protocol in place that will continue to monitor the situation once you are gone. Although technically the new system is in the hands of the Government, you must know from your inquiries by now that the WorkCover scheme and the detail of workers compensation legislation is such as to make even the most ardent lawyer or social economist glaze over and fall sound asleep. It is a very complicated, detailed area. It seems to us that the only people who really know are the WorkCover authority and it is the WorkCover authority about whom we have some reservations, if I can put it that way as politely as possible.

To go briefly through what the differences are, under the new system you have your president, two deputy presidents, arbitrators and medical assessors as the main set-up. None of these decision makers have any independence from the Government. They are under contract to the Government for a set number of years and then contracts are renewable at the pleasure of the Government. So, an outsider would think if you are a decision maker you had better do what the Government wants you to do. I am aware this is being recorded, so rather than laboriously take you through it I will take you to the bill—I regret I have not caught up with the Act. Section 2 of proposed schedule 5 to the Act shows the terms of tenure of all decision makers.

The other thing to bear in mind is that arbitrators are not necessarily legally qualified—that is section 369—and neither are medical assessors necessarily registered medical practitioners or doctors. That is section 324. That means that a lot of very complex issues are going to be decided by people who fit the Minister's criteria. They can be either a legally qualified medical practitioner or someone the Minister thinks fit, or a legally qualified person or someone the Minister thinks fit. There is no transparency. In a follow-up, if you want to see what an arbitrator has decided, there is no judgment and there is no record of what happened. You get a certificate, and a certificate can be accompanied by a short statement. That is all you get.

That in itself makes appellate rights that exist in this new system a bit of a quandary, because the appellate rights will be revealed on what happened below. If the only record you have of what happened below is a certificate, you will not be able to establish very much on appeal. They have not even thought about any system of recording whatever procedure occurs in the lower levels. That is to say, in the primary level where the arbitrator or the medical assessor deals with it. So, you, as a Committee, looking at what is going on, have no chance, there is no record.

The other matter that militates in favour of getting a system in place now while you can see what the issues are is the procedure involved. The arbitrator has a number of optional procedures. He can see all the parties, he can see some of the parties, he can see an expert witness without seeing others, or he can see none of them, he can sit at his desk and do it all on paper. What is more alarming and, if I may say so, fairly un-Australian, is that the medical assessor, be he doctor or not, can demand that the applicant be examined by him. In other words, the poor old worker is standing in front of them and the doctor can say, "Take your shirt off, mate", poke him around and then sit down as a judge and make a decision on him. Again, there is no procedure to record what goes on and the result is a decision on a certificate. So, this new procedure can hardly be said to be transparent.

The other aspect of difficulty in the new procedure is that of legal argument. It is forgotten, of course, that the "greedy, parasitic, self-interested lawyers" are there for a reason. That is to interpret and apply the law. Clause 315 of the bill refers to what the medical assessor has to deal with. I am dealing with the bill. I am told that some of these issues have been taken away from the medical assessor. As it was first presented, the medical assessor had to deal with legal matters such as causation, medical stability, permanent impairment, any deductibility under section 68A, loss of hearing, partial incapacity for work, definition of injury and, on top of that, assess whether the witness was telling the truth. I might table this document as an example of the issues raised. It has been prepared by one of our members as to the legal issues surrounding the area of medical disputes alone. It is entitled "Workers Compensation Legislation Amendment Bill part 7" and there is a handwritten note saying "Doc 4".

Document tabled and made public.

The matters we would respectfully suggest that you consider to get some protocol for recording—and these are not comprehensive, we would be happy to talk to the Committee or arrange for facilities for the various subjects—are things like at the moment what percentage of workers compensation claims that come to court or will come before a dispute resolution system? What percentage of those are run? In what percentage of those are there awards in favour of the employer? If you have those records you will see whether there is any change when they come before the new system.

What is the range of awards given under section 66? That might necessitate chopping down to the various general parts, whether it is backs or necks or arms or legs, and what is the range of awards given under section 67? Are there as many section 67 awards given out under the new system—in other words, does the injury reach the threshold—as there are under the present system. I am using these section numbers assuming that the Committee is familiar with what they mean. What is the range of deductions given under section 68A? At the moment they run at about 10 per cent of the awards. Will they increase or not? There are a lot of other matters which, if you have a checklist, you can then more effectively monitor the changeover in the system.

The Hon. GREG PEARCE: Is that they checklist you will be able to hand up to us?

Mr WYNYARD: At this stage we are saying it is just an idea. If you are interested we will be delighted to assist you and get one to you.

The Hon. JOHN JOBLING: Perhaps they could do so, Mr Chairman.

CHAIR: Yes, any assistance we can receive.

Mr WYNYARD: We would be happy to do that.

CHAIR: Just to allay your earlier concerns about the Committee. This has not been decided yet but I raised with the Government what happens when another bill is introduced. We have only one bill referred to us. I indicated I would then move that that bill be referred to this Committee. It then raised the question when do we finish, and obviously we cannot finish at that original date. The Legislative Council itself will make the decision. So, do not be too concerned that a guillotine is going to fall. I think it will be the exact opposite.

Mr WYNYARD: We have heard a rumour to that effect, too, that more legislation is imminent.

The Hon. JANELLE SAFFIN: Could I ask a supplementary question on the checklist. Do you have a checklist now? Given that you represent the interests of injured people, I imagine you have a checklist even if it is not formal that has inculcated some legal principles that you would look at with the legislation?

Ms ROBERTSON: I suppose we would have ideas about the important point we see about fairness and natural justice to injured workers. They are probably fairly basic tenets of what we stand for. So, why we do not have a document here today, it is pretty easy for us to give you an outline of the things that we envisage as important in a scheme that is going to be fair to injured workers. We can certainly do that.

Mr WYNYARD: Can I turn now to the third element that is under your purview: efficiency in operation of workers compensation system and the administration of WorkCover authority. As I submitted earlier, it is bureaucracy that is driving, as far as we can see, these reforms. I appreciate that the Government, particularly under the Minister, has done a very good job of purveying, if you like, the statistics and the matters that are given to them, but I think I must preface what I am saying with respect to the Minister that of necessity by definition, if you like, in the Westminster system of government you are to some extent the hostage of your bureaucrats and you are relying on what they tell you.

You will recall that this legislation that you are now overseeing came down in a rush in March without any consultation whatsoever and it was only the reaction of the unions that caused some limited consultation to occur. You may recall Ms Robertson addressing the crossbenchers on a couple of occasions and us putting to you this fact that will not go away. That is, that there is no and never has been any economic crisis in the WorkCover scheme. I saw what you said in *Hansard*—and I regret that we did not make it that clear, and it might have been the talking after Alison—when you said we say there is no deficit. We do not say that at all. The point is that the deficit is something that has never been investigated, it is based on assumptions we know nothing about, and said via WorkCover to exist in the face of WorkCover's own accounts, which show a steadily increasing asset base from 1995 through to the present day.

That asset base has gone from $3.5 billion to $6.81 billion in the last year. Ask an actuary how that can be, because we have, and the actuary will pause for a couple of seconds before trying to work out some answer. But it is an unusual situation. It really does not matter as to whether there is a deficit for these present purposes. You will recall that this House passed a motion in early April this year sending the whole WorkCover scheme off to the Committee to have a proper look not just at what the Sheahan inquiry looked at, but above all to look at the financial and economic aspects, these numbers that have been spruiked around, and it has been happening throughout the life of this Government.

Hansard rings and the rafters ring with cries of "Whose fault is the deficit?" But no-one has ever looked at what the deficit is. It is an actuarial assumption, expanded out over, we believe, somewhere between 30 and 50 years. There are unborn injured workers waiting to make their claim, according to the actuarial assessment, into the future. The other thing about the actuarial assessment into the future, the discipline is that you do not take account of any income coming in, which is running, as you know, at $2.1 billion from the employers and also investment from the present asset base of $6.8 billion.

CHAIR: What do the plaintiff lawyers say the deficit is? You still sound as though you are questioning whether there is one.

Mr WYNYARD: No. We would be very surprised if there were not a deficit because of the—

CHAIR: Again, scheme deficit.

Mr WYNYARD: Scheme deficit. We know from being at the rockface that appalling wastages are going on. Let me put it this way, the first area of wastage—I will table this in a minute after I explain my views—there have been loudly spoken, anecdotal stories for years about the system that WorkCover insists that the managed fund agents estimate claims. In other words, a claim comes in from Joe Blow who has injured his arm. He is going to be off work for a certain time. He gets into that area of dispute, which means he will probably go to court. The actuarial estimates required by the guidelines from WorkCover are that you estimate his income from the date he went off work to until he is 65.

