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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 Monday 28 May 2012

The Committee met at 8.55 a.m.

PRESENT

The Hon. R. Borsak (Chair)

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

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

CHAIR: Welcome to the third and final 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. This morning the Committee will hear from the medical and health sector with representatives of the Australian Medical Association appearing first, followed by representatives of the Royal Australian and New Zealand College of Psychiatrists and the Australian Psychological Society. The Committee will also hear from the Civil Contractors Federation, the NSW Master Builders Association and the law firm Slater and Gordon.

This afternoon the Committee will hear from Dr Kevin Purse, an academic with expertise in the area of workers compensation as well as from representatives of the insurance company Allianz, the Australian Physiotherapy Association, Shoalhaven City Council and the Police Association of NSW. The Committee will also hear from actuaries Mr Michael Playford and Mr Peter McCarthy of PricewaterhouseCoopers and Ernst and Young respectively, who gave evidence on the first day of hearings. Finally the Committee will hear from a number of individual witnesses who will share their personal experiences of the NSW Workers Compensation Scheme. I would like to thank all the witnesses attending today.

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 of the Committee, be disclosed or published by any member of the Committee or any other person. Witnesses are advised that 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 a court of law. 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.

FIONA DAVIES, Chief Executive Officer, Australian Medical Association NSW, and

MICHAEL DAVID GLIKSMAN, Vice President Australian Medical Association NSW, affirmed and examined, and

PETER JOHN BURKE, Medical-surgical specialist representing the Australian Medical Association, Australian Association of Surgeons delegate to Medico Legal Committee, Law Society of NSW, sworn and examined:

CHAIR: Would you care to make a short opening statement?

Ms DAVIES: I thank the Committee and particularly the secretariat for scheduling the Australian Medical Association's attendance. The care of injured workers in New South Wales is a very important issue for our members and we value the opportunity to attend this hearing. Doctors interact with the workers compensation system in a number of different ways; firstly and most significantly as treating doctors and then also in important roles as medical assessors, medical experts and injury management consultants. I pass on the apologies of our president, Associate Professor Brian Owler. Brian is a neurosurgeon with extensive experience as a treating doctor. He sincerely regrets that he is unable to attend today. Treating doctors have a very important perspective on the dealings with the workers compensation system. They are the people who have the day-to-day interaction with doctors. However, I am pleased that we have two very experienced doctors able to attend today, Dr Gliksman and Dr Burke. Both work in the workers compensation system as medical assessors and medical experts and both also work over the motor accidents jurisdiction. They are happy to take questions based on our submission or any other issues that you like to raise.

Mr MICHAEL DALEY: We heard evidence last week from a peak body representing rehabilitation providers that in their view there should be increased focus on early intervention in the scheme and that rehabilitation providers should be brought in to manage each claim much earlier than is currently the case. Do you have any comment on that?

Dr GLIKSMAN: I think that is a very pertinent observation and submission. The AMA certainly supports the concept of there being early medical supervision preferably by way of a medical review panel to provide guidelines, particularly when there are flag events such as indicators of a case either departing from accepted treatment or becoming prolonged. There needs to be early independent medical input into those. So, in general, we would agree with that.

Mr MICHAEL DALEY: On page 3 of your submission whilst making general comments about some failings in the administration of the scheme you cite the tendency of the scheme to allow agents to issue form letters. You go on to say that these are increasing the cost of the system. That is a pretty damming assessment of failure in the administration of the scheme, if I can put it that way. Could you elaborate on that? You are saying it is increasing the cost of the system, people are saying benefits to injured workers need to be slashed, and you are saying there are problems with administration. I would like to hear a bit more about that.

Dr GLIKSMAN: I think in general our view is that if problems related to issues with causation and administration could be remedied, it would in all likelihood not be necessary to cut benefits, particularly to those who are genuinely injured and disabled. I think that would be in the interests of everyone. There are some problems in relation to administration that occur because junior members, without medical or nursing qualifications, are making decisions as to causation and the appropriateness of ongoing treatments. They are seeking confirmation but that involves considerable delays. Delay, in terms of genuine injury, leads to a worse outcome. I think those are things we would like to see remedied and believe would benefit the entire system and the injured workers.

Mr MICHAEL DALEY: One of the things that underpins the issue paper issued by the Minister's office is the notion that injured workers possibly need an incentive to return to work—other than their own inherent desire—and benefits should be stepped down earlier or cut to provide them with an incentive to return to work. In your experience as treating doctors, do injured workers have an inherent desire to get back to work or do they need to have their benefits cut to induce them to get back to work?

Dr GLIKSMAN: I do not think there is a simple answer to that question because it involves a number of motivations. It involves the genuinely injured who will not recover, the genuinely injured who will recover to some extent and those who have secondary gain, for want of a better description, that do not particularly want to get back to work and who are not injured to the extent where the problem is ongoing. A one-size-fits-all remedy will harm a lot of people. It will save money, but I suspect only in the short term. What we need is a system that can identify, by way of flagging events, problems that are getting out of control and resolve them rapidly.

Again I point to the concept of medical panels to provide guidance as to treatment, appropriate rehabilitation plans and stepping up the return to work. In concert with stepping up the return to work, in terms of graded lighter duties back to full duties, you would commensurately step down the benefits. It is a complex area and I suspect however one goes it is not going to be ideal. The best solution would be one that maximises the chance that only those who are truly injured long term receive the long-term benefits.

Mr MICHAEL DALEY: One of the other propositions put forward in the issues paper is that the whole person impairment threshold should be reset from 15 per cent to 30 per cent—item number one.

The Hon. TREVOR KHAN: You are misstating the issues paper.

Mr MICHAEL DALEY: Severely injured workers should be set at 30 per cent.

The Hon. TREVOR KHAN: That's right.

Mr MICHAEL DALEY: What do you say about that 30 per cent threshold? How many would make it through the 30 per cent threshold?

Dr GLIKSMAN: Very few. There is discord between the guides to the evaluation of permanent impairment methodology, in terms of determining whole person impairment, and the effect on a person's life and ability to work. The main aim of the guides is to provide a valid repeatable method of rating impairments, but it does not necessarily say a great deal about a person's ability to return to particular work or to a particular type of work. In my experience of those I see who I feel have a genuine work-related injury less than one in 100 people would get to the 30 per cent threshold. In my opinion it would shut the system down as a means of support.

Dr BURKE: I agree with that. It is one in 100. It would severely damage the average person who is genuinely injured at work.

Mr MICHAEL DALEY: One or two submissions have suggested that burgeoning medical costs and occasional over-prescription of treatment by medicos is leading to cost blowouts in the scheme. I should give you the opportunity to say something about that.

Dr GLIKSMAN: From my experience the vast majority of treatments are reasonable and necessary but of course there are some that are not. Most medical practitioners in the area will know who and where that comes from. Again that would be best dealt with, and effectively dealt with, by the Medical Review Panels. There would be no difficulty pulling up those practitioners who did transgress. My view is that it is a small minority and correcting it, while important for a lot of reasons, would not brings costs under control by itself; there needs to be other methods as well.

Mr BURKE: May I come back to your opening question about forms and the organisation? In this State there are several scheme agents and the administration is split very widely. I understand—I am not sure of this firsthand—that in South Australia there is one agency that prides itself on getting workers back to work more quickly than anywhere else in Australia. I think that that is something which it might be possible to look at.

Mr MICHAEL DALEY: Would you take that on notice and provide the Committee with some details of that scheme in South Australia?

Ms DAVIES: Yes.

The Hon. ADAM SEARLE: You refer on page five of your submission to the issue of Medical Review Panels providing guidelines to stop unnecessary treatments. How does that work in practice? Are you talking about binding medical tails or just setting out protocols for medical practitioners involved in the system?

Dr GLIKSMAN: I think protocols would certainly be a first step and when people depart substantially from those protocols a rapid review should take place. Whether it is necessary from there to proceed to some formal means of enforcement, I am not sure. It would take a pretty thick-skinned and rather, shall I say, not entirely socialised medical practitioner to ignore the feedback of their peers in this matter. I suspect it is a problem that would either not arise, or would arise very rarely.

Ms DAVIES: We have had discussions with WorkCover about a range of educational activities. We have undertaken those in the past, and the support doctors need is evidence, support of good practice and best practice guidelines. Our doctors, particularly general practitioners who are at the frontline delivering WorkCover services, want to provide the best care that they can for their patients. They find themselves in a very complex situation of being a long-term family doctor who is trying to help the person return to work. We want to ensure our interactions with WorkCover support the work of general practitioners, support general practitioners to get their patients back to work in a way that is about education, evidence and guidelines to help those general practitioners do the best they can for them.

The most important thing that we want is for good general practitioners to want to see WorkCover patients. WorkCover patients are difficult, complex and are often what general practitioners call "heart-sink" patients. We want to make sure that our general practitioners are well supported to do that work, that there is not excessive red tape and burdens to deal with them. That is where we think the medical panels' education and guidelines will really help our members.

CHAIR: Who would serve on the medical panels? How are they appointed?

Dr BURKE: There is a great resource amongst the approved medical specialists who work now with the Workers Compensation Commission and the Motor Accidents Authority. Most of them meet together at least once every two months and discuss ongoing problems and how to face various situations and find solutions. They are very keen to make this scheme work. Obviously the important functions of the scheme are to ensure that every worksite and every workplace in this State is as safe as it possibly can be. The second aim is to make sure that people who are injured are given prompt and appropriate treatment and are got back to work as soon as possible to the best value of them personally and the best value also of society.

It is an extremely important function. These medical specialists who are already associated with the medical scheme could provide very valuable input into functions from the word "go"—from the time the person is injured. What is the diagnosis? At this stage these medical people have no input at all into the diagnosis. Secondly, whether this constitutes an underlying condition or whether it is an injury. They have a great deal of experience in assessing how work may have contributed to an injury. From that obviously the issue of causation is extremely important and it is something that the doctors decide under the motor accidents legislation. But they have no input at all into those aspects in workers compensation.

Last week I was on a workers compensation appeal panel about a man who was a forklift driver. His leg felt itchy, he bent down and scratched it and it became a chronic ulcer. The reason why this happened was that he had varicose veins, chronic veinous insufficiency in both his legs. It would have happened whether he had done this at home, in his sleep or wherever. They took the words "his leg was scratched at work", therefore, it is a work injury. The consequence of that poor decision meant an extremely long and expensive course that the compensation system covers that without question. We have lots of example along those lines and we see that as being an unfortunate effect of the way that the legislation is set up.

Dr GLIKSMAN: Coming back to where the resources could be found in terms of the powers, as well as the resource to which Peter made mention—the AMS [approved medical specialist] and the assessors with the Motor Accident Authority in relation to that—the specialist colleges, including the College of General Practitioners would be more than willing, I believe, to provide independent expertise in that regard. I make mention of the College of General Practitioners particularly—I am not a general practitioner, I might add—because general practitioners by and large feel left out of decisions in the system and yet are responsible for a great deal of the effort provided. A college input into issuing guidelines would be of great value to general practitioners who would require the back up of their college. I think it would be a well worthwhile step.

May I address the other issue that Peter mentioned, and that is of causation? Both Peter and I work on both the Workers Compensation Commission and the Motor Accidents Authority. In the Motor Accidents Authority the medical assessor addresses both causation and percent impairment. To access the system does not require there to be an established motor vehicle related injury. Causation is determined by the medical practitioner. In the workers compensation system that is not the case. To gain access to the system under the Act causation needs to be shown beforehand and that causation is decided by a non-medical practitioner—qualifications, possibly legal. Once that is accepted as being an accident—

The Hon. TREVOR KHAN: I will take that as a detriment.

Mr MICHAEL DALEY: There are five lawyers on the committee.

Dr GLIKSMAN: I should add that I have a law degree as well so I am not going to hit myself. It really is outside the expertise of those who make a decision on causation but that is done to allow access to the system. Once it is done the assessor, the AMS, cannot change it. It is cause. It has been determined that this problem has been caused by this particular work-related event. All we can decide on is per cent impairment. In my view, and I think Peter has given a good example of it, there are some ludicrous things that get through that would not get into the Motor Accidents Authority scheme. My off-the-cuff estimate is about a third of the cases that are accepted in the workers compensation system and then proceed through impairment assessment would not get to first base in the Motor Accidents Authority scheme.

The Hon. TREVOR KHAN: A third?

Dr GLIKSMAN: I would say it would be at least a third. Understandably, the person who has a submission before them wants the person to at least get to a medical assessment, but the problem is that the mechanism available to do that in the workers compensation scheme imposes a determination which locks the person into the scheme whether or not there is a work-related injury. I think eliminating that alone would make a very substantial difference to the cost.

Dr BURKE: Often at that early point there is little expert medical advice to the lawyers or to anybody else involved and there are consequent delays. Somebody is injured, it is okay if they have got to go straight into hospital and have an operation or something, but if there is something like a hernia or a disc problem there is then a delay caused by the system before they can get permission to go into hospital, and of course there are delays getting people into hospital anyway. It is very frustrating that injured people are kept waiting for appropriate treatment. Somehow this sort of logjam needs to be overcome.

Dr GLIKSMAN: That is a separate issue to the causation one. I think if this Committee does nothing else but address the causation issue and bring about an alignment between workers compensation and the Motor Accidents Authority it will have done a great service to the State.

The Hon. TREVOR KHAN: Doctor, we are going to run out of time so I am not going to ask you to do it orally but are you or is the Australian Medical Association able to give us a number of examples where you are of the view that, essentially, causation has been accepted where, on the basis of the assessment that is subsequently undertaken, it is demonstrated to be misplaced?

Dr GLIKSMAN: De-identified. I would be more than happy to gather that material for you.

Mr MARK SPEAKMAN: Could you also take on notice your response to sections 8, 9, 10 and 11 of the Sewer Contractors Federation submission, which is No. 170, about their work capacity testing?

The Hon. PAUL GREEN: Just carrying on from where you talk about the Motor Accidents Authority, are there any other red tape issues that you can see would improve the processes?

Dr GLIKSMAN: We think there are. I might ask Fiona to make mention of some and I will elaborate if necessary.

Ms DAVIES: We are about to undertake with WorkCover a detailed survey of our membership about the range of red tape aspects that treating doctors find. Associate Professor Brian Owler has certainly described that as a surgeon. He is regularly asked to provide information and further reports on information that have already been provided and documented or information that is available through the notes and other mechanisms.

Doctors are required to provide information within a 10-day period, often for no particular reason, and treatment should not be being delayed within that time.

But it is particularly the calls for re-approval, recertification and further reports from both insurance companies and lawyers that are frustrating and delaying the access to treatment. Obviously we need to ensure, particularly when we are talking about access to surgical procedures, that people have approval and it is done because it is needed to be done, but there is not the need for the recertification, the re-reporting. Every time a report is issued the doctor is entitled to challenge for that, and they should, and it is further cost. Often that re-requesting information comes from scheme agents who do not have sufficiently experienced staff, who are driven by protocols and are therefore seen to question and reassess the advice that has been provided.

Of course, from every delay from every step that is longer that a patient is away from work, and the single biggest frustration we get from our doctors is the amount of documentation, paperwork, requests for scheme agents where the person responsible for the claim changes constantly, where they are then required to provide all of the information again or where claims are unexpectedly stopped or not continued when a patient is actually on their journey. So we think there are a range of activities being undertaken by scheme agents that are unnecessary and that are not benefiting the patient and adding a significant cost to the scheme.

Dr GLIKSMAN: May I elaborate on that? There seems to be a perverse incentive within the scheme to delay making a decision, even when all the material is before the agent and is clear to the agent. It is now becoming almost a one-to-one where I will issue a report which clearly addresses all the issues and a few weeks later I will get back a letter from the insurer, the agent, saying, "We can't make a decision until you clarify these points", and they list exactly the points that were clarified. I refer all those to the WorkCover Authority, but they must be inundated now with the practitioners doing that. But somewhere there is a perverse incentive for the agents to do it. Treatment delayed means, as Fiona said, a delay in returning to work, but it also means a potentially worse injury and impairment, and that is in no-one's interest.

The Hon. PAUL GREEN: In regard to that perverse incentive, what would you change? Have you thought about what could be done to change that?

Dr GLIKSMAN: I think that the agents need some medical input into those decisions and interpreting the reports for them. There are very junior people who are asked to do this. They are issued guidelines, I believe, by senior management but they are not equipped to assess the reports they are getting or to resist any pressure to delay.

The Hon. PAUL GREEN: You are not suggesting it is deliberate?

Dr GLIKSMAN: I do not think it is deliberate from the people who actually make the decisions and I do not know whether it is deliberate from those more senior, but it does occur to me that it is more profitable not to make a decision than it is to make one.

Mr MICHAEL DALEY: Is it the case that scheme agents are paid for keeping the files open because of the length of them?

Dr GLIKSMAN: I do not know.

Mr MICHAEL DALEY: I am just wondering why your perverse incentive would exist at all.

Dr GLIKSMAN: What I can tell you is of an experience I had when in fact I was asked to do what I thought was the kind of work that I am outlining, and that is to advise an insurer, an agent, on cases. It became very quickly apparent that what I was actually being asked to do was to phone up doctors to act as a de facto injury management consultant—come into the office, read the reports, act as a de facto injury management consultant, call the doctors involved and try and get the treating doctor to change either their diagnosis or their certification, and I was told that the managers of those sections are paid a bonus on getting people off their books. Now I cannot attest to the truth of that—that is hearsay, of course, firsthand hearsay—but it would explain a great deal of what is happening in relation to those things. So I think the medical input needs to be genuine. It should not be binding; the agents cannot put themselves completely in the hands of them, but it should be persuasive.

Mr MARK SPEAKMAN: The rehabilitation providers in their submission No. 140 tell us that medical diagnosis is not a good predictor of return to work, and other psychological factors may be inhibiting return to work. Would you like to comment on that?

Dr GLIKSMAN: It is a very broad statement. I would have to ask what the evidence is. I find it hard to believe that an accurate diagnosis does not serve as a reasonable predictor. If it is not serving as a reasonable predictor then something is happening between diagnosis and return to work to dilute the predictive value of that diagnosis—either the correct treatment is not being received, it is being truncated or it is not being recognised or directed properly. So the blank statement that was given I think may hide a lot of problems that this Committee could address.

CHAIR: Thank you very much for attending today. I note that you have taken some 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 within three working days after you have received the transcript.

(The witnesses withdrew)

YVONNE SKINNER, Chair, Faculty of Forensic Psychiatry, Royal Australian and New Zealand College of Psychiatrists, New South Wales Branch,

DAVID STOKES, Executive Manager, Professional Practice, Australian Psychological Society,

AGNES LEVINE, Chair, New South Wales State Committee, Australian Psychological Society, and

BO LI, Senior Policy Adviser, Professional Practice, Australian Psychological Society, affirmed and examined:

CHAIR: Welcome. Witnesses are advised that if there are any questions you are not able to answer today that you would be able to answer if you had more time or certain documents at hand, you are able to take questions 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 heard in private by the Committee could you please state your reasons and the Committee will consider your request. Would you like to give a short opening statement?

Dr SKINNER: I am here on behalf of the New South Wales Branch of the Royal Australian and New Zealand College of Psychiatrists. I have spent some time consulting with colleagues who are involved with WorkCover in treating and assessing injured workers. As psychiatrists we see many workers who have suffered physical and psychological injuries. We note that workers who have suffered physical injury often claim psychological injury and may require assessment and treatment for the psychological component of the work injury.

The goals and aims as stated in the issues paper appear to be reasonable and do not raise any concerns for us. It is important, we feel, that injured workers receive proper care and are not disadvantaged as the compensation scheme is restructured. Workers who have suffered more minor injury should be provided with adequate support to allow them to recover and regain their financial independence. More seriously injured workers will require more intensive treatment to avoid setbacks caused by delays and might need retraining for an alternative occupation. We do not want to see them disadvantaged by these changes.

We make the following comments. The need for reform: There is a considerable body of research demonstrating that early assessment and initiation of appropriate treatment assist the injured worker to return to work. As an injured worker is off work for a prolonged period the chances of return to work are greatly reduced. Therefore, we recommend that a psychiatrist should be involved early to provide an assessment and develop an appropriate treatment plan. Treatment should be evidence-based and for a reasonable and necessary time frame. Prolonged and unnecessary treatment leads to a perception of disability and dependence on the treating practitioner. Some of our colleagues have reported cases in which persons have been receiving weekly sessions of so-called counselling for years with no improvement in the level of their complaints in their reported symptoms or in their functioning. The issues paper points out that this tends to reinforce the dependency and their perception of being ill.

Some psychiatrists reported hearing of unorthodox treatment, such as in one case a person being placed in a dark room, or costly home visits when the person was capable of travelling to an office, thus increasing dependency on the treating person. There were other reports of treatment that might even be harmful. Whilst we recognise that there might be a need to cap medical coverage, we would need to be assured that this would not disadvantage injured workers. Injured workers suffering psychiatric or severe physical injuries might develop chronic psychiatric problems which require maintenance treatment to prevent relapse, and these injured workers should not be restricted to a simple recovery and return to work where this might not be appropriate. It is important that injured workers should receive appropriate and necessary treatment, and in some cases of severe injuries a longer time frame might be required.

In relation to the assessment of impairment, there was one issue we would like clarified. It was mentioned that there might only be one assessment and we were not sure whether this meant that only one person would carry out the assessment or whether it is within the time frame that there would be one point in time where a whole person impairment would be assessed. We were concerned if the assessment was restricted to one assessor because there might be some possible disagreement. But if it meant that it should be determined at a particular point in time we did not have any problem with that. We feel that there should be an opportunity for more than one determination so that a reasonable and consistent assessment can be made.

Another point that has been raised is consideration of the remuneration of psychiatrists and psychologists performing assessments. Psychiatrists are concerned that fees are fixed at a low figure and it might mean that competent professionals will avoid doing assessments and that might not be in the interests of the injured worker. Aspects of treatment provision require careful consideration because we feel it is very important that the treatment should be evidence-based and appropriate. The College of Psychiatrists is willing to assist in formulating guidelines for the regulatory framework for health providers and any caps that might be applied to treatment. We are willing to assist in any way we can. We hope that these comments are helpful and we are very willing to assist in any other way we can.

Mr MICHAEL DALEY: Dr Skinner, you spoke about injured workers who develop psychological problems such as depression and so on. I hope I am not paraphrasing you incorrectly, but I understand you to say that those workers need to be looked after as part of the scheme as well. At page 5 of its submission, Allianz Australia Workers' Compensation (NSW) Ltd, one of the scheme agents, states:

> In our experience, many claims are extended beyond the treatment of the original injury and regularly encompass related physical conditions, pre-existing or degenerative conditions and secondary psychological conditions (such as depression and anxiety). It is our contention that debilitating as they are for the individuals, management of these goes beyond the intention of the Workers' Compensation Scheme principles.

Would you like to make a comment on that assertion?

Dr SKINNER: This is a difficult issue because a person understandably might become depressed and suffer all sorts of psychological complications as a result of a severe physical injury. When the injuries are very severe—I mean catastrophic injuries such as being involved in an explosion or a serious fire and suffering injuries that render people incapable of working—great stresses are placed on the family and there are all sorts of other secondary issues that arise that might require psychological intervention.

Mr MICHAEL DALEY: Are they secondary to the extent that you think the scheme should not cover them; that is, that only the primary injury should be treated and the secondary injuries that have arisen from the accident should not be part of the workers compensation scheme?

Dr SKINNER: No, in those complex cases involving severe physical injuries the psychological issues need to be addressed because they are secondary to the physical injury and are part of the work injury. On the other hand, I think that sometimes there are cases where the person has other personal problems, such as family problems, that pre-existed the injury. Sometimes the psychologist might take them up as part of the case when it is not really related to the work injury.

Mr MICHAEL DALEY: The Australian Medical Association has just given the Committee strong evidence about the need to introduce medical assessment panels early so that medical practitioners can deal with causation issues, recommend treatments and so on. Do you have any comment about the value or otherwise of medical assessment panels?

Dr SKINNER: I think that would be very valuable because it would enable a proper management plan to be worked out using proper evidence-based management principles. If that could be formulated early it might prevent the problem of the person not receiving treatment and ending up being away from work for a prolonged period when that might not have been necessary. It would be advantageous both in terms of returning a worker to work and formulating a proper treatment plan.

The Hon. ADAM SEARLE: You gave evidence about the importance of early intervention or early access to treatment. Can either or both of the organisations say how soon after notification of injury injured workers are able to access treatment from a psychiatrist or psychologist? Is it early enough or too long? Do you have any views about that?

Dr SKINNER: At present?

The Hon. ADAM SEARLE: Yes.

Dr SKINNER: In my view it is often too long. Workers sometimes just stay at home hoping to get better without any treatment for periods of up to a year or more.

The Hon. ADAM SEARLE: Are you aware of or are you able to say what is the cause of that delay? Is it that no-one has identified that the person has a psychiatric or potential psychiatric injury that needs treatment?

Dr SKINNER: I think there are a number of reasons. One is perhaps that the treating doctors do not intervene early enough or the patient does not seek treatment early enough. They might not even go to a general practitioner but simply stay at home hoping to feel better. Sometimes it is because of a feeling of stigma; they do not want to see someone about a psychological injury because it is seen as a sign of weakness. Again, they hope they will simply recover over time. I am not quite sure, but I think they are the most commonly mentioned reasons.

Ms LEVINE: The guidelines under which the scheme agents and insurers operate require that the case manager is involved within the first seven days of a claim being lodged. The possible weakness in the system is the qualifications of the case manager and their capacity to recommend or approve the right path. The nominated treating doctor is the key person who must be able to make a diagnosis and recommend action for referral to appropriate treatment providers, whether they be physical or psychological treatment providers.

The Hon. ADAM SEARLE: Is that one of the responsibilities that rests not only with the treating doctor but also with the scheme agents and case managers?

Ms LEVINE: Yes, the case manager should be on top of that as well.

Mr STOKES: The Australian Psychological Society is very concerned about the compartmentalisation of difficulty. There is no such thing as an injury that is simply physical. Our argument is that you must apply a biopsycho-social model to the intervention program. You cannot compartmentalise and say that this is just a physical injury. We do not think that exists. It is very important, as the Australian Medical Association has suggested, that the medical panel have a broader view. If such panels were set up—and we would be right behind that notion of early and quick assessment—there must be a strong psychological presence to contribute to that analysis and assessment.

The Hon. ADAM SEARLE: On pages 2 and 3 of the Australian Psychological Society submission you describe a decline in planned management experience since 2008 with the scheme agents and set out some potential reasons for that. Is my understanding correct that you are saying that from that time WorkCover provided less oversight of the scheme agents and therefore they were not managing cases properly, or is there some personnel issue?

Mr LI: I do not think there is any single factor associated with it. Certainly, anecdotally we are hearing that case managers are overwhelmed by the number of cases they must deal with. As a result there is a reasonably high attrition and turnover rate within the industry. That compounds itself in personnel having to learn the system and the processes involved in the system. That inevitably results in delays in responding appropriately to injured workers' requirements, rehabilitation goals and so forth. Again, our submission argues for those case managers or injury management advisers to have reasonably high quality clinical and working experience. Of course, that requires a reasonably high salary in most circumstances to be able to appropriately receive, assess and direct those referrals either to treating practitioners or to other parts of the scheme itself. There are many factors and I do not think any one of them is more important than the others.

The Hon. ADAM SEARLE: Just getting back to the idea of earlier intervention or earlier treatment, what could be done to the scheme other than having better qualified injury management people?

Mr LI: I will just refer you to page 4 of our submission. At the bottom of page 4 we outline four features of a scheme which we think, working as part of a package of reforms, would work; rather than choosing elements to be installed under an individual basis. We certainly believe that a client-centred approach focusing on active rehabilitation and return to work is a central part of the scheme. The next is early intervention, as our colleague Dr Skinner mentioned earlier, supported by a psychosocial model, not just a biomedical model, as Mr Stokes mentioned earlier. The next is a learning system, and what we mean by that is to gradually improve on the expertise both within the scheme itself and within the insurance agents. Within the scheme itself we recognise that the scheme currently has a panel of independent consultants and they have expertise at their disposal to direct injury management plans and so forth. We think that is a good element of the system and of the scheme that should be continued if not expanded. Certainly that expertise should be expanded into the

insurance agency area, as I mentioned earlier. So they are the four elements, if you like, that when combined together would move the scheme toward a more appropriate return to work focus.

The Hon. ADAM SEARLE: In terms of return to work, are you able to say based on the feedback you have had from your members what the key obstacles are to injured workers returning to work? Is it the lack of suitable duties being able to be provided by their employers, or is it because employment has been terminated and they are unable to get other employment, or is simply because they do not want to go back to work for some reason?

Mr LI: Again I think there are many factors associated with barriers to return to work. While there are barriers as to suitable duties, it is really the early identification, early referral and early intervention of workers with injuries. Now, as Mr Stokes mentioned earlier, any physical injury would have consequential psychological impact. It is about picking up those issues and acting on the whole person to ensure that their physical and psychological health are looked after from the outset, working with the scheme agents and the employers and having the right provider recognising those signs and symptoms to facilitate the return to work. Sorry, I just lost my train of thought there. Would you care to repeat the last part of your question, please?

The Hon. ADAM SEARLE: I was looking at what the key obstacles were to return to work based on the information you had from your members.

Mr LI: Yes. Certainly as we mentioned earlier the relatively high attrition rate and turnover rate within the agents. And lack of understanding of the intention of the providers and processes within the scheme certainly meant that there is a feeling amongst our providers and injured workers that they have just been processed through the system rather than having their actual injuries looked at and addressed at a personal level. That is where a lot of exasperation and anger and angst would arise.

Mr STOKES: Can I just add to that to say that chronicity issue is far more significantly impacting on psychological factors than physical ones. Even when you can sometimes get some physical improvement, long delays from the injury to actual active intervention can really have a serious effect upon the psychological component. People's loss of self-esteem, people's frustration with the system, their lack of positive feedback that work gives you, all of that has a significant impact. The longer you leave them sitting at home, if you like, without significant intervention the more your problems are. Many of our members say if only I had got to see this person in the first three months of their injury, but 12 months down the track I am really uphill now. That is a serious factor.

The Hon. ADAM SEARLE: So the longer before you start the longer it takes?

