REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE NO. 1

INQUIRY INTO PERSONAL INJURY COMPENSATION LEGISLATION

At Sydney on Monday 4 July 2005

The Committee met at 10.30 a.m.

PRESENT

Reverend the Hon. G. K. M. Moyes (Chair)

The Hon. R. H. Colless
The Hon. K. F. Griffin
The Hon. R. M. Parker
Ms L. Rhiannon
The Hon. E. M. Roozendaal
The Hon. I. W. West

CHAIR: This is the fifth public hearing of General Purpose Standing Committee No. 1 into personal injury compensation legislation in New South Wales. The first witness to provide evidence today represents the Australian Manufacturing Workers Union [AMWU] and the New South Wales Government. The Committee has previously resolved to authorise the media to broadcast sound and video excerpts of its public proceedings. Copies of the broadcasts and guidelines are available from the table near the door. In reporting Committee proceedings members of the media must take responsibility for what they publish including any interpretation placed on evidence before the Committee.

In accordance with these guidelines, while a member of the Committee and witnesses may be filmed or recorded, people in the public gallery should not be the primary focus of footage or photographs. Under the standing orders of the Legislative Council evidence and 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 a Committee member or by any other person. Witnesses, members and their staff are advised that any messages should be delivered through the Committee clerks.

PAUL ANTHONY BASTIAN, State Secretary, Australian Manufacturing Workers Union, New South Wales Branch, 133 Parramatta Road, Granville, and

PETER RICHARD TYSON, Solicitor, Level 20, 580 George Street, Sydney, affirmed, and

GAIUS WILLIAM WHIFFIN, Solicitor, Level 20, 580 George Street, Sydney, sworn and examined:

CHAIR: Mr Bastian, in what capacity are you appearing before this Committee? Are you appearing on behalf of the union?

Mr BASTIAN: On behalf of the union.

CHAIR: Mr Tyson, in what capacity are you appearing?

Mr TYSON: I am appearing on behalf of the AMWU.

CHAIR: Mr Whiffin, in what capacity are you appearing?

Mr WHIFFIN: On behalf of the AMWU.

CHAIR: If you consider at any stage that certain evidence you may wish to give or documents you may wish to tender should be heard or seen only by the Committee, would you indicate that fact and we will consider your request. Would you like to start by making a short opening statement?

Mr BASTIAN: I would like to make a statement on behalf of the union. When introducing the 2001 reform to workers compensation the New South Wales Government gave a commitment that no worker would be worse off under its reform proposals. After nearly four years of these reforms the AMWU maintains that this pledge, given to the workers of New South Wales, does not ring true. As a consequence we are calling for an independent review of the implementation and practical effects of the legislation on New South Wales workers. In our view the review should cover, firstly, the application and effect of the whole of body impairment guidelines; secondly, the circumstances in which common law damages can be accessed; and, finally, the operation of the Workers Compensation Commission.

In relation to whole of body impairment guidelines, the introduction of the 2001 reforms was predicated on the introduction and application of these guidelines. These guidelines were to determine an injured worker's entitlement to a lump sum; whether the 10 per cent threshold is met in order to access a lump sum payment for pain and suffering; and, finally, whether the 15 per cent threshold is met in order that an injured worker can access common law damages. The AMWU opposes the use of these guidelines as it maintains that their focus was on impairment rather than disability; that they would make it difficult for workers to reach the threshold set in the legislation; and that they would, as a result, lead to workers receiving less compensation, that is, being worse off.

We are not the only critics of the guidelines. The American Medical Association states that the guidelines should not be used to determine compensation and the Australian Medical Association criticises the guidelines as compromising the independence and treatment of examining doctors and focusing on impairment rather than disabilities. In our submission workers are indeed worse off under the 2001 reforms. In our view the application of the guidelines by medical practitioners is inconsistent, particularly in relation to section 66 claims, with as many disputes now as there were prior to their introduction. It is also our submission that the guidelines need to be amended to give a more equitable result, particularly for injuries such as back, orthopaedic and other disabilities. The review should examine and determine whether workers are worse off as a result of the introduction and the use of these guidelines.

The gateway thresholds to pain and suffering in common law damages are both discriminatory and prohibitive, leaving those with catastrophic injuries particularly worse off. The guidelines are discriminatory in that the thresholds are higher than those that exist in other legislation

such as motor accidents and civil liabilities legislation. As well, unlike other legislation, common law claims, if made under the 2001 reforms, are restricted only to economic loss, with injured workers rights to ongoing medical care being extinguished. Surely the cost of supporting yourself and your family are the same, regardless of where the negligence occurred. Yet if you are a worker injured through your employer's negligence at work your rights and entitlements are less.

We maintain that the standard of care should be higher for employers than those relating to motor vehicles, or in shopping centres and theatres. The 15 per cent threshold in the circumstances that I first outlined is particularly prohibitive. What real choice do catastrophically injured workers have under these guidelines? They can either pursue a common law damages claim for economic loss only at the loss of their ongoing medical care, or accept to take a capped lump sum with a statutory payment of around $300 per week. In our view that is Sophie's choice; it is not a real choice at all. In relation to the procedures before the Workers Compensation Commission, it is a system that involves a large number of arbitrators with little workers compensation experience dealing with complex medical and legal issues. They are not required to publish the reasons for their decisions, which impact on the rights and entitlements of injured workers. In our view that has resulted in a lack of transparency and inconsistency in the system let alone inconsistent outcomes.

Despite complex criteria having to be met, my advice is that as much as 20 per cent of the decisions of arbitrators are subject to appeal. As I said earlier, the AMWU believes that an independent review of the 2001 reforms and their impact on the lives of injured workers and their dependents is required. We were given a commitment that these reforms would not result in workers being worse off. The evidence that we have gleaned from discussing this with members of our law firm, which is contained in our submission and annexed to it, clearly demonstrates that our members, particularly in those areas of injuries that I outlined, are worse off under these reforms.

The Hon. RICK COLLESS: You mentioned in your short address that the American Medical Association states that the guidelines should not be used for compensation purposes. What is your understanding of the purpose of those guidelines if they are not to be used for compensation?

Mr BASTIAN: The focus of the guidelines is on impairment—determining the level of impairment. That is one of the areas that we say is wrong. The issues should be on the disability of workers to be able to carry out their work as well as the social consequences of it. In our view the guidelines are too arbitrary. As we said, the guidelines themselves state that they should not be used to determine the level of compensation. But they have been adopted, both as a vehicle to judge impairment and to determine the level, via the thresholds, of compensation. The result is that whilst they are supposedly objective they are applied subjectively, which in our view is an inconsistent outcome.

The Hon. RICK COLLESS: Do you feel that they are too rigid, too inflexible, in the way that they are applied?

Mr BASTIAN: Yes. We think that there can be a number of amendments to make it more equitable, particularly in those areas that I have defined where we see the most discrepancy in the outcomes for workers.

The Hon. RICK COLLESS: In the covering letter to your submission you make the following point:

> While restricted access to compensation is a major issue for all injured workers very clearly the worst effects will be felt by the most catastrophically injured.

What are those worst effects to which you are referring? Is it the reduced payouts, or the fact that you are talking about impairment rather than disability?

Mr BASTIAN: It is the way that the gateway has a restricted application in terms of access to common law. Not only do you have to get over quite a high threshold when you compare it to other pieces of legislation based on the whole of body position; you are then left with this choice that if you pursue common law you extinguish your right to ongoing medical care. That is a real issue. It is not any real choice. What is the practical effect of these common law claims? It is my understanding that lawyers do not necessarily advise people to pursue that avenue as it is not in their interests. But their

choice then is to live on the statutory scheme at extremely low levels of income to raise their families and their dependents, and a lump sum payment. Under a previous system they would have been able to access the common law claim, ongoing medical care, get on with their lives, make necessary social changes to their lives and move on. We say that is one of the real areas of reform that is required for those who are catastrophically injured. In our view, there is a real flaw in the legislation.

The Hon. RICK COLLESS: The Government's submission makes an important point in light of what you have just said. It states that injured people with less serious but nonetheless valid claims can still seek full recovery of all reasonable and necessary hospital, medical, rehabilitation expenses, past and future loss of earnings up to three times their average weekly earnings, and other out-of-pocket expenses. Nothing in the Government's reforms limits the ability of a person to recover these things. Do you agree with that? The committee has taken considerable evidence that suggests that that is not happening.

Mr BASTIAN: I might defer to Peter on that.

Mr TYSON: That statement was referring to less serious injuries?

The Hon. RICK COLLESS: Yes, it was, but the committee has taken a considerable amount of evidence that suggests that it is not the case even with the less serious injury.

Mr TYSON: If the intent of that statement was to indicate that the new system would compensate less serious injuries—

The Hon. RICK COLLESS: It is referring specifically to people whose injuries are assessed at less than 15 per cent. Our concern is that it is very difficult for anybody to be assessed at more than 15 per cent.

Mr TYSON: If the intent of that statement was that those injuries would be compensated at a comparable level to the system that applied before the reforms, it is the union's submission that that is not so.

The Hon. ROBYN PARKER: The committee has received a lot of evidence that agrees with your position. What is your recommendation when the committee looks at loss of income for injured workers with weekly compensation payments? How can that be addressed so that they have a reasonable amount on which to live?

Mr BASTIAN: As we have said in our submission, the review needs to look at access to common law for those areas, some avenue to allow people to move through and claim common law and receive a common law damages claims, some review about how the guidelines are applied, particularly in relation to the areas where we say from the material we have gathered from cases we have had, there is a definite loss for workers under the current system and that is the areas of backs, orthopaedics and other disabilities. There are some areas where the guidelines can be changed. There also needs to be some consistent application of the guidelines through the Workers Compensation Commission.

Again my advice is that because there are so many arbitrators who lack experience in workers compensation generally in medico-legal matters, and they have got such discretion, there is a wide range of inconsistent outcomes. There needs to be some change to that area. In our view people must have more training in relation to legal and medical issues. There should be less arbitrators, not so many, and they need to be transparent, that is, we think workers have a right to know the reasons for a particular judgment, be it for or against them to provide transparency and accountability. There are issues about appeal that we think need to be changed in those areas. As it currently stands there are great hurdles in relation to appealing and, again, we say that that is an area that needs to be looked into. Prior to these reforms the compensation court was a specialist court, and that has certainly been greatly deregulated at the expense of workers' entitlements.

The Hon. ROBYN PARKER: The committee has received a lot of anecdotal and personal presentations who say their case has been managed very poorly by the insurance company or whoever

is handling the case. They have been mucked around and treated very badly and suspiciously. In your opinion how can the management of workers compensation cases be improved?

Mr BASTIAN: There has got to be more accountability of insurers in terms of meeting the guidelines that are required under the legislation. There is probably a host of issues that those who practise in it can say about improving it, rather than me. I can only say that our experience is that I have not noticed a lot of change pre-reform and post-reform in terms of concerns from our members about how insurance companies handle their cases.

Mr TYSON: I add that there has been some improvement in relation to the imposition of time limits on insurers in the communication of decisions in relation to claims that I think is an advance. The information we get is that evidence as to the inter-relationship between a claimant and the insurance company bureaucracy has not really improved. How you do that is not something to which we have turned our mind. I think, there must be ways to improve the communication between people who depend on workers compensation payments and insurance company people.

Mr WHIFFIN: I do not think the number of injured persons that have complained about the problems they are having, not in relation to liability but simply getting their weekly payments paid, I do not think that level of complaint has gone down.

The Hon. RICK COLLESS: The Government's submission contains its view that in relation to workers compensation the scheme deficit has been significantly reduced and premiums have remained affordable, that the transaction costs have been reduced and there have been improvements in claims administration and return-to-work rates. There have been improvements in support to employers and workers; a reduction in disputes has occurred; and the compensation available under the statutory scheme has been improved. Is that your view generally of what has happened since the changes came into effect?

Mr BASTIAN: No. I will deal with two issues in the host to which you have related, particularly in relation to the issue of the deficit being reduced. The first thing we would say is that that is not our concern. The issue for us is that we were given a pledge that no worker would be worse off, and clearly on the evidence that we have—and we think that would be the same with many law firms who represent workers—that is not the case. Secondly, how do you determine costs? I have sought to get some apportionment of where the savings come from that is attributed at least in press releases that is all borne by the costs of lawyers. I am not concerned about what costs lawyers lose, but when I have asked to get more detailed information on comparisons between injuries pre and post 2001 reforms to see statistically where that adds us, I am unable to get it.

I am told that you cannot get it because there is no central data system so they are unable to make those comparisons. But the simple comparisons we do with our members show our members are worse off, so there has got to be some evidence given about from where the savings generally are coming? We say workers are worse off. We can show it with figures on papers that they are worse off, but on a global sense I do not think anyone has been able to prove that it is all down to lawyers. But again we say, that is not our interest. Our interest is that we were given a commitment that no-one would be worse off and they are.

