REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE WORKCOVER AUTHORITY

CORRECTED

At Sydney on Monday 12 May 2014

The Committee met at 9.00 a.m.

PRESENT

The Hon. D. Clarke (Chair)

Mr S. MacDonald
The Hon. S. Mitchell
The Hon. P. T. Primrose
Mr D. M. Shoebridge

JOHN WATSON, General Manager, Work Health and Safety, WorkCover Authority of New South Wales,

CARMEL DONNELLY, General Manager, Strategy and Performance, Safety, Return to Work and Support,

GARY JEFFERY, Acting General Manager, Workers Compensation Insurance Division, WorkCover Authority of New South Wales, and

MICHAEL PLAYFORD, Consulting Actuary and Partner, Pricewaterhouse Coopers, Actuary, Workers Compensation Nominal Insurance Scheme, WorkCover Authority of New South Wales on former oath and affirmation:

CHAIR: Welcome everybody to the third hearing on the Standing Committee on Law and Justice's concurrent reviews into the exercise of the functions of the WorkCover Authority and the WorkCover Dust Diseases Board. The reviews are being conducted according to section 11 of the Safety Return to Work and Support Board Act 2012, which has designated the Committee to supervise the exercise the functions of the authority. Before I commence I would like to acknowledge the Gadigal people who are the traditional custodians of this land. I also pay respects to the elders past and present of the Eora nation and extend that respect to other Aboriginals present.

Today is the third hearing where we will again hear from the WorkCover Authority. Before we commence I will make some brief comments about the procedures for today's hearing. With regard to broadcasting guidelines, members of the media may film or record Committee members and witnesses. People in the public gallery should not be the primary focus of any filming or photography. I remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at this hearing.

I urge witnesses to be careful about any comments made to the media or to others after they complete their evidence as such comments would not be protected by parliamentary privilege if another person decided to take an action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat if anybody would like to refer to them. Any messages to be delivered to Committee members should be done through the Committee staff. I ask everyone to turn off their mobile phone as it interferes with the recording equipment. I welcome our four witnesses, who have all been sworn previously. Would anyone like to make a short opening statement?

Mr WATSON: No, thank you, Chair. We are very happy to take questions from the Committee on this occasion so we get an opportunity to deal with as many matters as possible today.

CHAIR: Thank you. I will start. A number of inquiries from stakeholders have expressed concern that the multiple functions undertaken by WorkCover, such as insurer, regulator, inspector and prosecutor, could generate conflicts of interest within the authority. How do you respond to these concerns and what action does WorkCover take to minimise conflicts of interest occurring?

Mr WATSON: I will take that from a work health and safety point of view first and we will deal with the work health and safety aspects later. First of all, thank you for the question. The role of a regulator obviously has both the enforcement and compliance functions so in that role in the work health and safety space we embody that in one person, in the inspector. That allows them to deal with matters when they see them in a workplace, either by serving notices, issuing on-the-spot fines or indeed providing advice and guidance to the PCPU that they are visiting or indeed to the employees at that workplace.

We have quite a formal process of exercising our prosecutorial capacity so we make sure that the decisions we make about whether we will or will not prosecute are made quite formally and that is done through a senior management committee using the compliance and enforcement policy, which is the national compliance enforcement policy which was developed through the Safe Work Australia processes. We have quite a clear separation of the various functions and in some of the realignment work we have done in the work health and safety division over the last five years a lot of that has been about making sure that we know the functions that we need to fulfill and we know who are doing those and that they are done once and done well, so that is the sort of principle that we apply to that.

CHAIR: As you would be aware, in the case of *Transfield Services (Australia) Pty Limited v WorkCover Authority of New South Wales and Mark Humphrey*, it has been identified that conflicts of interest can arise with WorkCover undertaking multiple roles in the workers compensation scheme. Would you like to outline the details of that case and its implications for the operation of the workers compensation scheme?

Mr JEFFERY: Can I clarify? Around the Transfield case?

CHAIR: The details of that case and its implications generally for the scheme?

Mr JEFFERY: I would like to take the details of the Transfield case on notice. Around the nominal insurer and the regulator, and the regulator instructing over the nominal insurer and the conflicts that could potentially arise there—

CHAIR: Do you see that as the main implication of that case?

Mr JEFFERY: I was aware of some of the concerns raised whereby WorkCover and the nominal were involved in the case and the conflict that could arise from that—so who regulates the insurer? We are looking at that at the moment. I am aware of some of the concerns around the role of the nominal insurer and the regulator, also the structure of the workers compensation insurance division whereby we are operating a nominal insurer but also regulating the self and specialised insurers and also can issue directions and contracts under licensing provisions and also under the legislation and conflicts could arise.

Along with that, we also regulate medical providers and so forth. We are working through the division to look at the delegations and structurally look at what could be potentially changed. We are in the process of reviewing that. We are also looking at the Victorian model—some of the underwritten models—the Western Australian model, and we are also going to look at the Queensland model to see how they operate and how we can get segregation of functions and correct delegation. Whilst there could be conflict we are looking to resolve that.

Mr DAVID SHOEBRIDGE: Did you read the transcript when the Law Society was giving evidence about the Transfield matter? Have you read that transcript?

Mr JEFFERY: A few weeks ago, yes.

Mr DAVID SHOEBRIDGE: Were you troubled by what you read in that transcript—the authority seeking costs from the worker when it was the authority's own stuff-up in the first place? Were you not troubled by it? Did you not go back and look at it?

Mr JEFFERY: I was not aware we sought costs from the worker.

Mr DAVID SHOEBRIDGE: That was what was said in evidence?

Mr JEFFERY: I would have to go away and look at it, Mr Shoebridge.

CHAIR: Does anyone else want to comment on that aspect?

Mr WATSON: No, I think we will take the matter in respect of Transfield on notice. We are happy to provide a full and detailed response to your question, Chair, and to the interjections by Mr Shoebridge.

Mr DAVID SHOEBRIDGE: No, it was a question; it was not an interjection, Mr Watson.

Mr WATSON: A question, was it? Okay, good, thank you. We will take that on notice as well.

The Hon. PETER PRIMROSE: To anyone on the panel: Does an inspector have a discretion not to attend a workplace once the regulator or WorkCover has appointed that inspector?

Mr WATSON: Under the work health and safety legislation, if they believe it to be unsafe, they have a discretion not to attend. There are certain circumstances where we do not require our inspectors to attend. In the case of a fatality we do not authorise our inspectors to attend until such time as the deceased has been removed from the scene mainly because that is managing their exposure to post-traumatic issues. But I do not believe

there is a right embodied in the legislation anywhere that an inspector can say, "No, I am not going to attend that workplace" when directed to by WorkCover.

The Hon. PETER PRIMROSE: Can you tell me how many injured workers were receiving support under the workers comp scheme as a consequence of hearing loss prior to the 2012 amendments to the scheme?

Mr PLAYFORD: I would have to take that on notice to get the actual numbers and I can respond to that.

The Hon. PETER PRIMROSE: While you are doing that, can you also let me know how many of those workers have had their support terminated under the provisions of the new legislation?

Mr WATSON: Yes, we can take that on notice.

The Hon. PETER PRIMROSE: At the same time, can you tell me how many are receiving support today for their industrial deafness?

Mr WATSON: Certainly.

The Hon. PETER PRIMROSE: Rob worked as a sheet metal worker since he was 14. He lives in Wagga Wagga. His job caused his industrial deafness. His workers compensation paid for a hearing aid that allows him to work as a maintenance man at an aged care facility. Without it, he will not be able to work. He cannot hear most of the nurses or the residents because he cannot hear high-pitched sounds without his hearing aid. Rob found out that he had lost his entitlements under the workers comp scheme when he recently went to get new batteries. As Rob put it to me, "How can they retrospectively take that away from me? I thought I had won. I thought I had a contract." What advice would you give Rob so that he can keep working?

Mr JEFFERY: I think that hearing aids is a complexity of the legislative changes. First of all, I would encourage him to contact his insurer to find out what entitlements there are. It is hard for me to talk about specific claims without knowing the actual details—date incurred and so on.

Mr DAVID SHOEBRIDGE: Assume he has 6 per cent binaural hearing loss.

The Hon. PETER PRIMROSE: Let us assume his insurer told him he was no longer covered as a consequence of the 2012 change, which occurred.

Mr JEFFERY: If that is what the insurers have advised, then he would need to seek some other support for his hearing aids under the current legislation.

The Hon. PETER PRIMROSE: Can you suggest what other support?

Mr JEFFERY: I do not have all the details. Obviously there are provisions under Medicare and so on for hearing aids. It does not provide the same level for industrial deafness. I know specific hearing aids are required.

The Hon. PETER PRIMROSE: Can you check the note from Mr Watson and tell me what that says?

Mr WATSON: One thing that is open to claimants in the workers compensation scheme is for them to ask for a review, so that can be done. We would be happy to receive the information in respect of Rob. Clearly the honourable member has that information. If the honourable member wants to pass it to us, we can look at that in detail.

The Hon. PETER PRIMROSE: What things would be taken account of in the review? This person has industrial deafness. Is he working at the moment and can only work because of the hearing aids. He has been told by his insurer that under the 2012 amendments he is no longer entitled to receive any support. What sort of things would be taken account of in the review?

Mr JEFFERY: For instance there could be further injury as a result of his workplace. We would look at something like that. He could be reassessed for that. It is difficult without talking through—

The Hon. PETER PRIMROSE: Let us say he only had, in this case, industrial deafness.

Mr JEFFERY: But he could have further injury from industrial deafness. Someone could have been assessed for industrial deafness 15 years ago and had a further decline over 15 years, so there could be things like that that you would look at.

The Hon. PETER PRIMROSE: Let us assume that he does have that. What would he be entitled to?

Mr JEFFERY: I could not tell you without looking at the facts of a claim.

The Hon. PETER PRIMROSE: Does the legislation not say that 12 months after—

Mr JEFFERY: If you have lodged a claim, yes, that is correct, but sometimes there are instances so that you can look at different things. The legislation says that you get 12 months of medical benefits. Hearing aids are included in that process. There are sometimes exceptions as well whereby someone could have gone back into a noisy workplace and has an entitlement to lodge a new claim.