Mr STOKES: Exactly.

Mr LI: Anecdotally we have heard from our members that sometimes the referral is two years, 24 months, after the initial injury and certainly by then the psychological symptoms have truly set in.

The Hon. NIALL BLAIR: Dr Skinner, can I come back to the issue of secondary treatment and something that you mentioned earlier that some psychiatrists may take up pre-injury issues as part of the case management. Did you want to expand on that? Are you saying that throughout the sessions they might address family issues or other problems that the person may be experiencing that are outside the scope of the injury?

Dr SKINNER: I think it is important that those issues should be addressed if the injury is serious and if the injury itself has impacted on the family, as it will if it is a serious injury causing disability. However, there are cases that have been mentioned of people taking up to two years or longer in treatment where the focus seems to go from the injury on to other side issues in the person's background, such as family or other personal relationships or some other problem. The focus goes away from the work injury and away from return to work on to something that is really peripheral to the actual work injury. So it is complex because we need to clarify which issues are important in relation to the work injury and might help the worker either to get back to work or to come to terms with the problems arising from his disability. It is important to the issue, but the whole thing should be focused on the work injury and helping the worker. Sometimes, as I say, if it is a very catastrophic injury then the family will be upset and then I think the whole issue should we addressed as part of the work injury.

Mr LI: If I may just add to that, so much of what we are is defined by what we do. I am an accountant; I am a policeman; I am a teacher. To have that role taken away from you as result of injury has enormous psychological impact not only to themselves but to the immediate family and perhaps the immediate community around them. So those issues are not readily separated. I think to examine the person's injury in isolation of the consequential impact factors is probably not the best approach that we would support. It is not something we are supporting.

Mr STOKES: I reiterate that again we would argue that the biopsychosocial approach says you cannot separate out the family issues and say that belongs to another responsibility or another jurisdiction. If an injury has impacted on an individual and that individual's psyche has been affected, and therefore the relationships in which they are engaged are affected, you are in the same package. That is what the whole biopsychosocial approach is about. You cannot see the individual as compartments and say that is someone else's responsibility. They are a whole and the whole is affected by the experience, therefore we have an obligation to the whole. I am not suggesting for a moment or denying that sometimes interventions can get sidetracked—I think that is occasionally the case—but in any injury there will be psycho and social aspects that you have to address.

The Hon. NIALL BLAIR: Would a third party assessment prevent the sidetracking to a point where we may see someone continuing treatment for years, and for which the insurance scheme is paying, that is clearly outside of the treatment of the original injury and the impact that is having on the family?

Mr STOKES: What we would like to see, and this is where we have gone in other States, is there is a panel of your own peers who can assist practitioners who get locked into such a—because it is very easy to get caught up in the client's needs and to that extent it is possible that individuals do get sidetracked. That is why we have set up professional panels to support these individuals. They can come in and provide advice and help to break a pattern that might have developed and provide professional support. We think that is an effective way of going through that, but also a monitoring of claims. You know, 100 sessions I have to say is time to be intervening and asking what is going on here that we can do more effectively.

Ms LEVINE: In January 2010 a new regulatory framework was introduced for psychologists and counsellors and that involved mandatory training for all those treatment providers within six months of being approved as a treatment provider. I have been personally involved in each of the 2,300 practitioners who have so far attended that training. Part of this regulatory framework involves this treatment plan, management plan that we have mentioned which must be completed if the treatment provider is to continue beyond six sessions. They need to get approval to go beyond six sessions. It is recommended that they prepare that plan before the sixth session so there can be continuity. If they go beyond that six sessions and then they have another six sessions, they must again require approval to continue. Very often what happens is that when they reach that 12th session that is where the independent consultant, of which there are six in New South Wales, comes in to assist with any issues that might have arisen to explain whether there may be some better ways of handling the treatment. Sometimes what is found is that the treatment provided is not of effect or is not able to continue making any progress and that is when it is critically important to bring in—perhaps not at the twelfth session but certainly not much beyond that—the panel to one of the consultants to provide assistance.

The Hon. TREVOR KHAN: If you are talking about 12 sessions, would it be 12 sessions spaced on a weekly basis, for instance?

Ms LEVINE: It is entirely up to the practitioner whether they wish to make it weekly. It is more often than not on a weekly basis or it could be fortnightly. The length of the session is up to the practitioner but they will only be paid per session.

The Hon. TREVOR KHAN: On the basis of other evidence we have received, it appears that the longer the period away from work the less likelihood of return to work. If you are looking at either 12 or 24 weeks, the prospect of returning to work has dropped dramatically by that stage of the treatment of the worker, has it not?

Mr LI: There are several issues there: Firstly, the time it is taking for the patient to receive a referral, and that could be up to 24 months. With the 12 weeks on top of that, it adds to the delay in return to work. I also support what Ms Levine said about the practitioner having the discretion. However, the professional bodies, such as the Australian Psychological Society, have strong evidence based on directing our members on professional ethical practices. Should those practices be found to be unwarranted or not, based on existing evidence, that gives providers stronger grounds to deny some of those treatment proposals. If a provider

continues to provide services without clinical justification and without appropriate clinical goals, that raises questions about the continuance of seeing that individual without any outcomes in mind.

The Hon. NIALL BLAIR: I ask your opinion about commutations. One of the things that we have heard from other witnesses was the positive side of the closure of a case: allowing the worker to get control of his or her life again and not be caught up within the system. Do you believe there is room for commutations as part of this process?

Ms LEVINE: I think commutations are quite technical, in terms of the 15 or so criteria that are required to be met in order to enable them. I believe there have been as few as 70 of these commutations per year. It is often those cases where they are unable to go down any other path by way of the courts, possibly because there was no employer negligence involved. I do not think we have sufficient evidence to be able to comment on what happens with such a small sample of people.

The Hon. NIALL BLAIR: If commutations were to be extended to have specific targeted commutations and that number increased where there is a decision made about a particular case, rather than dragging them out, would you have a view on that?

Mr STOKES: Yes, two things: If it facilitates earlier intervention, we would be sympathetic to that process but we would want to have some evidence of having achieved the goals that are set, as part of that process.

Dr SKINNER: I think the question of commutations is complex and I do not think we have sufficient information to know exactly how it should be handled. There are some cases where closure would be a good thing, allowing the person to go into an alternative occupation or work out some alternative lifestyle. On the other hand, I worry about commutations being granted when a person suffers very severe, catastrophic injuries and where they might need ongoing treatment with repeated physical and psychological interventions over many years because of the catastrophic nature of the injury. The commutation might limit the amount of funds that they have available for their medical treatment.

The Hon. TREVOR KHAN: Would any of you like to comment on what is a growth over recent years in the area of injury called "stress claims". What is driving it?

Dr SKINNER: I do not think there is a simple answer, but one thing is the change in the nature of the workforce that one is insuring. One does not see the same level of physical injuries in a white collar workforce as one sees in a blue collar workforce. That would be one factor. And we know from experience that those sorts of stress claims are more often seen in the white collar industries than in the blue collar industries.

Mr LI: The evidence will come when you meet with the Treasury Managed Fund and they would be able to demonstrate the agencies where the stress claims are particularly high.

The Hon. TREVOR KHAN: Would you like to comment on why in the 1980s particularly there was a spike in repetitive strain claims and why that has, in a sense, dissipated?

Ms LEVINE: Getting back to your original question, I think one factor in the rising incidence in stress claims that you mentioned earlier could be the better community awareness of those psychological stressors and the extent that work is responsible or attributable to those claims. I think the community is becoming increasingly aware of this, much more so than 10 or 20 years ago. In our submission we also made a pointed difference between mental health and mental illness. Much as we focus on mental illness such as anxiety, depression, schizophrenia and the like, there is a greater need for psychological health, mental health. In terms of mental health, we have already talked about preventative strategies, things such as what do you do if you feel stressed at work? How can you have the tools and resources to draw upon to seek to prevent those psychological injuries from manifesting themself in the workplace? A lot of work needs to be done on the promotion of mental health in the workplace, especially in light of the changing nature of the workforce.

Mr STOKES: The society has done a lot of work in the area of psychologically healthy workplaces and trying to find the characteristics of such workplaces, as opposed to those which breed psychological ill-health. We would have some observations along those lines to make, if you were interested. We were focussing just on the scheme at this point but you have raised an issue which goes beyond that.

Dr SKINNER: I think the way in which psychological injuries are handled is one of the factors that might be contributing to perpetuating these claims. If they are handled well in the beginning it might assist the worker to get back to work. When it becomes a battle with bureaucracy and the worker feels aggrieved and upset by their perception of the way it is handled and it goes on and on and treatment is delayed or there is no treatment for a prolonged period of time, it might perpetuate the whole thing. It can cause the worker to stay off work when it might have been possible to get them back to work earlier. Research shows that if a worker is off work for 12 months, it is a cut-off point and it is difficult after that to get them back to work again. Sometimes you see workers off work for more than 12 months before treatment is even initiated. Earlier assessment and treatment will help to reduce the time delay in these claims, and it might get workers back to work.

The Hon. PAUL GREEN: In terms of the six sessions or 12 sessions, I guess the thing with health and anyone who knows anything about health, it is not one size fits all. It is not necessarily that those six sessions will be used, is it?

Ms LEVINE: Indeed, it could be resolved within two sessions.

The Hon. PAUL GREEN: And six sessions could be in a week, as opposed to six sessions in a year, depending on what the psychological requirements are.

Ms LEVINE: It is unlikely.

Mr STOKES: It is unlikely because human learning theory suggests that you need time to consolidate and reflect. Six sessions in six days are unlikely to be as productive as six sessions across six weeks.

The Hon. PAUL GREEN: My point is time and I guess it could be intense or it could be spread out, depending on each case.

Mr STOKES: Yes.

The Hon. PAUL GREEN: Therefore, you could have one session, you could see there is no real issue, the person will adjust or adapt to their work injury and not need to be seen again.

Mr STOKES: It often happens.

The Hon. PAUL GREEN: Your second point is about access to consultations. Firstly, does the association find that psychiatrists or psychologists are shying away from seeing workers compensation clients?

Ms LEVINE: Anecdotally that is what was claimed by some of the more experienced practitioners. They were saying that they felt that the fee was insufficient to recognise their expertise but I do not believe that has necessarily been the case. There does not seem to have been a drop-off in terms of the numbers of approved treatment providers on the WorkCover database.

The Hon. PAUL GREEN: In rural and regional areas it is quite often felt that general practitioners have their books closed and that that complicates the healing process or the early intervention, as was previously mentioned. Mr Li mentioned that in one case it took up to two years for a client to see an appropriate person and that the healing process may well have been quickened and a lot of the issues avoided if they had been seen earlier. In light of that, what would your recommendation be as to a critical pathway to allow people to see practitioners within the 42 days that the employer has to get some sort of assessment?

Mr LI: This is where a lot of knowledge and experience needs to be invested in insurance agents and having the appropriate staff within those agents so they can handle claims in the most expeditious way, both clinically and from a scheme perspective, because to have case managers overloaded with work and so on is not conducive to the overall claim process.

Ms LEVINE: I think the nominated treating doctor is still the key factor here and their capacity to recognise the need for early intervention of a psychological nature and, indeed, any other physical treatments as well.

Dr SKINNER: I did not have any complaints from psychiatrists about the fees being an issue in relation to treatment but they did complain about bureaucracy—having to wait for approval either to initiate or

to continue treatments—and they felt this was an inhibiting factor that caused delay for patients. They were not concerned about their fees, but about the delays in initiating or continuing appropriate treatment.

The Hon. PAUL GREEN: What about the insurance agencies second guessing your opinion? Did you receive a lot of challenges on that? We just heard from the Australian Medical Association about second guessing the doctors.

Ms LEVINE: Again anecdotally we find a well-informed practitioner will usually be able to persuade a case manager that the proposed treatment is effective and evidence based.

The Hon. PAUL GREEN: So you do not get the agencies writing back and saying, "We have read your report but we are not happy. Please elaborate further on A, B or C?"

Ms LEVINE: We doubt that the case managers have that level of expertise but again we have not had much complaint along those lines.

The Hon. PAUL GREEN: You obviously see the cracks in the system. What would you change in terms of red tape and legislation?

Dr SKINNER: First of all the panel recommended by the Australian Medical Association would be something we think should be considered because, in our opinion, earlier assessment would be something that is important in perhaps sorting out the issues early, organising early treatment and hopefully getting the worker back to work or finding appropriate management for him or her.

Mr STOKES: Professional panels would be a major significant contribution. They have to be peer related so they do need to be for each professional group involved.

Ms LEVINE: Obviously the volume of claims would not require every single claim to go through that process. There would be a point at which—

Mr STOKES: Absolutely not. A protocol would enable that to happen sensibly.

Ms LEVINE: In part that is what is happening now—with the use of independent consultants.

Mr LI: I agree. There are many elements of the scheme which we believe should continue, such as independent panels and the expertise that lies within them, and a greater expansion of the roles of the expertise of insurance agents would be greatly appreciated, as well as the earlier identification and referral of injured workers dependent upon expertise both within the scheme itself by an independent panel and also by independent advisers and a greater push for evidence-based practise so that injured workers are not seen continuously without appropriate justification.

Mr STOKES: Can I say that the data collection would be of great assistance if it was more rigorous and, at times, clinically focused so that there is not only the capacity to be able to assess what is occurring more effectively but also to have some clinical evidence base that we constantly look for and try to follow. The workers compensation scheme could certainly assist that process with more rigorous data.

Ms LEVINE: A propos of that, can I just comment on the different components of the system as opposed to the scheme. What is lacking is the data that is coming from the different components like the self insurers and Treasury-managed fund; to bring that altogether to have a meaningful whole rather than have disparate collections of data. It would really be important to have some consistency there and accessibility to that data.

CHAIR: I thank you all for your attendance here today. I note that you have taken no questions on notice.

(The witnesses withdrew)

(Short adjournment)

DAVID CASTLEDINE, Chief Executive Officer, New South Wales Branch, Civil Contractors Federation, affirmed and examined:

CHAIR: 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 time. Regarding in-camera deliberations, witnesses are advised that if you should consider at any stage during your evidence that your response to a particular question should be made in private to the Committee, please state your reasons and the Committee will then consider your request. Would you like to give a short statement?

Mr CASTLEDINE: I would. Thank you for having me here today. The Civil Contractors Federation [CCF] takes this matter extremely seriously, which is why I have had the immense pleasure of sitting through most of the hearings. In drafting our submission, CCF has taken care to ensure that our comments and recommendations are within the terms of reference of the Committee. We did observe the Government's issues paper, but we considered that document's purpose more to stimulate discussion. So we have not limited our consideration to the options raised within that document.

CCF New South Wales wants a sustainable workplace injury management system that nurtures our economy and promotes employment. We want a system that supports the less seriously injured returning back to work quickly and safely. We want a system that provides a safety net for the seriously injured. We do not want a system that of itself becomes part of the problem by splitting apart employers and employees.

CCF New South Wales has presented our submission with consideration to the objectives of the scheme as set out in section 3 of the Workplace Injury Management Act and the Workers Compensation Act 1998, front of mind. Strong evidence has been presented before you that the current scheme is failing to hit its primary objectives of improving health and return to work outcomes. But not only is it ineffective; it is also inefficient, as we have seen from actuarial, peer review, Auditor-General, WorkCover and New South Wales Treasury reports. This is not an academic debate and we cannot afford it to be about policy perspectives. The tangible impact of this moribund system is to engender a sense of learned helplessness within those who are forced to engage with it. In being so, it is destroying the lives of injured workers—and I use those words very carefully—damaging the viability of employers and ultimately the economy of New South Wales. The system established to assist us is in fact harming us and so must be changed.

Turning from the generic to my own industry-specific perspective, civil construction work is inherently dangerous. In WorkCover's top 10 highest risk industries we are placed in six on them; 11 out of 12 of our members are experience rated. Nearly half our members have had claims in the last three years. So it is that our members are regrettably all too familiar with the impact of this scheme on their businesses and on their employees. So important is this point that I would like to make it another way. The majority of the employers in our industry do not move from town to town following projects. Forty-five per cent of my membership are regionally based and they live in the areas that they work. The big projects may move from region to region but the labour is quite often subcontracted to local firms. Our members are typically therefore well bonded to an area and live amongst the people they employ. We are a small, tight industry and as such we understand just how important it is that workplace injuries are managed very well.

The civil construction industry builds the infrastructure this State relies upon. So our major customers are tax and ratepayers of this State. A strong nexus thus exists between us, our costs and the value for money the people of this State receive for their infrastructure dollars. The premium changes mooted would lead, by our estimation, to nearly 1 per cent extra costs for civil projects in New South Wales or nearly 1 per cent less roads built for the given dollar. To put that in context, these are not dissimilar numbers to what the Federal Government has estimated would be the carbon tax in just its first year.

Our position on the deficit and performance of the scheme commences one of economic pragmatism. If New South Wales was paying 20 per cent to 60 per cent lower premiums than competing States, it would be difficult for me to sit here and say, "Don't put up premiums". But the opposite situation exists. Further, employment in the New South Wales economy is already tight. New South Wales Treasury has said in the WorkCover response that premium rises will hurt the labour market and higher risk industries such as ours will be hurt harder. Seventy-three per cent of respondents to a recent members survey stated a 28 per cent increase in premiums for five years would lead to job losses. Most said they would consider their business situation either

here in New South Wales or in total. And this is just today. WorkCover's submission on page 11 says, "further increases over following years may well be likely". What will next year's increase be? What do I tell my members?

A successful workplace injury management scheme requires the parties involved to have trust in the scheme. For the parties to have trust in it, it must be fair, fast and final. The current scheme's inefficiencies and poor management have let down all parties and—this is the key point—created an automatic response within both employee and employer alike of defensiveness and blame immediately a claim occurs. We need to move away from a scheme that increasingly generates a starting position of "he's a bludger" and "the boss doesn't care about me".

This is where the big benefits of claim costs will be drawn from. Civil Contractors New South Wales has provided 27 recommendations in our submissions and they fundamentally revolve around three core issues. Firstly, structural change needs to be implemented that will go to the heart of improving the relationship between employer and employee; it cannot damage it. Secondly, changes to legislation and regulation alone will not suffice. To be successful reform must consider the work being undertaken in guideline reform and the administration of WorkCover. Thirdly, reforms must be made to improve the performance of the parties in the scheme. Responsibility for management of the scheme claim performance ultimately rests with WorkCover and performance of some agents is in serious question. However, we are unable to confirm who the good and bad performers are as these details employers so desperately need to make informed decisions about and would in any other market be controlled by market pressures, are shrouded in confidentiality clauses.

Many of the recommendations we have made work on more than one of those three levers but all ultimately fit within the terms of reference of this inquiry. Thank you, Mr Chair.

Mr MICHAEL DALEY: Your opening page in your submission talks about inefficiencies and poor management. You referred to that again in your evidence this morning. You talk about individual agent's performance, the performance of WorkCover and things like that you have gone over. You conclude on page 2.1 that the fundamental legislative and regulatory inadequacies of the scheme must be fixed before any increase in premium should be considered. Given that your comments this morning and your submission have made serious reference to the administration of the scheme, do you think it would be a reasonable proposition as well then that no consideration to workers' benefits being cut, capped or any of those sorts of things be implemented before all of those administrative problems you have identified are addressed as well?

Mr CASTLEDINE: The Workers Compensation Scheme is a very complex arrangement but not so complex, I believe, that when one looks at inputs, certainly the ones we have recommended, one does not have an understanding of the direction in which the output would change. The recommendations we have put forward we believe will give a pretty clear indication of direction of output. I do not think, certainly from what I have seen in evidence put before you or in the submissions presented before you, that there is too much disagreement on what will happen if an input is altered. The disagreement and discussion is around the policy issue of whether a change should occur or not, and I would cite, for example, journey claims. Journey claims, we know, are 10 per cent of the scheme costs. We know that if they are removed then they will be a reduction in the claim liability. Whether that is a decision to make is a policy decision for you guys.

Mr MICHAEL DALEY: On page 3 you say that innovative insurance opportunities need to be reconsidered for the niche high-risk industries, particularly when involved in government servicing. How would you envisage that this niche high-risk insurance would work because I think at the moment the average premium rate is about 1.8 per cent and we saw the other day that some farmers are paying over 7 per cent? How would you treat them differently in the context of this sort of scheme?

Mr CASTLEDINE: There have been several very successful specialised insurance licences issued. Coal Services had premiums reduced from 11.4 to 3.4 per cent and Hotels Employers Mutual had similar good strong improvements in premiums all the while underpinned by significant improvements in return-to-work rates. I made the point specifically about the government issue because when we have surveyed our members, 34 per cent of them get their revenue directly from State Government funds and another per cent comes from local government so any cost which is increased on the civil construction industry, for example, will flow back into taxpayer dollars; it will cost the taxpayer more. So the importance for improving scheme performance in industries such as ours, I think, is even more salient.

The Hon. ADAM SEARLE: You mentioned the cost of journey claims to the scheme. Do you know whether those figures you have quoted are before or after any claim back by workers compensation from the Motor Accidents Scheme?

Mr CASTLEDINE: I am not sure—no, sorry. The information I have received from WorkCover is that it is neat.

The Hon. ADAM SEARLE: That is net?

Mr CASTLEDINE: Correct.

The Hon. ADAM SEARLE: A lot of your submission—I will not take you to the various parts—is very critical of the role of the scheme agents. What measures do you think could be put in place that would actually turn that performance around because it seems to me that a lot of what you say is wrong with the system, they are the sort of gatekeepers for a lot of those issues?

Mr CASTLEDINE: I would say a sizeable portion but it is by no means only the agents; there are some significant structural problems and those problems go to the heart of I think the first major problem with the scheme and that is how the structure builds the relationship between employer and employee. But going to your question, it is very difficult for me to answer because I do not understand the contractual relationship, so the first question we must ask is: Is there enough legislative power for WorkCover to control agents? Is there enough contractual power for WorkCover to control agents? Does WorkCover have the skills and experience to control agents? Is there the will to control agents?

If those questions are asked then we come back to one final question, and that is, is transparency ever a good thing in these sorts of arrangements and I think it is but we cannot see that. When my members come to me and say, "Which are the best agents?" I refer to a three-page report I pulled from the WorkCover website which is extremely difficult to follow and I then refer to WorkCover and ask them the question, and you see in my response the answer which they are obliged to provide under their current contract.

Mr MARK SPEAKMAN: At page 31 of your submission you make recommendations about amendments to section 57 of the Workplace Injury and Management and Workers Compensation Act regulations and relevant guidelines—and maybe this is a question you can take on notice. Are you able to provide some precise details of exactly what changes you want to see?

Mr CASTLEDINE: Precise, I would have to take on notice; I would have to get some drafted if we were to give you draft clauses. I would like to see, as I have alluded to there, a tightening of the arrangements. I want to talk about this compliance issue, if you do not mind, if you would give me a moment of latitude on that point. When we do not have a system that is seen by all parties to be robust, when we do not have a system that can prosecute and investigate firstly whether a worker is complying with the scheme, we lose confidence in it. So if we can have a confident arrangement where we know that a worker who is moving close to the line of non-compliance, if that could be moved quickly—and the problem at the moment with the system is that it is not able to be moved quickly—if that could be moved quickly then we have far more confidence in the scheme and in that case all parties will benefit and that relationship between employer and employee will improve.

Mr MARK SPEAKMAN: On page 4 of your submission you say we must do more to keep people safe at work. Is that a motherhood statement or do you have something specifically in mind that is not happening at the moment?

Mr CASTLEDINE: It is a policy statement. The Civil Contractors Federation [CCF], as I said earlier, takes workplace safety extremely seriously. At a federation level we have developed an integrated management system that will assist employers with safety policy and procedure. We have developed a fitness for work assessment system so that employers can assess people to be best able to perform the role that they are hired for—functional assessments, if you like, during the process of employment selection. I do not think one can ever be comfortable that one is doing everything. There is always a move for continuous improvement.

Mr MARK SPEAKMAN: So there are no specifics, just a general aspiration that we should always try hard?

Mr CASTLEDINE: In terms of safety, absolutely.

Mr MARK SPEAKMAN: Can you explain the mathematics on page 7 of your submission? I can understand that if you have higher than average workers compensation premiums, then an X per cent increase as an absolute dollar figure is going to impact your members more. But why is the percentage increase going to be greater for your members than for other industries?

Mr CASTLEDINE: It is not well talked about. We looked at the reduction in premiums that happened through the latter part of the last decade and how they changed. If you look at WorkCover documentation you read about average increases—an average of 28 per cent, an average reduction in premiums of 5 per cent here, there and everywhere through that period when we had a significant reduction—but when you look at the detail you will find the low-risk industries had larger increases than the average and the high-risk industries had lower decreases than the average. Whilst we are not actuaries we had a look at how that occurred over a number of changes in the mid 2000s to late 2000s and did a little extrapolation with an assumption we would see something like it in the future. The number is actually closer to one-third, I think.

Mr MARK SPEAKMAN: On page 6 of your submission, about seven or eight lines from the bottom of the page, you talk about mandated ongoing hearing testing. Can you elaborate on the effect that will have on hearing claims?

Mr CASTLEDINE: We of course do not know yet the exact impact—certainly from my discussions with WorkCover, hearsay though they are, and our own estimates—of the changes to law come 1 January this year whereby anyone who is exposed to noise and would have to wear hearing protection will have to have hearing tests in the future.

Mr MARK SPEAKMAN: Pages 12 to 13 of the NSW Nurses Association submission, No. 73, say that that association thinks that many employers are either unaware of their obligations under section 49 of the Workplace Injury Management and Workers Compensation Act or are wilfully ignoring it. Is that your experience with your members?

Mr CASTLEDINE: Section 49, suitable duties?

Mr MARK SPEAKMAN: The obligation to provide suitable work.

Mr CASTLEDINE: I believe that, as a whole, knowledge of suitable duties is not widely understood by smaller employers; that is, the obligation to find suitable duties. However, if the system works effectively I do not believe that should be an impediment to the process. From my experience in listening to our members, if the process worked correctly this would not be as big an issue as I hear it being made out to be. I make that comment because we know that 88 per cent of employers do not have an experience element to their premiums. They are small employers and seldom have injuries. However, the goal of the process and the goal of the system is that when an injury occurs—this is covered under the requirement to develop an injury management plan—if it is known an employee will be out of work for more than 10 days an injury management plan must be developed.

If there is going to be graduated return to work a rehabilitation provider must be engaged. We know that that process exists. The rehabilitation provider is a workplace oriented role and that role is to go to the employer and explain the process and the systems to them. If that rehabilitation provider, as we are very focused on doing it at CCF, explains to the employer the cost benefits of offering employment via suitable duties, it becomes a much easier decision for the employer to decide whether they want to take the employee back on some light roles. The problem is that getting that rehabilitation provider out at 6½ months or 9 months, depending on which study you want to read, is somewhat self-defeating. It is a little late.

The ideal process would be to follow the law and have the agent engage an injury management plan, develop a return-to-work plan, go to the employer and explain what the obligations are. There are provisions in the Act for an employer that does not follow them. I do not know whether they are followed; I do not know what the statistics are for that, but there are provisions in the Act. What we would like to see is education, information and a timely response.

The Hon. PAUL GREEN: Can I clarify something you said earlier in relation to transparency—that it would be good to publicise the best performance insurance agencies in terms of return to work rates?

Mr CASTLEDINE: Return-to-work rates are provided. As I said, there is a three-page document that is produced by WorkCover. The last one released, in February-March, was for the period ending 30 June 2011. That is quite late. It is difficult to read and understand for anyone who is not familiar with the industry and it does not talk about claim costs in detail. It is not a user-friendly document that an employer would be able to pick up and say, "Okay, I'm in this particular industry. I fit this particular cohort. Who is the best agent out there for me? What is their model of service delivery? Why should I engage with that agent in lieu of another agent?"

The Hon. PAUL GREEN: Do you have a view about whether commutations are good or bad?

Mr CASTLEDINE: I am not opposed to commutations. I think that used correctly they can be a tool. I am opposed to a couple of the views I heard expressed on Friday. I do not see them as a means of getting rid of people. I do not agree with the view expressed by the Construction, Forestry, Mining and Energy Union that we should not try to retrain a 55-year-old non-English speaking person with low levels of skills. I do not believe that is an appropriate strategy for an injured worker. I think we can still get a few years out of them and it might be that retraining is a viable option. I do not see it as a dump; I see it as a targeted tool.

The Hon. PAUL GREEN: Do you think data collection and computer software can be improved?

Mr CASTLEDINE: If our submission fails in one area it is this. We missed this one. I strongly support the views presented already that a single collection system would benefit everyone. WorkCover has struggled gainfully to try to extract data out of agents but it is very complex. We have got seven different systems. All the service providers under the agents operate under different data collection systems so I appreciate that that is very, very difficult and makes it difficult to make informed decisions.

(The witness withdrew)

BRIAN SEIDLER, Executive Director, NSW Master Builders Association, affirmed and examined, and

PETER GLOVER, Director, NSW Master Builders Association, sworn and examined:

CHAIR: Do you want to make a short opening statement?

Mr SEIDLER: We are happy to take our submission fundamentally as read, but I would like to make some observations about the building and construction industry specifically. We certainly have an ageing population in the workforce in the building and construction industry. The average age of a licensed builder now stands at around 41 years old. The industry now has to turn its mind to where we are going to get the skilled labour that we will need, perhaps not now when things are a little difficult and we are not building at capacity, but certainly later on when things do get better. We believe that the older population in the building industry will be called upon to give us assistance.

Certainly the current apprenticeship system, and those that might be coming in from overseas, will not satisfy the projected needs of our industry. We actually see that by the end of this decade some $2.5 trillion worth of work will be undertaken across Australia, and the share for New South Wales of that will be about $550 billion. We estimate that to satisfy that we need a high level workforce in our industry. In fundamental terms, having gone out to our industry, I have got to say our industry can best be described as a supplier of labour. We are reasonably primitive in that the biggest issue for contractors is that the collection of monies for workers compensation is proving somewhat difficult or at least they understand that perhaps collection of monies is not what it should be.