That means that the employer pays a premium on that estimate, and that estimate has been shown to be usually, conservatively, 100 per cent, but sometimes 200, 300 or 400 per cent over what the claim eventually is paid out at. I have a document called example A, which gives an actual example. There are, of course, no names. It is an anonymous document. It demonstrates graphically the situation.

CHAIR: It is based on a real case?

Mr WYNYARD: Yes, an actual case. It reflects, we are told, the common experience in the last number of years at WorkCover. We discussed this with one set of actuaries who immediately said, "We don't work out a deficit on those inflated estimates. We have another system." We asked, "So, you have two systems?" and we were told, "Yes." On its face it would appear that the employers are paying premiums way over what they should be paying. I must tell the Committee, however, that, having discussed this with some people who had contacts with employer organisations, I am told that they know about this and that they do not mind. I put that forward for what it is worth. But that is one area of wastage.

The second area of wastage that we see all the time is a bit of a sacred cow with the Government, and that is rehabilitation. We would submit on any proper inquiry of rehabilitation that it is nothing more than government-sanctioned overservicing. As I say, it is a sacred cow and it is one of the planks, if you like, of government policy that you have to rehabilitate people back to work. We find at the coalface that that is not so. Rehabilitation expenses are very high. Another area, again anecdotally—and you read this in the news—is the smoker who had a long expensive trial and got X amount. She said that she wanted X less $100,000 and she would have settled for that, but they would not settle. Again, that is another area that we find WorkCover been criticised for.

CHAIR: We are aware that there are lots of problems with WorkCover. What you are saying is probably true. There is probably a lot of wastage, but I am trying to get you to put some figure on that $2.7 billion scheme deficit, whether you think it is $1 billion or $2 billion. You have not answered that question.

Ms ROBERTSON: Could I go back to that, and perhaps attempt to answer it. We should make the point that in terms of a pure comparison of the numbers, we are not questioning the number that is produced, whether it comes out mathematically at $2.7 billion or any other number. That is that mathematical comparison between what the scheme actuaries tell us the asset base is and what they tell us the projected liabilities are. That is not the point of our questioning of that issue. Our questioning of that issue is its importance for this legislation and the reasons why the legislation is brought in and why they need to change the system. The Government has repeatedly put forward legislation on the basis that there is a crisis; that WorkCover is not going to be able to fund workers compensation claims; that if something is not done there will be some catastrophe, unspecified, but the implication is that there may be either bankruptcy or insolvency of WorkCover. It has been said a number of times in the annual actuarial reviews of WorkCover that WorkCover should not be regarded as a going concern.

That statement appears, to my recollection, in a number of the half yearly or yearly actuarial reviews of the WorkCover scheme. That is alarmist. We have been saying for sometime, while not necessarily questioning the mathematical comparison, whether it really creates a present financial crisis. The answer to that has now been given by the Minister recently in the House when he was asked whether WorkCover could go bankrupt, and if it did whether the Government guaranteed the entitlements of workers under the scheme. He answered with a degree of scorn, I think anybody would say by reading that part of *Hansard*. He said that it was alarmist and that it was not possible. He said that WorkCover could not go bankrupt and that it had substantial assets. In answer to a separate question from Mr Gallacher about who had to pay for the deficit he again, reasonably scornfully I believe, pointed out that the deficit is not something that anybody has to pay for. He answered by saying that it is not something that either the Government or the WorkCover authority has to pay for. The taxpayers do not have to pay for it.

But that is in direct contrast to something the Premier said on 29 March this year, if I have the record correct. It was at the time of the debate about the original bill and the Premier said that despite our best efforts the indications are that the deficit will grow to more than $2.2 billion by 30 June. That means that the deficit is equal to $338 for every man, woman and child in New South Wales today. He went on to say that there is no Jodee Rich to come in and pay for it; there is no HIH that will pick it up. The community of New South Wales will pay for the deficit, and it will have to pay for that deficit in one way or another. Then we have the Minister directly contradicting that more recently by saying that it is not something that anybody has to pay for. It is an admission of what we have been saying all along, that it is simply a comparison between projections. Our point about that is that everybody should take a deep breath and step back, and realise that there is not a financial crisis that can occur in WorkCover right now.

In fact, the deficit can only ever be realised as something of a financial threat, that is a debt that would have to the paid, if every single claim that is known to exist right now had to be paid out in full right now against the present assets of the scheme. That is a situation that cannot occur, given the way the scheme operates. It is an on-going payment scheme that pays for a lots of things as they occur. Sometimes it pays in a lump-sum form, but often that lump-sum form, as Mr Wynyard pointed out, is at a figure that is much lower than the projected cost of the claim over time. The nature of the scheme itself prevents that crisis from ever being realised. I would ask the Committee to consider this suggestion: Ask yourselves why the Minister is concerned with bringing down that gap. In our view there can be only one reason, a line is to be drawn under the scheme and any realisation of that gap between projected assets, projected debt and projected liabilities has to be brought down and that is because you want to rule off the scheme.

You would be concerned about it only if what you wanted to do was to draw a line under the scheme, close it off now and require all claimants with claims or injuries that may become claims up to date to be paid out of the present value of the current scheme. There is a privatisation agenda behind that. That could be the only reason why you would want to draw a line under that scheme, and that concerns us greatly and it is something that concerns the unions. We know that they continue to say that there should be no privatisation. It remains on the Government's books. It is of concern to us. Our message is, if our message has been confused in the past then we are sorry for that, but our message continues to be that there is no cash crisis, no present financial crisis that should create the need for legislation that so dramatically reduces people's rights.

CHAIR: It has been moved that we accept example A and that it be published. One of the questions in the back of my mind as you are speaking now is that we have been told that the triple-A rating could be affected by the scheme deficit, which would then affect interest rates and other aspects of the Government's budget.

Mr WYNYARD: That is another reason to have a look at the validity of the assumptions underlying the deficit. If I may say so, all through this debate, and this debate has been going on since the first Carr Government took office, there has been heated debate on the deficit, which really has generated more heat because no-one has ever looked at the deficit. The deficit is made up of underlying assumptions based on figures from WorkCover. There was one inquiry into WorkCover—I do not know if you have it—which was commissioned by the Premier in October 1995 and tabled, I think, in the lower House in May 1996. It resulted in the Council on the Cost of Government's report into WorkCover. I do not know whether you are familiar with that, or whether you have it. Its criticisms of WorkCover, its accounting methodology and its conflict of interests were quite trenchant.

CHAIR: As you probably know, because of the questions that you are raising we have employed our own actuaries for this Committee. Hopefully that will confirm or reject the deficit. That is a very involved process to which the Committee is committed to get to the truth, if you like, or the fact of the matter.

Ms ROBERTSON: I think it is important, if the Committee is employing its own actuary to look at the financial side of things, that the emphasis must be on looking at the assumptions that are fed into the calculations because that changes everything. If you feed in an assumption that every injured worker will be paid for 40 years with weekly payments, then you will get an enormous claims cost figure, but if you feed in an assumption that a worker would only be paid for five years, it dramatically changes the whole outcome. One of the things that needs to be looked at is what actually happens in the real world. It is all right to say that the legislation theoretically provides for someone to be on weekly compensation from the time that they are injured until the time they retire, but you have to look at how, in the real world, that operates. Is that really what is happening? Are people remaining on benefits for that length of time?

Something that would be instructive about that would be statistics from WorkCover about the rate of closure of claims to see how quickly it is that people who have active claims are going off the books. If you are getting a high rate of closure within the first three of four years, it may indicate that people whom one might otherwise have thought would stay on benefits in the long term are actually finalising their cases, so the assumptions about length of claim can be altered. That is a very important aspect, I think, of looking into that.

CHAIR: For argument's sake, you could say that of 100 claims, 10 per cent are finalised within two years, and so on, and maybe three per cent are finalised within 30 years.