The Hon. PETER PRIMROSE: At the moment is he working in an aged care facility.

Mr JEFFERY: As I said, I cannot answer the specifics without looking at the claim.

Mr DAVID SHOEBRIDGE: Why do you not just assume that the worker met the threshold for the previous scheme of 6 per cent binaural hearing loss and does not meet the new threshold in the new scheme for ongoing assistance for binaural hearing loss? So they fall between the very large cracks that are open in the scheme.

Mr JEFFERY: Yes.

Mr DAVID SHOEBRIDGE: What would you say to that worker?

Mr JEFFERY: I would encourage him again, if he has not been to his insurer, to go there first, to come to us for a review, and—

Mr DAVID SHOEBRIDGE: He does not have any basis to make a review because his binaural hearing loss does not meet the new threshold. What would you say then? Is your recommendation that he should put a worthless review in that he knows will fail?

Mr JEFFERY: We would always talk through the scenario with someone.

Mr DAVID SHOEBRIDGE: It is below the new threshold. What would you recommend?

Mr JEFFERY: Then we would recommend he contact the Commonwealth provisions for hearing loss.

The Hon. PETER PRIMROSE: So it is cost shifting on to the Commonwealth?

Mr JEFFERY: The legislation is a matter for Government, so it is hard for me to—

The Hon. PETER PRIMROSE: That is what you just recommended he do.

Mr JEFFERY: Because we are trying to do the best for all injured workers under the current legislation. We will always provide some level of advice as to what they can do.

The Hon. PETER PRIMROSE: And the advice would be he wears it himself, his family, a charity or the Commonwealth?

Mr JEFFERY: To a degree, yes.

The Hon. PETER PRIMROSE: I will ask you about this person who I will call Mr X. In May 2010 Mr X injured his knee. He had two operations on his knee and returned to work in October 2012. The second surgery to his knee involved the insertion of a plate as part of the reconstruction of his knee joint. Once Mr X's

knee had stabilised he needed to have a third operation to remove the plate. As a result of the Government's changes to the workers compensation entitlements, Mr X is not entitled to any further payments of weekly compensation after he returned to work. Though he had received compensation when he was off, his financial situation was adversely affected. As a result of the WorkCover changes, the insurer is unable to pay compensation in respect of the operation, even though it is clear it arises from the injury, for which the insurer had accepted liability. Mr X is not in a medical fund. He is not entitled to Commonwealth benefits. He is unable to pay the cost of surgery himself. Who should this injured worker now go to to get the plate removed so he can recuperate?

Mr JEFFERY: Again, I would need to look at the specifics of a claim. It is very difficult for me to provide scenarios without actually understanding—

The Hon. PETER PRIMROSE: Speculate then. You must get a number of these.

Mr JEFFERY: Once their benefits have ceased, then we would encourage them to go through the normal provisions for medical assistance that every other citizen has.

The Hon. PETER PRIMROSE: What are they?

Mr JEFFERY: Medicare, health insurance.

The Hon. PETER PRIMROSE: He does not have health insurance. So Commonwealth again, cost shift on to Medicare, or a private charity?

Mr DAVID SHOEBRIDGE: Is it appropriate that the transcript show that Mr Jeffery shrugged? I did not hear an audible answer but I saw a shrug. Is there an audible answer?

Mr JEFFERY: Sorry, I agree that they are the options they have.

The Hon. PETER PRIMROSE: Thank you. Bill is 82. He lives in Taree. He drove buses for 40 years. While he was helping a passenger one day he slipped on the steps of the bus and broke his shoulder. He was offered a payout but he said he was not a greedy person. He did not want the payout. All he asked for was care for his shoulder until he died. That is what was agreed. That was the contract and, for decades, he has received an annual X-ray and necessary therapy. He treated that letter as gold, because that meant it was a contract; he understood what a contract means. This year he was refused the X-ray and therapy he needs. He was told he is no longer entitled, even though he had a contract with the insurer, because the Workers Compensation Act had changed in 2012. What should Bill do now, at 82?

Mr JEFFERY: As per my last response, without knowing the specifics of a claim, it is very hard to provide advice.

The Hon. PETER PRIMROSE: Bill is 82 now. He slipped decades ago when he was helping a passenger. He did not want a payout. He had a contract that said he was entitled to receive an X-ray and treatment for his shoulder. Now he has been told because of those changes he is no longer entitled—

Mr DAVID SHOEBRIDGE: Implicit in the question is that this gentleman is not defined as a seriously injured worker under the new scheme and has a whole person impairment in the range of 10 to 20 per cent?

Mr JEFFERY: It would be the same resolution as the previous one.

The Hon. PETER PRIMROSE: How many injured workers met the scheme's definition of being seriously injured in 2013?

Mr JEFFERY: Approximately—we would have to give you the exact number on notice—but approximately 900.

The Hon. PETER PRIMROSE: What do you expect the number to be this year?

Mr PLAYFORD: It would be of a similar order.

The Hon. PETER PRIMROSE: There is clearly not much point in continuing to ask you questions about individuals because clearly what we are talking about is just cost shifting on to the Commonwealth.

Mr DAVID SHOEBRIDGE: On notice you were asked this question: How many workers have lost their entitlements to medical expenses as a result of work capacity assessments for the periods 1 July 2012 to 30 June 2013 and 1 July 2013 to date. Your answer was:

> A work capacity decision does not examine an injured worker's entitlement to medical expenses. Workers whose weekly payments of compensation have ceased will retain their entitlement to reasonably necessary medical and related expenses for 12 months from the date those weekly payments ceased.

I do not know if that was you Mr Playford or Mr Jeffery or someone else in WorkCover that gave that answer, but the answer clearly recognised the fact that when a work capacity decision gives a worker a zero entitlement to weekly benefits and they lose their weekly benefits for 12 months that they then cease to get their medical expenses. You recognised that was what the question was getting at. How many workers have lost their medical expenses because that has played out and I ask you now to answer it?

Mr JEFFERY: I think we would have to—I am trying to think about how—

Mr DAVID SHOEBRIDGE: The number would have been helpful.

Mr JEFFERY: Because of the complexity around work capacity assessments we would have to go back and look at who has been reinstated into benefits as well. It could fluctuate. I am trying to think—

The Hon. PETER PRIMROSE: How many people have had their benefits reinstated?

Mr DAVID SHOEBRIDGE: You have given the Committee those partial answers in other parts of your answers. We are asking you to put the two pieces of information together and tell us how many people have had their medical expenses cut because of an adverse work capacity decision? They have had 12 months with no weekly payments and then had their medical expenses cut—it is not brain surgery.

Mr JEFFERY: No, but it depends. The number of work capacity assessments and numbers we gave you were over a period and then they get 12 months post that. We need to go back 12 months from today and look at the number to there to give you that figure.

CHAIR: You will be able to do that?

Mr JEFFERY: Yes.

Mr DAVID SHOEBRIDGE: Why didn't you do that on notice before we asked?

Mr JEFFERY: We have tried to answer all the questions.

Mr DAVID SHOEBRIDGE: Your answer recognised the issue we were getting at, that they lose their medical expenses 12 months after an adverse work capacity decision. Your answer recognises it but you did not give us the information, do you not understand how frustrating that would be to the Committee? We have you back for the second time now.

Mr JEFFERY: Clearly we are not avoiding the issue, we have missed that point and we will be happy to provide it.

Mr DAVID SHOEBRIDGE: In terms of the reviews of work capacity decisions that are undertaken by WorkCover, which is the second review process?

Mr JEFFERY: Merit review.

Mr DAVID SHOEBRIDGE: Merit review, the statutory timeframe for WorkCover for that is what?

Mr JEFFERY: It is 30 days.

Mr DAVID SHOEBRIDGE: Your answers on notice show us that the average is 61.9 days. The longest time taken, which was still outstanding when you gave us the answers on 10 April, was a staggering 199 days. Has that been decided yet?

Mr JEFFERY: The 199 day case? I could not tell you off the top of my head.

Mr DAVID SHOEBRIDGE: Do you know why that case took 199 days for WorkCover to sort out?

Mr JEFFERY: There have been complexities with merit review and we are attempting to work through them and we are working very closely with the merit review. There could be a number of reasons. Some have been that we have had delays in getting information through and some have been due to resourcing issues. We are certainly aware of it and we are working very closely with the director.

Mr DAVID SHOEBRIDGE: You are working very closely with the director?

Mr JEFFERY: Yes.

Mr DAVID SHOEBRIDGE: When you saw there had been a case for 199 days this director who you work closely with, what did you ask him?

Mr JEFFERY: I have asked him. We have an action plan to implement, we have appointed resources and—

Mr DAVID SHOEBRIDGE: What did he say about the 199 day case?

Mr JEFFERY: I would need to take that on notice.

Mr DAVID SHOEBRIDGE: Do you have any understanding of why these things are taking so long?

Mr PLAYFORD: In my role I do not get into the individual merit review cases, so I have nothing to contribute.

Mr DAVID SHOEBRIDGE: If a worker has been without weekly benefits for a period of time because of an adverse decision by an insurer, if the delay is extensive by WorkCover there are circumstances where the workers can lose a period of their benefits even if you overturn the decision on merit review, isn't that right?

Mr JEFFERY: Yes, that is correct. From a nominal insurer point of view we have taken a beneficial approach to this. We have been working with insurers to continue benefits whilst the delays have been there.

Mr DAVID SHOEBRIDGE: If the insurer has not continued the benefit, if the review has been sought?

Mr JEFFERY: That is correct.

Mr DAVID SHOEBRIDGE: How many workers have had an absolute loss of their benefits because of a bureaucratic failure by WorkCover?

Mr JEFFERY: I would need to take that on notice.

Mr DAVID SHOEBRIDGE: Don't you think that is important information, Mr Jeffery?

Mr JEFFERY: I do.

Mr DAVID SHOEBRIDGE: You have workers who are literally struggling from one payment to the other, often on a very low statutory rate, and then because of the incompetence of WorkCover they can lose weeks or months of benefits, don't you think that is a crucial matter for you to address?