Also, one issue of workers compensation of course is time, that is, the time it takes to get injured workers back to full duties. The construction industry is quite a difficult industry, labour intensive and indeed many employees who have been injured do not necessarily go back to their previous positions. Master Builders, along with a number of other industry organisations, some 14 years ago put forward to the then State Labor Government a position that perhaps we should have an industry scheme, that is, the building and construction industry should have an industry scheme which would hive off its liability. There were suggestions that the industry would take its portion of liability and pay for that through an industry scheme and that may substantially help where we find ourselves today.

Interestingly, looking at the previous submissions made by the Master Builders Association and other industry parties, it would appear that we are in the same position as we were some 14 years ago—a large deficit, return to work not being as good as it could be and dispute settlement procedures for resolving conflict once an accident or a problem comes to light are taking too long. I guess in that context, we did make some comments in our submission as to where we think in very simple terms we can make the scheme better. We would be happy to take questions on our submission.

Mr MICHAEL DALEY: You talk about an interesting concept, Mr Seidler, having an industry-specific scheme. Will you elaborate on some of the benefits that scheme might bring to your members and concentrate on how that would lead to your own industry-specific scheme performing better financially than the WorkCover scheme? Where does it get all of us having an industry-specific scheme? I do not see how you achieve that state.

Mr SEIDLER: The two fundamental bases to an industry scheme was collection and the method of collection of premium and the other was a highly tailored return-to-work process that would be done by industry experts specifically for the building and construction industry. The collection of premium, which appears to be fundamental to this, was to be done by placing a levy on development applications, similar to that of the levy that is currently triggered when anyone puts in a development application to a local government authority. That would have to be set obviously at a level that would deliver the outcomes. Of course, we are not in a position in that these reports that we did some 14 years ago were done by actuarial advice and submitted to government. However, I would have to say that they would all have to be done again. We merely raise this as a possibility.

Mr MICHAEL DALEY: Is that instead of premiums?

Mr SEIDLER: No, it would be a two-tiered approach. Simply having a levy placed on industry, you would probably have those, then completely disregard safety. As we know safety is premium in all of this. There

would have to be rewards. You would still have to pay a premium, but it would be based on the possibility of rewards for good performance. It would be a combination. I must say that not all in the industry subscribe to that; there were opponents. However, the biggest issue for those people who have a large number of employees is competing with those who do not pay any premium whatsoever. The other issue for them is industry injuries as opposed to company-specific injuries. We are talking about the issue of journey claims, building industry hearing problems or what we also classify as bad backs. In very simple terms we were looking at industry claims coming out of a pool collected by the levy.

The Hon. ADAM SEARLE: There has been a lot of talk about differential premium rates between New South Wales and other States such as Victoria and Queensland. Your organisation also highlights that. Are there markedly different accident rates in your industry in New South Wales compared to either Victoria or Queensland?

Mr SEIDLER: Not that we are aware of. However, it would appear that the collection in the other States is somewhat better than in New South Wales.

The Hon. ADAM SEARLE: Do you mean the percentage of proper insurance as opposed to underinsurance?

Mr SEIDLER: Correct.

The Hon. ADAM SEARLE: You also focus in part on the novel idea of collecting premiums in a different way on development applications for an industry scheme—that is, the idea of more regular premium payments rather than one hit in the year staggered throughout the year. How frequently or periodically should that be given the fluctuation for your members?

Mr SEIDLER: We still have flexibility that allows us to adjust our premiums. However, anyone who has worked in the building industry knows that projects can come and go within hours and you need to access higher numbers of employees. The industry has indicated that that would be a better way of doing it rather than perhaps projecting what will happen when the premium is paid.

The Hon. ADAM SEARLE: We have some information before the Committee that suggests the real value of actual payments in the hands of injured workers has significantly declined over the past 10 years in the order of about 20 per cent or 21 per cent. If that is correct, the current level of benefits would not itself be a particular issue. Do you say that it is the level of benefits that is creating an issue in the scheme or are there other more systemic issues, such as the behaviour of scheme agents or other factors?

Mr SEIDLER: As I said, if you talk to the people who employ labour as opposed to those who subcontract labour you hear that return-to-work programs are very important, and safety management plans are, of course, part of that. I guess we get into the question of deemed employees in many instances. What has come through more and more clearly is that the collection of the premium becomes more and more difficult. If it gets harder for people to employ because of higher premiums then they will not and will continually subcontract. That in itself may not be a problem if you are subcontracting to legitimate people. However, the statistics suggest that the premiums are not being collected but the benefits are increasing.

The Hon. ADAM SEARLE: So if premium collection were improved for your industry it is conceivable that the current industry rate or the premium level being paid by your members would go down; that is, if the right amount were being collected from enough people?

Mr SEIDLER: That is a reasonable observation.

The Hon. TREVOR KHAN: I heard what you agreed with, but is the premium in your industry, as it is in other industries, not set on the basis of claims experience? Is that right?

Mr SEIDLER: Partly, yes.

The Hon. TREVOR KHAN: For instance, you end up with 5 per cent or 6 per cent as opposed to 1.8 per cent or whatever overall because of the perceived injury/claims experience in your industry.

Mr SEIDLER: Partly, but we are at between 10 per cent and 15 per cent.

The Hon. TREVOR KHAN: Perish the thought. But that is still on point. If there is an improvement in a premium collection, the method of calculation applied in your industry or any industry does not include a factor for the performance as far as collection of premiums is concerned, does it?

Mr SEIDLER: The point we are making is that if the premiums were collected we would not have such a deficit and therefore would not have to contemplate increases in percentages.

The Hon. TREVOR KHAN: I agree with that, but I do not think that was Mr Searle's question. He talked in terms of an industry-specific impact of better premium collection. I am suggesting that there may be an overall effect on employers across State in terms of the premium, but it will not be industry specific if we improve premium collection in your industry. That is essentially what I am getting you to agree with.

Mr SEIDLER: I understand the difference.

Mr MARK SPEAKMAN: Are there parts of your written submission that you want to be kept confidential?

Mr SEIDLER: No, not necessarily.

Mr MARK SPEAKMAN: Not at all?

Mr SEIDLER: No, we do not have any problem with that.

Mr MARK SPEAKMAN: Do your members wilfully ignore their obligation to provide suitable work, or are some of them ignorant of that obligation?

Mr SEIDLER: I do not understand the question.

Mr MARK SPEAKMAN: The New South Wales Nurses Association suggests that many employers are either unaware of their statutory obligation to provide suitable work or wilfully ignore it. Is that true in your industry?

Mr SEIDLER: No, we have an education program for members of the Master Builders Association advising them about how to deal with workers compensation issues and safety issues. They are constantly updated about what the law says and what is expected of them.

The Hon. NIALL BLAIR: I refer to the self-employed issue. Your submission addresses subcontractors. Can you expand on that? I am looking for information about deemed workers and a particular contractor being a deemed worker for a number of employers.

Mr SEIDLER: The issue of who is a worker and who is a subcontractor has been around for decades. There are four or five pieces of legislation that provide different tests that can be applied to find out whether one is an employee or an independent contractor. Our submission points out that those who are deemed independent contractors obviously fall outside the collections. One point to consider when contemplating an industry scheme is that we would apply that to all workers as opposed to employees.

The Hon. NIALL BLAIR: How many of those self-employed builders in your organisation would then need to take out a workers compensation insurance policy just to tick a box on a prequalification form?

Mr SEIDLER: I could not answer that. It goes to the number of workers employed by individual contractors as opposed to those who are independent.

Mr MARK SPEAKMAN: On page 8 of your submission you deal with work capacity testing. Can you elaborate on what testing you would like to see?

Mr GLOVER: In simple terms, what we have identified there is that we believe there is very little or insufficient work in our industry relating to the issue of being able to test people's capacity and fitness to go back into the workforce. And I suppose too, sometimes that is somewhat limited because in the building industry there are not a lot of options for light duties. In most cases either you are fully fit or you are not fit, and that transition is not always easily managed in our industry. I think what we were seeking to highlight there was

that we believe there could be more work done in that area which would help to transition people from the workers compensation injury stage and back to work.

CHAIR: You talk about work capacity testing at specific points. Are you able to identify what those specific points should be?

Mr GLOVER: Not with specificity. We have highlighted it in the submission because we think it is an area where more work ought to be done. If more work were done in this area, there would potentially be reliance on the workers compensation system for shorter periods of time, because hopefully we would manage people back to work. Obviously, those sorts of programs would depend upon the injury and individual circumstances. It is somewhat aspirational but we think it is worth looking at.

CHAIR: What has been happening to accident rates in the building industry in New South Wales over the last 10 years?

Mr GLOVER: I think they are declining and that is for a variety of reasons. The way we build has changed. It is evolving and changing, so we think the way one builds a building today is a lot different to the way one built it 10 or 20 years ago and it is safer as a result. The techniques are different and so forth. It is not perfect, of course. We still have accidents but not as many as we used to. That is in part as a result of that. Coming back to a question you may have asked Mr Seidler earlier, employers generally in our industry are more aware of their responsibilities and obligations than they were 20 years ago. The issue is more front of mind now for them than it was back then. So I think those things combined are showing a reduction.

The Hon. PAUL GREEN: Do you have a view on commutations?

Mr SEIDLER: No.

The Hon. PAUL GREEN: Are you for them?

Mr SEIDLER: Yes.

The Hon. PAUL GREEN: Are you for them in all circumstances?

Mr SEIDLER: We would have to seek some advice on that. We actually have a committee that deals with this sort of thing and runs information through. It ranges from small contractors to large and the experts in workers compensation would need to be consulted. I would prefer to take that on notice.

The Hon. PAUL GREEN: Do you have a view, in terms of journey claims?

Mr SEIDLER: We do. The issue of journey claims, as I think I mentioned earlier, is one of the hottest topics for employers. Under the legislation, those who employ are exposed to journey claims. In a number of submissions past and present, we have suggested that in the building industry that we classify journey claims as an industry injury as opposed to a company-specific claim or injury. And therefore, it should come out of some pool which we say would be part of the industry-specific scheme. So, industry-specific injuries, such as journey claims, hearing damage and bad backs, we see as something that industry should be looking after, as opposed to individual employers, as it is generally something that has happened as a result of working in the industry.

The Hon. PAUL GREEN: In terms of data collection, are you happy with the way that data is gathered and shared by WorkCover? Is there a way it can be improved?

Mr SEIDLER: Our advice or information that comes from WorkCover as to the injuries in the industry, we do not see it as being a major issue as to a cost on the industry. We are reasonably happy with that.

The Hon. PAUL GREEN: Red tape or legislation? If you had the chance, what would you cut or what would you reform?

Mr SEIDLER: I guess early intervention is the biggest issue for building industry injuries and there is suggestion that the involvement of the insurance industry complicates it, as opposed to maybe up-front rehabilitation providers. It depends a lot on who the rehabilitation provider is in our experience, but early intervention is the most important thing for us.

CHAIR: I note you have a question on notice. The secretariat will provide you with a transcript highlighting the questions you have taken on notice. The Committee has resolved that answers to questions taken on notice are to be returned within three working days after you have received the transcript.

(The witnesses withdrew)

ROSHANA MAY, Practice Group Leader, Slater and Gordon Lawyers, on former oath:

HAYDEN JAMES STEPHENS, General Manager, Slater and Gordon Lawyers, and

DAVID JAMES NAGLE, Solicitor, Slater and Gordon Lawyers, sworn and examined:

CHAIR: You are advised that regarding questions on notice, 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. In regard to in-camera deliberations, you 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, would you please state your reasons and the Committee will then consider your request.

CHAIR: Would you care to make a short opening statement? If so, please limit your statement to about five minutes. The other day someone spoke for 25 minutes.

Mr STEPHENS: Yes, thank you. I will do my best. I can assure you that it will not take that long. We thank the Committee for allowing us the time to elaborate on our written submissions. My name is Hayden Stephens and I hold the position of General Manager in New South Wales. I have been at Slater and Gordon for nearly 20 years. In that time I have worked in Victoria, Western Australia and more recently here in New South Wales. To my left is Roshana May, who is known to the Committee. Roshana is the State practice group leader of workers compensation at Slater and Gordon. She has spent more than 25 years representing injured workers and brings to this presentation experience of the schemes deficiencies and its strengths. To my right is David Nagle. David, like Roshana, has practised law in New South Wales for over 30 years; much of this time was spent in country New South Wales. He brings to this discussion an important regional perspective.

Slater and Gordon is a national law firm with a 75-year history of acting for injured people. Importantly, we have seen in that time great changes in the way that society, through governments, treats injured people—be it on the road, in public or, as is particularly relevant today, at the workplace. As the Committee will see from our submission, we act for a significant number of unions whose members are injured at the workplace, and we also act for many workers who are not union members, in a variety of industries across New South Wales, from Lismore in the far north to Albury in the south and Broken Hill. We employ around 1,000 people, we pay workers compensation premiums and we take our responsibilities as an employer seriously. Like most others who have given evidence to this Committee, we fully understand that the WorkCover scheme is not delivering for workers and it is not delivering for employers. However, it has become clear in recent months that one of the key concerns is the scheme's reported $4 billion deficit and the impact this is having, or will have, on premiums and workers' benefits—this appears to be the driving imperative for change.

We come here today with a very simple proposition: Before doing anything about premiums or benefits, look at the management of the scheme, the red tape and the way in which scheme agents interact with WorkCover and workers. We appear before you as representatives of our clients wanting to impress upon the Committee just three things. First, the Government ought not to rush into changes that will disadvantage injured workers; it should make considered policy decisions. In this inquiry we have heard submissions from a variety of sources setting out some proactive measures that extend well beyond the issues paper. These need to be explored and costed to see what savings can be achieved. Second, there is strong evidence that the causes of WorkCover's problems are related to the cost of the delivery of benefits, not the cost of the benefits themselves. Why is it then that all 16 reform options, as set out in the issues paper, just deal with cutting benefits when the best evidence of the cause of instability in the scheme points to an operational failure rather than a legislative failure? Finally, and importantly, I urge the Committee to place in context the claim that is front and square at the issues paper, and I quote:

> New South Wales has one of the most generous benefits scheme in the nation.

I will elaborate on this shortly. While advocating for workers is very much part of our DNA, we also believe we have much more to contribute to this reform debate. In Victoria and Queensland when governments and regulatory authorities have undertaken similar workers compensation reforms, Slater and Gordon has contributed to significant improvements, particularly around claim-handling processes. In our submission it is clear that cutting workers' basic benefits is not the answer. The facts are: in real terms workers' benefits have fallen by more than 20 per cent in the eight years to 2010; major injuries have halved since 1996, from 62,000 to

30,000 today; and disputes are now one-third of what they were in 1996; over roughly the same period the cost of running WorkCover has gone from $70 million in 1999 to $600 million; payments to insurance companies have gone from $200 million in 2002 to $475 million in 2010; and the scheme's balance sheet has gone from a $625 million surplus in 2008—four years ago—to a current $4 billion deficit, and half of this has been caused by—in the words of the Government's own actuaries—"external influences impacting investment returns".

It is clear from just those few observations that it is not benefits and payments to workers that are the major cause of WorkCover's financial problems. So before the Committee considers recommending cuts to benefits, much more work must be done to get a better understanding of what the real problems are, particularly the ones WorkCover's own actuaries highlight are deteriorating claims-handling experience. I will now hand over to David to introduce Jake Robotham, one of his clients, who is seated behind us today.

Mr NAGLE: Thank you for the opportunity to provide an instructive illustration of an injured worker under the present scheme. Jake stands before you. He is a 20-year-old first-year carpentry apprentice from Nowra. In May 2010 he was working on site erecting an industrial shed. He was struck by a forklift that carried unrestrained a large concrete block. He sustained a crush injury to the right foot, with multiple fractures and some other injuries. He was taken to a number of hospitals and underwent repeated surgery. He has multiple screws and rods inserted in his ankle. To his credit, Jake has returned to work but essentially performs manual sweeping duties. He remains on first-year apprenticeship wages. In relation to the foot injury alone, Jake has been assessed by a certified WorkCover WPI assessor, who determined an assessment of 8 per cent for Jake's lower extremity. Under section 66 Jake is entitled to an amount of $11,000 only. For his foot alone he would not qualify for pain and suffering. He does not meet the 10 per cent threshold. This is despite the fact that Jake now suffers constant pain and restriction, his foot swells, he needs orthotic shoes, and he walks with a limp. Jake already has osteoarthritic changes and he will require further surgery to fuse his ankle. Specialists have told Jake to get another job. He has been told he will not be able to return to work as a carpenter. To date no-one has given him any advice about retraining options.

I want to make three clear points. First, Jake is already severely restricted under the present legislation. Second, he is substantially disadvantaged compared with an equivalent person injured either under motor vehicle legislation or the Civil Liability Act. I ask the question, given the circumstances of the accident, the clear breach of liability by the employer and the clear seriousness of this man's injury, why should he be penalised? Third, tradesmen such as Jake are also disadvantaged compared with a worker who suffers a similar injury in another State—Hayden will elaborate further in that regard.

Mr STEPHENS: I would like to give the Committee a quick rundown—and I will be brief—of the sort of compensation that Jake's leg injury, and other injuries like it, might receive if a worker suffered such an injury in Queensland or Victoria. As Mr Nagle said, in New South Wales, dealing just with the crushed foot injury alone, the most that this type of injury will receive is an $11,000 lump sum based on the 8 per cent impairment rating. Taking that foot injury and many other injuries like it, workers in New South Wales do not have access to a common law claim because they do not meet the 15 per cent threshold.

In Queensland a tradesman with a crushed foot injury like Jake's can make a common law claim. Applying the set of assumptions around a tradesman's earning capacity, which I am happy to share with you later, a worker like Jake could receive more than $500,000 in damages. If we move south across the border to Victoria a worker with a crushed foot injury can also gain access to common law. There are thresholds that exist in Victoria but the parliamentary research brief is confusing for readers, not for me, with the Victorian scheme. In the body of the document it says that access to common law in Victoria is based on a 30 per cent impairment threshold. While this is true, it is rarely used because of the difficulty in reaching this high impairment bar.

A second avenue to common law available to workers in Victoria is known as a narrative test and is utilised in about 90 per cent of cases for workers with serious injuries like Jake's. Again, using as a reference Jake's foot injury and adopting the same set of assumptions as applied in the Queensland example, a worker with Jake's foot injury could receive more than $600,000 in damages. As you will see, the gap in common law entitlements is enormous. I appreciate that schemes should be viewed as a whole and I know as it stands today a New South Wales worker can receive ongoing weekly payments without the same restriction on duration as exists in other States. These weekly benefit provisions are among the few left in place in 2001 when a raft of benefit cuts took place. As we have seen, other States have a common law benefit that is exponentially better in comparison to New South Wales. If the proposals set out in the issues paper to cut benefits are accepted it would make the New South Wales scheme one of the harshest in the country.

Mr MICHAEL DALEY: A recurring theme both in submissions and in evidence given by witnesses has been a frustration with the performance of the scheme agents. Do you have anything you would like to say briefly about that and, equally, about how you might suggest the performance of scheme agents is improved?

Ms MAY: We experience contact with our clients every day and there are 30 lawyers in New South Wales who do workers compensation claims for Slater and Gordon. We have regular contact with clients who complain about repeated loss of documents that they forward to their insurer, they do not get payments in time, medical treatment is not approved, they are not provided with rehabilitation, there is no option for vocational assessment or vocational retraining, their employer will not provide them with suitable duties, they have no means of forcing their employer to do so. Essentially, they are a very small player in a scheme that is controlled by employers and insurers.

My own dealings with insurers or scheme agents leads me to believe that there are some very unskilled and very young claims handlers amongst the insurers who have little life experience and treat workers as if they are not worthy of receiving benefits. I can give specific examples. Only yesterday I received a call from a client who has been waiting for approval for shoulder surgery for nearly four months now. She has an option. Her doctor has sent a request for surgery on numerous occasions by fax to the insurer and the insurer, when she contacts them, says, "We haven't received the referral." She has been at the doctor's surgery when she has seen the doctor's secretary actually faxing through the document. And yet approval does not come. There is a means of enforcing future treatment. However, it is a long and protracted procedure through the Workers Compensation Commission. It would be quicker for her to be able to get the insurer or scheme agent to consider the treatment, decide whether or not they will pay it so she can move on.

Mr NAGLE: I have a client who is 62 years of age—a worker who has been in the sawmilling industry all his life. He has profound industrial deafness, tinnitus, loss of balance, nausea. He cannot read and write; he cannot use a mobile phone. The reality is that for the next four years he will have numerous return-to-work programs. He will be required basically to jump through a hoop. The reality is that this man does not have a work capacity. The reality is that the scheme agent is getting paid for the next four years. The rehabilitation people are getting paid for the next four years and all of this cost is being heaped on the scheme where in reality that cost should not be there. The cost is not going to the worker. The worker does not receive it. It is a huge administrative burden which has been created.

The Hon. ADAM SEARLE: Are you saying that is occurring when the medical evidence is quite clearly that a person is incapacitated?

Mr SNAGLE: Absolutely.

The Hon. ADAM SEARLE: How does this continue? When the medical reports make this clear, how does it continue?

Mr NAGLE: Because there is a drive of return-to-work programs. The scheme agents are being paid for the return-to-work program.

Ms MAY: It appears to me that all of the guidelines and operational instructions that emanate out of WorkCover, which direct insurers to do one thing or other to initiate return-to-work programs, to hold back on medical payments. I am not sure of the extent of all the operational instructions but there are operational instructions that are made and withdrawn which direct scheme agents to do one thing or another. They affect the worker because the worker is affected merely by an action that a scheme agent is directed to take or not to take in respect of their claim.

The Hon. ADAM SEARLE: Return to work where possible, I think, is widely accepted as a desirable outcome. We have had a lot of submissions before us and evidence about return to work. On the one hand employers have either been unwilling or not been able to provide suitable work. On the other hand is a presumption that the system has some kind of incentive for workers to remain on benefits rather than going back to work. Can you comment on those matters and what you see, based on your experiences, as the blockage to return to work where workers have that capacity to do so?

Ms MAY: I think it is multifaceted.

The Hon. TREVOR KHAN: We have heard that more than once.

Ms MAY: I am sorry. Multifaceted in this sense: There are obligations on workers, employers, the insurer and on the authority in relation to return to work. The scheme has a number of mechanisms contained within it, within the legislation in the chapter entitled "working through management" or the injury management chapter. The marriage of those competing obligations is not a very happy one, I suspect, and I suspect from my own experience that that is because while there are obligations on employers to provide suitable duties there does not seem to be any sanction with which to kick employers who are in a sense recalcitrant. I am aware from my colleagues that about 10 per cent of large employers—I think I started to say this the other day in evidence—have their premiums calculated on claims handling experience so that if they do not provide workers with return-to-work options within their own employment industry they are penalised by having to pay the difference between the worker's ordinary maximum statutory rate entitlement and what they would receive under section 38, which is the section that provides them with 80 per cent of their award rate for up to 12 months while they are not provided with suitable duties in their work.

Those similar sanctions could be applied across the board to all employers. They are not. Similarly, the penalties and discounts on premiums or rather surcharges on premiums which are able to be levied by WorkCover or the scheme agents on employers who do not provide return to work satisfactorily or do not implement return to work programs or do not implement injury management plans, who do not take up job placement or the second injury scheme could also be facilitated and utilised to provide workers with a greater range of options for return to work.

Mr STEPHENS: Can I add one small point to place in context your question? In many ways all roads lead back to the issues paper. At page 25 of the issues paper there are numerous references to the connection between cut in benefits, weekly payments, step downs and the like and return to work. As you would have read in our submission, we reject that connection. We do not believe there is any evidence to suggest that that connection exists; in fact, to the contrary. The Australian and New Zealand return-to-work monitor 2010-11 states that its survey results found that 1 per cent of injured workers said that being forced off benefits or benefits being too low was a factor in their return to work.

Mr MARK SPEAKMAN: In two places in your submission, pages 4 and 21, you say that the administrative cost of running WorkCover has increased from $70 million in 1999 to more than $600 million recently. Could you take this on notice: Could you provide us with a copy of the desktop analysis that you refer to in footnote 4 and the Law Society memorandum that you refer to in footnote 21?

Ms MAY: Certainly.

Mr MARK SPEAKMAN: Could you go to page 25 and your reform recommendations, recommendation 5? Could you elaborate on what the current position is regarding negotiations and precisely what you say should change?

Ms MAY: The current situation is this: in order to assert a permanent impairment claim you have to have a permanent assessment from a trained assessor of impairment who has gone through a WorkCover training program and is capable of making impairment of the body system in which the injury falls; you cannot just use any doctor. The process is that you serve that claim on the insurer and they have a period of two months in which to investigate. WorkCover have restrained its scheme agents from obtaining their own medical evidence and only recently in the amended guidelines on independent medical examinations have they permitted, in a sense, scheme agents to obtain their own medical evidence as to impairment.

If an insurer or scheme agent does obtain their own impairment assessment they will make a counter offer. WorkCover has issued claims guidelines that say it is not permissible to negotiate between two impairment outcomes. A classic example: My impairment assessment says 10 per cent, which gives my client entitlement to section 67 pain and suffering compensation and the insurer's scheme agent's medical assessment will say 5 per cent. Before 2002, and in fact for injuries occurring before 2002, we are enabled to negotiate between the positions. The claims guidelines say you may not, that your position has to be supported by an independent medical evaluation so unless you have a third, which becomes the approved medical specialist in the commission, you are not allowed to negotiate. May I add one more thing? Section 65 of the Workers Compensation Act says that the commission is not allowed to determine impairment other than through the medical assessment process.

Mr MARK SPEAKMAN: Could you take on notice to provide us with precise references to where in the guidelines we will find provisions you have referred to?

Ms MAY: Certainly.

The Hon. TREVOR KHAN: I take you to page 19 of your submission and what is headed up as what could be described as a significant contributory factor issue but in fact under the Act, as I understand it, is a substantial contributing factor issue. Do you continue to hold the view that the legal position on this matter is clear and does not require legislative amendment to give effect to this option?

Ms MAY: It is clear in the sense that section 9A sets out an entitling provision in respect of injuries. It excludes certain injuries. Injuries which are not the substance of a substantial contributing factor by employment are excluded. It is for a worker to establish and to prove that their injury, usually by medical means, is as a consequence of their employment and their employment is a substantial contributing factor. That is clear and that is how the law has operated for some time. To specifically exclude a particular type of injury seems unnecessary.

The Hon. TREVOR KHAN: I am not inviting that; I am inviting a question whether the test is appropriate?

Ms MAY: We would say that the test is appropriate.

The Hon. TREVOR KHAN: At the present time you would say everything is hunky dory?

Ms MAY: Yes.

The Hon. TREVOR KHAN: We have heard some evidence this morning from the Australian Medical Association that seems to address this point with injuries that end up before an assessment panel. If I take their evidence in short form it is that about 30 per cent of injuries that are assessed before those panels are in fact not caused by employment but because of the nature of the scheme under which we operate that assessment of causation or that concession of causation is made before the assessment is undertaken by the panel. What would you say about that evidence?

Ms MAY: I am not sure what you mean by panel. The only time that a worker comes before a panel of doctors is in a medical appeal panel in which case they are not examined by a panel. Medical panels are something of the past. They are what existed prior to 2002; in fact, no, they existed before the commission so I am not sure what is meant by a panel of doctors. But causation is not just a matter of medical causation and causation of injury is not determined by doctors; it is determined by arbitrators in the commission. If we allow causation to be determined by doctors, then this scheme will alter significantly and I do not know of any scheme where doctors are the determiner of causation. Causation is a very complex issue.

Mr ROB STOKES: I turn to the fourth paragraph on page 4. You mention that the options for reform in the issues paper not only target the root cause of deterioration in the financial experience of the scheme, they actively ignore them. I am interested in the use of the adverb there as in implying a motivation. What are you getting at when you are saying that ignorance is active?

Mr STEPHENS: Nothing more than from our plain reading of the issues paper. If you look at the options for change, they go to the heart of cutting benefits. They do not address what we have read as the causes of instability, the underperformance of the scheme agents, the insurance claims for managing costs on their own, the claim handling expenses, the issues that you have heard from Roshana in relation to return to work. These are issues that we say require focus and they do not appear to be addressed in the issues paper options.

The Hon. PAUL GREEN: In your paper on page 9 you talk about constantly being drawn into red tape. Could you be a little more specific?

Mr NAGLE: Only to the extent that WorkCover is an organisation which has created a lot of red tape. We agree with Mr Brack's evidence on behalf of the employers that there is a consistency between employers and workers, but both of us experience the bureaucratic arm of WorkCover and we believe that with appropriate good governance of the Government that that can be dramatically improved and thereby improve the cost nature of the scheme.

The Hon. PAUL GREEN: Have you thought how that could be improved?

Mr NAGLE: I suppose there are three points. You dismantle WorkCover as best you can. You then privatise the insurance industry as it was prior 1987. That would provide better delivery of benefits to workers. It removes the red tape that both the employers and the workers both complain of.

Ms MAY: May I add that perhaps starting simply we note that WorkCover had embarked on a process of reform, particularly of their guidelines. The red tape is largely in terms of navigating the scheme; because of the overlay by WorkCover guidelines, operational instructions, all sorts of directives. We note that WorkCover have embarked on a process of reform and we are happy to see that they are going to hopefully strip away some of the red tape that makes it easier for at least workers to navigate the scheme, hopefully employers and insurers as well.

Mr STEPHENS: Mr Green, it is a good question because it is fair to say that all schemes suffer some form of red tape, but in my experience some schemes are better at resolving those issues. I refer to my experience as a practice group leader in Victoria where I had active engagement with the Victorian WorkCover Authority on working through the very issues which were roadblocks at times to early benefit delivery. The Victorian WorkCover Authority took in that period, and takes today, very much an open approach in engaging with stakeholders, including plaintiff lawyers, on these issues, guided by the overriding principle that benefits should be delivered as quickly as possible in a cost-efficient manner.

Mr NAGLE: The other point I would make is that as a lawyer in Shoalhaven I know that Shoalhaven City Council operates an effective workers compensation scheme as a self-insurer and because of their good work practices they have not had any workplace injury damages [WID] claims for some years. They are able to get people to return to work. They do not have the interference of WorkCover and the scheme agent to employer, to worker.

The Hon. PAUL GREEN: I declare a conflict of interest. I am the Mayor of Shoalhaven City Council. However, they do have a great practice.

