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REPORT OF PROCEEDINGS BEFORE

JOINT SELECT COMMITTEE ON THE NSW WORKERS COMPENSATION SCHEME

INQUIRY INTO NSW WORKERS COMPENSATION SCHEME

At Sydney on Friday 25 May 2012

The Committee met at 9.00 a.m.

PRESENT

The Hon. R. Borsak (Chair)

Legislative Council
The Hon. N. Blair
The Hon. P. Green
The Hon. T. Khan
The Hon. Adam Searle

Legislative Assembly
Mr M. Daley
Mr M. Speakman (Deputy Chair)
Mr R. Stokes

CHAIR: Welcome to the second public hearing of the Joint Select Committee on the NSW Workers Compensation Scheme. This Committee was established on 2 May 2012 to examine various aspects of the scheme. They include its performance in meeting the key objectives of promoting better health outcomes and return to work outcomes for injured workers. The inquiry is also examining the scheme's financial sustainability. Today the Committee will hear from representatives of the Insurance Council of Australia, the Australian Industry Group and the Housing Industry Association. It will also hear from representatives of organisations from the medical, disability and rehabilitation sectors. Various unions will be appearing, as will the New South Wales Farmers Association.

I would like to thank all the witnesses attending today. The Committee is holding a final hearing on Monday. It will hear evidence from a range of organisations and individual witnesses who will share their personal experiences of the NSW Workers Compensation Scheme. The Committee has previously resolved With regard to broadcasting guidelines to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the guidelines governing the broadcast of the proceedings are available from the table by the door. In accordance with the guidelines the media can film committee members and witnesses but people in the audience should not be the primary focus of any filming or photographs. In reporting proceedings of this Committee the media must take responsibility for what they publish or what interpretation is placed on anything that is said before the Committee.

Witnesses are advised that if there are any questions they are not able to answer today but would be able to answer if they had more time or certain documents at hand, they are able to take a question on notice and provide the Committee with an answer at a later date. The delivery of messages to witnesses and members, or their staff, or documents tendered to the Committee are to be delivered through the attendants of the Committee or the Committee clerks. I advise that any documents presented to the Committee that have not been tabled in Parliament may not, except with the permission the Committee, be disclosed or published by any member of the Committee or any other person.

Witnesses are advised if at any stage during their evidence they consider that the response to particular questions should be heard in private by the Committee please state your reasons and the Committee will then consider your request for in camera deliberations. I would like to remind all those present that witnesses who appear before parliamentary committees are protected by parliamentary privilege for the things that they say during the hearing. That means that what they say cannot be used against them later in court proceedings. I also remind witnesses that the freedom afforded to witnesses by parliamentary privilege is not intended to provide an opportunity to make adverse reflections about specific individuals. Witnesses are asked to avoid making critical comments about specific individuals and instead speak about general issues of concern. Everyone will turn off their mobile phones for the duration of the hearing.

DAVID KRAWITZ, Chair, National Workers Compensation Committee, Insurance Council of Australia, and

VICKI MULLEN, General Manager, Consumer Relations and Market Development, Insurance Council of Australia, sworn and examined:

CHAIR: Would you care to make an approximately five minute statement before questioning?

Ms MULLEN: Thank you for the opportunity to give evidence to the Committee. I will give a brief opening statement including an overview of the Insurance Council of Australia and the general insurance industry. The Insurance Council of Australia [ICA] is the representative body of the general insurance industry in Australia. Our members represent more than 95 per cent of total premium income written by private sector insurers. Insurance council members, both insurers and reinsurers, are a significant part of the financial services system in Australia.

June 2011 statistics of the Australian Prudential Regulation Authority show that the private sector insurance industry generates gross written premium of $34.3 billion per annum and has total assets of $114.9 billion. In the area of State- and Territory-based compulsory compensation schemes in Australia, our members are variously involved in motor accident and workers compensation schemes as insurers or as scheme agents. Insurance council members underwrite the motor accident schemes in New South Wales, Queensland and the Australian Capital Territory. A member of the ICA is the claims agent for the South Australian motor accidents scheme.

Insurance Council Australia members underwrite the workers compensation schemes in Western Australia, the Northern Territory, Tasmania and the Australian Capital Territory. Insurance Council of Australia members are scheme agents for the workers compensation schemes in New South Wales, Victoria and South Australia. In New South Wales, Insurance Council of Australia members that act as scheme agents for workers compensation are Allianz, CGU, Employers Mutual, GIO and QBE. As Committee members may be aware, there are also two claims managers that are not licensed insurers that are also agents for the New South Wales workers compensation scheme. These claims managers are not members of the Insurance Council of Australia.

As noted in the submission of the Insurance Council, we do believe it is important to clarify the specific role of Insurance Council of Australia members in the scheme. Our members do not insure or underwrite the scheme; our members do not manage the funds of the scheme. Our members are appointed by WorkCover to issue workers compensation insurance policies; determine and collect insurance premiums; manage workers compensation claims; provide support for injured workers, including rehabilitation; pay workers compensation benefits to injured workers; and manage any third party service providers, such as medical and rehabilitation services. The provision of these services by our members to the scheme is governed by separate contracts between each scheme agent and WorkCover.

The Insurance Council of Australia acknowledges the need for comprehensive reforms to address the deteriorating performance of the New South Wales workers compensation scheme. We support in principle reform options set out in the New South Wales Government's issues paper. However, we submit that a proper financial analysis should be conducted of any reform proposals, to allow the New South Wales Government and stakeholders to make informed decisions about the proposed reforms that are most likely to effectively address the deteriorating performance, and to ensure an affordable and fair scheme for all. As noted in our submission, the Insurance Council has specifically addressed those reform options which involved the particular expertise of our members as scheme agents. We are happy to take questions from Committee members.

Mr MICHAEL DALEY: Ms Mullen, would you be able to go back over the last paragraph of your submission in which you referred to, I believe, a proper financial analysis? Could you say that again for me?

Ms MULLEN: My apologies. What we are saying is that in principle we support the various reform options that are set out in the issues paper; and we are suggesting that a proper financial analysis needs to be done of the impact of each one of those reform proposals; and we submit that that is a necessary task to do so that a proper analysis can be done of the actual impact of each of those proposals on the performance.

Mr MICHAEL DALEY: So there has been no proper analysis done to date on the potential financial impacts of any one of the 16 items in the discussion paper, if I paraphrase you correctly. How long do you think such an analysis would or should take?

Ms MULLEN: I imagine it would be a matter for the scheme actuaries to do that. I imagine it would require actuarial analysis to do that properly.

Mr MICHAEL DALEY: Say three days a month, ballpark?

Ms MULLEN: You would have to put that question to the actuaries. Unfortunately, I could not answer that. By necessity, it would be a complex analysis.

Mr MICHAEL DALEY: Would it require, in your view, simple actuarial analyses, or would we have to scenario test some of those recommendations as well, would you think?

Ms MULLEN: Again, you are asking me about actuarial techniques about which I cannot speak; and I would suggest that you put those questions to the scheme actuaries. I apologise; I cannot really help you on that matter.

Mr MICHAEL DALEY: Thank you for your submission. One of the things I was looking for—and, without being critical, I do not think I found, and I am happy for you to correct me if I am wrong—but in your opening comments you summarised the duties and roles of your members insofar as they fit into the WorkCover scheme. I think the phrase you used in general was that they manage WorkCover claims. You have confined your submission to the 16 recommendations in the discussion paper. I was looking to you to take this rare opportunity to bring forward some concerns of your members about inefficiencies in the scheme, and ways in which we could help them to improve their performance, because you will have heard some comments in the media about the performance of the scheme agents.

Ms MULLEN: That is correct; and we are obviously very aware of those comments that have been made. I will give a general response to that, and then I might refer the question to Mr Krawitz. We would broadly say that our member scheme agents are aware of some efficiencies that could be gained. Typically, we would say that with any compulsory compensation scheme all best efforts should be made to drive out the friction costs; and I think our members have some views about where those friction costs may lie in the scheme. I think we probably addressed some of those issues in general terms in our submission. But I might now defer to Mr Krawitz to give you a bit more detailed answer.

Mr KRAWITZ: I would be happy to make a statement about some of the challenges that face the scheme agents in managing the scheme. The Insurance Council of Australia's view is that, if you look at the deterioration, the underlying drivers are around the current legislation and also the application of that legislation. Scheme agents are of course bound by our contract with WorkCover and the guidelines that we are issued. In many instances we feel that both the legislation and its application can prevent us from achieving optimal outcomes on claims. I would be happy to give some examples in that regard, if that is desired.

Mr MICHAEL DALEY: That would be good.

Mr KRAWITZ: I believe this was discussed on Monday: the notion of a work capacity test, for instance. Our view is that the tail of the scheme is a particular problem; it is large, and it is growing. I think there was evidence presented by the actuaries that that is a very large contributor to the deterioration of the scheme. It is the view of the Insurance Council of Australia and its members that the substantial majority of injured workers do want to return to work as quickly as possible; but that cannot be said for all workers. Currently, we do not believe that we have truly effective powers in that regard—the notion of a work capacity test, for instance. I think section 40A has been discussed regarding the power that that gives to agents. The way the legislation works today, section 40A really just stipulates that the workers must cooperate with that process. But the assessment itself is not binding; and our agents can, and do, get medical independent assessments confirming work capacity. But ultimately it is up to the nominated treating doctor; and the nominated treating doctor can ignore that advice.

So the only real avenues that the agents have in that regard are persuasion; and, if that does not work, dispute. And when we are talking dispute that would mean going to the Workers Compensation Commission. The experience of agents would be that often times the Workers Compensation Commission will overturn

decisions made by agents in respect to withdrawing benefits, even when evidence that we have obtained supports it. I will give you a specific example in that regard from one of our agents. An injured worker was required to job seek, and he reported that he was working at a small business operated by him and his wife. Based on this information, plus an earnings capacity assessment report and a vocational assessment report, the agent issued a section 74 notice, reducing benefits to nil. Both reports identified suitable employment available.

The case was eventually brought to the Workers Compensation Commission, where the arbitrator rejected these arguments, essentially on the belief that no employer would wish to hire him. The agent was ordered to pay the full stat rate, even though the injured worker was in fact working, plus spouse and dependant benefits, even though the wife was not a dependant under the legislation as she operated the business in question. That is one example of some of the challenges that we face as agents. I have another example, if it is helpful, around controlling medical expenses. I think that has been discussed as well.

The Hon. ADAM SEARLE: On page 5 of your submission you talk about measures to improve return-to-work rates as an important lever in improving scheme performance. You identify shortening the time on weekly benefits. It is the case, is it not, that a number of employers with injured workers either cannot or do not find suitable duties and that is actually a significant barrier in terms of people returning to work. Would you agree?

Mr KRAWITZ: That can certainly be a barrier. Similar to my comment on injured workers, our experience would be the substantial majority of employers do want to get workers back to work as quickly as possible and do uphold their obligations around suitable duties.

The Hon. ADAM SEARLE: What percentage of employers—in terms of the claims managed by your members—actually provide suitable duties under the legislation?

Mr KRAWITZ: I do not have any statistics like that at hand.

The Hon. ADAM SEARLE: Will you take that question on notice?

Mr KRAWITZ: Yes. I am not sure if we would be able to pull that together on a scheme-wide basis but we will take it on notice and see what we are able to do.

The Hon. ADAM SEARLE: I would be very interested because return to work is obviously an important aspect of the scheme. Section 49 of the Workers Compensation and Workplace Injury Management Act says the employer must provide suitable work, with certain caveats. What role do your members take in terms of making sure that employers actually adhere to that obligation? Where they say do not adhere to that obligation, what investigations of that proposition do your members engage in to make sure that employers are being truthful or accurate?

Mr KRAWITZ: In that regard, generally speaking, our role would be to influence. We do not have any hard powers at our disposal to force or coerce in any way shape or form. Again the substantial majority of employers, I would say, do uphold their obligations—some probably do not. Our ability to influence that is somewhat limited.

The Hon. ADAM SEARLE: For example, where an employer, in the view of your members, was not upholding their obligations surely you would report that to WorkCover with all the details?

Mr KRAWITZ: We would tell the employer what those obligations are. As far as reporting to WorkCover in each and every instance I would have to take that on notice to see what the policies dictate.

The Hon. ADAM SEARLE: What reporting do your members do to WorkCover where they uncover instances of non-cooperative employers not adhering to their legal obligations?

Mr KRAWITZ: As far as specific reporting I do not have that information on hand.

The Hon. ADAM SEARLE: Will you take that question on notice?

Mr KRAWITZ: Yes.

The Hon. ADAM SEARLE: What percentage of workers in the tail, injured persons who comprise the tail, have had their employment terminated and within what period of the injury?

Mr KRAWITZ: As far as scheme-wide statistics are concerned, I think you really do need to ask WorkCover for that information. The ICA certainly does not have any scheme-wide information other than our own agent information and scheme-wide information that is publicly available.

The Hon. ADAM SEARLE: Leaving aside the scheme-wide information, do the agents who are members of your organisation have that information for the claims that they have handled?

Mr KRAWITZ: I believe if you ask each individual agent they would most likely have that information or could pull that information together, but none of that is shared with the ICA; none of that is pooled in any way, shape or form.

The Hon. ADAM SEARLE: Will you ask your members for that information and provide it to the committee?

The Hon. TREVOR KHAN: I do not think that is appropriate. WorkCover attended the committee on Monday. The Hon. A. Searle had ample opportunity to investigate those matters here. He is now seeking this witness to undertake an investigation of potentially other witnesses or other bodies. I believe what he is asking the witness to agree to is inappropriate.

The Hon. ADAM SEARLE: First of all, I can ask Allianz about its experience but leaving that aside, this body represents a number of the scheme agents. I am not asking the witness to do something he cannot do, I have just asked whether he could ask his members for such information as they have got.

[*Interruption*]

Mr Chair, I am discussing this matter, not debating it with the Hon. Trevor Khan. Surely the scheme agents are closer to the action than WorkCover and they would have the primary data or information.

CHAIR: I allow the question. It is up to Mr Krawitz whether he can, or is prepared to, get the information.

Mr KRAWITZ: We can certainly make the request of our member agents.

CHAIR: Will you take that question on notice?

Mr KRAWITZ: Yes.

The Hon. ADAM SEARLE: PricewaterhouseCoopers, the scheme actuary, in the executive summary of its most recent report noted that the decline in the scheme's return-to-work rates is linked to the deteriorating performance of some of WorkCover's largest agents. The peer review of that report indicates that steps need to be taken to improve claims management, especially in relation to a number of functions including return to work. What is the view of your organisation, leaving aside cuts to benefits, how return-to-work rates could be improved through the actions of the scheme agents?

Mr KRAWITZ: I am not in a position today to talk about the performance of any particular agent.

The Hon. ADAM SEARLE: I am not asking you to do that.

Mr KRAWITZ: I think some of the proposals put forward, such as change in step-down, we believe could and should have a positive impact on return to work by creating the appropriate incentives. We do agree with the principle that the incentives today are not strong in that regard.

The Hon. ADAM SEARLE: Leaving aside reductions in benefits, what actions do you feel could be taken by the scheme agents in terms of their own role in improving return-to-work rates?

Mr KRAWITZ: I think substantial actions are undertaken today. Often times though—to the prior statement I made—agents do find when we are following the legislation and the guidelines our decisions are

overturned and that creates a climate in which it is very difficult to achieve the outcomes that we believe are achievable on claims.

The Hon. ADAM SEARLE: You mentioned earlier in relation to the employer's obligation to provide suitable work that you had the view that your members who are scheme agents did not have any coercive powers or enforcement powers.

Mr KRAWITZ: They do not.

The Hon. ADAM SEARLE: Do they need, or should have, those powers to improve employer adherence to those obligations?

Mr KRAWITZ: I would say more work would probably need to be done in that regard to determine whether that would have a substantial influence on return to work rates.

The Hon. ADAM SEARLE: Page five of your submission states that your organisation supports the whole person impairment threshold of 30 per cent for serious injuries. Based on the experience of your members who are scheme agents, what percentage of claimants would that cut out of the system?

Mr KRAWITZ: I do not have that information available at this time. Again I would say for scheme-wide statistics WorkCover and the scheme actuary are the best sources of information.

The Hon. ADAM SEARLE: On page 6 of your submission you indicate that binding whole person impairment assessments should be done but you indicate that they should be done only once the injured worker has reached the maximum medical improvement based on guidelines. What is the average length of time for maximum medical improvement? What do you think is the appropriate time frame?

Mr KRAWITZ: Obviously that will vary on a case-by-case basis. The issue we do have today though is that there is basically no restrictions on the number of assessments that injured workers are able to get. They can choose and change assessors pretty much at will. We believe that creates a climate in which it is very hard for us to manage the process.

The Hon. ADAM SEARLE: Do you accept there is no one time period for every injured person?

Mr KRAWITZ: I think that is probably a good question for the actuaries again. My guess would be that there is no single one time period that you would apply to all injury classes, no.

The Hon. ADAM SEARLE: On page seven of your submission you talk about appropriate cost contain measurements for medical expenses. What are you propose there?

Mr KRAWITZ: Again I think this is an area in which there is a disconnect between the guidelines, where issued, and often times the practice. As agents we do have guidelines as to what constitutes reasonable and necessary medical expenses under section 60 but we do not have the authority to enforce those guidelines. When we decline payments on such grounds these matters often end up before the Workers Compensation Commission for a decision. The Workers Compensation Commission is not bound by the same guidelines as agents and often times we find that the Workers Compensation Commission will find against our decision.

An example in this regard—again, from one of our agent members: there was an injured worker who submitted for reimbursement a $7,500 spa that he claimed helped his back pain. This was not a pre-approved expense and was purchased 11 years after the original injury. The agent in question declined on the grounds that this was not considered reasonable and necessary. Ultimately this went to the Workers Compensation Commission and that was overturned and reimbursement was made. Again, I believe that is a relevant example of some of the challenges that we face as an agent in controlling scheme costs.

The Hon. ADAM SEARLE: What do you think would be a better control on the approved expenditure of medical expenses?

Mr KRAWITZ: A starting point in that example would be to have the same set of guidelines that the Workers Compensation Commission follows as that issued to the agents, which is not the case today.

Mr MARK SPEAKMAN: At page 8 of your submission you talk about New South Wales having the largest tail liability. Is that just in dollar terms or is it also in some sort of percentage terms?

Mr KRAWITZ: I think we would have to take that on notice. I certainly would not want to share any statistics that we have not checked and proven.

Mr MARK SPEAKMAN: Could you take on notice generally what the comparative data are for tail liability of different schemes?

Mr KRAWITZ: Yes.

Mr MARK SPEAKMAN: Lower down the page you talk about commutations and you say in the last sentence that you support targeted commutation. Are you talking there about consensual commutation where workers agree?

Mr KRAWITZ: I think as agents we would agree there are times that commutations can be valuable but we would also agree that the use of them too widely can cause problems.

Mr MARK SPEAKMAN: Are you talking about consensual commutations?

Mr KRAWITZ: I think commutations always need to be consensual and if both parties do not agree then it would not make sense to pursue a commutation.

Mr MARK SPEAKMAN: When do you see that commutation should be an appropriate available option and when is it an inappropriate option?

Mr KRAWITZ: I think for some long-term injured workers with no work capacity a commutation may, in certain circumstances, be a desirable outcome for both parties. I do not think there is a hard and fast rule on where commutations apply and when they do not.

Mr MARK SPEAKMAN: Is there a problem with having commutations available across the board?

Mr KRAWITZ: The scheme actuaries certainly put views forward on some of the issues that can create, and if you look at the history of this scheme earlier, around 2000 and 2001, there was a significant problem with blowout of costs around commutations and lump sum benefits.

Mr MARK SPEAKMAN: Is that your own view or are you relying on what the scheme actuary's view is about that?

Mr KRAWITZ: I think certainly the scheme actuary has a well informed view in that perspective. As agents I think we would also agree that widespread use of commutations could be problematic.

Mr MARK SPEAKMAN: If, for example, you cut weekly benefits and you have an option of commuting those weekly benefits, is it really a cost blowout problem in those circumstances?

Mr KRAWITZ: The issue you have is whether or not there are some injured workers who would view that as an incentive and therefore potentially have claims that are a higher cost to the scheme in order to achieve that pay out.

Mr MARK SPEAKMAN: You say they would inflate their claims to weekly benefits and other benefits. Is that what you are saying?

Mr KRAWITZ: Certainly the scheme actuary has put forward the views that when you have higher use of commutations there is a risk to an increased cost for the scheme around weekly benefits.

Mr MARK SPEAKMAN: But apart from the scheme actuary's view do you have an independent view about that?

Mr KRAWITZ: At this stage I do not have a view to put forward from the Insurance Council of Australia in that regard.

Mr MARK SPEAKMAN: The Bar Association made a submission to us and they gave us a seven-point plan they would like to see, and one of them was revocation of section 151Z (2) of the Workers Compensation Act to allow injured workers to take action against third party tortfeasors under the Civil Liability Act. They say that that would enable recovery of payments made at no cost to the scheme and that it is wholly consistent with insurance principles that it spreads the risks and protects the interests of WorkCover. Would you like to comment on that?

Mr KRAWITZ: The Insurance Council of Australia does not have a view in that regard from its members, so there really would not be any comment I would be able to make today.

Mr MARK SPEAKMAN: Are you able to comment on whether that would affect premiums for other insurers?

Mr KRAWITZ: I would not be in a position to comment on that today, no.

Mr MARK SPEAKMAN: Is that something you could take on notice?

Ms MULLEN: We could take that on notice but I think the general answer to that is it would obviously depend on who the third party was in any recovery that has been made outside the scheme framework, and that would typically depend on, presumably, the kind of public liability cover that a particular third party may have. So I guess the generic answer would be it is possible that that would create costs elsewhere. That is probably the best we could say.

Mr KRAWITZ: What I would point out, certainly through reading through a number of the submissions, there were a lot of views put forward by different parties on changes that could happen with the scheme. I am not sure the value of getting the Insurance Council of Australia's opinion on each and every one of those.

Mr MARK SPEAKMAN: On page 7 of your submission in the last few lines you say you support aligning work injury damages with the Civil Liability Act in relation to principles of common law negligence. The Bar Association made a submission on that and, as I understand their submission, they advocate harmonisation but they say that the workplace is different and you would have to have a carve-out for assumption of risk and obvious risk. Would you be comfortable with harmonisation but with a carve-out like that?

Mr KRAWITZ: At this stage the Insurance Council of Australia members support that proposal in principle. That is one area, as mentioned in our opening statement, that we believe would benefit from a costing and a benefit analysis to determine whether or not it is worth pursuing.

Mr MARK SPEAKMAN: On page 6 of your submission there is a graph. I know you say this is sourced from the actuarial valuation but I wonder if you could explain the graph to us and, in particular, what the horizontal axis represents.

Mr KRAWITZ: Essentially this is a chart over years within this scheme in terms of when injuries have occurred and the number of workers who have been able to achieve a 15 per cent whole person impairment, and each of the colours and bars represent different years within the scheme.

The Hon. TREVOR KHAN: Is it each year or is it half-year? Are they six-monthly increments, so where we have got 18 that is, in fact, nine years?

Mr KRAWITZ: That would be exactly right. So it is six-monthly periods on that axis, and obviously if you go back to the first year, 2003, you do have approximately nine years of data available for that year. If you go to the most current year of 2011 you obviously have a much smaller amount of data available.

The Hon. TREVOR KHAN: Are they cumulative?

Mr KRAWITZ: That would be correct.

Mr MARK SPEAKMAN: At the bottom of page 6 of your submission you talk about the medical assessment service currently in operation in the CTP scheme. Could you describe that for us please?

Ms MULLEN: I am no expert on that but what I can say is that, as members may be aware, in the CTP scheme in New South Wales there is a specific system for the assessment of medical injuries. So I guess what we are saying there is really support for an independent and binding medical assessment scheme. We can take that on notice and provide you with more details of that scheme if that helps the committee members.

Mr MARK SPEAKMAN: Ms Mullen, I think at a couple of stages you have talked about areas of efficiency that could be made in administration but you are aware of friction costs. Are there any quantifiable savings you can identify in administration that do not involve cutting benefits?

Ms MULLEN: Again, that is going way outside my detailed knowledge of the scheme. What I would say generally is that I am aware that our scheme agents are currently working closely with WorkCover under an operational framework where they are examining all of the various guidelines and documentation that govern the arrangements for the scheme agents. Probably the best answer I can give is that I think those operational efficiencies are currently the subject of some detailed examination between WorkCover and the scheme agents.

Mr KRAWITZ: In keeping with previous comments, any information on scheme-wide data or scheme-wide savings is not something that we as agents or as the Insurance Council of Australia are in a position to calculate or to provide such information.

Mr MARK SPEAKMAN: Are there any changes in guidelines for agents that you would like to see that do not involve legislative change?

Mr KRAWITZ: I cannot say whether or not this requires legislative change, but having consistency between the guidelines that we are issued and the guidelines that the Workers Compensation Commission is issued would be in our minds a very strong step.

The Hon. TREVOR KHAN: I refer again to page 6. I am interested in the graph. I take it that what we are looking at is a graph that shows essentially the level of impairment that is assessed for individual workers. Is that right?

Mr KRAWITZ: Yes.

The Hon. TREVOR KHAN: I take it that that level of impairment would be assessed for the purposes of making a section 66W claim?

Mr KRAWITZ: Yes.

The Hon. TREVOR KHAN: If you were a lawyer acting for an injured worker you would not be getting a medical assessment to determine whole person impairment in any claims between the time of the injury, which I take to be the zero, and six months. You would have trouble even organising an appointment.

Mr KRAWITZ: I cannot speak to the specifics of individual claims in that regard.

The Hon. TREVOR KHAN: Surely there is a point at which there is no data available in the first six months or 12 months? As a lawyer you would not normally be getting a whole person impairment assessment done on an injured worker during that early period.

Mr KRAWITZ: The Insurance Council of Australia has replicated this chart from the actuary's report. Specific questions around how that was derived are best put to the actuary.

The Hon. TREVOR KHAN: Do I take it that the point you are making is that claims are being made for a whole person impairment under section 66W so that a payment is made based on, for instance, some level of impairment? Is that right?

Mr KRAWITZ: The point that we wish to make with this chart would be that there are two key things to look at. One is ultimately how high does each bar go, which is a measure of the total number of workers who have exceeded that 15 per cent impairment. The other is steepness, which shows you how quickly that is

happening. In this regard the data provided by the scheme actuary suggests that we are seeing an increase in the number of workers who are exceeding that 15 per cent threshold and it is happening at a quicker rate than in the past.

The Hon. TREVOR KHAN: Or does it show that the assessments of more seriously injured workers are occurring at a later time after the injury?

Mr KRAWITZ: This would suggest it is happening earlier because the bars are steeper for the more recent years.

The Hon. TREVOR KHAN: I think I will have to go back and study the maths.

Mr KRAWITZ: I apologise if I am not explaining that properly.

The Hon. NIALL BLAIR: Do your members have any explanation or are they looking at the statistics to determine why they are occurring earlier?

Mr KRAWITZ: At this stage we do not have an agent-wide view on the drivers of that.

Mr MARK SPEAKMAN: I refer to page 7 and the second paragraph commencing with the words "As noted above". Could you explain or elaborate on the second sentence commencing with the words "The single medical assessment process"?

Mr KRAWITZ: This relates to the earlier discussion around the number of times an injured worker is able to get an assessment for whole person impairment. If we were to move to a system that limited those numbers, or ideally was more of a single assessment at maximum medical improvement, we believe we would see a reduction in the number of old claims coming back to the scheme and being reopened.

Mr MARK SPEAKMAN: I refer to the second last paragraph on page 8, commencing with the word "Further". What is the composition of the medical panels in Victoria that you are referring to and what is the range of disputes they determine?

Mr KRAWITZ: I would have to take that on notice for further details regarding the composition.

The Hon. TREVOR KHAN: I refer again to the chart. Do you know from what you have done whether there are other charts for different levels of impairment?

Mr KRAWITZ: Any data in this regard would come from the scheme actuary.

The Hon. TREVOR KHAN: It may, but you have one here that deals with 15 per cent. Is there a chart accessible for 30 per cent?

Mr KRAWITZ: At this moment I am not sure whether there are other charts within the valuation that cover different levels of impairment.

Mr MARK SPEAKMAN: Do your members include the specialised insurers?

Ms MULLEN: No, they do not. I understand that the Worker's Compensation Self Insurer's Association has submitted separately.

Mr MARK SPEAKMAN: So you are speaking for the scheme agents?

Ms MULLEN: Yes, that is correct.

Mr MARK SPEAKMAN: And any other interested insurers?

Ms MULLEN: No.

Mr KRAWITZ: No, just the scheme agents that are members of the Insurance Council of Australia.

The Hon. TREVOR KHAN: You used the example earlier of the purchase of the spa. I am not being critical of the anecdote, but is there a reported decision that you relied upon or is it simply an internal note from one of your members?

Mr KRAWITZ: I do not understand.

The Hon. TREVOR KHAN: If it went to the commission is there a case citation of some form that relates to that?

Mr KRAWITZ: We have guidelines around what is considered reasonable and necessary. I am not sure whether a case study has been put forward.

The Hon. TREVOR KHAN: We are at cross purposes. You have indicated a decision was made by the insurer and it went to the commission and the commission said it was reasonable to spend whatever the amount was on the spa bath. Normally when a decision such as that is made it will be an unreported or a reported decision.

Mr KRAWITZ: I will take that question on notice and provide further details about that particular claim.

The Hon. TREVOR KHAN: Thank you. If there are any other such similar decisions that you are aware of, can you provide the Committee with details?

Mr KRAWITZ: Yes.

The Hon. TREVOR KHAN: Preferably in the form of a reported or unreported decision.

Mr KRAWITZ: Yes.

Mr MARK SPEAKMAN: On page 5 of your submission you refer to the Rutherford review report. Can you give details of what evidence there was in that inquiry that you say supports the proposed option for change?

Mr KRAWITZ: At this stage we would have to take that question on notice to provide further details.

The Hon. PAUL GREEN: I refer back to one of your comments about the guidelines. There seems to be two sets of rules. Can you elaborate on that and give some other examples of where the commission seems to have one set of rules and you are held to another set?

Mr KRAWITZ: It is not necessarily that there are two different sets of rules but that there are guidelines that we as agents have and they are not replicated with the Workers Compensation Commission. It is more the absence of those guidelines with the Workers Compensation Commission than a different set of guidelines.

The Hon. PAUL GREEN: How do you feel that the Committee could improve that?

Mr KRAWITZ: Bringing them into alignment and having the Workers Compensation Commission bound by the same set of guidelines that the agents are bound by would be a very positive step. As far as additional examples are concerned, I do not have more with me, but we can commit to pulling together some more examples in that regard from our members.

The Hon. PAUL GREEN: I would like that if it is possible. In terms of impairment, you are talking about the different approach that seems to be swinging to an earlier assessment. The complication of that is that if you have an earlier assessment then the injury out works over a longer period. So it is a catch 22. If you have an early assessment you might not get the full gamut of the injury and if you do a later assessment you are in over 15 per cent and a different range of options opens up for the injured person. In terms of your responses to Trevor Khan, were you suggesting that the earlier or the later assessments have been more productive and helpful?

Mr KRAWITZ: These are not assessments driven by the agents. These are assessments initiated by the injured worker, so we do not control that timing. I would not comment at this stage whether earlier or later is positive or negative. I would say that the data does imply that you are seeing an increase in the number of people making it past the 15 per cent threshold and that is happening at a quicker rate than in the past.

The Hon. PAUL GREEN: We seem to be speaking quite a lot about commutations. I note that you said some long-term commutation issues probably are not helpful. Do you believe if self-insurers were able to have commutations that they were able to independently resolve it would be helpful, or is your comment broadbrush?

Mr KRAWITZ: Our comment relates to the scheme that we are agents for. Certainly we would not want to put forward a view on what is appropriate for the self-insurer.

The Hon. PAUL GREEN: So you are not speaking for them?

Mr KRAWITZ: No.

The Hon. ADAM SEARLE: You have indicated your organisation's support for work capacity testing but I am interested in your view of how that would work. For example, if someone was employed at a particular workplace would you envisage that the work capacity testing would have to be specific to the role that they either were fulfilling or to see whether they could fulfil duties that were available or able to be offered by their employer? Surely it would require work capacity testing from the employer as well.

Mr KRAWITZ: Certainly a comprehensive program needs to look at the individual workers in terms of what capacity they have, full stop. That needs to be supplemented by other measures to understand what types of jobs and roles are available for that person given their capacity.

The Hon. ADAM SEARLE: I understand how the testing of people's capabilities would be done, which is the first part, but would that be done, in your view, against some kind of general template of mobility or functionality? Exactly how does your organisation see it working?

Mr KRAWITZ: There does need to be obviously guidelines around how these are conducted and you do need to have qualified assessors completing the work capacity assessments for them to have merit.

The Hon. ADAM SEARLE: How would it work in terms of making sure that that assessment was useful; that is, it actually related to work that was available either with the existing employer or in the real world, rather than some kind of abstract notion?

Mr KRAWITZ: Today we do have the ability to understand what is available from the earnings capacity assessment and the vocational assessment report, which essentially looks at the job market and understands what roles are available and what appropriate roles are available. I believe there are the appropriate mechanisms in place today to allow that to happen. As per earlier comments, the challenge we have is we are not in any way able to enforce that because there is nothing binding about the current work capacity assessment. Therefore we can do this work but it does not always mean it results in a positive outcome.

The Hon. ADAM SEARLE: Is there any particular model of this working in any other jurisdiction that you would look to as a guide?

Mr KRAWITZ: Victoria has a model around work capacity assessment that is more binding and the view from our members who also play a role in the Victorian scheme is that we believe it is a positive and a strong tool to assist partially incapacitated workers back into the workforce.

The Hon. ADAM SEARLE: I was really more looking at the methodology of how the assessment was being done. Are you saying the Victorian methodology is the one you would be looking to?

Mr KRAWITZ: I cannot say if the methodology in Victoria is substantially different to the methodology in New South Wales. I would have to take that on notice.

The Hon. ADAM SEARLE: So when the Insurance Council of Australia says it supports the idea, it is just the concept rather than any particular way of doing it?

Mr KRAWITZ: That is correct.

The Hon. ADAM SEARLE: In terms of matching these skills up with the employers, obviously we have had submissions that indicate new employers are reluctant to hire people who have been injured at work or have had workers compensation claims. Even if you did one of these functional assessments which sets out someone's capacity for work, how then do you encourage that person to be taken on by an employer? What powers do you think your members should have to be able to encourage employers to take people on?

Mr KRAWITZ: If we are talking new employers we, as agents, do not have any tools today to encourage new employers to take on a worker. I know there have been incentives put in place by the Government to encourage new employers to take on those workers and I think those are appropriate types of incentives. That is the best direction, I believe, for that type of encouragement. I do not believe there is necessarily anything we, as agents, could directly do to influence that.

The Hon. ADAM SEARLE: What about existing employers? What other tools could be usefully provided to your members who are scheme agents to encourage existing employers to provide suitable duties and to reintegrate injured workers back into the workplace?

Mr KRAWITZ: Today we do make clear to all employers what their obligations are and certainly do everything we can to influence them in that regard. Whether there are legislative changes that could be made to make that work better, that is not something that we currently have formed an opinion on.