In relation to damages, the same thing applies. The anecdotal evidence in our annexure was based on assessment under both regimes, because of the circumstances at the time, and it clearly shows that our members in these categories are worse off, and in most cases, substantially worse off. Despite anything else, the other inequity that stands out to us, is that we do not understand why an injured worker is different to someone that is injured in a car or a shopping centre. You can have exactly the same injury in a shopping centre or in a car accident, but if you have it at work you get less and your rights are less. I do not understand that. Our members do not understand it. It is an inequity that should be got rid of.

Ms LEE RHIANNON: Did you say that injuries by workers should be at a higher rate?

Mr TYSON: The standard of care.

Mr BASTIAN: Yes, in terms of the standard of care?

Ms LEE RHIANNON: Yes.

Mr BASTIAN: I, and the unions, certainly believe that if you look at the standard of care owed to someone in a motor vehicle accident or injured in a shopping centre, our position is that an employer has a much higher standard of care in relation to workers under their care for a substantial period of the worker's life.

Ms LEE RHIANNON: You mentioned the problem of getting a statistical comparison before and after the changes. Would you provide examples of workers who are worse off because of the changes?

Mr BASTIAN: I refer to the annexure in our submission. For example, a mechanic who worked for a trucking company: left shoulder injury, right wrist, pre-2002 would have got $23,500, post-2002 $14,250. A worker making chewing gum for a process company: back and leg injury pre-2002 $33,750 under the table of maims, post-2002 $10,000 and so on.

The Hon. RICK COLLESS: In that case what was the nature of the back and leg injuries? How severely injured was he?

Mr BASTIAN: I will defer.

Mr TYSON: I am not sure that we can give—

Mr BASTIAN: We can take that on notice and give more specific details in relation to those injuries.

Mr TYSON: In general terms, the difference between the table of maims and the post-reform situation is that the table of maims took into account disability as against mere physical deviation from the norm which is the impairment.

Mr WHIFFIN: These are examples where an individual has been assessed under both regimes for the purpose of the actual claim. Claims in these particular cases overlapped the various 2001 amendments so the need was to have them assessed under both regimes by individual doctors because at that stage it was not certain which law would apply. They are cases where there have been not just theoretical assessments under both regimes but actual assessments. In relation to the amounts, you will find that the statutory maximum under section 66 went up with these amendments—I think it was $121,000 to $200,000. But in terms of the equivalent amount, the 10 per cent whole person impairment, it is not $20,000 it is $12,500. There is not a proportionality there until you get to about 40 per cent. For there to be a response from the Government that there has been an increase, sure there has been an increase, but it is only in higher range. Down the lower end, as some of these figures show, we are talking about less for injuries, and certainly there has been a decrease.

Ms LEE RHIANNON: Mr Bastian, one of your key recommendations was an independent review of reforms. Have you canvassed that more widely? What support do you have for that suggestion?

Mr BASTIAN: I have not really canvassed that issue more broadly in terms of within the trade union movement. Of course, we support the submission by the Labor Council but we have taken a firm position because of our strong opposition to the use of the guidelines in the first place, because of what we have done in terms of preparatory work for this hearing, that it requires a review. In fact, if my memory serves me, we were given an undertaking as well to have a review of the operation of the legislation and to my knowledge that has never occurred.

Ms LEE RHIANNON: Did the Minister give that undertaking?

Mr BASTIAN: Yes, from memory that is right. We were given an undertaking from the Government through the Minister, I think, in relation to a review to be undertaken. In any event, we think, and we have said in our submission, it requires an independent review against that pledge, which was very public, that no worker would be worse off. We say in our case that has not been true.

The Hon. IAN WEST: I ask a question of Turner Freeman. You referred to the issue of lump sums for section 66 and section 67. At page 43 the submission from the Cabinet Office refers to an increase from $171,000 to $250,000. Did you say that the actual increase does not have an effect because of the issues of access being a 10 to 15 per cent whole of body threshold depending on whether it is section 66 or section 67? Did you say that the access issue means that those particular top-level figures have no meaning?

Mr WHIFFIN: The top-level figures of $250,000 is made up of two components: the section 66 amount with a maximum of $200,000 and the section 67 amount for pain and suffering with a maximum of $50,000. I have not got the exact figures here but I believe you have to be over 70 per cent impairment under the WorkCover guidelines to get the maximum figures. The point is that if you are 10 per cent you get $12,500 under section 66. For the lower percentages every 1 per cent is worth $1,250. It is not worth 10 per cent of the maximum. To say there is an increase, there has been an increase but whether there has been that increase in smaller claims the evidence just does not show it.

The Hon. IAN WEST: In terms of the Workers Compensation Commission, we appear to be getting strong anecdotal evidence that the pension-type scheme means that a lot of claims are not being finalised and there is also difficulty in the arbitral, conciliatory and judicial processes. Can you give us your experience of the commission?

Mr WHIFFIN: I think that is right. I think the arbitrational nature of the system is not necessarily the problem. The fact that claims can be looked at at an early stage in terms of resolution is not necessarily the problem. The position certainly of the union is that the way that has been conducted by the Workers Compensation Commission at the moment clearly is not fair to injured workers. The procedure involves, for example, a telephone conference. You may have heard various talk about how telephone conferences are conducted. I have not been involved in any particularly difficult telephone conferences, but there is certainly innuendo that telephone conferences have been held with dogs barking in the background, babies crying in the background or someone being at their daughter's sports day. There are other suggestions out there that demand, in my view, that this system has to be reviewed and has to be much fairer to injured workers.

The Hon. IAN WEST: In terms of consistency of approach, which obviously we would all like to see, have you had cases where a truck driver has been injured in a shopping centre whilst at work?

Mr WHIFFIN: Certainly.

The Hon. IAN WEST: How would you determine your approach to that particular claim?

Mr WHIFFIN: Do you mean in terms of the different laws that may apply?

The Hon. IAN WEST: Yes. How would you advise that person?

Mr WHIFFIN: It really does depend. It depends on the severity of the injuries. Certainly if someone has potential entitlements under two different schemes they are invariably better off under the non-workers compensation scheme, invariably better off. You see it more often in terms of motor vehicle accidents than work-related injuries. Just to give you an example, the American Medical Association guidelines are also the basis of the motor accidents impairment guidelines, although different editions are used. The fourth edition is the basis of the motor accidents guidelines, and the fifth edition is the basis of the workers compensation guidelines. Under motor accidents law you have to get over a 10 per cent threshold to have a common law negligence case.

Once you get over that threshold general damages apply to the assessment of injuries for entitlement to non-economic loss. Invariably if you get over that threshold, the claims assessment and resolution service of the Motor Accidents Authority or the District Court are awarding damages close to $100,000. That is for severity of 10 per cent whole person impairment. Under the Workers Compensation Act someone with a similar impairment gets $12,500 plus a small amount for pain and suffering, probably around about $5,000. In those sorts of situations, if did you manage to get over the

various thresholds, either under the Motor Accidents Compensation Act or the Civil Liability Act if you are injured in a shopping centre, invariably you rely upon your rights under that Act.

The Hon. IAN WEST: In terms of administering your practice, do you find that claims for worker compensation have a long tail? They go on and on and you cannot close the file.

Mr WHIFFIN: You cannot close the file in a lot of cases simply because there is an ongoing payment, of course. It may be that payment is awarded by the commission, in which case until it is disputed by an insurance company in the future the claim is being paid, so to speak. Yes, there are many more cases where there are ongoing payments. The reason for that is the inability in a pure workers compensation case to commute unless you meet various criteria.

The Hon. IAN WEST: Would you see that this long tail or pension-type scheme may end up in a situation like we had in 1987 where there is a further blow-out?

Mr TYSON: Could I answer that? The problem we have with answering those questions is that there is simply insufficient statistical analysis available. The answer to that question would become obvious to everybody if WorkCover did publish the level of detail that has been sought now for some years. It is not available. We do not know.

Mr WHIFFIN: There is just one other point I would make. The fact that injured persons are required to be on this drip feed method of weekly payments, as was mentioned in the submissions, does not encourage independence and rehabilitation for those workers. There is not a lot that they can do themselves without the assistance of an insurance company in terms of rehabilitation—which does not always occur—to change their lives around, so to speak, and rehabilitate themselves on $334 a week, for example.

The Hon. IAN WEST: If we are going to have consistency of approach to benefit structure what would you like to see?

Mr WHIFFIN: From this perspective there certainly needs to be a lowering of the 15 per cent threshold to allow common law access to all persons. As I think was mentioned earlier, just because you are injured at work rather than in a motor vehicle accident does not mean you will have less responsibilities in life.

The Hon. IAN WEST: How do you see the Civil Liability Act as an approach?

Mr WHIFFIN: That has been suggested. That certainly would be the preferable position. It takes account of the disabilities that a person suffers from. To that degree it is certainly a much more preferable position than the position with workers compensation at the moment.

The Hon. IAN WEST: And the Motor Accidents Compensation Act?

Mr WHIFFIN: And the motor accidents Act. Motor vehicles in that sense is fairly similar in terms of common law access to workers compensation except for a lower threshold.

The Hon. IAN WEST: If a truck driver was injured in a retail store, went to hospital and suffered from medical malpractice, which area would you suggest he go to?

Mr WHIFFIN: The first thing is that the workers compensation probably would not apply, because if the injury were in a shopping centre there may not be any negligence from the perspective of the employer in that situation. The negligence would probably be in relation to the shopping centre and the hospital. What would generally happen is you would have to determine the extent to which the medical malpractice played a part in the overall result to determine the various thresholds and the level of the disability from the shopping centre incident. There may be some overlap there, but I would suspect that such a case would not involve workers compensation except for the statutory scheme.

Mr TYSON: All things being equal, if you had a choice you would pursue the claim under the Civil Liability Act. You would be mad not to.

Ms LEE RHIANNON: We are meeting with an officer from the Cabinet Office next session. What would you like to say to the Cabinet Office if you were able to put a question to it? What is at the top of the list?

Mr BASTIAN: I would like to see the figures that can demonstrate that workers are in fact better off under this scheme. That is not the case with us. I would love to see the figures that show workers are generally better off. We say they are not.

Ms LEE RHIANNON: You are going back to their original commitment?

Mr BASTIAN: That is the whole thrust of our submission. The reforms were predicated on that commitment. We opposed it. We did not believe it would work. We say it has not worked. That commitment does not run true for our members. They have suffered under it. It is for the Government to disprove it, in our view.

The Hon. ERIC ROOZENDAAL: In relation to medical specialists, you say in your submission, "Legal representatives were advising injured workers to compromise their claims, often to a significant degree". Would you explain the logic behind that? It is in the last three paragraphs of your submission.

Mr TYSON: There is a perception that approved medical specialists are less benevolent in their findings than in many cases the offers that insurers are prepared to make on the basis of the medical reports submitted to them. That is a fairly widespread perception.

Mr WHIFFIN: To become either an approved medical specialists or accredited by WorkCover to make assessments under the whole person impairment regime you have to do a certain degree of training. That is not the issue. The issue is if you look at the lists on the web sites of the approved medical specialists and accredited doctors, the doctors that have done the training are those that have the time to do it. They are generally not treating doctors of injured workers. There are quite a few doctors that also treat on that list, but most of them are traditional medico-legal specialists who have been working predominantly for insurers over a substantial period of time. They have got the time to do the training.

The Hon. ERIC ROOZENDAAL: Do you see a way of reforming that?

Mr WHIFFIN: In the submissions I think it is put that there should be some sort of independent panel to review applications in that regard. There certainly needs to be a much greater degree of fairness in the doctors that are put forward in that regard.

(The witnesses withdrew)

VICKI TELFER, General Manager, Strategy and Policy Division, WorkCover New South Wales, Locked Bag 2906, Lisarow,

DAVID BOWEN, General Manager, Motor Accidents Authority, Level 22, 580 George Street, Sydney, and

ANTHONY LEAN, Policy Manager, Legal Branch, The Cabinet Office, Level 37 Governor Macquarie Tower, 1 Farrer Place, Sydney, affirmed and examined:

LAURIE GLANFIELD, Director General, Attorney General's Department, 8-12 Chifley Square, Sydney, sworn and examined:

CHAIR: Do any of you wish to make an opening statement?

Mr GLANFIELD: Thank you for inviting us to appear before you today. Given that your inquiry covers civil liability, workers compensation and motor vehicle accident compensation laws, we have in attendance senior Government experts from each of those areas. As you can see, I am joined by the General Manager of the Motor Accidents Authority, Mr Bowen, the Policy Manager of The Cabinet Office's Legal Branch, Mr Lean, and the General Manager, Strategy and Policy Division, WorkCover NSW, Ms Telfer.