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

(The witnesses withdrew)

KEVIN GEOFFREY PURSE, Senior Research Fellow, Central Queensland University, affirmed and examined:

CHAIR: 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. You are also 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 your request. Would you care to make a short opening statement?

Dr PURSE: Yes. I will start by telling you a little about myself. I am with Central Queensland University at the moment. My background is that initially I was trained as an economist. I began my experience with workers compensation and health and safety in about 1979. I was subsequently a director of the South Australian WorkCover board and a health and safety commissioner. Since then I have completed a doctorate in workers compensation policy in 2004, and I have published a reasonable amount both on Australian and international issues relating to workers compensation and health and safety. Some of the journals in which I have published are the *Australian Journal of Labour Law*, the *International Journal of Comparative Labour Law and Industrial Relations*, and the *Cambridge Journal of Economics*.

I would like to make a couple of comments. The starting point is that despite claims to the contrary, New South Wales WorkCover's estimated unfunded liability of $4.1 billion does not mean that the State's workers compensation scheme is on the brink of insolvency. Nor is it costing New South Wales more than $9 million a day as has been suggested in some circles. I think these claims reflect a fundamental misunderstanding of what a scheme's unfunded liability means. At its simplest, an unfunded liability is an estimate of a shortfall between WorkCover's estimated liabilities and its total assets. It is the product of actuarial projections based on what might or might not happen over a period of 40 or 50 years, possibly more, in the absence of changes to the scheme's performance over that period. As the scheme's actuaries inevitably observe, unfunded liability estimates are inherently uncertain.

I think a much more reliable guide is the scheme's funding ratio. The present ratio is 78 per cent. This is a very conservative estimate in my view. I think if we had a more performance-based approach it would be at least in the mid-80s. It is also important to note that WorkCover has more than sufficient funds available to meet its current financial obligations. I think the 2010-11 financial statements indicated there was some $735 million available to expend on claims costs and related costs.

The other point I would like to make is that the notion that workers entitlements need to be cut in order to improve the competitive position of New South Wales employers vis-a-vis their interstate rivals in Victoria and Queensland in particular is fundamentally ill conceived. First, it overlooks the evidence that the level of serious work injuries in New South Wales is considerably higher than in Victoria. Second, it ignores a more fundamental point that workers compensation costs are largely the consequence of poor workplace health and safety management practices. This is estimated to cost Australia about $60.6 billion a year. That equates to about 4.8 per cent of gross domestic product that is forgone as a result of our inability to get on top of workplace health and safety.

If we are talking about the need to improve both productivity and competitiveness we really need to look at improving workplace health and safety. It is much better to do this at the front end than at the back end, which is I think the flavour of the issues paper. I would argue that the excessive emphasis placed on WorkCover's unfunded liability, a misplaced view of competitiveness by the State Government and its agenda to strip back the entitlements of injured workers also have had the effect of diverting scrutiny from the scheme's underlying problems.

In my assessment the main causes of the scheme's performance have been a failure of claims agents in delivering their injury management responsibilities, despite being paid $318 million in fees to do so as of last year; WorkCover's apparent inability to manage its agents; and the lack of compliance with their legal obligations by sections of the employer community in providing suitable employment for injured workers ready to return to work. The precipitous decline in enforcement of workplace health and safety laws is another factor. In the four-year period to 2010 there was an 18 per cent drop in the number of improvement notices issued, a 29

per cent drop in the number of prohibition notices issued and a massive 77 per cent decline in prosecutions and convictions for offences against the law.

The final factor is that we have had a very serious drainage in premium income. The issues paper indicates than $1 billion a year has been removed from the premium pool over the past five or so years. The other perhaps important point is that average premium reductions occurred when the scheme was unfunded. One can understand premium reductions occurring when a scheme is fully funded or better, but when it is not fully funded that seems to me a very inappropriate way of dealing with premiums. That concludes my opening comments and I will answer any questions I can.

The Hon. ADAM SEARLE: You indicated that the better indicator of scheme performance is the funding ratio. You indicated that 78 per cent funding ratio of the New South Wales scheme is a very conservative estimate. It should be in the mid 80 per cent if a performance approach was taken. Will you elaborate on what that means? Why should we take that view rather than the more conservative view?

Dr PURSE: First, you have to look at how these estimates are constructed. One of the two big issues in New South Wales and in a number of the other schemes is that these days they have what is called a risk margin incorporated into the costing. The penchant for risk margins arose out of the collapse of HIH in 2000-01. It was designed to address a problem in the private sector. When you talk about publicly underwritten workers compensation schemes though, there is a different set of dynamics at play. Put simply, a publicly underwritten scheme will not go broke; you will not have a HIH. That is not to dismiss the problems you can have, but there is a very significant difference.

A related issue is that in New South Wales, like in Queensland, South Australia and Victoria, the sole insurer always has access to premium income. You are not going to lose premium income to competitors and you are not going to go broke as a result of competition between insurers. That is the background. On the WorkCover figures the latest estimate of its risk margin puts it at $1.725 billion. That, in my view, is $1.725 billion that should not be there. The net value of that would be better remaining in the community with the employers who would otherwise be liable for it. So that is one issue.

Another issue is the question of discount rates. The actuaries work that out these days on the basis of a risk-free rate of return. Again that is another development associated in the wake of the HIH collapse. Again, I think if you are talking to the private sector that is quite a prudential approach to take. But with the publicly underwritten schemes I do not think it is necessary again. The other point to note is that on my understanding WorkCover's investment performance since its inception has been reasonably good. However, to the extent that that is the case, it is not reflected in the actuarial assessments.

This is important because for every 1 per cent of variation in the discount rate there is half a billion dollars at stake. If WorkCover has, say, a 2 per cent rate of return with better than the risk-free rate of return, then that is $1 billion. You add the $1 billion with the other $1.725 billion and you have got $2.725 billion. That is most of the current unfunded liability. I think there needs to be reform in that area. I am not sure that it will happen any time soon but to some extent these actuarial assessments are a product of the assumptions. They are not driven exclusively or necessarily largely by the data, they are driven by the underlying assumptions. I have to say that full funding is not the only way in which you can cost workers compensation liabilities.

The Hon. ADAM SEARLE: In the Unions NSW paper that you reported, there is a critique of claims outsourcing and claims management by scheme agents and a critique of scheme agents' performance generally. You also indicate that the obvious solution, that is, in-sourcing as with Comcare in Queensland, is not particularly viable if there are ongoing contractual relationships. What is the solution to the poor performance—

Dr PURSE: It is very difficult because by way of background, outsourcing is used extensively in New South Wales, South Australia and Victoria, all of which have had their problems. The only study I am aware of is one I published in 2009. That was based on the South Australian scheme and it was easier to do because for about 20 years in South Australia there had been no substantive changes to the WorkCover legislation. Therefore, you did not have the range of confounding factors that were in New South Wales or Victoria. The findings were basically that outsourcing had been overhyped. It was introduced on the basis that it would be cheaper. In South Australia that was supposed to be 10 to 15 per cent cheaper annually. The reality was that it was 11 per cent annually dearer.

A more fundamental problem I think though is that when you outsource you outsource your core business. If you are going to do that then you need to be very, very sure you know what you are doing. Some

things you can outsource—for example, if you run a manufacturing company of cars and you want widgets you can outsource them pretty easily because you know how many you want, you know the technical specifications of them and you know when you want them delivered by. But in a lot of areas with outsourcing there is a great deal of uncertainty. The criteria for performance are a little bit vague.

The consequence is that you do not get an alignment between what WorkCover would want and what its agents deliver. We have seen that repeatedly not just in South Australia but also in Victoria and New South Wales. There has always been talk and changes to the way in which agents are remunerated. That happens because they do not get it right the first time. In my experience they do not seem to get it right the second time or subsequently either. You have always got that potential for a disalignment between scheme objectives, as articulated by Parliament, and WorkCover and then performance by claims agents. When schemes are going along well these things are beneath the surface but when you have a downturn for whatever reason they then sort of bubble up, and that is part of the problem we have got at the moment. I think that has been acknowledged by the scheme actuaries. I know particularly the Ernst and Young peer review actuary spent quite some detail on that in terms of what needs to be done.

So we have got two problems: We have had the claims agents underperforming and the contract manager which, in this case, is WorkCover not providing adequate oversight. Not knowing the particulars of the contractual arrangements it is pretty hard to say what precisely ought to be done, but in general terms we know that there needs to be much closer supervision by WorkCover and clearer directions to the agents. I am afraid I really cannot say much more without additional information but that would be the general thrust of what I suggest.

Mr MARK SPEAKMAN: Did write the Unions NSW submission to this inquiry?

Dr PURSE: Yes, I did.

Mr MARK SPEAKMAN: Were you paid to write that submission?

Dr PURSE: Yes, I was.

Mr MARK SPEAKMAN: Are you still on a retainer from Unions NSW to give evidence to this inquiry?

Dr PURSE: I have been paid to come here today, yes—not very much, I might add.

Mr MARK SPEAKMAN: Do you have any actuarial qualifications?

Dr PURSE: No, I do not. When I was on the WorkCover board in Adelaide I had quite extensive dealings with actuaries at the audit finance committees and in general discussions. I have also given papers at actuarial conferences, but, no, I am not an actuary.

Mr MARK SPEAKMAN: Are you qualified to be a legal practitioner?

Dr PURSE: No, I am not.

Mr MARK SPEAKMAN: Do you have any psychology qualifications?

Dr PURSE: Not that I am aware of.

Mr MARK SPEAKMAN: Are you qualified to be a certified practising accountant, a member of the Institute of Chartered Accountants or a member of the Institute of Public Accountants?

Dr PURSE: No.

Mr MARK SPEAKMAN: Have you been a trade union official?

Dr PURSE: I certainly have been.

Mr MARK SPEAKMAN: Which unions and when?

Dr PURSE: I worked with the Public Sector Association in Adelaide from 1979 to 1984. I then worked at the Trades and Labor Council from 1986 through to 1993.

Mr MARK SPEAKMAN: Are you a member of a political party?

Dr PURSE: Yes, I am.

Mr MARK SPEAKMAN: Which party?

Dr PURSE: Do I have to tell you?

Mr MARK SPEAKMAN: I have asked you the question.

Dr PURSE: I am. Let me say in my research I have been pretty critical of Labor governments as well as Liberal or Coalition governments and I am going to stay that way. The fact that you might have some sort of political association, in my view, should not stop you from being critical if you think your professional judgement is on the ball. If you look at some of my publications you will find that I would have provided some of the harshest critiques of the Rann Labor Government in South Australia.

Mr MARK SPEAKMAN: Are you a member of the Labor Party?

Dr PURSE: I am, yes.

Mr MARK SPEAKMAN: You talked about the inherent uncertainty in the $4 billion figure. Is it your evidence that the ratio is a much better indicator?

Dr PURSE: Yes.

Mr MARK SPEAKMAN: However, the ratio is neither inherently more certain nor uncertain than the absolute dollar figure?

Dr PURSE: Again, to the extent that both figures—the unfunded liability figure and the funding ratio figure—are dependent on the estimate of the outstanding liabilities, yes. However, in the public discourse the unfunded liability is more misleading than the funding ratio. It also claims that the scheme is going insolvent when anyone with even a limited familiarity with this area would know that that is not the case.

Mr MARK SPEAKMAN: So a ratio is a better depiction because you get a sense of proportion?

Dr PURSE: I think so, yes. That is a good point.

Mr ROB STOKES: You provide evidence about the need to focus on employers improving the safety of workplaces to get scheme costs under control. What do you say about journey claims where employers do not have much control?

Dr PURSE: Again, journey injuries have historically been part of the workers compensation make-up because they are related to work. You can argue that they are only remotely related and others argue that they are integral. It certainly has benefit for the employer. Journey claims tend to be quite small in proportion and in some jurisdictions you can get recoveries from the motor accidents commission. In the overall scheme of things it is not a big deal. However, we need to be careful with employer controllable risk. Workers compensation is no fault. Sometimes the employer is at fault and at other times it is a third party, and sometimes it may even be the worker's fault. The essence of workers compensation is that there should be no fault. We need to be careful about selectively going into the risks that the employer can control. For example, you might be a truck driver and your employer is trying to do the right thing and has done the right thing. You are on the road and you are hit by some idiot coming the other way and you die or you are seriously incapacitated. A workers compensation scheme is designed to cater for that need.

Mr ROB STOKES: That brings me to a related point. I refer to payments in the case of a tragic death where there are no dependents. Should a lump sum be paid to the estate?

Dr PURSE: I think this is a recent development in New South Wales in 2008. I do not see any problem with that. Again, death payouts tend to be a very low proportion of scheme costs. I do not have the figures, but they could be easily obtained from WorkCover. They are probably about 1 per cent.

Mr ROB STOKES: My question is not about the costs but the principle.

Dr PURSE: I do not have a problem with it. However, I can see the logic of an alternative view, such as the view you are articulating.

Mr ROB STOKES: I am merely asking questions.

Dr PURSE: Again, it is one of those things that gets towards the boundary. On balance, if I die and I have no family then no compensation is paid. You could argue that that removes an incentive for the employer. Personally, I do not know that that is a particularly strong argument. However, I might have people other than my immediate family—my nieces and nephews—and that money might go to them. Someone was killed and I am not sure we should distinguish between whether someone is immediately available to receive compensation as a result or whether people might be a little more removed.

Mr MARK SPEAKMAN: Have you read any WorkCover annual reports?

Dr PURSE: I plead guilty.

Mr MARK SPEAKMAN: So do some of us. Have you read the report for 30 June 2011?

Dr PURSE: I have read some of it, yes.

Mr MARK SPEAKMAN: If the WorkCover board, including Mr Mark Lennon, puts the position at 30 June 2011, using a risk-free discount rate and having a risk margin of 12 per cent for a so-called 75 per cent probability of adequacy, does it follow that you do not agree that that represents a true and fair view of the authority's position?

Dr PURSE: I do not know the board's background to this and I do not particularly want to individualise it. My personal view is that there is no need for a risk margin, and certainly not a 12 per cent risk margin. It simply increases not only the liabilities but also the premiums that might otherwise be payable by employers. I am not sure that I have answered the question.

The Hon. PAUL GREEN: For clarification, are you saying that that risk margin should not exist and that that money should be given back to employers for better use?

Dr PURSE: That is the essence of it. Once you bring that figure back to its net present value I am not sure how much it would be. Any subsequent reduction in premiums might be quite low. The other point is that you would not want to do that in the present circumstances where the scheme is not fully funded.

The Hon. PAUL GREEN: What about the self-insurance situation? Self insurers put a lot of money into WorkCover and it is held as a bond. Would that be an opportunity to give it back to good performers who are doing the right thing?

Dr PURSE: Do you mean the self insurers?

The Hon. PAUL GREEN: Yes.

Dr PURSE: They do not pay premiums in the sense that most employers do.

The Hon. PAUL GREEN: They pay bonds.

Dr PURSE: That is different. I think that is in case they become insolvent so that the scheme does not get stuck with picking up their residual claims liabilities.

The Hon. PAUL GREEN: But the sums are quite high.

Dr PURSE: They can be. I am not overly familiar with it. However, I think they are two different issues and probably should be treated that way.

The Hon. PAUL GREEN: Do you have any comments about commutations and journey claims?

Dr PURSE: I have already commented on journey claims and I think they should be included. Commutation is a mixed bag. Most scheme participants probably favour them. In the late 1990s they were used extensively as a liability management tool by WorkCover. It tends to detract attention from the front end—the return to work side of things. Having said that, I think there is a role for commutations, you need to be very careful. When the commutation bubble bursts it is invariably the injured workers and their lawyers or union advocates who are blamed for having a lump sum mentality or culture. If you look at it a little more accurately, you find that the scheme administration has unleashed or given birth to lump sum payments as a mode of dealing with matters. That is not a factor that plays out only in New South Wales; it has also been an important factor in the South Australian scheme and I suspect in other schemes as well.

Commutations are always difficult. Where do you draw the line? Once they are available people start using them or there is pressure to use them. In South Australia many people were almost pressured into them. They were told that if they did not they would be subjected to a work capacity review and a way would be found to get them off the scheme. They were offered a commutation instead. It is a messy business. In a strategic sense it is worth considering.

The Hon. PAUL GREEN: You do not think it would blow out the scheme if it were reinstated as long as it was strategic?

Dr PURSE: It could. If the Government is anxious to pursue that course of action, there needs to be closer consideration. It was not canvassed in any depth in the issues paper; one could not get a sense of what was in mind. Subject to those qualifications, it would be worth closer analysis.

CHAIR: Thank you very much for appearing before the Committee.

(The witness withdrew)

(Luncheon adjournment)

NICHOLAS SCOFIELD, General Manager, Corporate Affairs, Allianz Australia Insurance Limited, and

MIKE SIOMIAK, General Manager, NSW Workers Compensation, Allianz Australia Insurance Limited, affirmed and examined:

DAVID MARC KRAWITZ, Chief General Manager, Workers Compensation, Allianz Australia Insurance Limited, on former oath:

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. 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, would you please state your reasons and the Committee will then consider your request. Mr Krawitz, would you like to make a five minute address?

Mr KRAWITZ: Thank you for the opportunity to give evidence to the Committee this afternoon. Allianz is one of Australia's largest workers compensation providers. We are one of seven scheme agents appointed by WorkCover New South Wales 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. It should be noted that, as an agent of the New South Wales scheme, we do not insure or underwrite the New South Wales Workers Compensation scheme and we do not manage the funds of the scheme. In light of our function within the scheme, our submission is principally focused on section A of the inquiry's terms of reference concerning the performance of the scheme against the key objectives of promoting better health outcomes and return to work outcomes for injured workers.

Allianz strongly supports a fair and financially sustainable workers compensation scheme that provides access to care and support for injured workers to have a speedy and effective recovery and, where possible, return to work for workers who have suffered an injury or illness at work. We recognise that all parties have a role to play in ensuring timely and sustainable return to work and Allianz takes its obligations as an agent very seriously, including supporting employers for work, health and safety practices and assisting them in fulfilling their workers compensation obligations. This support includes extensive training in both work health and safety and workers compensation, with Allianz facilitating 50 training sessions to over 1,100 employer attendees in 2011.

We would like the Committee to know, at the outset, that the substantial majority of injured workers return to health and safety within a short time frame, supported by both their employer and Allianz as a scheme agent. For example, of the claims notified to Allianz in 2011, 70 per cent had less than five days off work and 90 per cent had less than 30 days off work. While this is positive, the claims that do not quickly resolve are becoming an increasing cost for the scheme. Of the 19,000 open claims that Allianz currently manages, more than 40 per cent sustained a workplace injury more than three years ago. Within this group is a cohort of severely injured workers who, by reason of the nature of their injuries, will remain in the scheme for a significant period and, in some cases, indefinitely.

As outlined in our submission, we endorse the provision of additional benefits for severely injured workers. There is also, however, a substantial segment of workers whose original injury does not necessitate long-term absence from work but the scheme, in its current form, does not provide us with the tools to appropriately resolve these claims. We believe it is the ineffectiveness in differentiating between the seriously and less seriously injured that is the most significant challenge in the scheme's structure. We agree in principle with the proposed changes outlined in the issues paper and in particular the recommendation for a more effective work capacity testing regime.

It is Allianz's opinion that any changes should also be supported by a comprehensive operational architecture that is unambiguous, enforceable, applicable to all parties and consistently applied. This would include, for example, consistent guidelines for both agents and the Workers Compensation Commission. Finally, we submit that actuarial analysis should be conducted of any proposals under consideration to allow an informed decision about the reforms that are most likely to be effective. We are happy to take questions from the Committee members.

The Hon. ADAM SEARLE: On page 4 of your submission you indicate that you support a range of measures, including step downs in benefits, work capacity testing and capping of benefits. I suggest to you that those measures are all in the area of cutting benefits to injured persons. In evidence this morning representatives from Slater and Gordon presented a chart that suggests that the value of benefits paid through the scheme to injured workers has declined in real terms by about 20 per cent to 21 per cent over the past 10 years. If that is correct, and the real value of benefits paid to workers has gone down by one-fifth, these proposals, which you say your organisation supports, are really punishing those who are already vulnerable, are they not? If those benefits have been reduced over the past decade what sort of incentive is that to someone to return to work?

Mr KRAWITZ: We have not seen the information in question so I am not in a position to comment on that particular data today. However, I would say that the views we have put forward here are not to say that for each and every worker we should see different benefit structure. As was pointed out in our opening statement, we believe that there are workers in this scheme that we do need to have greater tools to move them off the scheme when appropriate, and our comments are very much in that vein.

The Hon. ADAM SEARLE: How long have you been a scheme agent or participant in the NSW Workers Compensation Scheme?

Mr KRAWITZ: That is a very good question. I believe it is at least 10 years now; I would have to check for the exact date.

The Hon. ADAM SEARLE: But a substantial period of time?

Mr KRAWITZ: Yes, a substantial period.

The Hon. ADAM SEARLE: I am happy for you to take this question on notice if you do not have the information to hand. In what percentage of the claims handled by you as a participant in this scheme have employers provided suitable duties so that injured employees could return to the workplace?

Mr SIOMIAK: We do not have the exact numbers. We can look at the numbers, but I would say the vast majority of our claims go back to the existing workplace. At least 70 per cent of our claims, probably more than that, go back in five days.

The Hon. ADAM SEARLE: People who go back in such a short time would not necessarily have a formal return-to-work plan, would they?

Mr SIOMIAK: Anything over five days is a formal claim.

The Hon. ADAM SEARLE: In terms of the claims that you handle outside that 70 per cent, in the five-days-plus area, I would like to know—

Mr SIOMIAK: We will take that on notice.

The Hon. ADAM SEARLE: Are you also able to provide to the Committee with figures on what percentage of employers terminate the employment of injured workers at six months, nine months, 12 months and 18 months after injury?

Mr SIOMIAK: I am not sure that we actually have that information but I will take the question on notice. I would suggest that WorkCover would be better placed to have the full scheme information.

The Hon. ADAM SEARLE: I understand they might have the full scheme but you would certainly have that information for your claims?

Mr SIOMIAK: We could probably get some information.

The Hon. ADAM SEARLE: You also say on page 4 of your submission that "benefits should be provided to injured workers in respect of their primary workplace injury only". We heard some evidence this morning from a psychologist and psychiatrist that often there are psychological or psychiatric issues associated with being injured that are not really separable from the frank injury. Is that something you accept or do you say that should not be treated?

Mr SIOMIAK: I think what we have experience of is that the longer people are on claim the less likely they are to go back to work, and the longer they are on claim the more likely they are to gain some form of psychological concern. Part of our submission has been around the ability to get access to nominated treating doctors to actually discuss the claims and to put in place proper plans that will get them back in some form of work capacity at an early stage. Our belief is that by putting in place some form of support and counselling at an early stage you will have fewer people with that particular psychological outcome.

The Hon. ADAM SEARLE: We have received evidence and submissions from a number of employer interests who have indicated member dissatisfaction in dealing with scheme agents generally—I am not fingering you in particular—for example, acceptance of claims where the employer said it did not happen at work and where they seem to have actual information that they pass onto the claim agent. They say that has not been properly investigated or investigated at all. We have also heard complaints made by a range of stakeholders about early intervention and getting injured workers to rehabilitation quickly. The Committee has heard evidence suggesting significant time lags before scheme agents put injured workers with rehabilitation providers and the like. Do you have anything to say about your perspective on those things?

Mr SIOMIAK: Over 90 per cent of employers do not have return-to-work coordinators; in other words they will be inexperienced when it comes to claims—they do not understand the actual claims process. We spend a considerable amount of time discussing with employers exactly what the process is when they come on board with their first claim. The issue is that we have seven days to accept or otherwise deny liability on a claim and seven days is a very limited time to actually make that decision. We work within the guidelines that are part of the scheme. We have to follow certain procedures to actually make or deny that decision. Whilst we understand the issues that certain employers have, we have to have the evidence in order to support or deny their assertations. Generally we can only work off the medical certificate provided by the doctor.

Mr MICHAEL DALEY: On page 5 of your submission under the heading "Allianz's experience of the NSW Workers' Compensation Scheme" and your experiences—which you have given evidence today is a decade long or so—you say that you "operate within a legislative framework that is supported by an extensive operational structure comprising of over 300 different documents. While there are guidelines and procedures available to Agents"—that is all agents—"to return workers to full health and back into the work place", these guidelines are far from effectual. You say they are ambiguous and open to variable interpretation, not enforceable, inconsistently applied and are not used by all parties involved in decision making regarding claims. So some serious structural reforms need to happen to the scheme. Yet a page earlier you say as an insurance company that the key changes that are fundamental to ensure the success of the scheme is to step down benefits, introduce work capacity testing and cap benefits. So on page 5 the scheme is seriously flawed, and on page 4 the insurance company says cut benefits to workers. Do you understand why some people would think that is a little incongruous?

Mr SIOMIAK: The first part of the three points we made on page 4, they are basically in relation to the issues which were in the paper and basically we are saying that those are probably the three areas that we felt would most impact on the evaluation scheme. However, whatever scheme structure you put in place will have to be fully supported by an operational framework that all agents and all parties within the scheme can operate within. That currently does not exist to a level that enables us to have the tools and ability and authority to make decisions we believe are fundamental to our decision-making process.

Mr MARK SPEAKMAN: Is Allianz one of the two largest agents in the scheme?

Mr KRAWITZ: It depends on what the definition of "large" is. We have had this discussion and based on available scheme data, depending on whether you measure the number of policies or the number of claims, you actually get two different answers. So we are not certain what Ernst and Young is referring to when they talk about the two largest agents in the scheme.

Mr MARK SPEAKMAN: That was going to be my next question. Page 8 of the Ernst and Young peer review talks about previous evaluations and says that WorkCover should take steps to improve the claims management in the scheme, especially in relation to the two largest agents which are making a much larger contribution to the scheme's deterioration and their market share. Then on page 7, the most recent evaluation, Ernst and Young say that some of WorkCover's largest agents do not appear to be improving. Would you like to comment on that?

Mr SIOMIAK: In terms of relative position, we cannot give any comment because we do not have the information. That is basically down to WorkCover. We are just one of the seven agents. In terms of absolute performance, Allianz is consistently ahead of scheme in all the return to work measures that are publicly available. Two years ago when the scheme had a new deed we were awarded 1,000 more claims and 4,000 more policies, which would suggest that we must have reached performance to get those additional claims and policies.

Mr MARK SPEAKMAN: Have you read the Civil Contractors Federation submission?

Mr KRAWITZ: No, I have not read that one.

Mr MARK SPEAKMAN: Could you take on notice and respond to sections 5 to 7, 8 to 11 and 21 of that submission? Have you read the Australian Medical Association's submission?

Mr KRAWITZ: I may have read that one. I have read about 20 of them so I cannot be sure if it was that one or not.

Mr MARK SPEAKMAN: Can you take on notice the material under the heading "causation" on pages 4 to 5 and the material under the heading "other uses of medical assessment panels" on page 5 of that submission and provide a response? Just going to that submission, there is one thing I want to raise with you. There is a complaint by the Australian Medical Association [AMA] of a tendency for scheme agents to issue form letters. Can you either respond to that or take that on notice?

Mr SIOMIAK: I will take that on notice.

The Hon. TREVOR KHAN: I take you to page 13 of your submission, item 1 at about point three or four on the page commencing "determining access". Would you like to expand on the point you make there with regard to benefits being based on binding assessments of injuries provided by a panel of accredited medical assessors and how you see that working?

Mr SIOMIAK: The basic problem we have for many of our longer-term claimants is that it is the nominated treating doctor who has the final say in whether a worker has capacity whether to go back to work or not. We can and do employ within the scheme independent medical examiners [IME] who review whether it is work capacity or other forms of capacity. Even though they are specialists the treating doctor does not actually have to take them as binding and can continue to sign the worker off. Our view is that if you do employ IMEs their decision should be binding. I think if you actually went down that route and whether it is work capacity you would find that many more people would be off scheme at a much earlier stage.

The Hon. TREVOR KHAN: I go to item 3 on that page, that is, the statute of limitations provisions. Are you able to indicate what sort of claims are being made as much as three years after the apparent incurring of the fake injury?

Mr SIOMIAK: If it is more than three years we have somewhere between six and 700 new claims notified which are three years or more in age. Some are a deterioration of disease related things like hearing loss, which somebody cannot help that.

The Hon. TREVOR KHAN: That is dealt with as an exception.

Mr SIOMIAK: In terms of the nature of conditions, there are a number of claims that we get where it is actually almost impossible to determine cause and therefore we have to take liability. For example, people may have worked in a manual handling job years ago. They are now getting back problems, knee problems, whatever related to that work. Gaining information in the 21 days that we are provided is virtually impossible. Therefore there are many claims we are taking on board now which are both outside the statute but accepted and also where we believe more information provided by doctors would challenge some of those liability decisions.

The Hon. TREVOR KHAN: In earlier evidence you gave reference to acceptance within seven days and I think you then made reference to the 21 days.

Mr SIOMIAK: Twenty-one days is for deferring it. It is seven days for a claim where it is very recent. If it is out of statute it is 21 days.

The Hon. TREVOR KHAN: Sorry, say that second part again.

Mr SIOMIAK: Where we have this late notified claim we have 21 days.

The Hon. TREVOR KHAN: I take that to be outside that period of time.

Mr SIOMIAK: That is right, yes.

The Hon. TREVOR KHAN: With regard to the seven days, that is seven days for the acceptance of provisional liability?

Mr SIOMIAK: Provisional liability, yes.

The Hon. TREVOR KHAN: Who has the obligation to notify of a claim under the Act?

Mr SIOMIAK: That is a good question. I will take it on notice. I am not sure but I believe—

The Hon. TREVOR KHAN: It is fairly fundamental to the initiation.

Mr SIOMIAK: I believe it is the employer but I will confirm that for you.

The Hon. TREVOR KHAN: Does a claim form have to be filled in by anyone?

Mr SIOMIAK: No. Notification is by telephone or by email or by fax.

The Hon. TREVOR KHAN: So it falls on the employer and it does not have to be in writing.

Mr SIOMIAK: Correct.

The Hon. TREVOR KHAN: What if the employer is unclear as to what actually has been the nature of the incident or event that has occurred? How do they then comply with the obligations under the Act?