CHAIR: On Monday we had some evidence from WorkCover and I think also from the actuary regarding the computer systems that are being used by the agents. I think they gave evidence that there are seven different agents and seven different computer systems and all the maintenance for those individual systems has to be carried out and paid for by WorkCover separately. To my mind, knowing a little bit about these sorts of things, those computer systems would all be different even though at the end of the day they would come up with the right sort of outputs as required under the law. Do you have any views in terms of what might be done to improve that?

We have also been given some evidence that most other States run one single system. On Monday a figure was posited by someone that around $100 million at some stage had been quoted to do that. To my mind, given the size of this scheme, $100 million would be a drop in the bucket if it gave more flexibility to the agents and more control to the nominal insurer.

Mr KRAWITZ: I think ultimately a single system is a question for WorkCover. I would say there are certain benefits that WorkCover would derive from a single system. I believe, as agents, we find to have our own system in place also has benefits because it does allow us to customise our systems. It also allows us to make investments in our systems and in some way differentiate what we have to offer from the other agents in the scheme.

CHAIR: You do not think there would be savings to the taxpayer in doing it that way?

Mr KRAWITZ: To determine whether or not there would be savings for the scheme as a whole, I think that would be an exercise that WorkCover would need to undertake to fully understand the costs and the benefits.

Mr MARK SPEAKMAN: What is your view on privatisation of the scheme in a competitive market with appropriate prudential requirements?

Ms MULLEN: It is probably well known that the Insurance Council has a standing policy position that is supportive of the private provision of insurance services, and that goes across all of the compulsory compensation schemes that are currently underwritten by governments in Australia. I think what we would say is that at this point in time no-one is seriously discussing private underwriting with the deficit in the State as it currently is. I think in principle, yes, we would support the private underwriting of the scheme but I think there is a long way to go before those conversations can be seriously had.

Mr MARK SPEAKMAN: If you went down that path what would you do with the deficit?

Ms MULLEN: That is probably one of the most critical questions and that would be a matter presumably for negotiation between the government of the day, if that were to occur, and the potential participants in a privately underwritten scheme. I think that probably an answer to that would be that the tail liabilities would need to be addressed before Insurance Council of Australia members would be interested in participating in the scheme

Mr MARK SPEAKMAN: Do you have any ideas how that could be addressed?

Ms MULLEN: That is a matter outside of my expertise. That is outside of my expertise.

The Hon. TREVOR KHAN: I take you to the third paragraph on page 6. In a situation where a lump sum benefit is paid, there has been some form of assessment undertaken to determine the whole person impairment. Is that correct?

Mr KRAWITZ: That is correct.

The Hon. TREVOR KHAN: Who pays for that assessment?

Mr KRAWITZ: I believe the scheme ultimately pays for that assessment, but we should take that on notice to be 100 per cent certain.

The Hon. TREVOR KHAN: It is a cost incurred and it falls back on the insurer, whoever that may be. Is that right?

Mr KRAWITZ: I believe that is the case for all assessments, but I would want to make sure that is the case for 100 per cent of assessments.

The Hon. TREVOR KHAN: Let us go to a situation of an assessment having been made, one assumes the worker has been appropriately represented and a year or two later seeks a further assessment. Who pays for the second assessment undertaken at that stage?

Mr KRAWITZ: Again my belief would be that that would be paid for by the scheme and the scheme agent.

The Hon. TREVOR KHAN: Would that be the case irrespective of whether, on that further claim, the level of impairment was increased?

Mr KRAWITZ: I believe that is the case, but we will take it on notice to confirm it.

The Hon. TREVOR KHAN: If they came back for a third assessment a year or so later, is that again a situation where the insurer pays for the third assessment, irrespective of the size of the further impairment?

Mr KRAWITZ: Again, I believe that to be the case and we will confirm it.

The Hon. TREVOR KHAN: If the second or third assessment came back—perish the thought—with a lesser level of impairment, would you check whether the insurer would end up paying for that assessment as well?

Mr KRAWITZ: I believe that would be the case, but we will confirm it.

The Hon. TREVOR KHAN: Would it not be, if that is the situation, that there is no incentive to essentially close off a claim? There is no cost disincentive to what is likely to be a lawyer pursuing a matter over and over again.

Mr KRAWITZ: That is in keeping with the reasons we put forward as to why we believe moving to more of a single assessment process has substantial merit.

The Hon. TREVOR KHAN: Prior to the motor accidents legislation going through its most recent iteration, you essentially only got one hit in terms of the level of impairment that somebody had suffered in a motor injury. Would that be correct?

Ms MULLEN: Could you ask that question again?

The Hon. TREVOR KHAN: In terms of a motor accident, where an assessment of impairment was done, irrespective of the precise mechanism, the injured passenger or driver only got one shot in terms of impairment, did they not? They were not able to come back over and over again.

Ms MULLEN: That is my understanding. In the New South Wales compulsory third party scheme there was a medical assessment service and my understanding is that those injuries would be assessed by that service, and my understanding is that that is their single shot, but I can confirm that and get back to you.

The Hon. TREVOR KHAN: That has historically been under motor accidents legislation.

Ms MULLEN: Yes.

The Hon. TREVOR KHAN: You made your claim and you got an assessment, and whether that was done you only had one shot at it, you could not come back a year or so later and say, "Wait a minute"—

Ms MULLEN: I think that is correct. My understanding is that you cannot come back for a second time, but I will confirm that.

Mr KRAWITZ: I think we should take that on notice. I do not have intimate knowledge of the workings of the Motor Accidents Scheme, so I think we should take that on notice to confirm.

CHAIR: Thank you for attending the hearing. The secretariat will provide you with a transcript highlighting those questions that you have taken on notice. The Committee has resolved that the answers to questions taken on notice be returned within three working days of you receiving that transcript.

(The witnesses withdrew)

(Short adjournment)

EMMA MAIDEN, Deputy Assistant Secretary, Unions NSW, affirmed and examined:

MARK LENNON, Secretary, Unions NSW, sworn and examined:

CHAIR: I welcome Mr Mark Lennon, the Secretary of Unions NSW, and Ms Emma Maiden, Deputy Assistant Secretary, Unions NSW. As you are aware, in relation to questions on notice, witnesses are advised that if there are any questions you are not able to answer today, but would like to be able to answer if you had more time or certain documents at hand, you are able to take the question on notice and provide us with an answer at a later time. Regarding in camera of deliberations, witnesses are advised that if you should consider at any stage during your evidence that your response to particular questions should be heard in private by the Committee, please state your reasons and the Committee will consider that request. All witnesses must be sworn prior to giving evidence. I ask that each of you in turn state your full name and job title and either swear an oath or take an affirmation. You are entitled to make an opening statement, if you wish.

Mr LENNON: Thank you, Chair. I wish to take this opportunity to make an opening statement. At the outset I state that Unions NSW welcomes this review of the State's workers compensation system. We think it is appropriate and timely. However, what we do not accept are some of the premises on which the review is taking place: in particular, the notion that the system is in crisis and is broken; also the idea that the starting point of any review should be looking at the question of whether the premiums for workers compensation system are competitive relative to other States, in particular Queensland and Victoria; the premise behind the Government's issues paper, "The Way Forward", clearly involves a reduction of entitlements for injured workers; and the time frame that has been afforded for this review, which is a major concern of ours.

My understanding is that the Premier outlined to Parliament the other day that this matter needs to be resolved and legislation must be through the Parliament by 30 June. That means that the whole review process will be done, on my estimate, in a little over two months. Given the nature of the system, given the $11 billion in the fund, given the number of claims that are met every year with regard to the fund, to try to do a review of the scheme and its undoubted complexity and have new legislation through the Parliament in two months is just totally inappropriate as far as we are concerned. There needs to be more time and there needs to be genuine consideration of the issues. There also needs to be more time for consideration and engagement with all the other stakeholders so that appropriate outcomes can be reached. Workers compensation is too important an issue to have the matter before the Parliament to meet a deadline of 30 June this year.

The Government's statements refer to better outcomes for workers as a result of this review, yet if you look at the issues paper the primary focus seems to be on further financial disincentives as a means of getting people back to work more quickly. From our perspective, clearly that is the wrong approach. The notion that any State in the nation may have the best workers compensation system simply because it has the lowest premiums is not the way to go forward. Clearly, in our view, that is a race to the bottom and a question of just trying to seek out the lowest common denominator. The right approach from our perspective, in looking at how any workers compensation system should be running, should be a focus on four things: First of all, let us go back to the key question of prevention and how our occupational health and safety system is working in the first instance, and how we are preventing workplace injuries as the best step to aid our workers compensation system, and therefore reduce the need for benefits to not only workers but to society generally.

Secondly, if we move to the system itself, we have to focus on how effectively it is working administratively. There is no doubt, as you will see this from our submission, that there are serious concerns about how effectively the administration of the system is working at the present time. Thirdly, and most importantly, we emphasise in our submission that we have to really concentrate and focus on, as a community and as a State in New South Wales, what are the best return-to-work outcomes. That seems to me to be where there are a lot of different views on how we can get people back to work, make sure they are recovered, make sure that they can be restored, if not to their original duties then to appropriate duties given the nature of their injuries. That is where the focus should be. Of course we need to focus on ensuring that there are sufficient support systems to enable that to occur. That goes to the question of medical and legal services.

Unions NSW believes that that focus will lead to better outcomes overall for our workers compensation system but, importantly—and the point we are all talking about but from different angles—we must ensure that the economy benefits as a consequence. If you look at Safe Work Australia' s figures, I think they reported last year that workplace injuries cost $60 billion. A third of that, which is New South Wales' share, is $20 billion.

Safe Work Australia estimates that is worth approximately 4.8 per cent of gross domestic product nationally, so it would be something similar along the lines for the New South Wales. That is where our focus should be—improving and enhancing economic productivity in this State by reducing workplace injuries and ensuring that, first, we have got workers back to work and not only helping themselves as individuals but also helping the community and, secondly, providing the necessary boost to the New South Wales economy.

The other argument we have about the whole discussion about the lowering premiums is, as you see in our submissions, our serious injury rate is higher than the State against which New South Wales is always benchmarked, Victoria; yet, as pointed out in our submission, our frequency rate when it comes to serious injuries, which I understand has increased, or major injuries over five days is 27 per cent to 42 per cent higher than Victoria. In that context, why are we talking about reductions of premiums for employers when their performance in the workplace in lowering injury rates is not on the mark of what is perceived to be—and I use this term in the general sense—our competitor, Victoria.

We think a couple of issues need to be focused on in any reform of the system. First of all, we should examine the way claims are handled. As you see in our submission, we have referred to outsourcing of claims in this State that we have had for approximately 15 years, or from approximately 1997. Despite the best endeavours of everyone involved—and I know this—trying to get the right system in place has not worked. It does not seem to be working. It is not just evidenced here but you will see from our submission that it is also in other states, Victoria and South Australia, where they similarly have outsourcing and agents handling the claims. It is not working and it is not effective there, either. A lot of it is to do with agent behaviour and, from my understanding of the model we have here in New South Wales where we have seven agents and they need to be competing with each other to see who can provide the best service, it is my understanding that despite various remuneration formulas and changing remuneration, has failed to deliver for the scheme here in New South Wales. So that is area one.

The other area is the issue of suitable-employment obligations for suitable duties so that injured workers may be phased back into the workforce, effectively. Again that is an area where here in New South Wales we seem to be failing. It seems to us that part of the problem is that there seems to be conflicting objectives in our legislation. On the one hand under the 1998 Act, there are the obligations to find suitable duties and bring people back—and what is reasonably practicable is the test that is applied there—and on the other hand we have provisions under the Workers Compensation Act by which injured workers can be dismissed after six months. Again, it is not working and that is an area that needs to be focused on. The third area is retraining. I think we all accept at some stage that certain people will not be able to return to their normal duties because of the nature of their injuries, or indeed to the industry in which they may have been working. There needs to be more emphasis on giving injured workers the opportunity to retrain and therefore take up duties or work in another occupation or industry altogether.

At a previous time a previous Minister for Industrial Relations and occupational health and safety had a proposal on the table that the State should spend some $500 million looking at workers who had long-term claims for a set period and at a certain time looking at engaging them in ways to retrain them, so that they may take up duties or work in other industries. I think it was agreed by all parties at the time as an interesting innovation and a way forward. We would say that needs to be done earlier in the piece rather than later. The sooner we can identify workers who are injured and are unlikely to go back to the industry or the occupation they have been working in—they may need to move on to another industry or occupation—the better. That is not easy but that is an area we would put an emphasis on.

When it comes to the question of medical expenses, which is another problem at the present time it seems for the scheme and the fund, we would say there needs to be, as PricewaterhouseCoopers has said in its report, a holistic approach to the question of how medical expenses are dispensed by the scheme. It seems to me it is not just a problem common to the workers compensation scheme, it is a problem common to us as a community now. Given the sophisticated nature of our medical system, given the technology involved, it is an expensive system. As you know, medical costs have risen greater than the consumer price index across the community in the past 10 years or so—7 per cent as I understand. For a worker's compensation claimant or someone else in the system it can get very complex and there can be a lot of service providers. People are losing track of who is where and when and from WorkCover's point of view, oversighting all that, there needs to be a more holistic approach to how people in the workers' compensation system deal with the medical system and how the interface can work more effectively.

As to the issues paper itself, I will not go into the detail there because we put our response in our submission. The three things we would be prepared to discuss and consider further are the question about better entitlements for those with a 30 per cent workplace injury but we think that is too high and should come down lower but we would welcome discussion about entitlements for people who are severely injured. We see some merit in discussion about how pre-injury earnings are determined but again there needs to be some discussion about how that is formulated. Finally, on the issue of commutations, yes, commutations have been around before and we have engaged and supported commutations in certain circumstances, always on the basis that they are working in the best interests of the injured worker. Again I thank the Committee for the opportunity to appear today. I will close my opening remarks at that.

Mr MICHAEL DALEY: The Insurance Council of Australia, in its submission said:

> *Effective* return to work incentives for injured workers must be a central feature of a scheme …

That presumes, I think, that injured people inherently do not want to work and need to be incentivised to come back to work. What you say about that?

Mr LENNON: I think all the submissions I have looked at and certainly in our submission we say that is not the case. In our submission we say that the majority of people clearly want to get back to work and that happens in the majority of cases. We do not believe that trying to incentivise people by dropping their payments is an effective way of trying to get people back to work. It does not seem to have worked in other States. It certainly has not worked in Victoria where the return to work rate is slightly lower than ours. Consequently, our experience of most people who are injured is that they want to do is get back to work as quickly and effectively as possible.

Mr MICHAEL DALEY: One of the things you mentioned in your opening remarks and you have taken some time to address in your submission is the performance of claims agents. On page 13 of your submission you say:

> In 2010-11 remuneration paid to … seven claims agents was $318 million … Compared to the amount paid in 1997, which amounted to $141 million …

You say even adjusting for inflation that is an increase of 226 per cent. Were you surprised there was no treatment or discussion whatsoever in the discussion paper about the performance of claims agents?

Mr LENNON: Absolutely. I think not just in the issues paper but as I said at the outset, if we are going to have a genuine discussion about workers compensation reform in this State we have to look at the way claims are handled. Let us just go back one step before the claims agents. The argument we put in our paper is I think it is the Queensland system that has it in-house and works more effectively than the ones we have here or in Victoria or South Australia where the claims are outsourced. Everyone has struggled with trying to work out how the outsourcing of claims can work more efficiently. It has not and it appears not to.

In our submission we say when South Australia outsourced claims handling the cost of claims handling went up by 11 per cent. There does not seem to be an easy answer. The model we have in New South Wales is the competition between seven agents. All we have seen with that is that it has not delivered better service. One of the major complaints, of course, is that there is a high turnover amongst claim managers as people are trying to improve the service and there is a lack of expertise in the area. The competition model has not worked, the outsourcing model has not worked. It needs to be given serious review and serious consideration as part of any way forward for a workers' compensation system.

The Hon. TREVOR KHAN: He did not answer your question because he knows what you are putting.

Mr MICHAEL DALEY: I did not answer your question either, Mr Khan.

The Hon. ADAM SEARLE: In relation to getting injured workers back to work, the employer is already under an obligation, under the Workplace Injury Management Act to provide suitable work. What feedback have you had from your affiliates about whether that provision is working effectively?

Ms MAIDEN: The feedback we have is that while some employers are good in providing suitable duties for their employees once they are injured, a lot of employers really do not take those obligations

seriously. Very large employers who you would expect to have many different opportunities they could offer to workers, in changes to their duties or more limited duties, are just not willing to take that obligation seriously. It is very difficult to get that obligation enforced through taking disputes to the Workers Compensation Commission and so forth. You see those examples all the time, unions are telling us, of having to fight to get people back on suitable duties who have been cleared to perform even the same number of hours they had previously been working but perhaps with some limitations and they have identified jobs within their workplaces that they can do, that are there, vacant and available to them, yet the employer will not place them in that job and they are having to fight for it.

We also see circumstances where employers have placed injured workers in suitable duties in the workplace but, after the six-month period has expired, they then say you cannot return to your pre-injury duties, even though you are doing a job that they would otherwise be paying someone else to do and a job they need to have done in their workplace. After six months, if the worker cannot return to pre-injury duties they will terminate him. They hired him to do job X and he is doing job Y, a job that they want done in their workplace but they terminate him anyway. This is one of the real problems. Other suitable duties are not being created or when they are being created they are not willing to be provided to the employee on a longer-term basis. Of course, once a person is terminated it is hard for them to get a new job. Most employers require a declaration as to their workers compensation status and employees have to be upfront about the fact that they have been injured, We hear the stories time and again of people going for interviews, being cleared and often completely capable of performing the job with no restrictions, yet they are not given a chance because they have a history of injury and that new employer does not want to take that risk.

The Hon. ADAM SEARLE: Does Unions NSW have any views about how promoting greater adherence by employers to the obligation to provide suitable duties could be enhanced or encouraged?

Mr LENNON: Absolutely. As we have said in our submission, part of the problem has been the question of reasonably practicable suitable duties. It has always been a bit of a stumbling block from our experience and from feedback from affiliates. In our submission we allude to the fact we can look at provisions they have in other States. In South Australia if there is going to be a proposal to dismiss a worker, 28 days notice is given and an opportunity to work through the issues as we see it to find that person suitable duties. Similarly, in Victoria there are special powers which may allow someone to be found suitable duties. Clearly there should be stronger emphasis on the employer to provide suitable duties in the first instance and, if they have an argument that they do not, then to prove the case why they do not.

The Hon. ADAM SEARLE: You mentioned that there had been an earlier proposal to allocate resources to provide retraining for injured workers to provide them with greater opportunities to secure work, presumably with new employers. Do you think that that is a facility that an investment in the scheme should generally be making?

Mr LENNON: I think any investment that the scheme or us as a community can make to allow people to get back to work or to remain in work if they are already on suitable duties is a worthwhile investment. At the time of course I think when the Minister brought that view forward the scheme was fully funded and $500 million was going to be set aside out of the fund at that time to allow for this proposal to be put into place. But, given our view, return to work is to the benefit of all, including the employer and including the community at large, and remembering of course when you look at the demographics and we are getting older as a society we need to try and keep up our workforce participation rate. Anything we can do as a community to keep people active and in work the better.

Mr MICHAEL DALEY: One of the proposals in the discussion paper is in relation to the 30 per cent threshold. We had some evidence the other day from some of the lawyers groups that in their experience there are but a handful of people who would reach the 30 per cent threshold and yet it seems to be a serious consideration that is still floating around. What is your experience of these thresholds and what do you say about a proposed 30 per cent threshold?

Mr LENNON: I said at the outset we welcomed the fact that more seriously injured workers should get access to more entitlements, but as I said also the 30 per cent threshold is clearly too high. I have not spoken in this with any depth with my colleagues about what we would think is an acceptable threshold. But we think anyone—clearly and as I say it is something I would have to go back and talk to unions about—but 15 per cent is seen as the threshold for workplace injury damages. You have 15 per cent whole of person impairment then you are severely injured and therefore you should be able to access I think more entitlements to assist you to get

through the process, and assist you whether, first, you can recover in the first instance but also whether you have opportunities then to take up alternative work. I come back to a previous question. I do not want to be seen to be evading the question. We have said that clearly the amount being paid to agents has increased and we have said that in our submission. I have seen the WorkCover Authority's submission and their response in that regard. But there is no doubt, whatever figures you use, the figures being paid to agents has increased over recent years.

The Hon. TREVOR KHAN: You actually do not have those figures.

CHAIR: Order!

Mr LENNON: That is the point. I think we can agree that the payments have increased and yet the sort of outcomes as a consequence have not, and that is the point that needs to be clearly made.

Mr MARK SPEAKMAN: You have been a member of the WorkCover board since 30 May 2007?

Mr LENNON: I have.

Mr MARK SPEAKMAN: And you were reappointed on 31 May 2010?

Mr LENNON: Yes.

Mr MARK SPEAKMAN: And that was by Mr Daley when he was the Minister for Finance?

Mr LENNON: Yes.

Mr MARK SPEAKMAN: Prior to 30 May 2007 you attended some board meetings from time to time as John Robertson's deputy?

Mr LENNON: Yes.

Mr MARK SPEAKMAN: Does WorkCover pay for you to be a board member?

Mr LENNON: It does but the fee is paid back to Unions NSW.

Mr MARK SPEAKMAN: Has that been the case since you were appointed in 2007?

Mr LENNON: Yes.

Mr MARK SPEAKMAN: Are those fees tens of thousands of dollars?

Mr LENNON: I think the fee for the WorkCover board is about $30,000.

Mr MARK SPEAKMAN: Per annum?

Mr LENNON: Yes.

Mr MARK SPEAKMAN: Have you attended all or nearly all board meetings in every financial year that you have been a member?

Mr LENNON: Yes.

Mr MARK SPEAKMAN: Do we take it that prior to attending board meetings you conscientiously read the board papers?

Mr LENNON: I try to, yes.

Mr MARK SPEAKMAN: And each financial year since you joined the WorkCover board have you voted to adopt the annual financial statements of the WorkCover scheme for that year?

Mr LENNON: I have.

Mr MARK SPEAKMAN: And each year since you joined the WorkCover board have you voted in favour of a board resolution to declare that in the opinion of the directors of WorkCover the financial statements and the notes thereto for that year give a true and fair view of the financial position and performance of the WorkCover scheme as at or over the relevant time?

Mr LENNON: I have.

Mr MARK SPEAKMAN: And on each occasion before you voted did you read the financial report for that year and satisfy yourself that it exhibited a true and fair view?

Mr LENNON: I did.

Mr MARK SPEAKMAN: If you need to see the annual report I will provide you with a copy, but you know that in the case of the financial statements as at 30 June 2011 the accumulated net deficit was shown as $2.36 billion approximately?

Mr LENNON: I accept that that is the figure.

Mr MARK SPEAKMAN: And you were satisfied to say that the deficit as at 30 June 2011 gave a true and fair view?

Mr LENNON: Yes.

Mr MARK SPEAKMAN: You were satisfied that it was not a myth?

Mr LENNON: No.

Mr MARK SPEAKMAN: You agree it was not a myth, and included in that calculation of $2.36 billion approximately, to arrive at that bottom line there was an estimate of outstanding liabilities?

Mr LENNON: Yes.

Mr MARK SPEAKMAN: And those outstanding liabilities were not potential liabilities; they were actual liabilities, albeit that there is a bit of judgement involved in estimating their amount?

Mr LENNON: Yes, over a 10-year time frame.

Mr MARK SPEAKMAN: And that was your view when you voted to adopt the 30 June 2011 accounts?

Mr LENNON: Yes.

Mr MARK SPEAKMAN: In each financial year since you joined the WorkCover board have you voted in favour of a board resolution to adopt a risk margin for the scheme as at balance date?

Mr LENNON: Yes.

Mr MARK SPEAKMAN: And each year since you joined the WorkCover board has that risk margin been based on a probability of adequacy of 75 per cent?

Mr LENNON: Yes. I think it came in in 2007 and I am just trying to remember whether it was when I first joined or after I joined. But it does not matter.

Mr MARK SPEAKMAN: At least for the last several years—

Mr LENNON: Yes, that is right.

Mr MARK SPEAKMAN: —it has been an adequacy of 75 per cent, and you have understood each financial year that that has resulted in a risk margin of 12 per cent or slightly higher each year?

Mr LENNON: That is right.

Mr MARK SPEAKMAN: And in voting to adopt the financial statements each year you have satisfied yourself that that is appropriate?

Mr LENNON: Yes.

Mr MARK SPEAKMAN: Likewise, you have understood each year when you voted to adopt the financial reports that the overall outstanding claims liability has been calculated as the inflated and discounted values of the expected future payments, reflecting the fact that these payments will be spread over future years?

Mr LENNON: Yes.

Mr MARK SPEAKMAN: And each time you have voted to adopt the accounts you have understood that the lower the discount rate the greater the outstanding claims liability, other things being equal?

Mr LENNON: I am sorry, the last question?

Mr MARK SPEAKMAN: Each time you have voted to adopt the accounts you have understood, other things being equal, that the lower the discount rate, the greater the outstanding claims liability?

Mr LENNON: Yes.

Mr MARK SPEAKMAN: And you have voted each year to adopt accounts that have included calculations made by the scheme actuary?

Mr LENNON: Yes.

Mr MARK SPEAKMAN: And each year you have known that the discount rate being used was a risk-free rate of return on Commonwealth Government bonds?

Mr LENNON: Yes.

Mr MARK SPEAKMAN: And you have never complained at board meetings about that approach?

Mr LENNON: No, I have questioned it.

Mr MARK SPEAKMAN: Notwithstanding that, you have satisfied yourself that accounts that have been arrived at using that risk-free rate give a true and fair view of the WorkCover scheme's financial position?

Mr LENNON: Yes, in accordance with the practices.

Mr MARK SPEAKMAN: Not only does it accord with the practice, you have decided and you have voted in favour of resolutions adopting financial accounts that use that risk-free rate of return as giving a true and fair view of WorkCover's position?

Mr LENNON: Yes.

Mr MARK SPEAKMAN: Do you agree with this? The Unions NSW submission now appears to advocate not adopting a risk-free rate of return and using—I withdraw that. The Unions NSW submission challenges the use of a risk margin of 12 per cent and challenges using a risk-free rate of return, is that correct? Am I characterising the submission properly?

Mr LENNON: That is right.

Mr MARK SPEAKMAN: Do you agree that that is quite different from the position you have adopted as a WorkCover board member year after year in voting for accounts that use that risk margin and use a risk-free rate of return?

Mr LENNON: Yes.

Mr MARK SPEAKMAN: The best evidence of your view is not what you say in a union submission written by somebody else but what you have done year after year as a director of WorkCover?

Mr LENNON: Sorry, I just have to—

Mr MARK SPEAKMAN: The best evidence of what you think the appropriate approach is for a risk margin and a discount rate is not what is said in a union submission written by someone else but what you have voted for year after year as a WorkCover director?

Mr LENNON: No. I think you are confusing the roles, Mr Speakman. I am very clear on what my role is as a director of WorkCover—

The Hon. TREVOR KHAN: It is not a question of what your role is; it is what you think.

CHAIR: Order!

Mr LENNON: —and what my obligations are as a director and all of us who are directors, be it any government entity or be it any superannuation board we may be on or a corporation. I am very aware of the responsibilities as a director. The view of Unions NSW and its 60 affiliates about how the estimates of the liabilities of the scheme should be formulated is a separate matter. I am here in my position as Secretary of Unions NSW to put forward the views of the affiliates that have been outlined in the submission that is before you.

Mr MARK SPEAKMAN: I am not asking you about your role as an advocate. I am asking for your personal view. I am suggesting that your personal view is best demonstrated by what you have voted for year after year as a WorkCover director?

Mr LENNON: But I am not here in my personal capacity. I am here—

Mr MARK SPEAKMAN: I am asking you to answer that question; tell us your personal view? Do you agree that your personal view is best reflected—

The Hon. ADAM SEARLE: Mr Chairman—

Mr MARK SPEAKMAN: Let me finish the question.

The Hon. ADAM SEARLE: Mr Chairman—

Mr MARK SPEAKMAN: —is best reflected in what you have done year after year?

The Hon. ADAM SEARLE: Mr Speakman is haranguing the witness. Other witnesses have been given the opportunity to answer as they see fit without being harangued, without questioners raising their voices in an unseemly way. I ask you to ask Mr Speakman to ask his questions without raising his voice.

Mr MARK SPEAKMAN: Mr Chairman, I ask you to direct the witness to answer my question and not give a speech about some other question that he would like me to pose.

Mr MICHAEL DALEY: Point of order: The question was based on a presupposition that Mr Speakman could direct the witness to imagine that he is sitting here in a different capacity. Mr Lennon has clearly explained the capacity in which he is sitting here now. He has answered that question. I think you, Mr Chairman, should, as Mr Searle suggests, keep Mr Speakman on a bit of a tighter leash.

The Hon. TREVOR KHAN: To the point of order: This witness, Mr Lennon, is sitting here giving evidence. He is a person. He is not a role. He has views. He does not give his evidence in any other capacity but operating as a person and he is entitled to be asked what he thinks, not what some amorphous body known as Unions NSW does. He is fundamentally conflicted and he is entitled to be asked questions that address his fundamental conflict between what he has done as a director year after year and what he now wants for another audience for us to believe what he has been doing.

Mr MICHAEL DALEY: And he has answered that question and he is not sitting here as Mr Lennon janitor.

Mr MARK SPEAKMAN: Further to the point of order: We are not here taking submissions. We are here taking evidence. The question I have asked is relevant. I ask you, Mr Chair, to direct the witness to answer the question.

The Hon. ADAM SEARLE: Further to the point of order: It has been well recognised that witnesses come here to give evidence but they do so in representative capacities. Earlier this morning a number of witnesses particularly had to make it clear that they were here representing a body. In the past we have accepted that they come here as applicants.

The Hon. TREVOR KHAN: They were not directors of WorkCover.

CHAIR: Order!

The Hon. ADAM SEARLE: They were able to give their evidence. Mr Speakman may not like the answers he gets. He can ask the questions he wants, but he cannot determine how a witness will answer.

CHAIR: Order! Mr Speakman is entitled to ask whatever reasonable questions of the witness. Mr Lennon is here today representing Unions NSW and he can answer the question in the best way he thinks fit, whether that is for Unions NSW or with the other hat on. I understand the difficulties of these sorts of situations when one wears two hats, but Mr Lennon is here today in his capacity for Unions NSW. I also understand that questioning will be robust and I am prepared to entertain some robust questioning. As far as being too loud, the member can push the microphone back a little or sit back further in his seat. Mr Lennon, do you want to continue?

Mr LENNON: Absolutely. I am happy to share. Let me just say, first and foremost, that from a Unions NSW perspective, that is my capacity here—and I will come back to you, Mr Speakman, in one second—to say we have purely put our view about the question of the calculation of the deficit. The fact is that the Government is out there saying there is a crisis because of the unfunded liability. But let us get it into some perspective. That is the point we are making in this. It is an unfunded liability that is estimated over 10 years. There are issues in terms of the unfunded liability that is dealing with the state of the markets at the present time. That is about half the reason for the deficit. There is the question of the risk margin and the $1.7 billion put aside for the risk margin. We are just making a very telling point here: let us just get the concept of the deficit and the nature of the problem in some context. It is not like the scheme cannot pay its liabilities tomorrow. That is not to say that we do not need to try to address some of the issues.

Coming back to Mr Speakman's question, my problem with answering your question is simply this: As in all boards, there is robust debate about how we should make decisions around questions and particularly, can I say, about risk margin. But I am not in a position here to breach the confidentiality of board discussions about issues around risk margins or the discount rate and things of that nature. I may have personal views in regards to that matter and have made those views clear at board meetings. It is not appropriate for me to raise them here. Nor is it appropriate, as I said earlier, for me to raise those here given the fact I am here in my capacity as Secretary of Unions NSW.

Mr MARK SPEAKMAN: Do you say on your oath that you have not adopted the view year after year that the financial statements of WorkCover give a true and fair view of the position of the WorkCover scheme?

Mr LENNON: I accept that that is the fact in accordance with present accounting practices and actuarial practices, but understand that some of the actuarial practices we have adopted at WorkCover have been ones that of course were brought into place for better regulation of the private sector but have been adopted by WorkCover even though we are a public entity.

Mr MARK SPEAKMAN: The size of the deficit is based on outstanding actual liabilities, albeit that opinions can differ about how you measure those liabilities, do you agree with that?

Mr LENNON: I am sorry?

Mr MARK SPEAKMAN: The size of the deficit is based on outstanding actual liabilities, albeit that opinions can differ about how you quantify those actual liabilities?

Mr LENNON: That is right, yes.

Mr MARK SPEAKMAN: It would be quite misleading to say that it is based on potential future claims, do you agree?

Mr LENNON: I am not sure on that. That is not my understanding, but if you want to draw that conclusion.

Mr MARK SPEAKMAN: You have agreed with me that it is based on outstanding actual liabilities, not potential liabilities, albeit that opinions can differ about how you calculate those actual liabilities?

Mr LENNON: Certainly the opinions can differ how about you calculate those liabilities, correct.

Mr MARK SPEAKMAN: But they are actual liabilities, are they not?

Mr LENNON: That is my understanding.

Mr MARK SPEAKMAN: They are not potential liabilities?

Mr LENNON: No. I will come back to that question.

Mr MARK SPEAKMAN: Can you answer the question?

Mr LENNON: Sorry?

Mr MARK SPEAKMAN: Do not come back to it; can you answer that question?

Mr LENNON: Yes. The answer is yes. Let us move on.

Mr MARK SPEAKMAN: You agree with me?

Mr LENNON: Yes.

Mr MARK SPEAKMAN: So it would be quite misleading to describe them as potential future claims because they are actual claims?

Mr LENNON: Yes.

Mr MARK SPEAKMAN: Yet what you have done in your $800,000 media campaign is to say that the size of the deficit is an estimate of future potential claims?

Mr LENNON: Yes, but then we are looking at the question of the discount rate and things of that nature.

Mr MARK SPEAKMAN: But based on what you have agreed with me, your media campaign is very misleading, is it not?

Mr LENNON: I would not say that; not at all.

Mr MARK SPEAKMAN: You have agreed with me that the outstanding liability is an actual liability and you are going around scaremongering and telling people that it is based on potential claims?

Mr LENNON: We are certainly not scaremongering people about the nature of what is happening to the workers compensation scheme and the proposals that are before them.

Mr MARK SPEAKMAN: I am going to put a proposition to you and ask you whether you agree. From a prudential perspective, any consideration of reductions in average premium rates should only be

undertaken when a scheme is fully funded and even then only if the underlying claims trend is favourable. Do you agree with that proposition?

Mr LENNON: That a reduction in premiums should only occur when?

Mr MARK SPEAKMAN: Any consideration of reductions in average premium rates should only be undertaken when a scheme is fully funded and even then only if the underlying claims trend if favourable. Do you agree with that?

Mr LENNON: Yes.

The Hon. PAUL GREEN: In your submission on page 4 you state:

> The reluctance of governments to scrutinise the actions of scheme administrators, their claims agents and employers, especially in view of the pivotal roles they play in the functioning and financial performance of workers compensation schemes, is a deep seated, perennial problem and a major obstacle to genuine reform.