Mr JEFFERY: As I said, Mr Shoebridge, we have been working with the nominal insurer scheme agents to ensure that they continue benefits until the review is complete and we have been working with self and

specialised. Self and specialised merit reviews have also been prioritised to ensure that there has been minimal delay so we do not have that complexity.

Mr DAVID SHOEBRIDGE: Has every nominal insurer and self-insurer continued to make payments?

Mr JEFFERY: I cannot talk about the self-insurers because I do not have that detail. We have been working with the scheme agents, yes.

Mr DAVID SHOEBRIDGE: And have all the scheme agents adopted that?

Mr JEFFERY: To my knowledge, yes.

Mr DAVID SHOEBRIDGE: And historically?

Mr JEFFERY: To my knowledge, yes.

Mr DAVID SHOEBRIDGE: Could you please provide us the exact numbers of workers who have lost their benefits because of these failures in WorkCover and perhaps some detail about what WorkCover is doing to address it. For myself, I find that failure of WorkCover one of the grossest failures of a statutory authority: To see people struggling on workers comp, then lose their benefits absolutely because of the bureaucratic failings in WorkCover. It beggars me that it has got to that point. Could I ask you about the Goudappel case? I do not know who has their head around the finances best for the Goudappel case. What has been the financial impact of the Goudappel case?

Mr PLAYFORD: The Goudappel matter?

Mr DAVID SHOEBRIDGE: You can call it Goudappel, you may know better than me.

Mr PLAYFORD: I have recently completed my evaluation as at 31 December 2013. The outstanding liability that I estimated in respect of future payments that could be paid to Goudappel matters, including associated legal costs, is of the order of $355 million. I have provided a letter to WorkCover in which I included an estimate of the number of claims.

Mr DAVID SHOEBRIDGE: Did you say $355 million?

Mr PLAYFORD: Yes. There has also been a quantum that has been paid over the last 12 months or so in respect of Goudappel matters.

Mr DAVID SHOEBRIDGE: How much is that? You are looking, sorry.

Mr PLAYFORD: If you would like me to dig through—if I am taking too long I am happy to take it on notice. It is of the order of about 17,000—

Mr DAVID SHOEBRIDGE: Claims.

Mr PLAYFORD: —claims for section 67 and of the order of about 13,000 to 15,000 matters for section 66 benefits. I have a letter somewhere where I can provide some exact numbers.

Mr DAVID SHOEBRIDGE: You can give us the exact numbers on notice. The answers given on notice were—and given that the best estimate of liability in the Goudappel decision could potentially impact the scheme—section 66 lump sum liability by $161 million, section 67 pain and suffering liability by $201 million and legal costs associated with those claims of $87 million.

Mr PLAYFORD: That should add up to $355 million.

Mr DAVID SHOEBRIDGE: No, that adds up to $449 million.

Mr PLAYFORD: That is previous work I had done a period ago. That has now been replaced by future payments of $355 million—that is, combined section 66, section 67 and associated legal costs. Payments made to date are of the order of $100 million. So that would get up to $455 million.

Mr DAVID SHOEBRIDGE: If you have a detailed working from PricewaterhouseCoopers, could you provide that to the Committee?

Mr PLAYFORD: Absolutely.

Mr DAVID SHOEBRIDGE: With the $100 million that has been paid to date, the decision in that matter is listed for judgement in the coming weeks is it not?

Mr PLAYFORD: That is correct.

Mr DAVID SHOEBRIDGE: What will happen to the $100 million that has been paid to date?

Mr JEFFERY: It will remain with the people who have received it.

Mr DAVID SHOEBRIDGE: There will be no attempt to claw it back from WorkCover?

Mr JEFFERY: No, and the judgement is due on Friday.

Mr DAVID SHOEBRIDGE: So there has basically been a bit of a lottery going—namely, the people who have managed to get their matters determined to date have got a slightly increased lump sum payment but those who have not managed to get their matters resolved to date, if the decision goes against the workers' interests and in favour of WorkCover on Friday, will simply lose out. So there will be this sort of arbitrary cut-off. Is that how you see it playing out?

Mr JEFFERY: Yes.

Mr DAVID SHOEBRIDGE: Do you think that is fair?

Mr JEFFERY: It is a matter of law and policy, I can't—

Mr DAVID SHOEBRIDGE: I know it is a matter of law and policy. You are operating the scheme; you are very close to it. Do you think it is fair?

Mr SCOT MacDONALD: Point of order: Is it fair to ask witnesses, even if there is some sympathy for the question, for a personal opinion about policy and regulation?

CHAIR: There is some latitude here. We are still within the boundaries. Anything that you are not sure about you can always take on notice and you should exercise that right, if you wish.

Ms DONNELLY: It is fair to say that our focus is on administering the laws, not making them and not interpreting them; that is the role of the courts.

CHAIR: The Committee understands that.

Mr DAVID SHOEBRIDGE: You have the scheme you have been dealt with by Parliament, and I do not suggest otherwise. You are managing the scheme you have been dealt with by Parliament, and I think we all recognise that. Do your actuarial assessments showing the current state of the scheme assume that the Goudappel case will be decided against WorkCover or in favour of WorkCover?

Mr PLAYFORD: I have assumed the Goudappel case as it currently stands, so it is included in the liabilities of the scheme at this point in time.

Mr DAVID SHOEBRIDGE: Potentially on Friday there could be a $350 million improvement in the scheme's performance.

Mr PLAYFORD: That is correct, yes.

Mr SCOT MacDONALD: My question relates to an earlier issue raised with the Committee—namely, Atilio Villegas, your file No: 2012005855. Indeed, my question relates to the separation of decision-making and whether you decide to prosecute or not. This report outlines 17 failures, some of which are substantial and others possibly not so substantial, but in the view of investigator Pryor they probably contributed to the death of this man. I would like to understand how the decision was made not to prosecute Leighton, Waco or Proforma, or all of them, and the reason behind that. We all stood for the death of workers. I am not signed-up to the idea that the number of prosecutions is what really matters; to me it is the quality of prosecutions. When I read this report, even though procedures were put in place by Leighton and Proforma, and possibly even Waco, the design of those procedures and the monitoring of them had failures. In the design there were not, as they call them, hop-ups, mid-rails and things like that.

So even though there were some good processes, you can have the best processes in the world but if those processes are not followed through, particularly in performing dangerous roles such as this man was carrying out—by all accounts the lack of hop-ups appears to have contributed to his death—I am not a lawyer but from my reading it appears there were some fairly substantial failures. I am happy for this question to be taken on notice: Why has there not been a prosecution of one or all of those companies, in spite of their written processes and all those sorts of things? Do you want to respond to that now or leave it for later?

Mr WATSON: I will take the substantive part of the question on notice but can I note for the interest of the Committee that the two identities involved have actually deregistered; they remain in administration and are currently being wound-up. So that is always a difficulty. If you want to run a prosecution you have to have somebody to prosecute, and that is not going to be the case in this matter. We have been in touch with the family and the deceased's son. At the moment we have put an offer to meet with them, which we do with families quite regularly. We have a bereaved family service in which we provide assistance to families when these circumstances unfold. We are also aware of the CFMEU involvement in this as well and we are in contact with them. But the actual decision-making process I do not have with me as to that particular matter but we are absolutely happy to provide a full brief on that.

Mr SCOT MacDONALD: As to how the decision was arrived at?

Mr WATSON: Absolutely.

Mr SCOT MacDONALD: You have a number of entities: Leighton, Waco Kwickform Pty Limited and Proforma. The last two, as you say, are in administration or receivership?

Mr WATSON: Yes.

Mr SCOT MacDONALD: On my reading of it, Leighton is the principal contractor?

Mr WATSON: Yes.

Mr SCOT MacDONALD: Leighton is responsible for the design. Again, they are responsible for oversight even if Waco or Proforma do the work and they all have their risk-mitigation processes—or they did have. At the end of the day, to me, Leighton's are the people that are in the dock. You can have all the delegation of authority that you like but at the end of the day Leighton's are still very much in business.

Mr WATSON: They are.

Mr SCOT MacDONALD: Is there some rationale or thinking behind why Leighton would not be brought to account over this?

Mr WATSON: I am happy to take that question on notice. I do say that it has been the application of the publically available document that we have used. We will look at that and give you a full explanation of that on notice.

Mr SCOT MacDONALD: I cannot see a date on this WorkCover report by Mr Pryor. It is a comprehensive report, and there is a police report behind it, but it does not have a date. One of the issues is, unless I have got the date wrong, there seems to have been a long time between the death in March 2012 and the

report about 18 months or close to two years later. Unless I have missed something, it was a long period of time before that report came through. Could give us some clarification around that?

Mr WATSON: I will certainly do that. We often have interactions with the Coroner that also delay matters. We will look at the time frame, the content and the decision-making.

Mr DAVID SHOEBRIDGE: I think the Coroner has refused.

Mr SCOT MacDONALD: I am confused about the Coroner. I went to the Coroner and I even paid for a coroner's report, but there is no report that I can find.

Mr WATSON: They made a decision not to hold an inquest.

Mr SCOT MacDONALD: That could well be. My office was not told precisely that. That is a grey area.

Mr WATSON: I think that is the case. I will check it and provide the information to the Committee.

Mr SCOT MacDONALD: Without specifically talking about this report, I think I or other members might have put some questions to you about the phoenix problem. In this instance we are dealing with some phoenix problems. I do not want to verbal you, but I think you responded that it is not your role; it is an Australian Prudential Regulation Authority/Australian Securities and Investments Commission role. I understand the reasoning behind that response; you do not have the powers to go behind it. This Committee could put up some ideas or make some recommendations around phoenixing and probing at the point of a company applying to get a policy. You might put questions to them much like those asked when people apply for comprehensive insurance. They are asked whether they have a no-claim bonus, whether they have other policies and so on.

If the authority were given the power—if that is the appropriate thing to do—would it not be feasible or reasonable to do a bit of probing when the policy is applied for? The public officer, director or related party might be asked whether they have any outstanding premiums or other policies and whether in the past six months or year they have had a policy relating to an entity that has gone into receivership or administration, has been suspended, or a policy has been suspended. Would they be unreasonable things to consider that might go some way to overcoming the pro forma, Waco or phoenix issues?

