CORRECTED

REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO THE REVIEW OF THE EXERCISE OF THE FUNCTIONS OF THE WORKCOVER AUTHORITY AND THE WORKERS' COMPENSATION (DUST DISEASES) BOARD

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At Sydney on Friday 21 March 2014

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The Committee met at 9.05 a.m.

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PRESENT

The Hon. D. Clarke (Chair)

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

CHAIR: Ladies and gentlemen, welcome to the first hearing of the Standing Committee on Law and Justice's concurrent reviews into the exercise of the functions of the WorkCover Authority and the Workers' Compensation (Dust Diseases) Board. The reviews are being conducted according to section 11 of the Safety, Return to Work and Support Board Act 2012, which designates the Committee to supervise the exercise of the functions of the authorities. Before I commence, I acknowledge the Gadigal people, who are the traditional custodians of this land. I also pay respect to the elders, past and present, of the Eora nation and extend that to other Aboriginals present.

Today is the first of two hearings we plan to hold for the reviews. We will hear today from the WorkCover Authority of New South Wales, the WorkCover Independent Review Office [WIRO], Unions New South Wales and others. In accordance with the broadcasting guidelines, while 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 also remind media representatives that they must take responsibility for what is published about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside their evidence at the hearing. I urge witnesses to be careful about any comments that may be made to the media, or others, after your evidence is completed because such comments would not be protected by parliamentary privilege if another person decided to take action for defamation. If anyone has any doubts as to the guidelines for broadcasting, they are available from the secretariat.

Regarding questions on notice, there may be some questions that a witness could only answer if they had more time or certain documents to hand. In these circumstances, witnesses are advised that they can take questions on notice and provide an answer within 21 days. Witnesses are advised that messages should be delivered to Committee members through Committee staff, who are seated behind me. Finally, mobile phones should be turned off because they can interfere with the recording and transcription. I am often the worst offender on that.

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

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

MICHAEL PLAYFORD, Consulting Actuary and Partner, Pricewaterhouse Coopers and actuary for Workers Compensation Nominal Insurer Scheme, sworn and examined:

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

CHAIR: I welcome the witnesses from the WorkCover Authority of New South Wales.

Mr WATSON: If it is appropriate, and we are in the hands of the Committee, then I would like to make an opening statement.

CHAIR: Yes, I invite you to do that.

Mr WATSON: Thank you for the opportunity to make an opening statement on behalf of the WorkCover Authority of New South Wales. As the Committee is reviewing the exercise of the functions of the WorkCover Authority of New South Wales, the focus of this statement is on the administration of WorkCover's legislative responsibilities. I would like to highlight to the Committee some of the features of WorkCover's recent operational approaches taken to deliver the services that we need to deliver to the people of New South Wales. In particular, our operational focus is, firstly, to prevent work-related injuries and illness and to reduce the severity of those injuries and illnesses when they do occur. Secondly, we focus on ensuring that treatment, rehabilitation, care and support is in place in accordance with the law for those workers who are injured at work; and, indeed, ensuring that they can return to work and to their lives as best as possible and as quickly as possible. I am pleased to report that the most-recently finalised data shows that the long-term trend in major incident claims is continuing downwards. In 2011-12 New South Wales achieved a major claim incident rate of 8.7 per 1,000 workers. This is the lowest incident rate since 1987. I repeat that it is the lowest incident rate since 1987.

Work-related fatality rates are also improving. A 35 per cent reduction in the incident rate of workplace fatalities has been achieved in the 10 years to 2011-12. I tragically report to the Committee, unfortunately, that we have had two workplace fatalities in the past 30 hours in New South Wales. One was in suburban Sydney and one was just last evening in Moree. It may be appropriate at the end of my statement for us to take a moment to stand and remember those people who have been killed at work.

That said, I acknowledge that every fatality is one too many. Indeed, the numbers, although going down, still reflect a great toll on the families, friends, workmates and communities of those who have been killed at work. Over the next 10 years New South Wales aims to reduce the number of workers killed at work by at least 20 per cent. No fatality is actually acceptable. For the reduction in the incident major claims over the next 10 years our target is 30 per cent. That is a major target for us to stretch out to and indeed will ensure that more people go home safely at the end of their working day.

I would like to highlight the latest data published by Safe Work Australia that shows the New South Wales return to work rate has improved. Specifically, they report in 2012-13 in New South Wales the return to work rate has improved by 3 per cent to 88 per cent, making it higher than the national average of 86 per cent. Safe Work Australia's role is to lead the development of national policy to improve workplace health and safety and workers compensation arrangements in Australia. Improved claims management and initiatives to provide increased rehabilitation and vocational and job placement support to injured workers have enabled workers to return to work and to suitable employment earlier and have also assisted in their recovery whilst they are at work.

As a result of the improvements I have outlined and the sustainable financial position of the New South Wales workers compensation nominal insurer scheme, premium reductions have been possible over the last year for businesses in industries where there has been a relatively good return to work track record. The independent actuarial valuation shows the nominal insurer scheme is becoming more financially sustainable. As at 30 June

2013 a surplus of $309 million has been accumulated. As a result, 200,000 employers across 376 industries that have demonstrated an improved safety and return to work performance received an average premium reduction of 5 per cent on 31 December 2013. This reduction is in addition to the 7.5 per cent reduction that they received on 30 June 2013. There were 167 employers who received that reduction on 30 June 2013.

From 1 January 2012 the new work health and safety nationally harmonised legislation came into effect in New South Wales. This implemented a new approach to workplace health and safety and has a significant focus for our organisation. WorkCover, in support of the new legislation, has introduced a risk-based targeted approach to our field operations. This approach is now integrated into the prevention programs that we are currently rolling out across the State. Our focus on high consequence, low frequency and focus on industry and focus on workplace health are all programs with a risk-based approach. WorkCover had nearly 250,000 workplace health and safety interactions with New South Wales workplaces in 2012-13. WorkCover's focus on regional communities and the work on the high-risk sectors has led to an approximately 55 per cent increase in proactive workplace visits by WorkCover inspectors. WorkCover has a strong focus on the challenge of improving workplace injury, illness and fatality rates in New South Wales

The Hon. PETER PRIMROSE: Point of order: This organisation did not give us a submission. We have had an hour; we now have three-quarters of an hour. I ask that they table their presentation and allow us to ask questions. We did not receive the PricewaterhouseCoopers report until 5.30 p.m. yesterday. I have not had a chance to even look at it. I will certainly be asking for these witnesses to be called back anyway, but I ask that Mr Watson table his report, which really should have been part of a submission to this inquiry, and allow us to use the remaining 40 minutes to ask questions.

Mr DAVID SHOEBRIDGE: Or if there are five pertinent facts, please give us those facts and then we can move on.

CHAIR: How much more is there to go?

Mr WATSON: I have got some other information but I am in the hands of chair in respect of that. We do not want to hold up the Committee's deliberations.

CHAIR: If there is any particular point that is urgent for you to raise at this stage I am happy for you to do that, but we also have the pressure of time on us.

Mr WATSON: The honourable member has mentioned the time. I am happy if the Committee wishes to proceed to questions that we should do that. We will make sure the secretariat gets a clean copy of our opening submission.

CHAIR: Thank you, Mr Watson. We greatly appreciate that cooperation. We are very sad to hear about the two fatalities that have occurred in the past day or so. In a sad way, it highlights the importance of this Committee and the work it is doing in oversighting the process. It is a stark message to us that we must take our position and responsibilities seriously. It is appropriate that we stand to observe a moment's silence for those workers.

Members and officers of the Committee stood in their places as a mark of respect.

CHAIR: Mr Watson, as of course you would be aware, New South Wales set up the WorkCover Independent Review Office [WIRO] to deal with individual complaints and provide strong accountability in respect to the use of the New South Wales workers compensation system, a very important body. Mr Garling from that office has prepared a report dated 7 February. Do you have a copy of that report?

Mr WATSON: We do have a copy amongst our papers, yes.

CHAIR: You have had it for some time, have you?

Mr WATSON: Yes, we have; WorkCover has, yes.

CHAIR: You would therefore be aware that he has raised a number of concerns in that report. Have all of those concerns been raised with you?

Mr WATSON: Not with me directly but my colleague will take that question.

CHAIR: So they have been raised. For instance, he raises concerns that WorkCover has not complied with the legislation it is responsible for in setting policy directives for insurers in respect to the management of claims by injured workers. There are complaints about compliance by medical specialists. There is a complaint that there is a reluctance by WorkCover to engage with the participants in the workers compensation community. Without taking time today, because there are a whole series of complaints raised and clearly you have considered those, have you given a response to the WorkCover Independent Review Office [WIRO] in respect to the complaints he has raised?

Ms DONNELLY: Firstly, I confirm, that, yes, we are taking action on every single one of those issues. I have met personally with Mr Garling on those matters a couple of times and I have been meeting weekly with his office with other staff. We have put steps in place to improve the level of communication and coordination and prioritise. A number of those issues we have taken action and rectified; others we are giving top priority.

CHAIR: And you can confirm that you have responded in a timely manner when these complaints have been raised with you?

Ms DONNELLY: I believe we could improve and that is why we have put some additional steps in place so that going forward we are able to respond more quickly.

Mr DAVID SHOEBRIDGE: What are those steps?

CHAIR: To save time today could you provide to the Committee details of your response and how you have dealt with each of the complaints and concerns that he has raised?

Ms DONNELLY: I would be very happy to.

CHAIR: So that with more time available to us we can go through them, see what action has been taken and see how you evaluate those complaints. If you can take that on notice and get a response to us within 21 days that would be appreciated.

Ms DONNELLY: Yes, I would be very happy to.

Mr DAVID SHOEBRIDGE: WIRO has a number of very serious and specific complaints. For example, WIRO says that WorkCover has a practice of saying that when people have had a workplace capacity assessment they are entitled to zero dollars, you count the periods when they get zero dollars towards their 130 weeks of payments and that is contrary to legislation and placing thousands of workers at an unlawful serious disadvantage. What have you done in response to that?

Ms DONNELLY: We have taken action in response to that.

Mr DAVID SHOEBRIDGE: What action?

Ms DONNELLY: I am going to answer your question, Mr Shoebridge. From our point of view—and I note that both the committee and the WorkCover Independent Review Office have been set up to improve oversight of WorkCover—our job is to take those issues seriously and address them. On the zero weekly payments issue, we have looked at the issue. We agree with the WorkCover Independent Review Office. We have commenced advising insurers that we will be changing our approach. We are seeking from them information about what is needed practically to implement smoothly a change to that approach. We will then be identifying any injured workers that have been inadvertently disadvantaged and rectifying that disadvantage.

Mr DAVID SHOEBRIDGE: How many are we talking about? Do you have a handle on the number of workers who potentially have had their benefits terminated because of this wrong-headed approach by WorkCover?

Ms DONNELLY: We have begun assessing the numbers. We believe they are small numbers.

Mr DAVID SHOEBRIDGE: What is a small number?

Ms DONNELLY: Less than 1 per cent.

Mr DAVID SHOEBRIDGE: So how many?

Ms DONNELLY: I do not know the exact number precisely because we are still auditing that.

Mr DAVID SHOEBRIDGE: Six hundred, 700, 800?

Ms DONNELLY: I do not believe it is necessarily in that field, but I think it is more appropriate that we take that on notice and give you the figure as we complete our audit.

CHAIR: You will be giving detail, a time frame

Ms DONNELLY: Most happily we will.

CHAIR: When you received the complaint, when you responded and what action has been taken in specific terms.

Ms DONNELLY: I am happy to.

Mr DAVID SHOEBRIDGE: In an informal briefing at the end of last year WorkCover said they would provide this Committee with details of the number of workplace capacity assessments, the internal reviews and the merit reviews. Where is that information?

Mr JEFFERY: I can provide the work capacity assessment details. So, 16,710 work capacity assessments have taken place, 7,513 of those claims have had their benefits ceased—that is, deemed to be found to have capacity for employment—and 9,197 claims were transitioned to the new transitional rate, so continuing on with benefits.

Mr DAVID SHOEBRIDGE: Were those benefits reduced or not?

Mr JEFFERY: I have not got those figures because the old statutory rate was $432. The transitional rate was approximately $750, depending on dependents. Some came down and a lot went up.

Mr DAVID SHOEBRIDGE: But the long and the short of it is that about 40 per cent of people who had a workplace capacity assessment done had their benefits terminated?

Mr JEFFERY: Yes.

Mr DAVID SHOEBRIDGE: Have you reviewed the circumstances or done at least a partial review of whether or not it was appropriate that 40 per cent of people had their benefits cut?

Mr JEFFERY: Those people have avenues to go through the internal review process.

Mr DAVID SHOEBRIDGE: How many internal reviews?

Mr JEFFERY: Approximately 2,351claims in the system have gone to internal review, and then 809 of those have gone to merit review. At this stage I think about 90 have gone to WIRO, but I am sure Mr Garling will know.

Mr DAVID SHOEBRIDGE: How many of the internal reviews have been determined and what is their time frame?

Mr JEFFERY: It is 30 days for an internal review.

Mr DAVID SHOEBRIDGE: But that is not being complied with, is it?

Mr JEFFERY: The internal reviews are up to date. We have a delay with the merit reviews.

Mr DAVID SHOEBRIDGE: Which body does the merit reviews?

Mr JEFFERY: WorkCover.

Mr DAVID SHOEBRIDGE: And you have an obligation to comply with the law.

Mr JEFFERY: Yes.

Mr DAVID SHOEBRIDGE: And what does the law say in terms of time frames for merit reviews?

Mr JEFFERY: Thirty days.

Mr DAVID SHOEBRIDGE: And what are you doing? What is the time frame on average?

Mr JEFFERY: I will have to take that on notice.

Mr DAVID SHOEBRIDGE: Give me an idea—is it 31 days, 29 days or six months?

Mr JEFFERY: No, I think it is has blown out to approximately four months.

Mr DAVID SHOEBRIDGE: So it is four times what it should have been? And what is happening during those four months? Are workers getting any of their weekly benefits?

Mr JEFFERY: We are working with the insurers to ensure that they are maintaining their benefits.

Mr DAVID SHOEBRIDGE: But what if they have had their benefits terminated as a result of a workplace capacity assessment?

Mr JEFFERY: And they have a delay, then I would encourage them to contact us so that we can work with the—

Mr DAVID SHOEBRIDGE: They have had their benefits terminated, they have sought an internal review and it has been negative and then they come to WorkCover, which is meant to be, I assume, partly in their corner, for a merit review and they wait four months. Is it four months without weekly benefits?

Mr JEFFERY: We are working with the insurers to ensure—

Mr DAVID SHOEBRIDGE: How grossly unacceptable is that, that a worker has come to WorkCover with all of your resources, seeking to have a fair assessment of their workplace capacity assessment, and they wait four months for you to get around to do it. How acceptable is that?

Mr JEFFERY: Obviously, Mr Shoebridge, we are concerned—

Mr DAVID SHOEBRIDGE: How acceptable is that? Tell me how acceptable it is?

Mr JEFFERY: Well, if they are retaining their benefits, Mr Shoebridge—

Mr DAVID SHOEBRIDGE: If they have not; if they have had their benefits cut?

Mr JEFFERY: Then I would say that is not acceptable.

Mr DAVID SHOEBRIDGE: And what have you done in terms of the direction of resources to make sure this extremely vulnerable group of people are not being thrown out of their home because they cannot pay the mortgage?

Ms DONNELLY: Mr Shoebridge, we have recruited additional resources to remove that delay. We have very clearly instructed the scheme agents in the nominal insurer scheme not to disadvantage people in terms of their weekly benefits. We are undertaking an operational review of the merit review service in order to improve the operations and we are prioritising matters where we think a worker would be disadvantaged.

Mr DAVID SHOEBRIDGE: If you have your foot severed at work, completely amputated at work at the ankle, would you consider that a serious injury?

Mr WATSON: It is a serious injury. Under the Work Health and Safety Act it would be a reportable matter.

Mr DAVID SHOEBRIDGE: What about under the Workers Compensation Scheme? Would you consider that a serious injury—your foot completely amputated at work?

Mr JEFFERY: I think any injury at work is serious.

Mr DAVID SHOEBRIDGE: What about within the statutory framework in which you work?

Mr JEFFERY: If you are referring to thresholds, serious and so on, the legislation, depending on the whole person impairment, may not include it.

Mr DAVID SHOEBRIDGE: May not? You know it does not, do you not? You know that is about a 20 per cent whole person impairment and you know it is not considered as a serious injury. Or are you just pretending you do not know the thresholds?

Mr JEFFERY: No, I know the thresholds.

Mr DAVID SHOEBRIDGE: Well answer me as best you understand it. Is it a serious injury for the purpose of the Workers Compensation Scheme?

Mr JEFFERY: If a doctor was to deem it as having a whole person impairment under 30 per cent, or 30 per cent or less, then it would not be deemed serious.

Mr DAVID SHOEBRIDGE: You know for a fact, do you not, that an amputated foot is under 30 per cent?

Mr JEFFERY: Yes.

Mr DAVID SHOEBRIDGE: So why did you not just say yes the first time? Why do I have to drag it out of you in this short one hour we have with you?

Mr JEFFERY: I apologise.

CHAIR: You have seen the submission from Unions NSW? I think that was prepared at the end of January. They put a series of recommendations. Have you seen those recommendations?

Ms DONNELLY: I am aware. I have read through the submission and have seen that there are recommendations, yes.

CHAIR: Would you be able to take on notice and give us a response to those recommendations?

Ms DONNELLY: Happily.

CHAIR: I think there are nine or 10 recommendations. If you can take that on board and give us a written response?

Ms DONNELLY: I am very happy to.

The Hon. PETER PRIMROSE: That was one of my questions. There are actually 36 recommendations. I would also like to put them on notice.

Mr WATSON: We will deal with all of them.

Mr SCOT MacDONALD: Can I direct most of my questions to the gentlemen on the right, about the viability of the scheme and just to set the picture? Can you take us back to 2012 and remind us where we were in terms of deficit and the trajectory of the scheme at that time?

Mr PLAYFORD: Just referring to the executive summary of my valuation report for December 2011, which was one of the catalysts of the review that occurred in 2012, my role as the scheme actuary is to do regular assessments of the scheme's viability, and a key outcome from that is what is termed the outstanding claims liability, which forms a major part of the nominal insurer's balance sheet. When you compare it to the assets in the balance sheet, at December 2011 the funding ratio was 78 per cent, so that the assets were insufficient to meet the liabilities in the reported deficit that at that point in time was $4.083 billion.

I noted in my executive summary at that point in time that between June 2008 and December 2011 the scheme's funding position had gone from a surplus of $625 million to this reported deficit of $4 billion. So that is a turnaround of a bit under $4.5 billion in that 3½ year period.

Mr SCOT MacDONALD: I know it is difficult but can you highlight one, two or three of the top causations there?

Mr PLAYFORD: In that report I broke up that shift in the funding position between what was driven by external factors of the poor investment returns that had occurred during that GFC period and changes in what is termed the risk-free discount rate, which is the return on Commonwealth Government bonds, which is a key parameter that goes into the calculation of the outstanding claims liability, and that had also shifted during the GFC period. So those two, if you like, external factors contributed to about half of the change in the funding position. Based on my work, I would attribute about the remaining 50 per cent of that deterioration to a deterioration in claims management performance.

So in that report I include a number of graphs looking at things like the experience of work injury damages, the change in what is termed the top-up, the section 66 benefit amounts, return to work rates, amounts being paid in weekly benefits, and they all show deteriorating trends over a number of years in the lead-up to that. I guess the conclusion was reached that unless something drastic happened—and this is a decision for government, obviously—those trends were not capable of being turned around, that funding position would continue to deteriorate. That, I guess, is some context for the situation that existed at the time of the 2012 review.

Mr SCOT MacDONALD: If we had not taken corrective action—and I take the point that roughly half of it was due to external factors—where would that deficit possibly have reached?

Mr PLAYFORD: In my experience with schemes of this nature around Australia over the last 20 years, it is very difficult once you get an accumulated deficit of that magnitude and those sorts of deteriorating fund trends and I term it the cultural change, the way that the different participants in the scheme interact, the propensity to claim and so forth actually shift. Then, given the magnitude of the trends without the legislative change that occurred—the legislative change, was it right, the actual reforms; I guess that is a question for this Committee and for the government of the day—in my experience those trends were likely to have continued and the funding position in all likelihood would continue to deteriorate.

Mr SCOT MacDONALD: Someone mentioned before that we are now looking at a surplus of $309 million. That sounds like a lot of money but in the context of what you just talked about and what we have heard can you make a comment about our sustainability? I think we have turned a corner and we have got the legislative tools to manage it better, but $300 million in the context of this whole scheme—

Mr PLAYFORD: You are right. A $300 million surplus that we had in June 2013 was only a funding ratio of 102 per cent, so our assets were only 2 per cent more than liabilities. It is very easy for there to be a shock in the investment market, so it would mean the assets would reduce, and that is generally a short-term shock and so forth. But in the context of a scheme of this nature, it is quite a small buffer, and I guess there is also the context over the history of this nominal insurer scheme in New South Wales going back 27 years that the majority of that time it has been in deficit. There was only one short period when the scheme has been in surplus over its whole history.

Mr SCOT MacDONALD: A difficult question for you, but can you nominate a range of figures you think we might need to have—

Mr PLAYFORD: My understanding is the work of the board has a funding ratio policy, which is to target up to about 110 per cent funding ratio, and I think it is important to have a framework to try to manage solvency than make strategic decisions about what you do in terms of scheme design or pricing or other elements of the design of the scheme going forward. My understanding is that there is an aim of having the funding go up to no more than 110, but my understanding is that there is a range of perhaps 90 to 110. But I would have to take that on notice. It is the board's policy. That is a similar framework that many of the other schemes around Australia have.

Mr SCOT MacDONALD: All members of Parliament get representations. We get correspondence saying we need to turn the clock back, especially journey claims. Can you give me some response along the lines of if we did wind back in terms of particularly journey claims or other aspects of the scheme, what that might do in terms of that ratio you are talking about?

Mr PLAYFORD: Journey claims historically accounted for about 8 per cent of claims reported. I cannot do the maths in my head of what that number would be at the moment. On average, journey claims were slightly more severely injured in terms of overall profile than the remaining claims in the scheme, so they probably accounted roughly for about 9 per cent of costs. If I did the back-of-envelope calculations—and I can take it on notice to give you more accurate calculations—the annual cost of the scheme is circa $2 billion. So you are talking roughly up to about $200 million, probably somewhere in the range of $150 million to $200 million in additional costs per annum.

Mr SCOT MacDONALD: That is roughly half the surplus you nominated as where we are at today?

Mr PLAYFORD: Yes.

Mr SCOT MacDONALD: How do we stand relative to other states in terms of our premium competitiveness? On seeing that trajectory prior to 2011-12 it was difficult. Are we getting back into a more competitive position?

Mr PLAYFORD: WorkCover will take it on notice to give you the exact figure. It is certainly more competitive. WorkCover certainly has been able to reduce premium rates since the June 2012 reforms. I think at June 2013 my recollection would be that some of the key comparable states such as Victoria, which has a relatively similar benefits structure, still had lower premiums than New South Wales. But there are very big differences in the benefit structure from scheme to scheme. It is not always a like comparison.