Could you elaborate on this comment and explain to the Committee what sort of scrutiny would suffice to engage in genuine reform?

Mr LENNON: Sorry, for the scheme agents?

The Hon. PAUL GREEN: For the scheme administrators, claims agents and employers.

Mr LENNON: I think a number of proposals have to be put in place that will allow better oversight of how the agents are operating. It seems to me that the way the agents operate in their relationship with providers is very different between agents. For instance, we have had examples of providers who have seven different agreements with seven agents. That is something that needs to be sorted through. That is a good example. Why do we have seven different agreements for one provider with seven different agents? That seems to me to be a way that we can refocus. The system would have better administration.

The Hon. PAUL GREEN: One of the things we were talking about was technology and synchronising computer software. Is that an initiative you would support?

Mr LENNON: Yes, we would support anything that improves IT, but the problem is that despite the fact that people tell you they have the best IT system in the world, synchronising IT systems is often very difficult.

The Hon. PAUL GREEN: In your submission on page 16 you state that vocational rehabilitation:

> ... plays a pivotal role in the social and financial viability of all Australians schemes, although the extent varies between the schemes.

Can you comment on the different types of vocational rehabilitation, their successes and shortcomings?

Ms MAIDEN: Where was that?

The Hon. PAUL GREEN: Page 16.

Ms MAIDEN: Could you repeat the question, please?

The Hon. PAUL GREEN: You state that vocational rehabilitation "plays a pivotal role in the social and financial viability of all Australians schemes, although the extent varies between the schemes". I am taking on board that you are talking about getting workers back to work. In light of that statement I was wondering if you could comment on the different types of vocational rehabilitation and their successes or shortcomings, in your experience.

Mr LENNON: The important thing with vocational rehabilitation is the link between the employer, the rehabilitation provider and the claims manager. Provided they are in synch and everyone is comfortable with what is happening in terms of the rehabilitation being provided, that seems to work most effectively. What happens is that often people are getting rehabilitation that does not link in with their opportunities to come back

to their particular workplace. From our experience it is that link and coordination between the three that is the most effective way forward.

The Hon. PAUL GREEN: You have made some comments in your report about commutations. Your final summation was that as long as the client is happy and feels they have got a return you would be for that. Is that a fair statement? If the client got to a place that they were happy with, having their payments brought on earlier and an exit strategy of long-term management—

Mr LENNON: Commutation is a very vexed question. We said in our report it can be cyclical. At some stage commutations come back into favour and everyone is using them and then they become too expensive so they stop using them and go back. We would only support commutations in certain circumstances where it clearly is in the best interests of the worker—return to work options are not viable, for whatever reason, and this is the best way forward for them.

The Hon. PAUL GREEN: In that suggestion I hear a hint that it is what the union may think is in the best interests of the client or are you suggesting the client is in control and in the pilot's seat of this decision-making process?

Mr LENNON: Absolutely. It would not be a decision by the union. We would assist anyone in making that decision.

The Hon. PAUL GREEN: The ultimate choice would come back to the client?

Mr LENNON: That is right.

The Hon. PAUL GREEN: Given that self-insurers are trying to manage their funds and obviously get the best outcome with their self-insurance policies and the way they operate, what would your view be if they were to embrace commutations more? If we opened the way for that to happen, what is your view about what that would mean to the unions?

Mr LENNON: Again, I think you will find there are mixed views amongst the unions when it comes to the question of commutations. It is mentioned in the issues paper. The nature of them, how and where they will work and in what circumstances they will be offered still need to be considered. The ultimate focus has to be on return to work and trying to get people back into the workforce. If commutations are such that it means people exit the system and may be financially well off in the short term but worse off in the longer term, it is not a system we would support.

The Hon. PAUL GREEN: In your comments about commutations on page 32 you say:

> While not opposed in principle to a more strategic use of commutations, the trade union movement would need to be convinced that their use was part of a broader policy package ...

Could you elaborate on what that strategy might look like?

Mr LENNON: I think I have said that the problem with commutations is that they come into favour for a while and they are available but they are not used very strategically. It is just people exiting the system and maybe down the track end up still needing assistance with their work injuries, for whatever reasons, or needing financial assistance because they have not been able to return to work, and the money has gone. It has to be part of an overall strategy of ensuring that it is in the best interests of the workers if they are not going to be able to return to work or they want to move on to somewhere else in terms of work. In that context commutation is the best option for them.

The Hon. PAUL GREEN: If the committee were to make recommendations that brought lump-sum payments back into favour, so to speak, would you be deeply concerned that we would end up with a further growing problem with the lump-sum culture?

Mr LENNON: As I say, our primary focus is always trying to get people back to work and people trying to exit the scheme by way of a lump sum is not a system that we believe is the top priority. But, if there are certain reasons why that should occur we are prepared to consider it.

Mr MICHAEL DALEY: On Monday we heard from some employer groups who were making a point about the interplay between the employer, the injured worker and the doctors who were firstly assessing the injury and then also working with the injured person to get them back to work. They were calling for greater flexibility in that system to allow more communication between the employer and the doctor. They say that because of privacy issues they are prevented from talking to the doctor about the medical condition of their employee and are therefore prevented from implementing more flexible practices to get that person back to work. Do you have any views about that proposition?

Ms MAIDEN: There are problems obviously with privacy and doctors not being able to talk freely about an employee's medical conditions, but any changes that are mindful of privacy and facilitate a return to work would be a positive move. Certainly, in our experience, there is a lot of information provided by doctors about what the capacity of a worker is.

Mr MICHAEL DALEY: To the employer?

Ms MAIDEN: To the employer. Often the problem is more on the other side, in terms of a willingness to create those opportunities for employees even when they are identified in the workplace. In terms of our affiliates we have not heard it is a big problem with doctors not getting information to the employers. We find the problem is more that employers are not willing to create opportunities, are scared to, or saying there is going to be some exacerbation of injury when all the evidence before them is that is not the case. It is a bit of prejudice about the capabilities of people who are injured that is unfounded.

Mr MICHAEL DALEY: We have not discussed journey claims today. Someone earlier in the week discussed journey claims as a philosophical issue. I think it is more than that. One of the propositions in submissions and evidence put to the Committee is we should adopt the Victorian model where we allow the compulsory third party [CTP] motor accidents scheme to wear the treatment for the injured worker. In New South Wales we do not have a no-fault CTP scheme. If someone suffers workplace fatigue and has an accident on the way home, and it is their fault, they would not be covered by that proposition. Could you elaborate on your views as to journey claims?

Mr LENNON: Unions NSW has always supported journey claims. We said in our submission that you are travelling to work to give effect to the employment relationship. The only reason you are undertaking the journey is because you are travelling to work. It has been pointed out to us by a number of people in the medical profession, including nurses and doctors, that the nature of their employment relationship is that they are at-call. They may return home after a shift and get a call to return to work. They have been asked by their employer to return to work and are giving effect to the employment relationship. If they are injured on the way to work they are not covered. That is not acceptable in our mind.

Mr MICHAEL DALEY: One of the propositions is that the scope of journey claims should be narrowed to where there is a direct relationship between employer culpability and the cause of the accident.

Mr LENNON: That is the concept of the employer having no control?

Mr MICHAEL DALEY: Yes. What does Unions NSW say about that?

Mr LENNON: Unions NSW has said in its submission it is a no-fault scheme anyway. Increasingly with the service sector economy and the nature of work there are situations where workers are in positions where the employer does have control because the employee is out on the road or they are travelling to and from work. In the case of travelling to or from work they are often on the mobile about work. There are differing circumstances in the modern workforce which would not make that proposition acceptable.

The Hon. ADAM SEARLE: Some employer organisations have advanced a view about frustrations they have experienced with scheme agents or individual claims handlers and argue for employers having a wider more direct role in managing an employee's return to work or the provision of suitable duties. Does Unions NSW have any particular view about employers having a wider more direct role in managing injured workers?

Mr LENNON: It would be hypocritical for us to say that employers need to take more of a role getting workers back to work and then when employers wanted to take a more active role disagreeing with it. If employers want to take that role we are prepared to investigate it. It would have to be on the basis that the employer has appropriate capabilities to do that. I acknowledge there is frustration amongst a lot of people in the

system that they lose contact with the worker once they have gone off on workers compensation. Anything that can encourage closer relationships between workers and their place of employment would be supported, provided they continue to get the right treatment.

Mr MARK SPEAKMAN: On page 34 of your submission Unions NSW recommends that the average employer premium rate be increased through a process of modest annual adjustments until the scheme's funding position is restored. What is the increase that Unions NSW is advocating and over what period?

Mr LENNON: We have had a discussion about this. One of the proposals from PricewaterhouseCoopers [PwC] is an 8 per cent increase that would have the fund restored over 10 years. That is what we are talking about when we talk about a modest increase.

Mr MARK SPEAKMAN: On the same page, items 7.2 through to 7.7; have you done any calculations about what savings the implementation of any of those recommendations would give to the WorkCover scheme?

Mr LENNON: No, not at this stage. I see that as part of the problem with the whole debate. There does not seem to be any calculations about any of the proposals brought forward either in the issues paper or from other submissions. That is why we see it as important to have more time and have asked for that time.

Mr MARK SPEAKMAN: Item 7.2; what specific measures do you have in mind?

Mr LENNON: People are aware that WorkCover is doing a lot of work in the area of claims agents already. I think it has to be something along the lines of the Victorian model where there are clear protocols about how the agents perform their functions and how they are relate to the claimants and providers. There has to be a system agreed amongst the agents with oversight by WorkCover about how the system works and how claimants are dealt with.

The Hon. TREVOR KHAN: I take it that you agree with the proposition that if there is a premium increase over 10 years and the scheme continues to run at a loss for 10 years, that the essential net pool of funds available into the future will be reduced each year to fund its running at a loss?

Mr LENNON: I accept that premise.

The Hon. TREVOR KHAN: Therefore, in terms of a reduced pool of funds there will be less premium income that is available to help sustain the fund into the future.

Mr LENNON: We are arguing, Mr Khan, very clearly that the focus should be on prevention in the first instance. Let us go back to first principles here.

Mr MICHAEL DALEY: Let him answer the question.

Mr MARK SPEAKMAN: He is not answering the question.

CHAIR: Order!

Mr LENNON: We are assuming there is no improvement in the occupational health and safety outcomes in New South Wales. Our view is that is where the focus should be and that will help the scheme come back into surplus.

The Hon. TREVOR KHAN: The annual report of Unions NSW that you signed off, shows on page 26 a continuing reduction year on year in workplace injuries, does it not?

Mr LENNON: Absolutely.

The Hon. TREVOR KHAN: If you go to page 27 not only does it show that but it shows a reduction in the number of claims per 1,000 employees, does it not? Yes.

Mr LENNON: Yes.

Mr MARK SPEAKMAN: Which year is that?

The Hon. TREVOR KHAN: Year 2010-11. You have known that consistently, year on year, the rate of injury performance and rate of claims performance has been improving. Where the problem has been is in medical expenses and the length of time, for instance, that people have been off work. You have been told that year on year, have you not?

Mr LENNON: Yes.

The Hon. TREVOR KHAN: For instance, on page 4 in the middle of the page you refer to an emphasis upon an examination of the behaviour of those employers whose negligence has resulted in so many serious injuries. Statistically, if you place emphasis upon that, what is demonstrated is that is one of the key factors that is improving year on year. The factors you seek to place emphasis upon in your submission are the factors that are improving. What you do not place emphasis on are the factors that are deteriorating; increases in medical costs and the time that people are off work.

Mr LENNON: Yes, we do.

The Hon. TREVOR KHAN: Is that right?

Mr LENNON: Absolutely. First of all, the way to lower the time that people are claiming payment is this: Better return to work outcomes with more responsibility on the employer to get people back to work. Everyone accepts that medical costs are higher across the community. As PricewaterhouseCoopers [PwC] have said, there needs to be better management and a holistic approach to the question of medical cost. Unions NSW accepts there is a problem and we have put a solution forward.

The Hon. TREVOR KHAN: If the fund continues to deteriorate would you propose that there be—

Mr MICHAEL DALEY: Point of order—

The Hon. ADAM SEARLE: Point of order: Time has expired, Mr Chair.

The Hon. TREVOR KHAN: —an increase over and above 8 per cent?

CHAIR: Finish this question and that will be the last one.

Mr LENNON: Our view is that the focus of the Workers Compensation Scheme is getting the best outcome for working people and that means trying to get the best outcomes for working people getting back to work. If there are problems with premiums then we have to reconsider the issue. We do not necessarily want to go down that path and that is why we are saying let us look at the scheme, administration, return to work outcomes and medical costs because that is where Unions NSW believes that savings for the fund can be found.

CHAIR: I thank you, Mr Lennon and Ms Maiden, for coming.

Mr LENNON: Chair, I wanted to come back to Mr Speakman's questions about liabilities. I do not know whether I am out of order here, but I would like the opportunity to take those on notice and come back with a response. I want to come back to Mr Speakman's questions; and I want to make clear which ones—about liabilities, claims—

Mr MARK SPEAKMAN: The questions have been answered, Mr Chairman. That is out of order.

CHAIR: Mr Lennon, if you want to take something on notice, I will allow that.

Mr LENNON: Thank you, Chair. I will take from the Hansard transcript Mr Speakman's questions about the liabilities and the misleading advertisements and provide answers to the Committee on those questions.

CHAIR: Thank you. The secretariat will provide you with a transcript, which will have the questions you have taken on notice highlighted. The Committee has resolved that answers to questions taken on notice be returned to the Committee within three working days after you have received the transcript.

Mr ROB STOKES: Chair, on that basis, can I ask some questions on notice?

CHAIR: Yes.

(**The witnesses withdrew**)

CASEY SUZANNE YOUNG, Senior Industrial Officer, United Services Union, sworn and examined:

CHAIR: Welcome, Ms Young. Ms Young is Senior Industrial Officer with the United Services Union. Regarding questions on notice, you are advised that if there is any question that you would not be able to answer today but would be able to answer if you had more time or had certain documents to hand, you are able to take the question on notice and provide the Committee with an answer at a later date. Regarding in-camera deliberations, you are advised that if you should consider at any stage during your evidence that your response to a particular question should be heard in private by the Committee, you may state your reasons and the Committee will then consider your request. Would you like to make a five-minute opening statement prior to taking questions?

Ms YOUNG: Yes, thank you.

CHAIR: Please go ahead.

Ms YOUNG: I refer the Committee to the submission from the United Services Union to the Joint Select Committee on the NSW Workers Compensation Scheme filed on 10 May 2012. I trust that members have been provided with the opportunity to view that submission. In preparing the document, we sought to address some of the major concerns that we see with the issues paper that has been produced. I would be willing to take questions in respect of those particular issues. We sought to address in turn the 16 propositions in the issues paper, and I would welcome questions on those. I would draw the Committee's attention to the preliminary observations made in our paper; we stand by the representations in that document.

Mr MICHAEL DALEY: I want to get a feel for the United Services Union. How many workers does the union represent?

Ms YOUNG: Forty thousand members across a range of industries, including local government, clerical and administrative, airlines, and the energy and utility sectors.

Mr MICHAEL DALEY: One of the things that you raised in your submission, at page 18, is something that I do not think anybody else has raised; that is, that there should be an open and transparent review of the operations of WorkCover itself to consider, as you say, elements of waste, duplication and red tape. Do you want to elaborate on that?

Ms YOUNG: Thank you for that opportunity. We are saying that there are a number of difficulties with regard to duplication and red tape. We say that the money spent on WorkCover from collected premiums is quite problematic. I would seek to take that question on notice in order to provide some further documentation to support that.

Mr MICHAEL DALEY: You talk about waste, duplication and red tape. Would it surprise you to learn that some of the employer groups on Monday gave the same evidence about duplication, wast and red tape in WorkCover?

Ms YOUNG: No, that would not surprise me.

Mr MICHAEL DALEY: I ask you the same question that I have asked a number of witnesses on an important facet of one of the 16 recommendations in the discussion paper: that is the view that the workplace injuries threshold for seriously injured workers should be put at 30 per cent. Do you have a view about that?

Ms YOUNG: Yes, the union does have a view on the threshold. We say that it is quite onerous. Suffering a workplace injury can be significant and life-changing; and we say that that figure is very problematic.

The Hon. ADAM SEARLE: In relation to the 30 per cent whole person impairment threshold, do you have any sense of how that would impact on workers that you cover who have been claimants on the scheme?

Ms YOUNG: From the outset we would certainly say that there can be some difficulties in the amount of impairment that occurs; obviously, because we are represent members across a number of different industries, some members would be what we refer to as outdoor workers who would be performing quite a number of duties with physical or manual aspects, whereas we also have clerical and administrative workers who would be more sedentary in their duties. But, having said that, I might point out that the nature of an injury can vary greatly, and that can of course impact the way duties are performed in the future.

The Hon. ADAM SEARLE: In terms of the experience of your members, what have been the key barriers to their return to work?

Ms YOUNG: From the experience of members and from the information they are giving us as we work through their matters, I can say there is a general reluctance on behalf of employers to engage workers for a longer amount of time once a workplace injury has occurred. You will note that in our submission we touched on a number of examples of different employees, both employed in outdoor work and employed on indoor work, and we sought to chart the difficulties that they faced in retaining work. We also mention in our submission that employees terminated from their employment face a great struggle to gain future employment, on the basis that they are injured and may not be able to perform other duties for which they are trained.

The Hon. ADAM SEARLE: In the experience of your union, what are the key reasons advanced by employers as to why suitable duties are not able to be located for injured workers?

Ms YOUNG: Those responses can vary. A lot of the time we get indications that the duties that the member was previously performing prior to the injury are no longer able to be safely performed by that member. Often we seek redeployment for that member but it is generally the case that the response comes back from the employer that despite a thorough search of the employer's workplace there is no suitable place to redeploy the injured worker.

The Hon. ADAM SEARLE: Is that the case with large employers?

Ms YOUNG: I tend to find that that is the case, yes.

The Hon. ADAM SEARLE: What steps does your organisation believe have to be taken, or changes made to the scheme that would improve return-to-work rates?

Ms YOUNG: We say that there should be a greater degree of education particularly for the medical providers who are engaged in assessing and reviewing injured workers to the extent that they would have a greater knowledge, and perhaps even some more compassion towards people who are injured in the workplace that are seeking to return to work.

The Hon. ADAM SEARLE: Do you think the employer's current legal obligations to find suitable work need to be reviewed and perhaps improved?

Ms YOUNG: I certainly believe that there is room for improvement. Again I would draw back to educating employers on their responsibilities in regard to putting back injured workers in the workplace, yes.

The Hon. ADAM SEARLE: On page 15 of your submission you indicate that proposals to strengthen the regulatory framework for health providers is a sort of Big Brother approach. What does your organisation believe can be done to improve the role performed by health providers in the scheme?

Ms YOUNG: Principally I would take this question on notice, but the very preliminary remarks that I do make is to again refer to my previous response regarding further information and education for health providers so that they are quite aware of what it is that is required in dealing with injured workers.

Mr MARK SPEAKMAN: When a worker dies, and there is a death benefit, do you think the death benefit should be available if the worker has no dependents?

Ms YOUNG: I take that question on notice. I would make some very preliminary remarks that perhaps that benefit should be conferred on the estate for proper division according to the current legislation.

Mr MARK SPEAKMAN: When there is an estate but no dependents you say it should nevertheless go to the estate?

Ms YOUNG: Yes, for proper division according to legislation.

Mr MARK SPEAKMAN: The Hon. A. Searle and Mr Daley asked about an appropriate threshold for severely injured workers and you thought 30 per cent was too high. Where do you put it?

Ms YOUNG: I will take that question on notice.

Mr MARK SPEAKMAN: Do you have any idea at the moment of some range where you would put it?

Ms YOUNG: I am prepared to take the question on notice.

The Hon. ADAM SEARLE: Point of order: The witness gave her answer—she said she would take that question on notice.

Mr MARK SPEAKMAN: I am entitled to probe.

CHAIR: I allow the question.

Mr MARK SPEAKMAN: Do you have any idea at the moment of an approximate range in which you would put the appropriate threshold for a severely injured worker?

Ms YOUNG: In response I say I will take that question on notice.

Mr MARK SPEAKMAN: Is it the case that you have come to the committee today opposing 30 per cent but you have no idea where you would put it?

Ms YOUNG: I disagree with the term "no idea" but obviously I would need to take the question on notice and confer with senior management within the union.

Mr MARK SPEAKMAN: The Bar Association has put a number of proposals to the committee. Have you seen its submission?

Ms YOUNG: No.

Mr MARK SPEAKMAN: Part of the Bar Association's seven-point reform plan is to reintroduce the concept of fault as a mitigating factor in journey claims. What is your response to that?

Ms YOUNG: I will again take that question on notice, but we certainly are supportive of the issue of journey claims being maintained. I would indicate that travel to and from work is a critical part of a worker's daily routine. We would certainly say that those claims should be upheld.

Mr MARK SPEAKMAN: The Bar Association also says that claims handling guidelines for scheme agents should be revised to ensure that evidence presented by a worker is effectively challenged. The Bar Association also says that, for example, at present an employer has only 42 days to respond to a pre-filing statement which means that a plaintiff's expert evidence is almost never challenged as employer's representatives do not have the time to obtain proper expert reports. Will you comment on that?

Ms YOUNG: I will also take that question on notice.

Mr MARK SPEAKMAN: I ask you to take on notice each of the seven points in submission No. 77 of the Bar Association and provide a response?

Ms YOUNG: Yes.

Mr MARK SPEAKMAN: On page nine of your submission in the third paragraph that commences "Nowhere can it be seen …" are you saying that monies are being poorly spent on rehabilitation at the moment?

Ms YOUNG: We are saying that there could be a better distribution of those monies that are being afforded to rehabilitation, yes.

Mr MARK SPEAKMAN: How do you see that working?

Ms YOUNG: I will take that question on notice.

Mr MARK SPEAKMAN: On page 15 of your submission under the heading "Targeted commutation" in your discussion of item 15, you conclude by saying that it is appropriate to utilise commutation and a greater flexibility is appropriate. What restrictions, if any, do you think there should be on the availability of commutation?

Ms YOUNG: I will take that question on notice also.

Mr ROB STOKES: I refer to your concluding observations on page 17 where you have suggested that multiple factors may have led to the situation the fund finds itself in at this stage. However, that is not due to what you describe as lazy or indolent workers. What are those multiple factors?

Ms YOUNG: There are a range of factors that have led to the situation. We certainly would be reinforcing that preceding paragraph that it is not the fault of the worker who simply seeks to flout their obligations to return to work. I am happy to provide some further documentation on notice.

Mr ROB STOKES: On notice, okay. I refer to page four of your submission after the numbering 1, 2, 3 where you have suggested there is nothing intrinsically meritorious about any of the proposals in the issues paper about reform. In your concluding observations at page 18 you point to reforms that could be made to the WorkCover Authority to identify elements of waste. You also talk about premiums. I refer to those two paragraphs. In relation to the review of the WorkCover Authority itself, is your union aware of any instances of waste that you believe could be the subject of reform?

Ms YOUNG: I will take that question on notice and seek to provide some further documents, yes.

Mr ROB STOKES: In relation to premiums you have suggested an increase in premiums should not be regarded as taboo in dealing with the deterioration in the performance and sustainability of the scheme. Are you prepared to quantify what you mean by that?

Ms YOUNG: I will take that question on notice.

The Hon. NIALL BLAIR: I refer to your comments on page 18 of your submission in relation to premiums. It has been asserted there has been a loss of premium income in the order of $1 billion per year. I assume that comes out of the WorkCover annual report. Is the United Services Union a member of Unions NSW?

Ms YOUNG: Yes.

The Hon. NIALL BLAIR: Is it correct that the premiums are set with the recommendation that follow from the WorkCover board to the Minister?

Ms YOUNG: I will take that question on notice.

The Hon. NIALL BLAIR: If the United Services Union has concern about the reductions in premiums, and the WorkCover board has made a recommendation to the Minister over a series of years for a reduction in premiums, has the United Services Union raised the concern about a reduction in premiums with Unions NSW, and in particular, its representative on the WorkCover board?

Ms YOUNG: I will take that question on notice.

Mr MARK SPEAKMAN: Do you advocate an increase in premiums to deal with underfunding of WorkCover?

Ms YOUNG: I will take that question on notice.

Mr MARK SPEAKMAN: Do you agree that the level of premiums is fundamental to the sustainability of the WorkCover Scheme?

Ms YOUNG: In some regards yes, but again I will take the question on notice.

Mr MARK SPEAKMAN: You are incapable of telling us what you think should happen to premiums?

Ms YOUNG: I am willing to take the question on notice.

The Hon. TREVOR KHAN: There seems to be some evidence before the committee that over some years now there has been a deterioration in the performance of the fund—it has been running at a loss. Were you aware of that?

Ms YOUNG: Yes.

The Hon. TREVOR KHAN: Was that something that Unions NSW from time to time advised its members of?

Ms YOUNG: I would need to take that question on notice.

The Hon. TREVOR KHAN: Were you aware whether Unions NSW was telling its members that the team was going to hell in a handbasket?

Ms YOUNG: I am taking that question on notice because I could not comment specifically on Unions NSW activities.

Mr MARK SPEAKMAN: Did you write the submission to this committee for the United Services Union?

Ms YOUNG: I assisted with its preparation, yes.

The Hon. PAUL GREEN: On page 2 of the submission at the top it says that the assertions made in the issues paper as to the financial circumstances of the fund are not accepted as correct. How did you come to these assumptions?

Ms YOUNG: In reviewing the issues paper I can indicate that I am not an actuary or have any kind of financial accounting skills. I do not have that knowledge, therefore, in my view, in reviewing the documents it seems to be the case that there could be some flaws within that process, yes.

The Hon. PAUL GREEN: Are you aware that the Auditor-General made comment on it?

Ms YOUNG: I will take that question on notice.

The Hon. PAUL GREEN: In terms of commutation, how does the United Services Union see the opportunity to maybe have an exit strategy on people's situations in terms of getting out of the workplace, given their injury and work capacity?

Ms YOUNG: We would certainly view that particular line of questioning in regard to taking each individual case on its merits. We would certainly take the time to review the individual member's matter before making any firm decision. In that regard I would simply say that it is on a case-by-case basis.

The Hon. PAUL GREEN: Would you be of the view that even on a case-by-case basis if the worker was happy for that exit strategy being a lump sum payment you would endorse it?

Ms YOUNG: I would refer back to our comments in the submissions that one size does not fit all and what is appropriate for one individual may not be appropriate for another.

The Hon. PAUL GREEN: But if the worker is happy to do that would you—

Ms YOUNG: If the worker is happy, but again that would be individually specific.

The Hon. PAUL GREEN: You mentioned journey claims and how they may be carried in another level of insurance rather than through the workers compensation scheme. What would your union's view be on that?

Ms YOUNG: I will take that question on notice and provide a firmer view at a later stage.

CHAIR: You have taken a number of questions on notice. The secretariat will provide you with a transcript with the questions you have taken on notice highlighted. The committee has resolved that answers to questions taken on notice be returned within three working days after you have received a transcript. If that is not enough time just apply for a little extra time if you need it. Thank you very much, Ms Young.

(The witness withdrew)

RITA MALLIA, State President, Construction and General Division, Construction, Forestry, Mining and Energy Union, affirmed and examined:

IVAN SIMIC, Solicitor, Taylor and Scott, and

JODIE WORMLEATON, Spouse of injured worker, sworn and examined:

CHAIR: Witnesses are advised that if there are any questions you are not able to answer today but that you would be able to answer if you had more time or certain documents at hand, you are able to take a question on notice and provide us with an answer at a later date. Witnesses are advised that if you should consider at any stage during your evidence that your response to particular questions should be provided in private to the committee, would you please state your reasons and the committee will then consider your request. Ms Mallia, would you care to give a short five-minute statement?

Ms MALLIA: Yes, thank you. On behalf of the Construction, Forestry, Mining and Energy Union [CFMEU], New South Wales Branch, I thank the members of the inquiry for your time today. Today we would like to supplement our submission that we have already lodged with you. How we would like to do that is to introduce to you a number of workers who have travelled here far and wide so that we can tell you the stories of their experiences in terms of workers compensation.

We have had words batted around, like "lump-sum culture" and "pot-of-gold mentality", and these concepts have been the subject of discussion, as I understand, this week. We are also easily consumed with words like "deficit", "billions of dollars", "cost to employers". It is also very easy to be overwhelmed by what the coterie of actuaries has to say when they appear before you and crunch the numbers. But so far in this inquiry we have had very little said about the cost of workers compensation, and that is the human cost associated with cutting benefits and reducing access.

It was easy for us to put down some case studies in our submission, and you will see those before you, and I do not propose to transgress those. But today I would like to put a face to people that are affected by the changes that you are considering in this inquiry. They are not a minority of people; they are a cross-section of workers who suffer a range of injuries, all of which, if you give us the opportunity to go through them all, will answer some of the questions you have about journey claims, about the thresholds—some of the questions that I have heard you ask some of the witnesses before us. The workers are here voluntarily; they come here because they are concerned about themselves and their families, but they are also concerned broadly about other workers and workers in the future, who, at the end of the day, we consider stand to be the big losers in all of this.

That is what I want to say in opening. I would like to now go through and start our journey with these workers. First, I would like to introduce Sanja Budesa. Sanja is the mother of two young children and she lost her husband five years ago, leaving her and two children at that stage only one and three. Her husband was a formworker and he died in a car accident on the way home from work. While driving home alone in his car he ran into a concrete truck and was crushed, dying on impact. It happened after a long working day on-site, stripping formwork, moving shutters. Police found there was no issue of drugs or alcohol in the cause of the accident. He left behind a wife, Sanja—behind us—who had already lost part of her leg in a previous accident, and their two children. Without journey claim provisions under the Workers Compensation Act her family would have been left destitute and forced to sell their family home. That is one example of why we need journey claim cover for workers travelling to and from work.

I have two other examples. Glen Stone, a 47-year-old, is not able to be here today. Glen is a scaffolder and another Construction, Forestry, Mining and Energy Union member. He has been a construction worker for 20 years and lives in Miranda. He had never made a compensation claim in his life until a few weeks ago when he had an accident travelling home. He was working on a construction site at Macquarie University and he has travelled from Cronulla to the university for the past couple of months. Each morning he gets up at 4.30 a.m. and leaves his home in Miranda and travels until about 5.00 a.m. to get to work at North Ryde.

As members may or may not know, scaffolding is hard physical labour involving heavy lifting and handling of steel tubing. It requires a lot of climbing and a good sense of balance while erecting and dismantling scaffolds. On the day of his accident, Glen did overtime as usual and finished work at 5.30 p.m. He had been up since 4.30 a.m. About 15 minutes later, while travelling south through North Ryde, he ran into the back of a vehicle and came off his motorbike. He was not affected by drugs or alcohol; he was tired. He has suffered

multiple injuries as a result of the accident and is undergoing substantial surgery on his right arm, which is essential in his work as a scaffolder. He will be unable to work as a scaffolder for at least a couple of months following his surgery. He is not covered by the New South Wales compulsory third party motor vehicle green slip scheme because no-one was at fault in his motor accident. Fortunately, he is protected by journey claims provisions under the Workers Compensation Act. Glen's employer is a small scaffolding contractor who realistically will struggle to find anything much in the way of suitable alternative duties for a scaffolder without the use of one arm. There is a real risk that this accident will result in Glen losing his job despite his best efforts and those of his employer to get him back to work. This is yet another reason that we need a proper insurance scheme to cover workers in this situation.

I will now address the 30 per cent threshold. I will introduce the Committee to three workers: Tom, Justin and David. Tom and Justin are here today and David's wife, Jodi, is here on his behalf because he cannot travel. These men were all dogmen in crane crews. Crane crew members are usually the first workers on a construction site—they are often up at 4.00 a.m. or earlier. They set up heavy mobile cranes before the traffic increases. They are also often the last on site, working back to make the one last lift that every builder wants so that materials are in place for the commencement of work the next day. They earn good money—more than $2,000 clear in the hand—working six days a week. They spend their working lives with big, heavy machinery and moving machinery with heavy loads, and when things go wrong it is catastrophic.

All these men had part of their leg amputated as a result of a crane accident at work. No normal, reasonable person could possibly say that these men do not have serious injuries or deny them the right to claim work injury damages for their loss of earning capacity. The alternative is a paltry weekly sum until the age of 66, or for two years if at the end of the day benefits are cut off. That amount is little more than social security. Unbelievably, for some reason we need to double the current limit of 15 per cent to 30 per cent. Any whole person impairment percentage threshold is in the best of times artificial and arbitrary, but 30 per cent is ridiculous. That is why I have related these men's stories. David Wormleaton is 48 and his wife, Jodi, is here. They have two children and their son Michael suffers cerebral palsy. David suffered a severe crush injury resulting in a below-the-knee amputation. He receives weekly medicals and enormous financial strain has been placed on his household. He and his wife try to survive on weekly compensation payments.

Justin Williams is 29 years of age and is single. On 22 February 2012—just a few months ago—his leg was amputated above the ankle. Thomas Rigby is 36 years of age and is married with five children. Justin was injured on 22 February 2012. He suffered a partial amputation of the left foot, giving him a whole person impairment of 26 per cent. The insurer requires him to look for 10 jobs a week. He complies, but to date has been unsuccessful in securing employment. He will never be able to return to work as a crane driver. That is why the Construction, Forestry, Mining and Energy Union opposes an increase in the whole person impairment to 30 per cent. That would exclude workers like these men from being able to claim civil damages where there has been negligence on the part of the employer. We think 15 per cent is too high and that is why we opposed the 2000 increase and why we oppose the increase to 30 per cent now. At the very least, it should stay at 15 per cent.

I will now deal with other injuries that have very little chance of getting over the 30 per cent threshold. I introduce to the Committee Michael Jones, Michael Perks and Ivica Troglic. These building workers all have serious orthopaedic injuries that will stop them ever working on a building site again. They will struggle to reach the 15 per cent threshold let alone the 30 per cent threshold. Because they are members of double-income households they will be hit hard if benefits are cut after two years. After serious orthopaedic injuries with often very long periods of post surgery recovery, just coping with daily living let alone heavy manual work is a struggle. In old age these workers can look forward to increasing chronic pain from arthritis, which is accelerated.

Why are these workers not entitled to have a proper workers compensation scheme that insures them and their families during these difficult times? Michael Jones had hoped to speak to the Committee today, but we have been told that we can have only one additional witness. He has been struck by lightning twice and has come from the Shoalhaven to tell his story. If members were to look him in the eye they may notice that he has one glass eye. That is the result of an accident at work when he was a young bricklayer, just before the last time they gutted the workers compensation scheme in 2001. He would tell the Committee that although he had to give away his trade as a brickie because of difficulties he had with laying a straight course of bricks and working at heights with his reduced perception and sight he was at least he able to claim proper lump sum damages.

Michael has managed to regain control of his life settle down, marry, establish a home, have kids and find other work. He recently suffered a serious injury to his back at work and part of a disc in his spine has been removed. He can tell members that being on workers compensation he is treated as though he is a criminal. All he wants to do is to get off it. Being able to lodge a civil damages claim will allow him that opportunity. Michael's old injury—losing his eye—would not reach the 30 per cent whole person impairment threshold and would not be considered serious enough to claim work injury damages. His current injuries, as devastating as they are, also may not qualify him. The 15 per cent whole person impairment threshold is already very high.