I propose to make an introductory statement, which will focus on the civil liability reforms of 2002. Ms Telfer and Mr Bowen will then speak to workers compensation and motor vehicle accidents respectively. Mr Lean is on hand to answer questions in relation to the civil liability reforms and the Government's submission more generally. I hope that we are able to provide you with the information you need in order to finalise your deliberations. In addition we would like to take the opportunity to correct some inaccuracies and address some misconceptions which have arisen during Committee hearings to date.

In late 2001 and during 2002 there was a severe hardening of premium rates for liability classes of insurance for Australia. As we all know, for certain risks liability insurance became completely unaffordable or completely unavailable. The forces causing that insurance crisis were complex, just as several submissions to the Committee, including the New South Wales Government's submission, have pointed out. Among these factors were the collapse of major liability insurer HIH, increasing compensation payouts for bodily injury during the 1990s, increasingly litigious community attitudes, and changes in the way in which courts were prepared to extend liability for negligence. These factors combined to impact heavily on the cost of insurance in Australia.

Although some witnesses to this inquiry have downplayed the growing trend of litigiousness and judicial generosity towards plaintiffs, I draw members' attention to the Government's submission on this point which highlights increasing claim numbers and costs. I also point out that in his 2002 lecture the Chief Justice of the Supreme Court, the Honourable Chief Justice Spigelman, criticised the tendency of lawyers to "search for deep pockets" in the hope of finding wealthy organisations or well-insured individuals or bodies who could be sued. Insurance premiums for public liability had become, in the Chief Justice's view, a form of taxation—"sometimes compulsory but ubiquitous even when voluntary"—imposed by the judiciary as an arm of the State. It had become common for plaintiffs with relatively minor injuries to be awarded lump sums "greater than they could have saved in a lifetime". Indeed, this "tendency of lawyers" on which Chief Justice Spigelman commented is reflected in statements made during evidence before the Committee to date. One witness said before you:

> The criticism of Santa Clause judges I think was unfair because they were focussing on very large payouts, which, by and large, were covered by insurance in any event.

Such a statement could easily be misconstrued to suggest the witness believed that just because there is insurance in place, then a large payout is justifiable. This is probably not what was intended. The point which I think is often forgotten, as appears to have been the case here, is that someone has to pay for the insurance. Large claims have a significant impact on personal injury portfolios, and ultimately these costs are borne by both business and the consumer. Motorists pay for Greenslips.

Business, including most small businesses and community groups pay for Greenslips, public liability insurance and workers compensation.

In introducing these reforms, the Government was responding to the very real and significant increases in premiums which small businesses, community groups, local councils, home owners and families were being asked to pay. I will return, in a moment, to issues relating to the cost of insurance. Before I do that, however, I want to address another issue that is touched on by the Chief Justice's comments and highlight what is arguably one of the most important rationales for the Government's reforms: the intention to reinstate the principle of personal responsibility to the law of negligence. This point has not been given a great deal of emphasis during the hearings of the Committee to date.

In late 2001 there was strong community concern developing in relation to the types of cases in which people were being awarded damages. There was a strong reaction to what many perceived to be a trend of people seeking compensation for injuries which were a result of their own carelessness or bravado. For example, a man fell onto a railway track after climbing over a guard rail to urinate and he sued the Roads and Traffic Authority for negligence. A woman sued the owner of a theatre for not warning of the dangers of retractable seats. She was injured when she tried to sit on a retractable seat without first pulling it down. A footballer, injured during a match, tried to sue the Australia Rugby League, the body responsible for the rules of the game, because he thought the rules were too dangerous.

Justice McHugh commented in the High Court judgment of *Tame v New South Wales* in 2002 that "Negligence law will fall—perhaps it has already fallen—into public disrepute if it produces results that ordinary members of the public regard as unreasonable." One of the key drivers of the Government's reforms was to restore the principle of personal responsibility so that the law of negligence would accord more closely with community expectations. The reforms were designed to give courts statutory guidance when determining the liability of a defendant.

I will not repeat all of the reforms introduced by that legislation, as they are set out in our submission. They include, however, reforms such as establishing a reasonable duty of care whereby, for example, there is no duty to protect people from the obvious risks of dangerous recreational activities. And while it is still early days for litigated cases to be decided under the new laws, there have been a number of positive decisions in the Court of Appeal that reflect the intent of the reforms. In one case the Court said:

> … this shift towards personal responsibility for one's own conduct, especially in the context of sporting and recreational pursuits where the risk of injury is obvious, accords with current expectations of the community as reflected in legislation such as the Civil Liability Act 2002 …

Indeed, in relation to the examples I referred to earlier, those cases which predated the Government's reforms have since been overturned on appeal. The need to address the issue of personal responsibility is a matter which the courts have either simultaneously or subsequently decided to address. Some have argued before the Committee that the fact that the higher courts were starting to give recognition to the principle of personal responsibility and overturn decisions on appeal means that the Government's legislation was simply not necessary. The Government does not agree. By giving recognition to the principle of personal responsibility in legislation, the law is clear for everybody. More importantly, it provides certainty going forward, which will contribute to a more stable premium environment. Importantly, it reduces the risk that parties will incur the costs of an appeal just to get the right result.

The Government considers it important that this aspect of the reforms is not overlooked by the Committee. The rising cost of insurance was, of course, significant. Coupled with the concerns I have already outlined, insurers also appeared to have been experiencing heavy underwriting losses from the previous decade and investments were producing very low or negative returns. The insurers did what it is probably fair to say that any commercial business would need to do in order to remain viable—they withdrew from unprofitable areas or continued to increase prices to match the increase in claim costs and to stem losses.

As we all know, this had a significant and dramatic impact on the community. Small businesses, local community groups and sporting groups were suddenly faced with a situation whereby liability insurance was unaffordable or, worse still, unavailable. These businesses and community groups began making urgent representations to Government. Although certain

submissions to this inquiry have tried to characterise the insurance crisis as mere "inflamed rhetoric" and a "media beat-up", let me assure you that the crisis was very real indeed. If you were in any way involved in a community group or sporting organisation during 2001 and 2002 you will remember only too well how difficult it was to access, or to afford, adequate insurance.

Many Government departments will have files full of letters from members of the community addressed to the Premier and other Ministers seeking urgent assistance in the crisis. These include personal representations from members of Parliament, your peers, urging that the Government help their constituents. When the insurance system breaks down like this, and insurance is either unaffordable or simply unavailable for so many, the insurance market is no longer performing its vital function of sharing risk across the economy.

A lot of the factors causing the crisis were out of Government's control. However, the most obvious domestic factor which impacts on premiums and is generally within the control of governments is the number and cost of claims. The Government accordingly set out to introduce the civil liability reforms designed to restore predictability to claims cost and thereby improve the affordability and availability of insurance for the whole community. As I understand it, this Committee is currently grappling with the issue of whether the savings and benefits from those civil liability reforms have been appropriately passed on by insurers to the community. This is obviously an issue in which the Government shares a keen interest.

Actuarial advice given to all governments at the time of the reforms indicated that the reforms should result in a 13.5 per cent reduction in premiums. That figure related primarily to the stage one reforms—or those imposing fair but reasonable limits on damages. The actuaries noted that the stage two reforms—the personal responsibility reforms—could lead to improvements of about the same magnitude, although they are more difficult to cost. The Government has consistently made it clear that it expects insurers to pass on the benefits of tort law reforms to the community in the form of more affordable and available insurance.

In August 2004 The Cabinet Office, in consultation with Aon, held a seminar with key underwriters in the industry to explain the reforms, and to outline the way the reforms were being applied by the courts. This seminar was intended to give the industry greater confidence in the reforms. It is also recognised that the community needs information so that they can be confident that the benefits are being passed on. While it is possible for the State to do this in relation to specific statutory schemes which are under its control, such as in relation to motor accidents, insurers otherwise operate in a national market. It makes sense to collect data on a national basis.

It is the Commonwealth that has the primary power and responsibility for regulating the insurance industry and the price of insurance. The Premier has also on several occasions called on the Prime Minister to take action to ensure that the Australian Prudential Regulation Authority and the Australian Competition and Consumer Commission [ACCC] monitor insurer premiums and make sure that insurers pass on savings to consumers. The Government, of course, welcomed the decision by the Commonwealth Government to extend the monitoring of insurance premiums by the ACCC for a further three years.

In recent times the Government has been greatly encouraged by what we are beginning to see: insurance premiums for public liability and professional indemnity, as well as medical indemnity, dropping by up to 17 per cent. The latest Australian Competition and Consumer Commission Monitoring Report shows that in the six months to June 2004 premiums for public liability insurance fell by 15 per cent. Professional indemnity insurance premiums fell by 17 per cent in that same period. Many insurers have indicated that they anticipate there will be further reductions passed on in future years. In other words, we are now seeing the benefits of civil liability reforms starting to flow to consumers through lower premiums. Some insurers have directly attributed that reduction to the Government's tort law reform program. Others, while suggesting that it is still too early to pass on the direct savings of tort law reform, have highlighted the return of capital and competition into the market as a factor which has led to reduced premiums.

The return of capital and competition is at least partly attributable to a more positive view developing in the international market that the Australian liability environment is now more stable. In this regard I think it is important that efforts to detract from these significant reductions, by comparing

premium prices now to prices in 1998, are properly scrutinised by the Committee. Insurers and many others have pointed out that lines of public liability and professional indemnity insurance up to 1999 were significantly underpriced. As we now know, this is partly what led to the HIH collapse. It is probably unrealistic, and arguably irresponsible, to pretend that we should be expecting a return to pre-HIH collapse premium rates, given that experience and the prudential requirements for insurers introduced in response to it.

In the Government's submission and several others, the Committee has already been furnished with details about the positive impacts of the reforms on the affordability and availability of insurance for the people of New South Wales. In addition, several witnesses to this inquiry including those from Wagga Wagga City Council and the Local Government Association, have described how the community members they represent are much better off now than they were before the reforms. Greater participation by insurers in the liability market has improved access to the cover which the community needs in order to maintain vital social, cultural, sporting and professional activities. I will not labour those achievements again here.

What I do wish to briefly address, however, is evidence given to this inquiry by certain people that they are still experiencing some difficulties obtaining affordable insurance. There may be a number of explanations for this, the first of which was flagged by the Leeton Shire Council witness at the first public hearing on 23 May. He said that many of the people are unsure of what they need to do. They do not have the expertise or perhaps the contacts to find out where to go for public liability insurance. I suspect that this may be at least part of the problem, and the Government would welcome measures by the industry to promote the various schemes established by the industry.

The second point is that, in stark contrast to 2001 and 2002, most people in New South Wales are now enjoying greater access to public liability insurance. They have not responded to this parliamentary inquiry because they have no complaints; their concerns around affordable insurance have been addressed. I note that reference has been made during proceedings to the recently released NCOSS Insurance Survey. If we look at the introductory section of that document it states that the poor response to the survey—only 80 organisations responded, in contrast to the 250 responses received to the 2003 survey—may be indicative of fewer insurance problems amongst community organisations.

This, I think, is very telling and certainly accords with the anecdotal information available to the Government that community organisations now have far fewer insurance problems, with some insurance companies offering cover to not-for-profit organisations that was never on offer before. It would be unreasonable, however, to expect the civil liability reforms to be a panacea for all insurance problems, particularly where the organisation seeking to be insured has no risk-management processes in place. Many community groups, for example, undertake activities that are considered "risky" by insurers, such as administering medication or working with people affected by drugs and/or alcohol. NCOSS reports that 72 per cent of the organisations registered under their Community Cover scheme undertake activities that are considered "risky" by insurers. However, only 31 per cent of the registered organisations had insurance risk management processes in place.

The Government believes that "risk management" is an area which deserves further examination in the context of these deliberations. There is much to be said for organisations adopting "risk-management" strategies, and for insurers to encourage and help them to do so. With the implementation of risk-management strategies, not only is the insurer more likely to underwrite the organisation, it also means that injuries are less likely to happen in the first place. Injury-prevention is strongly supported by the Government, as can be seen by initiatives such as the Safer Towns and Cities Program undertaken by the Government last year in partnership with the central west community to increase awareness and understanding of workplace and community safety. Our civil liability reforms have achieved greater affordability and availability of insurance for most organisations in New South Wales. Perhaps efforts to educate people about how to obtain insurance, and assist them to implement risk-management strategies, together with the emergence of initiatives such as Community Care Underwriting and NCOSS Community Care, will further improve access to affordable insurance.

Now that I have talked a little bit about premiums and the issue of insurer profits, I wish to move to the issue of the impact on the legal profession. It would appear that as a result of the reforms,

solicitors and barristers practising in personal injury law have experienced a decrease in the volume of work available to them, which equates to a reduction in income in what was previously a lucrative area. Lawyers are engaged to represent injured clients, certainly; however, they derive income from this—in some cases a lot of income. It is important that we do not lose sight of this when we listen to what they have to say about the reforms.