Ms ROBERTSON: Yes. There will be, because of the nature of the scheme, people who may have been injured when they were young and they will be on workers compensation benefits for the rest of their potential working lives. I have several of those people on my books. They are catastrophically injured. We will never reach the point where we can commute their rights, for instance, because it just would be unworkable, so there are people

who will continue to cost the scheme money for their natural lives, but they are very few and far between. You cannot raise your projections for the whole scheme around those sorts of people. More typically the kinds of people we would see in our practice day to day are people who maybe receive two or three years worth of benefits and then resolve their whole claims for maybe the payment of up to five years of future benefits, so that you are not actually getting enormous amounts being paid in the majority of cases.

CHAIR: We have covered a fair bit of territory. Are there any areas of concern that Committee members would like to raise?

The Hon. GREG PEARCE: No. I am comfortable with what the Committee has heard.

The Hon. AMANDA FAZIO: My concern is just, for example, the comment you made about the high cost of rehabilitation. Would not that only be based on people who were not successfully rehabilitated and put back to work without having to seek legal redress? Is not your focus in terms of injured workers on people who are not easily relocated and placed back into employment because you only see people who are disputing claims?

Ms ROBERTSON: I do not think so. The typical people I see do not come to me because they are not being paid workers compensation. They come because they are getting the weekly payments and treatment expenses and they are being rehabilitated, or attempts are being made. What they often come to me for is, for instance, a solicitor to pursue that additional right to a lump sum for permanent impairment, which is something that they cannot really do on their own. In the context of that, time and again you see the information and the stories about the efforts and the time that has been spent as well as the money that has been spent on attempting rehabilitation for this person. Sometimes, eventually the person finds another job, but a lot of the time it is not necessarily in the direction that a rehabilitation adviser has been working.

I know of one example that is happening right at this moment. A fellow was a carpenter working for a business in the southern Snowy Mountains area of this State where employment is probably a bit sketchy at times and he has a serious shoulder injury. He did not come to me on the issue of a disputed claim for rehabilitation or anything like that: He just came to get his permanent loss payment. But I now have a pile that is two or three inches thick of rehabilitation reports. He has been to about three or four different rehabilitation providers. They have spent thousands and thousands of dollars on assessing him, doing vocational tests and making all these recommendations about what they think you can do. They are trying to push him to do different kinds of TAFE courses and all kinds of other things. Nobody seems to have really looked at what this man can do.

He was a carpenter. He now has an injured shoulder and he cannot do that sort of work any more. This man has an idea about trying to set up his own small farming business which he would be able to cope with, but none of his rehabilitation advisers think that that is a good idea. They say that he should go to TAFE, do this or do that. That is a lot of the point about rehabilitation: Workers feel that they are being driven in certain directions that they just do not see as suitable or appropriate to their lives. A lot of costs are being incurred, with good intentions, no doubt; but the outcomes are not necessarily worth the cost, and I think that is the point we would like to make about rehabilitation. There ought to be some kind of good monitoring about whether the outcomes in terms of results in real jobs are worth the cost that is going into rehabilitation.

CHAIR: You are aware, of course, that there is a lot of criticism of the legal costs involved in WorkCover and I think that some of the comparisons from the Minister almost say that the worker gets so much—for example, $430,000—and the lawyers get $420,000, which is almost the same figure. I think your reply was that that figure was a gross figure covering a lot of other matters such as medical and legal costs and so on. Have you presented anything in writing as your response to that argument?

Mr WYNYARD: It is not our business. With respect, we are acting for injured workers. That is a Bar Association and Law Society matter. The legal costs have not moved that much over the history of the scheme going back to the 1930s or the 1940s when I think the legal profession became involved in it. How can I put this? We would say that the legal cost issue is a smokescreen which is good for lawyer bashing, but it obscures the truth. Even on what the Minister is saying, we are saying that the wastage, if it is there—if it is $3 billion—with the best will in the world and the most venal approach to getting the money in the world, we could not be responsible for it, not even if you tripled our fees. The other thing to remember is that of course the fees have always been regulated. They are regulated for solicitors and it is the only jurisdiction for barristers where the scale is regulated by the Parliament. The fees have not moved in seven years. They have moved backwards, in fact. We would reject the accusation that it is the "greedy lawyers".

The Hon. AMANDA FAZIO: Mr Wynyard, what is your view on the increase in the number of people who are taking common law actions? I am not talking about people who have put claims in because of the proposed changes to the scheme. Over the last decade there has been a large increase in the number of injured workers who are seeking legal redress in respect to their injuries. What do you think has actually caused that? Is it the lawyers who are going out looking for business? Is it the influence of television and people seeing everybody suing everybody else on American television shows? What do you think it is?

Mr WYNYARD: I do not think people are influenced by what they watch on television. I think if they see an advertisement from lawyers, they will go and check out their rights. Once they do that, they will find that the difficulties strewn in the way of going down the workers compensation path include matters such as those in section 68A which just do not exist in common law where you have pre-existing problems taken off or an assessment is taken off the amount that is awarded. The procedural problems have become worse and worse over past years whereby people had to properly make claims, wait three months before they could make a claim and the benefits were reduced, as you know, by 25 per cent back in 1996. All those things combine to make the common law alternative a bit more attractive.

Ms ROBERTSON: The other thing is that we have mentioned the past 10 years or so, but it must be remembered that it was not until 1989 that common law rights were restored. At the time they were restored and until 1992, there was a higher threshold requirement than there exists presently to be able to successfully bring a common law claim. With the reduction of that threshold in 1992 it probably had progressively become more apparent to people that they can exceed that threshold and successfully receive common law damages. It really is, I think, just a progression over time of people becoming more aware of their entitlements. It may also be that lawyers have become more au fait with those procedures being available.

I suppose that when common law was abolished and then reintroduced in 1987 and 1989 respectively, people were a bit cautious about pursuing common law. We were not sure what it would have meant or what the real parameters were, and we did not know how accessible it was. I suppose over time it has settled in and people have become more familiar with it. People are able to better assess whether to pursue that avenue. This is something that we said to Mr Justice Sheahan's inquiry, namely, that when you contrast the level of benefit and the process by which it was obtained with the manner in which the rights are administered in the statutory half of the scheme—that includes legal proceedings, and I must really make the point that common law is not in contrast to the statutory half of the scheme in terms of taking court action; either half of the scheme entitles you to eventually have your case determined by a judge of either the compensation court or the District Court—it is not a matter of choosing legal action over not choosing legal action.

They are two different types of legal action and the result in the end outcome is vastly different for a common law claim from a workers compensation claim. Probably in some intangible way common law is more satisfactory for people in that they have finalisation of the case whereas if they were to remain in the statutory scheme and get piecemeal compensation—some of it by getting an award from a court and other parts of it by getting it from ongoing payments—the ongoing relationship with an insurer is problematic at times. That is another matter that prompts people to proceed with something that gives them finalisation.

Ms SCHEERLINCK: I just add from a policy point of view that common law claims are based on a fault system and therefore, if injured people wish to pursue their rights because their lives have been turned upside down as a result of somebody else's fault, they should not be discouraged from pursuing those rights. What we should really be focusing on is how to prevent those injuries from happening in the first place and increasing safety standards. We need to look at that as a solution.

CHAIR: Thank you very much for appearing before the Committee. I am sure that we will hear from you again in due course.

(The witnesses withdrew)

(The Committee adjourned at 4.28 p.m.)

TRAZMET (NSW) PTY LTD
ABN 93 089 584 207
78 Violet Street, Revesby NSW 2212
Ph: 9773-5766 **Fax:** 9774 1399
Email: trazmet@ihug.com.au

FORMWORK AND
CIVIL CONTRACTORS

24th October, 2001

Legislative Council
Parliament House, Macquarie St,
Sydney NSW 2000

Attention: Steven Carr

Dear Sir,

REVIEW AND MONITORING OF THE NSW WORKERS COMPENSATION SCHEME AND RELATED MATTERS

In reply to your correspondence dated 19th October 2001, where you indicated and provided the transcript of a public hearing dated 10 October 2001 where a witness referred to our organization in an adverse manner, we herewith respond as follows:

- Its obvious Mr. Fergurson is trying to use *Trazmet* as a general example of situations that occur in our industry, as proven over the last few years with other subcontractors.

  Mr. Fergurson is aware of a liability *Trazmet* has with the ATO not because we have been audited or identified by anyone of fraud, but simply Trazmet seeked advise from Mr. Fergurson on Contractual disputes in hand on our current Project with Bovis Lend Lease at St Leonard's, where we informed Mr. Fergurson of Our liability.

  Mr. Fergurson was not aware that *Trazmet* prior to seeking his advise had already notified the ATO and was negotiating payment of its liability.