Mr WATSON: Getting as much information as we can when a policy is issued by an agent will obviously assist that. Clearly, there needs to be legislative power for us to make those probes.

Mr SCOT MacDONALD: You do not have that power now?

Mr WATSON: I am not sure; I will need to take advice.

Mr SCOT MacDONALD: It is important for me and other members to know whether in your assessment it is a simple matter of asking those questions or whether you think this Committee or the Parliament should give you those powers. That is important.

Mr WATSON: A few things occur to me in respect of this. First, we do report suspicious activity by entities to the Australian Competition and Consumer Commission when necessary. We report as a matter of course if someone is trying to phoenix themselves. There is no question that that goes on. The thing that occurs to me is that if the officers of a propriety limited company are of the mind to phoenix the company—

Mr SCOT MacDONALD: They have a corporate veil.

Mr WATSON: —they are probably of a mind not necessarily to answer the questions honestly. That is an issue. We could look at our legislative power to do that and if the Committee wants to make recommendations in this area we would be happy to receive them.

Mr SCOT MacDONALD: That probably occurs to all of us. If someone is of a mind to defraud an insurance company, whether it involves a car or workers compensation, they will do so. If those questions are

answered and a public officer signs a document stating that the company does not have those legacy or phoenix—

Mr WATSON: It becomes a substantive matter.

Mr SCOT MacDONALD: If they sign to that effect or put the company seal on it then to my mind they are setting themselves up for allegations of serious fraud.

Mr WATSON: Indeed. We are not adverse to that type of solution in respect of this.

Mr SCOT MacDONALD: You say that you might alert the Australian Competition and Consumer Commission to phoenixing. Are there particular fields or industries that are more prone to engage in this than others? I have heard that this is an ongoing problem in the formwork field. Are there others?

Mr WATSON: The most likely businesses to do this seem to be in the construction sector. They are reasonably small operations or operations that are growing to the point where they need to have more formal structures in place to manage the business but those structures do not exist. That creates the potential for the management of the business to go awry and then go into receivership, not necessarily phoenixing. The viability of the business is placed at risk. The actual concept of phoenixing that we are talking about seems to be prevalent in some trades and it seems to occur from time to time. The legislation we have tries to get around that, but there is no doubt that it has a limited impact. People who want to get out from underneath their responsibilities and liabilities under the work health and safety legislation and the workers compensation legislation do so.

Mr SCOT MacDONALD: I ask you to think about all of that. Even in the case of Villegas, Leightons acknowledged that its contracting chain with some of the formwork companies was flawed because one of the companies—I cannot recall which one, but it is in the report—did not exist. It did not have an ABN or there was a breakdown between the company and the contractor because the contractor was not even there. It gets back to the point you are making that Leightons is the principal contractor. It seems to have neglected its obligation to have viable, financially robust contractors underneath it, to know who the directors were and so on.

Mr DAVID SHOEBRIDGE: Is there therefore an obligation on the head contractor as the one entity that can be identified as being in charge of the site? What is WorkCover doing on an industry-wide basis to recognise these problems in the construction industry and to hold the head contractors to account so that they are not simply contracting out their liabilities?

Mr WATSON: We have quite a relationship with the Australian Contractors Association, and these businesses are members of that association. We certainly discuss their responsibilities under the work, health and safety legislation. The point is that they either have a legal liability or they do not. The law is the law and when it is administered a case that will stand up must be built within the scope of the Evidence Act. We certainly do not go soft on large businesses, if that is what is being suggested. That is certainly not the case.

The Hon. SARAH MITCHELL: I refer to the inspections undertaken by and the reports from workplace inspectors. Some witnesses have been critical of the variability in the reports. What action does WorkCover take to ensure that the quality and accuracy of not only the inspections but also the reports?

Mr WATSON: I am not sure to which reports the member is referring. I will talk about the governance arrangements we have in place to ensure that inspectors comply with our internal standards and against which they are required to deliver. We have a specific governance unit that conducts internal audits of operations of inspectors when they serve a notice, write a report, provide an exit report when they leave a workplace and so on. Those sorts of things are all subject to audit and a report is prepared for our senior management team, which discusses them at meetings to ensure that we get consistency. When it comes to the individual performance of an inspector in the field, as I have said the previous times I have appeared before Parliamentary inquiries such as estimates and so on, we are very happy to hear from members of the public if they believe that an inspector is not fulfilling their duties appropriately; and we will deal with that. My inspectors know that that is something I am committed to doing.

It is important we do that because it is important that the New South Wales community has an inspectorate which is robust and inspectors who understand how to conduct themselves, with the authority that they have, in an appropriate manner. So we are very happy to receive that information. I can provide you on

notice with the detail of our structure around the management of the governance of that. Recently I have asked for our internal auditor, who is separate from the people who work in our division, to seek out a review of the decision-making processes—the very issues that Mr MacDonald has been exploring with me here this morning—we have for prosecutions to ensure that it is robust, that best practice is going on around the country, and that it delivers what we need to deliver in respect of transparency and accountability. So that process is getting underway. An external person will come in and do that for us. They will provide us with an overview and, I would expect, with some recommendations for improvements or areas we can adjust. If members are interested and if it would be helpful for the Committee then we can detail that as well.

The Hon. SARAH MITCHELL: Thank you, that would be helpful.

CHAIR: So you are certainly aware of those concerns?

Mr WATSON: There are always ongoing concerns about variability. Unfortunately, when you have 315 inspectors you are going to have a variety of operators.

CHAIR: Yes, but we are talking about a variety between a good standard and a bad standard. There will always be variations but we are talking about bad standards. So do you think that criticism is justified?

Mr WATSON: I do not think it would be universally justified, if I may say so. We are seen in this region of the world as an inspector that does do things well.

Mr DAVID SHOEBRIDGE: I do not think any witness has suggested that they would be uniformly bad.

The Hon. SARAH MITCHELL: No, it is just about the variability.

CHAIR: It is just that those who are not of a good standard are dealt with.

Mr WATSON: That absolutely would be dealt with. If people have concerns about that then they can raise them directly with my office. I have no problems about that.

The Hon. SARAH MITCHELL: You say that you are happy for people to raise concerns with you. Does that happen often? Do you have figures on how many complaints you get about WorkCover inspectors in general? I guess I am trying to ascertain whether it is a big issue in terms of the numbers reported.

Mr WATSON: I get about three examples a year where people write to me and say that they did not like the way in which an inspector has conducted themselves or done their job. Of course the other thing we do is to run customer satisfaction surveys. So we actually have a company go out independently on our behalf and talk to people anonymously. We do not know who they actually talk to; we just provide that company with a list of all the businesses we have visited, including the people who we have prosecuted. We get them to ask a series of questions about the quality of the service they received. We are obviously not asking someone who has been prosecuted whether or not they were happy that they got prosecuted; we are asking them about the process when we actually did that. Was it okay and what can we do to improve that?

CHAIR: What has that response shown overall?

Mr WATSON: I have to say that, when we first started, I thought we would receive something like a 40 per cent satisfaction rate. The first year I think, from memory, over 80 per cent—and it might have even been touching about 92 per cent—of people were satisfied with the way in which we were doing our work. We have those reports and would be happy to provide you with one of the more recent ones, and perhaps an older one as well so that you can have a comparison. Evaluating our impact and evaluating how we actually do our work is very important in respect of how inspectorates operate.

Ms DONNELLY: Going back to a point made by Mr Shoebridge earlier about people who have been prosecuted, we also have a program called close the loop. Mr Watson might like to talk about that also.

Mr WATSON: Yes, that is the other process we go through where we have prosecuted a company. Prosecution is really just one of the tools that you have as a regulator. I think it is important where we do have a prosecution that it has a lasting impact on the culture of the business. So we actually go back to them. We set up

a meeting with the senior executives of the business that we have been prosecuting and the senior executives of my division. They meet with the company to talk about what they have done since the prosecution occurred to make sure that we do not have to go down this path again. So what are the improvements they have put in place and how sustainable are they? I guess the third thing to look at is what assistance we can provide to make sure that this becomes the way in which they do business—that is, you get a safe outcome rather than the outcome they have had previously. So that is what we call the close the loop program. That is done routinely now—I sign off letters quite regularly to businesses that we are dealing with. So it is about closing the loop of our activity.

The Hon. SARAH MITCHELL: I have a couple more questions related to stakeholder engagement, which I did ask Mr Watson about when he appeared before the Committee a few weeks ago. After we heard from you some of the other inquiry witnesses brought up the issue of having an advisory council, which I think has existed in the past in various forms. Essentially what those witnesses were asking for was some sort of group that included stakeholders, WorkCover and the Minister's office to ensure there was regular and thorough communication. Would you have a view on the re-establishment of such a group or council or ways to improve that communication loop?

Ms DONNELLY: I might talk about that because we have been looking very deeply at that issue and are certainly aware that there have been a number of issues raised around stakeholder engagement in the four agencies that the Committee is reviewing. One of the things we have done is to have an audit across our businesses to see what kind of engagement we have in place and where we might need to adjust that. We have come up with some models that we are considering. In the WorkCover space there are calls for a tripartite approach so we are certainly considering that. While a ministerial advisory committee is really the prerogative of the Minister, we are certainly looking at what we can do to within the administration of our responsibilities.

We have stakeholders who do not just fit within that tripartite concept. Clearly the representatives of workers and the representatives of employers could be seen as key customers and the reason why WorkCover exists. But there are other stakeholders who are service providers. So we were wanting, as a next step, to have some consultation with them about what kind of mechanism would meet the needs of various stakeholders. We do have quite a lot of stakeholder engagement that is focused on particular segments or particular changes. We do accept that there have been some peaks and troughs in that, and we probably need to have more consistency so that people within the WorkCover stakeholder group are happier with the level of engagement and that it is regular and so on. We are certainly considering that sort of model. We have looked at the model that exists for the Lifetime Care and Support Authority where there is a regular meeting of a reference group. So that will be one of the concepts we will be consulting on.

The Hon. SARAH MITCHELL: As part of that, have you looked at sector-specific teams? That was something that was raised by National Disability Services.