Michael Perks is 29 years old and has a wife, Shannon, and a daughter, Madison, who is four years old. Michael was a steel fixer and he left school in year 9. On 2 August 2011 he lost his balance and fell onto concrete. He injured his lower back at L5/S1 and suffered a lumbar disc prolapse. Ivica Troglic is 44 years old and has a wife and son. He was educated in Bosnia to year 11. As members know, many workers in the building industry come from non-English-speaking backgrounds. Ivica's English very limited and he has been a form worker since coming to Australia in 1990, but he has no formal qualifications. He was stripping plywood on a construction site when he fell to the concrete 5.8 metres below, suffering serious multiple fractures to arms and legs and leaving him with steel plates. The effects of these injuries on these workers and their families is obviously devastating.

Unfortunately Daryl Baker is unable to be here today because he is awaiting surgery. Daryl is 48 years old. He and his partner have a daughter and a foster child, and a mortgage. Since leaving school in year 10 he has been a plant operator with South Coast Equipment. He suffered a lower back injury and an injury to his left leg. He returned on light duties despite his injury and he kept on doing light duties until his employer terminated him. He requires anterior lumbar interbody fusion. There has been a dispute with the insurer as to the appropriate medical treatment. I am not a doctor, but the insurer's surgeon wants to approve posterior surgery which I understand is cheaper, but his treating surgeon is advising that he needs anterior surgery.

Mr SIMIC: If I may interrupt, Ms Mallia. I personally handled this issue recently with Mr Baker and it was just absolutely amazing: We had a 30-year-old claims officer from the scheme agent arguing with a highly respected neurosurgeon in Randwick as to what was the best way to perform this surgery on this gentleman's back. It has been delayed for quite a while. They have finally approved it. This man has got serious problems with his back injury. He kept working for three years after his injury and he has only recently been terminated. It just gives you an idea how unreal the world is that WorkCover lives in. If you want to listen to me later on I am happy to give my opinion.

Ms MALLIA: One other example is David Skeates. David is here today. He is 50 years old. He was a hospital wards-person with the New South Wales Department of Health, a pretty significant employer. Because of the stress of being on workers compensation, he and his wife are now separated. They have two daughters, aged 11 and 12. He left school at year 10. He has done manual work all his life. He suffered a serious injury to his left arm, ripping off muscle from bone whilst manually handling a patient who was having a heart attack. He has had surgery many times. He fought tooth and nail in the industrial courts to stay employed, but lost. If big employers like the Department of Health cannot find a job for him, what hope do small employers have?

That brings me to our next point and that is the argument that is made that if people are off benefits quicker then they will go back to work. But employers out there do not employ injured workers. When workers who have had a workers compensation injury disclose to any prospective new employer that they have had a workers compensation claim they do not get an interview, let alone a job. And you can tell that from the advice that employers get. I do not want to defame anybody but recently there was a Continuing Legal Education paper provided by an eminent employment lawyer which I will quote from. This is the advice that employers get from their lawyers:

> If someone has made a workers compensation claim get them back to work, get them cleared, make a strategic assessment and then find a reason to sack them.

That is the advice that lawyers on the employer's side of the table give to employers. That is why we are not in any way convinced that the changes that are being proposed would actually lead to people getting back to work. I heard a question earlier about rehabilitation and about how rehabilitation could be better utilised. Quite frankly, in the 16 years that I have worked as a CFMEU representative, largely representing members in workers compensation and often fighting for their employment, the thing that they all tell me is that they all want to get back to work. Nobody wants to be on $432.50 a week. They want to get back to work. They want to earn the bucks that they were earning before they left. We are talking about workers who earn in excess of $1,500 to $2,000 working six days a week. There is no pot of gold if they are stuck on workers compensation.

But often there are people who are not able to be brought back to work and they are now forced to go through the rigmarole of rehabilitation and what I think are aimless processes. I will give you two examples.

Robert "Bob" Hanlon, who is here, is 61 years of age and a member of the CFMEU. He has a wife, Deborah. Prior to his injury he was a glass process labour. He left school at 15. While pushing a trolley containing 100 kilograms of glass up a slope he lost control and injured his right shoulder. He has got a rotator cuff injury and the repair surgery has failed. His right rotator cuff is now irreparable and he requires a total shoulder replacement. His left shoulder subsequently also became damaged and he underwent surgery to his left shoulder in May 2011 and he has tried to return on suitable duties. In 2007 with the same employer, whilst on suitable duties, he was lifting heavy sheets of glass, mainly using his left hand because his right shoulder was sore. As he lifted he felt lower back pain radiating to the right foot and he suffered an injury to his lumbar spine at L3/L4 and L4/L5 and has a disc protrusion. He was placed on permanently modified duties.

Robert would have liked to have stayed employed on suitable duties but he was finally put off work on 23 April 2008. He has since carried out volunteer work, such as being a Santa Claus for the Lion's Club and collecting money for the Salvation Army and the Cancer Council. He has applied for countless jobs in numerous industries and has not had success in securing one single position. Numerous doctors have actually advised him that there is no meaningful employment which he is capable of carrying out and he will never be able to work again.

A final example is Jose Salimao. He is here with his wife, Amparo. Jose is now in his sixties. He was in his mid fifties when he was injured. His wife, Amparo, works in a nursing home to keep paying the mortgage, having used his superannuation in crisis to pay his debts. He was born in the Philippines. His native language is Tagalog. He can speak English but has limited ability in terms of reading and writing. He moved to Australia in 1989, found a job within two weeks and was with the same company as a carpenter when he suffered his injury in 2003. Initially he had a few days off, then he returned on light duties. He could not tolerate those light duties and was certified unfit for work on 24 November 2003. He underwent surgery on 12 January 2004 and was terminated just after his operation. Jose has undertaken countless forms of rehabilitation without any real ongoing benefit, and he has not been able to work since 2004.

These are just some of the cases where the system should provide support. Rather than wasting money on endless rehabilitation and box ticking and forcing these people to do really unreal job searches when really there is no prospect of them finding alternative employment, that money could be better spent actually training younger injured workers back into the workforce and so that the workers compensation system provides a bit of decency and benefits and support. In conclusion, we do not believe that reform to the system to deliver savings needs to be achieved by abolishing workers rights. We have set out some options in our paper. Given the time that we had to put the submission in, we have not been able to really elaborate further on those but I am happy to take questions about your views. But we would like to see a consideration of why WorkCover requires $718 million to operate. Where is the consideration of how much money is being lost to employers who do not properly declare their wages and fail to pay proper premiums? At one point WorkCover was quite active around this issue. In the building industry we see it every day.

It is very easy to not have to pay your full complement of workers compensation premiums. You just get a certificate, you tell and an insurance company you have got five workers, 20 workers lob up on the job, nobody checks and you hope that nobody gets injured. Work is done, full premium is not paid for the full scope of employees and at the end of the day those employers are able to bid cheaper for the jobs than those employers who are actually doing the right thing and paying their full complement of premiums. Why is this inquiry not asking that of WorkCover and the activity around that, because there is certainly lot of leakage in construction. I would think any industry where there is a subcontracting type of situation where one subcontractor subcontracts to another subcontractor and there is a chain there is plenty of scope for employers not to be paying their proper premiums. Where is the consideration for employers to provide meaningful and secure employment? I have given you a couple of examples of how easily—

Mr MARK SPEAKMAN: Mr Chairman, I am concerned that we are going to run out of time. You have asked each witness to make an opening statement of five minutes; this opening statement in my estimation has now gone for 15 minutes. I am concerned we are going to run out of time to ask questions.

CHAIR: I think that is in order, Ms Mallia. I am going to allow questions now.

Mr MICHAEL DALEY: Ms Wormleaton, your husband is injured, is he?

Ms WORMLEATON: Yes.

Mr MICHAEL DALEY: How has the injury to your husband affected your family?

Ms WORMLEATON: I have actually written something down because I thought I would get up here and go blank. We used to be a very active family. We used to do a lot of waterskiing and jetskiing and stuff like that. Also motorbike riding and all those types of things. We do not do any of those anymore. Dave used to take my son out a lot. My son has cerebral palsy and does not get around so well on his own, so jetskiing and motorbike riding was something that he really, really enjoyed. I cannot lift the motorbike onto the back of the ute so I cannot take him.

Dave actually contracted golden staph while he was in hospital. He has since passed that on to me and my daughter. My son had to be tested before going into hospital. He has had a couple of operations since Dave's accident. He had to be tested before he was allowed to go in to have his operations in hospital, obviously to not spread it. Dave does not sleep very well and hence keeps a lot of us awake, wandering around during the night, because he is not exactly twinkle toes and it is very cumbersome now with his leg and that type of thing, so he is actually quite loud. His balance is not so good now, and when you get up in the middle of the night to go to the toilet with one leg your aim is not exactly the best, which creates a lot of extra housework for me. We have spent 24/7 together basically for the last three and a half years, which causes tension because you are not getting time to yourself.

The Hon. ADAM SEARLE: What would be the impact in your industry of a 30 per cent whole person impairment, based on your knowledge of the level of impairment of past claimants?

Mr SIMIC: Certainly if you lost your eye that would not be enough to get you over the threshold. If you lost part of your leg, you would not get over the threshold. Basically, the only people who could get over that threshold are people that are virtually in a coma. We have a client, Ms Potter—she apologises that she could not come—whose husband is in a coma, or literally, he has had serious brain damage, and that sort of injury will get over the 30 per cent threshold. It is just unbelievable that we are here again. I was involved in the 2001 reforms that brought a different generation of workers here to Parliament House, and now they are thinking of raising it to 30 per cent. You might as well not have a system.

The Hon. ADAM SEARLE: On the issue of weekly benefits, in your industry is it the actual take-home pay that people were on at the time of injury that they get, or is it another amount, and how is it calculated for your industry?

Ms MALLIA: The majority of our workers do a lot of overtime. They have a standard 38 or 36-hour week, so in the first six months of being totally unfit they would receive their 38 hours or 36 hours a week, but most of our members would work 50 or 60 or 70 hours a week—they would be taking home a lot of overtime. That contributes quite significantly to the high wages in the industry and from day one they lose that overtime. You do not get overtime on workers compensation, so from day one they suffer a financial disadvantage.

The Hon. ADAM SEARLE: Are they paid the award rate of pay? What if the worker is paid over the award for their work? Do they get their actual take-home pay or is it only the award rate?

Ms MALLIA: If they are covered by an enterprise bargaining agreement they get the ordinary rate of pay for that enterprise agreement, so that would exclude overtime and allowances. If they are on award, they get the basic 38 hours pay. If they are not covered by an enterprise bargaining agreement, which offers a rate of pay that is in a registered instrument, they would just receive the award rate of pay, even though in reality they might have received a higher, over-award hourly rate of pay.

The Hon. ADAM SEARLE: By and large, when your members are on workers compensation, on weekly payments, they are being paid a lot less than they would be if they were at work?

Ms MALLIA: From day one.

The Hon. ADAM SEARLE: So they already have an incentive to return to work.

Ms MALLIA: That is right.

Ms WORMLEATON: And I think after 26 weeks it drops down to less than half.

Mr MARK SPEAKMAN: Ms Mallia, is your union affiliated with Unions NSW?

Ms MALLIA: We are an affiliate of Unions NSW.

Mr MARK SPEAKMAN: Do you agree with its submission that premiums for this scheme should increase?

Ms MALLIA: I think ultimately they might have to. If there are not other savings that can be made, and you are convinced that savings do need to be made, then ultimately premiums might have to go up. I think there are measures that can be taken in the way the scheme is managed which might actually recover some of your savings without having to go down that path, but if at the end of the day that is the solution, then that is the solution.

Mr MARK SPEAKMAN: Do you have any idea of what increase of premiums you might be comfortable with?

Ms MALLIA: I do not have any idea what the appropriate rate would be. I am not an actuary. Like I say, we think there are options in here where you could make savings—collecting premium at the rate that is currently priced from everybody, not just from some employers, savings in respect of insurance agents and savings in respect of WorkCover—and you might not have to increase premiums at all. How high they would have to be, I do not know.

Mr MARK SPEAKMAN: Have you calculated any of those savings that might be made in other areas?

Ms MALLIA: No.

The Hon. TREVOR KHAN: I take it you have read the issues paper. Is that right?

Mr SIMIC: Yes.

Ms MALLIA: Yes.

The Hon. TREVOR KHAN: I take it from some of the introductory remarks that you made that your concern is that there is a proposal to increase the threshold for section 66 payments to 30 per cent. Is that what your concern is?

Mr SIMIC: No, just one of many—one of many.

The Hon. TREVOR KHAN: Sorry, I am not trying to put it that way. Is it your belief that there is a proposal being put forward for the threshold for section 66 payments to be increased to 30 per cent from 15 per cent?

Mr SIMIC: That is certainly what is being suggested by WorkCover.

The Hon. TREVOR KHAN: If I put to you that that is not in the issues paper at all—

Mr SIMIC: I am not addressing the issues paper. I am saying that WorkCover turned up here on Monday morning suggesting to this Committee that that is the way to go. I am suggesting to you that anybody applying their intelligence and good conscience to what WorkCover put to you on Monday would reject it.

The Hon. TREVOR KHAN: In my mind, and I think the minds of the other Committee members, none of us have been proceeding on the basis that the section 66 threshold is to be increased from 15 per cent to 30 per cent. That is certainly not my reading, and I do not believe any other Committee member's understanding of the evidence that was given.

Mr SIMIC: Mr Khan, one of the difficulties is that we do not know exactly what is being proposed.

The Hon. TREVOR KHAN: You do; you have the—

Mr SIMIC: There is a whole range of proposals there and most of them are draconian and take away workers' rights, like taking away journey claims. How much money is that really going to save, leaving a family like Mrs Budesa's family destitute?

The Hon. TREVOR KHAN: Mr Simic, or Ms Mallia, could I make the observation that there is not a proposal before us to increase the threshold of section 66 payments to 30 per cent.

Mr SIMIC: Is that the Government's position?

The Hon. NIALL BLAIR: It is the issues paper, just like the issues paper in section 4 is looking at average pre-injury earnings to address—

The Hon. ADAM SEARLE: Point of order: I am hearing the members offering information to the witnesses, but I am not hearing any questions.

The Hon. NIALL BLAIR: To the point of order: I had not got to the point of my question before my friend interrupted.

The Hon. ADAM SEARLE: I apologise.

CHAIR: Please continue.

The Hon. NIALL BLAIR: Have you read the issues paper, particularly section 4, the section about pre-injury earnings, and does your organisation agree with that section in the issues paper?

Ms MALLIA: We would support any increase to weekly benefits, but not a decrease after two years or a decrease after 13 weeks.

The Hon. NIALL BLAIR: The issue with that is that we are now talking about a specific point in the issues paper, not WorkCover's submission but a proposal under the issues paper.

Mr SIMIC: What is the exact proposal you are putting forward to us? Is this the step-down?

The Hon. NIALL BLAIR: No, the calculation of pre-injury earnings. That is detailed in the issues paper, not WorkCover's submission.

Mr SIMIC: I understand.

The Hon. NIALL BLAIR: So the question, relating back to Mr Khan's question, is in relation to the issues paper.

Ms MALLIA: That is fine. We do not understand the status of the issues paper. It is a number of issues. We do not know at the end of the day what proposals are being put. We are trying to respond to some of the things that have come out in the evidence this week as we have understood them. We do not have millions of dollars of resources, so if we have misunderstood a submission we apologise. At the end of the day, that is an issues paper. People are free to bring various recommendations to this inquiry.

We are putting our point of view about some of the issues that you should be considering and responding to what we see as the flavour of the evidence that has been put before you. We certainly did not come to this body with a view to being confined to the issues paper because, quite frankly, nobody has told us clearly what is proposed. Tell us if it is going to be retrospective or prospective, tell us what the actual system is that you propose to provide and we will respond to that. We are responding pretty blindly and we are trying to tell the story of the workers that will be affected by the proposals that are in that issues paper.

The Hon. TREVOR KHAN: Have you read the section in the issues paper that deals with work capacity testing?

Mr SIMIC: Yes.

Ms MALLIA: And we addressed it in our submission. We have some real concerns with it. We think that can be used as a tool—and we have seen it already in the system—whereby doctors and assessors can assess people have a capacity to work. They are taken off the system and they are left to fend for themselves in terms of finding alternative employment. We just do not think that is very realistic.

Mr ROB STOKES: You are critical in your submission of payments to agents. Do you have any ideas about how you would like to see agent remuneration reformed?

Ms MALLIA: I am not an expert in insurance, but I think they should be remunerated for the good work that they do, and that is about ensuring people receive their benefits, and where employers have genuine alternative duties they play a role in ensuring that employers provide those alternative duties. You cannot just have a tick-box exercise, that just because you have rung up a worker once, that is okay, you get a fee. We just do not think that is good enough. We think the system should operate in such a way that those who cannot work are supported and those who can work should be retrained, should be given opportunities to get their lives back on track.

Mr SIMIC: Mr Stokes, can I give you an example of how the agent scheme does not work? If you have someone who is seriously hurt, they do not get to 15 per cent even though they have had surgery and they are seriously disabled. They have very little value on the labour market that is open to them, given their skills and background, and they are left to rot on the workers compensation system until age 66. What WorkCover does now is, about every two years or so, they seem to send them on to a new scheme agent. Suddenly they have to go for a whole new round of rehabilitation assessments and injury management plans, which must cost of absolute fortune.

It is just a waste of money when the obvious solution is that if you have a 65-year-old form worker from a non-English-speaking background, who has very little further prospects given his injuries, maybe you should commute him or get him off the system rather than sending him to another course about how to learn information technology [IT]. They are just ridiculous proposals, and they just keep rotating and sending these workers around this endless loop. It is just an absolute waste of money.

The Hon. PAUL GREEN: Thank you for bringing all the people who came in. I appreciate that you did something that we have not seen yet, and that is put faces to our decision-making process. I think that is invaluable. In terms of commutation, some views already have been expressed that it should be entertained as part of our deliberations.

Ms MALLIA: Yes.

The Hon. PAUL GREEN: What would your view be in terms of commutations?

Ms MALLIA: We would support them. We would support them on the basis that all options at the end of the day have been exhausted for a worker. So it could not be done on day one but, clearly, if someone could not go back to work—like some of the examples we have you taken you to today—they should be given the option of getting off the drip-feed. I know many of our long-term injured workers use that money, which is often a very modest amount of money when we have had them in the past, to pay off their mortgages, defray some of their debts, to adjust to working or to living with life where they cannot earn the sort of money they were earning in the construction industry. We think there needs to be legal advice. It cannot be something that is just shoved under their noses without getting proper advice.

We thought the system in the past, where it was ticked off at the end of the day by the Workers Compensation Court, which has now since been abolished, was not a bad one because it made people think about that decision. There are consequences of taking the money, particularly if at the end of the day in the future there might be the need for other medical interventions. But we think that people should be, with the agreement of the worker, given the opportunity in those sorts of circumstances. I think that would contribute a saving of some money to the scheme.

Mr SIMIC: Just in relation to commutations and the whole WorkCover philosophy, I think everyone has forgotten that the most important purpose of the scheme is to provide insurance for injured people so their families are not left in family ruin. Rehabilitation is all great but, if realistically we are not going to make

legislation that will force even a large government employer to take back somebody like Mr David Skeates, who has some serious injuries to one arm but you would have thought they could find a place to him, what hope is there for any other employers? As I said, if we are not serious about putting in industrial legislation to force people to take them back, we have to give them some sort of proper compensation. If we are going to live in a free market society, one of the great things in a free market society is insurance. WorkCover has totally forgotten it is supposed to be an insurer and look after people's families when tragedy strikes. They have just totally forgotten it and lost the plot.

The Hon. PAUL GREEN: Jodie, I just want to say that—

Ms WORMLEATON: Yes, don't bother.

The Hon. PAUL GREEN: In your experience, is there anything that you would like to add to your comments about how this impacts on your finances as a family?

Ms WORMLEATON: Well, I am actually a full-time carer for my son, which is fairly minimal. I think it is around $600 a fortnight, which works out to about $350 a week, and my husband's compensation works out to about $500 a week. My rent is $420, so it does not leave a lot of room or scope to do anything but pay your bills, scrape through and buy some food. There is no amount of money of compensation that can give you back your quality of life. I mean, to not have to worry about being kicked out on the street and whether or not my kids are going to get through, that would just give me ease of mind, I suppose.

The Hon. PAUL GREEN: Thank you.

CHAIR: You have no questions on notice. Thank you very much for attending today.

(The witnesses withdrew)

(Luncheon adjournment)

MARK GOODSELL, New South Wales Director, Australian Industry Group, affirmed and examined:

GENEVIEVE VACCARO, Senior Adviser, Workplace Relations Policy, Australian Industry Group, sworn and examined:

CHAIR: Witnesses are advised that if there are any questions you are not able to answer today but would be able to answer if you had more time or certain documents at hand, you are able to take the question on notice and provide us with an answer at a later date. If you should consider at any stage during your evidence that your response to particular questions should be heard in private by the Committee, please state your reasons and the Committee will consider your request. Would you like to make a short opening statement?

Mr GOODSELL: I take the opportunity to make a few brief points. The Australian Industry Group's credibility is set out in appearing as a witness and making a submission. My personal involvement in this type of exercise goes back to the mid-1990s. I have been here before. It is somewhat sad and distressing that I find myself involved in another major reform debate about workers compensation. There are three important points. We do not believe that premium increases of any sort, let alone of the magnitude forecast by the actuaries, are an answer to the scheme's problems. They have not worked before when they were put forward as the answer in the mid-1990s and they are not justified in either the numbers or the severity of injuries that employers or industry is seeing going into this scheme. So, we say there is no case for that.

The answer lies in viewing workers compensation as a complex system and it needs a systems approach to resolution. In essence, it needs to do two things. It needs to get less seriously injured people back to work as soon as possible and it needs to objectively and quickly identify those who are seriously and possibly permanently injured and look after them in different ways. The extent to which all players in the system are incentivised and the system is structured to allow that to happen the better it will work, including employer's responsibilities. Thirdly, employers, and our members, support a workers' compensation system that does that and they will engage with it. Their engagement is essential to that being delivered. They will even put up with the fact that it is a no-fault scheme and they will put up with the reality that they are paying for things that may not be work-related. The deal is they will tolerate all that if turn the scheme is seen to be operating at a reasonable price to them and is not working against them, or elements of it are not working against their responsibility to try to get people back to work.

The Hon. ADAM SEARLE: You indicated there was a feeling amongst your membership that elements of the system were working against the employers' responsibility to try to get people back to work, is that correct?

Mr GOODSELL: Yes.

The Hon. ADAM SEARLE: We have also had submissions and heard some evidence that many employers find it difficult or otherwise do not provide suitable duties to return injured workers back to their particular workplaces or, in circumstances where they do, they do so for a period of time and when they are outside the six months prohibition on the dismissal of injured workers employment often falls apart, sometimes for reasons that are believed to be related to the original injury although there is some dispute about that. How do you think we could improve the role of employers in returning injured workers back into the workplace from which they have come?

Mr GOODSELL: I think the key to that engagement—I think that is an issue. We do not have a lot of micro businesses in our membership but a lot of our members find the most difficulty in that. Our members, typically now from when I first started to engage with them about workers compensation 15, 17 years ago do remarkably more emphasis on return to work and often light duties, despite the difficulties. I think the key to it is engagement—engagement with all the other stakeholders. There appear to be a lot of decisions made by insurers, by doctors. There is a lot of communication that goes through lawyers rather than direct party-to-party communication that obscures and gets in the way of that engagement with employers. So first they understand the effect of the decisions they make on the injured workers, secondly they understand the effect of the decisions they make on their premiums and thirdly they understand the effect of the decisions they make on the scheme's costs, which ultimately get back to them in the form of industry tariffs and that is a blunter effect than their tariffs.

So I think if employees are invited into the room more often and encouraged to take a more active role and the other players treat them as an equal rather than a second-class citizen, then I think that problem will be addressed greatly. I do not think it will ever be removed because particularly very small employers there is a difficulty in the light duties issue; on the flip side they do not have accidents very often. But most employers are probably in a position with a bit of thought to find a way of providing light duties, particularly where they know that it is only a short-term thing and that the system will encourage it to be a short-term thing so the return to work is ramped up quite quickly. Part of the reticence is a sense that "Oh, well, I might be providing what in fact may not exist in my establishment but this could go on forever because there seem to be incentives that will make it go on forever." So it is back to what I said about a systems approach. If they know this is part of a deal where everyone is trying to make this ramp up to full recovery very quick they will be much more encouraged.

The Hon. ADAM SEARLE: What about in circumstances where the nature of the injury is such that it will take a longer period of time before the injury is fully recovered from, or indeed there may be circumstances where it is not ever entirely going to go away. From what you have said, that obviously would impact on an employer's happiness or willingness to offer those altered duties. In those circumstances how can employers be required or indeed further encouraged to retain those employees in work rather than terminating them, simply because they cannot go back to their pre-injury position or a particular set of duties?

Mr GOODSELL: We attempted some time ago, with the assistance of WorkCover, we have looked at schemes of those type of workers taking their recovery through employment with other employers. There are some difficulties there but I think that is still unexplored territory. Again it comes down to the mythology and the perception about an injured worker being a bit of a risk to a second employer. So some premium or risk mitigation for that other employer may help.

The Hon. ADAM SEARLE: What about when the employment has not been terminated? Employers may be unwilling to, as you say, permanently adjust or reconfigure their particular workplace. They are required by the Act to make suitable duties available but the information we have had, at least in part, is that they may do that for a period of time but then they try to find ways to shift that out or shift that off by ending the employment in some way. How do you think those provisions can be made to work better or indeed be enforced better?

Mr GOODSELL: I still think that that phenomenon you are describing has a lot to do with the fact that there is a feeling that what is a temporary situation becomes a semi-permanent situation because of scheme design issues. If you are talking about people who are permanently injured, then obviously I think the scheme could do a lot of good by making decisions about the determination of that as soon as possible and as quickly as possible. It seems to take a long time, way beyond what I understand the medical evidence says about stability of the injury. It still takes a longer time than that for that kind of process to determine what their permanent incapacity benefits should be. It is an area of difficulty particularly for smaller employers, and I think that part of the answer is making sure that the employer understands the good they are doing by playing that role and not feeling like they are a second-class citizen in the process.

That is the first thing. The schemes I was talking about regarding placement with other employers did not necessarily mean termination with the employer where the injury occurred. It could be a temporary placement with someone else. There are some incentives for those employers. And, thirdly, if it involves a permanent injury. Most workplace injuries are general injuries. They do not take as long to get back to a fair bit of capacity as most people would think. That is my understanding. But if it involves a permanent incapacity, then decisions about financial issues need to be made earlier.

The Hon. ADAM SEARLE: In your opening statement you indicated that the costs being borne by employers are not necessarily fully referrable to the cost of the incidents. Has your organisation done any interstate comparisons about accident rates in New South Wales compared with Victoria, Queensland and other States that we are said to be in competition with?

Mr GOODSELL: Yes, they are all over the place. Victoria has a lower accident rate and a lower premium; Queensland has a dramatically higher accident rate and a lower premium.

The Hon. ADAM SEARLE: I am looking at some data from Safe Work Australia, which you probably do not have in front of you, that indicates serious claims are a higher percentage in New South Wales than either Victoria or Queensland?

Mr GOODSELL: In terms of serious injuries?

The Hon. ADAM SEARLE: Yes.

Mr GOODSELL: Injuries more than a week off work?

The Hon. ADAM SEARLE: Yes.

Mr GOODSELL: I understood that it was not higher than Queensland. Last time I looked at those figures, Queensland had a real problem. Even though it had the cheapest workers compensation scheme, it had higher accidents. There is some correlation. I think the correlation is in terms of the maturity of the whole system of managing OH and S and workers compensation. Clearly, on both of those elements Victoria seems to do a better job. It has had its eye on the ball in both areas. Both us and the unions have drawn comparisons between those statistics for various purposes. But if you sit back and look at that, Victoria has the system design right whereas the other States are less stable and have higher cost and higher injury rates.

The Hon. ADAM SEARLE: But you certainly accept the proposition that the costs of a scheme obviously are referrable to the rate of accidents in that State, or should be, and reflected in the premiums?

Mr GOODSELL: Yes, it should be, but the deterioration in New South Wales is not referrable to an equivalent sudden increase in injuries, either all injuries or serious injuries, in New South Wales. It relates largely to duration to the extent it is about injuries and not about financial management matters.

The Hon. ADAM SEARLE: In your submission you say that you obviously are totally against the idea of increasing premiums by 28 per cent, which is a figure that came from the issues paper or at least the actuarial studies.

Mr GOODSELL: Yes.

The Hon. ADAM SEARLE: On page 3 of the PricewaterhouseCoopers executive summary, when it talks about returning the scheme to full funding it states that five years would require a premium rate increase of about 28 per cent, which I think is where that figure comes from, or return to full funding over a 10-year period, assuming no further deterioration, would require a premium rate increase in the order of 8 per cent. That is not as dramatic as 28 per cent, is it? That is more bearable?

Mr GOODSELL: It is, but you will still get the question about why should New South Wales employers, who already have very high premiums, pay even more when it appears to be a system design problem, not a function of any great evidence of a change in their behaviour as employers, either in terms of injuring people or in their efforts to get injured people back to work. That is the reaction you would get from employers. To put it frankly, for those who pay payroll tax, there would need to be an increase in premiums but if there was a reduction in payroll tax at the same time, you probably would have a lot less anger.

But if you are just looking at workers compensation costs, there would be a lot of anger about any premium increase, but it would be commensurate with the amount of the increase. We are already starting this debate and I have noticed from my members, particularly over the last two years, an increasing number of them drawing to my attention that it is more expensive to take out workers compensation insurance in New South Wales than for what they think are equivalent businesses—either theirs or others—in other States, particularly Queensland or Victoria.

The Hon. ADAM SEARLE: I think you said earlier that making decisions about injuries earlier would certainly improve things.

Mr GOODSELL: Yes.

The Hon. ADAM SEARLE: You would accept also that early intervention is vital in effective rehabilitation?

Mr GOODSELL: Yes.

The Hon. ADAM SEARLE: The Rehabilitation Providers Association will give evidence to us later, but it claims that 15 per cent of all claims account for something like 85 per cent of the liability in the scheme

and that cohort represents claims that resulted in a delayed, protracted or no return to work, which, in turn, has been fed by late referrals to rehabilitation providers, that is, waiting extended periods of time before somebody is actually meaningfully engaged in a rehabilitation process. How do you think that aspect of the system can be improved to make sure that injured workers are put into rehabilitation programs more effectively and more quickly?

Mr GOODSELL: I think you would need a graduated set of flags much earlier in the history of a claim than the system currently has. Employers have their part to play. No doubt for some of them, once the phrase "workers compensation" looms its head there is a nervousness about engaging with the system. We tell our members, and many of them have reacted favourably to the message, that you cannot look at this as insurance. You actually have to engage with the system and play your part and that will bring some inconvenience and some financial pain, particularly with light duties. But it pays off in the long run. I think the major difficulties are in the skill set within their scheme agents in being able to identify claims that have the potential to become those types of claims.

Anecdotally, it is said that a good claims manager, a good rehabilitation person or a good occupational medicine person can probably tell within a week of looking at a claim whether it has the potential to be a problem. But the system does not seem to put up any flags at that point. To some extent there is an efficiency that not all of those will be a problem. But you need a graduated process in the early weeks of a claim to make sure that the appropriate attention is being brought—if it trips some of those flags. That means the agents having the knowledge and the medical providers being on the same incentive plan to know why that is being done and to get people back to work.

The practice of occupational medicine as it affects the workers compensation scheme still appears to be a level of maturity lower than we would hope. That comes from talking to doctors and professional people about it. You have to be able to do that for the appropriate number of claims, which appears to be only a small number—trigger the flags and get more attention paid to those. Importantly, the trick with employers is to engage with them in the right way. Do not just say to them, "You must do this"; explain to them. If it is a case of waiving a regulation or a guideline or some legislative tool at them, then so be it. You will get more cooperation if they feel like they are being a partner in this process. In the worst cases there is a sense, "Well, you're the person who injured them, that's why you're a second-class citizen. So, we're not going to talk to you unless we really have to" and they rebel against that.

Mr MARK SPEAKMAN: When approximately did the current design of the Victorian system start?

Mr GOODSELL: I am not aware of its last review. It had a major review in the last 10 years but I am not sure how much the benefit structure in particular was changed. Victoria certainly has been at a more stable and lower premium than us for the best part of the last 10 years.

Mr MARK SPEAKMAN: You were asked questions about the difference in the frequency of serious injuries between New South Wales and Victoria.

Mr GOODSELL: Yes.

Mr MARK SPEAKMAN: Unions NSW told us that the New South Wales rates were between 27 per cent and 42 per cent higher in the five years to 2009. Apart from scheme design, can you think of any other reason that New South Wales would have a higher serious injury rate than Victoria? For example, is there a difference in the structure of the economy or something else that could explain it?

Mr GOODSELL: I think it is the way their occupational health and safety legislation worked. The irony is that New South Wales has improved at a greater rate than Victoria in terms of injuries over the last five or six years, which coincides, in my observation, with the decision by WorkCover to stop being just a policeman and go back to being an educator as well, which was the Victorian model. New South Wales came from a long way behind in terms of injury rates but has improved over the last five years, but the workers compensation system has gone in the other direction. If you are talking about trends, there seems to be a weak linkage between the rate of serious injuries and workers compensation.

Mr MARK SPEAKMAN: You said in your opening comments that premium increases did not work in the 1990s. Can you elaborate on that?

Mr GOODSELL: Yes. A brief history of workers comp: The 1987 Act predates my involvement in it. It did not have common law in it. Common law was reintroduced in the early 1990s and the scheme started deteriorating soon after that. Around 1995-96 there were two years where there was a combined increase of about 55 per cent in premiums. The scheme continued to deteriorate and the deficit continued to get bigger until it reached a maximum of, I think, about $3.2 billion. A reform process started around 1997 with the Grellman inquiry. It took about three or four years for that to reach a legislative end. It was a fairly vigorous public debate at the time, particularly around this place. The scheme reforms of 2001 resulted in a reduction in the costs, a stabilisation of the scheme and a surplus of about $1 billion. All that the premium increases of 1995-96 did—I think they were 40 per cent one year and 12 or 15 per cent the next year—was to remove some of the deficit. They did not get to the problem, and that is really our submission now. The problem is systemic and premium increases would be just papering over the cracks.

Mr ROB STOKES: I have three questions, the first relating to medical costs. In your submission you raised the notion that we should move to a more occupational medicine approach in relation to rehabilitation. Do you have any observations on the role of GPs in the system?

Mr GOODSELL: It is a two-edged sword. The fact is the scheme relies on a lot of injuries being dealt with by GPS very efficiently and effectively and a lot of the injuries are very low level and people return to work having consulted their GP and there is not much of a problem. But in that class of injuries and claims that could turn out potentially to be a problem, particularly soft-tissue injuries, there is a point at which the GP's standard level of knowledge starts to do the scheme a disservice and possibly—some doctors would say this—the patient a disservice, because they just do not have the knowledge to effectively deal with a return to work. They may be able to deal with the injury but injury in a return-to-work context is a different thing.