  Trazmet on the project at St Leonard's due to numerous reasons are loosing substantial amount of money, and if we took the approach as most of our competitors have done we would have bailed out and folded, instead of making arrangements with the ATO.

  Although the scenario that Mr. Ferguson painted in regard to the situation with Subcontractors & ATO, in some cases seems to be what happens in the industry, but definitely is not the situation with *Trazmet* as outlined above.

As this hearing was mainly for the conduct of workers compensation scheme we herewith offer information on our Insurance policy for the year/period 25/10/00 to 25/10/01. Where we estimated our wages to be $ 4.0Million and recently submitted our actual as $ 4.120 Million, and confirm that our premium was paid on our estimate by means of Funding.

We are more than happy to provide evidence of all the above and if further information is required please do not hesitate to contact Eddie Treffiletti on 9773 –5766.

Yours faithfully,
TRAZMET (NSW) PTY LTD

Sam Treffiletti
Director

Prestige Cranes Pty Ltd

A.B.N. 33 003 302 618 A.C.N. 003 302 618
Specialising in All types of Crane Work
& Materials Handling
24 Hours a Day • 7 Days a week

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25th October 2001

Rev Hon Fred Nile MLC
Parliament House
Macquarie Street
SYDNEY NSW 2000

Legislative Council
GENERAL PURPOSE
STANDING COMMITTEES
30 NOV 2001
RECEIVED

Re: INQUIRY INTO WORKERS COMPENSATION

Dear Reverend Nile,

I am writing to you in response to the letter I received on Monday 22nd October 2001 in regards to N.S.W. Workers Compensation and other inferences made re Prestige Cranes Pty Ltd.

Please note that I, John Van Dyke, am not a director of Prestige Cranes, but the General Manager and that our director, Mr John Fakhoury is not present at this time to respond to you.

In reference to Prestige Cranes and workers compensation; following is our Certificate of Currency for Workers Compensation Insurance giving a wage estimate of $1,051,000.00 for the period of 01/07/2001 to 01/07/2002. A rise of just over $120.00 calculated on our last year's wages. I can only assume that the abnormal rise in our estimate from July to the end of November 2000 was due solely to the added workload just before, during and after the Olympic Games where Prestige Cranes supplied craneage to SOCOG.

In regards to the audit which was carried out in our offices 15/12/2000 for 2 to 3 hours, I have forwarded to you receipts of payments for all insurances and taxes.

In regards to the association with a leading Sydney crime figure, I can only assume it is Mr Domican to which they refer. This was the focal point of a Four Corners show on the 21/05/2001. Our director, Mr John Fakhoury was introduced to Mr Domican by the Assistant Secretary to the N.S.W. CFMEU and Mr Ferguson's right hand man. Mr Domican was introduced as an Industrial Relations consultant who had some contacts in Victoria and W.A. and could introduce our company to the unions in these states.

HEAD OFFICE:
7 Vangell Street,
Arndell Park NSW 2148
Ph: 02 9678 9999
Fax: 02 9678 9988

MINTO OFFICE:
115 Airds Road,
Minto NSW 2566
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WOLLONGONG OFFICE:
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NEWCASTLE OFFICE:
7 Gamma Close,
Holmwood Business Pk
Beresfield NSW 2322
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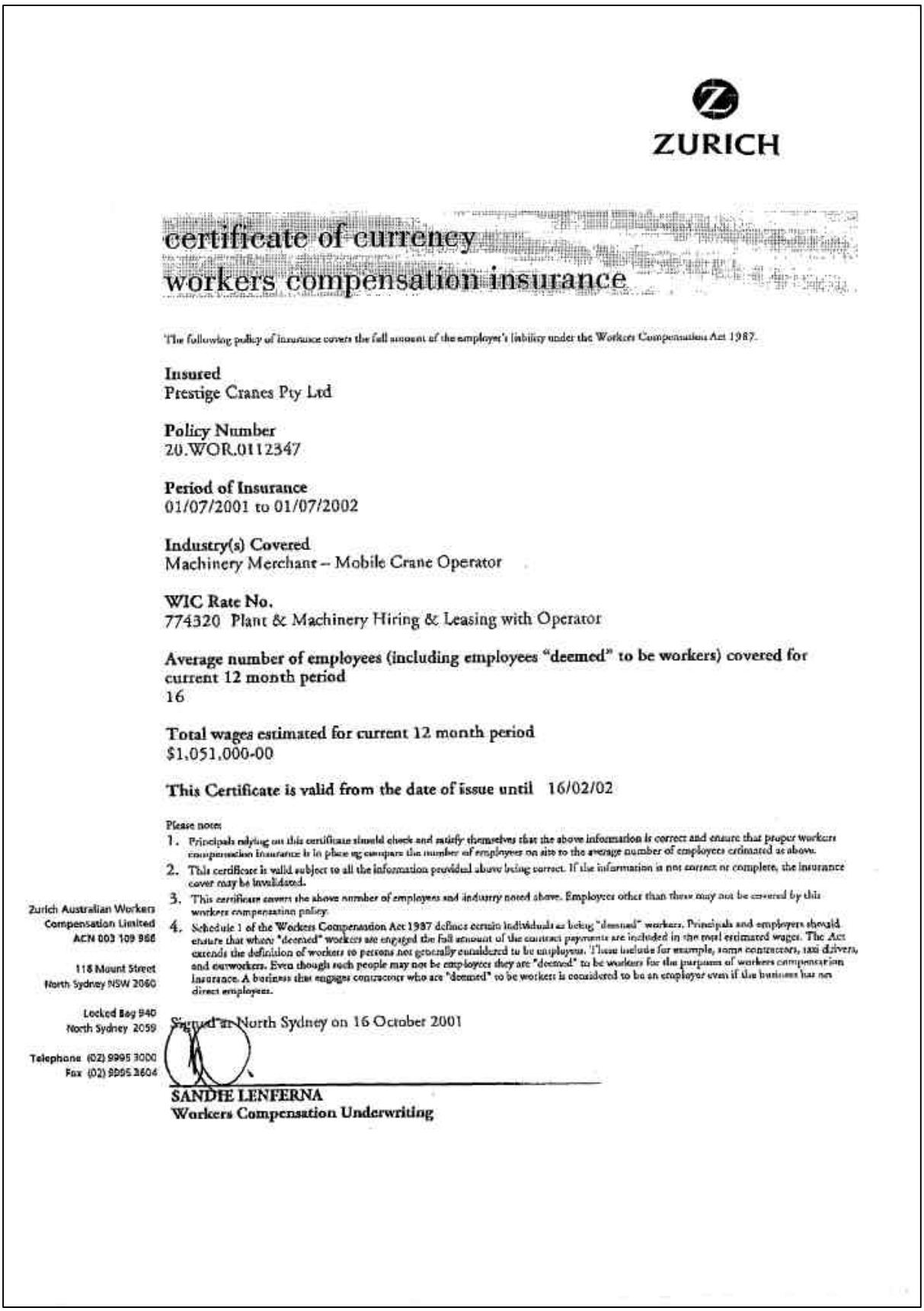
WELSHPOOL OFFICE:
118 Dowd Street,
Welshpool WA 6016
Ph: (08) 9258 9777
Fax: (08) 9258 9877

I hope I have answered your questions and I do repeat, I am the General Manager of Prestige Cranes and Mr John Fakhoury is the Director. He has informed me that if you have any further questions he and I would be happy to oblige.

Prestige Cranes has always endeavoured to do the right thing and we reject the inference that we are associated with any criminal element.

Yours Faithfully,

John Van Dyke
General Manager
PRESTIGE CRANES PTY LTD



ZURICH

certificate of currency
workers compensation insurance

The following policy of insurance covers the full amount of the employer's liability under the Workers Compensation Act 1987.