Mr DAVID SHOEBRIDGE: When you are taking that on notice, would you also include the impact of the premium cuts on the past and future surpluses as well? I note that the witness is nodding in terms of taking that on notice.

CHAIR: When you are doing your comparison will you compare apples with apples, if you understand what I mean?

Mr PLAYFORD: That is actually impossible to do. It is impossible to put a New South Wales benefit structure on a Queensland system and say what the cost is.

CHAIR: At least if you make a note of the variables we will have some understanding there.

Mr DAVID SHOEBRIDGE: Again, there was nodding, if not a verbal yes, in terms of taking that on notice.

CHAIR: You will take that on notice.

Mr PLAYFORD: Yes. I am sure they will summarise the question and give it to me.

CHAIR: Yes, they will.

The Hon. PETER PRIMROSE: Why are there no longer any references to scheme agent fees in your annual reports?

Ms DONNELLY: I am not aware why there are none. I am happy to take that on notice. I know that one of the things that we have agreed, in working to address the issues raised by the WorkCover Independent Review Office, is to provide more information, including scheme agent performance information. So I am sure we can look at it in that area of work.

The Hon. PETER PRIMROSE: Why were they taken out and will they go back in?

Ms DONNELLY: I am happy to take that on notice.

The Hon. PETER PRIMROSE: Why does fraud no longer get reported in the annual report? For example, there were targets in earlier annual reports for the number of fraud matters being investigated.

Mr WATSON: In respect of the content of an annual report generally, I think it is important to understand that there is a changing focus in respect of what agencies are required to report. WorkCover's previous annual reports were extremely extensive, as you are referring to. We have moved back to a report that actually complies with the guidelines a lot more closely. But can I say it is not to be interpreted in any way that we wish to withhold the information. We are happy to report the information to the Committee.

The Hon. PETER PRIMROSE: Where would the public find that information now as it is not in the annual report?

Mr WATSON: Certainly if the public were to write to us through the Government Information (Public Access) Act 2009 [GIPA] process we could provide that information under the GIPA rules.

Mr DAVID SHOEBRIDGE: Or they subpoena them, I suppose.

Mr WATSON: It is an unusual approach for us to be subpoenaed in respect of that sort of information.

The Hon. PETER PRIMROSE: Given that it was freely available until recently?

Mr WATSON: Yes, I think I have given an explanation as to why that would be in a more general sense.

The Hon. PETER PRIMROSE: That I find interesting because section 22 (1) (c) of the 1998 Act requires WorkCover to monitor and report on the operation and effectiveness of the workers compensation legislation and the work, health and safety legislation. And how you have increased your efficiency and effectiveness there is by reducing the amount of information that is publically available.

Mr WATSON: Can I just say that I have reported today in respect of our performance across the State in respect of Work, Health and Safety—major claim rates have reduced and fatality rates are reducing. That is about the effectiveness of Work, Health and Safety and the prevention effort that WorkCover takes. I indicated earlier in my opening statement that the focus of WorkCover is always to prevent injury in the first place.

CHAIR: Is it something to restore to annual reports?

Ms DONNELLY: I am happy to consider that. I also think we may be able to provide the Committee with some other reports that we contribute to. There is extensive benchmarking conducted by Safe Work Australia. We provide quite a lot of information there and those are in the public domain.

The Hon. PETER PRIMROSE: Why did you axe the statistical bulletin?

Ms DONNELLY: I think the point I would want to make there is that we have undertaken to recommence publishing statistical bulletins. We will address the gap in the period from 2010, since the last one, in the publication expected around May of this year. We will continue reporting on the statistical bulletins from thereon in.

The Hon. PETER PRIMROSE: Will that have at least the same amount of information?

Ms DONNELLY: That is the intention, yes. Certainly if the Committee would like to give us some guidance about the sort of content that it would like to see, we are happy to take that into account.

Mr WATSON: Before we move on, if I may? A good reference document for the Committee—and we are happy to provide a copy—available on the Safe Work Australia website is the comparative performance monitoring information. That report I think came down in August last year. It compares all jurisdictions, including New Zealand, and has some international focus as well.

The Hon. PETER PRIMROSE: I am aware of that. My concern is the timeliness of that information and the information that is not included.

Mr WATSON: Indeed.

The Hon. PETER PRIMROSE: But I am very pleased if you are going to return to reporting that statistical bulletin.

Ms DONNELLY: Yes, we are.

The Hon. PETER PRIMROSE: That is a positive.

The Hon. SARAH MITCHELL: The issue of stakeholder engagement was raised in a number of submissions. I think it would be fair to say that a lot of the submissions were critical of what they perceived to be a lack of stakeholder consultation. Are you are able to provide the Committee with a bit more information in terms of your current processes for stakeholder consultations?

Mr WATSON: Certainly. Perhaps if I can start with the Work, Health and Safety work we do—clearly that is the area of responsibility I have. The focus of the programs run across the whole of our prevention activities have a very detailed process of consulting with the people we are regulating. We really want to drive cooperation and voluntary compliance where we can. It is far better that workplaces are safe without WorkCover having to stand at the front door—having a systematic management of workplace health and safety. For example, we have got a focus on road freight program. It has a number of elements but what we do is to develop an industry profile, which gives us the picture that we have of that industry. We then consult with the industry players, the peak bodies in that industry but also the larger and smaller businesses that are actually in that target sector.

In looking at that we have a discussion with them about whether in fact the problems we have articulated in our industry profile report are the ones that they believe they are experiencing as well. We have discussions about what the solutions might be to actually mitigate the risks that we have highlighted. That is a very detailed consultation process and one that is very much focused on driving compliance at the end of the game. That is just one approach we take in respect of that. I guess the other thing is that we have a lot of informal relationships with both unions and employer associations. I have a program of talking with various union organisations but also talking with employer associations working away in the industries we are regulating. Of course, my team managers who have responsibility for various geographical areas of the State are required to linkup with industry as a part of their performance.

A good example of how we do that was recently the executive of the Work, Health and Safety division, my directors and I, moved our management meeting from Gosford to Dubbo. We met in Dubbo, and in the afternoon we drew together about 25 representatives from businesses and unions in the area and opened up a forum for discussion to see whether they are experiencing what they need to experience when they interact with WorkCover. We asked whether we are delivering the services they need and whether there are other ways that we can improve. That is an example of where we are changing the way in which we operate and engage with business.

The Hon. SARAH MITCHELL: Do you think there is room for improvement in your consultation process?

Mr WATSON: Consultation is one of those things that you never really finish. You never really arrive. It is important not to have consultation for the sake of consultation but to consult on issues that you need to deal with. I am very happy to do that. If the Committee has some recommendations, we will look at them, but we have a lot of work going on in that area.

The Hon. SARAH MITCHELL: That might be something that we can look at in our deliberations. Thank you.

Mr DAVID SHOEBRIDGE: My question is probably for you, Mr Jeffery. WorkCover has an important job to do in issuing guidelines. In many cases they end up being delegated legislation. Is that right?

Mr JEFFERY: Yes.

Mr DAVID SHOEBRIDGE: One of the guidelines you issued, which has the force of law, was for work capacity decision internal reviews. Do you remember that?

Mr JEFFERY: The guidelines for work capacity assessments, yes.

Mr DAVID SHOEBRIDGE: Those guidelines are really important, are they not?

Mr JEFFERY: Yes.

Mr DAVID SHOEBRIDGE: It is really important that they be accurate. Correct?

Mr JEFFERY: Yes.

Mr DAVID SHOEBRIDGE: Injured workers do not have any legal representation when they are going through those workplace capacity assessments, do they?

Mr JEFFERY: That is correct.

Mr DAVID SHOEBRIDGE: So, for example, how would a Portuguese bricklayer who did not speak English properly navigate their way through a work capacity assessment under your scheme without legal representation?

Mr JEFFERY: I would like to take the question on notice so that I can put some detail and context around it. We have put measures in place. The legislation is government policy. There is a service through our customer service centre to assist people through the workplace capacity assessment process. The insurers also provide interpreter services. The intent of workplace capacity assessments is to return people to work, not to cut benefits. That is where we are guiding the insurers. There are a lot of services available through rehabilitation.

Mr DAVID SHOEBRIDGE: Do you provide help on your website?

Mr JEFFERY: Our website probably needs further enhancement.

Mr DAVID SHOEBRIDGE: It is next to useless for this sort of stuff.

Ms DONNELLY: We have made some improvements, again in response to issues raised by the body with oversight, the WorkCover Independent Review Office. We have made commitments that we will continue to implement improvements.

Mr DAVID SHOEBRIDGE: I looked at your website this morning. I went to the internal review section. There is no explanation at all of what an internal review is. There is just a link to a PDF form. How does an unrepresented worker, perhaps with poor literacy skills, obtain that kind of information from WorkCover?

Mr WATSON: Mr Shoebridge, when you were looking at the website you would have noticed that there is a 131 050 phone number.

Mr DAVID SHOEBRIDGE: I did not see it.

Mr WATSON: It is there on the opening page. You probably have your phone in your pocket. If you go to the website now you will see the customer service centre number listed there.

Mr DAVID SHOEBRIDGE: I have already suffered through your website this morning.

Mr WATSON: May I address your question. If we are talking about somebody with low literacy skills then a website is not the place for them to navigate.

Mr DAVID SHOEBRIDGE: Where would they go?

Mr WATSON: Our customer service hub can be contacted on 131 050. They can talk a person through the various aspects involved in interacting with WorkCover. The customer service representative can fill out the form on their behalf and interact with them verbally.

Mr DAVID SHOEBRIDGE: How many forms have been filled out that way?

Mr WATSON: I do not have that figure, but we get 17,600 calls to that centre per month and there is a very high satisfaction rate for interactions. I am happy to provide information about the number of people who call about their workers compensation claims.

Mr DAVID SHOEBRIDGE: I would like to know the number who have their forms filled in in that way.

Mr WATSON: I will attempt to get that.

Mr DAVID SHOEBRIDGE: You said how important the delegated legislation and the guidelines for workplace capacity decision internal reviews are. The initial review guideline referred to guiding principles and required insurers to adhere to what was called the *Best Practice Decision-Making Guide*. Does this ring any bells?

Mr JEFFERY: Yes.

Mr DAVID SHOEBRIDGE: When you issued that delegated legislation and you required insurers to comply with the *Best Practice Decision-Making Guide*, did the guide exist?

Mr JEFFERY: No.

Mr DAVID SHOEBRIDGE: How could that possibly happen? You are making legislation that requires insurers to comply with a guide that never existed. How did that stuff-up happen?

Ms DONNELLY: The important point is that we have rectified that.

Mr DAVID SHOEBRIDGE: Could you answer my question. How did that stuff-up happen?

Ms DONNELLY: I am not able to answer that question at the moment.

Mr DAVID SHOEBRIDGE: Could you imagine any other part of the Government making legislation that referred to guidelines that failed to exist? Is WorkCover not up to properly regulating the system? Is it not capable of issuing this type of delegated legislation responsibly? Is that the conclusion we are to draw?

Ms DONNELLY: I do not agree with that assertion. We have agreed that there was a problem and have taken steps to rectify it.

Mr DAVID SHOEBRIDGE: Twenty-five per cent of people who used to get weekly benefits under this scheme no longer get them. Is that right? I ask that question of you, Mr Playford.

Mr PLAYFORD: That is correct. The information that I prepared for the Committee, which was provided yesterday, shows that the number of claimants who receive weekly benefits in a quarter reduced from about 40,000 in the lead-up to the June 2012 reforms to 30,000 in December 2013.

Mr DAVID SHOEBRIDGE: Mr Watson, you outlined the purposes of the scheme. I heard you talk about return to work and safety, but what you failed to mention was providing fair compensation to people who are injured. Do you view that as part of the scheme?

Mr WATSON: If you listened to my full presentation earlier, you will know that I talked about rehabilitation, vocational training, support for injured workers and, importantly, return to work. We know from international research that the best place for workers to get better is back in the workplace, working alongside their workmates, being involved in workplace interactions. It is important to understand that.

Mr DAVID SHOEBRIDGE: Have the 10,000 workers who have lost their benefits got back to work?

Mr WATSON: May I finish answering the first question you asked me? Apart from dealing with the $4.1 billion deficit, which your colleague across the table has mentioned, the reforms which the Government has put in place focus the scheme on making sure we support people who have the capability to work. The focus is on capability rather than disability. I think that is laudable.

Mr DAVID SHOEBRIDGE: Have the 10,000 workers who have had their benefits cut or failed to get benefits as a result of the reforms got back to work? Do you have evidence to prove that something like that proportion of workers is now back at work as a result of the changes?

Mr JEFFERY: We need to take that on notice to retrieve the data.

Mr DAVID SHOEBRIDGE: What has happened to the 12,000 workers who have lost their medical benefits?

Mr WATSON: Many of them have returned to work.

Mr DAVID SHOEBRIDGE: How many?

Mr WATSON: I can get you that figure. Rather than waste the Committee's time while I wade through paper to find that, we will take it on notice.

Mr DAVID SHOEBRIDGE: In doing that, could you also provide the Committee with the number of older workers, those who are 66 years and older, who have lost their medical benefits?

Mr WATSON: We can put an age profile on that, yes.

Mr DAVID SHOEBRIDGE: Are you concerned that, as a result of the changes, people who used to get the benefit of medical expenses after they retired are, in most cases, no longer protected by the scheme that you operate?

Mr WATSON: In the past, the approach to workers being injured was that they were thrown onto the scrapheap in many cases. The focus of our scheme now is to get people back to work.

Mr DAVID SHOEBRIDGE: These are older workers who are not going back to work. That is a non sequitur to my question. I am talking about retired workers. You know they are not going back to work. Could you answer my question: Are you concerned about the large number of older workers who have injuries and have lost their medical benefits as a result of the changes?

Mr WATSON: I have just passed a 30-year milestone in work health and safety to prevent the injury of workers in New South Wales. Am I concerned about people being injured at work and having their lives affected? Yes I am.

Mr DAVID SHOEBRIDGE: Could you answer my question?

Mr WATSON: I have just answered your question. I may not have given the answer you were expecting.

Mr DAVID SHOEBRIDGE: You gave the answer I expected, but my question was about older or retired workers and not workers of working age.

Mr WATSON: I return to your original question, which I will answer. Yes, we are concerned for older workers and for people who do not return to an active life, as best they can, after they have been injured at work.

Mr SCOT MacDONALD: Please give me information about how you interact with labour hire companies. There has been recent media coverage of labour hire companies and their focus seems to be on getting influence on building sites. What is your assessment of their commitment to safety? Is it a priority? Are you able to interact with them? Are they committed to occupational health and safety? Will you appear before the royal commission on this?

Mr WATSON: I have not been called before the royal commission at this stage, but we will appear if that is what the commission wishes. One complexity of the workplace environment is labour hire companies. We have had a number of major prosecutions against labour hire companies where they have not provided a good workplace health and safety system for people they are injecting into the workplace.

Mr SCOT MacDONALD: Why are there issues about the commitment of some labour hire companies to safety?

Mr WATSON: I am not commenting so much on their commitment as the failure of the systems they have in place. The important thing for a labour hire company is to understand what sort of work workers are going to be involved in and where they are going to be working. They need to match that risk to the capabilities, training and skills the workers need to do that work. Failures have been in managing that. There needs to be cooperation between the client—that is, the workplace getting the labour—and the labour hire company. That is another area where there have been difficulties. Part of the changes to the work health and safety legislation and moving away from the occupational health and safety legislation where an employer-employee relationship was the primary driver are persons conducting a business or undertaking, PCBUs. This change has cut through a lot of artificial arrangements to separate responsibilities. One of the key components of that change is the level of cooperation between the various persons conducting a business or undertaking coming together to form a workplace.

Mr SCOT MacDONALD: Please take on notice giving any recommendations for the Committee in that area. I think I understand exactly what you are saying; you had a direct relationship before and now you have a couple of layers.

Mr WATSON: Indeed, even in a workplace such as this you will have a number of persons conducting a business or undertaking forming a workplace and a great deal of cooperation is needed to make sure you have a safe outcome. I am happy to take this question on notice and provide more detail.

Mr SCOT MacDONALD: Are you concerned about any particular labour hire companies?

Mr WATSON: This is a public hearing and it is not appropriate for me to name particular firms.

Mr SCOT MacDONALD: You can provide us with a confidential reply.

Mr WATSON: I will take that on notice. We did some work on the workers compensation scheme looking at the worst performing large businesses in the scheme. Amongst those was a labour hire firm in Melbourne, which I visited with a workers compensation specialist to discuss the structure of the business model. One concern was the structure of the contract with the client business as it did not have details of work health and safety arrangements. If a worker is injured there should be details of how the worker would return to work and who would provide suitable duties—all those things need to be in the contract when you enter into a business arrangement.

Mr SCOT MacDONALD: Are bigger companies more likely to have such structures than smaller companies?

Mr WATSON: I think that is exactly the issue generally in workplace health and safety. Large businesses are generally well equipped to put in place systems while smaller businesses are not. That is why we provide a lot of assistance in the small business arena.

Mr SCOT MacDONALD: I have read that some of these labour hire companies are small and they have a model for getting mates into jobs. We would appreciate some recommendations on that.

Mr WATSON: We will have a look at that. We are very happy to hear from members of parliament who come across issues. We are happy to engage with businesses to improve the model. We want to prevent things from happening.

CHAIR: We have asked a number of questions on notice. The secretariat will be in contact to give you details of those questions. We will be very interested in your responses, which will assist us in our deliberations, as has your evidence. This is the first review and many issues will be raised to ensure the system operates effectively. We take our position seriously.

Mr WATSON: We share that responsibility.

(The witnesses withdrew)

KIM GARLING, WorkCover Independent Review Officer, WorkCover Independent Review Office, sworn and examined:

CHAIR: I welcome Mr Garling. Do you have a short opening statement?

Mr GARLING: I have circulated it to members of the Committee and am happy for it to be taken as tabled.

CHAIR: We appreciate that.

Mr DAVID SHOEBRIDGE: It is nice and short.

CHAIR: It adds to the substantial report Mr Garling has submitted. Yours is a very important position to deal with complaints and to provide accountability to the New South Wales workers compensation system. It appears you take your position seriously and I notice you have raised a number of concerns about various issues. I do not know if you were here when I raised your report with earlier witnesses.

Mr GARLING: Yes. I have been here the whole time, Chair.

CHAIR: They are going to respond and give us a report on how they have dealt with those issues, but you confirm that all of the matters and all of the concerns that you have raised in this report have been referred to the authority?

Mr GARLING: Yes, sir. The matters I referred to in my report are those which are clear.

CHAIR: Yes.

Mr GARLING: There are other matters that are under discussion, which I have not referred to.

CHAIR: I am coming to those as well.

Mr GARLING: Yes.

CHAIR: In regard to the matters that you have raised, would you be able to take on notice when you raised them and when you got a response?

Mr GARLING: I do have a schedule I can email today, if you wish. I have it with me.

CHAIR: Yes. We would much appreciate that. Without going to the individual matters at this stage because we might see them from your schedule, have you been satisfied with the responses that you have got in regard to the matters that you have raised?

Mr GARLING: I have received a response. I do not think by any measure those responses are satisfactory in terms of time.

CHAIR: Can you respond to us and take it on notice in regard to any of those matters?

Mr GARLING: Certainly.

CHAIR: We will be getting a response from the authority and then we would like to get a response from you to their response.

Mr GARLING: Certainly.

CHAIR: I think you mentioned that apart from the matters raised in your report, you have raised other concerns.

Mr GARLING: I have.

CHAIR: Are you able to take on notice advising us of what those issues are and whether you have obtained a satisfactory response as well?

Mr GARLING: Certainly.

CHAIR: Please take on notice all the matters that you have raised and all the responses that you have got back.

Mr GARLING: Yes, sir.

CHAIR: And your response to their responses.

Mr GARLING: Yes, sir.

CHAIR: Good. Thank you very much.

The Hon. SHAOQUETT MOSELMANE: You have referred to this document in which you draw attention in your submission to the position of WorkCover as both the regulator of New South Wales workers compensation and manager of the nominal insurer. You say that there appears to be an inherent conflict between these functions, which is exacerbated by the apparent lack of any regulatory presence in relation to the management of the New South Wales insurance fund. Can you elaborate on that?

Mr GARLING: Yes, I can. I think you would have noticed in the previous evidence that one thing that WorkCover does very well—and I think Mr Watson is a terrific leader in that regard—is in the accident area where he is usually on-site very quickly with his fluorescent vest, dealing with the issues that arise from the accident. Compare that to the insurance division, there is no fluorescent vest.

The Hon. SHAOQUETT MOSELMANE: How do we address that? What do you recommend that we ought to do to address those issues?

Mr GARLING: I think the answer, which is raised in a number of submissions as well, is that there has to be a separation of the two functions. If there were a separation of the two functions, we perhaps would not have had the significant failures that have occurred in the implementation of the reforms.

The Hon. SHAOQUETT MOSELMANE: Can you elaborate on how we ought to do that? We make recommendations in our report. It would be really good if you could elaborate on how we ought to do that in part of our recommendations.

Mr GARLING: I am happy to do with that in more detail on notice, if you wish.

The Hon. SHAOQUETT MOSELMANE: Yes.

Mr GARLING: But I think you would need to have separate authorities dealing with each of those functions. They are quite separate and discrete functions. If they are in separate hands, one can look for the responsibility for each of those groups when there is a failure. If you take the example of the zero weekly entitlement that has been discussed: if you have an insurance body and a regulator, the regulator would have said to the insurer, "That's incorrect." But because they are the same person, they do not talk to each other quite as harshly.

Mr DAVID SHOEBRIDGE: It is often exactly the same person doing the two tasks, as I understand it.

Mr GARLING: That is my understanding too.

Mr DAVID SHOEBRIDGE: Maybe on Tuesday and Wednesday they regulate their activities on Thursday and Friday.

Mr GARLING: That may well be.

The Hon. SARAH MITCHELL: I think you indicated that you were here earlier this morning.

Mr GARLING: Yes. I have been here the whole time.

The Hon. SARAH MITCHELL: I want to continue with the issue of stakeholder consultation. Your submission in particular was very thorough, but it was also quite critical of the lack of consultation. Could you elaborate on that a little further for the Committee and perhaps suggest how improvements could be made in that area?

Mr GARLING: I think the difficulty arises in this circumstance: for example, my office has now been in operation to some 18 months. Issues such as the guidelines for work capacity assessments and the like are dealt with internally at WorkCover. We are not included in that process at all, nor are other stakeholders. I think that is unfortunate because I have at least 14 highly qualified lawyers who are thoroughly experienced in workers compensation matters, and we are not consulted at all. In fact, the only way I find out about it is that someone tells me it has been issued in the gazette. I am fairly close to WorkCover in that sense.

There are stakeholders further away—insurers, lawyers and businesses—who do not get consulted at all. Similarly with the two regulations to which I referred in my report: They came out of the blue, no warning, no hint. My office is giving information to people who call up which is fundamentally wrong. We did not know that it was going to be changed or that there would be some alteration coming, so there is no consultation. That has got to change because there are people with the ability to make positive comment who are not being offered that opportunity.