Mr SIOMIAK: The way that our operation works, we accept the claim notification immediately. We then hand that over to a case manager who will then talk to the employer and gain more information to make sure that we have enough to be able to make an appropriate decision.

The Hon. TREVOR KHAN: Even if the employer may be unclear themselves as to what precisely has occurred.

Mr SIOMIAK: Absolutely, yes.

The Hon. TREVOR KHAN: For instance, what they may receive is a certificate from the treating doctor, the GP, that says as a result of work injury, whatever may be the detail of it, and that may be all they have.

Mr SIOMIAK: Yes, correct.

The Hon. TREVOR KHAN: Including where they have no direct contact with the employee at that stage.

Mr SIOMIAK: Correct.

The Hon. TREVOR KHAN: And you have to make an assessment of acceptance of liability on that basis.

Mr SIOMIAK: Generally that is the case, yes.

The Hon. TREVOR KHAN: Is that an appropriate way to run an entitlement scheme?

Mr SIOMIAK: You have various periods of time to make the formal assessment. But whilst the initial liability decision is within seven days you then have a period of up to 12 weeks to make a full liability decision. We do have time to gain further information as may be required.

The Hon. TREVOR KHAN: Sure, but we have already seen on similar material that has been referred to that if somebody has been off for 12 weeks the prospect of getting them back to work is diminishing by the week, is it not?

Mr SIOMIAK: Absolutely.

CHAIR: Mr Krawitz, going back to page 13, additional areas of reform, point 1 talks about determining excess and entitlement. Are you suggesting there, or maybe I am misreading it, that this no longer is a universal no fault scheme?

Mr KRAWITZ: No, we are certainly not. This relates more to the ongoing benefits that a worker may be entitled to. I think in keeping with our comments around some of the long-term injured workers who may in fact not still require benefits under the scheme that a more binding test would be extremely helpful in those types of situations. By no means I was suggesting that we move away from a no fault scheme.

CHAIR: Were you talking in that point in not an ongoing but you talk about determining access and entitlement to the scheme benefits should be assessed by a panel of accredited medical advisers ensuring skill and objective process. To me it looks like you are putting a gate in there?

Mr KRAWITZ: That is not the intent; to have a gate for benefits full stop.

CHAIR: At point 4 you talk about a comprehensive operational procedural model that is unambiguous, enforceable and consistently applied. One can only assume that your assumptions are that it is not unambiguous at the moment, it is not simple and it is not enforceable. What sort of model are you advocating then? I do not expect you to sit there now and give us all the gory detail but is it in a systems approach to it, is it in the guidelines? I note in your evidence and in your report there are something like 300 various types of reports or guideline notes that are available? What is the story?

Mr SIOMIAK: There is work underway which is being managed by WorkCover, which is called the Workers Compensation Regulatory Guidelines and Instructions Review Taskforce—sorry for the length of the title—which has all scheme agents plus self-insurers plus the specialised insurers represented. The view is to actually fundamentally reform all the documents to make them simpler, easier to use and to ensure that there is no ambiguity in terms of the actual content. We are looking to engage other stakeholders in that process, including the Workers Compensation Commission because we feel it is fundamental that they are part of the same process not only the definition but also in terms of ultimate use of the same guidelines. As agents we are bound by those guidelines; we work within them. If and when a decision is challenged and it needs to go to the commission, we submit that they should follow the same principle and process as well.

CHAIR: We have been told there are seven agents in the scheme at the moment. Do you think the scheme would run more efficiently if there were fewer agents?

Mr KRAWITZ: That needs to be a question for WorkCover to answer. We are not in a position to make any judgement on that.

CHAIR: Do you think the competitive nature of the agents' processes with the way they are run at the moment is working in practice for you?

Mr KRAWITZ: We believe there are opportunities in the current structure to compete and differentiate. A couple of areas that Allianz does so, as I mentioned in my opening statement, is that we invest heavily in training for our employer clients and believe that is a strong differentiating factor. We have also invested heavily over the years in our information technology systems and I know that the discussion around a centralised information technology model has come up but I would note that we have a full image paperless environment which we believe does offer distinct benefits. If you look at some of the other centrally run schemes such as Victoria, they are still running on paper-based files, so centralised, I do not believe, is always a better outcome in terms of the service that can be offered.

CHAIR: I do not disagree with that comment but then again we are trying to deal with seven different systems too. You might have state-of-the-art whereas agent number seven might have state-of-the- arc.

Mr KRAWITZ: Yes, it is up to each agent.

The Hon. ADAM SEARLE: You said there were two different ways of calculating who the two large scheme agents were?

Mr KRAWITZ: Policies and claims.

The Hon. ADAM SEARLE: Taking each alternative, who are the two big ones?

Mr KRAWITZ: Well, we would be one of the two under the claims definition.

The Hon. ADAM SEARLE: Not the underwriting definitions?

Mr KRAWITZ: Not, the policy definitions.

The Hon. ADAM SEARLE: Who are the two big ones by policy?

Mr KRAWITZ: I believe by policy, and you should check this, but I believe by policy it is QBE and GIO, and by claims I believe it is ourselves and QBE.

The Hon. ADAM SEARLE: You mentioned receiving claims outside the limitation period. What percentage of claims that you handle fall into that category of being outside the limitation period?

Mr SIOMIAK: We have roughly 600 new claims in that category each year and we have 19,000 altogether so that is 600 over 19,000.

Mr SCOFIELD: That is open claims of 19,000.

Mr SIOMIAK: We have about 20,000 new claims each year.

The Hon. ADAM SEARLE: So that is new claims altogether.

Mr SIOMIAK: We have 20,000 new claims each year but we have 600 that are outside the three-year identification.

The Hon. NIALL BLAIR: Some of the criticism from other witnesses has been about the constant change of case managers and inexperience of case managers. Would you like to respond to some of that on behalf of your organisation?

Mr SIOMIAK: To do the question fairness and justice, we will probably take that on notice.

Mr MARK SPEAKMAN: The Australian Rehabilitation Providers Association has said that each scheme agent has a different service level agreement and it says that makes compliance here more onerous than in other jurisdictions. Would you like to comment on that and whether it is possible to have a uniform service level agreement common to all agents?

Mr SIOMIAK: I think the starting point with our providers is to have a common basis by which they are engaged and basically it is to have outcomes based on the nature of the industry determined within some form of guideline. Once you have that in place then you can have some form of common service level agreement base so you start off with the premise of looking at the injury, create the right framework and then you have more common ways of looking at it.

Mr MARK SPEAKMAN: What is the stumbling block at the moment to having common service level agreements [SLA]?

Mr KRAWITZ: A common service level agreement would have to be directed by WorkCover obviously. Of course we as an engine do look to have service level agreements with the providers that we work

with to ensure that we are getting value for money and I think we would be not living up to our obligations if we did not do that but as far as our ability to use anything broader than just Allianz, we obviously would not be able to do so and WorkCover is the only entity that could make that happen.

The Hon. TREVOR KHAN: Are you able to give either now or later an indication as to what claims estimate you put on for a claim that is expected to last five days, 30 days and three months?

Mr SIOMIAK: In terms of what rules to use?

The Hon. TREVOR KHAN: For instance in terms of an experience-based policy, what loading is going to be put on the policy for a claim that is assumed to be for five days absence?

Mr SIOMIAK: Yes, we followed the standard rules and guidelines set by WorkCover.

The Hon. TREVOR KHAN: Are you able to indicate that to us in due course?

Mr SIOMIAK: Yes, no problem.

CHAIR: Thank you very much, gentlemen. I note that you have taken 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 within three working days after you have received the transcript. Thank you very much for coming.

(The witnesses withdrew)

MICHAEL PLAYFORD, Consulting Actuarial and Analytics Leader, PricewaterhouseCoopers, GPO Box 2650 Sydney, and

PETER McCARTHY, Partner, Ernst Young, 680 George Street, Sydney, on former oath:

CHAIR: Witnesses are advised that if there are any questions that 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 the question on notice and provide us with the answer at a later date. In relation to 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 will then consider your request. As you both have previously been sworn you do not have to do it again. Would either of you like to make a short opening statement?

Mr PLAYFORD: After our last appearance I took a number of questions on notice from the Committee and various supplementary questions were asked of me. I have responded to those and I believe they are in the system. I am not sure if the Committee has received those.

The Hon. TREVOR KHAN: What does "in the system" mean?

Mr PLAYFORD: With the secretariat, with WorkCover; I am not sure who. I was asked one question relating to page 174 of my valuation report and I might tackle that now to get it on the record and correct it. There was an assertion made by one of the legal groups about my valuation report. On page 174 of my valuation report is a table that looks at the number of intimations in the scheme and what we model and what we adopt as the valuation result. There is a column called "modelled ultimate intimation", which is a result of us applying one particular modelling technique to the number of intimations reported to date. For the more recent years it gives unrealistic results and I do not use the results of that particular modelling technique in deciding the ultimate valuation numbers that go into calculating my valuation result. In particular, the numbers that are used in my valuation result come from the column "current ultimate intimations". I just want to put on record that that should be corrected.

The Hon. ADAM SEARLE: On the work injury damages estimate, it is often the case that injured workers might be on weekly benefits or other benefits for a period of time before making a work injury damages claim. My knowledge of how the scheme works is a bit out of date so please correct me where I am wrong if it does not accord with your understanding. When a work injury damages claim results in a payment there is an element of that payment that has to be paid back to the scheme—any benefits that have been derived in terms of medicals or the like. Is that right?

Mr PLAYFORD: The way I have allowed for the weekly and medical payments on such claims up until the point at which they receive the commutation or the workplace injury damages [WID] is that the periodic benefit payments up to that point are included in the models that are projecting the weekly and medical benefits. But I then value the future payments stream, which is commuted or wrapped up in the WID in those separate models around commutations and workplace injury damages.

The Hon. ADAM SEARLE: How do you offset the two?

Mr PLAYFORD: You do not need to offset. I have allowed for the substitution, if you like, of them being on one payment stream until a point in time and then going across and getting commuted or getting a WID. At that point in time they are allowed for in my separate models that value the lump sums.

The Hon. ADAM SEARLE: How do you work out the value of the WID claims at the point of switching over?

Mr PLAYFORD: The WID is net of the recoveries for weeklies and medicals.

The Hon. ADAM SEARLE: So, you make full allowance?

Mr PLAYFORD: That is correct. I do not believe there is any double counting in my valuation result.

The Hon. ADAM SEARLE: In terms of the ultimate estimate of liability in the scheme—the $4 billion as at 31 December is the most recent figure—that is the present value of all the known liabilities as against all the assets. But those liabilities do not all fall to being paid on the one day; they may fall over a significant period. Over what period have you allowed for those liabilities to be paid?

Mr PLAYFORD: For many, many years into the future. For example, medical benefits can be paid up until the time that a seriously injured claimant dies so we have allowed for a payment stream that continues 40 or 50 years-plus into the future.

The Hon. ADAM SEARLE: As with weekly benefits, for example, that can go until a year after a worker retires.

Mr PLAYFORD: That is correct.

The Hon. ADAM SEARLE: Are all of those built into your estimated liabilities?

Mr PLAYFORD: That is correct.

The Hon. ADAM SEARLE: It may be the case—I am not questioning your methodology—that the medical expenses or the weekly benefit expenses do not go as far as you have allowed for. Is that correct? Is that possible?

Mr PLAYFORD: That is possible but we based it on the experience that we have seen in the scheme to date for claims of those sorts of age profiles and what we would expect into the future based on what we have seen in the scheme over the past 27 years.

The Hon. ADAM SEARLE: I am happy for you to take this on notice. Can you give us the figures for tails in the claim that are more than two, five and 10 years old?

Mr PLAYFORD: Figures for the outstanding claims liability associated with such claims?

The Hon. ADAM SEARLE: Yes.

Mr PLAYFORD: They are available in the valuation report so that is easy to extract.

The Hon. ADAM SEARLE: I may have missed them. It is not a trick question. I am happy for you to let me know afterwards.

Mr PLAYFORD: I will take that on notice and give you the page reference.

Mr MICHAEL DALEY: On page 29 of your executive summary in the recommendations the final dot point is entitled "front end return to work performance". You say return to work rates have ebbed and flowed but generally deteriorated since about 2007. Then you say, "Underlying this result are varying levels of performance by agents." We have had a lot of evidence over three days of public hearings about performance by agents. How significant a potential problem for return-to-work performance can the performance of scheme agents be?

Mr PLAYFORD: Very significant in the sense that if you miss that early window of opportunity of achieving a return to work they are likely to continue on into the tail. Once a claim gets into the tail there is a significant liability because in all likelihood they will continue on benefits for many years. If you look at the performance of agents—I do not have those statistics here and that would probably be a question for WorkCover given the contractual arrangements with the agents as to how they are measured—there is a significant differential in how agents perform. My experience is, as a generalisation, that the performance on those various metrics between the best performing agent and the worst performing agent can be in the plus or minus 20 per cent range.

Mr MICHAEL DALEY: What does that do to the end result?

Mr PLAYFORD: It can be quite a significant impact on what the liability is for a portfolio that is poorly managed versus the experience of a portfolio that is well managed.

Mr MICHAEL DALEY: Not that we have you on retainer, but what specific recommendations could this Committee offer up to assist in improving that problem?

Mr PLAYFORD: Where do you start? You could probably write a PhD on this topic. I feel for this Committee because you are being asked to look at a very difficult task. The operating model is just one element and the current operating model is an agency model. If you continue with an agency model what is the best way to optimise performance under that model? Again, it is difficult. I make the following observations: Improving competition between agents would have to be part of the answer. It is difficult to encourage competition in the current model because there are significant barriers to entry and exit for agents. Again, there has been talk about IT systems and that is just one example of those barriers. If you are a new agent wanting to enter the scheme you have to have your own IT system. If you are an existing agent and you are not sure about whether you want to be in the scheme it is difficult because if you exit you have to turn off your IT system. There is big cost involved in turning off an IT system and potentially you cannot spread that cost over other parts of your portfolio. So there are challenges in trying to encourage new entrants and also in trying to get the best outcome from your existing agents in the scheme. That is one area where I think there are opportunities to look at how you can improve competition between agents in this model.

The Hon. ADAM SEARLE: This may be a question that only WorkCover knows the answer to but I will ask whether you have the information. WorkCover apparently does not provide published data on the number of workers who have had their employment terminated while in receipt of workers compensation payments. Do you have any knowledge of those figures in New South Wales?

Mr PLAYFORD: It is not collected in the data that WorkCover captures from scheme agents so I do not have any information to answer that question.

The Hon. ADAM SEARLE: Do you know what impact that factor may have on people staying on weekly benefits longer?

Mr PLAYFORD: No.

The Hon. ADAM SEARLE: You refer to the performance of scheme agents in both the peer review report and the actuarial assessment and talk about the two largest agents in the scheme. Which two agents are you referring to as being the two largest?

Mr PLAYFORD: I am referring to QBE and Allianz. It is not as simple as just saying the two largest agents. Both those agents historically were two of the very best performing agents in the scheme. In more recent times their experience is merging back towards the scheme average so they have not suddenly become the worst performing agents in the scheme. I talked earlier about the difference in performance between the best and the worst performing being about 20 per cent. In more recent times that has been merging with everyone moving towards the scheme average. The worst performing agents are getting better and moving towards the scheme average and the better performers are moving back towards scheme average, in an environment where the overall scheme performance has been deteriorating. It is not as simple as pointing the finger at those two agents and saying that they have gone bad, because they are still performing as well as or better than many other agents in the scheme.

The Hon. TREVOR KHAN: If the two largest agents' performance deteriorates then the impact upon the scheme is potentially proportionately larger than the improvement of, for instance, the two smallest agents. That follows, does it not?

Mr PLAYFORD: Yes.

The Hon. TREVOR KHAN: Do we conclude therefore that the underperformance by the two largest agents is negatively impacting upon the outcome as far as the scheme is concerned?

Mr PLAYFORD: It is certainly a part of why the scheme performance is deteriorating but I do not believe it is the full reason, no.

The Hon. TREVOR KHAN: I think we all put our hands up to that. The Civil Contractors Federation has suggested that one way to improve the competitiveness of the agents is, in fact, to allow employers access to more information regarding the performance of the agents. What do you say to that proposition?

Mr PLAYFORD: That sounds like a reasonable proposition.

The Hon. TREVOR KHAN: Is that a basic free enterprise—more knowledge is good?

Mr PLAYFORD: Yes.

Mr MARK SPEAKMAN: What are you referring to when you talk about plus or minus 20 per cent?

Mr PLAYFORD: Plus or minus 10 per cent of a range of 20 per cent.

Mr MARK SPEAKMAN: Of what?

Mr PLAYFORD: Of scheme average.

Mr MARK SPEAKMAN: Scheme average what?

Mr PLAYFORD: Of the particular metric that we are looking at, for example, some of the key ones are just looking at return-to-work rates. Another key metric is an assessment of the outstanding claims liability of each agent's portfolio compared to the outstanding claims estimate of the overall scheme and how that portfolio value of an individual agent would vary if you parameterise using scheme average assumptions as opposed to assumptions specific to that agents' performance.

Mr MARK SPEAKMAN: Mr Playford talked about the two largest insurers not so much underperforming but coming back to the rest of the field. Mr McCarthy in his peer review talked about, in previous valuations, continued deterioration, and that WorkCover should take steps to improve the claims management in the scheme, especially in relation to the two largest agents. Mr McCarthy notes in his latest peer review that some of WorkCover's largest agents do not appear to be improving. What steps do you think WorkCover should be taking?

Mr McCARTHY: I need to clarify where that is.

Mr MARK SPEAKMAN: Pages seven and eight of your peer review.

Mr McCARTHY: The reference on page seven is actually a summary of PWC's actions.

Mr MARK SPEAKMAN: Page eight, weekly payments in the left hand column. WorkCover should take steps in the right hand column. What were those steps?

Mr McCARTHY: I did not set out any steps. It is just that given those two agents were impacting the performance of the scheme, WorkCover needs to focus on them to try to actually work out what steps they should take.

Mr MARK SPEAKMAN: They should do something with a capital "S" but you have not identified what it is?

Mr McCARTHY: Not in detail, no.

Mr MARK SPEAKMAN: On page 174 of the scheme actuary's valuation, the model ultimate intimations column which you say has not been part of your calculations, but why is it there? What is it doing?

Mr PLAYFORD: I apologise that it is a technical actuarial report and not a simple bedtime read. We employ a number of modelling techniques to try to find the answer of what the number of ultimate intimations might emerge for the accident years. One particular approach is a chain level model which is the results over in the model ultimate intimations. That model we find produces reasonable results for the older, more mature accident years. For the more recent accident years it does not give realistic results. If you look to the column to the left intimated to date, you will see that for the more recent accidents years I am talking, for example, June

2009 and more recent. The number of intimations is very low, less than triple figures. So the chain level model is very sensitive to that starting "C" where it projects out an estimate of the ultimate intimations. It is just one particular technique that we have used. The model results are shown in that column. We have overwritten those or used judgement in various other modelling approaches to derive the ultimate number of intimations on which our valuation is obviously based which is that column to the right.

Mr MARK SPEAKMAN: You spoke about improving competition as one way to improve scheme agents' performance. You pointed to the barriers to entry with information technology costs, initial capital cost and then the barrier to exit having that sunk cost. How then can you improve competition between scheme agents if there are those barriers to entry and exist?

Mr PLAYFORD: I do not want to harp on a single one but that is one example of a way of removing that barrier to entry and exit. If you look at the Victorian scheme they have been a lot more agile in being prepared to move agents in and out of their scheme over the various contract periods compared to New South Wales WorkCover Authority. I suspect there are a variety of other examples that could be thought of about how to improve competition. Publishing information is another example of that. It cannot just be around the remuneration rate. I think there has to be greater publicity of data to help inform the market around the performance of agents. That would help drive improvements in competition.

Mr MARK SPEAKMAN: Have you followed any of the oral evidence that has been given since you appeared?

Mr PLAYFORD: Some elements of it but I have not read all the submissions and I have not read all the references.

Mr MARK SPEAKMAN: Is there anything that has emerged in the oral evidence that we have not dealt with so far on which you would like to comment?

Mr PLAYFORD: In my original response to the supplementary questions I have made a written response to various assertions made by the legal groups around my valuations about the peer review process. I think it would be simplest just to wait until you have the opportunity to read those written responses to see if they satisfy the Committee.

The Hon. TREVOR KHAN: I refer to the top of page four of Slater and Gordon's submission 126 where we get back to the old issue of how much are the administration costs of running WorkCover. They start off with $70 million in 1999 and rise to $600 million recently. It is a figure that has been raised by other witnesses. We were told by you previously that the $600 million is not right. Will you provide an indication of what are the figures? On the face of it those figures are being repeated to the Committee.

Mr PLAYFORD: My understanding is that WorkCover has gone away and dug into those figures and has provided them in its response to their supplementary questions. I did not go and look at it. WorkCover did that. My understanding is that it has addressed that.

The Hon. TREVOR KHAN: Again it is "watch this space"?

Mr PLAYFORD: Unfortunately I think it is.

CHAIR: What is your view on the relative profitability of the various agents? Has it not come out in any of your analysis?

Mr PLAYFORD: It is the challenging one. Certainly the view of the agents is that it is not particularly profitable for a number of them to operate in the scheme. There has been a number of reviews of the agent remuneration arrangements over the years and a lot of that has been driven by concern that the agents are not receiving sufficient remuneration to make it profitable enough for them to invest in this scheme. So those remuneration arrangements have been subject to reviews. One of the challenges of rewarding on performance is that in an environment where the scheme deteriorates as a result of the global economic crisis, and agents in the scheme deteriorate, if that were a means to reduce remuneration to agents there is a risk then that that might have the business case to invest just when you want them to invest and you are trying to improve the scheme.

Once again you could then get into a downward spiral of poor investment leading to poorer results and less remuneration towards less investment again. It is challenging and that is why I believe to encourage competition you should not just focus on incentivisation by agent remuneration arrangements; you need to encourage competition via publishing information, by reducing barriers to entry and exit and so forth rather than purely trying to incentivise the remuneration rates. If you are not careful you could end up with an unintended consequence of driving under investment just when you need it.

CHAIR: Are we in fact not already starting the first circle of the spiral at the moment?

Mr PLAYFORD: That could be part of the problem at the moment.

CHAIR: Do we have too many agents given what you have just said?

Mr PLAYFORD: There are pros and cons to fewer agents and pros and cons to more agents.

The Hon. TREVOR KHAN: It is two bob each way.

Mr PLAYFORD: It is not simple. For example, if we had fewer agents that would increase market dominance of a small number of agents, which could be problematic if there were a takeover competition between two larger insurance companies. Do you really want one agent suddenly having 50 per cent market share? That complicates the equation of what is the right number of agents. It comes down to a policy decision.

CHAIR: You talk in terms of uniformity of systems and of reporting therefore as being one side of the same coin. Do you think that from the nominal insurers' point of view, and perhaps WorkCover's point of view, there has been an underinvestment in policy development and implementation on that side of the coin?

Mr PLAYFORD: Answering the question more broadly, my observation is that I made an assertion when I first appeared that I do not believe WorkCover has been invested in since the day it was created in 1987 to the level that it needs to be in capacity and capability. I used the example of the IT system. If you look at the number and calibre of people employed in the Victorian WorkCover Authority you will see that it is larger proportionally compared to New South Wales WorkCover. I am not talking about the workers compensation area—it is essentially the insurance company of WorkCover. Its ability to do the things that you suggested is hamstrung by the extent that it has the right number of people and the right calibre of people to do that. If you want to set WorkCover up for success in the future, that needs to be considered.

CHAIR: Do you think that the intervals between substantive reviews of the WorkCover arrangements should be shorter?

Mr PLAYFORD: It has been more than 10 years since the scheme was last reviewed. I believe that schemes of this nature around Australia would benefit from regular review—perhaps every five years or so. My experience is that most reforms to these schemes happen when they get into crisis. It would be much better if they were looked at regularly and corrections made so that they do not get to crisis point before corrective action is taken.

CHAIR: That is what I was leading up to. Should we perhaps do a review every five years regardless of whether the scheme is going well or is in crisis? Is that what you are suggesting?

Mr PLAYFORD: Yes.

The Hon. ADAM SEARLE: You mentioned the appropriate level of investment in WorkCover so that it can properly fulfil its function, and you compared that unfavourably with its Victorian counterpart. I do not want to put words in your mouth and if you do not feel you can answer you should not, but what should be the level of investment in the WorkCover regulator and in what areas is the investment needed? Even if you cannot provide a dollar figure, where is the investment needed?

Mr PLAYFORD: I certainly cannot provide a dollar figure. Capability is obviously part of understanding it as an insurance business. Leadership from the top down in terms of taking ownership in relation to the objectives of the scheme, responsibility that it is financially stable and meets its objectives of achieving return to work, and good health and social outcomes for injured workers are some examples.

CHAIR: Would it be helpful, as was suggested by someone today, to hive off the construction industry into its own fund, like the mining industry? Would it be a net benefit or detriment to the overall scheme?

Mr PLAYFORD: I do not think it is an obvious answer. There are pros and cons. I would want to take that question on notice.

CHAIR: Please do. One of the things that concerns us is the size of the scheme. When you are trying to do running repairs on the engine of a dirty great big B16 it is very hard to do much. Would the scheme be better off if there were specific areas of specialisation with industries being hived off to two or three minor schemes as happened with the mining industry? It is a little like the Treasury-managed fund—although that has its hands in the Treasury's pocket to a large degree. They are better run because they are not trying to be all things to all people.

Mr PLAYFORD: I will take that question on notice.

The Hon. TREVOR KHAN: My question goes to some of the evidence presented this morning. Do you have figures on the level of avoidance of the payment of workers compensation premiums in industries such as the building industry?

Mr PLAYFORD: There is no evidence that I am aware of.

The Hon. TREVOR KHAN: No evidence?

Mr PLAYFORD: Certainly not that I am aware of. The data that WorkCover collects is about what has been paid. You cannot extrapolate that to say what has not been paid or what has been avoided. I am not aware from my work what research might have been done in that area. There may well be some research.

The Hon. TREVOR KHAN: No information has come across your desk about an underpayment of premiums by x per cent?

Mr PLAYFORD: No.

The Hon. TREVOR KHAN: Mr McCarthy, do you have something to contribute?

Mr McCARTHY: An uninsured liability indemnity scheme has been set up. It provides compensation to people who have a work-related injury where the employer did not take out a policy. Not many claims are made. That gives you an idea how many claims have been made because employers have not taken out policies. But there may be many employers who do not take out policies and there are no claims.

Mr PLAYFORD: That is a good point. Page 231 of my evaluation shows details of the uninsured liability indemnity scheme. There is information about the number of injured workers covered by that scheme. That gives an approximation of the size of the issue.

Mr MICHAEL DALEY: The Australian Medical Association not surprisingly gave evidence this morning that the scheme could benefit from the introduction or reintroduction of medical assessment panels at an early stage to determine not only causation but also to provide a diagnosis and recommend treatment. This might not be up your alley, but do you believe that would that help?

Mr McCARTHY: That operates in the CTP scheme and it seems to work reasonably well.

The Hon. ADAM SEARLE: With regard to the underinsurance issue, some submissions have suggested that in some industries—for example, the construction industry—an employer might take out a policy to cover 10 employees but actually has 20 or 30 employees. Therefore, if someone is injured is it always one of the 10 rather than one of the 20 or 30. You may not have information about that, but that is the anecdotal evidence the Committee has received.

Mr McCARTHY: That may be true. There is a whole issue around contractors as well. You have to be careful in determining whether these people are really employees or contractors. I do not understand the rules around contractors and taking out workers compensation insurance, but they are complex.

The Hon. TREVOR KHAN: That is a problem.

Mr McCARTHY: I know there are many issues around that. Many contractors do not take out workers compensation policies; rather, the firm takes out a public liability policy.

The Hon. ADAM SEARLE: It is under a different policy?

Mr McCARTHY: It is debatable whether they are employees. It is a complex area and WorkCover may be able to supply information about how that works.

The Hon. ADAM SEARLE: But you do not have any hard data about that phenomenon?

Mr McCARTHY: There was an Institute of Actuaries seminar two years ago in relation to a paper that looked at the issue around contractors which happened to be a paper that someone from my organisation did. I can send it to you; it is publicly available.

CHAIR: You have a number of questions on notice, including Mr Daley's. The secretary 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 will be returned within three working days after you have received the transcript.

(The witnesses withdrew)

CAMERON JOHN BULLUSS, Compensable Bodies Representative, New South Wales Branch, Australian Physiotherapy Association, and

CHRIS WINSTON, Manager, New South Wales Branch, Australian Physiotherapy Association, sworn and examined:

TAMER SABET, President, New South Wales Branch, Australian Physiotherapy Association, affirmed and examined:

CHAIR: Witnesses are advised that if there are any questions on notice that you are unable to answer today but that you would be able to answer if you had more time and certain documents to 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 of your evidence that your response to a particular question should be heard in private by the Committee, could you please state your reasons and the Committee will then consider your request. Mr Sabet, would you like to make a short five minute statement?

Mr SABET: Chairman and Committee members, thank you for the opportunity to make our written submission and for the further opportunity to speak to you personally today. We understand that your task in reviewing and recommending changes to the WorkCover scheme in New South Wales is a considerable one, as is that of our members in treating the thousands of injured workers who pass through our practices each year. It is clear from the issues paper that the main thrust of this review is about the cost of the current scheme. Many of our recommendations accordingly have addressed this. Our submission is purposely patient-centric and has the following key recommendations:

First, that more focus is directed to the prevention of work injuries. Suggested strategies include—but are not limited to—workplace redesign and education of workers in their work environments. More importantly, we have physiotherapists trained in providing such advice. Second, that there should be a clear focus on return to work, wherever possible, with emphasis on supportive strategies to achieve such early returns. Third, that there should be identification of the most appropriate physiotherapist or provider to manage injured workers, with the establishment of referral procedures specifically to titled and specialist physiotherapists in difficult and more complex cases. Fourth, that injured workers have freedom of choice in selecting their treating physiotherapist, a corollary of which is that the Australian Physiotherapy Association does not support any proposal for preferred provider schemes. That is detailed in our submission.