Ms DONNELLY: One thing I can say is that, over the last year, we have done a lot of work with small business. There is something like 680,000 small businesses in New South Wales, and they employ a sizeable number of workers. Certainly we have had a number of stakeholders raising with us the fact that they are often time poor, resource poor and not able, obviously, to gear up to the same level of knowledge and systems as larger businesses. We have been through a very focused consultation process with a number of business groups and the Small business Commissioner and, as a result of that, made changes so that there are now specific people who are tasked to be contact points for them, and better service from the customer service centre. We now have an ongoing small business reference group that meets quarterly. They are happy with that.

So I think that shows a segment approach. They do not necessarily want to be at a lot of meetings hearing about issues that are not pertinent to them, and that is one of the considerations. Another point is that, in looking at the four agencies which are all in that space of safety, injury and insurance, there are common stakeholders—such as the New South Wales Bar Association, the Law Society of New South Wales, the Australian Lawyers Alliance, the Insurance Council of Australia et cetera; and some of them are representatives of injured people—who we could, without thought, be burdening with a whole lot of consultation that maybe is not feasible. It needs to be what will meet their needs.

The Hon. SARAH MITCHELL: What about the disability sector? With the rollout of the NDIS happening, is that something that you could turn your mind too as well?

Ms DONNELLY: Certainly. One of the areas that I work in is around the design and policy leadership for our input into the National Injury Insurance Scheme. We have some good relationships into parts of the

disability sector, particularly through the Lifetime Care and Support Authority. I recently spoke at a conference set up by National Disability Services to advise people about what is ahead with NDIS and how to be ready from the perspective of what insights we can share. I do think there is more that we can do in that space and that is most certainly part of this strategy.

CHAIR: A number of inquiry participants have expressed concern that injured workers are not entitled to legal representation and must deal directly with scheme agents. Are you aware of this criticism?

Mr JEFFERY: Yes, I am.

CHAIR: How do you respond to that?

Mr JEFFERY: There are two things. The legislation stated under work capacity assessments that there was no legal representation to be utilised and then there was an amendment that was put through because we know that each party was to bear their own costs for legal, in which case the Independent Legal Assistance and Review Service [ILARS] was set up for injured workers to access legal costs. So they have access to legal representation through ILARS, which is administered by the WIRO—it was delegated by WorkCover to go there—and they need to apply.

CHAIR: What about increased access?

Mr JEFFERY: For?

CHAIR: The concern is that there should be increased access.

Mr JEFFERY: For work capacity, are you referring to?

Mr DAVID SHOEBRIDGE: I think the question started about work capacity. Are you saying ILARS funds lawyers to do work capacity? That is how I read your answer.

Mr JEFFERY: Sorry; that is why I separated it out. Work capacity—in the legislation it states there is not legal representation and then for other matters—

Mr DAVID SHOEBRIDGE: My understanding is that that was what the Chair was asking about: the work capacity matters where there is zero legal representation—in fact, it is illegal to provide legal representation for a fee. That is the issue I thought the Chair was getting at.

Mr JEFFERY: I misread the question.

CHAIR: What would your response be to that?

Mr JEFFERY: In relation to a work capacity assessment, there is no legal representation; it is legislated. That is a policy issue. There is a process which we have spoken about earlier whereby they have an internal review, a merit review, and then there is a final review of the WIRO. There have been some mechanisms put in place to assist injured workers through that process and the WIRO has also been putting some services around that process as well. We have also been putting in some support or information services for injured workers through our customer service centre to assist them with that process as well.

CHAIR: A number of inquiry stakeholders have been highly critical of the consultation and communication process undertaken by WorkCover in preparing and disseminating new guidelines. Are you aware of this criticism?

Mr JEFFERY: Yes.

CHAIR: How do you respond to that criticism?

Ms DONNELLY: I think we are aware of those criticisms; we accept it. It is part of the reason why we are looking at improved stakeholder engagement.

CHAIR: Do you believe those criticisms have been justified?

Ms DONNELLY: I think as long as there is a perception from stakeholders that we are not engaging then we have a problem that we need to work on.

CHAIR: But there is a perception and a reality. Do you believe, in reality, these concerns are justified?

Ms DONNELLY: I think it is true that there was a high level of consultation and then we let that drop and we need now to get it to the right level.

CHAIR: Are you working on that now?

Ms DONNELLY: We are working on that now.

CHAIR: What specifically in that area would you be doing to overcome that drop in consultation that you detected?

Ms DONNELLY: One of the things that were mentioned is the particular legal reference group which is going to be having regular meetings. The next one, I believe, is in May. We have some consultation to do with stakeholders to make sure that the solution that we put in place is what meets their needs; so that is our next step. There is certainly much more active and constructive engagement with the WorkCover Independent Review Office and with opportunities for input and discussion at an early level. In fact, Mr Jeffery might want to talk about the guidelines that are under review at the moment.

Mr JEFFERY: We are doing a review of the work capacity guidelines at present at which we have a stakeholder group that is working combined—we have the WIRO at the table, we have some of the insurers, we have self and specialised insurers and so on. So we are working through a review of those guidelines, which then will go to a broader stakeholder engagement piece.

CHAIR: In summary, you say that you are aware of this concern.

Ms DONNELLY: We have heard it.

CHAIR: You believe that there is some justification for this concern and you say that you are now working with the stakeholders to ensure that that issue is resolved?

Ms DONNELLY: Yes.

The Hon. PETER PRIMROSE: Can I just return to Mr Jeffery's comment in relation to the WorkCover guidelines for claiming compensation benefits? That is the review that you were talking about?

Mr JEFFERY: Yes.

The Hon. PETER PRIMROSE: Can you tell me what the review involves?

Mr JEFFERY: We have coordinated a group of stakeholders, essentially. We received feedback from various stakeholders that the original guidelines were quite convoluted and complicated.

Mr DAVID SHOEBRIDGE: This is about work capacity assessments specifically?

Mr JEFFERY: Yes. So what we have done is we have engaged with industry, essentially, to review those guidelines, to look at structurally what they should look like. We are working very closely with the WIRO in particular on this because there is some expertise there, to get the guidelines to a more understandable and almost—simplistic is not the right word, but to a degree whereby anyone can look at them and understand the process, and then to separate some of the claims processes that we would like the insurers to follow and to use other mechanisms to go down that process.

The Hon. PETER PRIMROSE: So those who have been consulted—and I am reading from page 12 of the agenda dated 1 May of the Safe Work Australia Workers Compensation Significant Issues Group meeting—were scheme agents and self and specialised insurers?

Mr JEFFERY: And the WIRO. We are only drafting at the moment. Once we have a draft we will then broaden the stakeholder group.

The Hon. PETER PRIMROSE: Who else do you expect to be consulted?

Mr JEFFERY: I would expect that we would consult someone from legal. We would also like to engage the AMA and probably a worker type reference group or the unions.

The Hon. PETER PRIMROSE: Probably or—

Mr JEFFERY: Sorry, I am just trying to answer your question. We will.

The Hon. PETER PRIMROSE: You would expect that even though they have not been involved so far, worker representatives will be involved?

Mr JEFFERY: I think there is a point where we need to get a draft to get feedback on. What we did was we went to the people that were utilising the guidelines to get feedback so that we can draft something to go to the broader stakeholder, otherwise we will go round and round in circles just looking at the original guidelines and we would like to get to a point where we have something useable and workable.

The Hon. PETER PRIMROSE: So people like worker representatives would not have been able to contribute to that initial draft?

Mr JEFFERY: At this stage no, not at this point.

The Hon. PETER PRIMROSE: But you will involve them in further consultation?

Mr JEFFERY: Yes, three stakeholder reference groups.

The Hon. PETER PRIMROSE: When do you expect that to take place?

Mr JEFFERY: I think we are due to have a draft in the next couple of weeks, so I would assume that we go to the broader stakeholders by the end of the month.

The Hon. PETER PRIMROSE: You mentioned your customer service centre earlier. For how long have you had a dedicated work capacity liaison officer?

Ms DONNELLY: For a very short period of time. It is a very new role. We are still bedding it down and, in fact, evaluating whether that model will work. It is a role that exists within the customer service centre. The objective is to have as one of the team members someone who is a deeper specialist than the rest of the front-line staff who builds up their understanding of work capacity assessment and relationships with the various other bodies that have a role in work capacity assessments and reviews in order to have a faster, easier process if a matter is more complex and needs to be referred on.

The Hon. PETER PRIMROSE: You said a short time. How long?

Ms DONNELLY: My recollection is that it is April, so a very short period of time.

The Hon. PETER PRIMROSE: Has that person been communicating with other agencies such as the WorkCover Independent Review Office?

Ms DONNELLY: We have not been publicising it. I believe at the moment they have got something like about seven matters that they are working on for which they will have perhaps made phone calls on behalf of that person. But at this point there has not been a lot of publicity. They will be just ringing and saying, "I'm from the customer service centre." But the idea is to build a resource within the first level of the front-line team of a person who has deeper expertise and networks.

The Hon. PETER PRIMROSE: Mr Garling from WIRO has advised the Committee that he has never heard of the officer.

Ms DONNELLY: I had a conversation with Mr Garling about that last week. He was kind enough to advise me of that as well. I do not believe we have taken particular steps to publicise the role. My team have advised that they have mentioned that we intended to do it sometime ago, so he may not have been advised that it has now started up. I can take on notice, if you like, whether or not the person has actually had conversations with the WIRO. They just may not have introduced themselves in terms of their particular position title at this point because it is just starting up.

Mr DAVID SHOEBRIDGE: But you have given a detailed answer. You said it is about criticism about how you deal with a non-English speaking Portuguese bricklayer. You say we have got all this in place and the customer service centre has an escalation service. You give us that answer in April but you forget to say—and it seems an important omission—that you only recruited that person in April. How do you explain that? It looks deceitful, to be honest.

Ms DONNELLY: It certainly was not intended to be deceitful and I apologise for that.

Mr DAVID SHOEBRIDGE: Do you see how it could look deceitful? It looks as though this is the system in place, but you have actually just recruited this person in order to give this answer. That is how it looks.

Ms DONNELLY: I do not believe that is the case but I do understand the perception and I apologise for that.