Insured
Prestige Cranes Pty Ltd

Policy Number
20.WOR.0112347

Period of Insurance
01/07/2001 to 01/07/2002

Industry(s) Covered
Machinery Merchant – Mobile Crane Operator

WIC Rate No.
774320 Plant & Machinery Hiring & Leasing with Operator

Average number of employees (including employees "deemed" to be workers) covered for current 12 month period
16

Total wages estimated for current 12 month period
$1,051,000-00

This Certificate is valid from the date of issue until 16/02/02

Please note

1. Principals relying on this certificate should check and satisfy themselves that the above information is correct and ensure that proper workers compensation insurance is in place eg compare the number of employees on site to the average number of employees estimated as above.
2. This certificate is valid subject to all the information provided above being correct. If the information is not correct or complete, the insurance cover may be invalidated.
3. This certificate covers the above number of employees and industry noted above. Employees other than these may not be covered by this workers compensation policy.
4. Schedule 1 of the Workers Compensation Act 1987 defines certain individuals as being "deemed" workers. Principals and employers should ensure that where "deemed" workers are engaged the full amount of the contract payments are included in the total estimated wages. The Act extends the definition of workers to persons not generally considered to be employees. These include for example, some contractors, taxi drivers, and outworkers. Even though such people may not be employees they are "deemed" to be workers for the purposes of workers compensation insurance. A business that engages contractors who are "deemed" to be workers is considered to be an employer even if the business has no direct employees.

Signed at North Sydney on 16 October 2001

SANDIE LENFERNA
Workers Compensation Underwriting

Zurich Australian Workers Compensation Limited
ACN 003 109 988

118 Mount Street
North Sydney NSW 2060

Locked Bag 948
North Sydney 2059

Telephone (02) 9995 3000
Fax (02) 9995 3604

AON

Aon Corporate Risk Services
Insurance Brokers
Risk Consultants

PO Box 4119, SYDNEY NSW 2001
Level 33, Aon Tower
201 Kent St, SYDNEY NSW 2000
DX 10205
Telephone 9253 7000
Facsimile 9253 7106

8 October 2001

To Whom It May Concern

Certificate of Currency

In our capacity as Insurance Brokers to **TJF-EBC Pty Ltd and Prestige Cranes Pty Ltd** and others as per policy, we hereby certify that the undermentioned Insurance Contract is current as at 8 October 2001.

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy below.

Class of Insurance	**Contractors Plant / Liability**
Insured	TJF-EBC Pty Ltd and Prestige Cranes Pty Ltd
Insurer (Lead)	Lumley General Insurance Limited
Policy Number	14ML 3513629
Period of Insurance	30th September 2001 to 30th September 2002
Interest Insured (Summary Only)	All registered items and items with road permits – Third Party Property Damage / Road Risk
Limit of Liability	Liability - $20,000,000
Situation	Anywhere in the Commonwealth of Australia

Yours faithfully

Kelly Mawson
Account Executive

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AON

Aon Corporate Risk Services
Insurance Brokers
Risk Consultants

8 October 2001

PO Box 4189, SYDNEY NSW 2001
Level 33, Aon Tower
201 Kent St, SYDNEY NSW 2000
DX 10206
Telephone 9253 7000
Facsimile 9253 7106

To Whom It May Concern

Certificate of Currency

In our capacity as Insurance Brokers to **TJF-EBC Pty Ltd and Prestige Cranes Pty Ltd** and others as per policy, we hereby certify that the undermentioned Insurance Contract is current as at 8 October 2001.

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend or alter the coverage afforded by the policy below.

Class of Insurance	**Combined Public & Products Liability**
Insured	TJF-EBC Pty Ltd and Prestige Cranes Pty Ltd
Insurer (Lead)	Lumley General Insurance Limited
Policy Number	14L 3513629
Period of Insurance	30th September 2001 to 30th September 2002
Interest Insured (Summary Only)	Legal Liability to the Public in respect of Personal Injury (including Death) and/or Property Damage as a result of an occurrence and happening in connection with the Insured's Business including Products Liability
Limit of Liability	Liability - $20,000,000 Hook Liability - $1,000,000
Situation	Anywhere in the Commonwealth of Australia

Yours faithfully

Kelly Mawson
Account Executive

[illegible]

Aon Risk Services Australia Limited A.C.N. 000 434 720 A.B.N. 17 000 434 720

Receipt

C.T.A.S.
Coverforce Top-Up Accident Scheme

Employer ID: PRE021
Return No: 88406
Period from: 22/10/2001
To: 22/11/2001

PRESTIGE CRANES PTY LIMITED
7 VANGELI STREET
ARNDELL PARK NSW 2148

INSURANCE COVER PAID	No of Members		Totals:
Accident Cover:	21		$624.75
Top Up:	21		$412.65
Sickness:	0		$0.00
		Admin fees:	$10.50
		Total:	**$1,047.90**

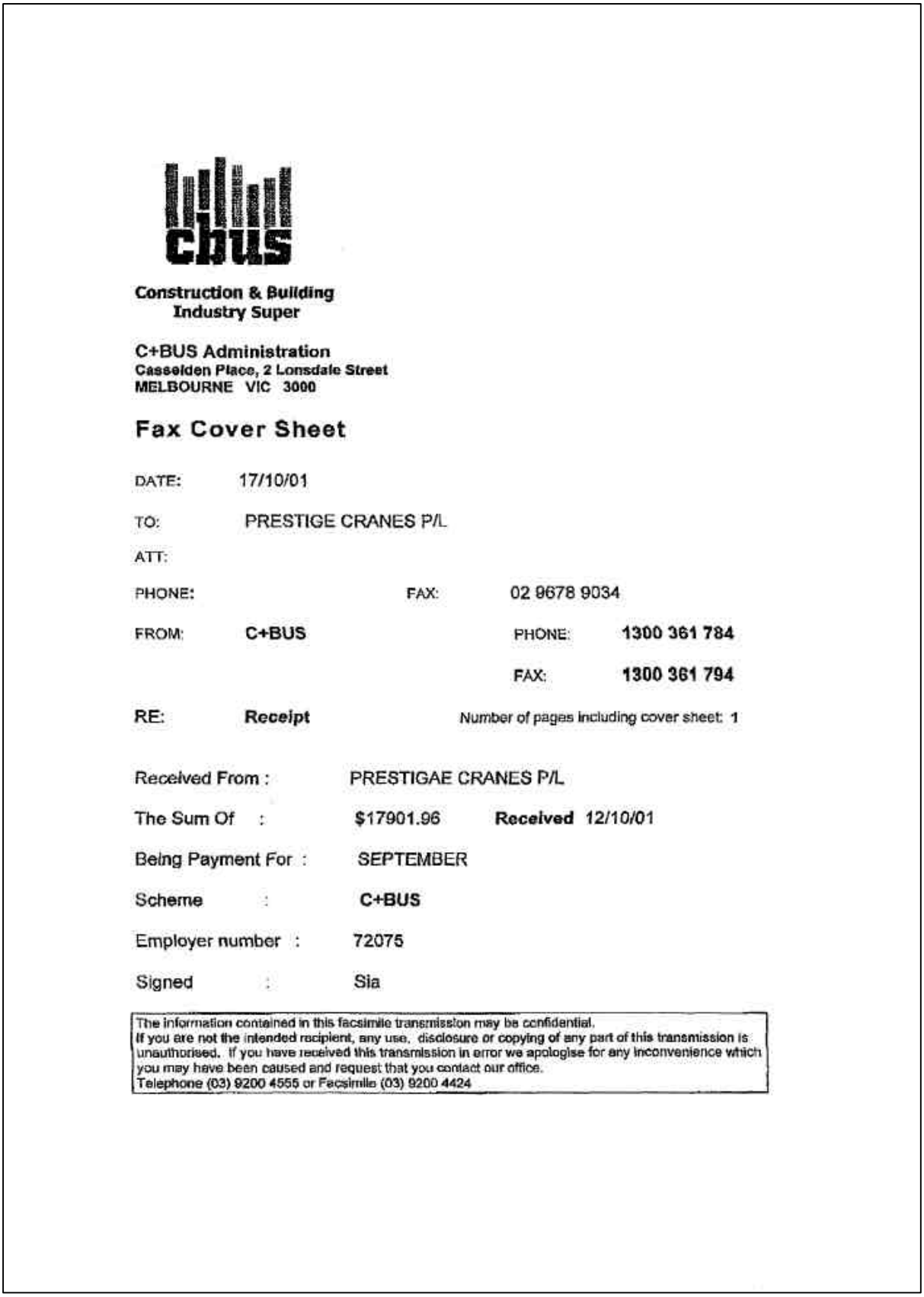
Members Deleted:	1	Original Members:	21
Members Added:	1	Adjusted Members:	21

Payment Date: 22/10/2001
Drawer: PRESTIGE CRANES PTY LIMITED
Bank Name: NAB
BSB: 082266
Cheque Number: 476573
Cheque Amount: $1,047.90
Cash: $0.00