In the areas of workers compensation and motor vehicle accidents the Government was concerned that much of the premium dollar was being swallowed up by legal costs rather than going to the injured person. In some cases the lawyers' fees ended up being considerably higher than the final award to the injured person. Ms Telfer and Mr Bowen will elaborate on this issue in a moment. There is no denying that the reforms in the workers compensation and motor vehicle accidents areas were designed to introduce improved dispute resolution processes and reduce the amount of matters going to litigation. The aim was for as much as possible of the premium dollar to go to the injured person more quickly.

With due respect, it is not difficult to see why the lawyers do not like the workers compensation, the motor vehicle accident reforms and, to a lesser extent, the civil liability reforms, but it is also interesting to consider this: lawyers are currently protesting against the profits they say are being received by insurers. Some might say, however, that the clients of lawyers—the injured, for example—may equally protest against the profits that they regard lawyers as taking in the form of the fees they charge for running their cases. This begs the question: who should profit in the area of personal injury compensation—the insurer or the lawyer? The Government's view is that while it is, of course, in everyone's interests for both insurers and lawyers to return some sort of profit in order to remain financially viable, it is undesirable for either to "profiteer" from personal injury.

In introducing its personal injury compensation reforms, the Government has tried to achieve a situation where as much money as possible is directed to those who deserve it: the seriously injured person. The impression that has been given by some people to this Committee is that the thresholds introduced by the reforms have left injured people without any access to compensation. Indeed, some have said that they have to tell people on a daily basis that they are entitled to nothing. This is a disingenuous and inaccurate portrayal of the rights of injured people under the current Civil Liability Act.

So, where do the reforms really leave the injured person? First of all, people with significant and permanent injuries have always been, and continue to be, compensated under personal injury compensation laws where they can establish negligence in accordance with the Act. I think everyone, including lawyers, concedes this. Secondly, the thresholds in the Civil Liability Act do not prevent injured people from receiving compensation. As the Committee is no doubt well aware by now, the threshold in the Civil Liability Act is only used to determine eligibility for non-economic loss damages—non-pecuniary losses such as pain and suffering and loss of the amenities of life. In order to qualify for damages for non-economic loss, the person's injuries must be assessed as being at least 15 per cent of the most extreme case.

This means that injuries which are considered to be less than 15 per cent of the worst case—such as minor burns, whiplash, perhaps a broken bone that heals without complications—will attract no damages for pain and suffering. On the other end of the scale, a person who suffers the most injury—such as spinal injury, brain damage or severe burns—will be entitled to the maximum amount of general damages. Injuries assessed as coming between 15 per cent and the most extreme case will attract damages for pain and suffering on a sliding scale. So, while it is true that the civil liability reforms have meant that some people with less serious and non-permanent injuries are now unable to access damages for non-economic loss, those people can still seek full recovery of all reasonable and necessary hospital, medical, rehabilitation and related expenses, past loss of earnings and future loss of earning capacity, and other out of pocket expenses.

I appreciate that thresholds are a difficult thing, because no matter upon which basis they are determined, by their very nature some people will come in beneath them. I also understand that this Committee has been presented with evidence in which people are alleged to have come beneath those thresholds. However, given the limited and finite resource of compensation that is contributed to by all of us, it is simply not possible to give non-economic loss awards to everyone. I note that in some civil law jurisdictions, there is no such thing as an award for pain and suffering. The Government

believes that within these parameters an appropriate balance has been struck between the rights of injured people to compensation and the ability of the rest of the community to pay for that compensation.

Those with minor injuries should be receiving compensation for their injuries, although they may not be receiving big lump sums for pain and suffering in respect of an injury which has successfully healed. Those with more serious injuries are receiving compensation, including substantial lump sum general damages. The role of lawyers in the process has been somewhat reduced, meaning that they take less of a cut. And, although we are continuing to monitor the situation, it appears that insurers are now starting to pass on the savings that they are receiving to consumers in the form of reduced premiums. Thank you. I will now pass to my colleagues.

CHAIR: Can I just indicate we have taken a long time on that statement. A redoubtable defence, but would you care to make briefer statements?

Ms TELFER: Mine is much briefer, but I thought it was important. Thank you to the Committee members and to you, Chair, for the opportunity to appear before your Committee today to speak about what the Government, through WorkCover New South Wales, is doing to give effect to the community's expectation that workers deserve a safe working environment and that if a work is injured in the course of their employment they should be looked after regardless of the injury's cause.

WorkCover New South Wales oversees a suite of measures intended to ensure the health, safety and welfare of workers firstly by preventing the occurrence of injury and disease in the workplace and secondly, in the unfortunate event that an injury does occur, by providing prompt medical and rehabilitation services to assist the worker's recovery and return to employment. Providing financial support during their recovery process and compensation for a residual permanent injury is, of course, an integral part of this process, but it is only one part. I think it is important to remind ourselves that the primary focus of the New South Wales workers compensation and occupational health and safety regimes is on prevention and recovery from injury and the return of workers to suitable, safe and durable employment.

The New South Wales workers compensation scheme is a distinctive system of compensation designed to address the special needs of injured workers by providing for immediate financial and medical assistance without the need to demonstrate fault on the part of the employer or occupier. For most injured workers from the reforms of 2001, provisional liability payments will commence within seven days of notifying an injury. That was quite an important reform because until then some considerable time was spent before an injured worker had access to either treatment or to benefits, and that delayed their recovery.

New South Wales has had statutory arrangements for a no-fault workers compensation scheme since 1910 and for compulsory insurance since 1926. No-fault arrangements were introduced largely in recognition that fault-based schemes would be inappropriate for workers because it can be difficult, risky and expensive to demonstrate fault; doing so also involves litigation, which can be lengthy and complex. Another major focus of the workers compensation scheme in New South Wales is to reduce the risk of injury by ensuring safer workplaces.

As I have noted before, the workers compensation scheme provides a range of benefits, not just weekly payments. These include hospital and other treatment costs such as physiotherapy, chiropractic, rehabilitation costs including assistance with formal retraining for injured workers who cannot return to their preinjury duties, legal costs, lump sums for whole-person impairment and pain and suffering. Unlike damages, workers compensation benefits for permanent impairment are available without proof of negligence: you do not need to demonstrate fault. Lump sums under section 66 of the Workers Compensation Act are generally payable from a 1 per cent whole-person impairment. If the 10 per cent whole-person impairment threshold is met, further benefits for pain and suffering are payable under the Act.

Following the reforms in 2001 injured workers can now claim for a far broader range of injuries than was allowed under the old system's table of disabilities. Under the old system, workers who suffered psychological disorders or damages to internal organs would not receive lump sum compensation except if they went through common law. For example, a worker who suffered

permanent damage to their lungs could not have received a lump sum payment under the old system but can be compensated under the current impairment guidelines.

I would like to go through a case study which we looked at in 2001 concerning someone who was not covered by the table of disabilities. This was a person who is married with three young children. He was injured in his late twenties when he was working as a sales representative. There was a freak accident. A car door slammed into his face and jaw when he was retrieving items from his car. That happened in 1995. His jaw and supporting structures of the face were severely and permanently damaged. He suffered constant pain, headaches and blackouts and underwent a number of operations to relieve the problems, but with only limited success. Because of his condition he was unable to work for more than short periods and was in receipt of long-term workers compensation weekly payments. Although he could receive a commutation of his weekly medical benefits, the WorkCover scheme's table of disabilities in place at the time of his injuries did not provide for a lump sum for permanent impairment of the jaw or for pain and suffering as a result of such injuries.

Under the reforms introduced in 2001, this person, if the injury had happened since that time, could have been assessed for permanent impairment. The amount he would get under the guides would be between 16 per cent and 50 per cent, depending on clinical examination on a whole person basis and that is to a maximum of $112,500. In addition, if his impairment was assessed as more than 10 per cent, he would have been entitled to a payment for pain and suffering of up to $50,000. The maximum lump sum for permanent impairment as a result of the reforms and pain and suffering was increased from $171,000 to $250,000. For example, a worker who lost the use of their right hand would receive a maximum of $70,000 under the previous table of disabilities, but can now receive a maximum of $130,000 under the whole person impairment guidelines.

A major focus in our scheme is on addressing specific needs and losses and assisting injured workers to safely return to work whenever possible. This produces better outcomes for injured workers. The ongoing partial payments are available where the worker's ability to work is reduced but not eliminated. A study by actuaries in 2003 compared the expenses and outcomes of workers on statutory benefits compared with those receiving lump sum payments as commutations or common law settlements. The weekly benefit claimants in general appeared to have better health outcomes and better return to work outcomes than either the common law or commutation groups.

Injured workers may bring common law claims for past and future economic loss where they satisfy the 15 per cent of whole person impairment, as measured by WorkCover guides, and can prove fault on the part of their employer or another. This threshold was established following the independent Sheahan inquiry, exhaustive stakeholder consultation and actuarial assessment. The threshold seeks to strike a balance between ensuring seriously injured workers are able to seek damages at common law and the need to protect viability of the underpinning statutory scheme which provides benefits for the vast majority of injured workers.

I turn now to dispute resolution which, of course, for the workers compensation reforms in 2001 were a major focus. In the past, if an insurer disputed a workers compensation claim, the worker usually had to attend court, resulting in a long wait to receive any benefits—sometimes years. That was not conducive to a worker's injury management, rehabilitation or return to sustainable employment. The 2001 reforms introduced measures to improve the prevention and resolution of disputes, including provisional liability, the claims assistance service, and the Workers Compensation Commission. They have resulted in savings of $1.793 million. Prior to the reforms, it was not unheard of for lawyers to receive more than injured workers, following a protracted common law claim. For example, a worker who filed a claim for a loss of hearing had to wait three years and three months—this is a real example—for the matter to be finalised. The worker received $30,000. Legal costs were estimated at $58,000, $20,000 more than the worker received.

An analysis of the premium breakdown for 2001-02 showed that 16 per cent of premiums were paid in legal fees, just 1 per cent less than workers received in weekly benefits. The most recent analysis of the premium breakdown shows that legal fees in 2005-06—and I do say that this is an early analysis—are anticipated to be 9.5 per cent of premium, with weekly benefits rising to 36 per cent of premiums. Under provisional liability, insurers are required to begin weekly compensation payments and injury management within seven days of notification of injury, ensuring the prompt management of claims. The claims assistance service that was established helps to resolve any

problems that may arise during the workers compensation claim process. It provides injured workers, employers and insurers with assistance about payment of benefits, delays concerning treatment and medical expenses, return to work injuries and reporting of injuries. As we noted in our submission, the claims assistance service receives approximately 5,000 requests for service per annum. The average resolution rate in 2004 was 81 per cent—that is, people approaching the service who were satisfied with the outcome that they had received.

If a dispute arises between a worker and an insurer, the worker may notify the dispute to the Workers Compensation Commission. The commission is independent and impartial, and is obliged to adhere to legislation and its rules. In the case of a medical dispute, a commissioner will appoint an approved medical specialist who is a properly qualified medical practitioner to determine the matter. They also determine matters involving permanent impairment. The use of medical practitioners ensures that properly qualified professionals, rather than the courts, determine disputes of the medical nature. A party has the right to pursue an appeal in the event of a disputed medical determination.

Finally, I return to the first point I made. The New South Wales workers compensation scheme is a distinctive no fault system that that is designed to address the special needs of injured workers. The objective is to compensate and assist injured workers by providing timely access to medical treatments, weekly payments and other benefits, and to return workers back to suitable, safe and durable employment. The scheme stands apart from common law because it is not concerned with the finding of fault on the part of employers or employees and seeks to avoid costly and difficult disputes and litigation. I thank the Committee for its time.

CHAIR: Mr Bowen, will you remember my previous warning about time? The reason is that there would be some feeling that the Government seems to be taking up all the time for questions with a stonewalling and a defence of government policy. We want to get beyond that.

Ms LEE RHIANNON: Are both Mr Lean and Mr Bowen intending to address us?

Mr LEAN: No, I will not.

Mr BOWEN: I would like to take the opportunity to make some opening comments. I am conscious of the Chair's comments relating to time, so I will cut it down as I go. I propose to spend about five minutes outlining some aspects of the operation of the motor accidents scheme that I do not believe have been put before you in either submissions or in evidence, and about five minutes in answering some of the matters that have been raised and have misrepresented the operation of the scheme. In turning to the first point, I note that each year the Motor Accidents Authority produces a very detailed report on performance of the scheme. That is published in our annual report and is subject to a review by the Standing Committee on Law and Justice, so there is already abundant information on the performance of the scheme that is available to the Committee. Some members of that Committee are also here, so I do not propose to go into all of that detail. But I do wish to deal with the four performance reporting criteria that the Motor Accidents Authority uses to assess the scheme—affordability, efficiency, effectiveness and fairness.