The Hon. SARAH MITCHELL: What needs to happen to make that change? Is it an internal issue?

Mr GARLING: I think it is an internal management issue within the authority.

The Hon. SARAH MITCHELL: Okay.

Mr GARLING: And perhaps a willingness to understand that there are people outside the authority who actually do have some understanding of the system.

CHAIR: You are going to expand on this in your response to questions on notice, or elaborate on that in greater detail for us?

Mr GARLING: Mr Chair, if that is what you would like, I am more than happy to accommodate that request.

CHAIR: We would indeed like that, thank you, yes.

The Hon. SARAH MITCHELL: This question is in terms of a request from workers to review the work capacity decisions from the WorkCover Independent Review Office [WIRO]. In your annual report, which was only up to 30 June—there were two—a previous witness mentioned a figure of 90.

Mr GARLING: I can give the exact figure as at yesterday.

The Hon. SARAH MITCHELL: Yes.

Mr GARLING: That was 105 requests and there was one more this morning, so that will make that 106; 88 have been completed; nine were withdrawn by either the insurer or the worker; and eight are outstanding. Those eight would be outstanding for no longer than 10 days, I believe. We have to have a time period of seven days to give the insurer an opportunity to respond, but beyond that seven days we are usually completed. We are certainly completing within seven further days, but hopefully within three business days thereafter.

The Hon. SARAH MITCHELL: In terms of the time frame for completion, you are within what you feel is a comfortable level.

Mr GARLING: We are well within our time scale.

Mr DAVID SHOEBRIDGE: Mr Garling, you would have heard the evidence from WorkCover that they are taking four months to do their merit review process. What impact does that have from your observations of the scheme?

Mr GARLING: There is a double impact. The first is that I think it is clause 22 of the regulations about the need to give a worker three months notice of any increase in benefits. As a result of that, if the merit review overturns an internal review decision, a worker can be without benefits at all for a period of time because of the delay. There is no answer to that because that is the legislation. It is not a matter of WorkCover being able to correct it. The law states that you miss out, so we have a number of workers who are without benefits at all for a period of time when the merit review says they are entitled to benefits. That is an incongruity.

Mr DAVID SHOEBRIDGE: Do you mean they can never catch up?

Mr GARLING: They never catch up. It is a gap—a complete gap—in their entitlements.

Mr DAVID SHOEBRIDGE: Because of the delay by WorkCover, the regulator, these workers will forever lose a period of entitlement to workers compensation?

Mr GARLING: Correct.

Mr DAVID SHOEBRIDGE: Have any of those cases then come to you?

Mr GARLING: Yes.

Mr DAVID SHOEBRIDGE: What is the response from the injured worker?

Mr GARLING: They are not always absolutely delighted, as you would imagine, but the fact is there is very little we can do because that is the law. We have underway a recommendation to the Minister that he consider revoking that regulation because I do not quite understand why we have to give an injured worker three months notice of an increase.

Mr DAVID SHOEBRIDGE: There is at least one example you give in your submission of what I would call bureaucracy gone mad in WorkCover, which is the whole person assessment resolution of a dispute. A worker might get a medical report from an independent and approved medical specialist that says that they are entitled to $15,000 and the insurer gets one that says they are entitled to $17,000 and they are prohibited from agreeing at $16,000. Can you explain how that possibly works?

Mr GARLING: That is a policy adopted by WorkCover. The difficulty we have is that we then spend $25,000 or $35,000 working out which one is correct.

Mr DAVID SHOEBRIDGE: You might have a dispute over $2,000?

Mr GARLING: Yes.

Mr DAVID SHOEBRIDGE: Then tens of thousands of dollars are required to be spent on resolving that dispute?

Mr GARLING: And many months.

Mr DAVID SHOEBRIDGE: Is there a prohibition from WorkCover on the worker and insurer actually getting together and agreeing?

Mr GARLING: Correct.

Mr DAVID SHOEBRIDGE: Have you raised that with WorkCover?

Mr GARLING: Yes we have. We have actually adopted a process within our office internally where my ILARS group—the Independent Legal Assistance and Referral Service—has taken an initiative to contact the insurers and say, "Is this a matter we can resolve without going any further? It is only over $2,000 or $3,000" because we have been very fortunate that the insurers have adopted a cooperative policy with us. But

within the last month, we have resolved quite a few of those matters without the need for them to go into the dispute resolution area.

Mr DAVID SHOEBRIDGE: But is that choosing one or other of the options?

Mr GARLING: Choosing one or other of the options.

Mr DAVID SHOEBRIDGE: Maybe, hopefully, there will be occasions where the insurer just sees that it is in the scheme's interest to agree to the worker's assessment?

Mr GARLING: Correct. I would say in each instance the insurer has adopted the higher figure.

Mr DAVID SHOEBRIDGE: But absent that goodwill from the insurer, WorkCover insists on scheme money—basically public money—being spent in this ongoing bizarre dispute resolution process?

Mr GARLING: I think overall one of my concerns has been that the cost of the resolution of disputes so far outweighs the cost of the amount being disputed. When you look at other areas, such as the Local Court system, the cost of dispute resolution is far less.

Mr DAVID SHOEBRIDGE: You talk about section 54 notices?

Mr GARLING: Yes.

Mr DAVID SHOEBRIDGE: Which is the notice insurers are required to give before they can terminate or reduce someone's benefits?

Mr GARLING: Correct.

Mr DAVID SHOEBRIDGE: There is a statutory notice period they have to give. How long is that?

Mr GARLING: Three months. The notice has to be served either by post or in person. If it is served by post, then one has to get an extra four working days.

Mr DAVID SHOEBRIDGE: Why is that three months important?

Mr GARLING: For two reasons. One is that it gives the injured worker the opportunity to consider what steps they may take to overcome the decision. Second is that it enables them to make arrangements, if they have to, with financiers and their other commitments. So they need a period of time in which they understand there will be an adjustment. It also gives them the opportunity if they want to accept the decision and return to work.

Mr DAVID SHOEBRIDGE: As I understand from your submission, this is an obligation that insurers somewhat routinely are failing to comply with?

Mr GARLING: They certainly were. I think we have overcome that difficulty. There are still isolated instances where it is not happening, but they are very isolated. I think it was a shock when we first raised it and we pointed out that it was in fact an offence not to give the full notice. We recommended at one stage that WorkCover actually look at whether it should pursue an insurer. I am not sure what the outcome of that is. That is still happening. But I think overall in the industry there was recognition that what I was saying was perhaps better adopted than not.

Mr DAVID SHOEBRIDGE: This is a classic case where the interest of the nominal insurer and the regulator are at odds?

Mr GARLING: It is a good example.

Mr DAVID SHOEBRIDGE: If workers are losing their benefits earlier, that improves the financial outcome for the nominal insurer, yet if the same body is the regulator it should be insisting on the parliamentary statute being complied with?

Mr GARLING: Correct.

Mr DAVID SHOEBRIDGE: Do you see any way of resolving this?

Mr GARLING: Better communication with the insurers. I think that would be a good step forward. I think many insurers have contemplated that. I think perhaps it was not made as clear as it could have been in the education information. I think that would be a good step.

CHAIR: On the question of information, were you present earlier when Mr Shoebridge raised matters with WorkCover that he felt should have been included on WorkCover's website and were not? I think you may have been present also when the Hon. Peter Primrose raised issues that he thought would have been covered in the annual report of WorkCover and were not?

Mr GARLING: Yes.

CHAIR: Would you take on notice a question to advise us in the interests of the scheme operating effectively and in view of your very important position as the WorkCover Independent Review Office, what you believe should be included, which presently is not, in the annual report or on the website?

Mr GARLING: Yes.

CHAIR: That may double-up with matters you have raised already, but I ask you take that as an additional matter to respond to.

Mr GARLING: We have tried to put as much information on our website as possible. We do have a translation service on the website that seems to be adequate. We also have tried to publish a number of documents that set out examples of what we do. We are attempting to improve that service we provide, however, I think the major difficulty we face is the fact that the first point of contact is often given as the WorkCover complaints line rather than mine. I have the statutory authority to deal with complaints and we really should be the one contacted first.

CHAIR: We understand your good work in that regard, but we are interested in getting a response to what you feel should be included by WorkCover on its website and in its annual report that presently is not covered.

Mr GARLING: Sure. Yes.

The Hon. PETER PRIMROSE: It seems that you are trying to do an awful lot commendably. Are you adequately resourced?

Mr GARLING: No.

The Hon. PETER PRIMROSE: What sort of things would you like to be able to do if you had sufficient resources that you cannot do at the moment?

Mr GARLING: We have a number of projects that we would like to proceed with. We have started on one or two, but without detailed resources it is very difficult. For example, we think it is time that the method in which claims are dealt with needs to be reconsidered. One of the major problems we have is that the system appears to be skewed towards creating a dispute rather than solving the problem for the worker. The aim should be to get that worker the resources they need to be cured and then to get back to work.

CHAIR: In other words, you are saying that there are things that should be done to make the system work more effectively and you would be in a position to make recommendations that would help the system be more effective?

Mr GARLING: Yes.

CHAIR: But because of lack of funds you are not able to do that?

Mr GARLING: I am not sure it is so much a lack of funds because I would have to say that the funding to the office is adequate. The difficulty is in obtaining the resources.

CHAIR: It is not sufficient for you to pursue the issues you need to?

Mr GARLING: The funding may be there, but getting the resources is a different issue because everything has to be dealt with through the WorkCover Authority. Now because of the recent changes there is an extra level in that everything has to be approved through the Department of Finance and Services. Even in recruitment, that can take six months and in an office of my size where I have 34 staff members, we are a high-skilled office, we do not fall into that pattern easily. If we need to procure something, all my procurement has to be approved by the WorkCover Authority.

CHAIR: Would you take on notice a question to provide to the assistance you require to operate more effectively?

Mr GARLING: Certainly.

CHAIR: To cover the matters you have just raised and any others that come to mind?

Mr GARLING: Yes.

The Hon. PETER PRIMROSE: Could you include also some of the projects that you comment on?

Mr GARLING: Yes. I can draw one immediately to your attention and that is in relation to the provision of hearing aids. At the moment, firstly, hearing aids are not a cosmetic attachment, usually. There may be some people who want a hearing aid just to look good, but I doubt it. Secondly, there is a dispute about the provision of the hearing aid so the person who clearly is in need of one has to wait some period of time while that dispute gets resolved. The cost of the hearing aid is less than $5,000, the cost of the dispute is five times that. We actually have done some research and there should be a report available for the Minister within the next 14 days, I hope.

The Hon. PETER PRIMROSE: I understand that the WorkCover Authority ran a return to work pilot project that looked at the effectiveness of interventions by inspectors and return to work outcomes. Have you seen that report?

Mr GARLING: No. My office is limited just to the insurance aspect of the Workers Compensation Scheme, so I do not have any authority over work health and safety. I am aware of those projects because we learn about them and read about them, but any direct involvement, no.

The Hon. PETER PRIMROSE: That has not been released publicly, I understand.

Mr GARLING: No, I am not sure that I have seen it.

The Hon. PETER PRIMROSE: We asked the WorkCover Authority to take on notice all the recommendations of Unions NSW to comment on. With regard to those that are relevant to you, could I ask that you do the same?

Mr GARLING: Certainly.

The Hon. SHAOQUETT MOSELMANE: In reference to the short summary of issues that you raised, you make mention of the legislation that was passed by Parliament requiring a discrete group of injured workers to be transitioned—and you highlighted that word—to the new benefit regime, that was in receipt of weekly payments immediately before 1 October 2012, and you say that WorkCover decided that it would adopt a policy of transitioning all workers, and you underlined "all". Can you explain what are the issues and what are the contradictions? You say at the end of it that is contrary to legislation. Are they in breach of the law?

Mr GARLING: It is probably the situation that they have done more work than theoretically was required. The impact is that it skewed the statistics about how well the reform project was going because, instead of having a limited number of injured workers to deal with, it was a wider group; secondly, it confused the wider group and, thirdly, because of the transition rate, that is the weekly benefit rate was fixed for workers

being transitioned from the old scheme to the new scheme, people were underpaid, and they may not know they were underpaid because they may not realise that they were not required to be transitioned. There are still instances of insurers purporting to transition workers who were not in receipt of weekly payments and we have drawn that to a number of insurers' attention and they have responded. However, that is the mischief, that someone who may have had pre-injury average weekly earnings of $1,500 is limited to the $938 figure.

The Hon. SHAOQUETT MOSELMANE: You said that they responded. How did they respond?

Mr GARLING: By correcting the material, but that is on an individual basis. In one particular case it took us six months to get that recognised because the insurer said to us, "We agree with you, but we are bound by WorkCover's direction."

The Hon. SHAOQUETT MOSELMANE: And you say that it is directly contrary to legislation. Are they in breach?

Mr GARLING: They are not complying with it. There is a subtle difference.

Mr DAVID SHOEBRIDGE: And they are their own regulator, are they not?

Mr GARLING: Correct.

Mr DAVID SHOEBRIDGE: If you are the regulator and you are not complying with your legislation, you could choose to do nothing?

Mr GARLING: Correct.

Mr DAVID SHOEBRIDGE: And that is what happens?

Mr GARLING: Correct.

Mr DAVID SHOEBRIDGE: Mr Garling, you talk about a number of occasions where there were changes to the scheme and a failure to communicate by WorkCover, and one of the examples you give is about medical expenses. A good many injured workers were going to see their entitlement to medical benefits terminated at 31 December last year and there was a last minute regulation passed which gave them some modest extension in terms of their benefits, but there was, as I understand it, an almost comprehensive failure by WorkCover to communicate that more broadly beforehand. First of all, is my characterisation correct, and what were the effects of it?

Mr GARLING: I think there are two issues that emerge from that. The first is that it was well known from the reforms in June 2012 that the 31 December 2013 date was there and was going to come. There was no doubt that injured workers who had not received weekly benefits within the last 12 months would lose that benefit at 31 December and, in particular, retired workers who had not been in receipt of weekly payments for some time, what are described as medical-only claims, would cease on 31 December. So people had plenty of warning if they read the legislation. Insurers did notify people of the forthcoming termination. However, we found, particularly in October-November, through our complaints area and through my Independent Legal Assistance and Review Service [ILARS] funding area, that there were a lot of people who knew then that they could not have the hip replacement, knee replacement or whatever by 31 December.

Mr DAVID SHOEBRIDGE: And the statutory arrangement was, and still is, that the medical procedure had to have occurred within the time period for you to be entitled to be reimbursed.

Mr GARLING: Correct.

Mr DAVID SHOEBRIDGE: It could be approved by the insurer, but if you did not get the surgery before 31 December you were not going to get paid for it.

Mr GARLING: Correct, but what happened was the insurers were not approving the surgery because it could not happen before 31 December, so workers who sought permission for medical procedures and discovered that they could not get them done in time were told, "We cannot approve it because you will not have it done in time." That could have been rectified in October-November by the regulation that was

subsequently issued, that is, if you had the approval before 31 December you could have the treatment later. For some reason, that was not done and, had we known, we could have said to a significant number of those who called us, "Get the approval; it does not matter when it is going to happen", but as we were only given that notification on the Friday before Christmas it was, in effect, a waste of space.

Mr DAVID SHOEBRIDGE: The effect was that a good number of solicitors acting for workers said, "My client needs surgery. Can you give me some legal funding so I can contest this claim for surgery?" And because you took the obvious practical view that there would not be time to complete the dispute and get the surgery in time, you would not give those workers funding.

Mr GARLING: Correct, but what we did do, and I must commend the Workers Compensation Commission in particular, we established a method whereby those claims were expedited and dealt with rapidly, and that worked for a number of workers, but of course that is only a small number.

Mr DAVID SHOEBRIDGE: And a good many others did not get the legal funding because you had no idea, because no-one had communicated with your office that they were going to extend the timeframe.

Mr GARLING: Correct.

Mr DAVID SHOEBRIDGE: Did WorkCover or anyone ever apologise for this mess and say they would do better next time?

Mr GARLING: No.

Mr DAVID SHOEBRIDGE: You say in your submission there is a failure to consult with other stakeholders in the insurance area and in the workers compensation area. What other stakeholders are you communicating with?

Mr GARLING: In my annual report there is a fairly detailed schedule of where I have been and who I have spoken to. I have made a point—and I have been supported, I would have to tell you—of going to see the Unions NSW monthly meetings; I have been to individual unions and spoken to them; I have been to the Australian Workers Union [AWU] in Newcastle and I have addressed the AWU conference in Sydney; I have been to address groups of lawyers; and I have been to address insurers. I have covered the field. If anyone asks me to go anywhere, I will go.

Mr DAVID SHOEBRIDGE: When you go to these places, what are those stakeholders telling you about similar communications with WorkCover?

Mr GARLING: I think there is a lack of proper communication, and I think that is a pity, because you can often learn from those visits, as I am sure each of you knows. When you meet constituents and groups of people involved, you learn a lot from that experience and certainly you get different outcomes when you go and meet them. It has been a great help to me that I have learned a lot more about the issues that are of concern to injured workers and what befalls them, but I think that the fundamental problem I have is the delay in the system. I have the saying in my office that, from day one, we do things yesterday, not tomorrow. I think, unfortunately, there is an attitude that says it can wait, and for an injured worker it cannot wait. That is the most important thing in their life: they have been injured at work.

Where do they find out about what to do next? Who tells them? Incidentally, this week I have had two calls from people I know who have said, "I have just been injured at work. What should I do?" There just is insufficient information with small employers, where the employer says, "You do not want to go and report it because that will affect my premium", so the injured worker is confused. There are no clear statements. Given these days of websites and databases and computers, surely it must be easier for a worker to know exactly what he or she must do. Is the doctor going to be paid for? These are small matters. Obviously where you have a significant injury—I will not use the term "serious injury", but a significant injury—it is all dealt with and dealt with very efficiently.

Mr DAVID SHOEBRIDGE: When we were talking with the Motor Accidents Authority they said that they have set up a new scheme where if they have a call from a claimant and they realise that it needs to be referred to an insurer for action they do what they call a "warm handover". In other words, they transfer the call

at the time to the other insurer or party who can resolve their dispute. Is there anything like that in place between WorkCover and the WorkCover Independent Review Office?

Mr GARLING: There is between the WorkCover Independent Review Office and insurance. What we decided very early on, rather cheekily I suspect in hindsight, was I went to the insurers and said, "When we get a complaint or a question or an issue of concern from an injured worker would you respond within 48 hours?" They do. We send out a preliminary inquiry by email and with probably 99 per cent of cases we get a response back within 48 hours, often quicker. The insurers have set up teams to deal with us and it has been very successful. That is why I say I am delighted that the insurers have cooperated. We are now moving into the further area where we are sending minor disputes to see if they can be resolved, minor matters that are before the commission. We are, in fact, funding now 95 per cent of all matters in the Worker's Compensation Commission. The other thing is we are paperless. Everything has to be done quickly. One of the beauties of having an electronic system is that it demands its own urgency and that helps. I have to say the insurers have been very good.

Mr DAVID SHOEBRIDGE: I have listened to your evidence and read your submissions. It seems to me if you want to come up with an arrangement that is going to help injured workers in a timely fashion you have to come up with an arrangement that bypasses WorkCover.

Mr GARLING: I think that is a little unkind. I think it needs WorkCover's support and I think we can get that support because while there have been some issues in terms of timing they have been receptive to considering what we are saying and they are now coming to understand that perhaps we are not as silly as we first were thought to be, that some of our suggestions are actually quite sensible.

CHAIR: Do you find them cooperative?

Mr GARLING: They are very polite, very courteous and they listen to me very carefully.

CHAIR: Well intentioned?

Mr GARLING: As you would expect, I was the alien who landed in the rose garden and I am not sure I would expect a lavish welcome. But I think as time has gone on and they see that I have not destroyed the roses that perhaps the cooperation will improve and certainly Carmel Donnelly has worked hard with my staff on that basis. I commend her for doing that.

CHAIR: Is there anything else you would like to place on record that has not been asked? I would like to give you the opportunity to comment on anything that has not been covered.

Mr GARLING: The only significant issue within the realms of government organisations is independence. If we are funded by and subject to approval for all staff and expenditure by the very authority we are oversighting it limits the ability to undertake necessary inquiries. That is a matter which I think was on the list of things to be done at one stage and it may have lost its priority.

The Hon. SHAOQUETT MOSELMANE: In relation to the provision of information by WorkCover; what type of information do you say WorkCover should release to better enable analysis?

Mr GARLING: In terms of detailed statistics?

The Hon. SHAOQUETT MOSELMANE: Yes?

Mr GARLING: I think there is a lack of detailed information in a simple form about types of injuries and the method of improving the management of those injuries. For example, one of the nursing homes has a policy of providing all sorts of lifting assistance for patients but they find that is sometimes ignored by the workers. That raises a work health and safety issue as well as a workers compensation insurance issue. That is something that could be explored perhaps with some more information. From my personal perspective, as the WorkCover Independent Review Office, what we would like to do is have information on every letter that goes to an injured worker that we exist, that we can be telephoned, we have a statutory obligation to deal with complaints and we provide assistance.

The Hon. SHAOQUETT MOSELMANE: Do you exist on their website?

Mr GARLING: There is recognition of my website on WorkCover's website, but that is an area that could be improved. Finally, on my website we publish as many statistics as we can and we recently put up the stories of the matters we have dealt with in the complaints area and I will draw particular attention to one matter—I will not identify the individual. A worker rang and complained that the benefit that he had been receiving was less than what he was entitled to but he was not quite sure so we had a look at it. Within 48 hours the insurer said, "You know what, you are right." They dealt with it within 48 hours and the worker got a refund of over $100,000.

The Hon. SHAOQUETT MOSELMANE: Had that worker written to the insurer first?

Mr GARLING: No, he telephoned us because he was not sure whether he was getting the correct benefit. We dealt with that within 48 hours for very little cost. That is very effective. That is the sort of thing we think is good and we publish a lot of those stories so if there is a trend we can identify it. Finally, our information is probably three to six months in advance of that given to the insurer because people come to us first. We can tell you that, for example, where there was decline in hearing aid claims, as reported in the actuarial report, the following quarter there was a spike. We had that information three to six months in advance of anyone else. There are some benefits in what we do.

CHAIR: Thank you, Mr Garling, for being with us today and we are looking forward to your response to our questions on notice. That will be of great benefit to us. All of this information will assist us in our deliberations. Thank you for being with us.

(The witness withdrew)

(Short adjournment)

MARK LENNON, Secretary, Unions NSW, sworn, and

SHAY DEGUARA, Industrial Officer, Unions NSW, and

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

CHAIR: I note that you have provided the Committee with a full submission but do you want to make a short opening statement?

Mr LENNON: Yes. Thank you and the Committee for inviting us to appear today. We think this inquiry is a very important one and we acknowledge not just our contribution but also the contribution made by our affiliates and injured workers to this inquiry. Clearly, the role that WorkCover plays in regulating health and safety in this State is fundamental to enhancing the quality of life for working people in New South Wales and probably singly has the most important role for workers in that regard in this State and that is why we view this inquiry with such importance.