Fifth, earlier and regular testing of injured workers for their capacity to return to work should occur. Sixth, physiotherapists should be allowed to write WorkCover certificates of capacity for the injured workers they are treating, rather than injured workers being required to visit their medical practitioners just to get such certificates. Seventh, cessation of benefits to injured workers once assessed by a suitable panel of health professionals, including physiotherapists, to be capable of durable return to work. This should be on a case-by-case basis and not on a time-cap basis. Eighth, there should be an improvement in the consultative mechanism between independent physiotherapy consultants and other consultants, insurers and the professional industry such as the physiotherapy profession, to facilitate best outcomes, expedited recovery, and early return to work for injured workers, rather than the perceived bias of such consultants being against treating practitioners.

Ninth, the Workers Compensation Commission should also include physiotherapists and/or independent physiotherapy consultants, as these health professionals are the most appropriate to resolve conflicts relating to physiotherapy management at this level. Finally, legislation to provide adequate, punitive powers for WorkCover to deal with and recover money from fraudulent practitioners, but only after conciliatory and/or educational measures have failed. It is incumbent upon such a provision that all WorkCover rules for all providers, are written, comprehensive, unambiguous and communicated. In summary, our submission identifies strategies that are proactive for the scheme, focussed on early and best intervention by the most appropriate provider, with mechanisms in place for peer support and review and specifically for the ability to refer to titled and specialist physiotherapists who have specific, demonstrated expertise. We welcome any questions you may have regarding our submission.

The Hon. ADAM SEARLE: In terms of improving return-to-work rates, what do you see as the barriers that are preventing or not achieving early intervention and, therefore, earlier return to work?

Mr SABET: We will probably answer this as a collective, so I will start and ask Cameron to supplement my answer. I will talk to you as a provider in the scheme as well and hopefully broadly reflecting the experiences of some of the members who are physiotherapists. There are numerous barriers: primarily, providers within the scheme are not trained in how the scheme works and they are probably the more vital providers. Physiotherapists in general are trained, but not the practitioners certifying work certificates. For example, the nominated treating doctors are not required to undergo specific education in the scheme. That can be a barrier, particularly where beliefs or biases relating to someone's certification could differ between two different providers. One often sees that occurring. I make this commentary, not only as a person treating in the scheme but also as a person reviewing files for and on behalf of agents within the scheme and I see it from both sides. That can be a significant barrier to the return to work. A personal reflection would be that communications from a vital component—the legal side of things—is often not transparent. That can also influence return to work dramatically.

Mr BULLUSS: The evidence suggests with return-to-work rates, if you can get people back to work earlier then their durable return to work rates are going to increase. As treatment providers, we sometimes find it difficult to do that for communication reasons. To get somebody back to work we have to communicate with a nominated treating doctor and we have to communicate with an employer. In an ideal situation we get out to the work site, look at the environment and negotiate a position where somebody who would otherwise be at home can get on to some light duties and get back into the workplace. The current scheme does not allow it. Physiotherapists are not allowed on site. So if I am seeing a patient with an injured back, I am actually not allowed on site to visit the employer, to look at the work environment and to make suggestions. That has to go out to a rehabilitation provider, to another person.

Mr SABET: In addition to that more often than not things like workplace assessments are often conducted by rehab providers. Usually one of the requirements is that the injured worker should be certified fit for some hours or even one hour a week on their certificate, and that could be six months down the track. So knowing what these people actually do in their workplace in order to require them to get there is not known till six months after. One of the elements in our submission was actually encouraging that workplace assessments are conducted early on so where they are going is actually known from the very beginning, which makes, I think, logical sense.

The Hon. ADAM SEARLE: What about the role of the scheme agents in terms of getting appropriate providers in touch with the injured worker at an early stage? Do you have any views on that or any experience of it?

Mr SABET: Again the criterion for the involvement of a rehab provider, as directed by the insurer, often relies on the fact that the injured worker must have an hour or two hours on their certificate. So they have to have working capability first prior to that involvement, which again reflects on why workplace assessments are often not done and why you do not know what they are going to do early on. In fact the treatment or any management provided more often than not can be somewhat of a guess.

The Hon. ADAM SEARLE: Who engages your members in this sort of thing?

Mr BULLUSS: We are engaged by the nominated treating doctor. The rehab providers are separate. They can be brought in by the doctor or the insurer—

Mr SABET: Or the employer or the injured worker.

Mr BULLUSS: One of the big problems I think is that there is double and triple handling of cases. When a person gets injured they see the doctor first, they get referred to a physiotherapist and sometimes a rehab provider is brought into it. There are three histories, three physical assessments and a massive churn of paperwork, which I just think is unnecessary if it was held, say, by the physiotherapist who is treating the person. I do not know what the actual cost of a rehab provider is, but it is my understanding that it is something like $4,000 or $5,000 per claim. A lot of that is actually taken up by history and paperwork and doing something that has already been done once or twice by other providers.

Mr SABET: To broadly answer your question, communication in itself is a major issue within the scheme certainly.

The Hon. ADAM SEARLE: In the box on page 11 of your submission you state:

> WorkCover NSW should abolish the top-up system to discourage persons with less serious injuries from claiming compensation …

What do you mean by that? Does that mean at the end of the top-up payment people do not have to return to work on limited duties?

Mr SABET: I will let Chris respond to that question.

Mr WINSTON: Let me just read that again. I think the concern here is that injured workers can start off with perhaps what is judged to be a lower percentage of injury but with various top-ups that can build up to a higher point.

The Hon. ADAM SEARLE: Top-up and assessments, not top-up pay?

Mr WINSTON: No, this is talking about top-up following subsequent assessment. The concern is that it would then lead to a point where you are at the 15 per cent level, or whatever level is deemed to be a higher payment. I guess it gets back to this early assessment aimed at early return to work. But a lot of this can be improved by that happening.

The Hon. ADAM SEARLE: In terms of claims for people who are off work for more than five days, what is the experience anecdotally of your members of employers being able to provide suitable work for injured workers?

Mr SABET: My personal experience is that insofar as the process of identifying whether work is appropriate one has to bear in mind the fact that some firms are not big enough to have, for example, return-to-work coordinators and some firms are too small to understand how the scheme works. Again the agents typically do not encourage referral—and I am not sure if this is built into the scheme or not—to the rehab provider until they have suitability and certification for some work. So my personal experience would be that it is done reasonably poorly.

Mr BULLUSS: I would agree with Tamer. I think with small employees if someone is injured they either have the job or no job. So frequently they are saying to their employees that there are not any suitable duties and that leaves them off. Sometimes there are but it is just that they have not identified what their capacity is and they do not feel qualified to actually comment on it, so they leave them off work until they are right.

The Hon. ADAM SEARLE: How can that be improved?

Mr BULLUSS: Again I think a negotiated assessment on site would make a huge difference. If someone who was suitably qualified—not all physiotherapists at this point are qualified to do this—could go out with the worker and meet with the employer, look at the environment and say, "You can do X, Y and Z", I think that would get people back to work a lot quicker.

Mr SABET: More importantly, to take that broadly is to eliminate the perception that the injured worker must have some capacity for work for a rehab provider or for the right person to actually go to the workplace and start negotiating these processes early. The point here again is—Chris just commented on it—that it needs to be done very early rather than late.

Mr BULLUSS: It is a complex issue and not all providers are educated. The previous group was talking more about more investment needed in the scheme. I think even in terms of physiotherapists there needs to be some investment in training to make sure that all providers are suitably qualified to do this, but that would be the ideal world for it.

Mr ROB STOKES: The Committee has heard evidence about commutations and a variety of views are held on that. Under the second last heading on page two of your submission it states:

> Workers whose injuries are less serious should have greater incentives to return to work, whilst more seriously injured workers should receive increased weekly benefits and lump sum compensation payments …

So do you think commutations should be received for more seriously injured workers? Is that your basic contention?

Mr SABET: I think there needs to be clearer definitions on what constitutes a serious injury and what does not. The reality at the moment is that simple soft tissue injuries, for example—again this is my personal experience as a physiotherapist and it is not generalised to every single work injury that comes through the day—have legal involvement early on and that can influence the return to work. I have some specific information that I can divulge later, which very rarely do we see—no, I will tell you now. We have some written evidence to show that even clinically solicitors have given advice in writing to injured workers relating to prescription medication they should or should not take that will define whether or not they will get certain amounts or payments, for example, and a reduction in work certificate hours being advised in writing to an injured worker. Again I will not generalise it across all but it does influence the workplace.

Mr ROB STOKES: And you can provide that to the Committee?

Mr SABET: I am happy to provide that and for it to be de-identified, yes.

The Hon. TREVOR KHAN: I take your evidence to be suggesting that in some relatively small percentage of cases—we have already identified that on this Committee five of us are lawyers—there are some lawyers who are essentially discouraging workers from returning to work? Is that the nub of what you are saying?

Mr SABET: I will reflect that as an example within certainly my own clinical practice. As I have said, I work in a multidisciplinary practice with surgeons. It is not uncommon for the question relating to when someone will be assessed for whole person impairment to arise prior to a major surgical procedure being undertaken on someone's spine. One has to ask the question as to why that actually occurs. The reason we understand for that to occur is that it pushes them above the 15 per cent whole person impairment. So one has to raise all of those questions as to whether or not these decisions being made are being influenced by secondary bodies relating to monetary objectives.

The Hon. TREVOR KHAN: Secondary bodies being lawyers.

Mr SABET: I am not going to generalise; I think there are some ethical lawyers out there too. But it is definitely an issue.

The Hon. NIALL BLAIR: Can we just go back to the example of the physiotherapists being able to go to the workplace and do an assessment? Is that currently the role that the rehabilitation providers are doing, visiting the workplace and looking at the functions?

Mr BULLUSS: Yes, it is. They do not do it with every worker. It is actually a fairly uncommon referral. I have no statistics on that but it tends to have to be a fairly long-term claim before that gets brought into play.

The Hon. NIALL BLAIR: Do you know what qualifications you need to be one of those rehabilitation providers?

Mr BULLUSS: A rehabilitation provider, they can be—I do not know if there is a minimum qualification. There are a lot of occupational therapists, exercise physiologists, some physiotherapists.

Mr SABET: There is a multitude of health professions typically. There is a criteria that WorkCover has established, which require an element of experience to be demonstrated. Again, they vary.

Mr BULLUSS: I do not think they do it badly. I think they get brought in very late and when they do get brought in I think it is very expensive because it becomes a paper chase. Physiotherapists typically get billed by a session for a client. I think it is $69.50 or something for a 20 to 30 minute clinical session, whereas for a rehabilitation provider it is time billing. It is six minutes is one minute; one minute is six minutes and so forth, as in the legal scheme. I think that is open to interesting billing practices sometimes.

Mr ROB STOKES: Creative.

Mr BULLUSS: Yes.

The Hon. NIALL BLAIR: I am not sure if you have read the Civil Contractors Federation submission but they advocate for a system that the treating professionals, the treating doctor, should be separate to, I guess, a panel to be made up of a medical doctor, occupation therapist, psychologist, dermatologist, physiotherapist who would be doing the work capacity assessment on the patient. Can you take particularly recommendation 8 in submission 170 on notice and provide you response to that proposal?

Mr WINSTON: Yes.

Mr MARK SPEAKMAN: Could I ask you to take sections 9, 10 and 11 of that same submission on notice as well and provide a response? Dealing with work capacity testing, touching on paragraph 1.9 of your submission, what role do you see physiotherapists having in that?

Mr SABET: The work capacity testing formally is—I mean, there are formal tests that are done. The problems that we have with these tests is that they are not overly valid, unfortunately, and a majority makes them unreliable to deliver. The issue relating to work capacity testing itself when determining capacity for a worker, we believe, should be undertaken by the professionals who are, technically speaking, able to treat using work-related activity. So unless everything is done ultimately to simulate the activity these people will encounter in the workplace to make sure that they have confidence in themselves and the physical capability to undertake that. It does not have to be done as a formal test. The reality of these tests are they are not valid tests anyway and there are many reasons why testing someone for work in a formal test manner, there are many criteria to determine why it may or may not fail.

Mr MARK SPEAKMAN: Why do you say they are not valid?

Mr SABET: They are demonstrated to not be valid.

Mr MARK SPEAKMAN: In what way?

Mr SABET: Through science and research. There is medical physical work performance evaluation [PWPE], there is numerous, probably no less than eight of these tests but they are not valid in the sense that whether they perform well on the test does not define how they will perform in the workplace because there are many reasons why someone might perform in the workplace. That includes relationships at work, medico legal involvement—we will definitely put that one in as well—the desire to work or not, all of these are factors in determining how they perform in that particular workplace.

The Hon. PAUL GREEN: One of the things we are finding through the inquiry is about data collection. I wonder whether you have a view on it. There are about seven different software systems. If the inquiry was to suggest that it be simplified, what would your views be on that in terms of being able to share the information that WorkCover is getting to make more informed decisions?

Mr BULLUSS: I personally think it would be a good idea. I think to be able to get some nominal data on what is a good provider outcome versus a bad provider outcome would be very useful in determining who is even fit to see these people.

Mr SABET: I would agree entirely with Mr. Bulluss. The more data and the more real time data in particular available, we were provided with some data from WorkCover which was 2009 and unfortunately lots of things happen in two years so the use of that data probably is not going to be overly valuable here today. But certainly information regarding provider performance, the performance of the scheme in general would be overly useful. I can draw a particular example. I think last year there was a paper published here in Australia relating to the return to work rates following lumbar fusion surgery. The author who provided that was surprised at the time that we did not know any information about this very costly procedure that was being done and what the return to work rates were. To his surprise the return to work rates following this for people in the WorkCover system, which has been published, was in the order of 3.5 per cent. Had that information been known before for that cost of surgery then again there would be some questions raised as to the appropriateness of particular procedures or interventions within the scheme.

The Hon. PAUL GREEN: In terms of red tape, what would you cut? If you had an opportunity to cut red tape or reform the legislation what would you do?

Mr SABET: Good question.

Mr BULLUSS: I would look at the Victorian model. The first point of contact I believe in the Victoria model is the general practitioner and that is often appropriate because not every cause of basic back pain is necessarily from the back. Sometimes it is from the organs. What may appear to be a back injury may not necessarily be. Following that, the treating physiotherapist has the opportunity to write the WorkCover certificates. So rather than having a periodic review with the GP to basically create more administration, it would leave that job in the hands of the person who is actually seeing the patient who knows them. I think it is an unnecessary burden on GPs. I do not think, respectfully to them, that they are actually qualified generally to even comment on these conditions. It is just not there. It would be like asking me to comment on someone's gastrointestinal problem. It is just not part of my training.

Mr SABET: One of the points of our submission was ensuring that the injured worker had the opportunity to see the appropriate person. Within physiotherapy it is important to recognise that not all physiotherapists are the same, not all have the same expertise as well. There is a specialist pathway or a professional pathway, we call it, involving different tiers. Currently those tiers are not recognised within the scheme at all, despite numerous attempts to have the pathway acknowledged or recognised. It leaves out a lot of providers who are able to provide a particular expertise, potentially cut inappropriate intervention, early or direct intervention in the right manner. That is probably the first thing I would change from my personal involvement within the scheme.

CHAIR: Thank you. You have 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 within three working days after you receive the transcript.

(The witnesses withdrew)

STEPHEN CRERAR, Manager, Human Resources, Shoalhaven City Council, and

ANGELA KEATING, Workers Compensation Coordinator, Shoalhaven City Council, sworn and examined:

CHAIR: Witnesses are advised that if there are any questions that 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 the question on notice and provide us with the 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 will then consider your request. All witnesses must be sworn prior to giving evidence. I ask that you each in turn state your full name and job title and swear either an oath or an affirmation, the words of both the oath and affirmation are on the cards in front of you.

The Hon. PAUL GREEN: I note an interest in this: I am the mayor of the city of Shoalhaven City Council.

CHAIR: Do either of you wish to give an opening statement?

Mr CRERAR: Yes, please. We would like to thank the Committee for providing Shoalhaven City Council with the opportunity to give evidence at this inquiry. Shoalhaven City Council is self-insured for workers compensation. In that capacity council employs, pays and manages injured workers. We feel therefore that we are in a unique position to comment on the effectiveness of the current scheme. We experience the direct consequences and impacts of injuries, claims and regulatory impositions.

Shoalhaven City Council is a well-managed and significant regional local government employer. The current scheme is not balanced, fair or financially viable. Major reform is required in our view. Our WorkCover bond has trended upwards over the last 10 years, having doubled from approximately $3 million to over $7 million currently. This money could be better utilised for greater employment opportunities of council and for additional services to the community. This is not sustainable. This increase is not due to the way we manage our claims but due to an increase in long-term tail claims and their associated costs. Shoalhaven City Council does not advocate draconian reforms but seeks change based on fairness and balance. For workers compensation to be viable in New South Wales into the future council advocates for a system that takes the interests of all parties into account.

Council proposes change in the following areas: capping weekly benefits and medical costs to prevent the ever-increasing expansion of tail claims; introduction of unrestricted commutation or a final settlement mechanism; significant strengthening of defences for psychological claims—in council's experience it is almost impossible to defend most psychological claims even though the employer has taken legitimate action based on operational requirements—creating incentives such as capping benefits and limiting the provision of make-up pay for injured workers to return to work and to increase hours of work; a reduction on the monopoly and influence that general practitioners possess—council strongly advocates the requirement of binding independent medical assessments on capacity for work; and a review of the disease provision given the overwhelming impact on self-insurers—in council's case we have a significant risk created by the ageing workforce. We look forward to discussing these issues and others contained in our submission with the Committee.

The Hon. ADAM SEARLE: In terms of the step down in payments—this might be different because you are a self-insurer, but as I understand it you are covered by the Local Government Award?

Mr CRERAR: Yes, that is correct.

The Hon. ADAM SEARLE: So when people go off on weekly benefits they are paid just the award rate of pay, is that correct or do you do something different?

Ms KEATING: It depends on if they are partial or totally incapacitated. If they are totally, they will get the award-based rate, but partial incapacity they get their allowances and overtime, and it is an average over the last 12 months.

The Hon. ADAM SEARLE: But if you are totally incapacitated and you are off, you are just on the award rate of pay and that is almost always significantly less than their actual rate of pay if they were still at work?

Ms KEATING: No.

Mr CRERAR: It really depends on what sort of work they do and whether they get regular overtime and things like that.

The Hon. ADAM SEARLE: In terms of your claims experience, which category do most of the people who are permanently incapacitated off work on weekly benefits fall into? Are they better or worse off than if they had stayed at work?

Ms KEATING: I would say it is 50:50.

The Hon. ADAM SEARLE: So half of them are worse off than if they were still at work?

Ms KEATING: Yes.

The Hon. ADAM SEARLE: So they are already experiencing a step down?

Ms KEATING: Are you referring to the first 26 weeks?

The Hon. ADAM SEARLE: Yes, when they are off sick, off on workers compensation; they are receiving less than if they were at work?

Ms KEATING: If they are totally incapacitated, yes.

The Hon. ADAM SEARLE: So they already have an incentive to get back to work as quickly as possible, do they not?

Ms KEATING: Yes.

The Hon. TREVOR KHAN: Half of them?

The Hon. ADAM SEARLE: I understand it is half, and the other half do not.

Mr CRERAR: But that would not be a significant amount of money, it would just be their regular first aid allowance or tool allowance and possibly some regular overtime.

The Hon. ADAM SEARLE: No shift allowances or anything like that?

Mr CRERAR: Yes, possibly.

The Hon. ADAM SEARLE: In terms of work capacity testing, how do you envisage that working? What exactly would be tested for? Someone's ability to perform certain movements or tasks, and would that be married up with actually what work is performed in that person's former workplace?

Mr CRERAR: That is definitely one way of looking at it and we do that periodically by using rehabilitation providers, but the problem with that of course, as you have no doubt heard in previous discussions, is that there is no binding effect of it and the injured worker can go back to their general practitioner and they do not necessarily have to cooperate. We have had good success with occupational physicians, with medical specialists in giving us good quality advice on capacity to work but again that is not binding so the injured employee can go back to their general practitioner.

Mr MICHAEL DALEY: Section 3 of your submission deals with section 11A of the Workers Compensation Act, talking about defences to psychological injury. Can you elaborate on some of the examples of what you are trying to do away with?

Mr CRERAR: Certainly. It is very restricted in what you can lodge a defence to in regard to that section, things like redundancy, transfer, discipline and the like. If the employer makes a decision based on normal business operational needs and an employee feel stressed about that, if they have a perception of stress, the case law is they have a legitimate claim even though the employer reacted appropriately and took reasonable action to run their business. We have had instances where we have had some part-time employees that get additional occasional hours working in our aquatic centres and through seasonal ebbs and flows their hours are cut obviously in winter they have gone off on stress leave and we have had no defence to that. It is a very difficult section.

Ms KEATING: Can I add the negative impact that that creates in a work crew once somebody has launched a psychological claim that should have been dealt with within human resources or within the employment arena, the doctor has certified them as having a psychological injury and there have been occasions where the diagnosis has been a stress disorder, which is not compensable, so we have declined the claim and the worker has come back with a new certificate with a different diagnosis. I am sure all the witnesses have said that the longer a worker is off work the harder it is to come back, particularly with psychological injury. We believe it should be dealt with appropriately within human resources rather than going off to a doctor and obtaining a certificate.

The Hon. ADAM SEARLE: You say it is reasonable to cap medical expenses to an amount and you give the time of about two years. What about people who have ongoing injuries or the need for ongoing medical intervention such as surgery? That proposal would leave those people falling back on the general health system, would it not?

Mr CRERAR: I tend to agree. They have to be some exceptions where that is required. It cannot really be a blanket rule.

The Hon. ADAM SEARLE: So it is not a hard and fast rule; it is more of a time when you have to see whether there is ongoing need?

Mr CRERAR: That is right.

The Hon. ADAM SEARLE: Item 14 on page 4 of 6 talks about strengthening the regulatory framework for direct providers. As a self-insurer you are able to decline payment for medical treatments, are you not, if they are not reasonable or necessary?

Mr CRERAR: Yes, we can dispute and we can decline, but more often than not it is lodged in the Workers Compensation Commission and it is overturned. Again there is no strong regulatory framework for us to be able to do that based on evidence-based medicine when it is deemed not to be reasonable or it is not working, so it is very difficult.

Ms KEATING: And we need medical evidence and issue a section 74 notice. We cannot just say no, we do not believe that the treatment is reasonable or necessary. There is a process that is very time-consuming and costly to go through.

The Hon. ADAM SEARLE: How do you see that being improved if you could have your way?

Ms KEATING: Our biggest issue is more with conservative treatment, such as physiotherapy and chiropractic, and the excessive treatment workers have. Sometimes it goes on for years and hundreds and hundreds of treatments and the injury is still not resolved or improved. I do not know the answer, but it is definitely an issue for us.

Mr CRERAR: There is a good guide for recovery periods with certain treatments. WorkCover has good evidence-based guidelines that enable to you to make a pretty good assessment of how long someone should be getting that sort of treatment.

The Hon. ADAM SEARLE: The duration for the kind of injury?

Mr CRERAR: That is right, the recovery periods and things like that.

The Hon. ADAM SEARLE: Has it been your experience that a fair amount of resources are expended on this sort of ancillary treatment, not really medical treatment, that is just not producing any great benefit?

Ms KEATING: Yes. I think New South Wales has the highest expenditure on service to workers but our return-to-work rates are so low I just do not think it is really helping the workers. As long as the treating doctors are supporting that treatment in their management plan on their WorkCover certificates we have to continue to pay those providers.

The Hon. ADAM SEARLE: What is your return-to-work profile like?

Ms KEATING: It is very good. One of the advantages of being self-insured is that we get people back to work. Our biggest problem is our tail claims, which take up almost 90 per cent of our costs yet are only 10 per cent or less of our claims.

The Hon. ADAM SEARLE: Is that from before you were a self-insurer?

Mr CRERAR: No, not all of them. They are just people who have left the organisation and they are very hard to control.

Mr MARK SPEAKMAN: Section 5 of your submission, at the bottom of page 2 and more particularly at the top of page 3, refers to incapacity payments. You say, "The current approach encourages injured workers to obtain medical certificates from treating doctors for long periods, which can sometimes defy reasonable evidence-based recovery times." From your experience, what long periods are you talking about?

Ms KEATING: If you are referring to tail claims, some of ours are 5, 10 or 15 years old. Once they have been totally incapacitated for 26 weeks the chances of coming back after that are almost zero.

Mr MARK SPEAKMAN: Are you talking about medical certificates for long periods?

Ms KEATING: They are issuing certificates for one year. A doctor is saying that a worker will be totally incapacitated for a year from the date on the medical certificate. We do not understand how they can foresee that and why they are not reviewed more regularly.

Mr CRERAR: Fundamentally it is very easy to go to a GP and get a certificate for two to three months whereas it is our experience that that worker should be back at work within days or weeks.

The Hon. TREVOR KHAN: How many people are employed by the council?

Mr CRERAR: Between 1,100 and 1,200 at any given time.

The Hon. TREVOR KHAN: What is your total wages bill?

Mr CRERAR: Around $60 million.

The Hon. TREVOR KHAN: And you have to provide a bond of $7 million?

Mr CRERAR: Yes. In WorkCover's eyes that is based on our long-term liability, which last time was $4 million-odd, and they add another 50 per cent on top of that.

The Hon. TREVOR KHAN: As a fudge factor?

CHAIR: That is exactly what it is.

Mr CRERAR: We would argue our workers compensation costs are only between $1 million and $1.2 million a year, therefore why can they not average the costs over a three-year period and retain that as a bond rather than the inflated $7 million that they currently have?

Mr MARK SPEAKMAN: In section 10 on page 4 of your submission you nominate a figure of 10 per cent. What is the rationale for that figure?

Mr CRERAR: That would be a fairly significant decline in capacity so we think it would be reasonable to have a further claim for whole-person impairment.

Ms KEATING: The issue with whole person impairment is if it is only 1 per cent or 2 per cent the legal costs are almost three or four times greater than the actual amount being received, so it seems like a lot of money is being wasted on lawyers and not going to the worker. It could be a little bit higher, because in New South Wales if it is 1 per cent you can claim, and it takes up a lot of time of the case manager, solicitors and the worker for just $1,250.

Mr ROB STOKES: In your opening comments you mentioned claims for psychological injury. What proportion of your organisation's claims would be for psychological injury?

Mr CRERAR: We have had a huge increase in the past 18 months or so. It is probably about 15 per cent; two years ago it would have been only 1 per cent or 2 per cent.

Mr ROB STOKES: What is the nature of those claims for psychological injury? Is it bullying?

Mr CRERAR: Yes, some of that and, as I said earlier, financial hardship due to rostering changes. It could be bullying or interpersonal conflict.

Mr ROB STOKES: We heard evidence earlier of claims being submitted in response to disciplinary procedures being initiated.

Mr CRERAR: Yes, we had those as well. That is a defence but you still have to go through the whole saga of disputing the claim and more often than not that gets lodged in the commission for a further review and they are very hard to defend.

The Hon. TREVOR KHAN: Is there any commonality in terms of work site, a medical practitioner providing a certificate, a legal practitioner providing advice between these claims?

Ms KEATING: There have been a few claims within one work crew in one area in one of our depots. That is probably the only one that has shown some consistency. As I said earlier, it is the impact that that claim has on those around it because usually a psychological claim requires a factual investigation and everyone in the crew is interviewed. A lot of the time they do not realise that if the claim is declined those statements will be attached to the dispute notice. It just causes a whole crew to—

The Hon. TREVOR KHAN: Fracture.

Ms KEATING: Yes.

Mr ROB STOKES: You mentioned the need to re-examine defences to psychological claims. What do you have in mind: changing the threshold or changing the definition of what constitutes a psychological claim? How would you address the defences?

Mr CRERAR: As you are alluding, the defence needs to be broadened and if the employer has taken reasonable action for genuine business or operational reasons I think that should be sufficient defence.

Mr ROB STOKES: You also mentioned the deterioration in your liability. Over what period has that occurred? You said it had gone from $3 million to $7 million. Has that escalated over time?

Mr CRERAR: Yes, that has happened over the past nine to 10 years.

The Hon. NIALL BLAIR: What has your safety performance been like over that period as far as injury rates or long-term injuries are concerned?

Mr CRERAR: It has definitely improved in the past six or seven years. We had a couple of ordinary years in 2004-05, but it has increased dramatically.

The Hon. TREVOR KHAN: Are you able to provide us with statistics on that?

Mr CRERAR: Yes, we can provide those.

Mr ROB STOKES: Would you also be able to provide statistics relating to the deterioration in the position of the liabilities under your scheme?

Mr CRERAR: Yes, definitely.

Mr MARK SPEAKMAN: The second paragraph of item 7 on page 3 commences "The system needs". Could you provide some specifics of how you see that working?

Mr CRERAR: Yes. It is particularly relevant for the long-term claims, the people we cannot get back to work who have only fairly low whole-person impairment. As I mentioned before, they are going back to their GPs and getting certificates for three months or six months and it is going on for years. We find it very difficult to get them back to work, so that is where we hope some sort of capacity testing by impartial medical specialists could be established so we could have some binding way of getting them to job seek and getting them back into the workforce.

The Hon. PAUL GREEN: Mr David Nagle from Slater and Gordon just said what an exceptional self-insurer you were in his experience. However, item 6 on page 6 of your submission talks about licensing issues and I note you are saying you should be able to get a bit more of a break on licensing issues. Will you elucidate your perception as a self-insurer of the challenges you face now?

Mr CRERAR: We are incredibly over-regulated as a self-insurer. WorkCover has very onerous requirements. Every year we have to submit a very detailed annual return submitting statistics, self-auditing and a lot of details for the organisation. At least once every three years we also have a major workers compensation and a work, health and safety audit which you may have heard previously costs many tens of thousands of dollars. It is very onerous and expensive. It takes people away from our normal work, such as ourselves case managing injured workers, and other senior managers throughout the organisation. The bond you have already heard about is incredibly onerous. Yes, I would hope that sometime in the near future that the licensing requirement could be extended to at least five to six years. As a self-insurer we do not see any need for WorkCover to come in and audit our work health and safety system or our workers compensation system because it is duplication of work basically. We already provide those details at least once a year.

The Hon. PAUL GREEN: What do you say in relation commutations?