Affordability looks at the cost of green slips to motorists, recognising that this is a compulsory product that all vehicle owners in New South Wales must purchase. As at June 2004, the average green slip premiums for a Sydney metropolitan passenger sedan was $340 and it dropped further to $327 in March 2005. That should be compared to a $441 pre-reform price. Five years after the 1990 reforms, motorists are still saving over $100, and that is without taking into account the effect of inflation over that period. When you look at inflation, that translates to a saving of over $200 per policy. That is shown by the fact that green slip prices have fallen from 50 per cent of the average weekly earnings to now below 30 per cent of average weekly earnings. When you look at it in a total dollar term, the saving to motorists in New South Wales over that five years is in excess of $1 billion. That is $1billion in the pockets of motorists of New South Wales after the scheme's reforms.

The efficiency measure looks at the rate at which benefits are delivered to claimants. One of the propositions that has been put to this Committee is that the changes to particularly the motor accidents scheme and to some extent the workers compensation scheme were about cutting premiums. That was certainly a component in relation to motor accidents to maintain affordability, but there are other significant objectives, including to speed up the resolution of claims and to allow people to enter

and exit the system more quickly. Over the period of the operation of this scheme, the percentage of total premium going to claimants by way of compensation has increased and the increase has been stark. The amount of the risk premium collected that goes to claimants by way of compensation payments has increased from 80 per cent under the old scheme to 86 per sent under the new scheme. Most of that saving can be attributed to the fact that in the new scheme, legal costs and administrative costs and claims handling costs have been reduced by almost 60 per cent and the investigation costs have halved.

Effectiveness is the third measure and that looks at the extent to which the scheme has delivered on making claims easier and faster. The 1999 reforms introduced an accident notification form which entitles the injured person to immediate medical treatment of up to $500. It significantly shortened the time it takes for the injured person to seek compensation. Three cumulative figures: under the new scheme, the time of notification of a claim has dropped by 16 per cent; the time from notification to first payment has dropped by 29 per cent; the time from notification to finalisation has dropped by 7 per cent. Considering the full claims alone, there have been improvements of close to 30 per cent in the average time to determine liability.

There has been a massive decrease in litigation. If we look at the first year of operation of the new scheme, which is now fairly mature at five years old, the rate of litigation is less than 1 per cent compared to close to 25 per cent of claims at the same stage of development under the old scheme. These trends indicate that injured people now lodge their claims more quickly. They access their claims for treatment of their injuries more quickly. They settle their claims more quickly. It also suggests that the legislation may succeed in changing the adversarial nature of the motor accidents compensation system.

The final indicator is fairness which looks at the extent to which the new scheme meets the objectives of continuing to ensure that the most seriously injured are properly and fairly compensated. The Motor Accidents Authority undertakes this analysis by looking at serious brain injury claims which are the most significant of our serious injury group. Over the period of the operation of the new scheme the average payment on finalised brain injury claims has increased by 3 per cent for matters finalised within the first year of the new scheme compared to the last year of the old scheme. Significantly, the average payment for non-economic loss under the new scheme for brain injury has increased by 24 per cent. That is fairly clear evidence that more seriously injured are also being well looked after under the new scheme. I point out that in our report there is quite a lot of other detail in relation to brain injury and serious injury claims which shows that matters such as time for payment is quicker and finalisation is quicker as well.

I turn to look at the issue of the operation of compensation schemes which has not been dealt with by this Committee. I want to look at outcomes other than financial outcomes. In 2001 the Motor Accidents Authority and WorkCover jointly funded an inquiry into health outcomes for claimants in compensation systems. The inquiry was conducted under the supervision of the Committee of Presidents of Medical Colleges. I have a copy of that report that I am happy to table. The report is based on a detailed literature search. The inquiry found that virtually all credible research studies conducted around the world in a variety of different legal and compensation settings found that injured people with access to compensation had poorer health outcomes than people who were not involved in compensation.

I think that care must be taken in considering that, not to attribute that to personal motivation of claimants but to recognise the very complex multiple reasons injured people get caught up in a system that is failing them in terms of helping them to get better. It has been one of the primary focuses of the statutory schemes to try to reverse that trend. There was recently a similar analysis untaken by Dr Ian Harris from Liverpool Hospital. He is a senior orthopaedic surgeon there. He reviewed 211 research articles on outcomes of patients following surgery. Of those he reviewed, 175 concluded that compensable patients do worse, 35 found no difference and only one found positive outcomes as a result of a person being in a compensation system.

Ms LEE RHIANNON: Mr Chair, I raise a point of clarification. We have now lost 45 minutes in which we would have had the opportunity to question the Government representatives. Can we make up that time, please? I am getting quite concerned as I have a number of questions for the witnesses.

CHAIR: Indeed. I have mentioned this three times and I have been assured by members of the Government that their responses will be brief. At the moment I think we should honour that commitment and I ask you, Mr Bowen, to keep that in mind. This is the last speaker.

Ms LEE RHIANNON: Thank you.

Mr BOWEN: On behalf of Government members, we certainly would be available for as long as the Committee wishes to answer questions but we feel that we should be given the opportunity to put on record aspects of the operation of these schemes.

CHAIR: Yes, but this is not a defence or a rebuttal of what other witnesses may have said.

Mr BOWEN: But the issue I am dealing with at the moment is, I think, an incredibly important issue about the operation of compensation schemes and health outcomes of injured people that has not been put before this Committee previously. I am making an assumption that it may be of interest to the Committee to consider the operation of compensation in other than simple financial terms.

CHAIR: You mentioned two reports, one of which was the group medical report and the other one was from Liverpool Hospital.

Mr BOWEN: The second one is from Dr Harris of Liverpool Hospital.

CHAIR: Can we have copies of those reports? Can you give me the titles? I want to check that we do not have them already.

Mr BOWEN: The first report is entitled "Compensable Injuries and Health Outcomes", which is from the Committee of Presidents of Medical Colleges and undertaken through the Australasian Faculty of Occupational Medicine of the Royal Australian College of Physicians. The second study was a recent presentation that Dr Ian Harris gave to a national symposium hosted by the MAA. The details of his presentation are on the MAA web site. I do not have a copy of that with me today but your office can download it.

CHAIR: Thank you. Continue, Mr Bowen.

Mr BOWEN: The reason I was mentioning this is that because of some work done by the MAA to look at health outcomes in the motor accidents scheme for people injured through whiplash—which is the most prevalent injury in motor accidents. Some 40 per cent of people involved in motor accidents have whiplash. We engaged an expert group to look at health outcomes of people before the scheme reforms, post the scheme reforms and post some other changes that were introduced. I cannot table that study but I will make it available to the Committee. I will mention the participants in the study. These included Professor George Rubin, professor of public health and community medicine at the University of Sydney; Associate Professor Ian Cameron, the chair of rehabilitation medicine at the University of Sydney; and some members of PricewaterhouseCoopers.

The astounding outcome of this study, which was to compare health outcomes at two years post injuries for people pre the 1999 reforms, after the reforms—which introduced the early focus on treatment and rehabilitation—and then after some treatment guidelines were introduced, was that there has been from the 1999 cohort to the 2001 cohort a 40 per cent improvement in health outcomes attributable to the focus on early treatment and early rehabilitation. In terms of the operation of these schemes and the significance of the reform agenda, I think that is one of the most critical pieces of evidence that I could put before you. The actuarial work that accompanied that also showed that payments for medical treatment were faster, that people completed their claims quicker and, because of this, claims overall were cheaper. So the summary of that is better health outcomes and quicker and cheaper claim finalisation, which is a fantastic result. We believe that when the 2003 group's results are tallied two years post injury—so at the end of this year—it will show a further significant improvement in health outcomes as a result of the MAA's guidelines for the treatment of whiplash, which are both a clinical guideline and a guideline to consumers.

I cannot underestimate the importance of this because it shows that these compensation systems operate in a medical and health environment as well as a legal environment. It has taken in the regulated motor accidents scheme a lot of hard work and enforcement of guidelines over the five years operation to get the CTP insurers to move on that, but it seems to me that it is still not at all recognised by the legal profession, certainly in the submissions that they have put to you. I will pass over some of the additional matters that I wanted to refer to in relation to injury prevention and management and the obligations there—perhaps I could provide a further additional statement on those—the operation of the assessment services and the information to consumers.

CHAIR: Do you wish to table what you have there?

Mr BOWEN: On those aspects, I will. I want to deal briefly with some of the matters that have been raised in the Committee's hearings, if I could do so.

CHAIR: I would advise at this moment not to do that. Just table the information and allow us to get on with questions. The impression, at least to me—it might be quite wrong—is that it is like trying to swim in a bowl of bureaucratic porridge at the moment. We want to get on to some sharp questions.

Ms LEE RHIANNON: Mr Glanfield, you talked about lawyers and gave us an impression of your concerns about their actions. You said that they derive a lot of income but you made no comment about insurance companies' profits. Why did you put the emphasis on lawyers and not cover the insurance companies?

Mr GLANFIELD: I am not sure that is quite right but perhaps I did not balance it correctly. I thought I made it quite clear that the Government's position is very much seeing a balance between the two. We regard people who provide services as having a right to be able to recover an appropriate level of income and to make an appropriate level of profit on that. That applies both to insurers and to the lawyers. I think the overriding issue here with all these compensation schemes is how you minimise the transactional costs so that you get the maximum amount of premium across to pay actual compensation. Whether it is insurers' claims, management costs, overheads or profits or whether it is the lawyers involved or even doctors and others who provide reports, our view is that those costs should be minimised.

Ms LEE RHIANNON: You commented that it is undesirable to profiteer. Australian insurers had returns on capital of about 23 per cent in the six months to 31 December 2004. What is your comment on that level? You also said that as much money as possible is being directed to those who need it. Considering that statement and the level of 23 per cent, do you think that is an acceptable level of profit?

Mr GLANFIELD: I thought I also made it clear—and I repeat—that the Government's interest is to see as much reduction in premiums in this area as possible. I indicated that we were looking with great interest to the report of this Committee on the issue of the level of return of premiums in discounts. I am not sure there is something more for me to add.

Ms LEE RHIANNON: So you do not want to comment on the 23 per cent?

Mr GLANFIELD: I am not an expert. It is so complicated with insurers I would not know whether that is or is not an appropriate level.

Ms LEE RHIANNON: Fair enough.

Mr LEAN: If I may respond to part of that, as I understand, the 23 per cent is for the most recent financial year. I think there were a number of years of heavy underwriting losses pre 1999. It is probably a bit difficult to focus on one particular year; I think you have to look across a number of years. I think the Government has consistently made it clear that it expects the full benefits of tort law reform to be passed on to consumers.

Ms LEE RHIANNON: Mr Glanfield, you mentioned three cases in your introductory remarks: a man who fell onto a railway track, a woman who sued the owner of a theatre and a

footballer injured during a match. I got the impression that you were using those cases to emphasise the Government's position that the payouts being made are too big. Is that correct?

Mr GLANFIELD: No, I was attempting to reflect community views at the time that they were examples of decisions that were perhaps not in accordance with community expectations about circumstances in which people would recover compensation.

Ms LEE RHIANNON: You said in your introduction to section 2.1.2 that a number of high-profile negligence court cases resulted in multimillion-dollar awards to plaintiffs. That comes from your submission. In the case of the man who, while urinating, fell onto the railway track and sued the Roads and Traffic Authority for negligence, are you aware of what happened in that case when it went to appeal?

Mr LEAN: Yes. I think Mr Glanfield said in his opening address that they were subsequently overturned on appeal.

Ms LEE RHIANNON: Why did you not put that in your written submission?

Mr LEAN: I will have to go back and check.

Ms LEE RHIANNON: You do not. In those three cases and in an additional case involving a 16-year-old boy who was refused entry into a hotel nightclub you do not follow through with what happened in each of those cases. That leaves one with a different impression. That is why I wondered why that information is not included.

Mr LEAN: If that was misleading, we apologise. That certainly was not the intention. The point that was trying to be made there is that there are a number of cases out of step with community expectations. Yes, the higher courts subsequently came along and overturned them on appeal but I think there is still an important point for Government there in that they need to respond to these sorts of cases legislatively so there is certainty for the future. We certainly were not trying to create an impression that these cases were not being overturned.

Ms LEE RHIANNON: It is surprising that you mentioned four cases—and you obviously have more researchers than we could ever find—but you were not able to provide that information. I was also interested in your thoughts on something that has come up quite consistently in many of our hearings. That is the inconsistency between different systems of insurance in New South Wales. I did not feel that you touched on that. I got the impression that you were largely for the status quo. Do you believe that inconsistency is a problem? I will give an example that I think illustrates the problem we come up against. There are two workers employed by different companies on the same building site. They both fall down the same hole that was put there negligently by the employer of worker A. Worker B will get higher general damages under the Civil Liability Act—up to double—and higher economic loss. That is obviously a bit of a tortured example but it is the sort of thing that can happen depending on how the insurance regime works when people are injured. Do you agree with that inconsistency?