Thank You

COVERFORCE PTY LTD ACN 067 079 261 ABN 21 089 180 725
Locked Bag No 5275 Sydney NSW 2001 Ph: (02) 9267 5999 Fax: (02) 9267 5922

benchmark CERTIFICATION IAS-ANZ



cbus

Construction & Building Industry Super

C+BUS Administration
Casselden Place, 2 Lonsdale Street
MELBOURNE VIC 3000

Fax Cover Sheet

DATE: 17/10/01

TO: PRESTIGE CRANES P/L

ATT:

PHONE: FAX: 02 9678 9034

FROM: **C+BUS** PHONE: **1300 361 784**

FAX: **1300 361 794**

RE: **Receipt** Number of pages including cover sheet: 1

Received From : PRESTIGAE CRANES P/L

The Sum Of : $17901.96 **Received** 12/10/01

Being Payment For : SEPTEMBER

Scheme : **C+BUS**

Employer number : 72075

Signed : Sia

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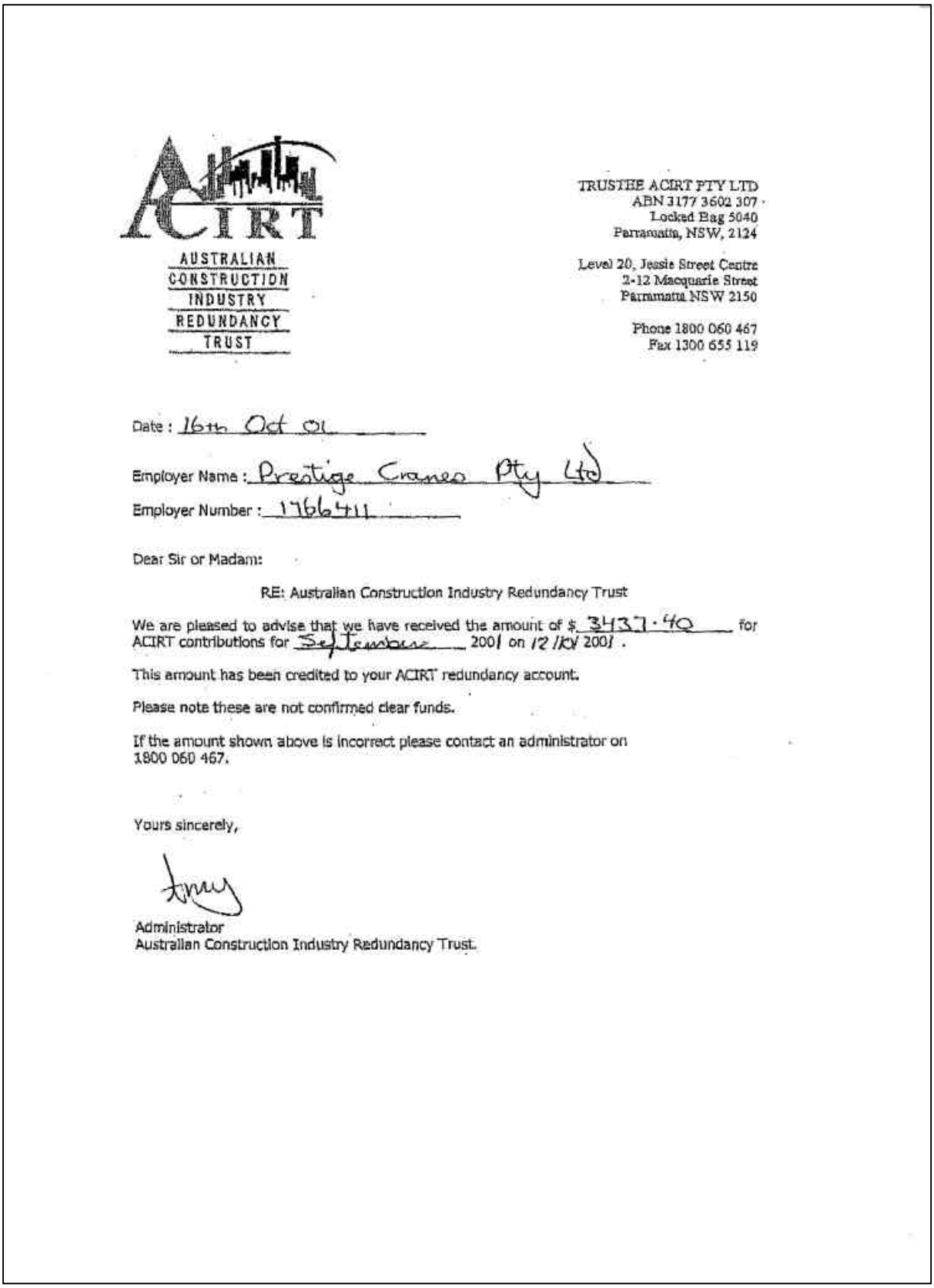
Telephone (03) 9200 4555 or Facsimile (03) 9200 4424



ACIRT

AUSTRALIAN CONSTRUCTION INDUSTRY REDUNDANCY TRUST

TRUSTEE ACIRT PTY LTD
ABN 3177 3602 307
Locked Bag 5040
Parramatta, NSW, 2124

Level 20, Jessie Street Centre
2-12 Macquarie Street
Parramatta NSW 2150

Phone 1800 060 467
Fax 1300 655 119

Date : 16th Oct 01

Employer Name : Prestige Cranes Pty Ltd

Employer Number : 1766411

Dear Sir or Madam:

RE: Australian Construction Industry Redundancy Trust

We are pleased to advise that we have received the amount of $ 3437.40 for ACIRT contributions for September 2001 on 12/10/2001.

This amount has been credited to your ACIRT redundancy account.

Please note these are not confirmed clear funds.

If the amount shown above is incorrect please contact an administrator on 1800 060 467.

Yours sincerely,

Administrator
Australian Construction Industry Redundancy Trust.

MINISTER FOR PUBLIC WORKS AND SERVICES
MINISTER ASSISTING THE PREMIER ON CITIZENSHIP
NEW SOUTH WALES

15 NOV 2001

RML 2001/2983

Mr S Carr
Committee Director
General Purpose Standing Committee No. 1
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Carr

I refer to your correspondence dated 19 October 2001, regarding the General Purpose Standing Committee No. 1's inquiry into NSW Workers Compensation Scheme.

The Department of Public Works and Services (DPWS) has prepared a submission, a copy of which is enclosed for your information.

I trust that this information is of assistance and thank you for providing DPWS with the opportunity to comment.

Yours sincerely

The Hon Morris Iemma, MP
Minister for Public Works and Services

Legislative Council
GENERAL PURPOSE
STANDING COMMITTEES
16 NOV 2001
RECEIVED

Governor Macquarie Tower, Level 30, 1 Farrer Place, Sydney NSW 2000. Telephone (02) 9228 4299. Facsimile (02) 9228 4277

RML 2001/2983

PARLIAMENT OF NEW SOUTH WALES
GENERAL PURPOSE STANDING COMMITTEE NO 1

REVIEW AND MONITORING OF THE NSW WORKERS COMPENSATION SCHEME

RESPONSE BY THE DEPARTMENT OF PUBLIC WORKS AND SERVICES TO ISSUES RAISED AT PUBLIC HEARING ON 10 OCTOBER 2001

1. Introduction

In the verbal submission made by Mr Andrew James Ferguson, New South Wales Secretary, Construction, Forestry, Mining and Energy Union at pages 11 – 18, statements are made about non-compliance with workers compensation on Department of Public Works and Services construction projects. In particular, it is claimed, at page 13, that 'Public Works does nothing' with regard to compliance with workers compensation. The specific areas of non-compliance are said to relate to subcontractors in the construction industry. Subcontractors are alleged to misrepresent both the type of work they undertake, to non construction activities (which have a lower tariff rate), and their total annual wages bill. This is done to reduce workers compensation insurance premiums.

The Department of Public Works and Services (DPWS) appreciates the opportunity to outline its compliance mechanisms for workers compensation.

This submission will demonstrate that the Department takes an active role in pursuing workers compensation compliance on its projects.

The Department also provides in this submission information relating to the three DPWS projects named by Mr Ferguson, the Conservatorium of Music (at page 12), Concord Hospital (at page 12) and Campbelltown Hospital (at page 13, 15).