There are three recurring themes that you will see through our submission. First, we think one of the problems in WorkCover at the moment is the fact that the tripartite model has broken down. Over the years, and it is based, if you think about the philosophy behind the legislation itself, going back to Rogans in the 1970s the idea is that it is on the basis of consultation and co-operation and over many years that has worked effectively in New South Wales through various tripartite structures, including, of course, the Advisory Council. So that is the first problem, I think, we see with the operation of WorkCover in the present circumstances.

The second issue that is recurring, and it has become an issue not just in recent years but going back maybe five or six years, is this dynamic, or this tension between the role of WorkCover as an adviser and its role as a regulator. I think all parties will agree that there is scope for both; the question is degree. At the moment as far as we can see in the union movement WorkCover is falling down, particularly in regard to its role as the regulator. We can point to some of the examples ourselves but just simply the word on the street is that as a regulator and enforcer WorkCover is not what it used to be.

The fact that last week we as a union movement had to go public and call for an audit of the construction industry in the Sydney region, given that we have had three major incidences on work sites across the Sydney central business district in the past 18 months, points to evidence of the problem of the role of WorkCover as a regulator and its failure to carry out that in the present time. It goes further to the question of enforcement and the question of prosecutions. We know that the number of prosecutions undertaken by WorkCover has declined significantly in recent years. Again, it comes back to the question of whether that then has been effective in ensuring that we have safer work places in this State. We would say the answer is no. We are still waiting, for instance, for an outcome with regard to the death of Mr Lopez, the Canadian backpacker who was killed on the old nurses' association site in Camperdown in April last year—that is 11 months. We think that clearly is inadequate.

Then of course we come to the question about workers compensation itself and the new laws. You will see in our substantive submission the issues of changes we believe should take place with the Act itself but there has been clearly issues around how the changes have been implemented, particularly coming to this question of work capacity assessments and the issue of return to work rates and how genuine are the return to work rates. Is it a question of simply people being told they have the ability to return to work or are they actually getting back and undertaking meaningful work. That clearly is a major concern out there amongst our members.

Finally, we believe that there needs to be significant reform to the legislation but in the short-term. As I said at the outset, the quickest thing to start fixing some of these problems, I think, is to return to the tripartite model that has worked so effectively in the past. I will leave those opening remarks there, Chair.

CHAIR: You made 34 recommendations in your submission. Setting aside those that related to legislative changes, I zero in on those that come within the authority of WorkCover itself, have those recommendations or suggestions in this document been put to WorkCover by Unions NSW or anybody affiliated with you?

Mr DEGUARA: As far as the legislative regulation actually pursuing, say, regulation of insurers, they actually put to WorkCover on a case-by-case basis. They have been put by Mr Garling as well in decisions on workers compensation. If it is about the actual operation of the laws they have been put to—

CHAIR: We cannot go into specific cases but in relation to the recommendations that come within the authority of WorkCover or any others, can you provide the Committee with that information? What have you formally put to WorkCover? When? What response did you get to your recommendations? And your comments on the response that you got?

Mr LENNON: Suffice to say we are happy to do that. There have been some issues put directly to WorkCover. Some have been put to Ministers. I am sure you will find we have a plethora of different pieces of documentation. Of course, there are also things that have been raised informally in various forums about the particular issues or problems we see. It goes back to the fundamental question, though, there is no sort of appropriate forum to raise these on a regular basis, that is, it comes back to the question of this Advisory Council.

CHAIR: I will come to that. Can you provide the Committee with anything relating to WorkCover that comes within the authority? Will you provide material on that as to what you specifically raised, when you raised it, when they responded, how they responded and your response to their response? I think you were present during the evidence of Mr Garling?

Mr LENNON: No, we were not.

CHAIR: Of course, you are aware of the position that he holds. Do you have interaction with Mr Garling?

Mr LENNON: Yes, to his credit we have had regular meetings with Mr Garling and the affiliate unions about WIRO.

CHAIR: If he does not agree with you and he gives you reasons for that, you understand the reasoning behind his decision?

Mr DEGUARA: That is correct.

Mr LENNON: Can I just say this, and I should declare an interest, I have known Mr Garling for some 35 years through a family contact, but he has had to deal with a very difficult situation, and the whole WorkCover Independent Review Office concept is somewhat contrived. It is a last-minute solution to a problem, and I think that he has dealt with it reasonably well and has been very consultative with all stakeholders as far as I see it. In his own submission, particularly the question of the conflict of interest between the nominal insurer and WorkCover, the artificial construct there is quite telling.

CHAIR: I think you would agree that he is certainly on the ball.

Mr LENNON: Absolutely.

CHAIR: Despite your relationship, you are quite able to separate a personal relationship and that does not hold you back in raising the things that you feel you need to raise?

Mr LENNON: No.

The Hon. PETER PRIMROSE: At the end of your presentation, Mr Lennon, you mentioned short-term changes. What are the things that need to be changed between now and the end of the year for a small sum balance to the system?

Mr LENNON: Admittedly we could use the various provisions under section 10 of the Act—Board Act—to bring in some advice, the power to set up committees, that would give the vehicle to set up an advisory committee. That would be step number one. We could set up two committees to be quite honest, one to oversight work health and safety and one to oversight workers compensation. I think there is so much involved with both issues that that would be the need. The second thing—my colleagues may have a different view—I would say immediately the issue of how work capacity assessments are dealt with and the review process by

WorkCover and the role of the WorkCover Independent Review Office. I do not know if there is any scope to deal with that without legislative change with the WorkCover Independent Review Office. There certainly is with the role of WorkCover and how it reviews decisions. I think that would be a step forward.

Ms MAIDEN: Also issues around journey claims. They were such a small part of the scheme previously and now the deficit has turned around so quickly on the basis of the figures released today. It took twelve months for the scheme to return to a positive balance sheet. Journey claims were a small part of the scheme and most of it was recovered from the Motor Accident Scheme, anyway. It could be easily reinstated and give a huge benefit to workers, and medical payments as well. I came in on the end of Kim Garling's evidence. We only saw that come into effect from the beginning of this year. We certainly called on the Government at the end of last year to put a moratorium on that part of the change to the legislation because of the fact that injured workers have ongoing medical needs. They should be met by the scheme. There is no correlation to the nature of the injuries themselves and the need for ongoing treatment with this arbitrary one-year limit. It is a direct cost transfer on to the Federal Government through the Medicare system and on to individuals as well.

Journey claims and medical payments are easy things to change. The work capacity decisions are a huge problem area for workers. You have got people in insurers' offices making decisions to remove people from their weekly payments on the basis of skills that that person may have in relation to a job that does not exist in the real world, not necessarily in the area where the person works. It is hypothetical and it is appalling. As Mr Garling has said previously, everyone has work capacity to some degree. You have to be in a coma to not have work capacity. That process is used against injured workers to cut off their weekly payments and circumstances where they are still injured and where they are still out of work. That is something that really needs to be changed.

CHAIR: Setting aside all of these issues that are clearly very important to you, you would agree that it is a good thing that the finances are in a healthier state now?

Mr LENNON: That is always a vexed question. Of course we want to make sure that the scheme is sustainable. We would not deny that but the question is by what means and mechanisms and, of course, you have seen the history of the workers comp reform in this State since 1988 and the way that the scheme has been brought back to surplus or alleged surplus every time is by cutting benefits, and that is not the way forward.

CHAIR: Let me put it this way—

Mr LENNON: It is all because of competitive federalism, as we know.

CHAIR: Sure. It is a worthy aim. You would agree there may be other important aims of such a scheme but that must be one laudable aim?

Mr LENNON: Absolutely, but not at the expense of workers benefits.

CHAIR: I understand that.

Mr DEGUARA: Why have an insurance policy if it does not actually insure you for much?

CHAIR: I understand. You are saying there are a number of aims in having the workers compensation scheme.

Ms MAIDEN: We have heard a number of times that the reason why the cuts need to come in was because there is a $4.1 billion deficit. Yet the report being released today shows in June 2012, when the cut was made, the deficit was only $2.6 billion and by the time the changes came in in October that year, it was better still and was on an improving trajectory without the changes, but a billion dollars is still being ripped out of injured workers' pockets and handed over to insurers and employers. That is what has happened to the scheme. It is a huge cost transfer. At the same time, employers have had a 12.5 per cent improvement in their premiums while workers are suffering with having their weekly payments and their medical payments cut off. Of course the numbers have to add up in terms of the scope, but it should not be workers paying and employers and insurers reaping the benefits.

CHAIR: Thank you.

The Hon. PETER PRIMROSE: My second question is given the structure of the board that is now covering all of these authorities, do you think that work health and safety and return to work is getting the specific attention that it needs?

Mr LENNON: No, and being a board member, that is not a reflection of the board. I have been on the board of the previous WorkCover authority and now the Safety, Return to Work and Support Board for seven years. Work health and safety, in a sense, because of the nature of it where it is not as transactional as workers compensation does not get the attention that it deserves. That is not a reflection on the board members. It is just the nature of the beast. It is the old 80:20 type problem. Eighty per cent of issues come from workers comp. The nature of workers comp, however, the complexity of it, et cetera, means that work health and safety does not get the attention it deserves and it is a bigger problem now that the board has responsibility for motor accidents and lifetime support and care.

CHAIR: What should happen?

Mr LENNON: In our submission we are saying that clearly there should be a separate management division, or words to that effect for the work health and safety division. As I said earlier, I think there should be a separate advisory committee or council oversighting work health and safety.

Mr SCOT MacDONALD: You were not here earlier on when there was evidence from Mr Watson around labour hire companies. I hope I do not misquote him. He is starting to identify them as a weak link, if you like, in respect of health and safety. Do you share that view?

Mr LENNON: Yes. I will let Mr Deguara speak to that.

Mr DEGUARA: If you look at an industry such as the construction industry, down at Barangaroo there is a principal contractor who might hire a dozen staff and the rest of them are hired through labour hire contractors, so you are looking a situation where the actual person who is the principal controller may not have much influence. It has been a problem for years with labour hire. Companies do prosecute labour hire firms and they improve their act, but now everyone can hide behind the corporate veil because there are layers of corporate structure. I think the Collins report at this Parliament also showed the levels of corporate structures and financing and stuff within the construction industry which makes it very difficult for anything to be pinned on anyone, unless you say from the top to the bottom there is a corporate responsibility for the health and safety of their workers.

Mr SCOT MacDONALD: It is a genuine question. I asked WorkCover for recommendations on behalf of the Committee. We have seen and read much about Barrangaroo. We have just heard about an example in Camperdown with a labour hire subcontractor. Are there recommendations you can come back to us with, not here and now, about raising the bar for those companies and what we expect of them? I am not sure what form this would take. Maybe it would be an officer or other means by which we can have some quality control around health and safety to ensure that they are meeting all of the guidelines.

Ms MAIDEN: We can definitely get back to you about that and some recommendations we would make. One of the ways in which we have seen employer behaviour changed in the past has been through prosecutions. We saw this in the banking industry. The Finance Sector Union took to court prosecutions against the banks, which WorkCover had refused to take, to improve security in banks. It dramatically reduced the number of bank robberies and injuries to bank staff. That comes back to the point we have made about prosecutions around labour hire. It is messy obviously when you have multiple employers operating in one place. This is not just about the construction sector; it is happening in so many other workplaces. We are seeing a proliferation of these insecure work arrangements. We will come back to you with some recommendations. But part of the answer has to be having really robust prosecutions where employers are not doing the right thing. The Work Health and Safety Act is quite clear: all the employers operating at one site have to work together to ensure the health and safety of everyone—that is, not only their own employees but also everyone in that one place. That is just not happening.

Mr DEGUARA: From the labour hire perspective, these are probably people hired who have a contract for maybe a week, a month or something. If they go and complain about health and safety then they will not get another gig. The consultation process is very hard to actually enforce. You need to have a regulator standing behind them and saying that if something goes wrong here then we need to fix it.

Mr SCOT MacDONALD: I appreciate what you are saying about having a big stick, but to me it is only one piece of the armoury.

Mr LENNON: Sorry to interrupt, Mr MacDonald, but, if you look at two of the three major incidents that have occurred in Sydney in the last 18 months, two have come down to one major construction company—that is, Lend Lease. What mechanism do you have other than a big stick to deal with a company of that size? If they cannot get their act together now—with all of the advice they have externally and internally—then what mechanism is there to deal with them other than to hit them with a big stick?

Mr SCOT MacDONALD: I hear what you are saying about the head construction company. Mr Watson did offer up the comment, and I hope I am not misquoting him, that the ones he had most difficulty with were at the bottom end of the market—the smaller end of the market. If you go in there with a prosecution, the corporate veil will probably frustrate you—you will probably find that there are no assets and there is not much behind that small company. If you could come back to us, I would appreciate it. I think it is a genuine concern for all of us: regulator, government and industry.

Mr LENNON: I understand that, but it still should not prohibit prosecution where it is appropriate. There are mechanisms under corporations law—and I do not profess to be an expert on that—to pursue people where and when a company has gone into liquidation or whatever.

Mr DAVID SHOEBRIDGE: Of course, prosecution is at one end of the system after there has been an accident. One of the proven ways of making workplaces safer is allowing right of entry to union officials, who can go in and inspect a site proactively to determine if it is safe. How are you finding those right-of-entry powers under the new Work Health and Safety Act?

Mr DEGUARA: Generally they are pretty much the same as before. However, we have seen some employers in recent times, even in government, to some degree frustrated with legalistic arguments about greater particulars, which is contrary to the actual WorkCover guide, as to the level of standard of entry.

Mr DAVID SHOEBRIDGE: Which government departments are you talking about? Do you want to provide some of those details on notice?

Mr DEGUARA: Yes, I can provide them separately.

Mr DAVID SHOEBRIDGE: Ms Maiden, part of the submission made by Unions NSW deals with the definition of suitable employment that is applied to work capacity assessments. One of the ongoing complaints, and I know my office receives complaints about this regularly, is the idea of there being a fictional job available for a fictional capacity of the worker. Can you explain how that operates in practice?

Ms MAIDEN: Yes, an admin person at the insurer looks at the file. They do not have to do extra medical tests or anything like that; they simply look at whatever paperwork is on file.

Mr DAVID SHOEBRIDGE: Because there is no requirement in the statute for them to be acting on evidence, is there?

Ms MAIDEN: No, that is right; there is no requirement for any normal checks and balances that you would expect in relation to such a significant decision about someone's weekly benefit. And of course there is no ability to challenge. You can engage a lawyer, but only if you do not pay them, to act on your behalf in relation to work capacity decisions—which is one of the most appalling elements. So you are basically depriving the worker of any ability to challenge the decision.

In terms of the way that it works, the insurer will look at a person's file. They might say that this person who was working on a construction site and has no real command of English—and we have seen this particular example of someone who had ruined their back and could not go back to work in construction—can go and be a shop assistant. They may be in a country town and the nearest shops may be 1½ hours away. So that would mean sitting in a car for 1½ hours, which is a problem for people with back injuries. That is not taken into account. They are told, "Well, you can travel 1½ hours." That is all for some fictional job that might exist in a country town. That does not take account of the fact that the worker does not speak English or have the skills to do that job. No employer is going to offer them that job. But, on that basis, that is work capacity that has been

identified—that is, yes; there are vacancies in retail work and this person has skills that could be employed in retail work. Therefore, their weekly payments are cut down to zero.

There is some administrative process they can go through to challenge it, but they cannot have any legal advice. And so they are cut off. They may then try to claim Centrelink benefits, but it may be that their partner earns too much and so they are not eligible for that. They may try to get a disability support pension. This is really ruining people's lives. This whole process is a fiction, as we say, because it does not result in anyone returning to meaningful work, or any paying job. All it does is cut off their weekly benefits.

Mr DEGUARA: For example, we had a person in the New England area who was asked to go for a job in Albury. The job did not exist. There was no vacancy, but they said that that person could be deemed suitable for that sort of employment. The way they work it out is based on a formula. It is just about making sure that they do not have to pay them any money, because there is a formula in the Act. If you get the proposed income up to the right level then you do not have to pay anyone.

The Hon. SHAOQUETT MOSELMANE: I have just two very quick questions, one in relation to your executive summary. You make a very damning comment in which you state that "WorkCover, rather than assisting in protecting injured workers, has become a tormentor of injured workers and a protector of unsafe work practices. WorkCover has failed to enforce the law and has failed to manage the scheme as the scheme's agent." Is it fair to say that, in your view, the system has collapsed?

Mr DEGUARA: In relation to those there are various aspects, but as far as health and safety is concerned it is quite common for a union official or a delegate or a worker to call up WorkCover only to find that WorkCover has already been called up by the employer and agreed with everything the employer said when it is an obvious breach of a code of practice or something similar. In relation to the workers compensation system, there are a number of times when people have been told either through the WorkCover Authority officers or through insurer agents very unrealistic—what has been described as bullying behaviour towards those injured workers. Injured workers do not have access to lawyers under this scheme. The scheme agents do have access to lawyers and they do use them. It is basically you go to a doctor's appointment three hours and 200 kilometres away or you lose your entitlements. That is what is being told to people.

Mr LENNON: Can I sum up this way: The system has not collapsed, the system works but in the eyes of working people of New South Wales the system is unbalanced. It is very unbalanced. They are not sure whether there is sufficient oversight of occupational health and safety [OHS]. I take Mr Shoebridge's point that we should all be focusing, as always, on prevention first and foremost. That is where the focus needs to be. It is clearly not happening. It is evident by what has been happening around the construction industry. That is point number one. The second issue clearly, as you have heard from my colleagues both in our submission and with their submissions today, when it comes to injured workers and particularly the questions of work capacity assessments the system is very unfair and unbalanced.

Mr DAVID SHOEBRIDGE: An injured worker against an insurance company has always been a David and Goliath battle, has it not? It is just that under this scheme David's slingshot has been taken away. There is really nothing.

Mr LENNON: The Bible has gone, otherwise I would check that one for you, Mr Shoebridge.

Ms MAIDEN: I know that our language is colourful but you really do hear of people who present with physical injuries—backs or arms or things like that—and the very process breaks them. They could have had a chance to get back to work but the process itself that they are made to go through injures them even further. You hear it every day.

The Hon. SHAOQUETT MOSELMANE: You might take this question on notice. Could you perhaps narrow down your 36 recommendations to three or five recommendations that you think we ought to make in our report?

Mr DAVID SHOEBRIDGE: That is our job.

The Hon. SHAOQUETT MOSELMANE: We will certainly do that, but if you could narrow down what you think is most important that would be helpful.

The Hon. SARAH MITCHELL: I am happy for you to also take this question on notice. I know you have touched on issues in regional areas in a couple of answers to questions asked by my colleagues. Your recommendation 26 looks at having people being able to attend doctors' appointments via telelink. If there are any specific examples in which you see a disparity between what your members are experiencing in regional areas as opposed to metropolitan areas that would be useful.

Mr DEGUARA: We have also attached the Macquarie University report, which has a bit on regional encounters with the WorkCover scheme. One of the difficulties you have in the regions is whilst you still can get injured at work and it is quite common for rural and regional people to get injured at work, your access to people who are qualified to deal with the workers compensation system is really very difficult. I used to regularly go to Armidale. At the university people had to go to a specialist in Newcastle or Sydney just to get a certificate. The local general practitioner would not see people without an appointment for two weeks or something. So how do you get a certificate? You do not actually get paid with WorkCover unless you have a current certificate, so you cannot retrospectively pay it. We can give you a list of examples.

CHAIR: You are happy to take that question on notice?

Mr DEGUARA: Yes.

Mr LENNON: I was just going to say I take your point, Ms Mitchell, because clearly agriculture is still a major issue when it comes to workplace injuries.

The Hon. PETER PRIMROSE: I have four questions that I will provide on notice. They are about commenting on the financial viability of the scheme, the current cap on medical expenses, statistical information and the operations of the Dust Diseases Board.

CHAIR: The secretariat will send you the details of those questions. Time has expired, unfortunately, but we thank for you being with us and assisting us in our deliberations. As I said, the secretariat will contact you about the questions on notice. If you can provide responses within 21 days we would appreciate that.

(The witnesses withdrew)

DENISE FISHLOCK, Chairperson, NSW Workers Compensation Self Insurers Association, sworn and examined:

PAUL MACKEN, Honorary Lawyer, NSW Workers Compensation Self Insurers Association, affirmed and examined:

CHAIR: Thank you for being with us. I note you have provided a written submission. Do you wish to make any brief opening comments?

Ms FISHLOCK: I would like to make a short address. Firstly, thank you for the opportunity to address you today in relation to the submission from the NSW Self Insurers Association. To commence with I would like to tell you what the employers—23 per cent of the New South Wales workforce—are looking for. It is a buzzword currently: deregulation. Self and specialised insurers attract red tape which detracts from the primary focus. We have this extra layer of WorkCover bureaucracy which impedes our resources and finances in doing our jobs. This is a layer which is specific to only self and specialised insurers. No other New South Wales business is required to undergo these subjective and bureaucratic audits.

Self and specialised insurers do not ask for anything. We are financially responsible and community responsible. What has been happening over the past 10 years is that WorkCover is imposing more and more requirements, compliance audits and guidelines on self and specialised insurers, who just want to manage workers compensation claims efficiently and in accordance with legislation. We are being hindered, not helped, by WorkCover. There is a lot Mr Macken and I could tell you but the three things that the NSW Self Insurers Association are seeking, and our submission covers these in more detail, are: we call for the abolition of work health and safety audits on self and specialised insurers; we ask that case management audits not be reintroduced as they do not provide value; and we say WorkCover guidelines should be minimal and developed where required by legislation only.

With work health and safety audits, self-insurers are audited by WorkCover only and they are placed on a licensed audit cycle. That cycle can be one year or three years. Employers covered under WorkCover's insurance companies are not audited. Self and specialised companies preparing for these audits are so concerned that they must pass the 114 criteria in these audits they engage expensive consultants to assist them. Many of these consultants are ex-WorkCover auditors. They pay $100,000 to $140,000 in consultancy fees just to prepare for a WorkCover audit. They are not paying for an audit; they are paying just to prepare for an audit. That includes getting their paperwork in order, having their staff coached, compiling statistical information and presentations for those audits.

One good example of an industry section in our membership seeking relief is local government. There are 14 self-insured councils, all spending a large amount of money in preparing for WorkCover audits. They are spending ratepayers' money where there is no evidence that this spending is providing value. Overall, the cost to business of these requirements amounts to hundreds of thousands of dollars and removes valuable work health and safety resources from the workplace. These audits are geared to documentation and process; not outcomes and business improvement. The more concerning issue is that they have no impact on the workers compensation risk.

You would think that safety audits and government resources would be better used on businesses where injury or death occurs but, no, these audits spend valuable time ticking boxes and reviewing documentation, organisational charts, first aid procedures. WorkCover commenced the process for case management audits about 10 years ago and this was a big mistake. They commenced auditing self-insurers who have a good record of managing claims and ignored claims management under their own control, resulting in a massive New South Wales deficit in 2012. Scheme agents have not been and are not measured under this audit process. Self and specialised insurers perform extremely well in claims cost management and evidence-based liability decisions, prompt payment of medicals and wages and durable and prompt return to work.