Mr GLANFIELD: I understand the position put to you from the evidence I read was that perhaps the civil liability regime should be the one that covers all three areas. Although it may be superficially attractive, one of the difficulties is what is the benchmark that you would provide across if you are going to have consistency. Consistency in itself is always good. The issue is probably one for my colleagues to answer. If workers compensation and motor vehicle accident insurance were to be brought under the same regime as civil liability, what impact might it have on those special regimes? I think that is the question that is probably more important.

Ms TELFER: That is right.

Mr GLANFIELD: Consistency is a noble objective, but what would it need to put it in place? If you made it the civil liability regime what would be the impact for those injured under those two schemes? I think I will defer to my two colleagues to address that point.

Ms TELFER: We read the transcripts of what has been said to this Committee about unification and having a unified system. As my colleague said, unification, a unified system and consistency are certainly desirable. I can only speak about workers compensation but it would raise some pretty significant difficulties for workers compensation. That is because in New South Wales in contrast to, say, the Civil Liability Act common law system, workers compensation is not fault based. A range of significant benefits is available under the statutory scheme—weekly benefits, medical treatment, physiotherapy, retraining, et cetera.

Under the common law scheme it is only fault based so claimants are required to show that someone was negligent. That would require quite expensive and often protracted litigation and it would be counterintuitive to the desired objects of workers compensation, which is to make sure that injured workers are fairly compensated, that they get that compensation and treatment early so that they have a chance of returning to health and, therefore, returning to safe and durable work. Whilst consistency is always desirable the issue is that that is not what workers compensation is about. Workers compensation is about making sure that there are weekly benefits and good treatment for injured workers so that they can return to work as safely and in as durable a manner as possible.

Mr BOWEN: As it happens that was part of my final opening statement, so there is quite a bit of detail in what I have tabled. I simply note that since 1942 motor accidents have been dealt with outside the normal personal injury negligence scheme. That is when compulsory insurance was introduced. Whilst there are differences in caps and thresholds between motor accidents and civil liability, there are far more fundamental differences to it than that. They include the existence of a nominal defendant scheme to allow compensation if people are injured by uninsured and unidentified vehicles. They include obligations to make early payment for treatment, which does not exist under civil liability.

They include it being a fully regulated system, which means that there are significant obligations on insurers in their communications and how they deal with claimants. They are enforced by a government regulatory authority. There is also the existence of out of court, informal and flexible mechanisms to resolve disputes through our motor accidents assessment services. I could keep going into quite a bit of detail. Caps and thresholds are different, but there are far more fundamental differences. Simply to apply civil liability to motor accidents would see an immediate and massive increase in premiums. It would take away all those other benefits that exist in a regulated scheme.

The Hon. ROBYN PARKER: Several unions have made representations to us. Today one union commented that it was given assurances by the Government that no worker would be worse off under the changes to personal injury compensation. Is that true?

Ms TELFER: I heard that question being asked just before the Committee broke for morning tea. I cannot recall that being said. I am not saying it was not said; I cannot recall it being said. The objectives of the 2001 reforms for workers compensation were to cut out unnecessary litigation and to make sure that payments were received in a fairer and faster way to injured workers. So at the time of the 2001 reforms New South Wales had the unenviable record of having the highest number of workers compensation disputes of any jurisdiction in Australia. It was up to more than 30,000 per annum. It was turning into a scheme where there was a great deal of delay.

The Hon. ROBYN PARKER: Is it correct that the Government gave those assurances?

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

Ms LEE RHIANNON: Is it your commitment to make the system better?

Ms TELFER: The objectives were to make sure that the workers compensation system became simpler, that there was fair access to workers compensation, and that it became faster. Fair access to workers compensation is not necessarily putting people through a system that delays access to compensation and delays access to injury management and treatment. It is about making sure that they get access to the things that they need at the time that they need them.

The Hon. ROBYN PARKER: So are workers better off under the system?

Ms TELFER: That would be one where we would need to unpack all the statistics. We have been able to demonstrate that there is now faster access to workers compensation. People are getting faster access to treatment.

The Hon. ROBYN PARKER: I understand that your answer is about faster access. My question is: Are all workers better off under the changes to workers compensation?

Ms TELFER: We would say on the whole, yes, they are.

The Hon. ROBYN PARKER: Mr Glanfield, you quoted Supreme Court Chief Justice James Spigelman's statement in support of the Government's changes to tort reform. That is correct, is it not?

Mr GLANFIELD: At that time. He subsequently made other comments.

The Hon. ROBYN PARKER: He has subsequently made other comments. I would like you to comment on those comments. He now questions whether the personal injury reforms have gone too far. He says that a plaintiff must have lost 15 per cent of his or her bodily functions to qualify for general damages. To quote him, he says:

> It does mean that some people who are quite seriously injured are not able to sue at all. More than any other factor I am sure that this restriction will be seen as much too restrictive.

He says that the thresholds now are underwriter given not a principal change. Is he right?

Mr GLANFIELD: I am not sure whether I will offer an opinion on that. I just make the comment—

The Hon. ROBYN PARKER: Did you say that he is right or not?

Mr GLANFIELD: I would prefer not to express a view about that. Let me explain why. He is saying, first, that there is a need to look at the issue of whether we have gone too far. Second, in a sense, when you are looking at these reforms that were put through, there is a need to correct misunderstandings, if I can put it that way. Someone who does not have an entitlement to pain and suffering damages is therefore not entitled to any compensation. I think in the last part of the quote that you just gave one might get the impression that people who were affected least by the threshold and were not entitled to pain and suffering damages in fact got no compensation. As I said at the start that is not the case. The fact is that they are still able to sue.

The Hon. ROBYN PARKER: So the Chief Justice has his facts wrong?

Mr GLANFIELD: I am simply saying that if he were suggesting—and I am not sure that that is the case—that someone who was not entitled to compensation for pain and suffering was unable to sue for other compensation, that is not correct. The fact is that a person does have an entitlement to other forms of compensation. It simply means though that if they are affected by that threshold they may not get general damages but they can still have all the other damages that I referred to earlier in relation to medical expenses, lost earnings and future earning capacity. So there is still a claim.

One of the concerns that I had relates to the extent to which perhaps lawyers and others are suggesting that people who come into their office who do not meet the threshold have no right to compensation. The fact is that they do. I think a question that could be asked of insurers is what they are doing to ensure that people in those circumstances are able to have their claims dealt with efficiently and properly.

The Hon. ROBYN PARKER: Is it your view that the thresholds are correct then, the 10 per cent threshold in particular?

Mr GLANFIELD: I really could not offer an opinion on that. I think it is for others to determine that.

The Hon. ROBYN PARKER: If you are defending the Government's changes surely you must have an opinion on whether or not the thresholds are correct?

Mr GLANFIELD: We are monitoring it, as I said. The Law Society tabled a document setting out some case studies that it believed were indicative of the fact that the thresholds were not appropriate. The case studies that were sent to us were anecdotal. They really did not have sufficient detail to enable us to make a decision on that. I have asked for further information from the Law Society on those cases to try to get a much better picture of how people are being affected by those thresholds.

The Hon. ROBYN PARKER: The unions told us that they have been trying to get data out of the Government and the Government has not been able to give them sufficient data to be able to assess whether or not workers are better off. You are saying that you are relying on the Law Society to give you the data?

Mr GLANFIELD: I think we are confusing schemes here. I am talking about civil liability. If you are talking about workers compensation that is a different area. Focusing on civil liability, the Government recognised at the time we were looking at reforms that there was not a lot of data in this area. There was little data about claims, types of claims and how they were resolved and there was not very much information about legal costs.

The Hon. ROBYN PARKER: On what would you have based your changes if you did not have data?

Mr GLANFIELD: You do your best with what you have at the time. One of the things that the Government put in place—in fact, it has been picked up by the Federal Government because, as I said in my opening address, there is a need for this to be dealt with at a national level—was to establish a proper claims database to enable more informed decisions to be made over time in this area. In fact, the Australian Prudential Regulatory Authority [APRA] is maintaining that database. We also asked the Commonwealth, and it is the case, that the Australian Competition and Consumer Commission [ACCC] monitor these reforms through monitoring insurance companies and their performance in this area. So we have two bodies monitoring this area, keeping data and analysing it. We will be watching it very closely. I do not think there is a need for us to have any further databases. Those databases are in place now. Recently the Commonwealth extended the ACCC's monitoring role for a further three years.

Mr LEAN: The APRA report is expected to be released sometime this week.

Ms TELFER: On the workers compensation side the reforms that we put in place in 2001 largely did not come in until 1 January 2002. In workers compensation terms that is a very short period. I reassure the Committee that we are continuing to closely monitor the reforms. The early indications are good. The objectives of the reforms are being met. We make the data available as soon as it is available and it has been fully analysed. You can take data out of context, of course. We make the data readily available to people who ask for it.

The Hon. ROBYN PARKER: So if unions give you a call you will give them that data?

Ms TELFER: Absolutely.

The Hon. KAYEE GRIFFIN: Union representatives made a comment earlier today relating to the Workers Compensation Commission and the way in which it operates. Mr Bastian also made a comment about deregulation, which was critical of deregulation as such. Apart from the changes to the workers compensation process, could you give the Committee some idea of what Mr Bastian meant when he referred to deregulation?

Ms TELFER: I did not hear his comments so I am not sure what he meant by deregulation. What happens in the Workers Compensation Commission is that what the Government did is set up a much less adversarial process to ensure that people from either side do not necessarily need to have lawyers at the Workers Compensation Commission. That is because it was felt that people needed to be able to put their case simply. If the matter is not resolved first through the claims assistance service

that WorkCover has, then they will lodge a dispute at the Workers Compensation Commission. That will be, first of all, looked at by a conciliator who is experienced in injury management, return to work, those matters that are about suitable duties and they may use an approved medical specialist if it is a matter about whether someone is or is not impaired. If the matter is not resolved it can then go to an arbitrator who will make a binding decision. It is a much less adversarial process.

We are getting some good indications coming out of the Workers Compensation Commission that not only are there much fewer disputes than what there were previously which, I think, is testament to some of the good things that have come out of the reforms, but those disputes are being heard and settled much more quickly than what they were before. Previously they would go to the workers compensation resolution service. If they were not resolved there—and they mainly were not resolved there, I think, it was somewhere upward of 80 per cent—they would then need to go off to the compensation court. Of course, at that time most people just gave up. I am not sure what he meant by "deregulation" and I would need to look at the comments carefully. If necessary, I will come back to the committee with a detailed response. But the Workers Compensation Commission is not the adversarial process: it is about trying to resolve those disputes at the lowest level possible but getting good outcomes for all the parties.

The Hon. KAYEE GRIFFIN: You said that an objective you wanted to come out of changes was to get people into treatment quickly and to set up things to allow the person who had been injured the opportunity to return to work. Has there been a big percentage change in relation to how quickly an injured person is assessed, the amount of time from notification of the injury to the time the person receives treatment and the process set up to allow the person to return to work?

Ms TELFER: I do not have all those percentages in front of me. I could put down some further comment about what happens at each of those particular points in time. Generally, we have found that the notification process has decreased. Notification might seem like something that is esoteric but in workers compensation it is quite important in that as soon as someone's injury is notified the sooner they get payment, and their injury management starts and they get access to treatment.

We do know that return to work has improved. The statistics I must caution though. The other thing that has been happening at the same time in New South Wales is that there has been a large focus on improving occupational health and safety so what we are getting is much less injuries overall and much less serious injuries. That means that we are able to get those injuries treated faster and get people back to work sooner. I will put together those percentages for the committee. We do know that notification is happening faster, payments are happening faster because of provisional liability, treatments are happening faster and there is improved return to work.

The Hon. IAN WEST: I remember in workers compensation the philosophy of prevention and return to work in the 1987 changes, I am sure that philosophy is continuing, and I wish you well with those ideals. The submission contains a reference to 27 April 2002 "Negligence: The Last Outpost Of The Welfare State" by Chief Justice Spigelman. I ask you to comment on his last address in September 2004 "The New Liability Structure in Australia"?

Mr GLANFIELD: I do not have it in front of me. He has made a number of speeches but if it is along the lines of what was referred to earlier, I guess my comments remain the same, that is, that the role of review is with this committee. I think the Government looks with great interest to the outcome of the considerations of this committee. I endeavoured in my opening address to try to foreshadow, I guess, some of the questions you might have had and provide extra information. I hope I did not go on for too long, but it was, in fact, selective. I have not tried to canvass all of the arguments that have been made for reform in this area.

The key issues I would make about the comments of the Chief Justice generally are that he is being strongly supportive of tort law reform. We had Justice Ipp produce a report that was nationally acted upon so at the time that these reforms were brought in there was a good deal of judiciary support to the reforms. I think it is always a fair question, and one which this committee is to look at: Are they working? Are they delivering the changes? As I have said, we have some national monitoring going on. We are reviewing it. We have asked the professions to provide us with examples where they think there may have been problems under the new legislation. It is still early in one sense that we do not

have too many judicial decisions in relation to the civil liability laws yet. So, in a sense, yes we are monitoring those very closely and we will see what comes of them. But I do not disagree with the Chief Justice that these are areas that we should always be looking at to see: Have we got it right?