Mr ROB STOKES: How could that be dealt with when the problem reaches that level?

Mr GOODSELL: There are mechanisms in the scheme for other and more specialist doctors to talk to the GP, doctor to doctor, and give them an indication from a professional occupational medicine point of view what might be a better outcome for their patient. It has to happen doctor-to-doctor because it appears that doctors only really like talking to other doctors. That is another reality we need to deal with, but so be it. If that is the case, then I think that having a class of independent medical specialists or whatever term you use who understand injury management in the return-to-work context at the appropriate stages of a claim, would be an advantage. Obviously we think that that is not happening early enough in a significant number of claims.

Mr ROB STOKES: The Mining and Energy Union in their evidence this morning suggested they were very strongly opposed to employers being able to inquire into a job applicant's history of workers compensation claims. Is this a right you feel strongly about and, if so, why?

Mr GOODSELL: I do not have a strong view. I know why employers want to. They have an interest in determining people's work functionality and maybe those two issues sometimes get mixed up. On the face of it whether you have had a previous claim should not matter. You have to ask why employers have an interest in that. There is a perception that someone who has had a claim may be at risk of re-injuring themselves. It is not a big issue; I have not come across it as being a big issue for our members. What they are concerned about is to make sure, particularly in a job where the physical capabilities are important, that they are able to assess the applicant's ability to do the job properly, and to do that in a fair way.

Mr ROB STOKES: You have a very clear position in relation to journey-to-work claims but of course the nature of journey to work has become less clear in recent years. What do you say in cases where, for example, someone is undertaking work during their journey to work or where they are travelling from a home office to a work office?

Mr GOODSELL: The way the Victorian system works is that if your journey is to your first work site, to a client's site or something like that, you are covered. Employers get narky that under the occupational health and safety law it is drummed into them that they are responsible for the things they expose their employees to. Even if they are going to do something silly you still have to assume they are going to do something silly. The minute a person is out of the factory gate and on a work journey the employer has no control over that, so you are sending mixed messages. That is the real problem. From the point of view of providing a safety net to people there is an acceptance of journey claims as part of the work and if they do not blow out and cause a lot of costs in the scheme they can probably be part of it. It is where you draw the line that becomes important.

There was a period in the 1990s when we drew the line in about three different places over about three different years. As soon as you draw the line people find a way around it. Wherever you draw the line it has to be a defensible line. The Victorians have said that the normal journey to work is something you contracted to undertake when you took on the job, and it is excluded. If it is not that sort of journey but a journey to a client site it is covered. Something like that. Whenever you come up with this you have to think about how defensible it is because there will be a lot of pressure on people to be on one side of the line or the other. Wherever you draw the line it has to be something that is going to hold, otherwise it will be a point of leakage. Our view would be that where the Victorians have drawn it is probably a good model.

The Hon. TREVOR KHAN: You talked earlier about injury rates. I take it there are two different statistics that are used. I am looking at the WorkCover report itself, which seems to indicate there is a definition called "major workplace injuries". Is that right?

Mr GOODSELL: I am not sure of the definitional differences in the statistics.

The Hon. TREVOR KHAN: There seem to be two: one is major workplace injuries and the other is major employment injuries, which includes diseases.

Mr GOODSELL: Long onset things, yes.

The Hon. TREVOR KHAN: I think your earlier evidence was that there has been a reduction in the workplace injury rate.

Mr GOODSELL: Certainly there has been a reduction in the rate of serious injuries where people take more than a week off work.

The Hon. TREVOR KHAN: I think the definition is more than five days.

Mr GOODSELL: Yes. Australia has a national objective of reducing them by 40 per cent over 10 years and most States are on or just short of that objective.

The Hon. TREVOR KHAN: New South Wales achieved that between 2001 and 2010. They reduced it, according to this, by 42 per cent from 15.8 to 9.1 per 1,000 employees

Mr GOODSELL: Yes. That was the point I made earlier. Whereas Victoria had been ahead of us, so although they improved they did not have as far to go.

The Hon. TREVOR KHAN: In terms of major employment injuries, which include the long-onset injuries, it has dropped by 37 per cent, just under the target level, from 21.3 to 13.4 per 1,000 employees.

Mr GOODSELL: Yes.

The Hon. TREVOR KHAN: At least in part that would seem to indicate that the reduction in major employment injuries, that includes diseases, is at a slower rate than the actual rate of work place injuries.

Mr GOODSELL: The trauma-based injuries. Yes, I think that is right. Reduction of injuries is what we would expect with technology, the shift of industry from manufacturing to a services base and from blue collar to white collar. In general terms you would expect the trend in injuries, and therefore the general trend in the cost of workers compensation, would be down over time. That is why you get a serious arcing-up when employers are told it is going to go up.

The Hon. TREVOR KHAN: Would it be reasonable to say that if there has been a 42 per cent reduction in workplace injuries over a 10-year period it is reasonable to have, over that same period, a significant decrease in premiums that are paid?

Mr GOODSELL: All other things being equal, yes. If there has been no change in benefits or access to benefits, yes.

The Hon. TREVOR KHAN: I take it from what you say that one of the problems in terms of the scheme performance is, notwithstanding this significant decrease in workplace injuries the performance of the scheme has been the other way?

Mr GOODSELL: Yes. It is extraordinarily frustrating for employers because they know what their accident records are. Most employers now would be able to tell you their injury rates. They could not do that 10 or 15 years ago. They know how much they injure people. They know how much energy they put into managing occupational health and safety. Whether it is driven by legislative pressure or out of the goodness of the heart, it does not matter; they know they are doing it. They cannot understand why they get told at the end of this decade that premiums have to go back up. It does not make sense to them on the basis of the workplaces they control and the extent that they are doing their bit in the system; they feel they are being let down by the system.

The Hon. PAUL GREEN: You said you were at the 1999 hearing, is that right?

Mr GOODSELL: I remember Reverend the Hon. Fred Nile chairing the review, yes.

The Hon. PAUL GREEN: What has or has not happened since then that you thought might be quite helpful?

Mr GOODSELL: During that debate in the late 90s what we tried to tell our members is—I have often used the line—whatever the position of the workers compensation law at any one time some of our members seem to do better than others. I try and send the message that understanding it is not insurance, engaging in light duties, alternative duties, and getting to know your local doctors are important things to do. That message is really hard to get across when people say, "That is all right, Mark, but why is our premium going up? And why, when I offer light duties, does the employee change doctors and try to fight the process?"

After the reforms in 2001 we saw a dramatic decrease in the number of cases that reverted to a legal process. I noted in the figures that the legal cost in the scheme at that time equated to lawyers getting paid more than the weekly benefits going to injured workers. It was about $400 million a year. Immediately after the reforms it dropped to $150 million. There was a big decrease in the number of disputed claims. Employers saw that. I saw our members engage with the injury management process. Many employers said, "My premium is reduced. I am more involved. I have taken on some of that cost in management time. I get more involved. I do not leave it up to the insurer."

In the last two years I have seen a return to the vibe that we got before the last set of reforms. When we try and talk about companies engaging they say, "That is all very well but we are more expensive than the other states and there appears to be reticence on behalf of some claimants, not all, and their doctors and lawyers in engaging in return to work; even when I bend over backwards to offer light duties." This only has to happen in a small number of claims. They are over represented in the claims I get told about. I know that. No-one rings me up and says, "I had a wonderful workers comp claim. It was a serious injury, but they got back to work really quickly." I do not get told about that. We get told about the difficult ones.

I have noticed that our members have been complaining about that over the last 2 to 2½ years in New South Wales. That coincides with the retrospective assessment we get out of the actuaries about what has been happening in the scheme. An important side effect of the scheme reform process is it gets employer buy-in to the scheme. If the scheme is behaving as it is now and there are real or threatened premium increases you do not get that buy-in and it is an important part of the equation—you need that buy-in.

The Hon. PAUL GREEN: Your comment of "policeman to educate" is pertinent.

Mr GOODSELL: That is what WorkCover did on the occupational health and safety side in the mid part of the last decade. They deliberately resumed an educative role in occupational health and safety which they had pretty much walked away from for a decade.

The Hon. PAUL GREEN: Is it still that way now?

Mr GOODSELL: No, they have improved and continued that model. WorkCover has been through a few changes recently. It remains to be seen what kind of model continues.

The Hon. PAUL GREEN: Can that improve?

Mr GOODSELL: It can. I have a constant debate with the various Government agencies about how they regulate. There is a lot of emphasis on the design of regulations and less emphasis on how government behaves as a regulator. I say to WorkCover, "You are in the influence business. How you influence people's behaviour and how you influence the behaviour of a workplace is a more complex process than walking in and saying, 'Regulation 4B says you have to behave like this, do it'." It is a high level process and requires a fairly mature organisational structure and mature people who are well trained in understanding how you influence an industry or a complex organisation to behave in a certain way. I think Victorian WorkCover appears to have done that as well as anyone has. In New South Wales WorkCover is getting much better at it and when you have agencies that work like that you get the results.

The Hon. PAUL GREEN: Page 8 of your submission talks about the direct impact of significant labour on-cost on the attractiveness of employing people in New South Wales. Could you make a comment on that? We have had comments that it could cost up to 12,000 jobs if a 28 per cent premium was implemented.

Mr GOODSELL: Australia is a high cost country. That is not compared to China, Indonesia or India; it is a high cost country compared to the United States of America [USA] and Europe. There are a range of factors. We start from a high cost base and New South Wales is a high cost State. We have a bit of a mining boom, not as big at Western Australia and Queensland. It is still an expensive State to employ people. You are starting from a high base in New South Wales. Even if you had the same percentage rates for workers compensation premiums as another state they are being applied to a higher base of wages. You can wear that. When the percentage is also higher on top of the higher base you are compounding the problem. Business is mobile.

The debate in 1987 about reform it was largely about companies competing with other domestic companies, probably in the same suburb. Particularly with the traded goods sector we are talking about your competition being anywhere in the world. When you are paying a higher base, if that is not backed up in a productivity trade-off, then companies will make decisions about where investment goes. We are seeing that on a daily basis at the moment. It is more complex than workers compensation premiums. But workers compensation premiums are symbolic, as well as real, and we tried to make that point in our submission.

There is the Russian roulette effect; if the system is not well targeted and one of your claims gets out of control it can feed straight back into your premiums. It is not a 28 per cent increase; it could be a 100 per cent increase in the premium over a one, two or three-year period off the back of that one claim. There is this double jeopardy approach. If the system is not fixed it is not a matter of the industry rates going up, every employer in the system is exposed to the risk that their claim is one of the claims the employee should have been back to work after three weeks but is still off work five years later, and that will feed into your premiums.

Mr MICHAEL DALEY: Mr Goodsell, I think a fair bit of interest has been generated by your comments about the dichotomy of the educative and regulatory roles of WorkCover. My experience with WorkCover is that they have been entering into a lot more industry agreements and things like that to keep injuries down. Do you think there is scope for major internal restructuring of WorkCover, or perhaps splitting the organisation into two, or something like that, so that there is not this internal conflict in the two roles of the organisation? Is that something that could be looked at?

Mr GOODSELL: I am not normally attracted to structural matters. Though structure is important, it is more about culture: knowing what you are there to do, and having in place the skills, focus and elements of planning, including legislation and relationships with insurers' agents, necessary to do the job that has to be done. The workers compensation and occupational health and safety divisions of WorkCover, for various reasons, need to talk to each other; but, for other reasons, they are really doing two completely different things. Does that mean they should be separate, or not? I do not have a strong view on that.

In terms of the education versus enforcement roles, on the occupational health and safety side the formation of the Business Advisory Unit has been useful. That allows people from the agency to be more welcome in workplaces, knowing that in a sense they are leaving their blue book in the car; they are not going to be issuing fines, even though they reserve the right to enforce regulations when they are on a site. Any behavioural or structural change that means employers will engage, and feel engaged with to a greater degree, will help. But you have got to start from the principle of a systems approach: you know what you are trying to do, and all the elements of that system, including the other service providers, doctors, lawyers and the agents,

are on the same plan. If you do not do it in an holistic way you will end up with the system fighting against itself.

The Hon. NIALL BLAIR: I am interested in the section of your submission on work capacity testing. It is your view that work capacity testing should not be conducted by the employee- or the employer-nominated treating doctor. Could you expand on that?

Mr GOODSELL: Going back to what I said earlier, there are probably a lot of cases where it may not matter if the case is one where the person is going to return to work quickly. But I think we are talking about most of these cases, where there is some question about work capacity. You need objectivity, and you need perception of objectivity, and you need to have someone making that decision who understands the full nature of the system they are engaged in. Most general practitioners engage in private medicine, and they make an assessment, as I understand it, almost solely on what they are told by the patient. So you need a system that gives the employer confidence; and it needs to be a proper system so the employee has confidence. But companies do get suspicious when the doctor makes decisions about work capacity without really knowing what the options are for work. The other phenomenon are the claimants—in much less cases—who keep changing doctors until they find one who says they are not fit for work.

The Hon. NIALL BLAIR: If an expert third party did a thorough work capacity test on a person, and previous issues had been resolved and the case was closed, do you think that would then reduce the risk or the perception that another employer may not want to take that person on if the person presented with a work capacity test showing the person can clearly carry out the position for which he or she is applying?

Mr GOODSELL: I go back to the question that Mr Searle asked earlier: again, it is a systems approach. If there is more confidence that there is objectivity about these issues, and issues are resolved and decisions made quickly, fairly and objectively, then you will get on a flow-on effect: employers will be willing to engage people who have come out of that system. I think the two issues compound on each other negatively at the moment.

Mr ROB STOKES: What has been your experience, just in broad terms, since the last reform process in the early 2000s until today? Is it your experience that there been a deterioration in the last couple of years?

Mr GOODSELL: As I said earlier, I have noticed it in the last two years, anecdotally. I noticed it because it annoyed me: I thought we had fixed workers compensation, and I wanted to move on to more productive things with my members. But they were telling me, "There's something wrong with workers comp." That manifest itself as a rash of hearing loss claims, and then messages about, "We're just more expensive than Queensland and Victoria." I said, "I'm not sure that's right." They said, "Well, it is." Then there was a lot more input about just problem claims—claims where light duties were being rejected, and people seemed to be fighting a return to work. So I clearly noticed that in my interaction with members over the last two, but possibly three, years.

CHAIR: Thank you very much, Mr Goodsell and Ms Vaccaro for coming. I think you have no questions on notice.

(**The witnesses withdrew.**)

DAVID HENRY, New South Wales Health and Safety Officer, Australian Manufacturing Workers Union, and

TIMOTHY AYRES, New South Wales State Secretary, Australian Manufacturing Workers Union, affirmed and examined:

CHAIR: I welcome Mr Tim Ayres, New South Wales State Secretary of the Australian Manufacturing Workers Union, and Mr David Henry, New South Wales Workplace Health and Safety Officer, Australian Manufacturing Workers Union. There are a couple of procedural matters to deal with before we get started. Regarding questions on notice, you are advised that if there are any questions that you are not able to answer today but would be able to answer if you had more time or had certain documents to hand, you are able to take those questions on notice and provide the Committee with an answer at a later date. Regarding in-camera deliberations, you are advised that if you should consider at any stage during your evidence that your response to a particular question should be heard in private by the Committee, you may state your reasons and the Committee will then consider your request. Would you like to make a short opening statement? If so, could you please keep it to five minutes?

Mr HENRY: Yes; I think I can pull that off. I speak on behalf of our largest manufacturing union. Manufacturing employees are, in round figures, about 10 per cent of people in New South Wales in its broadest sense, but account for about 20 per cent of payments from the scheme. So our people and the people who work in manufacturing businesses will be disproportionately affected by amendments to the scheme compared with everybody else in the community. I think it is fair to say that. We work in an industry, as my friend from the Australian Industry Group said, in which there have been significant improvements in safety over the past 30 years. Much of that has been to do with changes in technology and the vicissitudes of what has happened. But we are still a dangerous industry for people to work in. Two people were killed this week—one on Sunday in Newcastle and one early yesterday morning in western Sydney. There are very serious issues for us in terms of safety.

We do not think that the current system is perfect. The committee might not be surprised to learn that we think that the rate of benefits is too low for people. There has been a lot of finger pointing at the benefit rates, and people saying that they are too high over the course of past six months as debate about these issues have accelerated, but it is pretty difficult to live on the statutory rate in this State, particularly in the Sydney metropolitan area. We think that the rehabilitation processes are too slow and too inflexible. The fact that it takes on average about 12 weeks before someone is seriously assessed by a rehabilitation provider after an injury really militates against effective recovery and effective return to work.

We think that the duty, as it is currently constructed, on employers to effectively get people back to work is not strong enough and means that employers in our industry shirk their responsibility, in many cases, to get people back to work. Obviously we are strongly opposed to the proposals that are set out in the WorkCover issues paper. I will not go to all of them. I do not think I need to for this group. The committee will have heard enough about each individual proposition. The notion that for the sake of avoiding a 28 per cent increase in premiums, even if you accept that that proposition is what is required to fix the system, or a smaller increase over a 10-year period, several basis points really, on average, for employers across the State, that we should engage in a race to the bottom with the other States on premiums I think is a set of proposals that lacks imagination. It has been advanced not just by the Government but obviously by employer organisations around the State, and everybody amongst the employment community talks about reductions in premiums, as if that were the answer to the issues that some of the people in manufacturing face today—rising dollars, rising costs all sorts of issues.

There are real risks, besides the impact on workers of putting downward pressure on premiums and putting downward pressure on benefits, besides the suffering that will cause to ordinary people I do not think it is the right way to structure our system. It provides a set of pretty perverse incentives, I think, on employers in terms of their approach overall to workplace safety. I am very happy to have the opportunity to answer questions and engage with members of the committee, but of course, we are already committed to a vigorous campaign against the legislation. We will be campaigning in the community and amongst our membership. We have been a formally organised union in this State for 160 years and over the course of those 160 years we have seen workers compensation benefits improve and recede. I am sure that this will be an argument that will be with us for a very long time into the future. I think that what is proposed is an overreach.

Besides the community campaign, I am not prepared to be in a position where workers in the most dangerous industries in the State miss out on benefits. We will be introducing to our collective bargaining strategy and our collective bargaining claims, enterprise by enterprise, a new insurance product that I can advise will be a lot more expensive than a few basis points that employers get out of the proposals that the Government appears to be committed to. That top-up insurance approach is not perfect. It will benefit the people who are covered by the agreements into which we manage to insert those provisions. It will cover them to the extent that the top-up insurance policy can possibly cover the sorts of benefits that the scheme currently offers but it will only affect those people who are covered by those sorts of schemes. It will be costly. Obviously it will lead to more vigorous arguments, enterprise by enterprise. I do not think it is the right way to go but it is the way that we, I think, on our reading if this legislation proceeds, will have to proceed. I am happy to answer questions about the detail of our submission if there are any questions on notice I can only promise that it will ruin Mr Henry's weekend.

The Hon. ADAM SEARLE: Page 8 of your submission shows a table. Has that table been extracted from the Safe Work Australia document that is reference number six on page 42?

Mr AYRES: Yes.

The Hon. ADAM SEARLE: Will you step the committee through what that table shows?

Mr AYRES: It is supposed to draw the attention of the committee to the nexus between the rate of serious claims and its impact on the scheme.

The Hon. ADAM SEARLE: Does that chart show that the rate of serious claims in New South Wales is higher than in Victoria and Queensland?

Mr AYRES: Yes, there is a significant difference between, in particular, the Victorian scheme. While the two economies are not identical I think it is fair to make some comparisons between the two schemes. If you are looking at the drivers of what pushes up premiums, the drivers on premium costs, the rate of serious injuries is a critical issue.

The Hon. ADAM SEARLE: Are the industries you represent more or less dangerous in New South Wales than they are in Victoria in terms of accident rates or have you not done that work?

Mr AYRES: There is no reason why there should be a significant difference between the industries but clearly there is a difference in outcome.

Mr MICHAEL DALEY: Can you hazard a guess as to why that is the case?

Mr AYRES: I was very interested to listen to the outline provided by a previous speaker from the Australian Industry Group. I think that we have a different culture amongst employers in New South Wales. It is hard to put a finger on exactly what is the single driver of a lower injury rate in Victoria but there has certainly been historically a more vigorous approach to enforcement in Victoria, not just by the authority but by unions, in particular, and the powers given to unions under the old legislation in Victoria.

Mr MICHAEL DALEY: If you say the rate of serious injury in New South Wales is a driver to costs, and the committee has a discussion paper that does not go to that point, what further recommendations can you suggest that go specifically to that point to bring down the costs from that serious driver?

Mr AYRES: There are two issues. If we are serious about driving down premiums and premiums costs the first issue is, of course, to reduce the number of people who are seriously injured. The second key driver for reform of the system is to make sure that people who are injured get back to work more quickly. I was surprised by what I heard during the past half an hour from the Australian Industry Group. They must speak to different people than I speak to. The people who come in our door, like the young man I met yesterday who is a young apprentice at the start of his working life, with a serious back injury, are not shirking a return to work. He is desperate to work to work.

The people who we case manage through the system are never trying to dodge going back to work; they are desperate to return to work. The prospect of being put onto the statutory rate for them is a horrifying

prospect. For the young 24-year-old I met today who works for one of the State Government's statutory authorities—I will not name them today; I do not want to embarrass them, we will embarrass them next week—this young man has been prevented at every turn from effecting a proper return to work. So those two issues, reducing the rate of injuries but reducing the tail by trying to get people back to work into some sort of meaningful work, are the key issues for me.

The Hon. ADAM SEARLE: In terms of return to work, what are the main barriers that your members have faced in their endeavours to return to work having been injured?

Mr AYRES: Firstly, I think there is reluctance amongst many employers to go the extra mile in terms of providing light duties or reallocating people amongst the workplace and finding a way to get people back to work. I think there could be some improvements to the way that treating doctors engage with employers in order to make that relationship between their medical care and their return to work mesh in more effectively; I think that is certainly true. But the understanding that our members have is that if they are injured they have really got six months of employment to go. People are very pessimistic about the capacity of employers in our industries or the willingness of employers in our industries to meaningfully engage with getting people back to work.

The Hon. ADAM SEARLE: What new measures do you think could be put in place that would encourage employers to take the provision of suitable alternative duties more seriously?

Mr AYRES: I do not think there is anything in our recommendations that deals with this issue. I am looking at Mr Henry and he is saying that there is. The first thing, as Mr Henry has just reminded me, the case management system, the relationship between treating doctors and the system, is very important. But also I think that the duty that is impressed on employers to find ways of getting people back to work in the system is not strong enough. Of course, a lot of this is about culture, and the legal instruments are a pretty blunt force trauma way of resolving some of these sorts of cultural issues amongst employers, but at a base level, the duty that is imposed upon employers to find people a way back to work I do not think is tough enough for the sector that we work in because not many people who are seriously injured and who go beyond the six-month mark after their injury find their way back to work.

Mr MARK SPEAKMAN: Should death benefits be paid to the estate of a deceased worker who has no dependants?

Mr AYRES: I would have to take that question on notice. It is not an issue that has been raised with me before.

Mr MARK SPEAKMAN: You mentioned that 10 per cent of employees in New South Wales are in manufacturing. What is the percentage in Victoria?

Mr AYRES: I do not have that figure in front of me. The only thing I can say is that it is larger in Victoria; it is a more manufacturing-dependent economy. But I can provide those figures to the committee.

Mr MARK SPEAKMAN: Is there anything in the current occupational health and safety regulatory regime that would cause New South Wales to have a higher rate of serious injuries than Victoria?

Mr AYRES: I am not convinced that it is driven by the regulatory regime. I think there is a resourcing issue about both the education capability but also the enforcement capability in the WorkCover area, but I do not say that it is driven by just the regulatory regime.

Mr MARK SPEAKMAN: Do you attribute the present difference in serious injury rate to a difference in education and enforcement resources in Victoria compared with New South Wales?

Mr HENRY: As far as the regulatory regime in Victoria, there certainly, at this point in time and certainly for about the last seven or eight years, has been more enforcement, and that information can be found through the comparative monitoring documents. Victoria prosecutes more employers despite having less injuries and less fatalities, and they have more enforcement activities. We are not coming from a position saying that prosecuting employers is a be-all and end-all, but it does clearly send a strong message to the industry about the sort of behaviour that should be carried out in relation to safety.

Mr MARK SPEAKMAN: When you are talking about comparative monitoring data, is that the Safe Work Australia reports?

Mr HENRY: Yes, Safe Work Australia.

Mr MARK SPEAKMAN: Do you advocate an increase in premiums at the moment?

Mr AYRES: If you take the view that the pressure on the scheme is a function of—there are a couple of key drivers there: obviously the performance of the scheme during the GFC, and, all things being equal, the business cycle will deal with some of those issues. We do not say that there should be an automatic rise in premiums but we do say that premiums should not be pushed lower in order to fund cuts in people's benefits.

Mr MARK SPEAKMAN: Recommendation 1 says that a return to surplus should be achieved by a modest increase in premiums.

Mr AYRES: Sorry, yes. At the moment we are talking about an issue about a notional deficit over the course of many years. If the focus of our approach now is about returning to surplus in the scheme, if there is a modest increase required then we are not going to be opposed to that position.

Mr MARK SPEAKMAN: You mentioned a notional deficit. Are all your recommendations on the hypothesis that there is no real deficit; there is only a notional deficit?

Mr AYRES: No, we recognise that there is need for reform.

Mr MARK SPEAKMAN: Does that mean that you accept that there is a real deficit in the WorkCover scheme's funding?

Mr AYRES: What is the term I am looking for? There is an actuarial deficit. There is a shortfall in terms of what is projected, and we do not say that is not a serious issue.

Mr MARK SPEAKMAN: Is it because that is a serious issue that you would recommend a modest increase in premiums?

Mr AYRES: Yes.

Mr MARK SPEAKMAN: What percentage are you looking at?

Mr AYRES: We do not have a recommendation for you. There is presumably a bit more science that would need to be applied to determining that than could be generated in our AMWU Granville office.

Mr ROB STOKES: On the basis that you accept there is an actuarial deficit which is a serious issue, how do you propose then that recommendation 12 relating to annual leave for workers on leave due to workplace injury should be funded?

Mr AYRES: The first thing, of course, is that the actuarial deficit is a serious issue, but we have got to look at who is going to pay, and if it is going to be the ordinary people who turn up to work day in day out in manufacturing of course we will be opposed to it. There are difficulties and there are deficiencies in the amount of benefits that are currently available to people who are injured. We should look at making improvements to the scheme which mean people are treated fairly and which give people a fair go in the process. There are other ways of ensuring the scheme is in a strong position.

Beyond the narrow argument about the rate of premiums, there are many employers who do not pay their legal responsibilities in terms of workers compensation premiums, particularly the third and fourth tier contractors who are not necessarily as law-abiding and as regulated as people might like to think. There are certainly people who are dodging their workers compensation responsibilities. We need to look at serious initiatives to try to drive down the level of serious injuries. The thrust of our submission is not a narrow trade-off between higher premiums and the fund, but ensuring that the system works for everybody.

The Hon. PAUL GREEN: What is your view of journey claims?

Mr HENRY: I heard the previous speaker in relation to those issues. There are three propositions in terms of journey claims. One is that you knock them out altogether, another is that you allow all journey claims and the third is that you draw a line somewhere in the middle. The first two have the benefit of certainty because everybody knows the outcome. But I think only one is fair. Journey claims account for a very small proportion of the overall cost of the scheme. From memory it is somewhere between 2 per cent and 3 per cent. People accrue journey claims only if they are travelling to and from work.

I think there is a legitimate argument for employers at some level to say that they cannot control the routes that a person uses to return from work. There are some issues in terms of people who travel to and from work late at night or early in the morning after doing shift work. In our industry there are people who start work at 5.00 a.m. and 6.00 a.m. and who travel long distances to get there. Putting those issues aside about who is actually responsible, there is a need for certainty and fairness in this area. I think that is achieved by incorporating journey claims into the scheme. If you accept the alternative proposition, all you are doing is cost shifting out of the scheme. It means people lose the real opportunities presented by the workers compensation scheme for some meaningful approach to returning them to work after an injury. For those reasons we support journey claims being covered by the scheme.

The Hon. PAUL GREEN: What is your view of commutations?

Mr HENRY: We have taken a relatively cautious approach in our submission. Part of that caution is based on what we saw in the 1990s with the New South Wales scheme, where computations effectively led the scheme into financial difficulties. We recognise that there are some workers who would benefit and who have a preference for exiting the scheme. They see it as exiting the tyranny of being a slave to the scheme agents and insurers. If it were done with proper governance with specific cases, some positives could be derived from it. We do not want to see it being used as a mechanism to horse trade people's entitlements. If people are getting commutations it should be a genuine payout for what they would have recovered had they continued in the scheme.

The Hon. PAUL GREEN: So if the worker was happy you would be happy for them to progress with that system?

Mr HENRY: Yes.

CHAIR: You have taken a couple of questions on notice. The secretariat will provide you with the transcript with those questions highlighted. The Committee has resolved that answers to questions taken on notice should be returned within three days after you have received them. Thank you for appearing before the Committee.

(The witnesses withdrew)

STEPHEN MILGATE, National Coordinator, Australian Society of Orthopaedic Surgeons, and

JOHN HARRISON, Member and past President, Australian Society of Orthopaedic, sworn and examined:

CHAIR: Witnesses are advised that if there are questions which you are not able to answer today but which you would be able to answer if you had more time or certain documents to hand, you can take them on notice and provide an answer later. In addition, if at any stage you consider that evidence or a response to a particular question should be heard in private, please state the reasons and the Committee will consider your request. Would you like to make a short opening statement?

Mr MILGATE: The Australian Society of Orthopaedic Surgeons thanks the Committee for the opportunity to give evidence at this inquiry. Our principal witness is Dr John Harrison, the Past President of the Australian Orthopaedic Association, our orthopaedic training college and the Australian Society of Orthopaedic Surgeons, which has responsibility for professional and practice issues. Dr Harrison is also a recipient of the L. O. Betts Memorial Medal, which is the highest honour awarded in orthopaedic surgery. Dr Harrison's medical career has involved the treatment of hundreds of compensable patients with orthopaedic injuries. He has also acted as a consultant to the Workers Compensation Commission as an approved medical specialist in matters concerning whole person impairment. In addition, he has served many years on WorkCover consultative committees in an honorary capacity. I have had 21 years experience in dealing with the interface between orthopaedic surgeons and WorkCover administration through my involvement with the Australian Society of Orthopaedic Surgeons.

In addition to our submission, we make the following points. First, the general relationship between orthopaedic surgeons and the WorkCover administration has been positive and productive. Secondly, orthopaedic surgeons work within the scheme regulations. All proposed procedures must be approved by scheme agents and case managers in line with guidelines set by WorkCover. Thirdly, Australian Society of Orthopaedic Surgeons members are orthopaedic specialists who are accredited by fellowship with the Australian Orthopaedic Association. The degree is F.A.Orth.A. Fourthly, as doctors, orthopaedic surgeons have a duty of care towards the patient outside and any WorkCover arrangements and the rights of the patients are legally enforceable. Fifthly, treating compensation patients generally creates substantial extra demands on treating doctors. The doctor and patient are surrounded by a variety of third parties who can make demands on them both. These include plaintiff lawyers, injury management consultants, employers, rehabilitation providers, claims agents, case managers, patient interpreters, the patient's family, independent medical consultants, allied health professionals and WorkCover administrators.

The most recent report prepared by the heads of workers compensation authorities entitled "Australia and New Zealand Return To Work Monitor 2010/11" compared nine workers compensation jurisdictions. New South Wales doctors are considered the most helpful group in assisting compensable patients to return to work. That rating was significantly above the national average in all other jurisdictions for every other group involved.

Mr MICHAEL DALEY: At page 28 of the issues paper recommendation No. 14 states:

> Increases in medical costs over the last five years have been significant and it may be desirable to strengthen the regulatory framework for health providers to ensure that scheme resources are directed to evidence-based treatment with proven health and return to work outcomes for injured workers rather than on treatments that maintain dependency.

Does that not suggest that medical providers are engaging in treatments that are not evidenced based, that do not have proven health and return to work outcomes, and that they are trying to administer their patients with treatments that maintain dependency rather than get them back to work? That seems to be at odds with your submission.

Dr HARRISON: That part is substantially structured on the confusion that seems to exist in WorkCover statistics on what medical costs are. We are here representing a specialist group of orthopaedic surgeons who usually end up seeing a substantial number of the practical treating parts of injuries incurred in this State and other States. It has been hard for us to get a proper dissection of what the true cost is, despite our interactions with WorkCover, of the surgical treatment. So we are lumped in with a number of other entities there who are tagged as medical. We do not regard all of them as being medical components and that is part of the confusion. I might ask Mr Milgate to follow. We have an idea or a handle on how much we cost. We are a small segment but a very important segment in major injuries and many of the other so-called musculoskeletal injuries that occur in this State.

Mr MILGATE: First of all, all of the members of ASOS [Australian Society of Orthopaedic Surgeons] are F.A.Orth.A, so evidence-based medicine is part of their training. It is also part of ASOS's creed that we support evidenced-based medicine. Our members submit item numbers to WorkCover and for proposed treatments and WorkCover has the ability to approve or not approve those item numbers. They also have the ability to refer treatments on for extra expertise or extra advice, and they have control over what they approve. But as far as the Australian Society of Orthopaedic Surgeons is concerned, our members are trained in evidence-based medicine and practice and it is documented. What they do is well documented by item numbers.

Mr MICHAEL DALEY: There have been some suggestions and discussions in the course of these public hearings about whether it might be appropriate to cut off benefits to workers after a certain time. Assess them early on, compensate them in a certain way and move them off the scheme with no options for them coming back if a condition deteriorates. For orthopaedic injuries, what is the incidence of someone getting injured and then after a year or two, or three to five years, that injury deteriorating inherently; that is, there are no external factors that have exacerbated it? Could you just educate us a little on the nature of those types of injuries?

Dr HARRISON: We cannot say it does not happen. Over a time scale like that people are aging and the scheme is fairly generous to many people's interpretations of what is encompassed and what is taken on board. There are a small proportion of people with pre-existing injuries, particularly arthritis, who will sustain a frank injury at work and benefits flow as a consequence of that, which often have a long-term consequence in terms of further surgery at a later time. We are talking about arthroscopy of a knee, for example. That is one of the common items listed. Once that is done, although it has some short-term beneficial effects and that is how it is used, there are consequences in middle age people with pre-existing arthritis where their arthritic process may be accelerated and they may end up being part of the statistics of long-term tail for knee replacements at a later time. That is our field. That is not something we can directly alter other than being circumspect in when primary treatment is done.

So what you are saying in that limited sense is correct. Major spinal surgery after injuries, there are natural deteriorations. There is a natural history to injury disorders in different parts of the body that might very well in a higher percentage than 5 or 10 per cent be associated, through natural history, with subsequent problems that flow. Nothing is perfect, and even the Cochrane studies do not give us a totally accurate way of looking at what is absolutely justifiable evidence-based medicine. But back to your original question which we had already passed on from, we are not aware of too many instances where people practice voodoo medicine, particularly through surgery, on anyone. There is enough peer group pressure in most of the hospital systems where surgery occurs that that sort of thing just does not happen very often.