The Hon. PETER PRIMROSE: Do you expect to continue the person in that role?

Ms DONNELLY: I do, subject to evaluating. That would also include consultation with other parties about whether or not it is assisting. If it is not assisting then we would obviously evaluate and say perhaps we need to do something else.

The Hon. PETER PRIMROSE: Returning to the review of the guidelines for claiming benefits, what significant changes are you looking at?

Mr JEFFERY: Can I take that on notice, because, as I said, they were quite complicated and convoluted. I would rather put some structure around a response.

The Hon. PETER PRIMROSE: That is fine. Thank you.

Mr DAVID SHOEBRIDGE: Mr Playford, I think one of the most interesting documents this Committee has received is your document dated 1 April. I will provide you with a copy.

Mr PLAYFORD: Thank you.

Mr DAVID SHOEBRIDGE: It is entitled "Impact of investment returns on WorkCover solvency position—December 2011 to December 2013". Do you recall this document?

Mr PLAYFORD: Yes.

Mr DAVID SHOEBRIDGE: Essentially, this document is saying: Put yourself back in the position of the fund in December 2011, assume none of the statutory changes had happened and that the investment returns and changes had played out as they have to date. The document says to ignore the statutory changes. Is that right?

Mr PLAYFORD: That is correct.

Mr DAVID SHOEBRIDGE: Your conclusion is that if the Parliament had not pushed through the statutory changes as at December 2013 a deficit of perhaps $2 billion to $2.5 billion may have been reported?

Mr PLAYFORD: That is correct.

Mr DAVID SHOEBRIDGE: That is a substantial improvement on the $4 billion deficit that was sitting on the books in December 2011.

Mr PLAYFORD: That is correct.

Mr DAVID SHOEBRIDGE: It becomes more interesting as we play it further forward. You say that even without the legislative changes, by June 2014 the deficit would have reduced to perhaps $2 billion. Is that right?

Mr PLAYFORD: That is correct.

Mr DAVID SHOEBRIDGE: Then if we play it forward again with no legislative changes, between June 2014 and June 2018 the deficit may have reduced to just $0.5 billion.

Mr PLAYFORD: That is correct.

Mr DAVID SHOEBRIDGE: If we run it forward a bit further the solvency position approaches full funding by 2021.

Mr PLAYFORD: That is correct.

Mr DAVID SHOEBRIDGE: If none of the appalling loss of benefits and savaging of payments to workers had happened your best actuarial advice is that we would have been working towards a solvent scheme anyhow. You do not have to take on my characterisation of the benefits, so I will put it more neutrally. Absent the parliamentary changes that went through, this scheme would have been working its way through to surplus in any event?

Mr PLAYFORD: I guess my comment there would be back at December 2011 when there was a reported deficit of $4 billion I had made it very clear at that point in time that roughly half of the deterioration of the scheme's financial position up to December 2011 had been due to external factors during the global financial crisis [GFC] but the other half of the deterioration was due to the deterioration in the underlying claims management performance. When I last appeared before this inquiry I commented that my report at December 2011 showed deteriorating trends in some of the claim management metrics such as the volumes being paid in medical costs and lump sum benefits and so forth.

You are quite right that since December 2011 there has been some very good investment returns. They have been significantly more, like 10 per cent or 11 per cent per annum investment returns. It is easy with the benefit of hindsight to see that there has been very good investment returns. But as a Government and as a Parliament back in December 2011—I do not think anyone can always judge when good investment years will occur, so quite conceivably there could be a poor investment return next year. There is a long-term average investment return that plays out over a whole investment cycle. You are quite right that over the last two years there has been very good investment returns.

CHAIR: What would have been the accumulated deficits up until 2021, taking out the GFC component?

Mr PLAYFORD: I estimated back in December 2011, when there was a reported deficit of $4 billion, that if you had taken out the GFC impact it would have been about a $2 billion deficit but deteriorating further because of the way the claim trends were occurring.

CHAIR: What would have been your anticipated accumulation of deficits?

Mr PLAYFORD: It is hard to speculate how much further claims performance may have deteriorated. My valuation at December 2011 and all my valuations essentially assume that the experience you are seeing in terms of claim outcomes now would be sustained into the future. There was a risk back in December 201—given the trajectory—that it would have continued in that trajectory of poorer investment returns. In that case the deficit would have been larger going forward from December 2011 than it otherwise would have been, taking out the investment returns.

Mr DAVID SHOEBRIDGE: These are not accumulated deficits. There are the scheme estimates at each point, so they do not accumulate. It is just your best estimate at any given point.

Mr PLAYFORD: That is correct. If I can go to one other point, the question for Government is also about the time frame of wanting the scheme to be back in solvency. These schemes can operate with deficits for periods of time, but there comes a point where you have got to ask whether it should be back in a surplus position. That seems to be a laudable goal of good financial management. Even the scenarios I have done in this letter of 1 April, you are quite right that there is a trajectory of improving surplus position from now into the future to the point where it would return to surplus, but that is out to 2021, as I think I have estimated. That is just another question of what time frame the Government and Parliament is comfortable with for the scheme having a trajectory before it goes back to a surplus position.

Mr DAVID SHOEBRIDGE: You take that into account in part in this correspondence of 1 April. It is on page 4 of 5. The second dot point states:

> Actual discount rates and projection rates to 30 June 2013 have been used. Subsequent to this we have transitioned over the following five years to a longer term equilibrium curve. That is, we have assumed that discount rates will revert back to their high equilibrium level over the medium term.

Mr PLAYFORD: That is correct, yes.

Mr DAVID SHOEBRIDGE: Perhaps you could debunk that for me.

Mr PLAYFORD: What that means is that even as at today's date, as at 30 June 2013, the long-term discount rates which are used to take the liabilities back to a net present value are not at the level that you would expect in the longer term, the sort of average level. They are lower. Over time you would expect discount rates to revert to a long-term average level. That is what mean reversion means—just moving back towards the longer term average. So they are still a lot lower than what they were historically before the GFC.

Mr DAVID SHOEBRIDGE: What is your best estimate, sitting here now or as recently as you have done it, of the scheme's current deficit?

Mr PLAYFORD: The scheme is currently in a surplus position of a bit over $1.3 billion, and that is about a $1 billion improvement over the last six months. If you would like me to dig into the drivers of that improvement, obviously I am happy to.

Mr DAVID SHOEBRIDGE: I would.

Mr PLAYFORD: Over the last six months the assets side of the balance sheet has improved by the order of $689 million. There are two components to that. One is that the premiums that we are currently charging are higher than what I estimate the underlying cost of the scheme is' so additional premium is being collected. That automatically goes to improving the bottom line of the scheme's balance sheet. The second driver of the assets side is that investment returns continued to be very good in the last six months of 2013. So those two factors, collecting more premium and the assets getting higher investment returns than the longer term average, contributed to roughly two-thirds of the improvement in the solvency position.

Mr DAVID SHOEBRIDGE: When were premiums most recently reduced?

Mr PLAYFORD: There was a December 2013 insurance premium order, in which I believe there was a 5 per cent reduction. There had previously been a reduction in premiums at June 2013 as well.

Mr DAVID SHOEBRIDGE: Which was substantially bigger than 5 per cent?

Mr PLAYFORD: Yes. I think it was 7.5 per cent on average.

Mr DAVID SHOEBRIDGE: Even with those reductions in place your actuarial advice is that there is more being received in premiums than is necessary to pay the current package of benefits.

Mr PLAYFORD: That is correct.

Mr DAVID SHOEBRIDGE: What is the differential?

Mr PLAYFORD: It is of the order of 20 per cent currently.

Mr DAVID SHOEBRIDGE: So you could hold premiums at their current level and increase benefits in the order of 20 per cent and you would still have a viable scheme operating close to surplus.

Mr PLAYFORD: There are some uncertainties in my calculations but benefit improvements—there are two choices. Well, there are three choices, frankly. If you do not do anything the solvency position of the scheme is likely to continue to improve dramatically, and that is not necessarily an effective use of the capital of society having that locked away in WorkCover's balance sheets. So that is one option. The second option is you could reduce premium rates. The third option is you could improve benefits of the order that you are talking about, yes.

Mr DAVID SHOEBRIDGE: So using your best advice, with all your experience, if we hold things as they are for now for another 12 months, what sort of surplus are we looking at in terms of the scheme?

Mr PLAYFORD: Again it would depend on a combination of factors, in particular the investment returns. But by June 2015 for example—

Mr DAVID SHOEBRIDGE: Using this medium-term assessment.

Mr PLAYFORD: You would be looking at the order of about 125 per cent funding ratio. I do not have the numbers to convert that into a dollar figure but basically you have assets in excess of your liabilities of the order of about 25 per cent.

Mr SCOT MacDONALD: When you hit that figure of 125 per cent you are well over your 110 per cent which is your preferred level.

Mr PLAYFORD: That is correct.

Mr SCOT MacDONALD: And you just made the comment—I think quite valid—that that is not a great use of capital for the community. So do you turn around and make recommendations on that?

Mr PLAYFORD: It is not my role to make recommendations. I can estimate the impact if there are changes in the benefit structure for example or if there are rate reductions, what the premium impact of that would be. What is the right choice? It could be a combination. That is ultimately a policy decision. It could be a mixture.

Mr DAVID SHOEBRIDGE: You have a document there that you were referring to. Does that have some of your additional workings around this?

Mr PLAYFORD: This document I have here is just my presentation to the board of the WorkCover Authority. Then I have done a final page slide 12, which I think you would be referring to, where I have just done an illustration. It is not advice. It is an illustration of doing a combination of benefit enhancements and rate reductions. You could do one; you could do the other. But it is to give the board an indication of the parameters that they can move within. If they go outside those parameters the solvency position could start deteriorating again. So if you over-react, if you like, because I do not think anyone wants it to go back into deficit and again a crisis arises again just because of the solvency position. So I gave some parameters for the board around making those choices in making its recommendations to government.

Mr DAVID SHOEBRIDGE: Are you in a position to provide that document to the Committee?

Mr PLAYFORD: I am sure I could, yes.

Mr DAVID SHOEBRIDGE: Would you do that?