Mr CRERAR: I think that would be very useful. From previous experience many years ago it was a very useful mechanism to enable people to exit the workers compensation scheme. It is by mutual agreement of course, provided that all parties have got their legal advice. It is just virtually impossible to commute a claim in the current system even though the parties are prepared to do it.

The Hon. PAUL GREEN: In terms of data collection it has been said that there are about seven different systems. How do you find data collection for your benchmarking? Do you use a particular system? Would it be simplified by the use of just one system?

Ms KEATING: Yes, we use the Figtree software for our workers compensation which is used by some other self-insurers. I am not sure of the other ones out there. I think one system would be an excellent idea but I do not think it should be at the cost to the self-insurer because we have already been through a major project with WorkCover to see the CDR project concordance which has cost self-insurers lots of time and money from their case managers, and it is has not really been helpful for us. We have not gained any data from WorkCover that can assist us in being better case managers, or improving anything that we are doing. I think one system, yes, would be good as long as it was not at the expense of the organisation.

CHAIR: I refer to point seven on page 6 where you talked about retrospectivity. You say any reforms to the workers compensation system should be fully retrospective and apply to both current and future injured workers to enable employers and self-insurers to reduce costs and red tape. From where I sit the actuarial report is basically prospective rather than retrospective. Will you explain what you are talking about?

Mr CRERAR: We understand that it would be very difficult to make current claims retrospective. Hopefully some mechanisms of a new system could apply to existing claims—for example, work capacity testing could quite possibly apply to people who are currently on workers compensation benefits because, let us

face it, the objective is to get them back to work. So if that will assist to get them back to work and reduce the strain on the workers compensation system, and that is a good thing.

CHAIR: The Committee has resolved that answers to questions on notice be returned within three working days after you have received the transcript.

(The witnesses withdrew)

PETER JAMES REMFREY, Secretary, Police Association of New South Wales,

PATRICK GOOLEY, Vice President, Police Association of New South Wales,

TOBY LINDSAY, Duty Officer, NSW Police Force,

MELISSA KILMINSTER, Detective, NSW Police Force, sworn and examined:

KIRSTY MEMBRENO, Senior Legal Coordinator, Police Association of New South Wales, affirmed and examined?

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

Mr REMFREY: I thank the Committee for the opportunity to appear. The workers compensation scheme is critically important for police officers, who are duty bound by their oath of office to place themselves at risk to protect the community. Unlike other industries, it less possible for police officers to control the risks and they must regularly utilise the most effective risk controls. They must also regularly resort to personal protective equipment because risk elimination is not a realistic option. As a consequence, police officers are injured at higher rates and the nature of their injuries, both physical and psychological, are often severe and result in long periods of treatment and rehabilitation. This, combined with the high fitness standard required for operational duty, means that it takes longer for officers to return to pre-injury duties compared to those in other industries. It is for these reasons that we intend to focus on three areas of proposed reforms to the scheme that would have particular impact on our members.

Our submission speaks for itself and canvasses all of the issues covered in the review. However, there are some important aspects that we must highlight, and in particular the human element of the changes and the effect on individuals if the proposals in the issues paper were to be adopted. First I will focus on journey claims. This is in no particular order of importance. We articulate the importance of journey claims in our submission. Problems arise for our members in two ways. The first is the capacity for and regularity of recall to duty and the second is their capacity to be targeted while travelling to and from duty because they are police officers.

Our members are police officers 24 hours a day, seven days a week. They work all hours of the day and night and they are often travelling home from work in the middle of the night when they are at greater risk of being involved in an accident. As I said, their oath of office requires them to act and to intervene irrespective of whether they are rostered on duty and they can be recalled to duty at any time. Members are duty bound to assist in incidents when they are travelling to and from work, which places them in harm's way during their journey. While it is sometimes the case that when an officer intervenes he or she is deemed to be on duty and thus is covered by workers compensation arrangements that would exclude journey claims, that is often a point of argument, especially relating to the payment of overtime. It is not always a given that when an officer intervenes in an incident he or she is deemed to be on duty notwithstanding their oath of office. Being called out to attend an incident during the night is not uncommon and excessive travel is a reality. That applies to officers attached to metropolitan commands and regional and country commands.

Under our industrial law and arrangements, police officers are not normally regarded as being on duty until they either arrive at their place of attachment—this is when they are recalled to duty—or the scene of the incident. Under the proposals in the issues paper, police officers would not be covered those circumstances in the event of an incident. In respect of being targeted because they are police officers, there have been notable examples of police officers being injured or killed while travelling to and from work because they have been recognised as a police officer. They are a rarely armed in such situations; police routinely are not allowed to take their weapons home with them. It is very rare for police officers to be permitted to take their weapons home. Therefore, when they are travelling they are in a very vulnerable situation. Obviously in most cases they have no access to a police radio. We cite in our submission the case of a sergeant, whose name is suppressed—but I am sure members know of the officer concerned. She was seriously injured when she was attacked in Kings Cross when she got out of her car on the way to work. I do not need to go into the details, but that was a

journey claim under the current arrangements. There is no way that anyone would regard that as an on-duty claim. Obviously if had she not been covered that would have had a catastrophic impact on her family.

Journey claims account for a very small percentage of claims—roughly 2 per cent to 3 per cent. I cannot speak for how many claims are made by the Police Force, but there are not many. Nevertheless, the removal of such an entitlement would have a very significant impact on the individual who would be affected. The submission also refers to at fault and an assessment process in respect of journey claims. We have real concerns about how that might apply in a police context, particularly for our officers who are shift workers driving to and from work at any time of the day or night who are often fatigued. We do not have a massive incidence of these problems because we have good fatigue management plans in a place. However, in those situations where it does arise, we argue that they need to be covered. The issue of fault should not come into play in respect of journey claims.

The second issue we want to highlight is the proposed cap on medical costs and weekly benefits. As I said, the police work environment is unique because officers must place themselves at risk of serious injury to protect the community. Assaults are one of the more common incidents that result in workplace injuries to our members. A recent report we commissioned pursuant to a WorkCover grant that was published in December 2011 provides an analysis of the assault data and its impact on workers compensation claims. I have copies of that report for the Committee. The report is marked "Draft in Confidence" because pursuant to the WorkCover grant it must tick off on its contents. It was provided to WorkCover in December 2011 and we are yet to have the final tick off. There may be some issues that we and the NSW Police Force may not want to be made public. It should be treated in confidence for the time being. However, if there are issues that the Committee wants to put in the final report, we can have a discussion about that at another time.

I will pull out a couple of salient points from the report. The report was prepared to cover a period of time between 2005 and 2009. On average, 2,700 assaults occur per annum. Bearing in mind there are only 16,000 police officers and not all of them are operational police, that is a large number. The statistics reveal that one in four operational police officers can expect to be assaulted each year. This results in an average of something in the order of 700 compensable claims per annum. In regard to major workplace injuries, the definition being five days or more off on sick leave, in 2009 there were 12.3 per 1,000 officers in New South Wales with such claims. From the assaults perspective, it is a significant issue for us. This research was commissioned for slightly different reasons than workers compensation.

However, it has a number of uses and you will see in the research that it talks about times of day, the nature and reason for the assault and a range of other factors, including location. It is going to be helpful for both the union and the employer down the track as a joint exercise between us and the NSW Police Force to be able to look at resources and prevention strategies. To put all this into context, the claims for assaults represent only 14.4 per cent of physical workplace injury claims. On assault claims alone, policing in New South Wales is comparable to other industries. If one adds the psychological injuries and the other physical injuries which were not included—and we are not sure what they are because the data did not reveal that, but we can assume they would be caused substantially in motor vehicle accidents—then without doubt policing is one of the most dangerous occupations in the State. That was to be expected but it is nice to have some research that supports our anecdotal understanding.

The compensable injuries, whether they are physical or psychological, are generally severe. They do not fix themselves within a set period of time. Medical treatment and weekly benefits need to be available at any point during the claim, irrespective of the timeframe issues. Medical treatment should not be restricted to a limit of one claim per injury because of recurrences and deteriorations. Assaults result in orthopaedic injuries principally. I will not take you there now but on page 116 of the report there is an analysis of the various injuries. In 20 per cent of those the injuries are multiple—injuries to fingers, hands and wrists being predominant. Back, knees, shoulders, face and head are predominant in terms of the serious injuries that our members experience as a consequence of assaults. In many cases injuries would fall below the artificial threshold which is proposed to be set. However, in a policing environment where high fitness levels are required, the incapacity is serious. There is also an impact on the normal lifestyles of officers as a consequence of these injuries.

There has been some subsequent research done by Assistant Commissioner Peter Gallagher who did an analysis of members who were medically exited from the NSW Police Force in the last few years. His analysis was that only 15 per cent had been able to secure employment post medical exit. So the severity of the injuries is significant and has a massive impact on the capacity of police officers to lead normal lives post employment if

they have been medically exited. It is a problem for many of our former members and particularly with respect to serious back and neck injuries. The good news is that under these arrangements Mr Gallagher found that the vast majority of members who are injured at work returned to pre-injury duties. I spoke to him on the weekend and he did not have the statistics on that but he indicated it was the outcome and it is a positive thing. It is indicative of a desire by all our members who are injured to get themselves fit and get back to work. It is the nature of what our members do. In our submission, capping medical treatment will make the situation worse, not better. We need to ensure that our members who are seriously injured or those who are less seriously injured have the capacity to be able to access the medical treatment they need to get themselves well and to get themselves back to work.

Our submission is that there should not be an arbitrary cap placed on weekly benefits or medical treatment. The legislation has contained within it an ability for insurers to have injured workers medically assessed in order to ascertain their capacity to work and the reasonableness of medical treatment. We think the safeguards are there but whether or not they are being used is another matter. That is not a matter that is the fault of injured officers but is a matter about which you would have to talk to the regulator and the claims agents.

There is a submission by Constable Simon Shannon, who could not be here today due to medical appointments. He is about to have his fifth stint of surgery, relating to a situation where he was hit by a motor vehicle on Christmas Eve two years ago. When one reads his attached submission, it is fair to say that, in his case—which is not unusual—there is no quick fix for his injury. Sixteen months later, he is still going under the knife and there is no real guarantee about when or if he will be able to return fully to the job that he loves so much.

The proposal to reduce section 40 payments will be a disincentive to officers returning to work on suitable duties and on reduced hours. The scheme, in our assessment, should be structured in such a way as to reward those officers who have a capacity to do some work and get them back to work as quickly as possible on a graduated return to work plan. It is critical they are encouraged to return to work as soon as possible and the provision of make-up pay is an essential part of this. We do not see that the recommendation contained within the issues paper will assist.

The last issue I want to discuss today is improved return-to-work outcomes through suitable and permanent duties. This is a really important issue for our members and requires serious attention. It is critical that all our injured officers are provided with suitable duties and permanent duties. In some cases they do a great job but in many cases they do not. In our submission, there are no effective punitive measures in place to force our organisation to provide duties, nor is there any real assistance available to properly assist New South Wales Police to identify and determine appropriate suitable duties for injured officers. Too often our members who sustain an injury are often left worthless and under-utilised. Exiting them from the force is often the easier option for the organisation and for the officer, rather than attempting a proper return to work program. With the changes that occurred least year—which we will not discuss today—that is no longer an option. The provision of meaningful suitable duties needs to be the major focus of our organisation and this review and how to make it occur and how to get it right for all officers. Penalising injured officers, financially and otherwise is not the answer.

One issue I would like to raise with you today for consideration is the Canadian experience. There is a positive duty on employers in Canada to accommodate injured workers. It is called the duty of accommodation. They have to make every reasonable effort—short of undue hardship and there are legal definitions of those—to accommodate an employee who comes under a protected brand of discrimination within their human rights legislation, which includes disability. It has been a feature of Canadian workplaces but also the Canadian culture since 1985 at least. The requirement, insofar as it impacts on workplace injuries, is dealt with in a report from Professor Michael Lynk of the University of Ontario. It is a comprehensive document and I have provided a copy of the report for the Committee.

Document tabled.

We have developed relationships with forces within Canada, particularly the Ontario Provincial Police [OPP]. That is one of the biggest police forces in Canada. It does not suffer from the same approach to policing as the Americans do with their tiny forces. The OPP is a big force that covers the whole State, with 7,000 sworn officers and 2,000 civilian employees. They provide policing services in an area similar to the size of New South Wales, with both rural and city policing. In our assessment we have similar challenges relating to

geographic area, resources, indigenous issues, alcohol-related crime, youth issues, drugs, gangs and road fatalities, et cetera.

It is a very analogous organisation to ours. It is about half the size but, nevertheless, in our view the similarities are striking. Notwithstanding that, they have extremely generous illness and sickness entitlements—more than we have ever enjoyed putting aside the death and disability scheme—injured officers are either rehabilitated or accommodated and returned to work. There is no capacity in the OPP to medically retire an injured officer; it simply does not happen. They either stay at work or they stay off on sickness pay until they retire. However, they really have a very low long-term sick rate. What does that say? It says that their system of accommodation in our view works. They have a culture over there both for the employee and the employer, as well as the unions I might say, to get people back into the workplace, albeit in some cases on a permanently restricted basis, but they look after their people. As a result, they do not have the same problems that we have in New South Wales. We researched as to why that was and the only thing that we can come up with is this cultural issue that is engrained in their constitution around this duty to accommodate.

The law in Canada requires employers to adjust, adapt or modify workplaces and positions to accommodate an injured worker. It provides obligations on employees and their unions, as well as employers, and it is something that we argue this Committee should seriously consider recommending to Government if we are to seriously address the costs associated with this scheme, not only in policing but across the board. That is principally the opening from our end. We have provided the Committee with a range of issues in addition to our submission, which is rather comprehensive. The two injured officers we have brought here today we would argue are walking proof that it is possible with proper employer support and support in the system to assist officers, but there needs to be support in the system to provide for medical treatment and adequate benefits for injuries that simply do not recover quickly. Before proceeding to questions on a range of topics, including claims management and return to work or whatever the Committee wants to talk to us about, I would like to take the opportunity to ask Toby and Melissa to give the Committee a very short presentation as to their personal circumstances.

CHAIR: I am conscious of the time. We are running with you until 4.00 p.m.

The Hon. TREVOR KHAN: I do not want to restrict either of these officers from speaking.

CHAIR: I am not suggesting that we will but there will be a restriction on the number of questions asked.

The Hon. TREVOR KHAN: I accept that.

Mr LINDSAY: Thank you for allowing me to speak to the Committee today. I am and Inspector of the NSW Police Force. I have served in the NSW Police Force for approximately 18 years, both in New South Wales and also overseas in East Timor in one of the contingents that served there. Unfortunately, I was injured at work in 2004 in a major car crash. From that time onwards a number of symptoms developed and increased up until approximately 2007 when I had a severe episode in which I lost approximately 50 per cent of my grip strength in my arms as well as severe neck, head and shoulder pain. A subsequent MRI revealed that I had developed a spinal disease called syringomyelia, which in essence is a tumour or cyst in the spinal cord, in addition to a number of disc and nerve-related damage to my neck area.

A conservative period of treatment ensued for approximately two years—I am talking about physiotherapy, pain management, exercise management and support. I went through periods of restricted duties at work during this time and I bounced back to full duties, all through this period maintaining my motivation due principally to the support from my workplace and also to the insurer ensuring that I got the appropriate treatment, appointment approvals and medications for that time. Unfortunately, this did not help. I underwent three nerve block operations to the neck area in an attempt to try and ease some of the pain and debilitation that was caused by this disease. These were not successful in the end. So with a lot of communication between the insurer, my specialists and myself I underwent a spinal fusion and discectomy in 2009. I was immobilised in a neck brace for approximately five months as a result of this. I was obviously not at work. I have a young family. I have got three children and my wife is also an officer in the force. We live on a small farm at Jervis Bay. You can imagine the devastation that this caused to both my family as well as to my career.

During this time I actually studied as a sergeant to achieve promotion to the rank of inspector. I sat in bed, immobilised as I said, for the majority of the day and tried to make some use of it. This was with the full

support of both my family and my commander. About the same time as returning to work on restricted duties I successfully went through the promotions process and in the end achieved the rank of inspector, which in essence not only advanced my career but also advanced my ability to remain employed with NSW Police Force. As a general duties sergeant I would not have been able to perform the inherent job requirements if I had stayed with the injuries that I have.

Unfortunately I fell over a short period of time after having my neck brace removed and I fractured or cracked the fusion. We waited approximately a year hoping that the fusion site would grow back; it did not. In essence I had a broken neck for that year where I performed full duties. After a long period of consultation with independent specialists, the insurer and my specialists, in 2011 I underwent corrective surgery to the fusion site. I also had a disc removed below that site and an artificial disc placed in. I have titanium screws and plates in this site now, which has stabilised it. As of January this year I returned to work, obviously in a restricted capacity, but I am working through that graded return now. Prior to returning to work late last year I obtained a computer from my commander and did a number of work-related assignments—would be the best way of describing it—at home, mainly to assist in my motivation to return to work and also assist the workplace.

As a result, I now stand with approximately 30 per cent impairment to the functioning of my neck, which is a pretty good result considering I am standing and I am working and also functioning to a degree as a father and a husband. The treatments that I found vital to get me to where I am today were obviously physiotherapy, hydrotherapy, exercise management, as well as pain management, and access to the right specialists and the right treatment at the right time was vital. The collision occurred in 2004; obviously 2011, having bounced back a couple of times to work, is a significant period of time. I ask in any consideration by the Committee in terms of cutting periods of treatment that my position is kept in mind. If my treatment had been cut off earlier than has occurred obviously I would not be where I am today.

Unfortunately, I have a need for ongoing surgery. All going well, in approximately 5 to 10 years from now I will have deterioration above and below, which will require probable further spinal fusions. I am going to stretch that period out as long as I possibly can through good communication and motivation to undertake all the return to work and rehab programs that are set before me. Motivation and support are the keystones to my return to work and my return to functioning as a husband and a father. If I had not had the financial support by way of the insurer I doubt I would have been able to get to where I am now. I ask the Committee to please consider that similar injuries are occurring and that people are suffering very similar types of rehabilitation requirements. What I am saying in a nutshell is that we need time. Thank you.

Ms KILMINSTER: As was presented in my submission, in 2005 I sustained a shoulder injury on duty. I was 22 years of age at the time. Now, seven years later, I am still suffering with chronic pain and shoulder instability due to an accident that I had no control over. In life I have been blessed with two families—the family I go home to and share my life with, and the family I work with on a daily basis: the members of the NSW Police Force. My injury has caused three major surgeries, being three major reconstructions to my shoulder and immense rehabilitation. Now my shoulder is not just dislocating on a weekly basis; it is dislocating daily.

The physical pain is indescribable, but the effect I see this having on my 4-yer-old daughter is nothing but heartbreaking. I watch my daughter sit on the lounge as I am in chronic pain, being put in the back of an ambulance to go to hospital to have my shoulder relocated. Her little face drops as she asks me, "When will you be better, mummy?" Last week whilst trying to make good of my life and my family time with my daughter I drove past the hospital. My daughter turned to me and said, "Mummy, do we have to go to hospital today to have your shoulder put back in and get your arm better?"

This is not a life I wanted for my daughter and it is an experience no parent should have to endure. My injury has caused me an immense time spent in hospital undergoing surgery after surgery and relocating my shoulder. But when I am lying in a hospital recovering I have a laptop on the table typing up police fact sheets, completing coroner's statements and matters that are due for court. Why? Although I have endured this injury, I became a police officer to help others and my pain and suffering should not impact on my duty as a police detective. Since my injury I have returned to work when I am not seeing doctors and undergoing rehabilitation. I have chased down a male armed with a firearm about to complete an armed robbery, attended house fires, ensuring to protect the lives of others, putting my own life at risk on a daily basis.

Whilst attending these fires I have sustained ammonia from the smoke inhalation I have suffered. I have been hit by offenders, been spat at, seen the lowest of people but most importantly helped and cared for the

ones in need of my assistance. Throughout the course of my injury I have successfully investigated a vast number of cases, including the successful prosecution of a murderer, stopped a number of fraud syndicate groups, armed robbery offenders, sexual assault offenders and that is only to mention a number—preparing in-depth briefs of evidence, ensuring that these offenders are being convicted at court and sentenced to their time imprisonment. I am proud to say that I am a detective with the NSW Police Force.

When I go to work the days that I can I am happy to say that I make a difference even to the community. Even with one arm I am still positive that I am making a difference. To see my daughter's eyes light up when she tells her friends she is a detective is heartwarming. To see my daughter proud of what her mum does to influence other people and not put themselves first is utmost importantly to influence my daughter's life and no matter what hurdle comes her way never to give up in what you wish to achieve in life. Last Thursday I was told by the doctors that they do not have a cure for my arm. They are seeking advice from overseas at the present time and the only option left for my shoulder is to have it permanently fused, meaning I will need assistance on a daily basis to get dressed, to do my hair and even to drive a vehicle.

This not only impacts my family but this also impacts my career choices. No matter what happens, I will always be a detective. I will fight long and hard to maintain the position I have earned in the utmost difficult of circumstances. My shoulder will need ongoing surgery and rehabilitation for a number of years. This has caused both emotional, physical and mental pain not only to myself but my loved ones around me seeing me in chronic pain on a daily basis and my work colleagues. I should not be punished for sustaining an injury attempting to protect others. Yes, WorkCover helps financially but there is no price that can be placed on the physical impact on how an injury occurs whilst on duty. WorkCover should be enforced throughout the injury process no matter how long this takes.

I have learnt not to dwell on the past but also not to look too far forward into the future. I live each day as it comes. In the last three weeks I have spent five times in hospital, the last being on Saturday night with my shoulder dislocating by simply pressing a button. But as I get home at one o'clock in the morning you can guarantee by 8.00 a.m. I am at my desk working on cases, completing my duties as a New South Wales police detective. No sustained injury is the same, just like each case I work on on a daily basis is not the same, with every case having different methodologies. Injury should not fall under the same banner as a previously sustained injury. They should be treated on a case to case basis. Treatment cannot be cut off at a certain point in time. Permanent impairment can also not be determined at one single point in time. That is a percentage of being one in only a few in a day. I want to work but I also require the ongoing support of medical treatment for my injury to have any form of quality of life.

Mr MICHAEL DALEY: Mr Lindsay, since 2004 you have had five surgeries, numerous GPs, specialists, physiotherapy, exercise rehabilitation programs, MRIs, scans, X-rays, examinations, assessments and medications. Then you say if your benefits had been cut off earlier "I wouldn't be where I am today". Where would you be? Would you have had to take out a loan? With your personal circumstances would you have just gone onto the public waiting list? What would have happened to you if your benefits had been cut off two, three or five years ago?

Mr LINDSAY: I have private health insurance but the two major operations that I have undergone, the two spinal fusions in addition to coverage for work, the top up would have been a couple of hundred thousand and that is a conservative estimate. So if the private health insurance had not covered it, my family would have had to cover the costs and with that all gone without the treatment.

Mr MICHAEL DALEY: Would you have had the means yourself to cover that sort of cost?

Mr LINDSAY: I would have but we would be in a perilous situation financially now.

The Hon. ADAM SEARLE: I ask the same question to the other witness. What would be the practical impact if your medical benefits had been cut off after two or three years?

Ms KILMINSTER: I would be in significant financial disadvantage. Mine would mean that I would have to sell my house. I would have to sell the majority of my assets to cover my ongoing medical treatment. Not only now, my treatment is looking at overseas experience. The impact my injury has caused has never been seen in Australia before and now I am waiting on advice from overseas, being in the United Kingdom, to come up with a solution for my shoulder, if there is a solution.

Mr MICHAEL DALEY: Mr Remfrey, I hear the testimony of two or your members today and then look at the discussion paper which carries a suggestion in it that workers benefits need to be cut off or stepped down provided there is sufficient motivation to get back to work. How do you reconcile those two realities?

Mr REMFREY: I do not. The reality is that the people we represent are extraordinarily self-motivated, and if those two officers here do not give a pretty good indication of that then I do not know what more we can say.

Mr MICHAEL DALEY: Is it necessary in your opinion to financially penalise workers to get them to come back to work?

Mr REMFREY: No. In fact, in our submission it would be counter-productive. People would either have to defer or delay or to not have the treatment and they would be effectively unable to come back to work if they were unable to have that treatment. We are not talking about highly paid workers here. We are talking about people who are doing a job for their community and it is a very dangerous job and they often, as statistics would indicate, come into physical confrontations which results in physical injuries. We have not even touched on the psychological injuries but cutting them off and removing medical treatment, first of all, it is counter-intuitive to getting people back to work. It will not make them well.

In terms of reference of the Committee, I think there are seven keys that are encoded in there, seven features of a good scheme, two of which would be completely counter to what the proposals are. You will not make people well if you do not allow them to get back to work, if you do not give them the capacity to have the medical treatment that is required. It is just counter-intuitive to suggest that it would. We fully understand that you do not want a system that has unnecessary medical treatment in it. I do not know a human being who wants to go to a doctor unnecessarily. There are checks and balances in the system to allow that to occur. Whether or not those checks and balances are being used, that is a matter you have to look at, and I understand there is work being done through WorkCover at the moment on those issues about enforcement. But in terms of the answer to your question, it would be completely counter-intuitive to the outcomes that you want.

Mr MARK SPEAKMAN: According to the Safe Work Australia comparison table that we have, there are no journey claims in Victoria, Western Australia, South Australia and with some exceptions Tasmania as a general proposition. Is there some carve out for police in those States?

Mr REMFREY: In Western Australia there is. They are provided with medical treatment for all on and off duty injuries as part of their employment. I cannot speak for the other States. I am not particularly across their arrangements.

Mr MARK SPEAKMAN: In Victoria after 130 weeks, weekly benefits generally cut out subject to some work capacity testing. Again, are police dealt with differently from the norm in Victoria, to your knowledge?

Mr REMFREY: Not to my knowledge. I really cannot speak for the Victorian circumstances.

The Hon. TREVOR KHAN: Can you find out?

Mr REMFREY: Yes.

The Hon. TREVOR KHAN: Finding out, I guess, is the answer?

Mr REMFREY: Yes, I can do that.

The Hon. PAUL GREEN: In terms of workers compensation, is there anywhere that you feel red tape or legislative reform could take place?

Ms MEMBRENO: More so from an enforcement perspective. We have a lot of issues—and I am sure we are not alone—in relation to suitable duties and the employer providing those duties. We have a number of occasions where an injured worker is ready to return to work, the nominated treating doctor says, "Yes, okay, what can you do?" And the employer sits on their hands and does not actually provide or offer up suitable duties. At the moment there does not appear to be an appropriate power to actually force the employer to do it; there is no penalty, no punishment, no enforcement power, so I can definitely see capacity for an inspectorate of

some sort who can come in and oversee a scenario where perhaps you have an injured worker ready, willing and able to return to the workplace and an employer who is reluctant to provide those duties.

The Hon. PAUL GREEN: In your experience when the officers are due to return to work, is it your practice that maybe an occupational therapist or someone comes out and checks out the workplace.

Ms MEMBRENO: We would love that, if that actually occurred.

The Hon. PAUL GREEN: You would welcome that sort of reform but it never happens?

Ms MEMBRENO: Rarely, and I was speaking to these guys before we came here today and in Mel's case, she has asked purely for a headset to answer the phone because she clearly only has one able arm at the moment. It has been three weeks to ask for a headset. I am not sure how much a headset is these days, but three weeks will probably turn into another three weeks, from my experience.

The Hon. TREVOR KHAN: You do not really need an occupational therapist to go down to Woolworths to buy a headset.

Ms MEMBRENO: The issue in terms of claims management and early intervention, if you could get an occupational therapist or somebody to come out early on in a claim to provide someone the assistance to analyse the duties that are available and properly assess the working environment, that would be of great impact.

The Hon. PAUL GREEN: That is not unusual in aged care; they do that all the time. They send out the occupational therapist before the patient goes back home. I do not see what the problem is. It seems we need to do something that may encourage that. Is there any legislative reform, red tape or bureaucratic stuff?

Ms MEMBRENO: Yes, bureaucratic. Anecdotally we have obviously heard a lot of stories in terms of the insurer's inability to actually act upon medical reports when they make recommendations, the inability of the insurer to adequately assess a work injury damages claims. We are hearing all of that information and obviously in our submission we have outlined some issues that we see with work injury damages, perhaps not in regard to the threshold but more the assessment of the negligence aspect, which would require the Committee to look into that in further detail but more in terms of the WorkCover guidelines and lack of enforcement power within those. Some of those guidelines read really well—the provision of equipment, vocational retraining; it all looks fantastic in the WorkCover paperwork and documentation. Whether it actually happens, I can say hand on heart for our membership it does not actually happen, and a headset which costs a couple of hundred dollars is a prime example of that—a simple piece of equipment to allow someone to safely come back to the workplace and, as Melissa has indicated, to safely perform her job.

CHAIR: Would you characterise the NSW Police Force as a good provider of alternative employment for workers trying to get back to work?

Mr REMFREY: It is mixed. There is a lot of pressure on commanders to attack crime rates; it is principally their function and as a consequence an injured officer is seen as a hindrance to them. In circumstances where commanders have not had the training or do not understand their obligations, the easiest thing to do is to move them on and get a fresh body—the old American approach to taking that hill: we will just pour resources at it until we get it, don't worry about the outcomes.

A good example around this is we had a sergeant of police who was the head of detectives at The Hills operating with a not insignificant injury but accommodated by the arrangements that they have for three years and operating fantastically well with an injury. A new commander comes in and says, "You're injured. You can't do this anymore". That person ultimately is now out totally and permanently disabled, out of the force, gone, as a consequence of a series of events that his physical injury translated into a very serious secondary psychological injury. I have summarised that case. It went on for years. We took that to the highest levels in the force, to the commissioner himself, and could not get an outcome. It beggared belief that someone could operate and effectively the only thing that person did not do was kick down doors when they were doing raids. But, no, we could not save that person from ultimately considerable further suffering and losing that person out of the organisation. It is just a tragedy. There are unfortunately examples where our members are just treated so poorly. I think Pat, as an operational police officer, could probably give a better example.