The Hon. ADAM SEARLE: What would be the view of your organisation about a proposal to cap medical benefits to injured workers in the scheme?

Mr MILGATE: That is a matter for legislators. Our members have never suggested to us that improvements to the scheme would be made if members' benefits were cut or capped, but it is really a decision of the regulators of the scheme. We have not got into that area. We stick to the area that we know best, and that is the interface between our members and the WorkCover scheme.

The Hon. ADAM SEARLE: Are you able to say from the information you have got from your members what the potential impact would be on injured workers needing ongoing medical care if those benefits were capped?

Mr MILGATE: No, we have not got any analysis on that. One of the problems is we do not have detailed information on costings of medical treatment. There is this lump sum or this broad category of medical treatment. We have been to WorkCover and got the item numbers for a particular period to see what the profile is of what injuries are being treated. We can tell you that knees, shoulders, ankles are very prominent in orthopaedic injuries that are being treated. We look forward to those recovering. Our members look forward to their patients recovering.

When we have a look at the nine jurisdictional comparison of return to work we see that New South Wales is up there at 86 per cent. It appears that most of the schemes are at this sort of optimal level. South Australia is down a little. The durable return-to-work rates are also fairly consistently good for New South

Wales in comparison to those other jurisdictions. So we can only take that sort of analysis and say that the scheme appears to be working at an optimal level for most people.

Mr ROB STOKES: In your experience in relation to claims referred by general practitioners, do you find that general practitioners are effective in weeding out claims where injuries are not related to a work injury or where the injury does not in fact exist? What proportion of patients that get referred through to you in your experience have you found to either not have an injury or that there is no evidence that that injury was sustained at work? Are there many of those claims or are there not very many, or have they got more common or less common?

Dr HARRISON: I think there is a lot of variability. We are generally in a referral situation as specialists, but not absolutely. Physiotherapists, people can walk in off the street or be referred by someone else, a third party, to an orthopaedic specialist whereas under the medical benefit scheme that does not happen. The value of the general practitioner is he is usually a gatekeeper. If he is a traditional general practitioner—whatever that means in a changing world—and he has got an intimate knowledge of the patient and their reactions to injuries before there are not too many errors made in referrals and they are usually a more appropriate referral in terms of the accuracy of what is going on.

Most specialists do have to be a little more forensic in going back through the details. If they do not do it then they are going to have to do it later on in the WorkCover system to justify where they are trying to go or plan to go. So we have to do a little more checking. That happens at a secondary level and it is by and large done well. I do not think there is too much stretching of the imagination or the terms and conditions of the scheme in that step because it then goes back to the insurance company for a decision. So there are some checks and balances. I think there are many bulk billing clinics where the main aim is to get the person out the door and off to a specialist and it is often a favoured specialist in networks that I do not totally understand despite 35 years in the business. Things happen. So there is variability, and it may well happen. That is all.

Mr MARK SPEAKMAN: Are you able to give us an idea of what someone with 5, 10, 20 or 30 per cent whole person impairment would have by way of musculoskeletal injuries? What does that represent by way of example?

Dr HARRISON: As to injury, they would usually have to have a significant spinal component—

The Hon. TREVOR KHAN: For what percentage?

Dr HARRISON: If they were to hit that, and they would have to have some neurological deficit. If that is how they present, it is a fairly significant amount. They can acquire it through reasonable and appropriate treatment. Once spinal surgery is undertaken the quantum jumps fairly significantly by the whole person impairment principle. A significant injury affecting lumbar spine with some initial neurological problems subsequently treated by fixation at more than two levels with some residual symptoms will be getting up to 25, near 30 per cent. From that procedure, substantial as it is, we have orthopaedic spinal surgeons, but most of us are involved in less threatening levels of treatment in peripheral limbs. It takes quite a combination to hit 30 per cent whole person impairment before treatment and a lot of unhappiness or misfortune to hit it afterwards.

Mr MARK SPEAKMAN: What about someone at 10 per cent? What sort of injuries would they have?

Dr HARRISON: You can get to 10 per cent with a pelvic fracture, for example, from a fall with some displacement of the structure of the pelvis. You will get it usually with upper or lower limb injury with some associated neurological complications of that—nerve pressure—failing to resolve. That will take you up to 10 per cent. I guess the question is coming from what is a common law barrier. I think that was set by Justice Sheehan anyway, the 15 per cent, back in 2001.

Mr MARK SPEAKMAN: To hit 5 per cent, what sort of injuries would they have?

Dr HARRISON: A significant knee injury with some residual deformity or loss of bone within a joint, a major limb bearing joint—knee or hip—will get you over 5 per cent.

Mr MARK SPEAKMAN: If there were a system of binding medical assessments, would your members be capable of providing those for musculoskeletal injuries?

Dr HARRISON: Through the commission, which is allied with WorkCover—supposedly under it—I am an approved medical specialist [AMS] by that categorisation. I do some of that work. We have been put in a position of being the quasi judicial substitute for the legal system that existed before with judges—a somewhat uncomfortable process for people trained in medicine, but that is how it has been. It is a reasonable system; there are some imperfections in it. One of the imperfections is that the decision on causation is left to legally qualified people as arbitrators, so we are presented with a matter to be dealt with where the decision has been made on causation. We have to make the assessment, and there is a certain shudder about some of the evidence-based medicine background that was raised earlier. Some of those decisions—not all—are things that we might decide differently, but we are not in that position under this system. That is one of the imperfections of the ultimate whole person impairment assessment process. It is the other way in the motor vehicle accidents system, and it has its own imperfections. That is my comment; others might not share that view.

The Hon. NIALL BLAIR: In your submission you refer to the confusion around medical costs and you made reference to it earlier as well, and I note you have been to WorkCover to seek clarification.

Dr HARRISON: Yes.

The Hon. NIALL BLAIR: What are some of the medical treatments you would probably consider should not be included in this wide group?

Dr HARRISON: Mr Milgate might be better on this. We believe we are lumped in with hospital costs and many of the paramedical costs that we have only a slight influence in. If you do a major surgical procedure on peripheral limbs and the central part of the spine, there will often be almost an obligatory component of necessary physiotherapy or hydrotherapy—something that flows from doing that procedure. WorkCover has been reluctant to accept some prompts on that, so that inefficiency in the system is dealt with when the primary permission is given to go ahead with the surgery.

Mr MILGATE: We would like to see some specific data on surgical services, operations and the costs that flow from that breakdown for the various specialty groups. That is our main interest. We would just like to see the data and not be lumped in with provision of medical services in future, and modifications to this or that, but the specific surgical services costs by specialty and some year-to-year comparisons.

The Hon. PAUL GREEN: At point 34 on page 6 your recommendation is for WorkCover to provide an accurate breakdown of costs and cost movements in relation to medical treatment of compensable patients on an annual basis. Could you elucidate that?

Mr MILGATE: We would like to have a breakdown of what the costs are, the data, the frequency of each procedure, how many knees were done, how many shoulders were done, and we would send that to our members, feed that back to them, and then they can discuss it. We have lots of medical meetings and people are interested in data and discussions and outcomes. This is going on all the time. We would just feed that data into our training college, the Australian Orthopaedic Association [AOA], system and there would be interesting clinical discussions around that, and trends and whether those trends are seen outside the WorkCover system, and the public hospital vis-a-vis the private system, and productivity issues and so forth.

The Hon. PAUL GREEN: Your organisation does not collect that data?

Mr MILGATE: We cannot collect it. We have to get it from the WorkCover level. In our agreement we moved to an item number system in order to support WorkCover's ability to collect meaningful data for analysis of outcomes. Analysis of outcomes is very important. Performance is very important to all surgeons and orthopaedic surgeons. Their reputation rests on their performance. Some of the footballers running around on a weekend are examples of what they can do. They want to achieve good results and they like feedback at a very individual level, so that would be a big improvement if that could be done. One of the things that has been resented by our members is this broad thing about medical costs rising, et cetera, when we know that they are one component of providing surgical services, and we will let the others stand up on their own.

The Hon. PAUL GREEN: To clarify, you would like to be able to think that you could collect that data to benchmark yourselves, probably not just as an industry but also against WorkCover's expectations?

Mr MILGATE: Yes.

The Hon. PAUL GREEN: That brings me to point 31, which says:

> It is universally understood that the greater the delays in obtaining efficacious treatment, the higher the risk of a delayed return to work by the compensable patient.

Basically you are saying, if it is delayed, it is going to take longer and the outcomes are probably going to deteriorate. Is that correct?

Dr HARRISON: Yes.

Mr MILGATE: Yes.

The Hon. PAUL GREEN: Given that your organisation is quite pressured, particularly in regional and rural Australia where workers do not have access, how do you think the process could be improved to get a quicker appointment with orthopaedic surgeons in order to get a better healing rate and return the worker to work?

Dr HARRISON: Where there is not such access in country areas is difficult. There are regional ones and that is where they gravitate to, unless they are forced to come all the way to Sydney or a bigger centre. Part of the problem is that people injured away from where they live in the country suffer double jeopardy once they go back to country centres, so that is a small but significant issue that needs some better thinking. It is my personal view that major trauma tends to go by necessity to the major trauma hospitals in metropolitan Sydney and in Newcastle, Dubbo, Wollongong, et cetera. Because of the nature of those entities—that is, the big teaching hospitals—and their disparate services under the one roof, severely injured patients get broken up in their after-care period and they are disseminated all over the place in follow-up.

I do not know how much it is significant in the high-cost items for major injuries, but the coordination of their care and the integration are not well handled in most parts of New South Wales. It is partly by the structure of the teaching hospitals and the fact that the work goes there—they have great guys there working—but once they have done their little bit, they are broken up in their follow-up appointments, either through the clinic structure or back to the specialist in his rooms, in a delayed fashion.

I would not like to be the claims manager. I do not have a lot to say that is good about claims managers some of the time, but I would not like to be the claims manager handling that. It is a very difficult set of circumstances and it is possibly part of the reason that the major claims and the major complex injuries are so expensive and are not as efficiently handled as they might be in a better system.

CHAIR: Thank you very much, Dr Harrison, and Mr Milgate, for attending. I do not think you took any questions on notice.

(The witnesses withdrew)

(Short adjournment)

STEPHEN HURLEY-SMITH, Industrial Officer, NSW Nurses Association,

VELMA GERSBACH, Organiser, NSW Nurses Association, and

EMILY ALICE ORCHARD, Member, NSW Nurses Association, sworn and examined:

CHAIR: I welcome Mr Stephen Hurley-Smith, an industrial officer with the NSW Nurses Association, Ms Velma Gersbach, an organiser with the NSW Nurses Association, and Ms Emily Orchard, a member of the NSW Nurses Association, and thank them for attending. Regarding questions on notice, witnesses are advised that if there are any questions you are not able to answer today, but that you would be able to answer if you had more time or certain documents at hand, you are able to take a question on notice and provide us with an answer at a later date. Regarding in camera of deliberations, witnesses are advised that if you should consider at any stage during your evidence that your response to particular questions should be heard in private by the Committee, could you please state your reasons and the Committee will then consider that request. All witnesses must be sworn prior to giving evidence. I ask that each of you in turn state your full name and job title and either swear an oath or take an affirmation. Would you like to make a short opening statement for perhaps five minutes?

Mr HURLEY-SMITH: Yes, thank you, Chair. As I said, I am an industrial officer of the NSW Nurses Association. I am also a lawyer. I have been practising in both employment and workers compensation in one form or another for the entirety of my career since 1999. I hobbled to the chair today because I currently have a back injury. I just want to make the point it is just a bulging disc. I ask the Committee not to be fooled by appearances because Ms Orchard is the person who has the real injury here, not me.

I have good news for the Committee, and I have good news for the New South Wales Government. If the New South Wales Government wishes to reduce the alleged deficit within the workers conversation scheme, it does not need to do so by reducing the benefits for injured workers. In our view, all the Government needs to do are two things: First, adopt the recommendations that the association has put forward in its submission that are designed to encourage employers to provide injured workers with suitable work, or indeed adopt similar reforms; second, adopt the proposal set out in the issues paper with regards to targeted commutations, provided that those commutations lead to fair compensation for injured workers.

If the Government just did those two things, it would save a massive amount. The scheme would save a massive amount. In our view, there would be no need to reduce the benefits for injured workers. The main problem within the workers compensation scheme is not the fault of workers. It is not the fault of lazy or fraudulent workers, in our view. It is the fault of employers—not all employers, but many employers. The association has experienced a persistent reluctance from many employers to provide suitable work to injured workers. That results in a costs-shifting. It results in injured workers either being terminated or simply being sent home without work for long periods of time. Those workers then go on weekly benefits of workers compensation, paid for by the insurer and the workers compensation scheme, whereas, if they were at work, they would be receiving wages.

The general unwillingness that I have identified in relation to employers may stem from a number of sources, one of which may be ignorance with regards to the obligations upon those employers. I note the evidence given by Ms Aplin on the first day of hearings for this Committee. She identified a similar level of ignorance on page five of the transcript. I note also that Roshanna May from the Law Society noted a certain level of ignorance, which appears on page 48 of the transcript, and I also note that a level of discrimination was identified by the director of the Australian Lawyers Alliance on page 61. The present system whereby a premium adjustment is meant to be the driver to encourage employers to provide suitable work to injured workers is not working effectively enough. There needs to be something better. I note that what I have just said is consistent with what Roshanna May of the Law Society said as well on the first day of hearings, at page 48 of the transcript.

One of the recommendations put forward by the association is for there to be some kind of mechanism, such as through the Workers Compensation Commission or otherwise, whereby before an employer withdraws suitable duties from an injured worker, or before an employer terminates an injured worker, there should be some type of process whereby the capacity of the employer to provide suitable work can be examined. In our view, that is consistent with the evidence given by Ms Aplin where she talks about the creation of an inspectorate on pages four to five as well is on page 18 of *Hansard* of Monday's hearings. She talks about an

inspectorate to assist employers with respect to the return to work of employees. She envisaged an inspectorate which would have more of an educative role. We believe it should go much further than that. There should be an inspectorate that has real authority and real powers to facilitate a return to work for workers. Further, I note that there is some support for this idea, on my reading of the evidence, from Mr Garry Brack from the Australian Federation of Employers and Industries.

Mr Brack and I may not see eye to eye on a lot of issues, but I have a tremendous level of respect for Mr Brack. I think he is a good advocate for his members. He talks about an independent audit of occupational positions—"somebody who is properly qualified and accredited ... who understands the workplace and what happens in the workplace ... for somebody with that particular kind of injury...". That appears on page 69 of the transcript. What he is talking about, in my interpretation, is some kind of independent audit of occupational positions to facilitate a return to work for injured workers. That sits very, very comfortably with what the association has put forward in our submission with regards to the work capacity testing of employers. We believe, as I said before, that before an employer terminates an injured worker and before an employer withdraws suitable duties from an injured worker, there needs to be an assessment by someone independent not only to say to an injured worker, "These are the duties you can perform", but also to say to the employer, "These are the duties which you have to give to that worker." Thank you.

The Hon. ADAM SEARLE: In relation to your reform agenda, which is at pages 48 to 50, can you briefly run us through those and the rationale behind them, and how you see them as working to, as you put it, reduce the cost to the scheme?

Mr HURLEY-SMITH: Yes, thank you for that question. As I said, the recommendations that we put forward focused upon the mechanisms by which to encourage and, if necessary, force employers to provide suitable work to injured workers. Most employers are good—I emphasise that: most employers are good—and most employers are particularly good at dealing with workers who have a short-term injury from which they recover fully. Unfortunately, however, many employers are not good, particularly when dealing with workers who have a long-term injury from which they do not fully recover. The experience of the association is that at various points within the workers compensation process, invariably workers with serious injuries at one time or another either find themselves terminated or simply sent home with a, "Sorry, we don't have suitable duties."

It is often difficult to prove that an employer has suitable duties but there are a number of case studies that we put forward in our submission, many of which show it is obvious that the employer does have work. For example, there was one aged care facility that just expanded its facility. We have had aged care providers who say to injured workers that they do not have work for them but at the same time they are advertising for positions. We have area health services or local health districts, massive employers. If anyone should be able to accommodate injured workers it should be a local health district. If they cannot do it, nobody can. It just makes the whole thing absurd. That is what the recommendations are aimed at, providing carrots and, if necessary, sticks for employers to provide suitable work for injured workers.

The Hon. PAUL GREEN: Carrots first?

Mr HURLEY-SMITH: Carrots first, absolutely. Most employers are good.

Mr MARK SPEAKMAN: Is your association affiliated with Unions NSW?

Mr HURLEY-SMITH: I believe so, yes.

Mr MARK SPEAKMAN: Should death benefits be payable where a deceased worker has no dependants?

Mr HURLEY-SMITH: The question is should death benefits be payable where a deceased worker has no dependants?

Mr MARK SPEAKMAN: Yes.

Mr HURLEY-SMITH: So the money would go I do not know where? Off the top of my head I cannot think of where—

Mr MARK SPEAKMAN: The money would go to the deceased worker's estate. He or she may have left it to a charity or may have left it to a third cousin or a relative who was not a dependant, or a friend or anybody. Or they may not have any dependants and they may not have left a will.

Mr HURLEY-SMITH: In my view the answer to the question is yes. The money should go to the estate.

Mr MARK SPEAKMAN: Why is that?

Mr HURLEY-SMITH: The worker has died and a level of compensation is payable for that. The fact that they have dependants is not relevant. It is a death for which compensation should be paid.

Mr MARK SPEAKMAN: How does that protect an injured worker?

Mr HURLEY-SMITH: It discourages, I would have thought, employers from having unsafe workplaces.

Mr MARK SPEAKMAN: Even though it is a no-fault system?

Ms GERSBACH: Can I add, in relation to our particular members, who are all nurses, where you have an injured nurse who has been off work for a lengthy time and their workers compensation benefits have dropped to the statutory rate, which I am sure you are all aware is not all that generous, a lot of young nurses end up being supported by the financial support the family provides through a variety of ways. Emily has to live with her parents because—

Mr MARK SPEAKMAN: What does that answer have to do with my question about death benefits to a deceased without dependants?

Ms GERSBACH: What I am getting to is the family has laid out significant financial amounts to support the injured worker over time. If that was the case and the worker ended up dying because of the injury that would be a way of them being recompensed, even though they are not deemed to be a dependant. So there would be avenues to compensate people who have supported, either financially or in other ways, the worker who was killed.

Mr MARK SPEAKMAN: If a worker has a workplace accident and is killed immediately, why should a death benefit be paid to his or her estate if there are no dependants?

Ms GERSBACH: The other thing could be we do not know what sort of debts that person may have—whether they have mortgages, personal debts, whatever. There are a whole variety of reasons there would need to be money in their estate.

Mr MARK SPEAKMAN: Do you think one of the functions of the workers compensation scheme is to protect creditors?

Ms GERSBACH: No, I am not saying it is to protect creditors. It is to ensure that people's debts are paid but more importantly it is a way to ensure that wherever possible a safe work environment is created by the employer.

Mr MARK SPEAKMAN: As to journey claims, the Bar Association has a seven-point plan. One of its proposals is that the journey claims still stay as part of a worker's compensation scheme but the fault of the worker be a mitigating factor. So, compensation would be reduced if there was some fault of the employee. Would you like to comment on that proposal?

Ms GERSBACH: When you say the fault of the employee, if I can give an example again of our members, who are nurses, particularly who work in the country and have to travel a significant way to and from work, often on unsealed roads in awful climates, sometimes on black iced roads. They can have accidents there. Sometimes it may be the fault of the driver if he or she took a corner too fast, how do we know, but I think it is very hard to close them off simply by saying they were at fault so we need to reduce it. There are a variety of reasons there that play a part and it is not a simple answer to say yes, they should be reduced.

Mr MARK SPEAKMAN: In your paper you supported the idea of targeted commutations?

Mr HURLEY-SMITH: Yes.

Mr MARK SPEAKMAN: Are there any safeguards or restrictions on the circumstances in which commutations should be allowed, in your view?

Mr HURLEY-SMITH: Before I answer that, could I make one extra point with regard to the journey claims question that you asked?

Mr MARK SPEAKMAN: Sure.

Mr HURLEY-SMITH: My understanding of journey claims is that there is already scope within the legislation which provides you will not have a successful journey claim in certain circumstances, for instance, if you are drunk. There is already a fault mechanism built into the legislation. In my view that is sufficient. In relation to the question about commutations, it is not an area I would profess great knowledge about but my understanding is how it used to work and still works now is an assessment has to be made by the workers compensation commissioners as to whether or not commutation is the best thing for the worker. I think that is a fair test and I think it should be retained.

My experience with people who have been on workers compensation for a long time is that most of them just want to get out of the system. One injured worker described it to me as the pits, it is just the pits. So, greater access to commutation is something a lot of workers would jump at to get the chance to simply to get out of the quagmire. To be more direct with your question, as long as it is in the best interests of the worker, I think that is a suitable safeguard.

The Hon. PAUL GREEN: Just to carry on from that, unequivocally you are saying if the worker was happy to exit using that exit strategy, commutation, you would be happy to support it?

Mr HURLEY-SMITH: I professed at the beginning I do not have a huge degree of knowledge in this area.

The Hon. PAUL GREEN: That is fine. I have asked this question quite a few times. I am just trying to put the worker in the pilot's seat. If that is their choice you would back them?

Mr HURLEY-SMITH: Not necessarily their choice. The question of their choice is important but also my understanding of the way it used to work is the Workers Compensation Court as it then was would look at the circumstances and make a decision despite the worker's choice, it would not matter.

The Hon. PAUL GREEN: I think it is taken that they have been totally informed by all those parties around them of what that would mean?

Mr HURLEY-SMITH: Yes.

The Hon. PAUL GREEN: Taking that, if they are happy to sign out and get out of the system—and you have noted that most want to get out and get on with their lives—you would be happy?

Mr HURLEY-SMITH: I think so, subject to my proviso of my limited knowledge.

The Hon. PAUL GREEN: Of course. I mean, you can always say "subject to". Looking at No. 6 on page 50, having come from the health background and having been in the situation on the ward trying to get light duties, the peer pressure of trying to be obedient to the doctor yet meet the needs of the numbers on the ward, so I have very much been in that zone. In item No. 6 you say, "We recommend that it be an offence for an employer to require a prospective employee to declare whether they had previously suffered a workers compensation injury unless that injury would prevent him or her from performing the inherent requirements of the role. An offence of this kind could be inserted into anti-discrimination legislation." With this thought in mind, how do you process that an employer, in all good faith, signs someone up because they have basically come to them and said, "I've dealt with that. It no longer takes effect in my body. I don't have an inkling of that injury. I signed over to your cause and employment under your services"; then at some time in the future that

same injury is aggravated? How do you process who is responsible, and should the new employer be responsible for that?

Ms GERSBACH: Again, it depends on what degree of recovery they have achieved initially. If they have signed off as fit for pre-injury duties and fit to do the inherent requirements of their pre-injury role and are not requiring ongoing medical treatment, then for all intents and purposes my understanding is that claim is then closed and the worker presents for a new position, giving the undertaking that they are fit to do the inherent requirements of the job they are taking on. Therefore then if they are re-injured, my understanding is at the moment that it is referred to the current employer's insurer and the insurer then has it out with the prior insurer as to who or what part of responsibility is taken by him. I am not in a position to say who should; it depends on the nature of the industry.

The Hon. PAUL GREEN: One of the things the inquiry has been hearing is that suitable duties should be found; then after suitable duties, if the person wants to close that case and move on they can. Should that be declared to the new employer? That is an issue.

Ms GERSBACH: When we talk about the provision of suitable duties or suitable work our main focus is with the current employer.

The Hon. PAUL GREEN: Yes, I know. I understand.

Ms GERSBACH: But it is of concern when the injured worker is directed by the insurer to seek alternate work. The confusion is the current employer where the injury worker sustained their injury, they tend not to provide them with work so the worker has to look elsewhere. Other prospective employers are reluctant to take them, which is what we refer to. But our focus, particularly with the Department of Health in New South Wales—I would say it is, if not the largest, one of the largest employers in the State—if they cannot find work for an injured worker—and it does not have to be nursing—there is a whole variety of tasks that they can do. Our concern is that there is a high level of knowledge and skill that is lost to the industry when nurses are not appropriately accommodated in work that they can do with their current employer.

The Hon. PAUL GREEN: That is my second question. Because nursing is so big and there are a lot of people, sadly, on suitable or light duties, would the nurses union be against the idea of intergovernmental agency transfer for suitable duties? So, as you have just mentioned, not necessarily nursing. You could go to another government agency and do something else.

Ms GERSBACH: No, we are not against that.

The Hon. PAUL GREEN: That is an option you would entertain?

Ms GERSBACH: Yes, and in fact we look at other nursing positions or non-nursing positions within the local health district.

The Hon. PAUL GREEN: I am talking outside Health.

Ms GERSBACH: Yes.

Mr MARK SPEAKMAN: The good news as you have described it had two prongs. One was computation and the other was getting employers to do more about returning employees to work.

Mr HURLEY-SMITH: Yes.

Mr MARK SPEAKMAN: We are presented with actuarial analysis that suggests there is a deficit. We may get information about the savings the different slashings of benefits can achieve but we do not have any hard data at the moment about what cost savings can be made by making employers do more. Are you able to help in that direction?

Mr HURLEY-SMITH: I am not an actuary. Ms Orchard is here today and her case study is in the submission. She is fighting at the moment to get a position in the public health system. She is fit for the position that she is seeking in particular. Every day that that position is not given to her is a day that she receives workers compensation benefits from the insurer and it is a day that should not be paid for by the insurer; it should be

paid for by the local health district because she should be working. There are 10 case studies in our submission about it. That is a lot. There would be just a massive number of similar circumstances that we deal with on a day-to-day basis. We would be getting, I would say, the number would probably be—correct me if I am wrong, but I would say we would get at least 10 calls a week from injured workers who have problems with suitable duties at work.

The only organisation, the only check and balance out there trying to ensure that worker gets work is the union. There is no other check and balance in the system; the insurer is not doing it. The employer, if they are good they are doing it; if they are not, they are not doing it. If there were mechanisms to encourage and then if necessary force employers to provide suitable work to injured workers, a massive amount of money would be saved because we see it day in, day out, weeks tick by of workers on weekly workers compensation benefits paid for by the insurer when we know there is work that the employer can give. That is probably the best evidence I can give you. I am not an actuary. I wish I had the resources to be able to analyse it properly. I guess all I can tell you is the experience that I have had at the Nurses Association and my prior experience in other industries. I have seen it time and time again. The majority of workers just want to get back to work. The majority of workers are not lazy or fraudulent; the majority of injured workers just want to get back to work. That is what they want.

Mr ROB STOKES: On page 6 you talk about a criticism of the issues paper on the basis that it does not talk about imposing some addition responsibilities on insurers or employers. What additional responsibilities would you seek to have imposed on insurers and employers?

Mr HURLEY-SMITH: The seven recommendations we have put in there relate predominantly to employers. My understanding is that insurers would love the opportunity to be able to say to their clients, "Look, you've got to provide that person with this work and if you don't X, Y and Z will occur." Currently the only mechanism by which an insurer can regulate that is through premium adjustment. We believe that insurers need to be given more ability to influence their clients with regard to the provision of suitable work. If there was a mechanism, for example, through the Workers Compensation Commission, before the employer could withdraw duties or dismiss the workers, there had to be some kind of application or process through the Workers Compensation Commission. The insurer could be involved in that. I mean, they insure the businesses. They would have some level of knowledge about the type of work that is performed. If they could exert greater influence in that regard, we would be in favour of it.

CHAIR: Ms Orchard, do you want to say something?

Ms ORCHARD: I agree with what Stephen just said about insurance companies. I have actually been penalised and punished by the insurance companies because I am not employed. Well, I am employed; I am not currently working. I have been fit for suitable duties for over 12 months. I have found three jobs at St George, four actually, that I could have done within my current employer and I have not, yet the insurance company is on my back because I have not got a job. I have actually said to them, "Well, speak to St George and find out why they're not willing to take me back." They turned around and said to me, "Well, that's not our role. Our role is for you to job seek and for you to find a job externally if not internally within your current employer." As far as giving them a little more power in that instance, yes, it would be good because it is not the fault of the worker most of the time. I would love to be back at work. I would love nothing more than to be back at work. I am 26 years old and, trust me, after you have been off work for more than a couple of weeks it gets very boring. You get very tired and very depressed and your mental health starts to suffer as well. So having that mechanism in place would actually help the worker.

CHAIR: Thank you for that. Thank you all for attending today. I do not believe you took any questions on notice. Thank you once again.

Mr HURLEY-SMITH: Thank you for the opportunity.

(The witnesses withdrew)

DANIEL KYRIACOU, National Communications Manager, National Disability Services, and

JOANNE MAXWELL, Injury Management Advisor, National Disability Services, affirmed and examined:

SUSAN SMITH, Disability Safe Project Manager, National Disability Services, sworn and examined:

CHAIR: Before we commence, there are a few procedural matters to go over. Witnesses are advised that if there are any questions they are not able to answer today but would be able to answer if there was more time or certain documents at hand, they are able to take the question on notice and provide the Committee with an answer at a later date. Witnesses are advised further that if at any stage during their evidence they should consider that their response to particular questions should be heard in private by the Committee, please state your reasons and the Committee will consider the request. Would you like to make a short five-minute statement before we proceed to questions?

Ms SMITH: Yes. Thank you for inviting us to appear before this inquiry. National Disability Services [NDS] represents 220 not-for-profit disability organisations across New South Wales. Our members provide disability services on site, in clients' homes and at community venues. The New South Wales Government funds NDS to deliver the Disability Safe project to assist members across New South Wales to comply with work health and safety and workers compensation legislation. As the Disability Safe Project Manager, I coordinate training, advise and support disability organisations, and provide leadership and front-line staff in improving workplace safety. In the last 12 months we have assisted 120 organisations with these services. I am joined today by Jo Maxwell, who works as a return-to-work coordinator under the Disability Safe project, and Daniel, our communications manager.

In our submission we took advice from our members regarding their experiences with the current workers compensation system and our comments cover the main concerns raised as well as some recommendations that may fall beyond those listed in the issues paper. Firstly, I want to put on the record that we feel that the majority of workers compensation claims are managed well by employers, doctors and insurers. In the majority of cases employees suffer legitimate workplace injuries and work under the system with their employer and health professionals to successfully return to work. It is important to understand that providers in the disability sector have been established to fulfil a desire to support some of the most disadvantaged groups in our society—people with disabilities, their families and carers. Their goal is to assist their clients to live happy and fulfilling lives as valued members of the community. They work with people with a range of disabilities frequently in uncontrolled environments and this can impose a number of risks for workers.

The disability sector has demonstrated an ever-improving ability to provide suitable duties to assist injured workers back to work and strongly supports the concept that the workplace is the most suitable environment to promote a full recovery from work injuries in combination with suitable treatment. While the system works well in most cases, many providers in the disability sector are small employers with small numbers of claims. This means that often they are required to work with claims managers who do not understand their business or the duties offered and do not provide the same response times as other larger employers might receive. This can result in the claims manager not proactively driving the claim with early intervention strategies and accepting claims that our members do not believe meet the entitlements under the legislation.

The employers' lack of experience with the system means that they are less likely to be able to manage their insurer effectively. The small nature of many employers in the disability sector, who often offer only one type of service, means that suitable duties cannot always be sustained long term or may not even be possible in the case of traumatic psychological injury. Therefore, in cases where the worker is severely injured and/or suffers permanent restrictions, the system needs to rapidly promote redeployment or retraining and develop strategies to effectively provide this process. The disability sector is concerned about the potential increase in workers compensation premiums and the impact this would have on the not-for-profit organisations' ability to continue to offer services to clients.

However, we agree that those people with severe work-related injuries should receive the appropriate support. We have found that endeavours to assist a worker to recover from their injury are often frustrated by a medical system that does not understand or abide by the benefits of early intervention or active treatment. Despite knowledge that maintaining activity is important after, for example, strain injuries, often the current system is process driven. In some cases workers are still told to completely rest or await investigations prior to

commencing treatment. Further, passive treatments continue well beyond the acute phase. Neither practice is in the long-term benefit of the employee or employer.

We support the use of work capacity testing to identify work fitness so that a return to work can be progressed either with the same or an alternate employer. We believe that the workers compensation system in its simplest form should see an injured worker visit a doctor, have their injury assessed, and both treatment and a return to work plan issued. Ideally the process would be collaborative, with doctor, employee and employer at the table to coordinate the return to work plan. Realistic and accurate diagnosis is required to ensure only work-related injuries are covered under the workers compensation system. Finally, there must be an obligation on scheme agents to treat each case equally. It is an injustice to both employer and employee of small businesses when their claims are not given equal attention to those of larger organisations. I thank you for the chance to address this important inquiry and I am happy to take any questions you might have.

The Hon. ADAM SEARLE: On the second page of your organisation's submission you say that your organisation regularly collects benchmark data from members and from that you are able to make the claim that the sector is successful in minimising time lost in identifying productive suitable duties. I contrast that with the evidence you have just given about how it is often quite difficult for employers to find those suitable duties. Based on this benchmarking data are you able to provide us with some meaningful statistics about what percentage of employers are able to find productive suitable duties, both short term and in the longer term?

Ms SMITH: I was referring to the ability to sustain those suitable duties over a long period of time. That means somebody who is permanently incapacitated. The ability to accommodate them at the workplace is difficult, whereas the ability to get them back to work in the first place is quite good. There is a difference. I do not have the statistics.

The Hon. ADAM SEARLE: So your organisation does not collect any of those? You have not surveyed your members?

Ms SMITH: The benchmarking statistics we have are those I have provided you with today. We have some statistics that we have obtained from the WorkCover Authority with the permission of some of our members, which has demonstrated an ability over the past four years to reduce time off work and costs of claims. We have not brought those with us today.

The Hon. ADAM SEARLE: Would you be able to take that on notice and provide that to us in due course?

Ms SMITH: Yes.

The Hon. ADAM SEARLE: In your recommendation on page 2 you say that treating health professionals and scheme agents should take tighter control of costs and there should be limits on what is done and it should be directed only to resumption of pre-injury status. Can you elaborate on that? Does that mean there should not be any expenditure on rehabilitation to get somebody well again; it should only be if they can get back to their pre-injury duties?

Ms SMITH: I was careful in how I worded that because that means the whole person, not just the work-related part of it. Yes, I totally agree that we need to help the whole person because if they cannot cope at home they are going to have difficulty coping at work as well.

The Hon. ADAM SEARLE: There is a test of "reasonably necessary" for medical expenses to be approved now. Are you saying that does not work properly? It seems to me this recommendation you want to achieve already exists in section 60 of the legislation. I am trying to understand what the experience has been in your industry.

Ms SMITH: I can only rely on anecdotal evidence today, which is that there are cases where people receive excessive amounts of treatment, often of a passive nature. The insurer does not always act on that at an early stage.

The Hon. ADAM SEARLE: But you say this is anecdotal; you do not know how widespread this problem is or even if it is a general problem?

Ms SMITH: Anecdotal reports.