There has not been a case management audit conducted in 2013 as the audit tool was made deficient because of the legislative amendments. Guess what, the world did not stop. Injured workers would continue to be cared for under legislation and clearly it shows that you can stop a process for over 12 months and nothing happens.

CHAIR: Can I just interrupt you? Bearing in mind we have limited time, if that is a lengthy statement—

Ms FISHLOCK: There is only one more paragraph. The association says enough. We underwrite our own risk; we do not cost the Government anything and we have such high prudential requirements that efficient governing should be the issue and not paper trails and hoops.

CHAIR: You talk about the bureaucracy and so forth. Have you put these submissions to WorkCover?

Ms FISHLOCK: Yes, we have been talking to them about auditing. I have been chair for eight years so there have been many, many discussions on the value and cost of auditing.

CHAIR: Has anything specifically been put in writing to them?

Ms FISHLOCK: In relation to work health and safety audits, yes, I think we have. With case management audits we put in a lengthy response last November.

CHAIR: Would you like to provide us with a copy of that submission?

Ms FISHLOCK: Certainly.

CHAIR: And also the response you got from WorkCover?

Ms FISHLOCK: Yes, it was a one liner.

CHAIR: You might also like to make a comment on the response you received. Also, rather than speaking in generalities, could you outline specific ways that you think bureaucracy can be reduced without impinging on the safety and other requirements of the scheme?

Ms FISHLOCK: Yes, I can do that.

CHAIR: Would you like to take that question on notice?

Ms FISHLOCK: Certainly.

Mr MACKEN: Can I add for the benefit of the member that the issue of the work health safety and occupational health and safety audits, as they previously were, has been raised with WorkCover countless times over 15 years plus. The usual response from WorkCover is that they do it in other States so we need to do it here.

CHAIR: If you can give us detail in more recent times—

Mr MACKEN: No problem.

CHAIR: Rather than 15 years, but in more recent times.

Mr MACKEN: Sure.

Ms FISHLOCK: Certainly.

CHAIR: Perhaps over the past couple of years so we have specific detail of the detail you received, the specific responses and your comment on the responses.

The Hon. SHAOQUETT MOSELMANE: In your submission you say there are no specific concerns with the exercise of the functions of WorkCover, but throughout your submission and in your introductory statements the issue of auditing is raised.

Ms FISHLOCK: Yes.

The Hon. SHAOQUETT MOSELMANE: Is it not a requirement for WorkCover to monitor the way self-insurers operate?

Ms FISHLOCK: Yes, that is correct, but we already provide WorkCover with a lot of information on an annual basis so there is a 189 return that a self-insurer is required to submit to WorkCover every October that is quite lengthy.

The Hon. SHAOQUETT MOSELMANE: Do you supply them with the information that they actually seek?

Ms FISHLOCK: Yes, there is a work health and safety return that is required. It has the criteria that WorkCover sets and all businesses supply that information. We provide financial information and on a monthly basis we provide data electronically.

The Hon. SHAOQUETT MOSELMANE: They have to do the audit because it is part of their role; they are meeting their requirements as an authority, are they not?

Mr MACKEN: No. They do the auditing because they have included it as a licensing condition. The question as to why they do the auditing is frankly the point: Why do they audit self-insurers for work health and safety when self-insurers bear the direct risk of every penny that they spend on every injured worker? They are the one part of the scheme that actually has a direct incentive to have high standards of safety and that is the part of the scheme that WorkCover audits. The parts of the scheme that actually spend no money when they injure someone do not get audited.

The Hon. SHAOQUETT MOSELMANE: Is it an annual audit?

Mr MACKEN: It is annual if you are on an annual audit cycle; three yearly if you happen to get up to the exemplary standards that they ask and most health insurers do. But frankly it is money that is wasted.

CHAIR: But there needs to be an independent body to assess whether that is money that is wasted?

Mr MACKEN: If you do not accept what I say about that, yes. Can I say this: If auditing is something that is worthwhile for large employers, why would it only be directed at self-insured employers? If it is worthwhile, direct it at every large employer across the State and particularly at the ones that cost WorkCover money when they injure someone not the ones who do not cost WorkCover a cent.

CHAIR: You can flesh that out and get some material to us, can you?

Mr MACKEN: Sure.

The Hon. SHAOQUETT MOSELMANE: In terms of the money spent on auditing, where is it better spent? Can you recommend another area where WorkCover Authority could spend that money?

Mr MACKEN: Are you asking about where WorkCover could spend their money?

The Hon. SHAOQUETT MOSELMANE: Yes?

Mr MACKEN: The auditors who audit for safety for self-insurers are from the inspectorate division. They could be actually enforcing safety requirements across industry more broadly rather than spending their time auditing the companies who have the lowest risk at no cost to WorkCover. They could actually do their job as inspectors perhaps or audit those parts of the scheme which result in WorkCover paying money.

Mr DAVID SHOEBRIDGE: These work health safety audits are audits about the safety regimes and your compliance with the work health safety legislation? They happen on either an annual or three yearly basis, is that right?

Ms FISHLOCK: That is right.

Mr DAVID SHOEBRIDGE: If I understand your submission, you say that that kind of auditing should be in response to an identified problem rather than just a routine element of your licensing?

Mr MACKEN: Yes, if it has to happen at all. The critical considerations for licensing for self-insurance—self-insurance is a type of insurance; you are underwriting your own risk. The considerations relevant to whether you can or cannot underwrite your own risk should be purely prudential. They should have to do with whether or not you can pay as and when required. The work health safety audits have nothing to do with prudential risk; they are just an administrative burden imposed because of some sense that somehow it needs to happen, as I say, because other States do it. It is the lemming defence; they jump over the cliff so we want to jump over the cliff with them.

Mr DAVID SHOEBRIDGE: I ask about the guidelines. You express some significant frustration with the number and the complexity and, as I understand it, the common sense of the WorkCover guidelines. Can you respond to that issue?

Ms FISHLOCK: There are a lot of guidelines that WorkCover has created over the last 10 to 20 years and I think a lot of them are outdated. They really do not help insurer managed claims and often WorkCover uses those in a case management audit rather than giving us direction.

Mr MACKEN: About two years ago WorkCover conducted their own attempt to audit and rationalise the guidelines and guideline-like publications. There turned out to be well over 700 of them, many of which WorkCover did not even know existed at all and the auditing and review process involved essentially looking at every one of them, trying to correct them, amalgamate them and abolish them where possible. The suggestion we made at the time to the WorkCover Authority is quite simple. We said, "All you need to do is read the legislation and where you read the word 'guideline' draft something that is appropriate, rational and simple and then abolish every guideline except the ones you have drafted." Apparently that was a little bit too simple so they did not adopt the suggestion and they went on with the review process until it eventually got disbanded, and now we are left with people not knowing what guidelines are in force.

CHAIR: Are you saying that they investigated this? They did a review, they did an audit and then they abandoned—

Mr MACKEN: Partway through, the review process got abandoned.

CHAIR: Was any reason given for that?

Mr MACKEN: No, not to us.

Mr DAVID SHOEBRIDGE: It was probably a Federal guideline paper.

Ms FISHLOCK: Yes, a task force set up in 2012.

Mr DAVID SHOEBRIDGE: And you are bound by WorkCover guidelines in your role as self-insurers to the same extent that the licensed insurers are?

Mr MACKEN: Yes—probably more than the licensed insurers are, because self-insurers get case management audits. In other words, as part of their licensing conditions WorkCover also audits their management of claims by reference to the guidelines. So if they do not follow the guidelines they are marked down on an audit and if they fail an audit it impinges on their licensing conditions and the frequency of those audits to the point where eventually you can have your licence threatened.

Mr DAVID SHOEBRIDGE: But there was an issue raised by WIRO, and it has been raised by a number of participants in the scheme, about one particular guideline that WorkCover issued about decisions for internal reviews by insurers, which referred to what was said to be WorkCover's best practice decision-making guide, which never existed.

Ms FISHLOCK: That is right.

Mr DAVID SHOEBRIDGE: How did self-insurers deal with that?

Ms FISHLOCK: We were not consulted on that guideline at all.

Mr DAVID SHOEBRIDGE: You cover about 23 per cent of the workforce?

Ms FISHLOCK: Yes.

Mr DAVID SHOEBRIDGE: Are you routinely not consulted when guidelines are being formulated and issued?

Ms FISHLOCK: Only recently they did contact us. They are revising the claiming of workers compensation benefits. It is a 46-page document right now, and they have set up five working parties looking at the one document in sections and it looks like that document will now be 75 pages.

Mr DAVID SHOEBRIDGE: Are you on any of those—

Ms FISHLOCK: I am on one of them, and I have executive members on others. We are very concerned that, like Paul was mentioning, these guidelines have been revised and created, yet we need to go back to basics and say why do we have the guideline in the first place?

The Hon. PETER PRIMROSE: In terms of the consultative mechanisms that are available, are you on a number of those or all of them? With 23 per cent of the workforce it would seem appropriate that you should be represented.

Ms FISHLOCK: There is currently no consultative body between WorkCover and the association apart from I meet with Gary JEFFERY, or before that it was Geniere Aplin, on a monthly basis. I raise concerns on behalf of members; it is a one-hour meeting once a month.

The Hon. PETER PRIMROSE: Should there be a more formal—

Ms FISHLOCK: I think that would certainly be helpful.

Mr DAVID SHOEBRIDGE: So 23 per cent of the workforce gets one hour a month in terms of consultation with WorkCover on compo?

Ms FISHLOCK: That is correct.

The Hon. PETER PRIMROSE: And it is basically a failure?

Mr MACKEN: It has been a failure in the past.

The Hon. PETER PRIMROSE: It is a process which on the whole has failed?

Mr MACKEN: It is selective consultation. They consult when they think it is something that they have got enough time to consult about and sometimes the consultation appears at least to be simply for the purpose they consulted rather than to actually listen to what has been said about these guidelines and take on board those suggestions and change them.

The Hon. PETER PRIMROSE: Do you seek them out to consult?

Mr MACKEN: Always.

Ms FISHLOCK: We do have an executive committee meeting every two months and WorkCover are always invited to that meeting because it is the executive committee of 12 and in the past they have always sent someone from WorkCover—sometimes it may be Gary JEFFERY, other times it is Jason McLachlan, so down the line. But certainly there is also that mechanism there, but it is every two months.

Mr DAVID SHOEBRIDGE: One other concrete example might give some idea about the communication relationship with WorkCover. When the Government issued the first regulation at the end of last year to extend the period within which workers could have their medical procedures performed by an additional three months, what kind of consultation and notice were you given in that process?

Ms FISHLOCK: WorkCover have a weekly communication; it is an email that comes out on a Friday night late, and it was mentioned in that communication, but no consultation in relation to it.

Mr MACKEN: No consultation, and on the evening of Friday the 20th it was broadcast to members of the association by email.

Mr DAVID SHOEBRIDGE: So you got an email on Christmas Eve, basically?

Mr MACKEN: Yes.

Mr DAVID SHOEBRIDGE: And that was your consultation with WorkCover on it?

Ms FISHLOCK: On that particular issue.

Mr MACKEN: There was no consultation about it. That was when they were told about the fact of it having been issued.

The Hon. SHAOQUETT MOSELMANE: They were just informing you?

Ms FISHLOCK: Yes, informing us.

Mr DAVID SHOEBRIDGE: What practical difficulties did that give in terms of you and your business dealing with those workers who had those medical claims?

Ms FISHLOCK: I think self-insurers and specialised insurers are fairly proactive, so we were kind of looking at our claims and reviewing our claims and making strategies on those claims well before an advice from WorkCover.

Mr DAVID SHOEBRIDGE: But your strategy prior to that would have been on the assumption of one particular set of facts and then that completely changed with an email?

Ms FISHLOCK: Yes.

Mr DAVID SHOEBRIDGE: You would have had to change all of your strategies to cope with that?

Ms FISHLOCK: Yes, next year.

Mr DAVID SHOEBRIDGE: With no notice?

Ms FISHLOCK: Yes, there was not any notice for that particular announcement.

Mr SCOT MacDONALD: Is that 23 per cent expanding or contracting?

Mr MACKEN: One of the difficulties the association has raised with WorkCover on a number of occasions is the difficulty for new self-insurance licence applicants to become approved to have a licence. There have been essentially two new licences granted in about the last 10 years.

Mr SCOT MacDONALD: Is it prudential?

Mr MACKEN: It almost inevitably comes back to the work health and safety audit, and almost inevitably new applicants cannot pass the work health and safety audit at all. They are failed on that basis and therefore there are almost no new licences granted ever.

Mr SCOT MacDONALD: A significant barrier to entry. I hear your frustration, but is that necessarily wrong?

Mr MACKEN: Yes.

Mr SCOT MacDONALD: Why is that?

Mr MACKEN: Because the ability to underwrite your own risk as a self-insurer should only have regard to prudential issues, and from a prudential point of view these are organisations that have net tangible assets that mean that they are no risk; they have to take out a bank guarantee that guarantees 150 per cent of their liabilities so that even if they were at risk there would be no risk to those liabilities.

Mr SCOT MacDONALD: One hundred and fifty?

Mr MACKEN: One hundred and fifty per cent. So prudentially there is no risk at all. The work health and safety audit is something that is outside the issue of whether or not the company should be self-insured but imposed as a licensing condition. The suspicion of many members of the association is it is there for control purposes, not for purposes to deal with general and licensing issues.

Mr SCOT MacDONALD: On page 2 of your submission you point out that you are performing a lot better than the schemes, the licensed insurers and that sort of thing. Can you give me a minute on that? Why is that?

Mr MACKEN: One reason is fairly fundamental: because a self-insurer is paying the workers compensation costs of its actual employees. So when it comes, for example, to issues of return to work—

Mr SCOT MacDONALD: Less cross-subsidisation, is that what you are saying?

Mr MACKEN: Much less cross-subsidisation, but also when an employer is able to abrogate its financial risk for a workplace injury to an insurer it has less incentive to return somebody to work, particularly if they are not a premium sensitive employer where they get no extra costs whether they take them back or not—

Mr SCOT MacDONALD: The price signal is very alive?

Mr MACKEN: Exactly. But where a self-insurer employs somebody, getting them back to work is a priority because otherwise they pay more money; that is the bottom line. They would say too, and I think there is some justification, that they care more about actually managing those risks than helping the injured workers back to work. So there is a direct saving from those things. They perform better in terms of return to work rates and lower costs per claim and because, again, there is a direct financial incentive they generally have fewer claims and they manage disputes better—they manage every aspect of it better because there is that direct financial incentive.

Mr SCOT MacDONALD: To reiterate: your prudential requirements of 150—we heard from the two gentlemen with WorkCover before they are at 102 at the moment and they are aiming for, I think, 110 or so. That is quite a bit lower.

Mr MACKEN: Yes. There is no prudential risk that would arise under the current licensing conditions for a self-insurer, none at all, because of the bank guarantee and because of their net tangible assets requirements. There are no prudential risks. There is no reason why a company which meets the financial criteria should not be allowed to be self-insured. If they fail a work health and safety audit the only cost will be that if they become self-insured it will cost them more money because their safety standards are too low, and, frankly, their safety standards will improve when you grant them a self-insurer's licence because they are going to want to save money.

Mr SCOT MacDONALD: A difficult question but can you just make a quick comment about why they often fail or can fail or have failed in the past? Is there a group of problems?

Ms FISHLOCK: With the work health and safety audit?

Mr SCOT MacDONALD: In the audit.

Ms FISHLOCK: It requires a management system. So WorkCover come in and audit a process system and if the system is not in place or it is not mature enough they often do not pass.

Mr SCOT MacDONALD: So you are saying admin, back office—

Ms FISHLOCK: This is the new applicants?

Mr SCOT MacDONALD: —not on the workplace?

Ms FISHLOCK: No.

Mr SCOT MacDONALD: They fall down on the back office.

Mr MACKEN: Paperwork, paper trails.

Ms FISHLOCK: Administratively.

Mr SCOT MacDONALD: Again, I hear your frustration about the audit.

CHAIR: And that involves substantial time and so forth on your part.

Mr MACKEN: A huge amount of time. Internal resources from the work health and safety professionals within the organisation, external resources in terms of trying to make sure that compliance is in place before the audit takes place and then, of course, all the resources associated with the WorkCover inspectorate and the company, and often the directors of the company, and senior management of the company engaging in that process—hundreds of thousands of dollars.

Mr SCOT MacDONALD: Even if they cannot satisfy what I think you want—that is, no audit—are there any recommendations you can come back to the Committee with in terms of making that more practicable and simple? Maybe spot checks or something along those lines? If you are not going to get everything you want, which might be no audit, is there any sort of happy, practical ground?

Mr MACKEN: Just very simply, no audit without a trigger—for example, a self-insurer that has three serious incidents in the space of a year audit, otherwise no audit, or something like that.

The Hon. PETER PRIMROSE: On page three of your submission you mention Western Australia. Do any other States operate like Western Australia? Would you like to elaborate on what the system is there and why you think that is appropriate?

Ms FISHLOCK: I am not aware of any other States. I think most States have some sort of auditing process. It is very different in each State. This is driven because they are all working together under HWCA to look at a centralised model perhaps. Western Australia though has not ever had work, health and safety audits. Their safety statistics are printed and published, and they are very good. In relation to whether other States are not audited, I think the only other one may be Northern Territory.

CHAIR: Can you supply the Committee with those statistics?

Ms FISHLOCK: Yes, that was directly from a published document. So I can certainly provide you with the references.

The Hon. PETER PRIMROSE: The Safe Work Australia comparison of work, health and safety and workers compensation schemes, fifteenth edition, may be worthwhile if you can give us some of those statistics.

Ms FISHLOCK: Yes.

The Hon. PETER PRIMROSE: In your submission you state, "There is a clear conflict between the business of insurance and the business of legislative administration. The WorkCover Authority of New South Wales cannot function as both." How do you recommend that issue be addressed?

Mr MACKEN: The simple way is to separate the functions. If the WorkCover Authority is going to operate as the nominal insurer and therefore underwrite a scheme that pays out benefits, the WorkCover Authority should not be drafting the guidelines that direct how those benefits are or are not paid and how cases are managed. They are paying out the money; they should not tell themselves how to pay out the money and when to pay out the money. It is a conflicted process and quite simply they should be separated.

Ms FISHLOCK: I would agree with that.

Mr DAVID SHOEBRIDGE: Have you read the WIRO submission?

Mr MACKEN: The initial submission, yes. I think it has done a supplementary submission.

Mr DAVID SHOEBRIDGE: Would your observations of how WorkCover and the scheme operate be consistent with the WIRO submission?

Mr MACKEN: Reasonably consistent, not entirely consistent necessarily. One of the frustrations—we did not address this in our submission—associated with the current regime, for want of a better word, for dispute resolution is that there is a multi-tiered, multi-faceted dispute resolution process that in weekly compensation goes from a decision to an internal review to a WorkCover merit review to a WIRO oversight review and to the Supreme Court, and everyone gives up and is really annoyed about. In terms of lump sum compensation, that goes from a dispute where you cannot negotiate between yourselves, off to the Workers Compensation Commission, off to a doctor, off to a medical appeal panel and off to the Supreme Court if you think everybody has made a mistake. In terms of primary liability disputes, you go to the Workers Compensation Commission, to an arbitrator, to a presidential member and to the Court of Appeal if everybody thinks there has been a problem. It would make perfect sense to rationalise the dispute resolution process. It would be nice, for example, if you just went to one shop to get those disputes resolved, and it would not be particularly difficult.

Mr DAVID SHOEBRIDGE: Maybe have an internal review and then if you do not agree you go off to either WIRO or the Workers Compensation Commission?

Mr MACKEN: You have a decision and if someone has a problem with the decision they go to the Workers Compensation Commission or an equivalent body. It would not even have to be the Commission. If it is medical you go to a doctor, if it is not you make a decision.

Mr DAVID SHOEBRIDGE: And that body can refer you to the appropriate area?

Mr MACKEN: Exactly. It would simplify the whole thing.

Mr DAVID SHOEBRIDGE: What about the merit review process? How much experience have self-insurers had with the merit review process from WorkCover? That is the third stage in an unrepresented worker's travel through the workplace capacity assessment dispute, is it not?

Mr MACKEN: Yes, some experience. The delay at the moment is becoming somewhat protracted but in general terms the merit review process has not presented particular difficulties other than delay to self-insurers in my experience.

Mr DAVID SHOEBRIDGE: Is the delay that WorkCover is talking about a four-month delay? Is that roughly the same experience that you have had or do you want to take that question on notice?

Mr MACKEN: That is what it has become, roughly. Obviously in the early stages it was less, now it is up to about four months.

Mr DAVID SHOEBRIDGE: So pretty much WorkCover failed to put in place systems to deal with the inevitable surge in those kinds of applications?

Mr MACKEN: Well when you have got that three-tiered process the choice—

Mr DAVID SHOEBRIDGE: That is three of four.

Mr MACKEN: Three of four, the choice for an aggrieved worker is just to keep going through the process until it is exhausted. Frankly, I do not understand why anybody would anticipate that they will not do that in situations where their benefits are being cut off or reduced. Why would they not? That is the only way in which they can try and restore what they may believe to be an entitlement. Whether they have got it or not is a different thing. So inevitably it is going to go to merit review.

Mr DAVID SHOEBRIDGE: What does that mean in terms of costs for claims handling from your side of the record?

Mr MACKEN: They are substantially increased and the resources required are substantially increased. The first decision you make on that process and the internal review decision essentially requires a workers compensation claims officer to write a judgement. With the greatest respect to their qualifications, that is not what they have been trained to do.

Mr DAVID SHOEBRIDGE: So you have actually found those 2012 reforms, so far as they set up the workplace capacity assessment, as an administrative burden on your clients?

Ms FISHLOCK: They are certainly very complex. They have not been simplified.

Mr MACKEN: Burden is a very kind word.

Mr DAVID SHOEBRIDGE: What word would you use?

Mr MACKEN: Nightmare.

Mr DAVID SHOEBRIDGE: There was some discussion earlier about the expansion of self-insurers. If I understand it, one of the philosophical concerns about the expansion of self-insurers is that self-insurers inevitably tend to be good risk. Large entities with very established systems, responsible employers, become self-insurers. They are the sort of low-risk part of the workers compensation market. If that continues to expand the rump that will be underwritten by the public scheme will be the high-risk smaller employers. Would you think that is some of the reason why there is reluctance in WorkCover to expand self-insurers?

Mr MACKEN: It might be a perception but it is not a reality. There are abbattoirs that are self-insured. They are the highest risk type of industry you get but they are competently able to self-insure, do it effectively and efficiently. Transport companies, lots of high-risk industries, are self-insured. They do not actually detract from the scheme, they take ownership of their own risk, their own personnel, their own obligations and they make it work efficiently and effectively without the assistance, such as it is, from the nominal insurer.

Mr DAVID SHOEBRIDGE: In terms of the work health and safety audits that you were talking about, has your experience been that any positive recommendations have come out of them or is it just purely a paper thing?

Ms FISHLOCK: I think that audit recommendations are often looking at improvement. Sometimes the improvement is around document control and better organisational charts. That does not help safety in our businesses.

Mr MACKEN: There may be elements of it that, on occasion, do bring improvement, but the overwhelming experience is that safety outcomes are not positively affected by the audit process.