Mr PLAYFORD: Yes I would.

Mr SCOT MacDONALD: That is being conservative with your investment projections.

Mr PLAYFORD: That includes a long-term investment return which is based on the asset mix WorkCover is currently invested in.

Mr DAVID SHOEBRIDGE: Probably to you, Ms Donnelly, the Federal Government is just about, if reports are true, to open up the Comcare scheme again to new participants. Have you been consulted by anyone in relation to that?

Ms DONNELLY: I am happy to start and then some of my colleagues may want to add because we are certainly aware of that. There was a review that is known as the Hanks review that made some recommendations about that and certainly I understand those are the scenarios you describe. We have asked Mr Playford to have an initial look at the impact on the normal insurer scheme and I suspect it is one of the things you may be interested in. Certainly, it is a matter for the Australian Government, what they decide to do but as we understand what they are considering, there may then be an opportunity for businesses that are based in New South Wales and another State to move to self-insurance under the Comcare scheme. There might be some reasons why they would like to do that. There may also be some reasons why that would not be attractive for some businesses. Some of the considerations that we have looked at is at an operational level, which is where our focus is. How would that impact areas of work health and safety regulation, which Mr Watson might talk to.

Mr DAVID SHOEBRIDGE: Your inspectors are currently regularly refused access to sites, if they seek it, run by companies such as John Holland, which is in the Comcare system.

Mr WATSON: We do not administer the legislation that John Holland and Comcare do. Comcare have an inspectorate and they operate, and we have an arrangement between the two organisations. Complexity arises when you have sites where you have perhaps a principle contractor under Comcare and subcontractors operating that are New South Wales subcontractors. So we have a dual jurisdiction arrangement. That is the complexity of the arrangements.

Mr DAVID SHOEBRIDGE: The complexity that was in, say, the Villegas case, becomes multiplied by a factor of who knows what in those situations when there is an accident.

Mr WATSON: Yes, absolutely. That is the sort of complexity we need to work our way through. There are other freighting companies that are involved that are self-insured with Comcare that could be making deliveries to businesses in New South Wales and have something go wrong in that environment so you do have that rubbing up of jurisdictions but not to make too much of it because we have that in other areas as well, say, along the borders as well we have the same issue where you have businesses—you build a bridge across the Murray River at Albury for example—

Mr DAVID SHOEBRIDGE: It does not happen all that often, does it?

Mr WATSON: We work in the field together, like we do with Comcare. That is what we are doing in Victoria. So we have both a WorkCover NSW inspector and a Worksafe inspector from Victoria working together on particular sites.

Mr DAVID SHOEBRIDGE: What is the fund impact?

Mr PLAYFORD: I have not quantified it but I have been asked to consider it.

Mr DAVID SHOEBRIDGE: In what direction does it go?

Mr PLAYFORD: I do not think it is a major issue from a financial perspective. My reasoning for that is along the lines of many large employers in New South Wales are already self-insurers in the State-based schemes. They have already made that choice of being self-insurers. If they move across to become a Commonwealth self-insurer, that does not impact the nominal insurer scheme's financial position because they are already out of the nominal insurer's scheme. It would only be employers that currently are covered by the nominal insurer that made the choice to move across that would impact the financial position. They are employers that have already to date have not decided to go to self-insurance on State-based arrangements, so it is not clear to me that they would necessarily choose a Commonwealth-based self-insurance arrangement. The drivers there, or part of the drivers there, would be what is the arbitrage opportunity, which is the differential in what their costs would be if they were a Commonwealth self-insurer versus the premiums they paid in the nominal insurer's scheme.

That goes down to what is the overall average premium cost of the New South Wales scheme, which has been coming down over recent times and was an objective of the 2012 reforms. It is also due to the extent to which there is cross-subsidy between different industry categories in the New South Wales premiums system. There have been in the past, but again they have been unwound, if you like, over the last few years so that the amount of the extent to which some industries are cross-subsidising other industries has reduced significantly over the last four to five years. I am not convinced that from a financial perspective it would have a major impact on the New South Wales nominal insurer. I could wrong. These occupational health and safety rationales for why someone may want to move to be in a Commonwealth insurer may be important. I do not necessarily think they are. I guess at this point it is all wait and see.

Mr DAVID SHOEBRIDGE: Who authorises payment for the wages of the WorkCover Independent Review Office's staff? If the WorkCover Independent Review Office wants some money to employ some additional staff, who do they come to?

Mr WATSON: I will have to take that on notice. I would have to take that on notice. I am not aware of that complexity, but we can take that on notice.

Ms DONNELLY: It is not one of the witnesses here today.

Mr DAVID SHOEBRIDGE: No. but it is someone within WorkCover. Those decisions are made within WorkCover?

Mr WATSON: Yes. It is funded through the WorkCover scheme.

Mr DAVID SHOEBRIDGE: If the WorkCover Independent Review Office thought that it needed additional funds in order to oversight WorkCover, it would have to come to WorkCover to ask for those funds. That is how it operates, is it not?

Ms DONNELLY: As I understand it, yes.

Mr DAVID SHOEBRIDGE: Do you see a problem with that in terms of a conflict? If a regulator wants to oversee you and maybe ride you a little harder, so to speak, about the work you do has to come to see you for funds, do you see a conflict there?

Ms DONNELLY: Yes. As a understand it, you do have that relationship. I certainly know that it has been raised in some of the submissions and questions on notice. Personally, I think it could be quite problematic.

Mr DAVID SHOEBRIDGE: Would WorkCover have any objection to there being an independent funding arrangement for the WorkCover Independent Review Office; in other words, you getting out of the business of funding the WorkCover Independent Review Office and there being a statutorily independent funding process for the WorkCover Independent Review Office?

Ms DONNELLY: I think we will take that on notice because partly it may be a matter of government policy about how they have set up the arrangements.

Mr DAVID SHOEBRIDGE: Well, it is called the independent review office.

Ms DONNELLY: I certainly understand and accept that.

Mr DAVID SHOEBRIDGE: If you want to put truth to that statement, independence in funding would be a key part of it, would it not?

Ms DONNELLY: I guess I am just alerting the Committee to the fact that a position on that would not be made by the witnesses that you have here today, so we will take that on notice.

CHAIR: But you could not see a problem?

Ms DONNELLY: If you are asking for my personal opinion, I think there could be some solutions that could be looked at but I have not taken the time to do it.

Mr SCOT MacDONALD: This is not so much question but a clarification getting back to Mr Villegas. One of the things I am looking for in your response is the feature of subcontractors and contractors going into administration not being a barrier to prosecution. The Waco pro forma, in that decision to prosecute or not prosecute, the fact that those subcontractors had gone into administration was a barrier to not prosecute.

Mr WATSON: In this particular case.

Mr SCOT MacDONALD: In this particular case, but in your thinking.

Mr WATSON: In general terms, one has to have a defendant to prosecute or a legal identity to prosecute. When that legal identity has been wound up, you do not have that.

Mr SCOT MacDONALD: I understand the pro forma and Waco, but we have a principal contractor in this situation. We have Leighton's—

Mr WATSON: Yes.

Mr SCOT MacDONALD: —which is responsible for a safe working environment.

Mr WATSON: As I say, we will take all that on notice, but every case rises and falls on the facts of the matter and the details. We will bring all that together for you.

Mr DAVID SHOEBRIDGE: But when a company becomes deregistered, you have also got the people who are involved in the management of it.

Mr WATSON: That is right. By practice we look at running prosecutions against the individual directors of companies as well as the legal identity of the company. That is quite a common practice for WorkCover.

Mr DAVID SHOEBRIDGE: Will it be part of your answer to Mr MacDonald in the Villegas matter?

Mr WATSON: If you have a question that you want us to answer.

Mr DAVID SHOEBRIDGE: Did you look at that?

Mr WATSON: Did we have a look at that? Yes, we can have a look at that, sure.

The Hon. SARAH MITCHELL: I have just a quick question in relation to the Self Insurer's Association. I am not sure if you have seen a transcript of the evidence that they gave to us when they appeared, but they had some concerns about the audits that they have to go through in relation to workplace health and safety. The cost, complexity and regularity were three of the terms that were used. Are you able to provide some information, either now or on notice, to the Committee about what the audit requirements are for self and specialised insurers?

Mr WATSON: We can provide you on notice with the detail of the audit, but by way of background and for context to the answer we will give: We use the national audit tool for work health and safety, which is agreed to by all the workers compensation insurers across Australia. It is that audit tool that we administer in New South Wales. We use a sampling practice rather than a 100 per cent practice so out of the five elements in the audit tool we sample two of those and self-insurers need to pass to a 75 per cent standard rather than a 100 per cent standard. Other self-insurer arrangements around the country in at least one jurisdiction may use 100 per cent over the five standards or the five elements. That is the approach we take. That audit tool currently is being reviewed—I am aware of that—and we have people working on that committee to review that audit tool. But we will give you a full answer to that question on notice, if you like.

The Hon. SARAH MITCHELL: Yes. Thank you.

Mr WATSON: Thank you.

Mr DAVID SHOEBRIDGE: Self-insurers were asking why you are going through this process of biennial auditing of their work health and safety when in terms of being a self-insurer the issue is their handling

of workers compensation claims and their viability as a self-insurer. Their question was: Why are you doing this other part? What is the rationale for that?

Mr WATSON: Okay. They go through a three-yearly audit, first of all, and the rationale behind that is that we believe our self-insurers should be exemplar performers in respect of work health and safety and we also want to be sure that the injury rates that they experience are not adversely contributing to the overall rates in New South Wales but also to the overall liability that may have to carry financially, and therefore get beyond their capacity to actually manage that financial impact.

Mr DAVID SHOEBRIDGE: But that could be done by looking at their injury rates and, if there is a spike in injury rates, by red flagging them and then doing an audit in that process. I think that was the nub of the concern as I saw it from the self-insurers: Even the best performing ones with no indication of an issue in terms of injury rates are going through this expensive process and they could not see the justification for it.

Mr WATSON: Well, I think self-insurers do spend a lot of money getting ready for our audits.

Mr DAVID SHOEBRIDGE: That is what they said.