The Hon. ADAM SEARLE: Also on the second page you talk about anecdotal evidence from your sector about the contribution of pre-existing conditions or what you term to be lifestyle factors. You say employers should take responsibility for lifestyle choices. What are you getting at there? Are you suggesting that people are coming to work in your industry affected by bad lifestyle choices?

Ms SMITH: Our industry tends to have a large number of workers who are older and a percentage of those workers may not be maintaining good lifestyle choices—their weight, for instance. That is what I am referring to. Obviously, when you are talking about physically demanding work it can impact on their capacity to undertake the work safely.

The Hon. ADAM SEARLE: So you are not suggesting people are coming to work affected by drugs and alcohol and other problems like that?

Ms SMITH: No.

The Hon. ADAM SEARLE: You mean weight?

Ms SMITH: Yes.

The Hon. ADAM SEARLE: And general fitness. I am glad I understand that.

Ms SMITH: Health and wellbeing-type issues.

The Hon. ADAM SEARLE: You also talk about pre-existing conditions being a problem. Again, is this just impressionistic and anecdotal from your members or do you have some hard data about just how much of a problem that is in your sector?

Ms SMITH: It is anecdotal.

The Hon. ADAM SEARLE: On the fourth page of your submission you talk about treating doctors treating the scheme as a cash cow and ordering expensive treatments which are not necessarily work related. I think somewhere else in your submission you decry the use of yoga treatments. Do you have any hard data about how widespread such a problem is in your industry or is this again just impressionistic and anecdotal?

Ms SMITH: I am sorry, it is anecdotal.

The Hon. ADAM SEARLE: So we do not really know how much reliance we can place on that?

Ms SMITH: No.

The Hon. ADAM SEARLE: And neither do you?

Ms SMITH: No.

The Hon. ADAM SEARLE: You also say on page 4 that it is well known that treating doctors write medical certificates for workers who are upset. Are you suggesting doctors are writing medical certificates when people are not really sick? Is that what you are getting at?

Ms SMITH: What I am getting at is they are treating persons' emotional distress as a medical condition.

The Hon. ADAM SEARLE: Okay. You say it is well known. What data can you point to or statistics that have been collected that we can place some reliance on in relation to that statement?

Ms SMITH: Again, sorry, it is anecdotal.

The Hon. ADAM SEARLE: You say that doctors who undertake such practices should not be allowed to provide WorkCover services. How do you suggest mechanisms could be put in place to identify such doctors and police this problem, if it exists?

Ms SMITH: I think the scheme agents can collect information about doctors who issue those sorts of certificates on a regular basis and they can act on individual doctors when they identify that as well as potentially blacklist them or some similar process.

The Hon. ADAM SEARLE: Do you think the scheme agents would need some additional powers in this respect?

Ms SMITH: Yes.

The Hon. ADAM SEARLE: Going back to page 3 of your submission, are these the same scheme agents that your members are telling you are not responsive to their concerns about liability being accepted or return to work plans and things like that?

Ms SMITH: Yes.

The Hon. ADAM SEARLE: Are you able to elaborate on the difficulties that your members are telling you they are experiencing with scheme agents?

Ms SMITH: Again, I am sorry, this is anecdotal. They have a different case manager every time they ring, they are unable to contact the case manager and they do not get a response from the case manager in a reasonable time frame.

The Hon. ADAM SEARLE: On page 2 of your submission you say that your organisation supports changes that will result in a system design which directly relates claim costs to work-related initiatives. I apologise if I am struggling but I do not understand what that means. Can you elaborate on what you are getting at in that phrase?

Ms SMITH: I am really talking about the return to work process and initiatives around that early return to work.

The Hon. ADAM SEARLE: So you are talking about reducing claims costs by getting people back to work?

Ms SMITH: Yes, definitely.

Mr MICHAEL DALEY: Following up a question Mr Searle asked about the performance of scheme agents and the problems you referred to, are you disappointed that the issues paper makes no mention of these sorts of structural or managerial problems with the performance of scheme agents?

Ms SMITH: Yes we were; that is why we raised them in our submission.

Mr MICHAEL DALEY: So it warrants further looking at?

Ms SMITH: Yes, definitely.

Mr ROB STOKES: Mr Searle asked you a few questions in relation to some of the anecdotal evidence you have provided, which obviously suffered from a lack of probative force in that it was not entirely substantiated. Could you provide on notice some more details about what you are referring to, particularly in relation to the accountability of doctors and the practice of doctors ordering unnecessary treatments? It would be helpful if you could point to some concrete examples of where that has occurred.

Ms SMITH: Yes. I am sure we could get some.

The Hon. NIALL BLAIR: Could I go to the recommendation about shared return to coordinators and a service you have invested in. Are you providing advice and assistance to your members to facilitate or conduct that return to work role?

Ms MAXWELL: Yes. Most small insurers may get a claim once every couple of years and because of a staff change-over or lack of experience they do not know how to manage that. We go in there and assist them to find the suitable duties, write the return to work plan, assist with meeting doctors and workers and understanding their obligations in the system in order to get a balanced and proactive approach to return to work and suitable duties.

The Hon. NIALL BLAIR: You would be liaising with the scheme agents and the people that are case managing the actual cases as well?

Ms MAXWELL: We try to promote it as much as possible but, unfortunately, it is for them to approach me. It is best to promote the service as much as possible. Usually they will contact me and I will help them out.

The Hon. NIALL BLAIR: Where you say we need to reduce the bureaucratic requirements for the use of a shared return to work coordinator, how do we do that?

Ms MAXWELL: At the moment we have to lodge it with WorkCover and we have to go through a process of writing it into the return to work program and put everything in writing upfront. Then it needs to be approved by WorkCover and it can take quite a few months to get that all together.

The Hon. NIALL BLAIR: It has to happen for every case?

Ms MAXWELL: Yes. It would be much better if you could be accredited and you could act more quickly.

Ms SMITH: It is a requirement for every employer we provide assistance to. Every time we get a case from a different employer we have to go through that process.

The Hon. NIALL BLAIR: You are asking to be accredited in order to provide that service to the small employers that you represent across the State?

Ms SMITH: Yes. If it was a once-off accreditation we could be utilised by anyone who needed our services.

Ms MAXWELL: Within our members.

The Hon. TREVOR KHAN: Your members are relatively small organisations, are they?

Ms MAXWELL: Yes, usually funded by both Government grants and charity.

Ms SMITH: The size does vary. The vast majority would be in the small to medium employer size.

The Hon. TREVOR KHAN: What does small to medium mean?

Ms SMITH: Less than 50 employees.

The Hon. TREVOR KHAN: That would be a medium size employer?

Ms SMITH: I believe that is how WorkCover would class it.

The Hon. TREVOR KHAN: Do I take it from the previous answer that we are talking about not-for-profit organisations?

Ms SMITH: Our members are all not-for-profit organisations.

The Hon. TREVOR KHAN: Not what one would describe as rapacious profit earners?

Ms SMITH: They are not after the dollar, no.

The Hon. TREVOR KHAN: What we are talking about is small and medium size. The Hon. Adam Searle and Mr Daley have been asking a variety of questions of witnesses with regard to alternative employment or what used to be called light duties in my day. In terms of your member organisations, how easy is it for them to provide such duties on a long-term basis?

Ms SMITH: It is not easy. It depends on the size of the organisation and the range of services that they provide. Some organisations, even though it is 50 employees, will offer a range of services such as day services, accommodation services and respite services. Whereas there are other small organisations that may only offer respite services. Most of the time management is hands on with the services. So there is not the back-office type role as well as alternate roles for people to do. Where there is a range of services it is easier for them, but there are a limited number of positions available.

The Hon. TREVOR KHAN: We heard from the NSW Nurses' Federation about cost shifting. Cost shifting is being placed onto the workers compensation system by the failure of employers to provide alternative duties. What is the capacity of the small to medium members to provide alternative employment and it not cost them significant sums?

Ms SMITH: To create a role it costs. If the person was not able to do their substantive duties then there is a cost, because they are not funded for that role and they are funded for all the roles that they have. There is a problem with that. We have looked at, and are going to be implementing, the possibility of work trials within the sector as a whole, so if somebody cannot be sustained in their particular workplace they can remain in the sector. We want to retain their knowledge and skills but move them to an organisation that has other services that meet the requirement for that individual.

The Hon. TREVOR KHAN: In the specific small to medium not-for-profit employer we are talking about, essentially they are providing long-term alternative employment to the injured worker by withdrawing another service from the disability services sector?

Ms SMITH: Yes, that would be the case.

The Hon. TREVOR KHAN: That is a terrible position to be in.

Ms SMITH: It is, yes.

The Hon. PAUL GREEN: On page 6 of your submission you comment on evidence based medical treatment. Your recommendation says the scheme should not support never-ending treatments without any measurable work capacity, direction or achievements and should require treatment providers to demonstrate an understanding of the workplace and involvement in return to work planning prior to approval of treatment sessions. For example, provision of psychiatric treatment for 18 months with no progress towards work fitness should not be accepted. Would you like to elaborate on that? Are you talking about capping times or what are you suggesting should happen?

Ms SMITH: I am talking about directing treatment appropriately. Passive treatment that does not have a goal of returning to work should be capped because there is no benefit to anyone.

Mr KYRIACOU: The key aim of our submission is to talk about collaborative work. All of these areas are concerned with return to work and coming up with a system—with the employer—where the employee gets back to employment. We have argued pretty hard that having a collaborative process where the employer is able to help put together the return to work plan, and it be a process where there is joint effort, would make a big impact. Doing those things in isolation often means that the medical profession do not actually know whether or not there are fit duties and when the fit duties will apply. Having a collaborative process will assist in some of these matters.

The Hon. PAUL GREEN: On the last page of your submission you mention journey claims. You suggest there that you would generally support the removal of journey claims when travelling to and from work for disability support workers. I see in the recommendation you then talk further of the disability support worker travelling to a client's home. Can you explain what you mean? Is it removal of cover for the support worker travelling to the place of business or is it from the support worker's home to the client's house if they start from home first thing in the morning?

Ms SMITH: What we are recommending is that if there was any change to journey claims liability that understanding what was a work journey and what a journey was to and from work should be made extremely clear so there is not the case of someone, in my opinion, starting work but not being covered under workers compensation.

The Hon. TREVOR KHAN: That would cut out the whole trucking industry.

Ms SMITH: Unfortunately, there are a lot of people who do start work from home.

The Hon. PAUL GREEN: It is an interesting point because cars are becoming a mobile office.

Ms SMITH: Of course, if a vehicle is detected speeding, normally responsibility falls back on the individual driver; but if you are on the phone and crash, and you are doing work business, maybe it would be seen otherwise. So it is a very complicated issue nowadays, and it is progressing as the car becomes very much a mobile office.

The Hon. PAUL GREEN: I was wanting you to clarify the point you made there about the recommendation on abolishing journey claims.

Ms SMITH: It is very much looking at what policies are in place as well, because basically a good work health and safety policy would say not to use the phone while you are driving.

The Hon. PAUL GREEN: I am talking about using the mobile hands free, of course.

Ms SMITH: We recommend not even doing that.

CHAIR: Thank you very much for attending the hearing. The secretariat will provide you with a transcript, which will have the questions you have taken on notice highlighted. The Committee has resolved that answers to questions taken on notice be returned to the Committee within three working days after you have received the transcript.

(**The witnesses withdrew**)

ANNETTE WILLIAMS, National President, Australian Rehabilitation Providers Association, and

NIKKI BROUWERS, President, NSW Australian Rehabilitation Providers Association, sworn and examined:

CHAIR: I welcome Annette Williams, National President of the Australian Rehabilitation Providers Association [ARPA], and Ms Nikki Brouwers, New South Wales President of the Australian Rehabilitation Providers Association. Thank you very much for coming. Regarding questions on notice, you are advised that if there is any question that you are not able to answer today but would be able to answer if you had more time or had certain documents to hand, you are able to take the question on notice and provide the Committee with an answer at a later date. Regarding in-camera deliberations, you are advised that if you should consider at any stage during your evidence that your response to a particular question should be heard in private by the Committee, you may state your reasons and the Committee will then consider your request. Would you like to make a short opening statement?

Ms WILLIAMS: Yes, please. The Committee will be aware that the Australian Rehabilitation Providers Association has provided two submissions to the inquiry. The Australian Rehabilitation Providers Association is the peak body representing the workplace rehabilitation industry, and our members are organisations. They assist people to remain at work, or to return to work, or to find new work following a workplace injury. Workplace rehabilitation providers operate in all States, Territories and in the Commonwealth compensation schemes, as well as in the Federal government employment services sector. I am the National President and the past President of Australian Rehabilitation Providers Association New South Wales, and Nikki is the current President of Australian Rehabilitation Providers Association New South Wales. We have both worked as colleagues on the New South Wales branch for over 10 years.

Mr MICHAEL DALEY: On page 2 of your submission numbered 128, under Reform Principle 3, you say "ARPA has committed to advocate for continuous improvement in public health policy around work". Then you say, "Early intervention is the cornerstone of effective rehabilitation." The Committee has heard evidence today that, as things currently stand under the scheme, sometimes it will take 12 weeks for an injured worker to see a rehabilitation provider. Do you have any ideas on how the speed of that might be improved?

Ms BROUWERS: Our evidence actually says 31 months; and that is from a quite significant study that covered more than 91,000 New South Wales claimants. So the difference between 12 weeks and 31 months is quite significant. How can it be improved? We believe that early intervention is critical and significant. We make most difference where we can see people early and can keep them connected with the workplace. We believe this can be achieved through a screening process, and we believe the work capacity assessment could quite clearly identify a person's capacity and what stream of workplace rehabilitation the person could benefit from.

Mr MICHAEL DALEY: So that would be a work capacity assessment at the front end?

Ms BROUWERS: Absolutely.

Mr MICHAEL DALEY: Could I check with you a figure you have on the following page—and I know these are not your details:

> Comcare data collected from Commonwealth premium paying agencies … found that employees who returned to work in less than 5 days had an average total claims cost of $60,000.

Firstly, is that five days from injury?

Ms WILLIAMS: Yes.

Mr MICHAEL DALEY: And they have an average total claims cost of $60,000?

Ms WILLIAMS: That is a total claims cost.

Mr MICHAEL DALEY: For the one employer from that injury?

Ms WILLIAMS: Yes.

Mr MICHAEL DALEY: So $60,000 for spraining an ankle and coming back in five days?

Ms WILLIAMS: Yes.

Mr MICHAEL DALEY: Nurses have just given evidence that, in their view, significant savings from the tail could be achieved by giving scheme agents more power to compel employers, particularly large public entities, to take injured workers back to work and find alternative employment. Would you agree with that statement?

Ms WILLIAMS: Our position on that is that early intervention is a panacea for a lot of the issues within the workers compensation scheme. Most of the issues in relation to finding suitable duties and sustaining suitable duties and achieving sustainable outcomes arise because we see the 15 per cent who are at risk far too late. So there is a lot of work to do, and we find that the many barriers now presenting themselves are making a return to work difficult. In general, employers are cooperative in their return-to-work process; we can find suitable duties, and we can develop suitable arrangements. We believe that, with the proper assistance upfront, the outcomes can be achieved much more effectively and in much shorter time.

Ms BROUWERS: If I could add to that. Effectively, that is our value proposition. A workplace rehabilitation provider actually explains to an employer why it is so important to keep that worker engaged in the first place. That is a simple proposition to argue and to put forward in the early days. Three months, six months, 12 months, 31 months is way too late to be able to achieve that.

Mr MICHAEL DALEY: Is that proposition sufficiently addressed in the issues paper as it currently stands?

Ms WILLIAMS: In our response we address it in full; but not in the issues paper, no.

Mr MICHAEL DALEY: I am referring to the issues paper put out by the Government.

Ms WILLIAMS: Not in the issues paper, no.

The Hon. ADAM SEARLE: In relation to people being referred to rehabilitation providers quite late in the piece, I think you say over half of them are referred outside 12 months from injury. What are the causes of that very late referral to rehabilitation providers? Is it that the scheme agents are not referring them to you, or is it that workers are not making an application? What is the cause?

Ms WILLIAMS: Our studies show—and it is our experience—that 85 per cent of referrals are made by scheme agents. That does have an impact. There is generally a wait-and-see approach. It is because there is a statistic that most people return to work naturally by 12 weeks; so there is a wait-and-see approach to see if that is going to happen, rather than identifying that 15 per cent that need assistance very early on—and three months is too late.

The Hon. ADAM SEARLE: What could be built into the system so that say scheme agents know when to refer someone more appropriately?

Ms WILLIAMS: There are tools being used by agents. There is also an obligation on agents to contact all parties—the employer, the injured worker and the doctor—very early on, within days of processing the claim.

The Hon. ADAM SEARLE: Are they doing that?

Ms WILLIAMS: They are. Generally, it is an administrative process. There needs to be more rigour around a genuine triage process that identifies people who are presenting with barriers.

The Hon. ADAM SEARLE: To put it bluntly, do the people working in the scheme agent's firms who drive this, from your experience, have the appropriate level of skills to be able to fulfil these functions properly?

Ms WILLIAMS: There is no requirement for the claims officer to have qualifications. That is currently being addressed by the Personal Injury Education Foundation [PIEF], which is what WorkCover NSW

and Work Safe Victoria are actively involved in. So there is a genuine drive by the industry to improve competency and provide some qualifications and training, but we are in the very early days at the minute.

Ms BROUWERS: To come back to your question, we believe that a system fix is two-fold. One is about ensuring that there is a single repository of information, so a dataset that is consistent across all agents and WorkCover. So that would be the first point.

The Hon. ADAM SEARLE: Do you mean a single information technology system?

Ms BROUWERS: Yes, a single information technology system which has a single operating model and has a single service level agreement. It sounds quite simplistic, I know, but it does not exist at the moment. Once we have that then we could identify those workers who remain off work—we are proposing at seven days—and at that stage refer them to what we believe is a work capacity assessment by appropriately trained allied health professionals who have the skills to identify those injured workers who are at risk, who are vulnerable, and refer them into the right service at that point of time.

The Hon. ADAM SEARLE: Will you provide to the Committee the cortex solutions research paper that you commissioned?

Ms BROUWERS: Absolutely. Previously we provided that to WorkCover and to the Government. We would be really pleased to provide it to this Committee. It is in the process of being published.

The Hon. ADAM SEARLE: At the bottom of the third page of the national submission you talk about workers' experience of significant barriers to return to work to achieve a durable return-to-work outcome. Is that outside the six months prohibition on terminating injured workers? Is that what you are referring to? What are those barriers?

Ms BROUWERS: Durable action means the ability to remain at work when the process has happened. We have a 13-week marker where we then go back and check the person is still engaged in the workplace. With that particular question, we are talking about the safe return to work that is durable.

Ms WILLIAMS: The measure of durability is determined by the provider. It does not mean when they get a pre-injury duty certificate or when they are at their capacity, the 13 weeks starts when the provider believes that it will be durable so it is a stabilised return to work. The 13 weeks kicks in from there. Then we must verify that they are at work, or not at work, at a 13-week measure mark.

Mr MARK SPEAKMAN: At the foot of page 5 of the New South Wales submission it says that New South Wales supports only one claim being made for whole person impairment. Why do you support that option?

Ms BROUWERS: We are of the understanding—it is actually outside our brief—the whole person impairment happens because of the failure to return to work in the first place. So we would support anything that we believe could drive assisting people to remain at work, and stay at work, because we fundamentally believe that strives better social outcomes and better economic outcomes for the scheme and for New South Wales as a whole.

Ms WILLIAMS: One of the main issues surrounding sections 66 and 67 for providers is that there is a misperception that rehabilitation assistance and weekly payments are related to sections 66 and 67, and they are clearly not. It is a misperception that impacts on our ability to focus on return to work in some cases.

The Hon. TREVOR KHAN: There is some evidence from WorkCover that it has changed its method of remuneration of service providers in that they are placing more emphasis upon the tail claims than they previously were, and that is in some way factored into their remuneration package. I think the evidence was that that was from 2010 or thereabouts. Have you noticed during, say, the past six years a change in the behaviour of the service providers with regards to both the tail claims and the management of claims generally? Are they getting better?

Ms BROUWERS: The results would say they are not. I could tell you that we are not getting our referrals earlier. So for someone who has been in the scheme for a very long time, initially they were driven by

employers and doctors and you would get referrals very early. As we state in our research, 85 per cent of referrals are now coming from agents and that is where we are seeing the delay.

Ms WILLIAMS: The agents scheme contracts definitely created a shift to agent referral away from employer and doctor referral.

The Hon. TREVOR KHAN: Would you repeat that?

Ms WILLIAMS: The agents scheme contracts that commenced in 2005 definitely led to a shift in referral patterns from anyone being able to refer, as long as it was approved by the insurer or claims agent—so that could be the worker themselves, their doctor, their treating provider or the employer—that has now shifted to the majority of our referrals being received by claims agents now. There is a stand back from other stakeholders to put people forward for rehabilitation assistance.

The Hon. TREVOR KHAN: Is it a stand back or is it a circumstance where they are almost actively discouraged from participating in the process of a return to work?

Ms BROUWERS: Our view is that a lot has been said about the "lump sum culture" that is happening in New South Wales at the moment. It is the view of the Australian Rehabilitation Providers Association that it is actually a wait-and-see culture that is producing a lump sum product at the end. As Annette outlined earlier, because such a large proportion of workers return to work of their own volition, and without any assistance, then there is a wait and see across all stakeholders about who will go back to work without investing money. This goes to the cost-plus arrangement that is happening in New South Wales with WorkCover at the moment. So it is about driving down costs as opposed to let us spend the money up-front and receive significant benefits long term. Our language talks about let us turn the tap off to the tail, and to turn the tap off to the tail you have to stop creating the tail. You do that by really succinct and appropriate referral early.

The Hon. TREVOR KHAN: On page three of the national submission you have provided figures on costs of claims of $60,000 and for claims over 35 weeks it is an average cost of $250,000. Those estimated costs, are they not, what I call 12 per cent of employers who have got what I call in the old days, burning cost policy, or a performance based policy, are reflected in their premiums, are they not?

Ms WILLIAMS: I confirm that those statistics are Comcare data.

The Hon. TREVOR KHAN: The data in New South Wales may be somewhat different but the reality is they are going to be those sorts of figures?

Ms WILLIAMS: Yes.

Mr MARK SPEAKMAN: Page 5 of the New South Wales submission refers to the Federal Government Department of Employer, Education and Workplace Relations Job Capacity Assessment. Will you provide the Committee with a copy of that?

Ms BROUWERS: Yes. I can provide you with the deed that has been in place. Is that what you mean?

Mr MARK SPEAKMAN: Whatever documentation you think will assist the Committee in understanding what is done by that Federal department.

Ms BROUWERS: Yes.

The Hon. NIALL BLAIR: I refer to early intervention and your concern that return to work rehabilitation providers are not getting involved soon enough. My understanding is that initially when there is an injury an injury management plan is started with the treating doctor, the employer and the employee and the rehabilitation provider will not come into play until a return-to-work plan is developed? Do you say the rehabilitation provider should be involved earlier in the injury management plan to be able to make that assessment earlier rather than a wait-and-see culture to which you referred?

Ms WILLIAMS: When developing the injury management plan the claims agent should, as part of that process, be doing an assessment. That assessment should be robust enough to identify claims that need to be immediately referred and that would be detailed in the injury management plan itself.

The Hon. NIALL BLAIR: Does the document to which Mr Speakman referred have the applicable criteria to enable them to do that type of assessment?

Ms BROUWERS: The assessment we are talking about, the job capacity assessment that we have referenced in the Federal Government, is completed by a multidisciplinary team—physiotherapists, occupational therapists, psychologists, for example. I am not across if agents have their capability internally to do that but it is definitely an allied health professional assessment.

Mr MARK SPEAKMAN: Are medical practitioners involved in that?

Ms BROUWERS: No. That was purposely done by the Federal Government; they want to move away from a diagnostic-based assessment to a function-based assessment and because of some great report and research that has been talking about the diagnosis is not a predictor to work, and if diagnosis is not a predictor to work then we need to look at all of those other factors that are, and it was felt that allied health professionals were the right people to do that.

Mr MARK SPEAKMAN: How do you assess someone's functionality without having diagnosed their medical condition?

Ms BROUWERS: It is a very good point. You cannot complete a JCA until they are fully treated and fully diagnosed. So part of this process is the doctor needs to remain, and they are an integral and important of any injury management plan. So the diagnosis occurs via the doctor; he organises the treatment plan. However, the complexity that happens at the workplace—the psychosocial flags, the other contributing factors about their relationships with their peers, their supervisors and their family—is what is assessed, and it is a contextual assessment completed face-to-face.

The Hon. ADAM SEARLE: You talk in the national discussion paper about the significant barriers to return to work. From your members' observations what are the barriers to employers taking injured workers back into their workplace and getting them back to work?

Ms WILLIAMS: Ninety per cent of employers in New South Wales are small employers and it is not that they are unwilling generally; it is just that they do not know what they do not know. Someone has got a medical condition, they have got a claim, they really need very quick assistance to understand the process, understand their obligations, understand other people's roles and obligations, identify suitable duties and get a plan that we can put forward to the doctor to approve. So they just need their hand held generally if they are a small employer. The large employers have processes in place and an obligation to have dedicated return to work coordinators and usually they will involve us where it is so complicated that they want an independent party to work with them to facilitate the return to work process.

Ms BROUWERS: Could I comment on the independence? As accredited rehab providers we are not advocates for workers or employers, we are advocates for return to work, and that true independence enables us a unique opportunity to appropriately assess and determine what the barriers are and help to resolve those.

The Hon. ADAM SEARLE: But from what you were saying earlier, the smallness of the employer is sometimes a difficulty and they do not know what they do not know. Who should be providing them with that hand holding or that education so that they can fulfil their obligations to provide suitable duties?

Ms WILLIAMS: In some instances a claims agent can do that just by advising them of what their obligations are and how the process works. If it looks like the employer is identifying that there are not any suitable duties, not really engaging in conversation, that would represent a flag to the claims agent and then we would be asked to proceed and go and facilitate that return to work.

The Hon. ADAM SEARLE: So to the extent that that function is not being properly carried out, that will be a failure by the claims agents in the scheme?

Ms WILLIAMS: Or resistance on the employer that would need intervention at the workplace that we can go to and sort that out, notwithstanding that some claims agents attend the workplace and doctors conferences as well. But usually if it needs an intervention at the workplace to deal with that issue then a referral should be made.

The Hon. ADAM SEARLE: It only works if, in fact, your members have been involved by a referral?

Ms BROUWERS: Agents do it really well but they do telephonic case management and we know that when the barriers are significant. So the other thing maybe in the mix is that there is a conflict within the workplace as well and that needs to occur face-to-face and at the worksite. Again, our value proposition is that our work occurs in the context of work and therefore helps to resolve those issues.

Ms WILLIAMS: One of the issues sometimes with an employer is that they do not believe the person did it at work or it is not work-related and what we try to explain is that under the legislation providing return assistance or rehabilitation assistance is not an admission of liability. So we can really educate the employer in that "We are here to help you. We are not admitting liability but we can facilitate and resolve this issue quickly for you".

Mr MARK SPEAKMAN: At the top of page 7 of the New South Wales submission there is a statement about targeted commutation. You say there are appropriate occasions where targeted use is effective, et cetera. What are those occasions?

Ms BROUWERS: That is when the return to work process has failed and the people need an exit strategy.

Mr MARK SPEAKMAN: Have you ever come across any situations where commutation has occurred and you thought it was inappropriate?

Ms BROUWERS: Because of the changes that happened in the Act we very rarely see commutations any more. What we do see though is a system that makes people sick, and the continuation of living in that system is adding to their illness.

Mr MARK SPEAKMAN: Should there be any restriction on the use of commutations, in your view?

Ms BROUWERS: It is outside the scope of ARPA New South Wales' view.

Mr MARK SPEAKMAN: I think one of our previous witnesses suggested that the fees of rehabilitation providers should be regulated. Would you like to respond to that?

Ms BROUWERS: I would love to. We believe in an open market system and believe that market-driven demands will, in fact, set an appropriate rate, and that has been the experience to date. So we would continue to encourage the Government to not gazette fees but to allow the market to clarify and to set what that is.

Mr MARK SPEAKMAN: Is there any turf war going on between you and the medical practitioners in this area?

Ms BROUWERS: Not that we are aware of. Quite clearly we need to work very collaboratively with the medical practitioners and I believe we do that very effectively and we need to continue to do that. We value their input and what they contribute to this. We operate in a different space and that space is in the workplace. We are just saying that we need to ensure that we can get access not to every injured worker out there—that would be totally inappropriate. But we need access to those that have a high risk, that are vulnerable, that will benefit from our assistance, but they need to do that early and not late.

Mr MARK SPEAKMAN: I have not held them up side by side and compared them but are there any differences of opinion between the New South Wales submission and the national submission?

Ms WILLIAMS: No. The only thing that we have not addressed that is a main focus—apart from early intervention in the national submission—is the administrative burden. We deal with seven different service level agreements, seven different report pro formas, seven different KPIs, seven different large spreadsheets that we have to report to every month now, case claims and performance. The burden is extraordinary and unprecedented across Australia.

Mr MARK SPEAKMAN: So you would like to see a standardised version of each of those?

Ms WILLIAMS: Standardised, as it is in other jurisdictions. There is too much focus on administration and process, even for the consultant—100 codes even though the framework has four. Agents do want a code because they ask for information that we need to pull out of a code. The administrative burden really needs to be addressed.

Mr MARK SPEAKMAN: Just generally, are there any helpful tips from other jurisdictions like Victoria and Queensland you think could be applied in New South Wales?

Ms WILLIAMS: Yes. The other issue in relation to administration—this is just an administrative issue—is approvals. Delay in momentum and moving a case forward and being proactive—every time we want something we need to ask permission and we need to get approval. That was also an issue in Victoria. So, for example, if someone required a new employer service and they were assessed, vocational goals were established and we wanted to start a job seeking process, it was taking 20 working days on average, so a month, for the worker who was all ready and prepped to say, "I am going to look for these jobs. Are you going to help me?" It took a month for that to happen. We have longer delays than that, and what Work Safe said in each point of their service delivery is that if the approval is not given within two days the provider can commence to the next level. That is a seamless solution to proactive and effective return to work.

CHAIR: The secretariat will provide you with a transcript that has the questions you have taken on notice highlighted. The Committee has resolved that the answers to questions taken on notice will be returned within three days after you have received a transcript. Thank you very much for coming.

(The witnesses withdrew)

FIONA SIMSON, President, NSW Farmers Association, sworn and examined:

GRACIA KUSUMA, Industrial Relations Manager, NSW Farmers Association, affirmed and examined:

CHAIR: Welcome. Witnesses are advised that if there are any questions which you are not able to answer today but which you would be able to answer if you had more time or certain documents to hand, you are able to take the question on notice and provide an answer at a later date. If you should consider at any stage during evidence that your response to particular questions should be heard in private, please state the reasons and the Committee will consider your request. Would you like to make a short opening statement?

Ms SIMSON: Workplace injuries and illnesses are regrettable occurrences. It is the view of NSW Farmers that the best safety regimes are those that encourage shared responsibility and ownership of safety in the workplace, or more specifically for my family and the members of my organisation, on the farm. We congratulate the Government on the work health and safety reforms which have been adopted and which have removed the reverse onus of proof upon employers, and the education and information initiatives within the farming sector that better enable farmers to understand the issues surrounding safety in the workplace and that things they can take control of can make a difference.

NSW Farmers' philosophical view about the workers compensation scheme is that its primary focus should be on the processes that return individuals to work after sustaining a workplace injury or contracting a workplace disease. Our members do not have problems with people who are genuinely injured being compensated as they regain fitness to be able to return to work. In fact, it has been the experience of NSW Farmers that our members top up payments to workers who are on compensation to bring their wages up to pre-injury rates during claims despite not being required to do so by the system. However, our members are frustrated when delays occur within the system slowing up an employee's return to work when the claim is not really connected to work and when, albeit on rare occasions, an employee's fraud imposes extra costs on the scheme, which are ultimately borne by the employers, either through an experience-based premium or through general increases in basic premiums.

NSW Farmers has circulated a survey to members in light of the parliamentary inquiry. I will briefly summarise the sentiments expressed. The survey found that 60 per cent of respondents find the workers compensation scheme to be difficult to navigate and half of the respondents concur that the current scheme arrangements are not optimal insurance arrangements reflecting the risks. In addition, 62 per cent of respondents felt many claims were unwarranted due to the inadequate investigations of the scheme agents and WorkCover to identify non-work-related injuries. Our members are also concerned that New South Wales has the highest workers compensation insurance premiums in Australia for agriculture. I will use the dairy industry as an example. The cost price squeeze of the major supermarkets is placing downward pressure on farm gate incomes making margins increasingly important in the dairy industry.

Data in an Australian Bureau of Agricultural and Resource Economics and Sciences dairy farm survey indicates that workers compensation costs for the average dairy farming family in New South Wales are close to $1,600 higher than the costs incurred by a dairy farming family in Victoria and more than $1,200 higher than in Queensland. If the 28 per cent increase in premiums outlined in the scheme valuation is implemented alongside the 3 per cent reduction in Victoria, the disadvantage to the New South Wales dairy farmer becomes more than $2,450 against production in Victoria and more than $2,000 in Queensland. It must be noted that the figures I have quoted are conservative because they do not include any premiums paid on director's fees or trust distributions made to family members as imputed wages. To consider it in another manner, for every full-time station hand employed by a farming family in New South Wales with no overtime worked, that family suffers an additional cost of between $1,000 to $1,400 compared to Victoria and $700 to $1,300 compared to Queensland, with both increasing to $1,800 to $2,200 and $1,300 to $2,000 respectively with the proposed increase.

This must be considered in the context of other pressures that will inflate production costs such as the carbon tax and the upcoming increase in superannuation guarantee charges. The survey found that 70 per cent of respondents indicated that they would be forced to reduce their workforce should there be a 28 per cent increase in premiums, either by scaling back their operations or investing in machinery in the long run. The contraction of farming enterprises would have a significant flow-on impact on the regional economy. The agricultural sector is one of the key economic drivers in regional areas, being responsible for the direct employment of 11.3 per cent of all workers in rural and regional areas and indirectly responsible for the employment of 24.5 per cent of all employees in rural and regional areas.

Mr MICHAEL DALEY: On page 4 in paragraph 2.2 of your submission you address the failure to motivate return to work. You say that improving return to work outcomes is important for the community, the economy and so on. However, you make no suggestions about how the scheme might be improved to facilitate better return to work outcomes. Do you have any suggestions?

Ms KUSUMA: Due to the limited information with regard to data and statistics and considering that from the report the deterioration of the scheme came into place in the past 12 months, the data has not been provided as yet and we do not know the costing of the drivers of the deficits in the scheme. Therefore, it would be difficult to say which part could be improved. However, we agree in principle with some of the changes mentioned in the issues paper. One relates to implementing an earlier step down in the weekly benefit—

Mr MICHAEL DALEY: I am talking about ways to get people back to work earlier. Do you have any practical suggestions?

The Hon. TREVOR KHAN: That is what she is saying about the step down.

Ms SIMSON: The step down could be addressed at an earlier point—at 13 weeks as opposed to 26 weeks. There are numerous statistics and reports that deal with employees who have been out of work for longer being unable to come back to work.

Mr MICHAEL DALEY: I did not phrase my question correctly.