Mr DAVID SHOEBRIDGE: You argue that the cost-benefit analysis is not there for these reviews without a trigger.

Mr MACKEN: No, it is not.

The Hon. SHAOQUETT MOSELMANE: On page 5 of your report you make reference to the injury management plans. You say that they are almost always entirely unread by the injured worker or the medical practitioner, that they become an object in themselves, and that they are effectively bureaucratic nonsense and impede the smooth return to work by the worker. What do you recommend in that situation?

Ms FISHLOCK: Injury management plans are required to be created when an injury is significant. The insurer puts the document together with information about a strategy for that worker and sends it to all the different parties. It is supposed to promote compliance and communication, but we have found that it is another layer of paperwork that does not seem to have a lot of outcomes.

The Hon. SHAOQUETT MOSELMANE: Is it being ignored?

Ms FISHLOCK: Yes. The return to work plans have an outcome. The injury management plans that insurers are required to produce do not seem to have outcomes. It is an exercise that often is ignored.

The Hon. SHAOQUETT MOSELMANE: Have you made that submission to WorkCover?

Ms FISHLOCK: Yes, I have.

The Hon. SHAOQUETT MOSELMANE: What was their response?

Ms FISHLOCK: They see the injury management plans as a process that can achieve outcomes and that has been in place for some time. There has not been any change in their thinking.

Mr DAVID SHOEBRIDGE: I have a question about a very specific issue, a disagreement between a worker and one of your insurers about a lump sum, a section 66 benefit. The worker might get a medical report from a WorkCover approved medical specialist that says the worker is entitled to the equivalent of $12,000. One of your insurers will get a report that says the worker is entitled to $14,000. Then there is the inability to agree on a compromise without having to go through a very expensive process that includes the Workers Compensation Commission and a review process. Can you speak to that?

Mr MACKEN: You raise two elements of dispute resolution. One is the ability to cut the baby in half, so to speak, between impairments. The rationale behind it is that when you apply the Australian Medical Association fifth edition guide and the WorkCover guidelines to the assessment of impairment, every doctor who does it will come up with one result.

Mr DAVID SHOEBRIDGE: That is why there are two approved medical specialists with different results in the first place.

Mr MACKEN: I have seen cases where there have been five and they have all come up with a different assessment. The guides are supposed to be objective so that everyone comes up with the same answer. WorkCover says, "There has to be a right answer, so just pick the right answer and let us all move on." They will not let you split the difference or argue between various points. It goes back to a philosophical view held by WorkCover that people should not be able to settle disputes generally because it is a pension scheme and people should get what they are entitled to or not. That has been a problem the whole way. It is a problem in impairment assessments and it is a problem with the scheme generally.

It is no secret that the association has been pushing for years to reintroduce the concept of commutation, where an injured worker can be enabled to settle their statutory compensation rights, take hold of their own destiny, get a financial payment for giving up those rights and move on with their life. It is a very good idea for injured workers. It is a very good idea for self-insured companies. It is a very good idea for the scheme generally. It is an idea which WorkCover does not like.

Mr DAVID SHOEBRIDGE: Have you seen the most recent actuarial report, which shows that the number of commutations has absolutely collapsed following the most recent reforms?

Mr MACKEN: It is almost impossible to commute your liability now because of the seven hurdles in the legislation. It means that the ability for badly injured workers to recapture their life and have dignity and work capacity restored to them is taken away. It means that the ability for insurers to properly assess the risk and pay out that risk and take up the administrative and other burdens of managing a claim is also taken away. It makes no sense. It is a bad law.

Mr DAVID SHOEBRIDGE: It goes against other moves in the disability area, where the idea is to empower individuals and insurers and let them make their own decisions.

Mr MACKEN: Absolutely.

Mr DAVID SHOEBRIDGE: With workers compensation they are stuck forever in a bureaucratic nightmare.

Mr MACKEN: Absolutely.

Mr DAVID SHOEBRIDGE: You were going to speak about the lump sum.

Mr MACKEN: If you cannot agree to compromise between a 6 per cent and an 8 per cent impairment, the inevitable cost is that somebody fails on application and goes to an improved medical specialist, at a price of $1,400, for them to examine and try to find an impairment assessment that everybody likes. In the meantime, there are transactional legal costs of another $10,000 and all of the administrative costs associated with it because you cannot split the difference. It does not make any sense.

Mr DAVID SHOEBRIDGE: This is purely because of a WorkCover guideline.

Ms FISHLOCK: Yes.

Mr MACKEN: A directive, yes.

Mr DAVID SHOEBRIDGE: If you want to contest a claim, you have to spend $10,000 to $20,000 to resolve a $2,000 difference.

Mr MACKEN: Yes.

Mr DAVID SHOEBRIDGE: When you say to WorkCover, "This is insane; will you allow us some flexibility?" what do they say? I am putting words in your mouth.

Mr MACKEN: You are.

Mr DAVID SHOEBRIDGE: You might use a more polite form of expression.

Mr MACKEN: I do not think we have addressed that with WorkCover. I do not think we have gone to them about it. It has been in place for so long.

Ms FISHLOCK: It has been in place for a long time.

Mr DAVID SHOEBRIDGE: Is this one of the ongoing, chronic problems in the scheme?

Mr MACKEN: It is one of the things that show a disconnection between the regulator and reality. They are not case managers. They do not manage workers compensation claims themselves, so they do not acknowledge the reality of dealing with somebody who has had an injury and somebody who is trying to manage the statutory entitlements and return to work outcomes for that person. There is disconnection between the regulator and that process.

Mr SCOT MacDONALD: I know I am repeating myself, but I want to stress that, as you see it, the main barrier to entry for self-funded entities is that audit.

Mr MACKEN: Yes, the workplace health and safety audit.

Ms FISHLOCK: In the eight years that I have been chair, the only financial one that I know of has been a hotel group owned by an overseas company. Decisions on all the rest have been due to workplace health and safety audit results. They have been invited to reapply once their workplace health and safety system is deemed to be more mature or they have put more money into improving it.

Mr SCOT MacDONALD: Would you say that WorkCover is not keen on it?

Ms FISHLOCK: Self-insurance?

Mr SCOT MacDONALD: Yes.

Ms FISHLOCK: They say they are.

Mr SCOT MacDONALD: But the reality is otherwise.

Mr MACKEN: The reality is that their actions seem to suggest that they do not like self-insurance. Their words suggest that they are big fans, that they are well in favour of it and that they love it deeply. Their actions are not consistent with that.

Mr SCOT MacDONALD: I have similar questions to those of Mr Shoebridge about the size and character of self-insurers. Would self-insurers be an amalgamation of pharmacists or a large pastoral group? Are those sorts of things possible?

Mr MACKEN: For self-insurance, no; for specialised insurance, yes. For example, Guild is a specialised insurer that covers all the pharmacies. They are all different entities but they are covered by the specialist insurer that understands the specialised risk and provides them with that service. Hotel Employers Mutual does the same thing for hotels. Groups of organisations with common interests, risks and issues can get a specialised insurer's licence. A self-insurer's licence needs to apply to a company or a group company if they get a group licence.

Mr SCOT MacDONALD: So in local government it is very stable and manageable, but in the building industry, where people work for a short term, practices might not be all that solid. Is there a place for both?

Mr MACKEN: In what sense?

Mr SCOT MacDONALD: Can the self-insurers manage those industries where there is transient employment?

Mr MACKEN: The Skill Group was granted a self-insurer's licence several years ago. They are in part a type of labour hire organisation that manages those issues. They manage their safety properly, manage their risk properly and look after their employees properly.

CHAIR: Thank you both for being with us today. Your input is valuable to us and will assist us in our deliberations. The secretariat will inform you of any questions on notice. The Committee would appreciate if you could get your responses back to us within 21 days.

Ms FISHLOCK: Certainly. Thank you for the opportunity.

Mr MACKEN: Thank you very much.

(The witnesses withdrew)

STEVE TURNER, Assistant General Secretary, Public Service Association of NSW, affirmed and examined:

CHAIR: I welcome Mr Turner.

Mr TURNER: We cover people employed by the WorkCover Authority and we have made a submission.

CHAIR: Would you like to add to that submission?

Mr TURNER: I think everything is covered in the submission. Workplace health and safety is regulated by the WorkCover Authority and workers compensation. We think there need to be good synergies between the organisations. They complement each other and should remain within a single organisation to help to develop and support each of the roles of the organisation. There have been some perceived biases in WorkCover and for that reason we have put forward various proposals about how clear protocols would avoid any perceptions or interpretations of bias in conflicts within the organisation.

We believe there needs to be greater resourcing of the inspectorate division, which has been run down in recent years. There has not been a new inspector for some time and some inspectors were made redundant last year. There needs to be a better focus on cumulative occupational health issues in workplaces: workplace stress, mental disorders, contact with chemicals in the workplace. These issues need to be better resourced with the inspectorate developed to investigate. We have recently given a submission to the building inquiry, which covers a lot of areas. We also believe there needs to be a WorkCover board with tripartite representation and regular meetings with WorkCover to help ensure compliance and that all people involved in this area are working together.

CHAIR: In your submission you say you support the Unions NSW submission to the inquiry.

Mr TURNER: Yes.

CHAIR: They have 34 recommendations and I notice you have 29.

Mr TURNER: Yes.

CHAIR: I have not done a cross-reference of them. Are they the same?

Mr TURNER: I cannot answer that directly, but they complement each other.

CHAIR: Have you put in writing to WorkCover the recommendations relating to WorkCover in the submissions?

Mr TURNER: We have had various discussions with WorkCover over recent years, primarily arising from bullying and what we believe to be management practices that could be improved. Our submission deals with building and developing management and the structure of WorkCover. We had a lot of discussions with WorkCover about the recent restructure of its work health and safety division, especially when it became clear inspectors could be made redundant. In terms of more generic questions, we have had discussions more with the Minister than with WorkCover directly.

CHAIR: Is there a paper trail of the submissions you have made to WorkCover and have you had any written responses?

Mr TURNER: I would have to check. We gave detailed evidence to the inquiry on bullying covering what we had submitted in the past, what is in writing and what is not. Whether all points raised in this submission are in writing, I would have to check.

CHAIR: We have 29 submissions and a number of them might not be relevant to WorkCover. Can your association go through them and ascertain which issues can be dealt with by WorkCover and then indicate the extent of negotiations on those issues and the view of WorkCover so we can understand what has taken place?

Mr TURNER: I cannot do that today, but I can undertake to have it completed.

CHAIR: Can you take it on notice?

Mr TURNER: Yes.

CHAIR: That would be helpful. Have any of your recommendations been accepted? You may have made recommendations apart from the 29 in your submission and some of those may have been satisfactorily resolved.

Mr TURNER: We have raised issues with WorkCover that have been satisfactorily dealt with. We believe some issues were agreed to but they have not been implemented quite as agreed—I addressed that in the other inquiry. In relation to the 29, I can prepare a document and get it to you. I did not write this submission, and the person who wrote it has left the association, so I do not have the detail in my head.

CHAIR: Please reconstruct what has taken place as best you can, specifically in relation to these recommendations.

Mr TURNER: I can do that.

The Hon. SHAOQUETT MOSELMANE: The inspectorate division has been run down, as you said, and you recommend the engagement of additional WorkCover inspectors. Is there a way to better utilise existing inspectors or do more inspectors need to be employed?

Mr TURNER: The answer is multifaceted. We address it in the submission to the extent that the inspectorate role has changed and expanded in recent times and therefore extra resourcing and training would assist in that changing role.

The Hon. SHAOQUETT MOSELMANE: What were the key changes?

Mr TURNER: Primarily increasing the powers of the inspectorate and some of issues they look at. They are now involved in the work health and safety side as opposed to just safety in the workplace. There is an issue about the independence of the inspectors. In the past some direction has been given to inspectors and we have been told about this—we can get further information on it, if you wish. Having more inspectors would help with these issues. When inspectors have gone to the workplace to look at stress-related or bullying issues, we believe there have been instructions not to deal with those types of issues.

The Hon. SHAOQUETT MOSELMANE: If there is information you would like to give us as a confidential submission, you have the opportunity to do so.

Mr TURNER: Yes.

The Hon. SHAOQUETT MOSELMANE: On page 6 you say that the workers compensation legislation of 2012 had a profound negative impact on injured workers. Please elaborate.

Mr TURNER: I would rather take that on notice, because these comments about the changes to workers compensation came from the person who has left the association, so I would like to make sure what I say is correct. That is why I did not address any of the workers compensation side in my opening statement.

The Hon. SHAOQUETT MOSELMANE: Sure.

Mr DAVID SHOEBRIDGE: You do not advocate the splitting of the workers compensation oversight and regulation from the work health and safety oversight and regulation. You think there are benefits from having the two together. Is that right?

Mr TURNER: We believe there are benefits in keeping it together and synergies in keeping it together.

Mr DAVID SHOEBRIDGE: What are the particular benefits of having the two together?

Mr TURNER: One side of the issue—occupational health and safety and dealing with safety in the workplace and occupational issues arising from workers compensation, for instance—all lead to each other; what can be inspected better in the workplace to prevent workers compensation injuries or better resource to ensure that you prevent the injury in the first place.

Mr DAVID SHOEBRIDGE: So you see it as being the whole spectrum from providing as safe a workplace as is possible to seeing the consequences of an injury and feeding that back into a safe workplace.

Mr TURNER: That is right, and it involves training and education to prevent injury and to prevent compensation. Therefore, it is the synergies of all of that interacting with each other.

Mr DAVID SHOEBRIDGE: You might wish to take this on notice, but what about in the workers compensation part of it where you have the nominal insurer, which is WorkCover, which has all the risk and concern about the finances as well as being the regulator in that sphere? Is that an area that you do not wish to canvass other than on notice?

Mr TURNER: I will take it on notice, which is probably the best; but to begin, it goes back to that synergy of, if you are the insurer and you know what is going on, you see what is arising. You can also start to deal potentially better with the prevention in the workplace.

Mr DAVID SHOEBRIDGE: Can I ask you about the inspectors and the roles of inspectors. Concern has been raised in a number of the submissions that, effectively, if an inspection is getting out there and proactively dealing with an employer and making a whole series of recommendations about what can and cannot be done in the workplace, which is then wholly or partially implemented, and then there is an injury or a significant problem at work, that puts the inspector in a very compromised position, if the inspector has to consider whether or not to prosecute because a lot of what the inspector has been saying and engagement of the inspector might be up for scrutiny in a prosecution. What you say about that potential conflict?

Mr TURNER: Almost any organisation has that type of conflict in roles. There are two ways of managing it: You could have an alternative inspector go and look at the injury and the accident later on so you have an alternative report coming from another inspector; there is also the benefit of the inspector being able to say, "Well, I went to that power stationed. I warned them that hopper, unless it was fixed in a different way, was going to cause an injury. Now it has caused an injury, so now I can directly personally give evidence on why this employer was more negligent than could have been by sheer accident."

Mr DAVID SHOEBRIDGE: That latter scenario puts in place the prospect of employers not wanting to invite WorkCover onto their premises in the first place because who you invite in for positive advice might actually end up prosecuting you for failures. That creates that tension, does it not?

Mr TURNER: Potentially, but it could also lead to the employer taking good advice and therefore the injury not occurring, which means that you have built on the experience of the inspectorate working with workplaces and employers.

Mr DAVID SHOEBRIDGE: Do you think there is some benefit in considering Chinese walls within that part of WorkCover so that inspectors who are going out and engaging with people to try to make positive change and identification in the workplace are coming from an entirely separate pool from the inspectors who go in and consider prosecutions?

Mr TURNER: That is another possibility. That supports our submission that the inspectorate ought to be enhanced and better resourced. At one point of the submission we talk about if you train the inspectors in different roles and then rotated them through the various activities, on one particular event, for example, the same inspector would not have to deal with both advice and prosecution, but they could learn from rotation through the different aspects of the role.

Mr DAVID SHOEBRIDGE: As I understand your submission, the expansion of duties from inspectors that have come about with the work health and safety changes probably makes the need for that division of responsibilities, and expansion of the inspectorate, more pressing rather than less.

Mr TURNER: It certainly makes it more pressing, yes, so that it can properly resource the various roles that have been put to the inspectors, or to the inspectorate, and onto WorkCover through those changes.

The Hon. SARAH MITCHELL: I wish to go back to the issue of stakeholder consultation, which is something that I raised with previous witnesses earlier today. Your submission makes a few recommendations in terms of developing a board in eight, nine and 10 of the specific recommendations I am looking at. But just in general terms, how are you finding your consultation with WorkCover as an organisation? Do you feel you are given information that you need, that there are timely responses to any of your inquiries, and can you give us a bit of an insight from your perspective into how that is operating?

Mr TURNER: We have had better consultation with WorkCover in the past. Our submission says that we ought to move back towards that level of consultation where there is more regular consultation with unions, with the Unions NSW, in a tripartite approach so that everyone is around the table at the same time discussing issues so that they can be more effectively addressed and better answered. We have had different responses in our approaches to WorkCover, depending on the issues, and we have also had some very bad responses as we have laid out in the bullying inquiry. That question is hard to answer because it is dependent on the issue and what is going on, but we believe that WorkCover could move back to better consultation generally with employers and with unions.

The Hon. SARAH MITCHELL: So you feel there is definite need for improvement in that area?

Mr TURNER: Yes.

The Hon. SARAH MITCHELL: I have just one more question, and I am happy for you to take this on notice, given that you have mentioned you did not actually write the submission. In relation to return to work plans, one of your final recommendations is that WorkCover should actively intervene when notified of a dispute over a return to work plan. You say that you found in a number of cases the development of plans had been hindered by the employer's unwillingness to provide suitable employment. Are you able to provide a bit more detail on some of those examples? I am happy for you to take it on notice.

Mr TURNER: I take it on notice to give you detail on it, but it is where we have found that people who are trying to negotiate a return to work plan and the employer has not necessarily taken notice that the person could return to work with alternative duties.

The Hon. SARAH MITCHELL: Yes.

Mr TURNER: And the employer is more reluctant to give alternative duties. Therefore, to get a return to work plan when the employer will not accept the concept of alternative duties, that leads to a breakdown in discussions completely. It is those types of issues that we are saying need to be looked at.

The Hon. PETER PRIMROSE: Thank you, Mr Turner. Can I take you to page eight of your submission so that I can get you to elaborate on one point. You state that under the 2012 changes to weekly benefit calculations a number of public sector pay offices are having difficulty understanding and administering the formulas for calculating the weekly compensation payment. Could you elaborate on the consequences of that and also what you think needs to be done about it?

Mr TURNER: To provide a detailed response, I would rather take that on notice and then we can get back to you, but we have many examples where there have been incorrect payments made because of faults or mistaken calculations. I am not sure whether that is an issue of the department or Businesslink, if they are the ones who are doing the weekly pays, and that has then led to issues of people either not receiving payment or receiving incorrect payments that they have to repay. If you are already on a reduced wage, that causes more stress on someone trying to recover from an injury. It is those issues. But in terms of the specifics of each type of incorrect occurrence, I would have to take that on notice.

The Hon. PETER PRIMROSE: Please take this question on notice. I am more interested in the complexity consequences. You have highlighted some of them but, in particular, they will highlight those consequences. What recommendations need to address these in terms of the formula or the practice in relation to overpayment? I ask you to address those issues.

Mr TURNER: I will take that on notice.

The Hon. SHAOQUETT MOSELMANE: In recommendation 20 on page 7 you recommend that WorkCover holds the insurer and insurers' agents accountable for a failure to comply with the legislative requirements for processing provisional liability. I would have thought that is something that it would have been doing already?

Mr TURNER: Yes. Can I take that on notice? I too would have thought it was something they were doing already. But that would have come directly from our welfare officer and I will just clarify why we are raising the point again.

CHAIR: We are ahead of schedule, which is testimony to your succinctness in answering questions.

Mr TURNER: Or the ability to take more on notice. Thank you very much.

CHAIR: Thank you for attending. We look forward to your responses.

(The witness withdrew)

(Luncheon adjournment)

ASHLEY WILSON, Director, Hearing Care Industry Association,

MICHAEL DAVIS, technical expert,on WorkCover, HearingLife, and

GRAHAM HOLDGATE, private citizen, affirmed and examined:

CHAIR: Thank you for attending; we much appreciate you being here. Would you like to make a short opening statement? We have your submission, but there may be something you want to add to that.

Mr WILSON: Yes, thank you very much, Mr Chairman, and I also thank the Government for organising this opportunity to present evidence. For the benefit of everybody here today, I am also the Managing Director of Hearinglife, a company that provides hearing care testing, devices and rehabilitation services to thousands of Australians, the current president of the Hearing Aid Manufacturer and Distributors Association of Australia, and I am a qualified and former practising audiometrist or hearing care clinician.

As the Committee would be aware from our submission, the Hearing Care Industry Association represents providers of services and devices for thousands of hearing impaired Australians nationally, including those who suffer from industrial deafness. Our association's members help their clients make informed choices about their hearing. We appreciate that your Committee has very broad terms of reference to consider for this inquiry. However, we would like to draw your attention in particular to the consequences of recent reforms of the NSW Workers Compensation Scheme for those with work-induced hearing loss. In short, I am here today to seek remedy to a wrong that needs to be put right.

I invite you all to imagine sitting here, keen and willing to participate in your job as committee members, but simply not being able to hear clearly, if at all. I dare say you would feel frustrated, depressed, angry, embarrassed, indecisive and socially isolated. If this situation were difficult to comprehend, you would be forgiven, because until we are truly in someone else's shoes it is often hard to fully appreciate what life must be like for another with a hearing loss. It is one thing to be ignorant to the plight of someone with work-induced hearing loss. However, it is another thing entirely to deny those who we know are suffering and eligible for workers compensation with a remedy which could restore and maintain their capacity to have a productive, fulfilling working life, and to be connected to their families and communities; denying them access to compensation and rehabilitation through a scheme that is actually intended for that very purpose, for what is a workers compensation scheme that does not compensate workers for injury that lasts a lifetime? I expect that if you were one of those people with work-induced hearing loss, when you finally did get to find out about recent changes that do not pay for the replacement of hearing aids or batteries or necessary rehabilitation treatment after the first year, you would be highly dissatisfied.

In my hands I have a typical hearing aid and a packet of hearing aid batteries. These devices are compact yet powerful. They are marvels of modern technology. Australian science, ingenuity and innovation have put this country at the forefront of restoring hearing to the community. Hearing devices, like mobile phones, are improving, becoming more robust and getting smaller over time. We now have technology whereby a hearing impaired person can put a hearing aid into their ear and leave it there for up to three months. There is no visible sign that a person is hearing impaired, which can be important for some people as, in some cases, there is still a stigma attached to wearing a hearing device.

Hearing aids are not the same as other prosthetic devices, some of which can last a lifetime. Hearing aids have a limited life, usually about five years, and once they become damaged through wear and tear or become obsolete they are unusable. Their batteries need replacing on a relatively regular basis and this is, frankly, dependent on how often the hearing aids are worn. People with noise-induced hearing loss usually need a device for each ear. The retail price for hearing aids can range from $2,000 to $10,000, binaural or for both ears.