The Hon. IAN WEST: There is no doubt that from 1999 to 2002 when the perception of an insurance crisis was upon us that the New South Wales Government led the way with tort changes? You are correct that Chief Justice Spigelman then and still supports those changes to ensure that the correct environment is put in place. In your submission on page 23 you give some indication as to the striking of the balance of a fair and reasonable compensation for injured workers or injured people, and the community's ability to pay for that compensation. You champion, rightly so, the Civil Liability Act 2002. Do you still hold that view?

Mr GLANFIELD: One of the issues for us at the time the reforms were being considered was it was not just about affordability of insurance, in fact, the vast majority of the people who were writing in were unable to get insurance at all: it simply was not available. It is one thing to talk about compensation, and levels of benefits, but, in fact, if there is no insurance then there is no compensation—

The Hon. IAN WEST: Not some much benefit in getting injured but compensation—

Mr GLANFIELD: I am sorry, absolutely. The fact is that the availability of public liability insurance was a real issue: it was not just about cost. For those who could access it, it was certainly about cost, and the reforms were designed to redress that. As the insurers have returned to the market, as we have now got more stability back into the market, of course, it is right that the committee should be looking at, is the balance right in relation to the compensation arrangements that have been put in place? But at the time we believed that was the appropriate thing to do, and I think that has been clearly supported by what has happened. The fact is that premiums have come down and insurance is more available. As for getting the balance right, we are always happy to look at that.

The Hon. RICK COLLESS: The Government's submission on page 17 refers to the recent evaluation of NCOSS insurance programs that demonstrate the considerable success of the scheme in realising its objectives. You referred to this in your opening, the recent NCOSS 2005 insurance survey results, however, show that public liability premiums for the community sector had increased by 9.16 per cent on average between 2004-05. Do you consider that an increase of 9.16 per cent is a considerable success?

Mr GLANFIELD: The point I made in my opening address was, in fact, that was an extremely small sample so the only issue I would raise there would be whether that represents the whole of NCOSS coverage? Much earlier surveys canvassed a greater number of people.

The Hon. RICK COLLESS: Did you mention something like 80 to 250—

Mr GLANFIELD: Yes, in a sense, maybe it is human nature, but you would expect that people who have a problem would be the ones who would respond to the survey.

Ms LEE RHIANNON: Maybe they had given up.

Mr GLANFIELD: Can I say the answer to all of this though, if some people are experiencing an increase, we believe that is where the offer made by the Insurance Council of Australia is one that should be taken up by any community group that is finding it difficult to obtain insurance, or is finding it expensive. The council offered to assist in finding it. The second thing is, I do not know in relation to some of those community groups whether there are issues about their risk management strategies. Maybe they do not have risk management strategies and the reason for the premium increase for some is they simply do not have those in place. You really need to look behind the data. We certainly look at that, but our concern was that it was a very small sample of organisations.

The Hon. RICK COLLESS: Do you have any idea of the real figure? What is your view of what the change in premium is?

Mr GLANFIELD: We would have to rely on the comprehensive survey that was undertaken and is continually monitored by APRA, the national body, where, in fact, it showed a significant reduction, a 15 to 17 per cent reduction in a range of premiums across this area. That is the body that has been charged with monitoring this across all, it is not a survey or a sample, it is actually looking at the insurers' returns and looking at how their premiums are responding. That is certainly one of the significant pieces of evidence we would be looking at.

The Hon. RICK COLLESS: In the executive summary under section 1.3 findings in relation to workers compensation you list a number of dot points about the outcomes of what is happening with workers compensation. You talk about the scheme deficit being reduced, premiums remaining affordable, transaction costs being reduced, improvements in claims administration and return-to-work rates, improvements in support to employers and workers, reduction in disputes, and compensation available under the statutory scheme has been improved. When we put that to the union, however, it very clearly refuted those findings. In its submission it said that the worse effects of reduced access to common law, which I clarified with them, will be felt by the most catastrophically injured people. What is your response to that?

Ms TELFER: I will go through each point and then come back to that question. The scheme deficit has been significantly reduced. When the reforms were introduced in 2001 the scheme deficit at that time was estimated at something like $2.2 billion, and increasing at $1 million a week. Our scheme actuaries say that without the reforms the scheme deficit would have gone up to somewhere over $6 billion. It has now come down to $1.6 billion. I think we can quite clearly say that the scheme deficit has been reduced. Premiums have remained affordable. We have not had to put up premiums. That was one of the choices that was available.

The Hon. RICK COLLESS: I accept those points. I am concerned that the unions and many organisations have said that while all those things may have been achieved, is it worthwhile if the worst affects are felt by the most catastrophically injured?

Ms TELFER: Under the New South Wales workers compensation scheme there are statutory benefits that are available. One of the reforms that happened in 2001 is the amount of statutory lump sum payment available for injured workers was the increase from $171,000 to $250,000. That is not an insignificant sum of money. We would say that the catastrophically injured have access to that lump sum. They also have access to ongoing weekly benefits to their retiring age plus 12 months. They also have access to ongoing medical and treatment costs. So that the statutory scheme is designed to assist catastrophically injured workers without them having to go through protracted and complex litigation in order to find negligence, which in some cases they did not find.

Indeed, the legal costs were such that any benefits they got out of common law were very much reduced and those common law claims then cut off their access to statutory benefits. Workers compensation needs to be thought of as a no-fault statutory-based scheme. Common law is still available for past and future economic loss. The lump sum amounts that are available for permanent impairment and lump sum have been increased to $250,000 and they remain in place. Indeed, going away from the table of disabilities into a broader set of guidelines meant that many more injuries are now compensable through lump sum payments than were previously available through the table of disabilities.

If the focus is purely on common law then there might be some argument about whether or not these reforms have benefited injured workers or made them worse off. But workers compensation cannot simply be seen as a scheme where you need to find fault. It is primarily based on the statutory payments not needing to find fault. So common law is only a very small part of it. It is still available for future and economic loss. The lump sums have been increased but the statutory benefits remain in place. We think that gives a better outcome for the most catastrophically injured workers. You would hate to be in that situation, but the workers compensation scheme is there for them.

The Hon. RICK COLLESS: We have taken evidence from people injured at work who were on salaries of about $1,000 a week prior to their injury and are now trying to survive on workers compensation payments of $300 a week. Yet in your submission you talk about past and future loss of earnings up to three times the average weekly earnings and other out-of-pocket expenses.

Ms TELFER: What page is that?

The Hon. RICK COLLESS: It is page 24.

Ms TELFER: That is civil liability reforms.

The Hon. RICK COLLESS: It may well be. What about the situation with workers compensation where people who are earning good money prior to their injury are now being expected to exist on $300 a week?

Ms TELFER: Maybe I could take a couple of moments to explain how the weekly benefits system works. The first six months that someone is on statutory benefits—the first 26 weeks, and that can be cumulative because people can go back to work—by and large people remain close to their average weekly wage through the first 26 weeks. After 26 weeks, as is common with many, in fact, most workers compensation schemes around Australia, there is what is called a step down to a statutory rate which is, I think, close to $400 a week plus more available in benefits to dependants. But what we find is that the majority of injured workers, the vast majority of injured workers do not need to get to that point because the focus of the scheme is getting people back to work sooner. Yes, there is a step down. I cannot comment on the specifics of those cases of those injured workers who gave evidence before because we do not have consent to give out those details.

The Hon. RICK COLLESS: It is in the transcript. I am sure you could find the evidence about the individuals if you wanted to.

Ms TELFER: Unfortunately, the legal advice we have been given is that even though they have given evidence and it is on transcript we do not have their consent to give further details. If we do get that consent we would be more than happy to give further detail, but we need to protect people's privacy. As to the weekly benefits, there is a step down after six months. New South Wales, unlike many other schemes though, goes through to retirement age. In other schemes benefits are cut off after two years and in some cases five years. In New South Wales benefits go right through to retirement age plus 12 months.

Ms LEE RHIANNON: Ms Telfer, in response to an earlier question you said, "On the whole workers are better off". I take it you mean that some workers are better off and some are not. Is that a fair interpretation?

Ms TELFER: I think you could always find an instance where because of, for example, the change from the table of disabilities to the broader range of payments and the benefits that are available under the permanent impairment guidelines someone who may have got a lump sum for a particular type of injury now gets less because of the whole person impairment. However, that has to be balanced against what is happening to those workers who did not get anything under what was available before under the table of disabilities.

Ms LEE RHIANNON: Do you acknowledge that some are worse off?

Ms TELFER: There may be some instances, yes.

Ms LEE RHIANNON: In response to an earlier question, you said you would be happy to provide statistical information to the unions.

Ms TELFER: Yes.

Ms LEE RHIANNON: Will you put that information on your website?

Ms TELFER: Yes. In fact, we put our statistical bulletin on the website. It is there in all its glory. We wish people would download it. It is the least accessed document on the website. The 2002-03 statistics are there already. We are about to finalise the 2003-04 statistics. I hope to have them on the website in mid-August. That depends on the publishing deadline. There may be some slight slippage there. The statistical bulletins are available on our website.

Ms LEE RHIANNON: You say the information is already there on the website?

Ms TELFER: Yes.

Ms LEE RHIANNON: That was disputed today. I will follow that up.

Ms TELFER: I am more than happy to take individual calls on it.

Ms LEE RHIANNON: I would like to go back to the discussion we had earlier about consistency. You and Mr Bowen made some comments and you were getting into the minor details about the differences and some aspects that could be lost. I would like to go back to the issue about the degree of inconsistency in whole person impairment. We have injured in a motor accident 10 per cent whole person impairment under the Motor Accidents Authority permanent impairment guidelines, injured by someone other than employer 15 per cent of a most extreme case under the Civil Liability Act, injured prisoners 15 per cent whole person impairment under the WorkCover guidelines, injured coalminer 25 per cent. I would like to hear your comments on that. I cannot believe that you would be happy with inconsistencies. It clearly puts workers under stress and there is uncertainty when court cases go ahead. We have heard so much evidence about the pressure and the unfairness.

Ms TELFER: I will deal with it first and hand it over to my colleague. As I think we said very clearly, consistency is always preferable. The WorkCover permanent impairment guidelines were taken from a standard that is accepted mostly around Australia and is used in other jurisdictions around Australia. One of the things we also need to look at is what is going on in workers compensation, not just in New South Wales but in other jurisdictions, and to try to make sure that there is some consistency. We monitor developments as they go along. If the guidelines need to be reviewed or need any tweaking, that can occur. We certainly have not closed that off. Consistency is always desirable but we also have to look at the purposes for those permanent impairment guidelines to make sure that we are compensating people fairly.

The other thing I would say is that we did move from a very rigid set of table of disabilities in 2001 to the permanent impairment guidelines. We wanted to make sure that there were not many inconsistencies in the transition from the table of disabilities into the permanent impairment guidelines. The AMA edition of permanent impairment guidelines, which we modified, is pretty well accepted around Australia in other workers compensation jurisdictions and has been picked up largely by those other jurisdictions.

Mr BOWEN: I will just add a little bit in relation to motor accidents. I think the reason for that inconsistency goes to the purpose for which the thresholds are there. Those purposes are different under the various statutory schemes and different again in civil liability. They are not new. That is not a reason why they should continue but the inconsistencies are historic in that there have been different thresholds and different tests for those thresholds between various different types of personal injury damages for a long time. The thresholds in motor accidents for non-economic loss were introduced as part of the Motor Accidents Act 1988 to limit non-economic loss. As Mr Glanfield explained, the damages for non-pecuniary injury, pain and suffering, loss of amenity of life and the like, were limited to the most seriously injured with the intention of keeping the green slip prices affordable so there was a balance between what motorists were paying and the level of benefits that were being provided. That was a restriction which at that stage did not exist in other personal injury schemes.

What had happened by 1999 was that over 60 per cent of claimants were accessing non-economic loss because the test that was being used had deteriorated. More and more people were getting access to it to the point where a whole lot of soft tissue injuries people were getting a little bit of compensation for their time off work, they were getting compensation for their medicals and treatment costs, they were also accessing non-economic loss payments and they were getting legal costs on top of that. That was driving up the price of green slips to the point where it was unaffordable. There was a community reaction to that which prompted the reforms.

The change in 1999 was to say that the original intent was to limit access to non-economic loss to the most seriously injured. How can it best be achieved in the context of a regulated insurance scheme? The view was taken that it would be best achieved by taking away a verbal threshold and

introducing a medical threshold by having a greater than 10 per cent whole person impairment with recourse to that being assessed by independent medical assessment that can exist within statutory schemes such as motor accidents and workers compensation. There is no mechanism for it to operate in civil liability. They serve different purposes. The purpose overall is to limit the non-economic loss payments to the most seriously injured for the purpose of maintaining affordability.