Mr WATSON: They should not have to do that, let me say. They should actually be practising this every day of their working life; that is to say, we should be able to walk in at any moment and see good practice. I am concerned that self-insurers may spend a lot of money preparing for an audit when in actual fact the systems they have in place should be in place 12 months of the year.

Mr DAVID SHOEBRIDGE: It is quite one thing to have a system in place that deals with workplace injuries, gets people back to work quickly, provides them with adequate workers compensation benefits, and has work health and safety practices in place that are good, but it is quite another thing to then capture that information every three years and provide it to WorkCover. That is what they are complaining about in so far as the work health and safety matter. Your answer seemed a little bit flippant, to be honest, that they should not be incurring this cost. Surely you should be working with them to ensure that they are not.

Mr WATSON: I will first say that I am a bit offended by the term that my answers are flippant.

Mr DAVID SHOEBRIDGE: When you read the transcript you can take your own view of it.

Mr WATSON: Quite frankly you are entitled to hold a view of my answers—I actually understand that—but I do not hold the same view as you do. We review the audit tool. We review the approach that we take to self-insurers in respect of work, health and safety. The difference that they have between a non-self-insured identity as opposed to a self-insured identity is that there is a formal process in place to check as we are discussing. That is a part of the cost of being a self-insurer in New South Wales. I have got to say it is the same across all jurisdictions—they have some element of work, health and safety auditing that goes on in all jurisdictions.

Mr DAVID SHOEBRIDGE: What troubles me about our exchange is that self-insurers appeared before the Committee and expressed deep dissatisfaction and genuine concern about the cost and nature, and your response, so far as I can understand it is, "Well, that is their own problem. They should have systems in place so that they do not have that." We also have the spectre of Comcare coming in and potentially having an attractive alternate home for self-insurers where they can go and exit the scheme.

Mr WATSON: Where they conduct work, health and safety audits?

Mr DAVID SHOEBRIDGE: Just let me finish. The attitude of "They should improve their own game, it is not WorkCover's job" would seem to be the kind of attitude that drives them into Comcare.

Mr WATSON: Let me say, it is WorkCover's job to make sure self-insurance arrangements in respect of work, health and safety are actually appropriate. We do review those. The audit tool review is a part of that review. How that will be managed in the future is always up for discussion. Only just the other day I had a chief executive officer of a self-insurer in my office and that chief executive officer was visiting all the regulators around the country and discussing self-insurer arrangements and how they best fit to that business. So that is not an unusual event, so we do have engagement with self-insurers and with the association as well.

The Hon. PETER PRIMROSE: I note that WorkCover has convened an allied health provider framework working party. The review will identify and develop opportunities to harmonise approaches across WorkCover and the Motor Accidents Authority. Would someone talk to that?

Mr JEFFERY: It would probably be better for us to take it on notice. Essentially we have commonality between our counterpart, the Motor Accidents Authority, and our engagement with the allied health providers. So it is looking at a number of things that we can simplify and improve process on across industry so it could be approvals, it could be the way we engage with them and so on. We can put some structure around that for the Committee.

The Hon. PETER PRIMROSE: Yes, please. Are you aware of any impact in relation to the Motor Accidents Authority of costs transferred to it as a consequence of the abolition of journey claims?

Ms DONNELLY: I am certainly happy to take that on notice. But if I recall correctly when Mr Nicholls and other witnesses appeared before the Committee's review of the Motor Accidents Authority he indicated that there were not any impacts evident yet.

The Hon. PETER PRIMROSE: "Yet"?

Ms DONNELLY: There have not been any impacts detected to date.

The Hon. PETER PRIMROSE: Will you take that question on notice?

Ms DONNELLY: I am happy to.

The Hon. PETER PRIMROSE: I note that WorkCover Tasmania is developing a workplace bullying strategy. Will you talk about what WorkCover NSW has done?

Mr DAVID SHOEBRIDGE: It sounds like the subject of a whole new inquiry.

The Hon. PETER PRIMROSE: It does.

Mr WATSON: The bullying strategy is being developed. Tasmania are informing us of that across the Heads of Workplace Safety table so I will be able to inform the Committee more about that towards the end of next week after we have had another Heads of Workplace Safety meeting. The approach we have taken is we have had—I think I have spoken of this in another place—

The Hon. PETER PRIMROSE: I am not in that other place.

Mr WATSON: I understand that term, Mr Primrose. We have a service whereby people can ring the WorkCover Authority. We send out a pack of information to them which allows them to make a formal complaint to us. There is a bit of complexity here now with the Fair Work Commission as well working in this space at the Federal level so we have got the two jurisdictions operating, a bit like our discussion to do with Comcare. We then triage that against the national agreed triaging arrangements for inspectorates and we conduct an investigation into what the concern is and interact with the complainant and with the business.

The Hon. PETER PRIMROSE: You said that you expect to have some additional information in the next two weeks.

Mr WATSON: There is a Heads of Workplace Safety Authority meeting next week. I am the chair of that group and I will get some information from Tasmania and I am happy to provide it. Out of session I can seek the information from the Tasmanian jurisdiction, if you like, to inform the Committee of what it is doing.

The Hon. PETER PRIMROSE: Yes.

Mr SCOT MacDONALD: I am interested about the close-the-loop program. If I am right, Leightons is one of the principal contractors at Barangaroo. Will you provide me an assurance that the faults that were identified by Mr Prior in his investigation into the death of Atilla are covered off in your close-the-loop program and we will not have that risk at Barangaroo?

Mr WATSON: I am happy to take that on notice.

Mr DAVID SHOEBRIDGE: Of course, close-the-loop probably will not have operated in relation to Leightons because you did not prosecute them?

Mr WATSON: No, but we certainly have interaction with them. If we have fully investigated a matter we would still have a close interaction with that company to ensure that we are not going back down that path again.

Mr DAVID SHOEBRIDGE: Does close-the-loop operate in those circumstances?

Mr WATSON: Yes, it does. It is not a formal letter in that way, but certainly we inform each of the participants in an investigation of the outcome of that investigation. We would seek to get assurances from companies that they have taken action to correct any shortfalls. I have got to say if the shortfalls are that serious, and the evidence is there and the case can stand the principles of the Evidence Act then we would be in court anyway.

Mr DAVID SHOEBRIDGE: The Hearing Care Industry Association presented to this Committee with a gentleman who had the benefit of hearing aids under the scheme. He said how life-changing they were for him but he was not entitled to replacements or batteries and the like. What has been the reduction in the liability to the scheme for that kind of medical provision of hearing aids?

Mr PLAYFORD: I will take that question on notice to provide the Committee with the exact numbers.

Mr DAVID SHOEBRIDGE: I would also be interested in understanding the estimated cost to the scheme to reinstate those benefits. It is probably one and the same.

Mr PLAYFORD: Yes, I can probably answer that now. I am often asked to cost plausible benefit changes that might occur at various stages. This issue around hearing loss claims but also on prosthesis—artificial legs et cetera—being subject to this cap. I have done a calculation if hearing aids prosthesis, home and vehicle modifications and things of that nature were exempt from the medical cap. The cost for new claims incurred would be of the order of about $20 million per annum and there would be a once-off impact for existing claims that are currently in the scheme of the order of about $100 million to $140 million.

Mr DAVID SHOEBRIDGE: What would be the impact of that on the surplus?

Mr PLAYFORD: On the surplus which is only in respect of existing claims?

Mr DAVID SHOEBRIDGE: Yes.

Mr PLAYFORD: The impact on that only would be in the order of $100 million to $140 million reduction in the current solvency position.

Mr DAVID SHOEBRIDGE: For all existing claims?

Mr PLAYFORD: That is correct.

Mr DAVID SHOEBRIDGE: And then there would be about a $20 million per annum.

Mr PLAYFORD: Going forward, additional costs each year into the future.

Mr DAVID SHOEBRIDGE: And that is for hearing aids and prosthetics?

Mr PLAYFORD: Prosthetics, home and vehicle modifications for people that are not defined as serious, yes. Excluding them from, having the medical cap not apply to those sorts of claims.

Mr DAVID SHOEBRIDGE: So that is anyone who has had an amputation at all?

Mr PLAYFORD: That is correct, yes.

Mr DAVID SHOEBRIDGE: What is the total size of the scheme at the moment?

Mr PLAYFORD: The liabilities of the scheme currently—before you add on the risk margin that is included in the liability, the central estimate that I come up with is of the order of $11.3 billion.

Mr DAVID SHOEBRIDGE: So we are talking about, on an $11.3 billion scheme, we are talking 1 per cent?

Mr PLAYFORD: That is correct.

Mr DAVID SHOEBRIDGE: Could I then ask you about the reinstatement, broadly, of medical expenses? So, the medical expenses that have been removed?

Mr PLAYFORD: I have not done any estimate of if you remove the entire medical cap but I have done a costing if you looked at the range just for the 20 to 30 per cent whole person impairment band where I estimated that, if you removed the medical cap just for that band—20 to 30 per cent whole person impaired—the impact on the existing claims would be of the order of $183 million and the per annum go forward costs would be of the order of about $18.5 million.

Mr DAVID SHOEBRIDGE: Again, probably 1.3 per cent?

Mr PLAYFORD: That is correct. I have not done a costing for less than the 20 per cent. The cost impact there would be very significant and would also change, I believe, the claiming culture of the scheme significantly, so I would not put a number on the table today. I have not done that costing but it would be a material number, if you got rid of the medical cap completely.

Mr DAVID SHOEBRIDGE: A number of inquiry submissions have urged us to reinstate those medical benefits. Would you be able to provide some figures for perhaps reinstating them to anyone, from 10 per cent, a bit below and above, and also a complete reinstatement. Would that be possible?

Mr PLAYFORD: I can do something, yes.

Mr DAVID SHOEBRIDGE: I would appreciate that, thank you Mr Playford.

CHAIR: We would like to thank you for returning to be with us today to assist us in our deliberations. There are a number of questions on notice. The Secretariat will forward those to you and we would be most appreciative if you could get a response to us within 21 days. Thank you for being with us. That will conclude our inquiry for today.

(The witnesses withdrew)

(The Committee adjourned at 10.53 a.m.)