Mr GOOLEY: There is probably an inconsistency across commands, whether the individual commander has responsibility for the return to work but the circumstances are beyond their control. I was approached this morning by an officer who has had an injury for seven years, been back and forth from restricted duties, off duty, full duties. They are ready to return to work and all they need is one simple piece of equipment, being a thigh holster. They are in short supply at the moment. This person has a consistent back injury where the doctor says, "You cannot wear a gun belt". Between a low-bearing vest and a thigh holster they can return to full-time meaningful full duties but there is just not one available so that person is going to be doing a job as an additional person really, a spare job in the station until that thigh holster becomes available. Our commander would go buy and one off the shelf if they could but at the corporate level they are not available, therefore, they are not there.

Simple things like equipment—a friend of mine who transferred had a serious back injury and needed a height adjustable desk and special chair. I think $1,300 was the total bill for it and there was a blue between the commander who did not have $1,300 and the insurance company that did not think it was necessary or argued that it was not necessary. Then the argument came about when he transfers who owns the desk—for $1,300 that is what you pay a sergeant of police to sit at home. This person is able to provide very meaningful duties in a time of crisis at his command and he certainly did once he returned to work when an officer was murdered. So there are examples everywhere of inconsistency. It is because the responsibility is on the commander but they do not necessarily have the financial control over those things.

The other thing we notice is restricted duties—the duty to accommodate is a really novel solution in New South Wales. It is not something you see bandied about but being a hierarchical organisation with a high-risk environment we look consistently at what people cannot do and we put the term "standard police restrictions". The police medical officer ticks the box for "standard police restrictions"; it does not look at what you can and cannot do. It is just a range of things that because you are on restricted duties you are not allowed to interact with members of the public, wear your uniform in public, drive marked police vehicles, when you could be well and truly able to do that but we just take people off the road. A duty to accommodate says, "What can you do and let's make it work with your team and do it." There might be three things you cannot do and certainly the Canadian model is something we really advocate for, particularly in a policing environment. What we get paid versus what it costs to train us, we are a lot more valuable in the cops than out of it, I think.

The Hon. TREVOR KHAN: In terms of the two examples you presented, what is the interaction between the workers compensation legislation and the motor accidents legislation because both are motor vehicle accidents that you presented?

Ms MEMBRENO: I notice that has been raised in a few other submissions in terms of whether you can claim motor accidents. I think the issue—and I am not a lawyer so I am not going to propose to answer that from a legal perspective—is in terms of the compensation available under the two different authorities and the ability that one crosses the other one out and I note in both of these cases they have had ongoing treatment and rehabilitation over many, many years. In the event that they pursued a motor accidents claim there would have been a potential for them to lose out on any ongoing medical costs which, in these two particular cases would have had a huge financial impact upon them if they had settled a claim under motor accidents and then they had continued deterioration of their shoulder.

The Hon. TREVOR KHAN: I am not going to talk to them, for some reasons, but it was an election that essentially was taken to proceed under the workers compensation as opposed to the motor accidents legislation, as you understand it, and I am comfortable if you just say yes?

Ms MEMBRENO: As I understand it, but I am definitely not a lawyer and I am not in a position to provide a proper response.

Mr GOOLEY: Perhaps I could give an example. On 30 April 2001 I was involved in a head-on collision. At the time I was in pursuit of a stolen vehicle. I was never charged with a criminal or traffic offence—actually I was charged with a traffic offence that was later withdrawn. I was deemed the driver at fault and with the driver at fault in a police motor vehicle collision action is always taken against them in the first instance. It did not come up to negligence but certainly I had no claim for motor accident; I had a claim for workers compensation. Luckily, four years later when I was still receiving treatment that allowed me to return to full duties I was able to leave police prosecutions and move back into operational policing, which has been very important to me.

Ms MEMBRENO: I was just like to add to that after speaking to my two officers. The issue of fault did come into play in terms of those motor vehicle accidents.

The Hon. TREVOR KHAN: Right.

CHAIR: I think you have taken a question on notice and you have agreed to provide some information for us. The secretariat will provide you with a transcript and the question you have taken on notice will be highlighted. The Committee has resolved that answers to questions on notice be returned within three working days after you have received the transcript. If you need a little more time—

Mr REMFREY: That is okay. Was it just Victoria that you were interested in?

Mr MARK SPEAKMAN: Yes, just Victoria.

CHAIR: Thank you for coming.

(The witnesses withdrew)

MICHELLE BURGESS, representative of Injured Workers Support Network,

PETER WINDLE,

JOHN McPHILBIN,

LORRAINE HELEN FORDHAM, and

RONALD SMITH, affirmed and examined:

CHAIR: We are going to vary the agenda today because we are running behind time but we will give everybody plenty of opportunity to give evidence. We will combine the two panels into one and the witnesses will tell us their individual stories. 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 to hand you are able to take the question on notice and provide us with an answer at a later date. With regard to in-camera evidence, if you 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 consider your request. Before we ask questions would each of you like to make a short statement about yourselves?

Mr SMITH: I am a team member for Coles and I also work for Fire and Rescue NSW as a retained firefighter. In May 2011 I hurt myself at Coles by moving a pallet received at the back dock. We received a chicken load for the grocery deli. I hurt myself by moving a roll cage that was overweight and I ended up with an inguinal hernia in the left side of my groin. I was off work for some time and could not work. I put in all the paperwork for WorkCover and a workers compensation payment and got rejected. I put it in again and then all the proceedings started from there.

Ms FORDHAM: In October 2010 I was at my local roundabout on my way to work when I was hit by a four-wheel drive. I was on the roundabout but before I exited the four-wheel drive hit my car and it spun out of control, hit a tree, went over a front retaining fence and into another tree. I fractured my sternum, which is a very painful injury. I was off work for approximately 10 weeks. I was in hospital for five days on a morphine drip. When I eventually returned to work I had a phased back into work. Rather than seven to eight hours a day I built up to my normal work hours. My claim was covered by workers compensation because it was my normal journey that I take every day to work.

Mr McPHILBIN: I have been waiting for this opportunity for a long time—nine years in fact. I have prepared a brief statement so I cover all the points I need to cover. It will be very short and to the point. In 2003 I was forced onto workers compensation as a result of a work-based injury. I suffered a psychological injury as a result of workplace bullying. I had blown the whistle on the culture of workplace bullying and corruption and was subsequently fired as a result. My former employer at the time, Chubb Security, was subsequently fined by both WorkCover and the Australian Competition and Consumer Commission for major violations of occupational health and the Trade Practices Act. The fines totalled in the vicinity of $2 million. Unfortunately a person lost their life as a result of the occupational health and safety violation. I cite these facts because they highlight the type of hostile and corrupt culture that was pervasive at the time. It appears that things have not changed much.

My claim was initially declined and I was forced to fight for basic entitlements from the Workers Compensation Commission. I was successful in winning my case. However, that was only the beginning of the nightmare. Despite suffering from major depression as a result of the ordeal I received very little help from the insurance company. It took the insurance company, even after years of lobbying New South Wales politicians for help, six years to provide me with the support I desperately needed. I was left with very little support from the system for six years. In fact, from 2003 until late 2005 I was subjected to numerous psychiatric assessments. Many of the recommendations were routinely ignored by the insurance agent, CGU. I found that many of the claims managers—and there were quite a few of them—were very unhelpful and hostile and condescending at times. A lot of the recommendations that were put forward by all of these psychiatrists were a complete change in career.

From late 2005 to 2009 I received little or no contact from the insurer. However, when I was finally contacted I received an apology for the failure of previous case managers to appropriately assist me at the time. I

found this incredibly insulting. This meant that I was left to languish for far too long and almost lost everything as a result. I even contemplated suicide on my darkest days. The system, in my opinion, is not designed to meet the real needs of injured workers and their families. In fact, it only adds insult to injury. Just last week I completed a course for a degree in Applied Social Science, paid for by WorkCover, which I think highlights their understanding of their own failures in the past regarding the management of my case. It has cost them $45,000 to re-educate me, which could have been done years ago, instead of just letting me hang.

I also intend to pursue a career in helping change the current system to better aid injured workers and their families and get them the care and justice they deserve. Then again, I am not sure what employer would employ me after being on workers compensation for nine years. I also believe there is a culture of bullying of injured workers by many employers and insurers. I heard in the previous testimony the amount of problems that injured workers have with their employers. For example, in a survey conducted by the Injured Workers Support Network, which Ms Michelle Burgess will be bringing up, uncaring and hostile employers and insurers were cited as a major source of distress for many injured workers. My experience proves that for me. I believe in those results.

In too many cases injured workers report that employers do everything they can to stop you from returning to work—I think that was mentioned also by the previous people—and that insurers attempt to bully them and their treating doctors into treatment schedules rather than more medically accepted treatment standards. In fact, a recent example of this comes from my former employer Chubb Security, which highlights the contempt many employers, I believe, have for injured workers. This came out on 13 May 2012: "Chubb Security boss apologises for 'oxygen thieves' email slur". The article states that "A Chubb Security boss was forced to apologise to workers and undergo counselling after circulating an email describing injured cash-in-transit guards as "oxygen thieves". It goes on to say that the email was sent by Chubb's national security manager Brian Lee, when responding to a request, "You don't have anyone there on workcover who can pick up one of my guys from Airport on 2nd May?" He responded, "I have plenty of oxygen thieves, but they can only work limited hours, so I may need to use a couple of them depending on the amount of time needed." The article goes on, "The remark referred to guards injured during cash-in-transit robberies or those on restricted duties because of post-traumatic stress disorder."

I also believe that attempts to step down payments to injured workers as an incentive for staff to return back to work has had the opposite effect. Being routinely bullied by the system despite being seriously injured or ill has never been the answer. Recent allegations of a growing lump sum culture miss important facts: Who would want to live this way for the sake of financial gain that is virtually impossible to realise? Reaching a level of permanent impairment that allows for lump sum payments in New South Wales is virtually impossible. I believe that these and other failures have and continue to have an adverse effect on injured workers and their families' lives. For example, the Injured Workers Support Network survey revealed that 59 per cent of injured workers reported—and this is a sample of 300, by the way, so it is a very robust sample—having contemplated suicide as a result of their injury in the last six months; 55 per cent said their relationships had suffered significantly; 34 per cent said they were now separated or divorced; and 65 per cent said their health was much worse off than before their work-related injury. I believe all of these statistics, in my experience, are accurate.

It is my view that a comprehensive review of the claims management process is badly needed because it seems clear that the hostility that many injured workers receive is actually delaying recovery and making life miserable for many in the process. In too many cases thoughts of suicide are a constant companion. Anti-bullying policies and policing of hostile and unfair treatment by employers and WorkCover insurance agents need serious consideration, in my opinion.

CHAIR: Thank you, Mr McPhilbin. I would just remind the witnesses that we cannot get into a situation where other third parties are being adversely mentioned. If you are going to talk about people—and I can understand your emotional reactions and your feelings—the Committee will not allow individuals who do not have a right of reply to be mentioned. If you are going to run out a case in some detail that is fine but could you please omit the name?

Mr McPHILBIN: That was public. It was in the newspaper.

CHAIR: That might be the case but it is a different situation to what we are doing here today. Those people will not get a chance to defend themselves and it is not in accordance with the rulings under which this Committee is being run.

Mr WINDLE: My name is Peter Windle. I am a 53-year-old National Parks employee with over 31 years employment with the New South Wales Government. I have been a field officer, a ranger, a senior ranger and a fire management officer; I have constructed park facilities, participated in search and rescues, firefighting, a trained firefighter—a full range of duties in that agency. I suffer from the cumulative effects of hard work and physical labour and I now need knee replacement surgery due to bone-on-bone knee joints from osteoarthritis. The length of my treatment is so far over three years for the identification, recognition, acceptance and assessment of the injury, then an operation. Recently I had a high fibular osteotomy to put off knee replacement for approximately 10 years. So in 10 years time I will need follow-up procedures.

So far for that I have taken an amount of 29 days off work on workers compensation and I had to take some annual leave to maintain my pay level because—I do not understand it fully—the repayments of the insurance company back to my employer. I have to have a similar operation on my other leg, which I will do once I have recuperated and gained strength in my other leg—about now probably. After taking time off for the operation and recovery I was on restricted duties for approximately three months. I was then able to pass a task-based assessment to regain firefighting fitness and I am now back on full duties.

I live in a rural area on the far South Coast of New South Wales and I have to travel to Sydney to visit my surgeon several times or for regular visits, and the cost of doing this would be prohibitive if I was not covered by workers compensation because I have had to have people drive me when I have had a plaster on or had braces. I need to access ongoing treatment to be able to carry out my work and live a quality life. Cutting off payment to workers compensation for medical bills after 2½ years I feel is unfair and unjust. My doctors have determined the duration of treatment and intervals between them and I could not afford to pay for the treatment myself and even the ongoing medication costs if I had to take it from my family budget.

I am still an effective and useful employee and maintain full duties with minimal absence from work. If I could not access the medical treatment I need this could be compromised. I have worked very hard for the New South Wales government, I have risked my wellbeing and have been exposed to dangerous situations and materials without any particular thanks. But I am not after thanks. The reason I have stuck at it is because I thought I had a safety net through workers compensation. I am now at a stage where I need to claim some of those rights and my access could be significantly reduced. I am very worried that if the proposed changes go through I will not get the ongoing treatment that I need to make my life pain-free and maintain my ability so that I can continue to be of value as an employee and also enjoy my older age with some physical mobility.

Ms BURGESS: I am here as a representative of the Injured Workers Support Network. I am here today in place of one of our colleagues, Greg Casey, who unfortunately could not appear today, although he has made a written submission, due to his pain return today. He is now awaiting approval from the insurer for his sixth back operation. At the last minute I have been asked to fill in. I am the coordinator of the Injured Workers Support Network. We are a non-profit organisation and are simply a vehicle to support injured workers in their quest in the workers compensation system. We have three current areas in which we operate—Sydney basin, Newcastle and the Central West area. I think Mr McPhilbin has covered off in a major way on most of the issues that I sought to make reference to in our recent survey put out by the group. The survey was sent out to approximately 1,000 people across New South Wales in a number of industries. So far what we have done in the report that you have in our submission is the results from 300 of those that we have processed so far. Those surveys continue to come back to us and we will have a final document that shows the outcome of that survey. Principally you have the document in front of you and I am happy to take questions or comments in relation to that survey.

Mr MICHAEL DALEY: Do any of the people that you help have much to say about the performance, good or bad, of scheme agents?

Ms BURGESS: They do and I think that is very clearly reflected in our survey. They say a number of things. I will probably just stick to the main ones that we hear all the time. People suffer a significant amount of stress from scheme agents and they are continually rung and told that they do not have a legitimate injury and that they should be back at work. The other issue that they constantly come in contact with, with scheme agents, is this issue about prolonged approval or, in fact, sometimes non-approval for even most of the basic things. So I am not talking big ticket items like operations, we are sometimes just simply talking about having the right chair to get them back to work. I have come across one of our members who waited nine months to get a chair to sit in so he could simply upgrade his hours at work. They are some of the things and the frustrations that we hear from our injured workers. They basically say to us if insurers would spend more time on actually helping us get back to work rather than putting impediments in place we would be a lot better off than we are now.

Mr MICHAEL DALEY: Some of the considerations that this Committee has to deal with in the formulation of its report go to the psychological state and the changing psychological state of the people who are injured. Does anyone want to talk about how being off with a prolonged injury or a psychological state waxed and waned or changed?

Mr McPHILBIN: I would like to answer that. With my particular injury, and actually the study that I am doing at the moment, what has become really apparent—and this came through when Comcare became really concerned about what is happening in its system—you have a number of people who might start out with a psychological injury and things will get worse but then they were finding that people who started out with a physical injury, and as a result of being in the system the number who were developing secondary psychological injuries was significantly increased. It was really impacting on the cost of the whole scheme. I think the police who were here earlier mentioned that the longer a worker is off—nobody wants to be unemployed, I think a lot of injured workers want to get back to work—the more likely they are to suffer from depression and anxiety.

You have psycho-social issues like family breakdowns, lack of money, all the financial issues. I know that impacted on me and everyone I speak to. People are afraid of losing their houses because there they were working a job, they are no longer able to work in a full capacity, they are getting less than what they were earning before—some down as far as 60 per cent. That causes additional stresses on the family. Hence you start getting psychological injuries. People start going back to their doctor reporting—I spoke to a fellow the other day who had a back injury. He talked about not being able to sleep, crying at the drop of a hat. He felt that he was falling apart but could not talk to anyone. We worked out that he had depression. However, in his culture it was unmanly to admit that he was suffering from a psychological injury or depression.

Mr MICHAEL DALEY: How would it affect you or your family if, after a certain period of time, you were told that in an effort to motivate you to get back to work your benefits will be cut or slashed or taken away?

Mr McPHILBIN: It actually drove my depression from a reactive depression into major depression.

Mr MICHAEL DALEY: Did that happen to you?

Mr McPHILBIN: My word it did and subsequently all of the psychiatrists in assessments that I went to had warned the insurer that my depression was getting worse, not better; they needed to retrain me, they needed to find a way to retrain me yet they ignored me. My depression got pretty bad.

Mr WINDLE: I think that the cumulative effect of being in such a situation would be devastating. You are already dealing with the realisation that work might not be the same, or an ongoing physical injury that you have not had to face up to before, and then you have that added weight thrown at you, through no fault of your own, is devastating.

Ms FORDHAM: My case was a little bit different because I have been recently widowed. I had been diagnosed with depression and sort of dealt with that through treatment and when I had the accident, because I was unable to do a lot of things, it actually put me backwards on my recovery with my depression. It was not so much a fear of returning to work, because my work was really fantastic to me, but just the fact of the injury and how painful it was. It made me feel worthless and that sort of thing all over again.

Mr WINDLE: I have noticed some anxiety or sadness not being able to keep up with my family, for instance. My kids might visit home and we would all walk the dog on the beach but I cannot go the distance. It is those minor things you cannot keep up with the kids.

Mr MCPHILBIN: I have had similar experiences.

The Hon. ADAM SEARLE: Ms Burgess, I am looking at the submission by the Injured Workers Support Network and four pages in you talk about comparisons between pre- and post-injury earnings. Is that earnings from all sources or is it earnings from workers compensation or does it include when people have gone back to work?

Ms BURGESS: It includes all of those things. Basically it was focused around what people, regardless of their industry, earned prior to their injury. Then if they went back full-time, because sometimes they get put

into a job that was of a lesser position than they had before, what we saw across the board was basically a significant drop in people's earnings. This misconception of the public that people somehow benefit from being on workers compensation is very ill advised. Not only have they got pain, are not capable of doing things with their families, and do not have a job to go back to, but also even when they do have a job to go back to it is, generally speaking, on less money than they were earning pre-injury.

The Hon. ADAM SEARLE: If my next question is dealt with in your submission please direct me to it, but in the experience of your organisation—I am happy for anyone else to answer this question as well—what would be the financial impact on injured workers if they were to have their medical benefits capped at two or three years?

Ms BURGESS: For the majority of the people that come to our forums it would have a devastating effect on them because there are quite of few of them in there. The man I replaced today, Grant Casey, would be a good example. Grant is onto his sixth operation. He has been on and off work for a period of years. So if we were to follow that scenario of a reduction in benefits, or the ceasing of benefits and medicals, then that would have a devastating effect on his family. He has a wife and three kids, a mortgage and the simple reality is that would be gone. His house would be gone and there would be no way that he would be able to support having the types of surgery that he needs to continue to have.

The Hon. TREVOR KHAN: Mrs Burgess, I think you have the broadest experience in this group, is it the case now that under the scheme as it exists there are step-down in payments?

Ms BURGESS: Yes, there is.

The Hon. TREVOR KHAN: After 26 weeks it is cut from the average weekly wage to the statutory rate.

Ms BURGESS: It is a significant cut.

The Hon. TREVOR KHAN: Therefore, when Mr Daley asks you questions about the effect of a step down, that already exists under the current scheme?

Ms BURGESS: It does. I will share our experience to date because it is relevant. We have a number of people in our support group—particularly in the Sydney basin, which is our biggest group—who have already lost their house. That significant step down after 26 weeks means that people lose their home very quickly. The result is not only that they have lost their home but sometimes their family unit also breaks down. Yes, I understand what you are saying; there is already a step down. From an injured worker's point of view and what we are hearing from our people is that it is hard to survive now in an already mean scheme, so what will it be like with further step downs and earlier than 26 weeks? It just means that it will happen more quickly.

The Hon. TREVOR KHAN: There is no doubt that that is the case under the proposal. One of the difficulties under the current scheme is that with one drop down at 26 weeks it is like hitting a brick wall. The drop is so significant and that is one of the problems. You drop from the average weekly wage, which may be a reduction from your previous income, but then there is an absolute plummet through the floor at 26 weeks.

Ms BURGESS: Yes, there is. I have a fellow who has post-traumatic stress disorder who was a truck driver and earned a significant amount. The average weekly wage already started to make that foundation very shaky.

The Hon. TREVOR KHAN: I understand that point.

Ms BURGESS: There are already a couple of step downs.

Mr MCPHILBIN: I would argue that when a person hits that barrier, whether it be a physical injury or a psychological injury, the prospect of suffering exacerbation of a previous psychological injury is increased significantly. That was my experience.

The Hon. TREVOR KHAN: Yes. I suggest that one of the problems under the current scheme with this massive drop at 26 weeks is that it is not when they reach that point but in the weeks or month or so prior to reaching that point that the looming brick wall becomes obvious.

Mr MCPHILBIN: And the dark cloud descends.

The Hon. TREVOR KHAN: Absolutely. In a sense it is always difficult. The current approach is not doing anyone any good given the dramatic drop at one point in time.

Mr MCPHILBIN: I agree.

The Hon. TREVOR KHAN: I refer to something that arises out of your experience, Mr Windle. You spoke about the $45,000 expended on your retraining. Is that right?

Mr MCPHILBIN: Yes.

The Hon. TREVOR KHAN: Can you explain how $45,000 has been spent? I am not being critical of the amount.

Mr MCPHILBIN: When I was finally contacted in 2009, the girl who is currently my case manager apologised and said, "I cannot believe someone has not contacted you in the past three years." I said that they had all the psychiatric reports and the psychiatric assessment saying that I need retraining because I could not go back to Chubb or do what I was doing. They said I needed complete retraining. They then got me a rehabilitation counsellor who was a trained psychologist. We had a discussion and she was amazed by the fact that when I first sustained my injury another psychologist had not been my rehabilitation provider.

I was told when it first happened that I should go out and get a job. They did not care what I got. They just wanted me out of the system to meet their statistics. We then had a discussion about what I wanted to do. I mentioned that I was absolutely furious with the system and I wanted to help injured workers and stop what was happening. We came up with doing a bachelor of applied social science. We put that to WorkCover and it promptly agreed to pay. I get all my travel expenses and text books—and they are not cheap. I said $45,000, but we are probably looking at $50,000. Including all my travelling expenses over three years, it might be $60,000. I cannot be sure, but that is a conservative estimate. That proves to me that WorkCover knew it had failed and failed big time. I have approached many politicians. In fact, I sent something to Minister Daley.

The Hon. TREVOR KHAN: He is sitting over there.

Mr MCPHILBIN: I will not hold it against him.

The Hon. TREVOR KHAN: No, perish the thought.

Mr MCPHILBIN: I raised these concerns. The responses I got indicated that WorkCover was running the show on stonewalling everybody and not providing the right information.

The Hon. TREVOR KHAN: I take it that there were letters signed by Mr Daley.

Mr MCPHILBIN: Yes. They would go to the insurer and I got a contrived response. As far as I am concerned, given the way I was treated I deserve compensation. I have been living on 60 per cent of my previous earnings and lost all these career opportunities. I want compensation.

The Hon. NIALL BLAIR: Was being left for three years a failing on the part of WorkCover or the case managers handling your case at the insurer failing to ask the right questions and work out a retraining program to be submitted to WorkCover to be approved?

Mr MCPHILBIN: Yes, it was.

The Hon. NIALL BLAIR: So it was more about the inexperience and poor handling of your case by a case manager?

Mr MCPHILBIN: Case managers.

The Hon. NIALL BLAIR: So you had a number of case managers?

Mr MCPHILBIN: Yes. I knew my rights and that I needed more specialist help. They were unwilling to provide it because it was not within their budget. They simply wanted me off the scheme. In hindsight, in 2009 it became very clear when CGU established a specialist psychological unit to deal with cases such as mine that they finally understood what they should have done a long time ago.

Mr MARK SPEAKMAN: The question of claimants being able to take lump sums and negotiating an overall settlement has been raised. Were any of you given the opportunity to do that? If not, would you have liked that?

Mr MCPHILBIN: I have been trying to get a lump sum payment for nine years. Had I received a lump sum payment in the beginning I think I would have been back at work, gone to university, changed my career and got on with it. I feel like a hostage to this system because I have not had the finances to do anything. It has caused more harm than good.

Mr WINDLE: I am not in favour of lump sums. I am not sure how my injuries will end up or what operations I will need in the future. I want my options open.

The Hon. TREVOR KHAN: It is too early for you to tell?

Mr MCPHILBIN: Yes.

Ms BURGESS: There are some people in our group who have been around for long periods and whose cases would be called tailings claims who would have liked that option to get out. However, it has not been promoted. It is horses for courses. Those who have been in the system who could clearly benefit from being moved on should have that available to them. Lump sums should still be part of the system.

The Hon. PAUL GREEN: In terms of you approaching medical officers, was there a delayed response to getting a first visit?

Mr WINDLE: Not in my case. I was pleased. It was fairly prompt.

MS FORDHAM: I was in hospital.

Mr SMITH: The insurance company delayed the paperwork by about four weeks in my case. Coles was self insured. I tried to get in contact with the caseworker but I could not. If they wanted to get me, they did. Payments and stuff like that were delayed. I lost wages and relied on mum and dad until everything was sorted out with solicitors and the ball started to move again.

The Hon. PAUL GREEN: Did you go back to work?

Mr SMITH: I went back to work on light duties until I had my operation. I was back to work on light duties and then returned to full duties.

The Hon. PAUL GREEN: Obviously you all have experience with the system. What would you fix?

Ms BURGESS: We have only a short period.

The Hon. PAUL GREEN: A bullet point each would be helpful.

Ms BURGESS: I would like to touch on this issue of first consultation. That is very significant because quite a few people who come to our meetings talk about the delay in seeing someone who can give them a diagnosis. For instance, we had one lady who was taken to the company doctor after falling down the stairs at a manufacturing plant. In my view, and I am not a doctor, she had significant injuries. So what we saw was five months before this person got a diagnosis. During that five months without proper treatment from a qualified doctor, just physiotherapy instead, the woman's condition deteriorated significantly. She now has long-term problems because of that. That is a quite extreme case, the five months, but it is very common for people not to receive immediate medical intervention, which is so important. The scheme is based around early intervention, so if you cannot get a diagnosis from a doctor what are you really doing? You are not getting any intervention at all and what you are getting is a state of deterioration where people just get worse and worse.

The Hon. PAUL GREEN: Do you think a physiotherapist could have written the initial certificate?

Ms BURGESS: I would say no, most definitely. There is a place for all allied health people within the scheme, but I really would like to share an experience that we have very often these days with large employers. Rather than send people to the doctor once they have sustained any sort of injury they have on-site physiotherapists. So you could have up to five instances where you were receiving physiotherapy treatment where you might actually have a broken limb. We have one lady in one of our groups who has had a broken wrist, had five manipulations by a physiotherapist on the site, paid for by the company. She has now had to have several operations on her wrist. So it is fraught with significant danger that there is no medical intervention but treatment by a physiotherapist. Their writing the doctor's certificate does not work for me.

Ms FORDHAM: I do not have a dot point that I can fix the situation but I would just like to say I was struggling with being a single income earner, having lost my husband. I had my elderly mother living with me, so finances were pretty on my mind. If this had not been covered by workers compensation I really do not know because I had a lot of out-of-pocket expenses. I had to do things like mow my lawns myself, but luckily I was able to get quotes and claim that money back. So I just want to stress if I had not been covered by workers compensation, I cannot afford private medical health coverage so I actually do not know how I would have survived. It would have been really tough for me.

Mr McPHILBIN: Can I give you a headline? I think that the system from the beginning is very, very adversarial. It is very hostile and it is all about reducing cost and this is what is causing the problems. I know from the very first day that I had a claim I felt like I was under siege. I was treated like I was fraudulent, like I was trying to rip the system off. Every injured worker I talk to feels exactly the same way.

Mr MICHAEL DALEY: Who was that from? Was that the scheme agent, or who imposed that feeling on you?

Mr McPHILBIN: It can come both from the employer and definitely the scheme agent.

Mr SMITH: Workplace harassment.

Mr McPHILBIN: Yes, it is basically. You feel as if you are being bullied and harassed and treated as if you—you come to doubt yourself.

Ms BURGESS: There are a couple of things that I would highlight. The claims management process, it is pretty appalling for injured workers now. They are subject to a fair amount of harassment, not just from the employer in terms of telling them they have got no injury, but also from case managers within the scheme agents. Everybody else within the WorkCover system actually has to maintain a minimum level of professional education every year. They have to have minimum qualifications. But you have actually got now, you know, 18- and 20-year-old people with no experience, no medical background, making decisions that significantly change people's lives. There needs to be some accountability just around that issue alone, because I think if you had somebody that was suitably qualified making decisions about whether or not people could receive treatment or simply a chair to get them back to work, then I think you would see some immediate savings to the scheme as a result of that.

The Hon. TREVOR KHAN: I think the employer could have paid for the chairs.

Ms BURGESS: And the only other point that I would like to make is that there is overwhelming evidence from injured workers that says that despite them wanting to go back to work, their employer does not have the same commitment about getting them back as they do. So, you know, even though you might have had an occupational therapist go in and identify duties in a particular area there is much reluctance on employers to take injured workers back because they see them as a liability.

I think the Police Association talked about some sort of obligation on the employer to take injured workers back. There needs to be that. It is enshrined in the legislation currently but in actual fact it does not happen. It does not happen. There needs to be some remedy, some action taken on employers who do not participate as well as they could and I would have to say in my own experience some do not participate at all. They just simply say you are injured and I do not want you back. There needs to be a penalty for that, and there is not now, or a reward for those that do participate.

CHAIR: Thank you all very much for coming today. We are happy to hear your stories, but we are not happy with the stories we are hearing.

(The witnesses withdrew)

The Committee adjourned at 5.05 p.m.