Combined with rehabilitation treatment services, those workers who are suffering from noise-related hearing loss have a high chance of fully participating in the workforce and in normal social and family activities, not becoming a burden on our governments—State or Federal—through our tax system, social security and other costly healthcare related services. This is important because research tells us that untreated hearing loss has been statistically associated with depression, social isolation, decreased cognitive function, decreased psychosocial well-being and higher mortality rates. There have been recent studies that have also shown an

increased risk of Alzheimer's disease. The sensory function of hearing is seen as a strong predictor of cognitive function in elderly people, as found in the research conducted over the last 10 years.

It is good that the New South Wales Government has reviewed the Workers Compensation Scheme as everyone has an interest in it being effective and cost effective, but recent changes have been unprecedented and we believe have been a step too far. Since 1 January this year WorkCover no longer covers the cost of a replacement hearing aid or the cost of batteries or repairs of hearing aids after the first 12 months of the worker suffering noise induced hearing loss. We understand this restriction does not exist in any similar scheme in any other part of Australia. I would like to provide you with some figures for comparison: The average hearing aid price compensated through the New South Wales Workers Compensation Scheme as of February 2013 was $4,800 binaural, or both ears; batteries were compensated at $107,000.30 per hearing aid and repairs were compensated at $342.50 per hearing—

Mr DAVID SHOEBRIDGE: —I think you got the battery figure wrong.

Mr WILSON: Did I?

Mr DAVID SHOEBRIDGE: It has a heck of a battery.

Mr WILSON: Sorry, I stand corrected, I apologise, batteries were compensated at $107.30 per hearing aid. As of January 2014 the charges were changed to $5,000 per binaural hearing aid for one issue only, batteries are now compensated to $110.60 per ear for the first 12 months, and repairs are now compensated up to $364.70 within the 12 months. However—this is a critical point—the very significant point now is the client, or person who endured the injury, is now wholly responsible for paying for batteries, parts, repairs and replacement hearing aids after the first 12 months for an indefinite number of years and possibly for the rest of their life. It seems to us that the New South Wales Government, in attempting to reduce its outlays to the Workers Compensation Scheme in the short term risks shifting the burden on taxpayers from medium to longer term. This would short-change taxpayers, it is a false economy.

Perhaps the consequences of these changes were unintended but we contend the cost will be much greater if the situation is not set right again now. A major finding of the 2006 Listen Hear! report by Access Economics on the economic impact and cost of hearing loss in Australia was that over half of the cost of hearing loss nationally results from decreased productivity. This $6.7 billion cost arises due to lower employment rates for people with hearing loss over 45 years and subsequent losses of earnings.

The cost of informal carers is also significant. Those costs were calculated according to the amount that would have been required to pay to provide communication assistance. Direct health system costs reflect the expenditure in the health system for diagnosis, treatment and management of hearing loss. An additional cost of not providing lifetime cover for hearing aids is a burden on families. Hearing loss not only affects the person with the hearing loss but the spouse and families who have to adjust their lives for the hearing loss of their loved one. The additional financial pressures on families of the current workers compensation regime will have broader social ramifications beyond the individual with work induced hearing loss. This hardship should be mitigated or removed altogether. The Hon. Robert Borsak, MLC, tabled a report of the Joint Select Committee on the New South Wales Workers Compensation Scheme in the Legislative Assembly on 13 June 2012. At that time he said:

> There can be unintended consequences when legislation is rushed through Parliament. However, there is no reason that such unintended consequences cannot be quickly rectified through amending legislation should the Government desire, knowing full well that it would have support across all political parties.

We too trust that the Government may be prudent enough to quickly act upon what appears to be unintended consequences for those with work induced hearing loss.

The Hearing Care Industry Association request this Committee recommends that injured workers should be eligible for reasonably necessary hearing aids and associated expenses indefinitely. We propose that ongoing eligibility should be based on the injured worker establishing a noise induced hearing loss of 6 per cent together with a recommendation from the treating doctor that hearing aids are a reasonably necessary treatment. It is essential that the costs associated with replacing and refitting hearing aids for workers suffering noise induced hearing loss in the workplace in New South Wales are covered. The Hearing Care Industry Association requests that this Committee considers an amendment to the current legislation by introducing a fifth subsection to section 59A of the Worker's Compensation Act 1987 to state the following:

> This section does not apply to treatment comprising the provision, replacement, maintenance or repair of any prosthesis including crutches artificial members, eyes or teeth and other artificial aids or spectacles.

Politicians do not need a hearing aid to listen but workers with industrial hearing loss do. Hearing is a critical sense and hearing loss lasts a lifetime. Restore lifetime cover; cover hearing aids, their repairs, replacements and batteries. A fair Workers Compensation Scheme is what the people of New South Wales should expect and deserve. We ask the Committee to make the corrections that are needed.

I would now like to introduce Mr Graham Holdgate who can say in his own words what it is like to experience noise induced hearing loss and how important it is to be compensated with hearing aids and associated services. Thank you for listening.

Mr HOLDGATE: Good afternoon, I am Graham Holdgate. I am a private citizen now retired on a pension. I am giving evidence today in my capacity as a private citizen of New South Wales who has experienced workplace induced hearing loss. I support the position of the Hearing Care Industry Association. I am pleased for the opportunity to tell you about my experience in person. It is the people who suffer injury who are the reason why organisations such as WorkCover exist. It is important that the impact of the Government decision on individual families is understood.

My hearing loss was obtained while I was working for TNT Security at Ansett international ground services division. One of my daily duties was to remove packages from an aircraft adjacent to one wing containing two engines. These engines spun at an idle speed of well over 3,000 decibels. Losing my hearing has affected my life and that of others around me. Having help with hearing aids and other services is vital for my quality of life and I am not in a position to readily pay for new hearing aids when I need them replaced. Getting adequate compensation is vital to me and you. As one of the many people impacted by the changes to the workers compensation scheme in New South Wales, I respectfully ask the Committee to recommend restoring the lifetime cover to compensate for a lifetime of hearing impairment. I thank you for listening to me.

CHAIR: You have made some recommendations, Mr Wilson, and recommendations were referred to in the submission you have already made. Have they been put to WorkCover?

Mr WILSON: No, they have not.

CHAIR: Is there a reason why you did not make some recommendations to see what was their attitude?

Mr WILSON: No, not in particular. We just took the approach that this was the first step in the process from our point of view.

CHAIR: Have you had any dealings with Mr Garling, the WorkCover Independent Review Officer?

Mr WILSON: No.

CHAIR: Are you aware that there is such an office as the WorkCover Independent Review Office [WIRO]?

Mr WILSON: Yes.

CHAIR: You have never sought to avail yourself of any possible services there?

Mr DAVIS: When we are dealing with our solicitors in that field our clients have to go to WIRO and get funding to get the case up and running. We are supposed to be at arm's length from WIRO, but it is being used to help our clients.

The Hon. PETER PRIMROSE: I refer to case study No. 1: Adrian, 37, injured in an explosion at a gas and chemical factory. He has been retired now for a number of years. He has 10 per cent hearing in one ear and you point out on page four that as a consequence of this change to the legislation it costs at least $900 a year to maintain his implant in one ear, at least $400 a year to maintain his hearing aid in the other, and a looming $3,500 bill to pay for his five-year-old hearing aid to be replaced—a process that is required every three to five years. We are talking about people who have retired as well as people who are looking at returning to work. My

question is: How common is that? From reading this the suggestion is that this was almost an accident in itself; that this was an unintended consequence whereas in all the debates about the bill—and I was there—it was well and truly pointed out that this was an effect. This would be a consequence of a deliberate decision in the legislation. Could you comment on that?

Mr DAVIS: With respect to the whole process and eligibility of clients we have people currently working, people recently retired, people working part-time and also people who go back to university or to technical college to further themselves and they get hearing aids to help them do that because they have been industrially damaged. We recommend a clause drafted by the Upper House that would exempt hearing aids and replacements be put into section 59A of the legislation. That would solve all our problems and our clients' problems. Because what we are finding is a lot of clients ring up and they are upset. They have a situation where they want replacement hearing aids and they cannot have them, and they say, "But I need them because I work, and socially I might be in some club—

The Hon. PETER PRIMROSE: There must have been a good reason for the Government to have chosen to do that. It was not an accident. It was pointed out in the debate on the legislation that this would be a consequence endlessly and it was a deliberate decision. It was not an unintended consequence. Can you provide the Committee with a good reason why a government may choose to do that to injured workers?

Mr DAVIS: Basically I can see it as bringing the Workers Compensation Fund back into balance. All the other factors within that, I can understand, need to be reviewed. Unfortunately it has come down too hard on the people who need hearing aids because they have been thrown out as well. The situation is a little bit different here as well. The threshold to get hearing loss compensation is 8.8 per cent in South Australia and 10 per cent in Victoria.

Mr DAVID SHOEBRIDGE: Is that binaural hearing loss?

Mr DAVIS: Binaural hearing loss.

Mr DAVID SHOEBRIDGE: Not whole person impairment?

Mr DAVIS: No. What we had in the past before legislation was changed was that if you had 6 per cent binaural hearing loss you could then go ahead and get compensation and hearing aids. When the legislation was changed what it said was, first, you can access hearing aids from 6 per cent upwards to 20.5 per cent for hearing aids only. When it was introduced it said 10 per cent whole-person impairment, which, according to the formula that comes out of that in hearing, is actually 20.5 per cent binaural. That tends to rule out so many people who need compensation for work. What we are saying is let us pull that back a little bit and at least offer them replacement hearing aids. But the 10 per cent whole-person impairment is just far too harsh for the hearing loss concerned; 20.5 per cent is a pretty savage loss.

The Hon. SHAOQUETT MOSELMANE: Do you have statistics as to how many people are captured? How many retired people in those circumstances are now denied this support?

Mr DAVIS: Sorry, I do not.

Mr WILSON: WorkCover would have that kind of data based on historical evidence.

CHAIR: You have not made an approach to WorkCover or to WIRO. The Committee has your submission and your comments and it will take those into account in any recommendations that it makes. Would your association consider making some submissions to WorkCover and also to WIRO as indeed Unions NSW and the Public Service Association have done on certain other issues?

Mr WILSON: Absolutely.

CHAIR: You will go ahead and avail yourself of that opportunity?

Mr WILSON: Certainly.

Mr DAVID SHOEBRIDGE: Mr Holdgate, what is your level of hearing loss?

Mr HOLDGATE: My level of hearing loss is 15 per cent in each ear.

Mr DAVID SHOEBRIDGE: Mr Davis, what does that mean in terms of Mr Holdgate's ability to get hearing aids under the current scheme?

Mr DAVIS: He cannot get replacement hearing aids, end of story.

Mr DAVID SHOEBRIDGE: One shot.

Mr WILSON: One shot. That is why we looked at section 59A (5) to give us the opportunity to do replacement aids, and factory repairs all come back into that. He has only got one shot at it and then he has to buy his own.

Mr DAVID SHOEBRIDGE: Are you retired now?

Mr HOLDGATE: Yes, I am retired now.

Mr DAVID SHOEBRIDGE: For how long have you been retired?

Mr HOLDGATE: I have been retired since 1996.

Mr DAVID SHOEBRIDGE: Without your hearing aids what is it like?

Mr HOLDGATE: Without the hearing aids it would be just like you being muffled. I would not hear any other people talking in the room. I would have to pinpoint you and look straight at you. If I cannot see you directly I would not be able to hear you. I would be picking up any other sound around and trying to pinpoint where you are. With the hearing aid it has helped me greatly in regards to home life and going to shopping centres. The hearing aid that I have on now means I can go to a shopping centre and hear my wife when she wants to talk to me.

Mr DAVID SHOEBRIDGE: You have no excuses, Mr Holdgate.

Mr HOLDGATE: But if I go into the lounge room, turn on the television, it is not as loud as it used to be. If I take out my hearing aids now my voice will trump up, that is to say, "I can hear you, can you hear me?" Other than that, without these hearing aids, my life would be miserable.

Mr DAVID SHOEBRIDGE: Now you have retired I assume you are on a restricted income?

Mr HOLDGATE: Yes, I am on a disability support pension.

Mr DAVID SHOEBRIDGE: Do you think you would be able to afford the $3,500 or so?

Mr HOLDGATE: Definitely not.

Mr DAVID SHOEBRIDGE: In the absence of the scheme protecting you, you face a prospect at some point of going back into that relative silence?

Mr HOLDGATE: Yes.

Mr DAVID SHOEBRIDGE: How do you feel about that?

Mr HOLDGATE: I do not feel too happy about it. I think the Government has failed me by not letting me have new hearing aids. These hearing aids are now four years old; they are up to their use-by date. I cannot even get a pack of batteries, whereas before I could go and get batteries whenever I wanted them. It will cost now $7 for a pack of four batteries that need replacing every two days.

Mr DAVID SHOEBRIDGE: The real concern is if you need to get it repaired or replaced?

Mr HOLDGATE: It would cost me far beyond what I can pay out.

Mr DAVID SHOEBRIDGE: Mr Davis and Mr Wilson, what would you expect the annual maintenance cost of hearing aids to be?

Mr WILSON: It depends on the user and how much wear and tear occurs, but maintenance-wise it could be ranging from $100 per annum up to $300 per annum.

Mr DAVIS: Touching on that point, hearing aids have different battery capacity depending how often you use them. It is like a radio. If you have a big hearing loss and you need a hefty hearing aid, the batteries will go quicker than if you have a mild hearing loss and you are not working it all the time. The cost will vary and it can get more difficult for those with a bigger hearing loss than the others, but it will turn over.

The Hon. SARAH MITCHELL: Following on from Mr Shoebridge, you make a series of recommendations or potential reforms. On page 4 of your submission you flag the idea of having a hearing aid replacement using a monetary cap. Given that you have said there can be a degree of variance in respect of cost, do you have a rough idea if you were to bring in a monetary cap what would be sufficient, or are we going to end up with the same issue where some people are going to fall outside of that anyway?

Mr DAVIS: The scheme, as it stands now, is that we can go up to $2,500 per hearing aid. That is as far as we can take it. It is capped at $5,000. There is no real problem with that. The problem is getting replacements within that. Not all people need top-of-the-range hearing aids. The middle of the technology is very good and it assists them, so about $5,000 is the capped price at the moment for workers compensation aid.

Mr DAVID SHOEBRIDGE: I think Ms Mitchell's question was if you allowed for replacements or if there was some discretion there to have replacements up to a certain monetary cap, what would be a reasonable monetary cap?

Mr WILSON: I think we can take that on notice and look into that.

The Hon. SARAH MITCHELL: Thank you.

The Hon. SHAOQUETT MOSELMANE: Going back to Mr Davis, you mentioned 20.5 per cent. Is that a whole-of-person impairment?

Mr DAVIS: That is a whole-of-person impairment of 11 per cent. Under legislation now, anything more than 10 per cent whole-of-person impairment equates to 20.5 per cent binaural hearing loss. To go from this point to that point is rather drastic. Before that legislation was changed, binaural hearing loss was 6 per cent and you could get the compensation. Some have now gone up to 20.5 per cent before you can get compensation. That is a quantum leap. It cuts out a lot of people.

The Hon. SHAOQUETT MOSELMANE: You say that it cuts a lot of people out. Is it 90 per cent or 95 per cent of people being cut out as a result of this?

Mr DAVIS: I do not want to be quoted on a percentage, but certainly a large number of people who would have got compensation are now further from it.

Mr DAVID SHOEBRIDGE: You deal with this all the time, 6 per cent, 10 per cent, 15 per cent, 22 per cent binaural hearing loss. Can you tell the Committee what those thresholds mean in day-to-day living activities?

Mr DAVIS: When you measure people's hearing loss, the audiogram puts down where the percentage of loss is and you do a chart and you find it down the bottom. What happens with hearing loss, if you think of the inner ear and the cochlea as a piano keyboard, it is broken up into three different sections. There is high frequency, mid frequency, low frequency. The high frequency cells are the closest to the ear, so when the sound comes in, there are little hair cells there. If they die down, hearing is gone and will not come back. So it depends on the intensity of the noise that they have been subjected to as to the percentage loss they have.

Mr DAVID SHOEBRIDGE: What does that mean in respect of the perception of who has the hearing loss? What can they not hear? What is the disability?

Mr WILSON: As a clinician I can tell you that typically the symptoms for people with industrial deafness or noise-induced hearing loss are all the same. The way we record the data about hearing loss and when we do the test, they all look fairly similar. What it gets down to is that people such as Graham who have noise-induced hearing loss hear vowels reasonably well but they do not hear consonants. A word such as "watch" is a "wa" sound and a "ch" sound. In an environment where there is ambient background noise, which is a mixture of low and high frequency sounds, when they try and listen to speech and someone says a word such as "watch", they will hear the "wa", but the split-second that "ch" occurs another low sound somewhere else in the background will predominate over the "ch" so they will just hear "wa", "ma", "ba", "wa", "ba", so all the base and none of the treble. The hearing aids now are so advanced, as Michael alluded to, that the chip in the hearing aid is effectively a graphic equaliser. We plug that hearing aid into a laptop and program algorithms within that hearing aid to amplify the frequencies or consonants to the level required for each individual. We do not amplify the lows because they are hearing those okay and then one can get back to normal hearing.

Mr DAVID SHOEBRIDGE: Effectively you go from unintelligible murmurings, almost, to getting back to hearing the conversation?

Mr WILSON: That is right. A point I did make but want to reiterate is that this issue is not just about the person with the hearing loss. In all western countries, research is being done and it is confirmed that someone with what we call an aidable loss—so someone who would benefit from hearing aids—typically takes about seven years to act on it because it is such a slow and gradual occurrence in most cases. At seven years, they do not just wake up one day and think, "You know what, this is too bad. I need a hearing aid." It is the family and the spouses who say they have had enough. They have adjusted their lives. They are getting blasted by the television, they are not socialising anymore because their partner has become reclusive, so they say, "You are going to get a hearing test."

Mr DAVID SHOEBRIDGE: Mr Holdgate, does that ring true to you?

Mr HOLDGATE: It is true.

Mr DAVID SHOEBRIDGE: How did it happen in your situation?

Mr HOLDGATE: If I am not wearing hearing aids I will be told, "Turn the television down; it is too loud." I became a member of a club and I have not been there. I refuse to go there because of the amount of people that are in that club. You have poker machines going off. I cannot distinguish what is happening in that club. If I go for a meal at the club I will have the meal and I am straight out. I will not stay in the club.

Mr DAVID SHOEBRIDGE: What about your hearing aids?

Mr HOLDGATE: With the hearing aids, I can go to the club, I can socialise. It has completely turned it around. It is a case where I can hear everything. I can listen to everyone in this room. I take them out and I would be looking at you to see when you are going to speak next. That is the difference.

Mr DAVIS: Can I make a comment on top of that. With a noise-induced hearing loss, it affects high frequency, which is women's voices, children's voices, so you are isolated from the family. That is where that falls in.

The Hon. SHAOQUETT MOSELMANE: If you do not have the money to fall back on, is there another authority or body or organisation to seek assistance from, or are you left out in the cold?

Mr HOLDGATE: I am left out in the cold. I could use general government ones but they would not be a match to what I am wearing now. I would lose a percentage of hearing again. They could not match these ones that I am wearing now. It is like saying if I go and buy a brand new car that has a noisy exhaust, I will hear it. I put the other ones in, I will not hear it. Virtually, the hearing aid that the Government gives you is on the lower scale. The old saying is buy cheap, you get cheap.

Mr WILSON: To make one final point for the purpose of clarity, what Graham was referring to there is the Federal Government Office of Hearing Services scheme, which is available to pensioners only. If you are not a pensioner you cannot access that scheme. Within that scheme there are entry level hearing devices that are free, but for industrial hearing loss you need technology over and above that to get the hearing outcomes that someone needs.

Mr DAVID SHOEBRIDGE: You need to filter and amplify not just amplify?

Mr WILSON: Correct.

CHAIR: Unfortunately we have run out of time, so I apologise, but we thank you very much for being with us. It would be of great assistance to us if we could get a copy of your opening statement. There will be some questions on notice sent to you, if you could give us a response to those in 21 days.

Mr WILSON: Mr Chairman, thank you again to the Government for facilitating this and the opportunity to put the evidence forward. It shows very clearly the great political system we have in Australia and I applaud the Government for taking action.

Mr DAVID SHOEBRIDGE: It is the Parliament. There is a slight distinction.

CHAIR: We thank you also for coming forward and being here and taking the trouble to prepare a submission and giving evidence today.

Mr WILSON: It is very important.

(The witnesses withdrew)

BRETT HOLMES, General Secretary, New South Wales Nurses and Midwives' Association, affirmed and examined:

STEPHEN HURLEY-SMITH, Industrial Officer, New South Wales Nurses and Midwives' Association, sworn and examined:

CHAIR: I welcome witnesses from the New South Wales Nurses and Midwifes' Association. Thank you for being with us today. I note that you have given us a submission and a supplementary submission, and I thank you for those. Would you like to make a short opening statement to add to your submissions?

Mr HOLMES: Yes, thank you. We will both provide short opening statements. I believe that there is a way that the New South Wales Government can dramatically improve return to work outcomes under the New South Wales workers compensation scheme and simultaneously save the scheme a considerable amount of money—that is, by putting in place robust mechanisms to encourage and if necessary force employers to provide suitable work to their injured employees. Many employers are good at dealing with their injured workers. Equally, however, there are many employers who are not so good. Many employers will stop at nothing to get an injured worker out of their workplace and off their books. From one perspective, you can almost understand this. It is simple economics—that is, place the burden on other parts of the economy or put the workers on social welfare, where the rest of us have to continue to pay for the injury which occurred as part of work.

I believe it is up to the Government to step in and fix the situation. To the Government's credit, in 2012 it responded to submissions we made on this issue to the Joint Select Committee on the New South Wales Workers Compensation Scheme by introducing two changes to the return to work provisions within the workers compensation legislation. I am speaking specifically about the making of section 49 of the Workplace Injury Management and Workers Compensation Act, which obliges employers to provide suitable work if requested and a civil penalty provision, and the introduction of an improvement notice system for suitable duties disputes. Those are two good reforms and we welcome them.

Unfortunately, however, our experience is that we have not seen any change in behaviour amongst employers. Many employers are simply continuing to attempt to shift injured workers off their books. I believe that WorkCover should be empowered and resourced to help change the attitudes of employers through both education and enforcement. We as a union are obviously able to represent our members and take on many of these fights. But we are also aware as members of the community that there are many injured workers who are not represented by unions. I do fear that they are being left in a very difficult situation where, without representation and without good advice, they are simply cast off by employers and left to the social security system as a result of the current workers compensation limitations. I would like to invite Stephen Hurley-Smith, our industrial officer, to give further information. He deals with many of these issues on a daily basis.

Mr HURLEY-SMITH: I thank you for the opportunity to give evidence today. I believe there is a glaring hole in our workers compensation system, a glaring inconsistency. On the one hand, if you are a worker and wish to make a claim that you have been injured in the course of your employment then there are all kinds of hoops that you have to jump through. There are all kinds of checks and balances in place to make sure that you can only receive compensation if you meet the requirements in the legislation. That is appropriate.