Ms KUSUMA: Even though it is very briefly mentioned in the submission, we have a particular opinion and recommendation. However, in terms of the practical implementation, we would be guided by other professionals. One thing we are recommending is better involvement of medical professionals in finding a resolution. From the discussions that I have with members I have found that one of the issues they encounter is receiving continuous medical certificates from the doctor stating that unfortunately the employee's condition has not improved to the extent that he can perform light duties or he needs to be off work because of total incapacity. It is anecdotal evidence, but they might see that person on the weekend in the community chasing pigs and so on. I repeat that that is anecdotal evidence. We are of the opinion that there is no one resolution for all issues. On a practical level, we have to include all different parties, including the medical professionals, to make them understand and to encourage workers to come back to work faster.

The Hon. ADAM SEARLE: In relation to accelerated step down, that is effectively a reduction in benefits to encourage people to return to work earlier. We have had evidence from other stakeholders who indicate that there is often a marked reluctance on the part of employers to provide suitable duties and that the blockage is at that level. Do you have data in your industry about whether people not being able to or not willing to provide suitable duties to injured workers is a problem?

Ms SIMSON: I think in our industry it is certainly sometimes difficult to provide light duties for all types of employees with the sorts of work that they undertake, but I also think that the lack of a statutory capacity assessment makes it very difficult for employers to actually do that with confidence. I know on our own farm with only medical certificates coming from the doctors that have seen our employees then it is hard for the employer to have confidence always as to exactly what sort of tasks we might task the employee with and whether they are in fact actually capable of performing those tasks safely. It is difficult. It is a very complicated situation that the employer finds themselves in, as well as perhaps the employee. As I say, I think if there was a better capacity assessment where the employer could have faith that the employee was actually properly being assessed and their capacity to undertake work was properly being assessed and that was very clear then it may be a lot easier to understand exactly what that employee is capable of.

The Hon. ADAM SEARLE: Do you have any information or data about the rough proportion of employers in your industries that are able or willing to provide suitable duties at the present time?

Ms SIMSON: No, not at all.

The Hon. ADAM SEARLE: You think statutory capacity testing would provide additional confidence for employers to provide those duties.

Ms SIMSON: Statutory capacity testing initially at a 13-week period. Instead of waiting the 26 weeks, I think the statutory capacity assessment at 13 weeks and then ongoing from there would provide some certainty for the employer that there was actually a fulsome assessment of the employee's capability to work and exactly what tasks that employee may then be able to perform on the farm. Clearly, as I said and as I think you said too, Mr Searle, at some farms it is difficult to find light duties. But by the same token there are an enormous amount of tasks to be done on a farm, so it is not always impossible.

The Hon. ADAM SEARLE: In your opening statement you referred to incidents of fraud on the part of some employees. You do not have any data about the incidence of fraud in your industry or the level of the difficulties or problems associated with any fraud?

Ms SIMSON: I think I said in my opening statement "albeit rare occurrences of fraud", so I certainly did not want to imply that that was a regular thing. We do have a question in our current survey and we have not provided the Committee with those survey results because it is still ongoing. We have had well over 100 responses to date. But I think there is some concern in there. Yes, 65 per cent of our employers so far have indicated that they have a concern about the way that the injury was sustained and that in fact it may have been sustained in a non-work related injury.

The Hon. ADAM SEARLE: And that would relate, would it not, to their general frustration expressed in your paper about dealing with scheme agents and whether they deal with concerns raised by the employers?

Ms SIMSON: Partly. The employers find it frustrating dealing with the scheme agents and to be removed from the management of that. Also I think it is in some ways to the journey claims and the recess claims.

The Hon. TREVOR KHAN: Could I go to page 6 of your submission and the commercial competitiveness issue and essentially the table of basic premium calculations. Has it ever been explained to New South Wales farmers why, or do you have an explanation as to why, there is this disparity between the premium calculation in New South Wales compared with, say, Victoria?

Ms SIMSON: No, not to my knowledge. I think it is extraordinary that grain producers and dairy farmers in New South Wales are paying nearly double the premiums.

The Hon. TREVOR KHAN: The only category where it seems to be less in New South Wales than in Victoria is in shearing.

Ms SIMSON: Yes.

The Hon. TREVOR KHAN: Otherwise the premium calculations are larger in every category in New South Wales.

Ms SIMSON: Yes, and it seems extraordinary. I have no answer to that.

The Hon. TREVOR KHAN: Has it ever been explained to you why where you have got a mixed sheep/beef farm apparently you pay a premium of 7.27 per cent and yet if it is a sheep farm it is 7.67 per cent—very aggressive sheep?

CHAIR: Or friendly cattle.

Ms SIMSON: I think the lack of clarity around some of these figures and percentages adds to the confusion that most employers have about how these are actually calculated, about how their premium is calculated and why they are paying as much as they are paying and the disparity between New South Wales and the other States.

The Hon. TREVOR KHAN: It seems to me extraordinary that we are looking at some of these figures at 5 per cent, 6 per cent and 7 per cent when the figures that have been quoted by WorkCover in terms of premium rates are 1.68 per cent.

Ms SIMSON: Clearly our industry is affected greatly by these sorts of premiums and it is hard to understand why we could possibly have such a difference between us and the other States.

The Hon. TREVOR KHAN: Or between yourselves and some other employers in the same State.

Ms SIMSON: Yes, absolutely.

Mr MARK SPEAKMAN: The NSW Nurses Association said that in their experience many employers are unaware of or wilfully ignore their obligations to provide suitable work to their injured workers. Is that true in farming?

Ms SIMSON: No, I think it is actually not at all true. I think we have had a great focus on workplace health and safety and we have been able to, particularly as an association, work very cooperatively with the authorities and WorkCover to have a focus on farm safety. There has been an extraordinary focus on, for example, machinery to make it a lot safer and provide a safe workplace in terms of power take-off [PTO] guards and tractor rollover protective structures [ROPS] cabs. You would understand that at the moment we have a focus on quad bikes, for example, and the wearing of helmets. So I think that in the past recent years we have actually seen a big focus on employers making their workplace safer and wanting to make sure that their workplace is safer for their employees. I think that is borne out by how many accidents there actually are on-farm, and the figures are quite low generally for most small businesses.

Mr ROB STOKES: Representatives of Unions NSW in their evidence today said that one of the reforms they would suggest to bring the scheme back into balance would be to increase workers compensation premiums by 8 per cent over the next 10 years. What impact would that have on your industry?

Ms SIMSON: We would certainly have to have a look at the figures, but I think initially some of the other reforms that we are proposing and that the Government is looking at would be more beneficial. I think, for example, having a look at the journey claims and the recess claims—the deemed workers in agriculture is a major problem and again it is very confusing for farmers that fencing contractors, for example, are deemed to be workers, whereas spray contractors are not. So I think before we actually assessed the impact of a rise of 8 per cent we would certainly want to have a good look at those issues and in light of some of these other things that we could do to change the scheme now to make it work better.

The Hon. NIALL BLAIR: I wanted to touch on that deemed worker or deemed contractor issue. Could you just talk through the differences that currently exist in those definitions, the impact that is having on your members and also your recommendation to try to get some consistency in that area?

Ms SIMSON: I might speak anecdotally and then I will ask Ms Kusuma to go into the technical details of it. Anecdotally it is certainly very confusing for farmers to understand that sometimes when they employ a contractor they are actually deemed to be a worker for the purpose of workers compensation—that can be a fencing contractor that constructs yards and does work like that—whereas if they actually employ a different sort of contractor it is not. But I will ask Ms Kusuma to enlarge on that.

Ms KUSUMA: As a little bit of background, currently schedule 1 of the Workplace Injury Management and Workers Compensation Act 1998 lists different occupations deemed as workers. One of the deemed groups of workers is rural work. If they come under this definition of rural work it means that they are considered as workers and their wages would need to be declared for the purpose of calculating workers compensation premium. The difficulty comes when a contractor employs employees, so the contractor and the employees would need to come under the definition of the farmer's wage and the farmer would need to then declare that as part of their wage for workers compensation calculation, while the contractors themselves are of the understanding that they are running their own business and those are their own employees, therefore they need to declare those wages for the purpose of premium calculation. Unfortunately, we do not have the actual figures, but just looking at this—even as a practitioner—I find it very confusing, let alone farmers who have a hundred different things that they need to focus on on a day-to-day basis. So it would be very likely that there would be double payment of these premiums and, unfortunately, it creates further confusion.

From my discussions—as part of my work I do discuss and have direct contact with members and farmers—the frustration they have is when they have a workers compensation claim. They feel like they are separated from the process, they do not have any say in terms of how the process is run, and sometimes they will just receive notification after the claim has been received. Once the employee has resigned and moved along, then they receive a claim and they would have no option of controlling anything. If the employee is still an employee, even then they have very limited understanding and limited information available to them so that they

can be more proactive in terms of managing the scheme agent, and the only source of information that they have would be from the scheme agent, unless obviously they call us and seek further guidance.

The Hon. ADAM SEARLE: On page 7 of your submission you refer to the frustration experienced by your members dealing with scheme agents. What greater role should be legislatively built in for employers? What would be of particular benefit to your industry in terms of dealing with claims?

Ms SIMSON: Referring back to the assessment, I think you also have to reflect on the situation in country New South Wales with doctors, rural doctors, and the pressures that they are under, so currently when an employer has an employee making a workers compensation claim, the employer is removed from the process. I think if there was a statutory capacity assessment, if the employer was able to receive that assessment—at the moment it is very confidential. Employers are not allowed to know what is happening in terms of the employee's treatment—they are usually the last to know—yet they are expected to be able to return that employee to work if they possibly can. So I think more involvement with this statutory capacity assessment, and perhaps being very focused on the industry it needs to be capacity assessing the employee for the job which they are actually required to do. I think that would include the employer more.

The Hon. ADAM SEARLE: Are workers in your industry mainly on award?

Ms SIMSON: Generally they are paid above the award and, because most of our employers are small businesses, who may only claim once in every 20 years, we often have a much closer relationship between our employees and employers, and the employers want to do the right thing by the employees. So what we quite often see in our industry, and it is borne out in the results of our survey as well, is that when the employee is first injured, in that first 26 weeks, even though they are not required to, usually the employer will top-up whatever benefit the employee is receiving and pay them the amount of their full wage. That is certainly what our employers would like to see happen in any new scheme. They have a genuine concern for their employee and that employee's wellbeing. Generally, or quite often, the employee is still living on the employer's farm and is more or less a member of their family, so they do have a genuine concern in ensuring the wellbeing of the employee.

Mr ROB STOKES: I point you to your chart on page 6 in relation to commercial competitiveness between the states in relation to workers compensation premiums. The submission by Unions NSW said that differences in premium costs between states do not actually drive businesses interstate. They suggested that those costs are just absorbed by businesses, so there might be a disadvantage but it does not drive investment decisions. Is that your experience?

Ms KUSUMA: I could probably start with just one example from my experience with the members yesterday. I was in Bomaderry to give a work health and safety [WHS] seminar and there was discussion amongst the dairy farmers. One farmer was telling his experience in trying to renegotiate a price with a particular processing company that we will not mention. However, the processing company mentioned that, "If you are going to ask for an increase in price, it would be cheaper for me to source the milk from Victoria, from down south"—and that is that. That is just one simple example. We can only imagine how many other stories there are in relation to this. This particular issue was also brought up when there was an inquiry in 2002, which if the Committee would like we can bring up and read the entire excerpt, but I think that would be a little bit too much.

Mr MARK SPEAKMAN: The NSW Nurses Association recommends the implementation of some form of independent review to be undertaken prior to an employer being able to withdraw suitable work or terminate injured workers and thereby cost-shift to the workers compensation scheme. Would you like to comment on that recommendation?

Ms KUSUMA: Sorry, just to clarify, an independent—

Mr MARK SPEAKMAN: Some form of independent review that must be undertaken prior to an employer being able to withdraw suitable work or terminate injured workers.

Ms KUSUMA: With that, we would have to see in terms of the practicalities as well as some of the regulations and expectations of the independent review, but, other than that, there are numerous amounts of red tape in the system as it is. It takes more than two weeks for a particular treatment to be ticked-off and for it to

continue. We can only imagine what other red tape would be inbuilt into the process and how much longer a claim could be with that additional requirement.

Mr MARK SPEAKMAN: The NSW Nurses Association also recommends that insurers be given the capacity, and then be obliged, to rigorously examine whether their clients are able to provide suitable work to an injured worker prior to termination or suitable work being withdrawn and prior to requiring that worker to seek work elsewhere. Would you like to comment on that recommendation?

Ms KUSUMA: Could we potentially take that on notice?

Mr MARK SPEAKMAN: Yes.

Ms SIMSON: Also because I am not sure whether the independent assessment is really referring to a statutory capacity assessment.

Mr MARK SPEAKMAN: They go on to say that they are opposed to work capacity testing of workers, but believe that there is clear justification for the work capacity testing of employers. Could you take on notice a response to the seven recommendations in the NSW Nurses Association submission, which is No. 73, and you will find it on the website?

Ms SIMSON: Certainly. I think I would like to read the whole submission before we respond.

The Hon. ADAM SEARLE: That might be a fairer thing to do. The seven points start at page 48.

The Hon. NIALL BLAIR: Your submission suggests redefinition of the coverage for recess claims. I assume that is because of the type of work where you have a lot of people staying on farms during large breaks. Is it to ensure that the test should be that the work was the contributing factor rather than an injury occurring just at the workplace?

Ms KUSUMA: Exactly, as well as another point of consideration that the employer would need to have some sort of control, because in the current system, regardless of whatever the employee undertakes during recess, the wording of the legislation itself is: as long as he or she does not abnormally subject himself or herself to the risk of injury. "Abnormally" can include anything, essentially.

Ms SIMSON: Our employers provide, and are very focused on providing, a safe workplace. If the employees in their recess do something that is potentially unsafe, which is very easy to do on a farm—and there is a celebrated case of shearing contractors in the Central West with the fish hook in the eye—that sort of activity then, clearly, we do not see as a worker's compensation issue, if they choose to do that sort of thing in their breaks.

CHAIR: Thank you very much. Our time is up. I note you have a couple of questions taken on notice. The secretariat will provide you with a transcript that has the questions you have taken on notice highlighted. The Committee has resolved that answers to questions taken on notice be returned within three working days after you have received the transcript. Thank you very much for attending.

(The witnesses withdrew)

(Short adjournment)

MELISSA ADLER, Executive Director, Workplace Relations, Housing Industry Association, and

DAVID HUMPHREY, Senior Executive Director, Business Compliance and Contracting, Housing Industry Association, affirmed and examined:

CHAIR: I welcome Miss Melissa Adler, the executive director of workplace relations in the Housing Industry Association, and Mr David Humphrey, the executive director of business compliance and contracting in the Housing Industry Association, and thank them very much for attending. Regarding questions on notice, witnesses are advised that if there are any questions you are not able to answer today, but that you would be able to answer if you had more time or certain documents at hand, you are able to take a question on notice and provide us with an answer at a later date. Regarding in camera deliberations, witnesses are advised that if you should consider at any stage during your evidence that your response to particular questions should be heard in private by the Committee, could you please state your reasons and the Committee then will consider your request. All witnesses must be sworn prior to giving evidence. I ask that each of you in turn state your full name and job title and either swear an oath or take an affirmation. Would you care to give a short opening statement, perhaps limited to five minutes?

Mr HUMPHREY: Yes. The Housing Industry Association [HIA] would like to thank the Committee for the opportunity to appear this afternoon. We welcome the Government's inquiry into workers compensation arrangements in New South Wales. At the outset it is important to note that the Housing Industry Association recognises the needs of injured workers. Our purpose here today is not to suggest that those who are injured while at work should not be supported and treated fairly. At the same time, high workers compensation premiums are a hefty on-cost for businesses, discourage employment and erode housing affordability. This pressure is acute. It is particularly acute in the residential building and construction sector where small businesses face ongoing pressures through government fees, taxes and charges.

Our position is that while the scheme is in significant deficit, the solution is not to increase premiums. In fact, the Housing Industry Association strongly opposes any increase. We believe that urgent policy change is required to ease the cost pressures on employers and to restore the incentive to employ, grow and retain investment. I would like to take a moment to provide the Committee with some information around the context in which our members operate. We are the peak representative body for residential builders in Australia with nearly 13,000 members in New South Wales. In the great majority of cases a member is a business, small or large, and has a number of individuals engaged with the Housing Industry Association which exceed this amount. The majority of our members are small businesses and this reflects the broader trend of an industry that is dominated by small businesses, sole traders and mums and dads.

We strongly believe that you cannot have a healthy economy without a healthy housing industry. In 2009-10 Australia's housing and renovation industries directly contributed approximately $72.4 billion to the economy. There is also what is called the multiplier effect of construction, which stimulates activities in other industries. According to our figures, for every $1 million increase in construction output there is an increase in output elsewhere in the economy of $2.9 million. In terms of employment, an extra $1 million of construction expenditure generates nine construction jobs. However, the Housing industry continues to struggle. According to the National Housing Supply Council, the gap between underlying demand and supply for new houses in New South Wales is 73,700 homes. The industry has had little improvement or bounce back from the global financial crisis [GFC]. In fact, when you look at the figures, in New South Wales we are building roughly 30,000 new homes each year, which is about 10,000 homes down on what we were building in 2004-05.

The residential construction industry is also one of the most heavily regulated and taxed industries in New South Wales. Consequently, any cost increases for the construction industry inevitably are passed onto consumers and have a negative impact on the state of the New South Wales economy. The Committee must be conscious of these flow-on effects. On the issue of regulations, those in the industry must manage a complex web of national, State and local laws, regulations and codes. These range from planning, design, environment health and safety, to local authority inspection and certification, and a multitude of building, electrical, mechanical and plumbing processes. They must also comply with the legislative framework that spans licensing, dispute resolution, builder's warranty obligations and contractual requirements. There are significant cost implications with these regulations.

Additionally, the residential construction industry is among the most highly taxed industries in the New South Wales economy. According to the Centre for International Economics when all taxes are included, the taxation on a new house is estimated to be 44 per cent of the final purchase price in Sydney. For young couples in Sydney, the cost of financing the extra cost of a home attributable to the tax amounts to 33 per cent of their after-tax income. In New South Wales the workers compensation premiums for residential builders are already 5.04 per cent of payroll, significantly higher than the comparative rate in Victoria and almost twice the Queensland rate. Any further increase to fund the operation of the scheme will further compound the tax burden on small businesses and create an affordability crisis for new home owners.

On reviewing the issues paper it is clear there is a heavy emphasis on promoting the recovery of injured workers and the health benefits of returning to work. The Housing Industry Association does not oppose these objectives however we express concern to the Committee that the issues paper does not outline specific options for change in this regard. We understand that it is generally the case that a stabilisation of premiums could be coupled with changes to the regulations around return to work, injury management and, importantly, the costs associated with claims management. We ask the Committee, in examining options for change, to consider the unique circumstances faced by the residential construction industry.

The Hon. ADAM SEARLE: In your submission you indicated you have concerns with limited time frames to provide submissions to this inquiry. You would accept the workers compensation system in New South Wales is relatively complex. Do you think it would be a fair proposition for any definitive reform proposals that the Government might adopt should be properly costed and scenario tested and consulted on by stakeholders before they are implemented?

Mr HUMPHREY: I think that is a fair proposition but you have to look at the context of what each reform measure being proposed would be. We would equally accept that the current premium being charged on residential builders is very high and the suggestion that they are going to be increased to even higher amounts is of some urgency at the same time. There must necessarily be a balance between getting the right measures and not spending 12 or 18 months considering options for reform. By the time this comes in we would be looking at 6½ per cent workers compensation premiums.

The Hon. ADAM SEARLE: At page 3 of your submission you talk about your organisation supporting a scheme that has a close connection between work health, safety responsibilities and workers compensation premiums. On the following page you say if the business as a poor claims history its premiums should reflect the historical level of risk. I do not want to put words in your mouth, but are you suggesting the experience rating for some employers should be expanded beyond the 12 per cent of employers who are currently experience rated in terms of having their premiums set?

Mr HUMPHREY: Our policy is to support a genuine rating system so that good employers who have a good record are given incentives to keep that good record by having lower premiums.

The Hon. ADAM SEARLE: Again, at page 4 of your submission you talk about broadly supporting caps on weekly payments and medical coverage duration. Do you mean caps on expenditure levels or caps as to time duration, and if so, what particular duration are you proposing?

Mr HUMPHREY: As we indicated in the submission, it is more a broad support towards these measures which might amount in either stabilising premiums or a reduction in premiums. I do not think in the issues paper any of those options were dealt with any greater detail. To my understanding they are probably the equivalent to the provisions in Victoria, which has a scheme which is probably much more financially sound at the moment and the premiums are a lot less.

The Hon. ADAM SEARLE: On page 6 you talk about consequences of fraudulent claims. Do you have any evidence or data about the prevalence of what you regard as fraudulent claims in the system or is this more impressionistic and anecdotal?

Miss ADLER: Anecdotal, from speaking with members.

The Hon. ADAM SEARLE: So there is no way I can really delve deeper into that concern?

Mr HUMPHREY: No.

The Hon. ADAM SEARLE: You also talk about concerns around the issue of provisional liability and perception by your members that claims are being automatically accepted by scheme agents without necessary reviews. Do I take it your members feel that scheme agents are not responsive when they raise concerns with scheme agents about various aspects of claims?

Miss ADLER: Not that they are not responsive but perhaps there is not enough time built in to adequately investigate if a claim is disputed by an employer or a business. Again, this is just anecdotal from speaking with members.

The Hon. ADAM SEARLE: Just leaving aside the issue of provisional liability—

The Hon. TREVOR KHAN: You can't; it is built into the system.

The Hon. ADAM SEARLE: No, I am saying putting that concern to one side, there is 12 weeks, I think, for an insurer to determine whether provisional liability should be accepted as a sort of ongoing liability. Do you think that 12 weeks needs to be expanded so the scheme agents can investigate that more thoroughly?

Miss ADLER: I think it needs to be looked into.

The Hon. ADAM SEARLE: On page 6 of your submission you refer to contractors and concerns about double dipping of premiums. What precise concern are you expressing there? What is the practical—

Mr HUMPHREY: What was the feedback on that?

Miss ADLER: Just that when a builder engages who they think is a contractor and that contractor has their own business, pays their own workers compensation premiums for—

The Hon. ADAM SEARLE: So double coverage.

Miss ADLER: Yes.

The Hon. ADAM SEARLE: Not that the builder would be having to pay twice.

Miss ADLER: Ultimately if that contractor is deemed an employee the principal or the business would need to then pay the premium and a penalty. So essentially there has been double dipping and double coverage and double payment.

The Hon. ADAM SEARLE: Not so much double dipping but over-insurance of a particular worker. That is what you are talking about, is it not? Two lots of premiums being paid for the same worker?

Miss ADLER: Arguably, yes.

The Hon. ADAM SEARLE: You are not suggesting that if that worker is then injured they then collect twice for the same injury under different policies?

Miss ADLER: I would hope not.

The Hon. NIALL BLAIR: No but the agencies collect twice.

The Hon. ADAM SEARLE: That is the question. Apart from anecdotal and impressionistic feedback from your members, do you have any hard data about what the level of that double coverage is in your industry or whether it is a real problem?

Mr HUMPHREY: The evidence that we get from members—

The Hon. ADAM SEARLE: If it exists.

Mr HUMPHREY: The feedback that we get from members is in the course of normally giving them advice about certain situations that will pop up in their business. Ordinarily we would not collect data in that form. Like other associations we would do it by surveys and we do not have any survey data on this.

The Hon. ADAM SEARLE: In relation to return to work, at least one of the cost drivers identified by the actuaries in the scheme is the long tail and that is of people on benefits who do not return to work so clearly failure to return to work is a driver of costs in the scheme. You say on page 7 that your members have concerns around the inability of being able to provide suitable duties. Is that a feature of your industry because of the small nature of your members as employers, that they are not in a meaningful position to be able to provide suitable duties?

Mr HUMPHREY: Particularly for the smaller builders and specialised contractors. We represent members ranging from manufacturers and suppliers and also some of the larger building businesses but it is an industry that is dominated by the use of the subcontracting form of engagement and they are specialised and it is very difficult. Either you are on the tools or you are not. There are not light duties in the sense that most of them have very little back office kind of, there is no photocopying work and those kind of other light duties that you could give people. So it is very difficult to return them to work either in a limited sense or a light duties sense also because of the fear of exacerbating existing injuries.

The Hon. ADAM SEARLE: And that fear is not related to any particular medical advice; it is just an apprehension by your members, is it? Or is it in medical advice?

Mr HUMPHREY: I suspect it is based on apprehension but I could not comment about what particular members' kind of experiences are about the medical profession.

The Hon. ADAM SEARLE: In terms of practical measures to improve return to work rates in your industry, given the prevalence of small employers, many of whom cannot provide suitable duties, what measures could be put in place to improve return to work rates for your industry that do not involve cutting the benefits to injured workers?

Miss ADLER: I guess being a member association we are probably not the best to comment on that. We are involved with WorkCover on their 10/5/5 Program, which you might have heard about—the top 10 industries and the top 10 risks in those industries. We believe they are going to do some work with us on the construction industry which we have not done yet. So I think their aim out of that sort of program is to help educate and increase awareness for smaller business on how to best manage return to work but we are still waiting further consultation with WorkCover on that.

The Hon. ADAM SEARLE: So you do not have any particular advice or policy ideas that you are able to advance to this inquiry about how we can fix that aspect of the scheme?

Mr HUMPHREY: No specific—we are happy to report back to the Committee if we can consult with our members but I do not want to be inventing policy off the cuff.

The Hon. ADAM SEARLE: In relation to changes to definitions of pre-injury earnings, is it the case in your industry that most of the workers are paid over award and have either overtime or other loadings attached to their usual take-home pay? Is that the case?

Mr HUMPHREY: I think it would depend on the definition of "worker", if you are including worker in a broad sense.

The Hon. ADAM SEARLE: I will ask you about the status quo? What currently happens?

Mr HUMPHREY: For an employee, many employees in the residential construction industry are apprentices. It is very heavily based around award wages. There are others who are engaged as employees in the industry and in that case often they are paid above award wages but they also have overtime and other things they are paid.

The Hon. ADAM SEARLE: But in relation to most of the workers who are injured and maybe go off work for a period of time on weekly payments, those weekly payments, even for the first 26 weeks, would be less than their pre-injury take-home pay, would it not?

Mr HUMPHREY: I do not have any data to support any comment on that.

The Hon. ADAM SEARLE: I do not want to put words in your mouth, and feel free to disagree with me. Your association does not have any data about whether workers who are off work on workers compensation and weekly payments are being paid less than when they were actually performing work, or the same?

Mr HUMPHREY: No, I do not have any data on that, sorry.

Mr MARK SPEAKMAN: Were you in the room when I was asking the farmers about what the nurses had to say about return to work obligations of employers?

Mr HUMPHREY: I was in the room. I did kind of roughly hear the question.

Mr MARK SPEAKMAN: I started to ask them about the seven recommendations of the Nurses Association. I can ask you about those now, or would you prefer to take that on notice?

Mr HUMPHREY: Perhaps if we take it on notice. I did hear the question in relation to return to work.

Mr MARK SPEAKMAN: The question I would like you to take on notice is: What is your response to each of the seven recommendations by the NSW Nurses Association, commencing at page 48 of its submission?

Mr ROB STOKES: I have two questions. First, you make the point of requiring longer time frames for the consideration of reform. Do you also think that reform of the scheme is urgent?

Mr HUMPHREY: I think both. We are not in the business of devising how the reform should be run out, but evidently there are some long-term systemic issues that cannot be sorted out in a very short time frame. Our position has always been—and it is our national position—that we support a truly privatised insurance system. That obviously is not something that is a short-term proposition but there must be a range of different recommendations that have been thrown around for the past 20 years, all of which may or may not have been taken on board. In relation to premiums, we would be supportive of measures that would at least allow for the premiums to stay where they are without them being increased, as has been suggested

Mr ROB STOKES: Unions New South Wales, in its submission, suggested that one of the main ways in which the scheme could be made sustainable was an 8 per cent increase in premiums over 10 years. Would that be sustainable to your industry?

Mr HUMPHREY: As I pointed out in the opening statement, new housing is already the most highly taxed or one of the highest taxed industries in the economy. When you are looking at the price of bringing a new home to market, 44 per cent of that price is tax. That is my understanding of the way that the CIE has put the report; that is a conservative estimate of the labour on-costs from workers compensation in New South Wales. It could be more than that. Increasing what is already the highest premiums for residential builders in Australia or, if not the highest, the second highest, I do not think it is sustainable or viable. Ultimately it would mean that many people will leave the industry, as some of the feedback that we are getting from our members at the moment.

The Hon. TREVOR KHAN: Dealing with the provisional liability issue that you raise on page 5 of your submission, we heard evidence earlier from the Australian Rehabilitation Providers Association—this is from Comcare, so we have to extrapolate it—that the average claims cost for employees who have not returned to work for less than five is $60,000. Taking that example, if a claim that has to be provisionally accepted within seven days, which is the current requirement, the claims estimate applied to that claim is at least $60,000, or thereabouts, even if it is only a week, is that right?

Mr HUMPHREY: It seems to make sense to me.

The Hon. TREVOR KHAN: If on a provisional basis they assess that the worker may be off for a month, then it is going to be a much higher figure than $60,000? That is self-evident?

Mr HUMPHREY: Yes. It seems to make sense again. Yes.

The Hon. TREVOR KHAN: If you are on an experienced-based premium, that will mean that your premium in a sense is going to go through the roof essentially without any likely investigation having been undertaken on the claim at all? That is the reality, is it not?

Mr HUMPHREY: With a truly experienced-based premium?

The Hon. TREVOR KHAN: Yes?

Mr HUMPHREY: I would probably have to take that on notice.

The Hon. TREVOR KHAN: Is it not the case now, with this current concept of provisional liability, that the worker does not even have to fill in a claim form?

Mr HUMPHREY: I do not have enough familiarity—

The Hon. TREVOR KHAN: Can you take that on notice?

Mr HUMPHREY: I can take that on notice. I am not as familiar with it.

The Hon. TREVOR KHAN: Indeed, the obligation on the employer is to report to the agent within 48 hours that a worker has gone off almost on a speculative basis that it is workers compensation?

Mr HUMPHREY: Yes.

The Hon. TREVOR KHAN: I suggest that whilst it has reduced the paperwork, one thing it has done is remove any of the basic details of reporting the claim that previously fell upon the employee with regards to what they say happened that led to the claim? Do know that?

Mr HUMPHREY: I do not have any specific knowledge of that, but it would seem to make sense from what you are saying.

The Hon. TREVOR KHAN: Could you take that on notice and see what you can find out from some of your members?

Mr HUMPHREY: Yes.

Mr MARK SPEAKMAN: You were asked questions by Mr Searle about fraudulent claims and your evidence was impressionistic and anecdotal rather than data driven. What is that impressionistic or anecdotal evidence that you are referring to?

Miss ADLER: Speaking with members who are calling up querying why their employees are getting workers compensation benefits when they do not think it was a work-related injury.

Mr MARK SPEAKMAN: How often has that happened?

Miss ADLER: I would not want to speculate.

Mr MARK SPEAKMAN: On page 4 of your submission you say that you would support broad reforms aimed at improving competition. Apart from discounted premiums where someone has a strong OH and S history with limited WorkCover claims, are there any other initiatives you would like to see to improve competition?

Mr HUMPHREY: In the short term, probably not. As I indicated earlier, we have a national position that supports a privately driven product to market if possible, but that would entail, I would have thought, greater competition.

Mr MARK SPEAKMAN: In the New South Wales context where there is a deficit in the scheme, how would you deal with that deficit if you were to move towards that sort of model?

Mr HUMPHREY: I think in the context of the current scheme, it probably has some natural difficulties in trying to privatise something that has been in deficit for such a long period of time.

Mr MARK SPEAKMAN: At the bottom of page 7 you say:

> ... that the considerations around the suitability of employment, do not overtly take the needs of the business into consideration.

Can you elaborate on that?

Mr HUMPHREY: Some of the anecdotal feedback we get from members is that when employees return to work they are essentially rushed back on the so-called light duties and the capacity of the business to be able to actually meaningfully engage them is not taken into account in as much a sense as it should.

Mr MARK SPEAKMAN: Two paragraphs above on that same page you say:

> While return-to-work programs are an important component of any workers compensation scheme, the impact on businesses within the residential construction industry must not be underestimated.

What do you mean by that?

Mr HUMPHREY: We accept and acknowledge that returning people to work in as quick, sustainable and efficient a way as possible is to the long-term benefit of both the employer and employee, but we have concerns with trying to move people off the WorkCover book, so to speak, to put them back on the employer when the employer is just not in a position to meaningfully use them and they are stuck with paying their wages.

Mr MARK SPEAKMAN: You support the abolition of workers compensation benefits for journey claims, is that right?

Mr HUMPHREY: I think we could say we support the way journey claims are dealt with in Victoria. I am not aware of any jurisdiction that does not provide any cover for journey claims, but I know that in Victoria it is dealt with via another statutory scheme through the car accident legislation. Definitely, it is an issue, particularly in the construction industry where you often do not know what is a journey claim and what is not. When is someone leaving for work, if you are engaged by multiple employers moving from one employer to the next? It can be a confusing area for people to traverse their obligations.

Mr MARK SPEAKMAN: Farmers had problems with recess claims. Is that an issue of concern for you?

Mr HUMPHREY: It has not been, no.

Miss ADLER: No.

The Hon. TREVOR KHAN: Can you explain the moving from one employer to the other in the concept of a journey claim?

Mr HUMPHREY: Say for instance you are a deemed worker, you are a contractor and you were deemed to be a worker for the purposes of the scheme. There will be issues where in the one day you could be going from one place of business to the other. Who has the responsibility for that journey claim?

The Hon. TREVOR KHAN: I am interested in that being conceived as a journey claim. My concept of a journey claim is a worker leaving his home and heading into work. What happens once he gets to a point of work and then moves to another location? In my perception that would not be described as a journey claim anymore because the worker is at work in the course of their employment from that point on. Is that simplistic concept wrong?

Mr HUMPHREY: Not if you are ending that point of engagement and you are going to the next point of engagement.

Mr ROB STOKES: Two different employers.

Mr HUMPHREY: There are two different employers.

The Hon. ADAM SEARLE: That is an issue of insurer on risk, though, not a journey claim.

The Hon. NIALL BLAIR: Is it more that because the worker is a contractor? We spoke earlier about where there could be an over-insurance of the same person—an employer who then contracts out that activity to another business so that they then become a deemed worker. Is the confusion in who the journey claim gets made against?

Mr HUMPHREY: I think when there is a contractor who has been a deemed worker there is confusion always in a range of different things, including whether they were to be a worker in the first place. But journey claims would be part of that.

CHAIR: Thank you very much for attending.

Mr HUMPHREY: Thank you.

Miss ADLER: Thank you.

CHAIR: You have taken a number of questions on notice. The secretariat will provide you with a transcript that has the questions you have taken on notice highlighted. The Committee has resolved that answers to questions taken on notice be returned three working days after you have received the transcript.

(The witnesses withdrew)

(The Committee adjourned at 5.58 p.m.)