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2. The Role of the Department of Public Works and Services

On the vast majority of DPWS construction projects the Department calls tenders and engages a single contractor, referred to as the head or principal contractor, to construct the public building or facility. (On a tiny proportion of projects DPWS carries out the role of the principal contractor. On such projects DPWS must comply with the identical requirements it places on private sector contractors.) The principal contractor subsequently engages many subcontractors to carry out the construction works. While DPWS has no contractual relationship with subcontractors, it is able to influence behaviour through the principal contractor.

While DPWS has no regulatory role in the area of employment law or workers compensation, the Department maintains regular liaison with the Government's regulatory authority for Workers Compensation, WorkCover NSW. This ensures alleged breaches of workers compensation requirements are investigated. This information is shared by the agencies and used to assess the performance of contractors and subcontractors.

The Department uses a range of policy and contractual measures to set the standards required for principal contractors. These standards also apply to the principal contractors' management of subcontractors. Principal contractors are obliged, under Government policy and contractual requirements, to ensure they and their sub-contractors comply with workers compensation legislation.

The policy and contractual requirements are detailed below.

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3. NSW Government *Code of Practice for the Construction Industry* (July 1996) Section 7.1 and Sanctions 8.1.

All parties involved with Construction work carried out on NSW Government projects must comply with the NSW Government's *Code of Practice for the Construction Industry* (July 1996). These obligations apply to all contractors, consultants, subcontractors and suppliers.

Of particular relevance for this Committee is the requirement under Section 7.1, which states:

> ***Contractors, subcontractors, consultants and suppliers must comply with the provisions of applicable:***
>
> - *Awards, and/or enterprise or project agreements*
> - *legislative requirements.*
>
> *Contractors must ensure that their subcontractors, consultants and suppliers comply with their legal obligations regarding their employees. Any relevant information is to be obtained through proper and lawful means, and in a way that respects confidentiality.*
>
> *Arrangements or practices designed to avoid award and/or legislative obligations including inappropriately treating a genuine employee as an independent contractor and/or inappropriate application of the Prescribed Payment System (PPS) of taxation are not permitted.*

This provision clearly requires the principal contractor to ensure that all their subcontractors comply with their workers compensation obligations. The NSW Government further details expectations of contractors in the *Implementation Guidelines* for the Code of Practice. Both these documents are included as Attachments (A and B).

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The *Code of Practice* at Section 8.1 also provides for Sanctions to be invoked against contractors, subcontractors, consultants and suppliers who do not comply with the provisions of the *Code*. The *Code* states:

> *The NSW Government is committed to the implementation of this Code and the Code of Tendering.*
>
> *Breaches of the Codes, as may be evidenced, through non-compliance, lack of commitment or unethical activity, may result in sanctions being invoked.*
>
> *Where the breach also involves any law or statute, the matter will be referred to the relevant enforcement agency.*
>
> ***Contractors, subcontractors, consultants and suppliers***
>
> *Sanctions for non-compliance with the Codes are based on the government's right as a client to choose with whom it does business.*
>
> *The final sanction imposed will depend on the nature of non-compliance and may involve:*
>
> - *a formal warning, or*
> - *partial exclusion from tendering opportunities ie reduction in the number of tendering opportunities, or*
> - *preclusion from tendering for any work in a specified period.*
>
> *Sanctions can be applied by a single government agency for lesser breaches or on a government-wide basis for more severe breaches.*

As a NSW Government agency, DPWS is fully committed to ensuring adherence to the *Code of Practice*. The Department carries out reviews of compliance with the *Code*. The Department also has established a procedure for identifying and investigating alleged breaches of the *Code*. The procedure includes the development and implementation of a reporting tool for alleged breaches, namely a standard format Statutory Declaration, which is available to the public through the NSW Government's Construction Policy Steering Committee's (CPSC) internet site. The web address is cpsc.nsw.gov.au. A copy is attached (Attach C).

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4. NSW Government *Industrial Relations Management Guidelines* (December 1999)

The NSW Government launched the *Guidelines* in December 1999 as a part of its Construction Industry Development Strategy. A copy is attached (Attach D) The full reform and development strategy is detailed in the NSW Government White Paper, *Construct NSW* (July 1998)

The *Guidelines* apply to the Construction Industry and complement the *Code of Practice*. The intention of the *Guidelines* is:

> To make industrial relations management a part of the culture of enterprises in the construction industry, and
>
> To help improve industrial relations management on government projects and in the construction industry generally.

The objective is for sound industrial relations practices, including ensuring compliance with the established regulatory requirements, to become integrated with day-to-day work and management practices.

Under the *Guidelines* all tenders called after 1 March 2000 also require contractors to submit Industrial Relations Plans. The Industrial Relations Plans must detail what arrangements the contractor will put in place to ensure that all their subcontractors meet all their award and other legal obligations, including workers compensation. A central element of the Industrial Relations Plans is the requirement for contractors to outline their measures for assessing subcontractors' ability to comply with their industrial relations and employment obligations, including workers compensation, prior to their engagement. Additionally the principal contractor must identify measures they use to monitor and verify ongoing compliance by subcontractors with their employment obligations.

DPWS assesses the Industrial Relations Plans submitted by the contractors, using a Checklist supplied in the Guidelines to ensure they comply. DPWS monitors the performance of contractors and their subcontractors in industrial relations and workers compensation areas during the life of the contract, including investigating any discrepancies. DPWS also conducts reviews of the implementation of Industrial Relations Plans.

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5. Contractual Conditions

DPWS uses a standard form of contract for all projects of a value over $1 million, the C21 contract. C21 has been used on DPWS projects tendered since January 2000. The standard contract conditions have been identified as an innovative, best practice approach to contracting. The C21 Contract has detailed requirements in the area of Insurances, including Workers Compensation. The provisions for Workers Compensation are specified in Clause 25.

Clause 25. 1, titled *'Insurance before work starts'* requires the contractor to establish and pay the premium for workers compensation insurance. The Checklist for the DPWS Contract Administrator who is managing the particular C21 Contract states that 'Before the Contractor starts any work under the Contract and whenever requested by the Principal in writing, the Contractor must supply proof that all policies under the Contract are current'. The Clause and Checklist are attached (Att E).

With regards to subcontractors, the principal contractor must adhere to very specific requirements under C21 contracts. Clause 25.2 *'Insurance for Subcontractors and Consultants'* states that

> *It is the Contractor's responsibility to ensure that, at all times, every Subcontractor and Consultant is insured:*
>
> *a) for workers' compensation and related liability; or*
> *b) (if workers' compensation cover cannot legally be obtained) under a personal accident insurance policy.*

By requiring the use of 'back-to back' contracts for all subcontracts above $100,000, DPWS is able to exert influence in the area of subcontractor behaviour to a considerable extent down the contract chain. The principal contractor must use a standard specified C21 Subcontract for subcontracts over $100,000, and in turn their Subcontractors (if any) must use an identical contract for their subcontracts above $100,000. For subcontracts below $100,000, and above $25,000, the C21 Contract requires the use of a standard core of contractual conditions.

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6. Compliance with Contractual Conditions

The DPWS Contract Administrator is responsible for monitoring contract compliance. Any reported or suspected breaches are investigated. The Department also requires quality management audits to be undertaken by nationally-accredited quality management auditors to monitor compliance with quality/contract management systems.

Where non-compliance has been identified it must be rectified promptly.
The DPWS Contract Administrator also evaluates overall performance by the contractor in the areas of Subcontractor Management and Contract Relations on a quarterly basis. The DPWS Contract Administrator must complete a Contractor Performance Report (CPR) on a three monthly basis. The CPR is then used when determining future tendering opportunities for contractors.

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7. Major Projects – Project Agreements

Under Section 7.4 of the *Code of Practice* contractors may seek to establish Project Agreements (also referred to as Project Awards) for major construction projects. The proposed Project Agreement must also meet the requirements set out in the NSW Government's Guideline, *Project Agreements – NSW Government Code of Practice for the Construction Industry process (Second edition 1998).* The Project must meet specified criteria, including identifying productivity improvement and dispute resolution measures.

Project Agreements are negotiated with, and signed-off by, the Construction Unions. Many of the Project Agreements include specific agreed arrangements between the contractor and the unions on workers compensation compliance. As illustrations of such provisions, attached are excerpts from the Project Agreements for the Sydney Conservatorium of Music and Conservatorium High School, and for Campbelltown Hospital Stage 2.