Ms LEE RHIANNON: There was a suggestion in earlier evidence about the performance of insurance companies when workers are injured and how they carry out their responsibilities. They say there is a need for detailed regulations to govern the performance of insurance companies. This evidence came up in relation to issues such as the fact that in many cases insurance companies refuse to use EFTPOS to pay workers, they continue to pay by cheque, they often say the cheque has been posted but the cheque does not appear and the injured worker has to chase up the cheque and they regularly refuse to provide travel and medical expenses. I would like your comments about such a suggestion of detailed regulations to ensure that insurance companies do their work.

Ms TELFER: The insurance companies would tell you that WorkCover overregulates them at the moment. Nonetheless, improving the operation or financial performance of the WorkCover scheme is very much dependent on the good performance of insurers. I am not sure whether the Committee is aware that we commissioned a report by Mackenzie and Company in 2002, issued in 2003, and that was the Partnerships for Recovery—Caring for Injured Workers and Restoring Financial Stability.

One of the strong raft of recommendations that came out of that report was to change the relationship that WorkCover has with insurers. Until now they have been on a long-term, no-stop contract. You may or may not be aware that we have gone to a tender process—in fact, the expressions proposal closed 10 days ago—to introduce agents rather than insurers. That will mean that insurers will be on tightly written contracts, which will be monitored extensively by WorkCover. They will no longer be on a contract that goes on and on; they will be on a tightly regulated contract. As I said, the expressions proposal closed 10 days ago, and we are looking to have that finalised by September, with the transition arrangements in October-December.

I think it is fair to say that the performance of insurers has improved but it is not at the level where WorkCover would prefer it, and we do want to improve the performance of insurers. Interestingly, I was looking at some of the previous transcripts regarding electronic funds transfer. That will be a requirement for scheme agents in the future.

Ms LEE RHIANNON: That would be set out in the contract?

Ms TELFER: Absolutely.

Ms LEE RHIANNON: When you say that the insurance companies have improved, when you sit on this side of the inquiry and listen to the evidence you certainly do not get that impression. For example, workers are not coming to us to give us the evidence. You have not brought workers to us to tell us, "I am better off under the new scheme."

Ms TELFER: None of us finds that. We only ever hear complaints. We never hear about those who are well off and who have been improved. Can I say that the level of complaints has decreased. That is shown through the level of disputation, which has decreased significantly since the reforms. But I am not going to pretend that insurers cannot improve their performance even further. One of the things that WorkCover is absolutely insistent upon in going down this new route of having agents rather than insurers undertake this work is that they will be doing it on our terms, with some very strict performance standards.

Ms LEE RHIANNON: Could you table the contracts?

Ms TELFER: Not yet. It is all commercial in confidence. I do not know if we would ever be able to table the contracts, but we can certainly give some further information to the Committee about some of the things that we have been looking for.

Ms LEE RHIANNON: I would like to request that.

The Hon. IAN WEST: Madam Chair, on 2 May in hearings here in Sydney we asked the Chief Executive Officer of WorkCover to provide us with detailed information about five individuals who gave evidence. Have we received any response to that?

CHAIR: No.

The Hon. IAN WEST: Can we chase that up?

Ms TELFER: It is certainly under active consideration at the moment.

Ms LEE RHIANNON: What does that mean?

Ms TELFER: I have the legal advice, and I am considering what information I can and cannot give to the Committee. But it goes back to the point I made before: The initial advice we have is that, even though people have given evidence here, and there is information on the transcript, we do not have the necessary consent in order to respond more fully to the Committee's request. I am seeking further advice on that at the moment, and it may be that if we are to give the Committee some of this information we need to obtain consent from a range of different parties, not just the injured workers. It is a matter of privacy. Section 243 of the workers compensation legislation is very strict about what information we can and cannot give.

Ms LEE RHIANNON: Apart from the workers' privacy, whose privacy are you talking about?

Ms TELFER: I am not a lawyer, but under the privacy legislation if we obtain information, that information can only be used for the purposes for which it was given. We get information from a range of different places—

CHAIR: Information can be held in camera by this Committee under parliamentary privilege.

Ms TELFER: Yes, I understand that. That is why I have sought further advice about what information we can give you in relation to injured workers.

CHAIR: I would not imagine we would need the High Court to resolve that.

The Hon. IAN WEST: In the conclusion to its submission the Cabinet Office rightly says that the objective is to strike a proper balance between fair and reasonable compensation for injured people and the community's ability to pay for that compensation through affordable premiums, and that mechanisms are being considered to have ongoing review of that. I would like some comment as to the New South Wales Government clearly being the leader in the tort reform changes that took place around the country. I assume that the Government would not be relying upon the ACCC and the APRA to lead the way, that the Government is having those two national organisations as information providers. However, would it not be true to assume that the Government will be making its own assessment as to consistency, affordability and efficiency, as you have described efficiency on page 31 of your submission?

Mr GLANFIELD: Can I make two comments on that. Certainly my reference to those two bodies was simply as being sources of some evidence in relation to the workings of the civil liability scheme, but they are not bodies that we would see as making recommendations. If they did, obviously we would see that as one of many sources that we would take into account. But a number of national bodies have been looking into this area. Firstly, the Treasurers around the country were actively involved in this area at the time of the reforms, and in fact are still looking at some issues, including a catastrophic, long-term fund that would be almost a no-fault fund. The Standing Committee of Attorneys General also had on its agenda monitoring the tort reforms, and also looking at the issue of inconsistencies nationally.

The Hon. IAN WEST: May I ask for clarification with regard to workers compensation and motor accidents compensation. First, with regard to workers compensation, on page 37 you say that

the annual figure for legal costs in 1996-97 was $200 million, and that escalated to $350 million in 2000-01. Then you say at page 44 that we have already made savings of $1,793 million, and that 80 per cent of that relates to legal costs. In other words, you say that since the tort reform changes in 2001 we have saved $1,434 million in legal costs and related costs. Is that true?

Ms TELFER: Yes, that would be true.

The Hon. IAN WEST: Since the changes in 2001 until now, we have saved the equivalent of the total cost of legal costs in the scheme? In other words, there have not been any legal costs?

Ms TELFER: No. The earlier figure was an annual figure; it was $350 million to $400 million per annum. So what we have saved is considerable funds in legal costs. It is legal and related costs, so it is also investigation costs, the costs of running a compensation fund, and a whole range of other things that go into that figure.

The Hon. IAN WEST: You are saying that we have saved in the scheme, since 2001 until now, $1,793 million?

Ms TELFER: That is right.

The Hon. IAN WEST: Would I be anywhere near the mark if I were to assume that you may be saying that they are projected estimates into the future, perhaps into 2030 or 2040?

Ms TELFER: I do not think that is the case, but I will check and get back to the Committee.

The Hon. IAN WEST: I would appreciate that, because the impression that has been given is that we have saved $1,793 million in the last four years. I find that to be absolutely unbelievable. Since the scheme started in 1987 not that much has been spent on legal costs, so how we could possibly have saved that in the last four years is beyond belief. I think there may be some playing with the figures. Mr Bowen, earlier you quoted a number of percentages. Can you take on notice and provide us with some actual figures? With all due respect, percentages do not tell you much. Could you provide us with some details on the figures and more expansion on the percentages? When someone says to me that over the last five years there has been 1 percentage point versus a 25 percentage point with regard to litigation, that does not mean anything to me. I would appreciate your elaboration as to what that means.

Mr BOWEN: In relation to premiums, I gave you actual numbers. In relation to the reduction in timing for notification, finalisation and liability, I gave you percentages. The actual numbers of days are listed in the MAA's annual report by way of percentages. In relation to things like the litigation rate and how many matters have been to court at the five-year stage of development, it is 1 per cent under the old scheme, and at the five-year stage of development it is 25 per cent.

The Hon. IAN WEST: I understand what you said. I am asking you to give us actual figures.

Mr BOWEN: All that information is in the MAA's annual report.

The Hon. ROBYN PARKER: Mr Bowen, did I hear you say earlier that the American Medical Association guidelines are good—in fact, so good that other States have adopted them?

Mr BOWEN: I did not say that.

Ms TELFER: I said that they have been picked up in other workers compensation jurisdictions, as they seem appropriate.

The Hon. ROBYN PARKER: Do you think they are a good method of assessment?

Ms TELFER: I think it is the most consistent method of assessment that has been found to date. I am sure that many others could be tried, but to date it seems that they are the best fit for workers compensation, such that they have been picked up by other jurisdictions as well.

The Hon. ROBYN PARKER: Could you comment further? It is almost completely contrary to evidence we have been given in general. In fact, I think that is the first time I have heard that comment about the AMA guidelines. The evidence we have had so far is that the guidelines are unfair, that there is no independent judicial review of the medical opinions, that they are arbitrary, that it is an inappropriate means of assessing eligibility for compensation. Could you comment on the evidence we have been given so far?

Ms TELFER: The comment that I can make is that the guidelines for permanent impairment were expressly introduced to ensure that we were getting decisions made by specialist medical professionals with regard to permanent impairment. They were not to be used by the judiciary but they were to be used by expert medical specialists who had been trained in their use and could use those instruments in an independent way to make decisions and recommendations about permanent impairment. So they are not subject to judicial review in that way because they are expressly used for medical specialists. They cover a broader range of types of disabilities than were covered under the table of disabilities and I think that is where some people, who may have got, for example, compensation under the old table of disabilities—and that has now changed because we are looking at whole person impairment—may feel that that is not as fair as what it was.

However, we look at the fact that the permanent impairment guidelines cover a wide range of impairments that were previously not compensated and they were designed for looking at the impairment; they were modified for use in the New South Wales jurisdiction because there were some particular things that we needed to make sure that were in there and they have been in use. Obviously these things are monitored and we will be keeping that under close review.

The Hon. ROBYN PARKER: Why do we use different guidelines for individuals? Under different systems we have had evidence that there are different guides used depending on the individual.

Ms LEE RHIANNON: Different versions.

The Hon. ROBYN PARKER: Different versions?

The Hon. RICK COLLESS: Version 4 and version 5.

Mr BOWEN: The motor accidents scheme uses AMA4 as modified by the guidelines issued by the Motor Accidents Authority as to how they interpret. At the time that those guides were initially made AMA4 were the most up-to-date set of American Medical Association guidelines available and we invested an enormous amount of time in training the medical specialists who undertake the assessment. Sydney University conducts a special training course for those doctors involved in it, but we continue to monitor them and do not believe that the changes to the American Medical Association guidelines introduced by AMA5 make any substantial difference that would warrant changing them at the regular point of time. The guides continue to serve the purpose for which they are intended, which is to make a comparative view on the seriousness of the injury by reference to the level of impairment with an objective medical test.

CHAIR: Mr West, do you wish to place your understanding on the record?

The Hon. IAN WEST: Yes. My understanding of the situation of the table of maims prior to the changes in 2001 was that there was the overriding judicial discretion to cover psychological disability and that was covered quite often. Also, the Minister had the ability to add to the table and did on a number of occasions. So I think it is a little bit improper for us to make the assumption that psychological injuries were not covered. And can I say, when you talk about an increase in the amount of money in the table of maims, the real issue is the question of access to the table, not the top dollar. When you are increasing the figures from 170 to 220 that is irrelevant if a person cannot access until they have 10 per cent whole-of-body impairment.

Ms TELFER: But that is not correct. The permanent impairment lump sums are available after 1 per cent.

Mr LEAN: That is right. That is under the no fault section.

The Hon. IAN WEST: Section 66, not section 67.

Ms TELFER: No, that was 10 per cent, and that has remained the case.

The Hon. IAN WEST: Right, but the section 66 disabilities are still covered by a whole body impairment, not the previous disability access. So there is clearly a big change in the threshold in getting into the ability to access. It is misleading, in my view, to say we have increased the table by increasing the top figure. It is the ability to access that is the issue.

Ms TELFER: Access is available to lump-sum payments under section 66 of the workers compensation legislation where whole person impairment is assessed at 1 per cent.

The Hon. IAN WEST: Whole body impairment is a different measurement completely to a disability of a limb or a part of the anatomy that was the previous assessment. You cannot compare the two.

CHAIR: We will check that out. A couple of our members here have flight times today to consider. It is my intention that we should close now.

The Hon. KAYEE GRIFFIN: Could I perhaps ask for a question on notice question?

Ms LEE RHIANNON: Can we put questions on notice?

The Hon. ROBYN PARKER: Maybe the witnesses could come back on another occasion because I certainly have a number of questions. It is unfortunate that the time got used up.

CHAIR: Thank you very much for your attendance.

(The witnesses withdrew)

(The Committee adjourned at 1.35 p.m.)