The Conservatorium Agreement was made a Project Award by Deputy President Walton of the NSW Industrial Relations Commission on 24 November 1999 and was negotiated by Walter Construction Group with Labor Council of NSW and the Construction Unions. At Section 12 the Award requires that contractors and subcontractors must comply with workers compensation requirements. (Attach F) Similarly Multiplex Constructions negotiated a Project Agreement with the Construction Unions for Campbelltown Hospital Stage 2 with the Construction Unions. This Agreement provides at Section 14 for detailed arrangements for workers compensation compliance. (Attach G)

These provisions are further examples of the measures taken to ensure subcontractors comply with their workers compensation obligations on DPWS projects.

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8. DPWS Circular– Workers Compensation Certificates of Currency

DPWS has also provided further assistance to its staff, and to its contractors, by documenting in a Departmental Circular the requirements for Workers Compensation Certificates of Currency. The Circular includes a guide provided by WorkCover NSW for DPWS staff and its contractors on how to review a Certificate of Currency, and this guide has been widely circulated. The guide also includes contact details for the WorkCover Compliance Improvement Branch. A copy of the Circular, issued by the Group General Manager, Project Management Group, DPWS on 19 July 2000, is attached (Attach H).

WorkCover provides advice in the document on: what is contained on a Certificate of Currency; who can have access to it; what is a reasonable level of wages; and what if there is a significant discrepancy between the Certificate and the number of employees onsite or wages bill? Excerpts from WorkCover's guideline on Workers Compensation Certificates of Currency are included below:

WHAT CONSTITUTES A REASONABLE LEVEL OF WAGES?

The construction industry is subject to high levels of casual and short-term employment. However a reasonable estimate of wages per employee for the purposes of scrutinising a Certificate of Currency would be $40,000 per employee.

If the employer has a significantly lower ratio of employees to wages estimates, the employer is required to justify the basis for the wages estimates, which the employer has declared to their insurer.

WHAT IF THERE IS A SIGNIFICANT DISCREPANCY BETWEEN THE CERTIFICATE OF CURRENCY AND THE NUMBER OF EMPLOYEES THAT AN EMPLOYER HAS ON SITE?

If the wages estimates have changed significantly since the employer obtained the Certificate of Currency, the employer can be requested to approach their insurer for a new Certificate of Currency, which contains the correct details.

Where an employer's estimate has increased by more than 33%, the insurer is required to recalculate the initial premium and to bill the employer for additional premium.

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WHAT IF THE EMPLOYER HAS WORKERS ON MULTIPLE SITES?

An employer may have workers on multiple sites in which case the number of workers on any particular site will be less than the total employed by the employer. It is not the responsibility of the Site Manager of a specific site to investigate allegations that an employer's workers in total across a number of sites is greater than that stated on the Certificate.

If these allegations are raised by a union official or another employer on the site, the person making the allegation should contact the WorkCover Compliance Improvement Branch on 9370 5613 or 9370 5823 to refer the allegation.

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9. Sydney Conservatorium of Music and High School

DPWS was the Project Manager for the Sydney Conservatorium of Music and High School. The Project was completed in July 2001. DPWS initially engaged Walter Construction Group Pty Ltd (Walters) as its Construction Manager. From 23 October 2000 Walters took over responsibility for the completion of construction.

At page 12 Mr Ferguson said: *'The principal contractor has no obligation to check whether or not the subcontractors it engages has a workers compensation policy'*. Mr Ferguson also apparently specifically refers to non-compliance by a formwork subcontractor for the Project.

Mr Ferguson's claims in relation to no obligations being in existence are incorrect, as the *Code of Practice* very clearly states contractor obligations in relation to workers compensation. In addition to this, the actual contract entered into by Walters confirmed those obligations along with other statutory obligations.

Additionally, Walters had an industrial relations obligation to the site unions under the Project Award, as identified above, to ensure that *'Contractors and subcontractors must ensure that all persons that they engage to work on the project are covered by workers compensation insurance.'*

DPWS advises that Walters's role, as Construction Manager for DPWS, was to recommend the engagement of Contractors to DPWS. Walters's recommendation of engagement followed their assessment of contractors' compliance with all relevant contractual requirements, including workers compensation.

Walters have supplied to DPWS a copy of a Workers Compensation Certificate of Currency dated 3 November 2000 from the formwork contractor, A & G Formworkers (Australia) Pty Ltd (A&G). A copy of the Certificate is attached (Att I). This Certificate states that A&G was insured, at the time, for the 'formwork' industry for 100 workers, with a wages bill for the relevant 12 month period of $4,000,000. According to Walters, A&G's workforce numbers never exceeded 100 on the Project. The nominated wages bill amount also met WorkCover's own Guidelines of an average $40,000 annual wages per worker. The evidence of a Certificate of Currency indicates that Walters met their compliance obligation and fulfilled their contractual requirements.

Neither DPWS nor Walters were previously aware of the CFMEU's concern on this matter until it was raised with the Standing Committee.

It has been noted that Walters have been given an opportunity by the Standing Committee to respond to the CFMEU claims regarding this Project.

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10. Concord Repatriation General Hospital

In Mr Ferguson's submission at page 12 reference is made to Prestige Cranes, a contractor on Concord Hospital

On this Project, the Central Sydney Area Health Service has engaged a private sector Project Manager, Atkinson Capital Insight (ACI). Hansen Yuncken is the Construction Manager. DPWS is the Procurement Risk Manager. Under this contracting arrangement DPWS is responsible for ensuring Government procurement and contractual standards are adhered to.

ACI are responsible for ensuring that Hansen Yuncken and all contractors and subcontractors comply with NSW Government and DPWS policy, legal and contractual requirements.

Hansen Yuncken negotiated a Project Award for this Project with Labor Council.

Hansen Yuncken (HY) are responsible for assessing and recommending to ACI the engagement of contractors, including ensuring compliance with their employment obligations. ACI then recommends to DPWS that contracts be established with the recommended contractors.

On ACI's and HY's recommendation, Prestige Cranes were engaged for an approximate, seven-week period on the site.

DPWS has been advised by HY that at the end of this contract period, they (HY) advised other contractors they could seek to engage directly cranage contractors for their own requirements, including Prestige Cranes.

DPWS have written to HY reminding them of their obligations under Section 7.1 of the *Code of Practice* regarding ensuring compliance by all contractors, subcontractors and suppliers with all award and other legal obligations.

DPWS has also written separately to HY, with regard to CFMEU's claims of alleged breaches of Section 7.1 of the *Code of Practice,* in relation to Prestige Cranes.

If the allegations made by the CFMEU are correct, and HY are unable to demonstrate they ensured compliance by Prestige Cranes, action will be taken in accordance with the Sanctions provisions of the *Code of Practice* (as outlined above).

DPWS is also investigating a possible breach by ACI in its role as a Consultant of Section 7.1 of the *Code of Practice.* ACI have a contractual responsibility to ensure that HY have complied with the *Code* throughout the life of the project.

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11. Campbelltown Hospital Stage 2

At page 13 of the submission made by Mr Ferguson statements are made about '*the largest contractor that worked on the Campbelltown Hospital Project... Emerson Formwork'* breaching workers compensation and other obligations. It is also stated *'Public Works does nothing'* in regard to compliance in this area.

DPWS is the Project Manager for Campbelltown Hospital Stage 2, on behalf of the South Western Sydney Area Health Service. DPWS has engaged Multiplex Constructions (NSW) Pty Ltd to construct the new facilities. Multiplex is the principal contractor, with a C21 contract in place. Multiplex subcontracted the formwork to Emerson Industries Pty Ltd, not Emerson Formwork. Multiplex were unaware that Emerson Industries further subcontracted to other companies. DPWS has no contract with Emerson Industries.

DPWS requires Multiplex to comply with the provisions detailed above. On this particular Project, prior to engaging Emerson Industries Pty Ltd, Multiplex used an accountancy firm to conduct a compliance review of Emerson Industries. As Emerson Industries were unwilling to furnish all the requested material, the accountants recommended that a performance bond be imposed on the subcontractor. Emerson accepted this arrangement. Multiplex's records indicate certain information relating to workers compensation and payroll tax was supplied by Emerson which related to associated Emerson companies.

DPWS is investigating how this subcontracting arrangement was established, with a view to assessing a possible breach of the *Code of Practice* by Multiplex.

DPWS is currently reviewing the corporate activities of the former Directors of Emerson Industries and associated companies, several of which are under Administration/ Liquidation. Any potentially unlawful activity will be referred to the appropriate regulatory body.