By comparison, however, if you are an employer there are not the same kinds of checks and balances in place. There is certainly not someone looking over your shoulder to the same extent to make sure that you are doing the right thing in terms of your injured workers. So, for example, if you are an employer who wants to get an injured worker out of your workplace for whatever reason then there is no-one there making sure that you actually have good reasons for doing that; and there should be. Because when an employer seeks to do that, they are forcing that employee to attempt to rely upon the wider workers compensation system by claiming weekly payments. Effectively that employer is pushing their responsibilities onto every other employer out there who pays their WorkCover premiums. As I said, by comparison there is always someone looking over the workers' shoulder. A worker has to produce medical evidence for each and every day that they claim they are injured. They have to attend all the medical examinations that an insurer directs them to attend. There is just not the same level of scrutiny, however, on employers.

Brett mentioned the changes to the 2012 return to work obligations—the two changes referred to in our submissions. They are good changes. But we have not noticed any discernible change in behaviour amongst

employers since those changes were implemented. We receive between 700 and 800 inquiries from our members each year regarding workers compensation. There has been the same level of inquiries since 1 October 2012 when those return to work changes commenced. We are still having to deal with the same volume of suitable duties disputes, day in and day out. In our supplementary submission we have put forward five case studies of workers who have duties taken away from them in what we say are dubious circumstances—that is, five cases since 1 October 2012, which is almost 18 months. In 2012 we put forward 10 case studies to the Joint Select Committee on the New South Wales Workers Compensation Scheme. Those two sets of case studies are just a sample of the kinds of matters we are dealing with.

CHAIR: You have made some submissions with various recommendations and expanded on them further. Have you ever put any of this to the WorkCover Authority of New South Wales? Have you made any representations to them or to the WorkCover Independent Review Office?

Mr HOLMES: The association has participated, with Unions New South Wales, in the dialogue that occurs between WorkCover and Unions New South Wales. In the discussions that the WorkCover Independent Review Office had with unions some time ago, we put our position forward as part of the union movement.

CHAIR: Do you find that the WorkCover Independent Review Office [WIRO] has been of assistance to you in any matters?

Mr HOLMES: I have not seen the impact of any change in terms of the attitudes of employers about the issues that we are raising. I am not sure that WIRO is in a position around that to make much change. But I do firmly believe that WorkCover needs to be properly resourced and empowered to make sure that these issues that we are raising are addressed in accordance with the legislation that is currently available to at least test whether it is sufficiently strong.

CHAIR: When representations are made to WorkCover are they done for you by Unions NSW or do you make separate representations, or is it a bit of both?

Mr HOLMES: We have joined together with Unions NSW in terms of those discussions and representations. We would hope that WorkCover is actually looking at the work that your Committee is doing and your reviews.

The Hon. SARAH MITCHELL: Mr Hurley-Smith, I think you said you get between 700 and 800 inquiries. Do you have an idea of how many of those come from regional communities versus the metropolitan area?

Mr HOLMES: We did not break them down by region. Our membership covers all of New South Wales, as you would expect, wherever there is a nurse working in either public or private or aged care.

The Hon. SARAH MITCHELL: My question relates to the issues with return to work, which is a big part of your supplementary submission. Are you finding that that is an issue? When we heard from witnesses from Unions NSW earlier today they said that jobs were offered but they were sometimes 100, 200 to 300 kilometres from where someone was living. Are you also finding that amongst your members in terms of return to work?

Mr HURLEY-SMITH: That people are offered jobs 200 or 300 kilometres away?

The Hon. SARAH MITCHELL: At least on paper. That is something that Unions NSW brought up.

Mr HURLEY-SMITH: I would say with the kinds of matters that we deal with it is more a matter of no job being offered at all. As matters are normally dealt with by the local health districts themselves in terms of public sector matters, they are contained within that geographical location. I am sure there has been instances where a job has been suggested which has been quite a distance away. In terms of the matters that I have dealt with I cannot recall something 200 or 300 kilometres away, but I do believe I have had some matters where it is closer to about 100 kilometres plus away.

Mr DAVID SHOEBRIDGE: I think Ms Mitchell is talking about when they have been terminated and they are dealing with the insurer under the work capacity assessment. The insurer is saying, "I'm sorry, there is some fictional job in Wagga Wagga that you might be able to do" without having to actually establish there is a

job. They say, "We believe you are fit for doing that fictional job and therefore we are terminating your benefits." Have you been dealing with the work capacity assessments insurance end?

Mr HURLEY-SMITH: I do not deal with that end of it, no. That level of detail would probably be dealt with by the workers compensation lawyers themselves. I am not really at that end.

CHAIR: Have any of your members come to you in circumstances such as those outlined by Mr Shoebridge?

Mr HURLEY-SMITH: Quite possibly but I do not know about them personally. If someone's payments were going to be reduced on the basis of some notional position which is hundreds of kilometres away then that is probably a dispute that would need to be run in the Workers Compensation Commission, which we would then refer to our lawyers.

Mr DAVID SHOEBRIDGE: Could you take it on notice? It is unlawful for lawyers to act in those cases for payment under the new scheme. How that gets dealt with by nurses would be interesting to hear.

The Hon. PETER PRIMROSE: At page 10 of your original submission recommendation 2 says:

> We recommend that the Government implement programs designed to educate employers regarding their obligation to provide suitable work to injured employees.

Could you elaborate on that? And is the issue really that employers do not know, or are there other motivations?

Mr HURLEY-SMITH: I do not know what their motivations are. I think there is a lot of misunderstanding out there. I think there are a lot of misconceptions with the employers that I deal with certainly. I think that an education program of some sort would go a long way in dealing with that. Time and time again I am dealing with all kinds of misconceptions. One of the major misconceptions is there seems to be a lot of employers who believe that their obligation to provide suitable work to their injured employees somehow ceases when a doctor says that a particular employee is never going to be able to return to pre-injury duties.

A worker may be fit for 95 per cent of their pre-injury duties but as soon as a doctor says, "You are never going to get to 100 per cent again, you are always going to have some level of medical restriction" it seems to me so often the employer will react to that by saying, "That's the end of our obligations. We don't have do anything more for you. We can take away your suitable duties. We can terminate you. We can force you to attempt to rely upon weekly workers compensation benefits." That is just not the way the legislation is set up. It is not set up in that way. I think an education campaign of some sort would help smaller employers particularly to understand their obligations.

Another big misconception is this idea that the obligation to provide suitable work only applies where they have got some vacant identifiable position. Particularly in the public health system I find that you have a worker who may be fit often for a very long list of duties but because they do not fit neatly within a particular vacant position the stance of the employer is, "We are not going to provide you with anything. We are going to terminate you or leave you at home languishing on workers compensation."

The Hon. SHAOQUETT MOSELMANE: I note in your opening statement you mentioned there should be more scrutiny on employers. In recommendation 2 on page 4 of your submission you said:

> We recommend that severe penalties be imposed on employers and individuals who refuse to provide work to injured workers where such work is available.

How do you recommend that be monitored? Can you elaborate on that recommendation?

Mr HURLEY-SMITH: Yes. In terms of how they can be imposed, section 49 is now a civil penalty provision but it is 50 penalty units, which is a relatively small amount of money. In terms of the penalty that might actually deter an employer from behaving in a nefarious way, I think the penalty could be substantially increased. In terms of how it can be enforced, part of what we have recommended is that there be a mechanism earlier in the workers compensation process. There could be, for example, power given to insurers to be looking over the shoulder a bit more of employers. When an employer wants to take away duties and therefore force that worker to rely upon workers compensation payments to the expense of the insurer and the wider workers

compensation scheme and every other employer out there, perhaps there needs to be a mechanism there where the insurer perhaps makes sure that in fact they are acting in good faith, that in fact there is no work for that worker. Maybe there should be some mechanism in place for that to occur where the worker could have some input to it and the employer could have some input as well.

There is work capacity testing in the legislation for workers. There could be work capacity testing for employers as well. It would not be too hard to put in place a system whereby someone has to assess whether or not there is work in a particular workplace for a worker with a particular kind of injury. If it could be handled much earlier in the process it is almost like the penalties may not arise because it could be dealt with so much earlier. But certainly penalties could be something at the back end which if someone is really determined to remove a worker from the workplace they could be used and enforced by WorkCover or industrial organisations or whatever.

The Hon. SHAOQUETT MOSELMANE: As opposed to a penalty in recommendation 2, in recommendation 1 you recommend that there should be a financial incentive for an employer to provide suitable work to injured workers. Is that the nub of the issue? Do you suggest financial incentives would resolve these problems?

Mr HURLEY-SMITH: I think that a range of things can be used. In isolation that kind of change may not lead to the most desirable kind of change but as part of an overall package I think that it could. A financial incentive for an employer to keep someone in work I could imagine would help workers compensation premiums. No-one wants to pay more than they have to on their workers compensation premiums, I am sure, just like anything else.

The Hon. SHAOQUETT MOSELMANE: Is there an example you can identify in other States where they have reduced the premiums to give an incentive to employers to keep their workers?

Mr HURLEY-SMITH: I do not know of how it works in other States. I am not sure.

Mr HOLMES: I am not aware.

Mr DAVID SHOEBRIDGE: You cite section 49, which is the obligation for an employer to provide suitable duties. What is the remedy for a breach of that if an employer refuses to?

Mr HURLEY-SMITH: The remedy for that, as far as I understand, is that you could tell WorkCover and perhaps ask WorkCover to issue improvement notices now. That is one course of action. The way we generally try to approach such issues is to deal with them as part of our dispute resolution processes. In the State system there is access to the Industrial Relations Commission to pursue that. In the Federal system however you may have an enterprise agreement that does not have a dispute resolution clause which includes an arbitration power in which case you are stuck on that issue. I think there are also question marks as to whether or not the Fair Work Commission can deal with a dispute like that.

My understanding is that it is possible to have proceedings in the Workers Compensation Commission to deal with reinstatement issues—this is certainly not my area of expertise—but my understanding is that the enforceability of any decision of the Workers Compensation Commission is questionable and that if you want to have a dispute resolved, it is not where I would go to try to resolve it. Where I would go is through an industrial commission is, I find, the better way to try to resolve these things.

Mr DAVID SHOEBRIDGE: When you read your case studies it seems pretty clear that injured workers are really hanging by a thread in any workplace whilst ever they are carrying any form of injury. At any moment if the employer gets them off to see a doctor who then says, "I'm sorry, you will never become totally fit", they can effectively be terminated. Is that what your members are saying to you; that when they are injured they feel like they have no security?

Mr HURLEY-SMITH: Absolutely, they are extremely vulnerable, and whilst the legislation says if you have got work you have to give it, that is not the conduct that I have to deal with. I have to deal with employers who simply will not recognise that that is their obligation and then you have to try and undo that in some way.

Mr DAVID SHOEBRIDGE: Is that why when you gave your introductory remarks you were talking about increasing the threshold before someone can be terminated because of a lack of suitable duties or the like? Is that how you see the remedy?

Mr HOLMES: I think what I was saying is that there needs to be education of employers; there needs to be, as we have said, incentives—and that can be in premium adjustment—and there needs to be penalties. We would appreciate it if there was, as Mr Hurley-Smith has said, a requirement for either the insurers or WorkCover to oversee issues where employers are not providing suitable work. As the examples given show, it is pretty devastating to those people who have committed their lives to nursing to then be told, "You have been injured at work but unfortunately you can do everything but perform like you were when you started" and that's it; that is the end of your career."

Mr DAVID SHOEBRIDGE: Particularly with nursing there are big known employers and once someone has had an injury, how does that affect the capacity of a nurse to get a job anywhere else in the industry?

Mr HOLMES: There is one case study where we were successful in getting one of our members who was badly treated by one local health district a job in another local health district and I would say we were only successful because of our ability to negotiate and have reasonable working relationships with different local health districts. This occurs in the public health system, which is the last place in the world you would think they would treat injured people badly but it is unfortunate that is where we experience far too much of that. It does not necessarily mean that there would be a black ban across the whole of the health system but once one local health district, which can be quite a large geographic area, decides that you are unfit to work, you will not get another job in that local health district and not everything that is done is written down but there is a lot of knowledge that can be passed around the system when it comes to whether you will or will not employ someone, despite it being against the law of course.

Mr DAVID SHOEBRIDGE: Is it your members' experience that they are routinely asked about having had prior workers compensation injuries when they go to get further employment?

Mr HOLMES: They have to attest to their capabilities to fulfil the list of duties and there is a clear employment process about the types of duties you would be expected to do and you have to list if you have any limitations or restrictions on that.

CHAIR: Unfortunately that will have to be the last question because of time constraints. Thank you for being with us today. Your input is certainly of value to us and will be of great assistance. It would also be helpful if you could provide the secretariat with copies of your opening statement. The Committee may also have some questions on notice and we would appreciate your response to those questions within 21 days. Once again, thank you very much for attending today.

(The witnesses withdrew)

JANET CHAN, Member, Injured Workers Support Network,

ADAM GRUMLEY, Coordinator, Injured Workers Support Network, affirmed and examined:

CHAIR: I welcome our next witnesses, Ms Chan and Mr Grumley. Thank you for attending the inquiry. In what capacity are you appearing before the Committee?

Ms CHAN: I am an injured worker and have worked with the regulator for about 11 years so I know the system quite well. I have had experience as an injured worker. I am a researcher and I am now also a consultant.

Mr GRUMLEY: I am the coordinator of Injured Workers Support Network.

CHAIR: We have a submission from you and also a supplementary submission. Would you like to make a short opening statement?

Mr GRUMLEY: Just a brief one. As I said in the affirmation, I am the coordinator of the Injured Workers Support Network. I am also an injured worker who was in the system for about four years. My role at the Injured Workers Support Network is I coordinate monthly meetings in the Sydney, Bathurst and Newcastle region, I look after a website, I deal with telephone inquiries, email inquiries and also written correspondence from injured workers and their families who are affected particularly by the June 2012 cuts to the workers compensation system. The five key issues that I deal with on a daily basis are the work capacity decision process, medical expenses, the hostile administration of the workers compensation in particular by the scheme agents working under WorkCover, return to work issues, enforcement—there is no assistance for injured workers—and the retrospective nature of the cuts to the system

CHAIR: In your submission you refer to widespread reports from clients of intimidation, bullying and harassment from insurers and the unwillingness of WorkCover staff to assist. They are fairly strong words.

Mr GRUMLEY: They are.

CHAIR: They are repeated elsewhere, or similar words. You refer to "workers suffering only physical injury have since developed a secondary psychological injury due to intimidation and poor treatment by WorkCover's own scheme agents".

Mr GRUMLEY: True.

CHAIR: Strong words also. Have you raised these issues with WorkCover?

Mr GRUMLEY: On my own basis I have.

CHAIR: On behalf of your organisation?

Mr GRUMLEY: As an injured worker for myself I have, and I fully enjoy the support of the network. I contact WorkCover for basic information. Wherever they set their line they seem to be going more to WIRO. Obviously WIRO are terrific in some areas; in other areas their hands are as tied as much as everyone else's under the legislation.

CHAIR: Do you have any case studies, any specific examples of the intimidation and bullying and harassment?

Mr GRUMLEY: Without a doubt, yes.

CHAIR: You can make those available to us?

Mr GRUMLEY: I could. The hard part is getting an injured worker to come forward.

CHAIR: Do you have anything reduced to writing?

Mr GRUMLEY: Again, I do record details from injured workers when they call—all on a first-name basis. I believe in anonymity in protecting injured workers. They fear for the repercussions from speaking out. There is also an issue if you speak to the media or out in any way and you highlight they are on workers compensation there is a negative stereotype associated with being on workers compensation, particularly if you are an injured worker trying to get back into the workplace; if you end up in the media it makes it that bit harder.

CHAIR: We can certainly keep names confidential if you supply them. In your representations or complaints to WorkCover did you reduce any of those complaints to writing?

Mr GRUMLEY: Mainly over the telephone. I have in the past as myself. I know a number of injured workers who have raised them with inspectors.

CHAIR: But dealing with yourself acting on behalf of your members, have you kept records of your attempts to raise these issues with WorkCover?

Mr GRUMLEY: Some issues I have, yes.

CHAIR: And what response do you get? What specific response do you get?

Mr GRUMLEY: Like I was saying before, I have lost faith in WorkCover. A lot of the issues will go straight to WIRO.

CHAIR: What I am asking is what response do you get from WorkCover when you raise these issues, which are pretty serious issues? I am surprised that when there are allegations of bullying and so forth if they are properly understood they would not be followed through on. I just want to get a paper trail and I am hoping that you can supply information to confirm the allegations that you have made. What response do you get from staff of WorkCover when you have raised these issues?

Mr GRUMLEY: I will just break it down to the simple matter of an injured worker trying to receive weekly benefits. You are meant to be paid, I think it is five—

CHAIR: I am talking about the bullying and the intimidation.

Mr GRUMLEY: This is where I am getting to. The scheme agent sort of refused to pay the weekly benefit and they have to do that within five working days, I believe. Sometimes, for instance, you might get paid today and you will not get paid again until Wednesday week. You could ring WorkCover—I have done it myself—and say, "The scheme agent is not making payment, I need some assistance", and they will tell you, "There is nothing we can do. If you have not been paid in another three working days give us a call and then we will get involved".

CHAIR: That is another issue. What I am talking about are the allegations of intimidation, harassment and bullying. What response would you get when you raise those issues with WorkCover Authority staff?

Mr GRUMLEY: With the staff direct?

CHAIR: Yes.

Mr GRUMLEY: Again, just for something as simple as that. Bullying is anything that is repeated and unreasonable type behaviour. When someone is injured at work they are living off a very minimal wage and if the insurers are playing games by not complying and making that weekly benefit that is bullying in itself.

CHAIR: That probably comes down to a definition of what we mean by bullying, but just getting back to the question I am asking: What specific response do you get from WorkCover staff when you raise on behalf of your members allegations of intimidation, bullying and harassment?

Mr GRUMLEY: Again, when I have raised those issues—I will just stay on the weekly benefits just to keep it simple—they will say, "There is nothing we can do. Give us a call in three working days, then we will get involved. We cannot intervene on your behalf."

CHAIR: I am not talking about their response to you in regard to benefits, I am talking about the allegations that you put to us in your submission of bullying, harassment and intimidation of members. I am trying to get details of you raising them and I am trying to get details of the specific response. I am happy to put it to you, Ms Chan, but Mr Grumley is the one who tells us that he has himself raised these issues and I am trying to get something specific.

Mr GRUMLEY: I can definitely give you another example of this type of behaviour. I was dealing with an injured worker who had suffered a psychological injury and they had made an appointment—all approved by the insurer—to go and see a psychiatrist of their choice. The insurer then cancelled that appointment and said, "No, you are going to see our psychiatrist. You have got 24 hours to get there or we will cut your weekly benefits off". So the injured worker contacted WorkCover, WorkCover said they could not do anything on their behalf, the injured worker rang me highly distressed and upset; I then contacted WIRO, who were able to intervene, have that appointment cancelled, the case manager was removed off that injured worker's file and the injured worker was then able to proceed to see the psychiatrist they were initially scheduled to see.

CHAIR: I am sorry; I have not heard anything that suggests intimidation—

Mr GRUMLEY: You do not think that is unreasonable?

CHAIR: We are not talking about what is unreasonable; we are talking about intimidation, bullying and harassment by WorkCover staff and others employed through the workers compensation system. They are pretty serious allegations.

Mr GRUMLEY: They are.

CHAIR: Would you like to think about that and we will put that question to you on notice and you might like to give consideration to it and give us a specific response.

Mr DAVID SHOEBRIDGE: I think it might have been accidental but all the submissions I read were about intimidation, bullying and harassment from insurers and an unwillingness from WorkCover. That is how I read the submissions.

CHAIR: It says from insurers and unwillingness—yes, that is right. There is also a reference here to "those suffering only physical injury have since developed a secondary psychological injury due to intimidation and poor treatment by WorkCover's own scheme agents".

Mr GRUMLEY: Being the insurers, yes.

Mr DAVID SHOEBRIDGE: They are the insurers.

CHAIR: But you are going to give us details. You are raising these issues. Clearly, WorkCover would be one of those that you would go to to raise allegations of these kinds against insurers.

Mr GRUMLEY: Yes.

CHAIR: I would like to get details from you of these complaints that you have made.

Mr GRUMLEY: Sure.

CHAIR: And the response of WorkCover staff, including whether they have specifically refused to investigate the claims of bullying, intimidation and harassment that you have complained about made by your members against insurers.

Mr GRUMLEY: Yes, I can organise that for you.

CHAIR: Could you do that for us? Could you consider it very carefully and give us some detailed response?

Mr GRUMLEY: Yes.

CHAIR: I think you indicated you raised something with the WorkCover Independent Review Office.

Mr GRUMLEY: Sure, yes.

CHAIR: That was about insurers being involved in harassing and bullying and intimidating your members?

Mr GRUMLEY: The example I gave you where the insurer had instructed an injured worker who suffered from a psychological injury if they were not at the appointment the next day they would cut off their weekly benefit. The injured worker raised it with WorkCover but WorkCover could not intervene on the injured workers behalf. The injured worker called me in a highly distressed state. I called WIRO, I got a contact there. I referred the injured worker to call WIRO and they were able to resolve it on that basis.

CHAIR: They resolved it.

Mr GRUMLEY: Sorry, WorkCover Independent Review Office [WIRO].

CHAIR: What was it they resolved?

Mr GRUMLEY: They were able to get that appointment cancelled. They were able to get the case manager removed off that injured worker's file because the behaviour was a little bit—how can I put it—disappointing.

The Hon. SHAOQUETT MOSELMANE: You interpret that as bullying?

Mr GRUMLEY: Without a doubt.

CHAIR: Intimidation.

Mr GRUMLEY: Threatening. You do not ring someone with a psychological injury up and tell them, "If you are not at an appointment tomorrow we are going to cut your weekly benefits off."

CHAIR: Would you like to give us details of the complaints made to Mr Garling of the WorkCover Independent Review Office?

Mr GRUMLEY: Yes.

CHAIR: The Committee heard evidence from him today. He is a very impressive man who seems to be very devoted to doing his job and fulfilling his role.

Mr GRUMLEY: Yes.

CHAIR: I would like to know in detail what has been complained about so that the Committee can follow through with Mr Garling what that involved.

Mr GRUMLEY: I have visited the offices at WIRO. I do record all calls that come through. I do keep data and statistics. I am quite happy to share that with you, if you would like to see that.

CHAIR: If there is more than one case please give us the details.

Mr GRUMLEY: Yes.

CHAIR: Are there a number of cases?

Mr GRUMLEY: The website alone has had like three million visitors.

CHAIR: But your complaints.

Mr GRUMLEY: Yes, we record all the information that comes through.

CHAIR: The number of cases you have referred to that all involve intimidation, harassment and bullying.

Mr GRUMLEY: Sure.

Ms CHAN: Actually there are a number of members of the Injured Workers Support Network that have reported that because I was talking to them hoping to get some data for my research. They have reported that they actually belong to a self-insurer and all of them were for workplace bullying. What the self-insurer did was to isolate them and put them aside—that is how they deal with it. When they ring up and say, "Look, I want to go back to work." They will not let them go back to work. Then they contact WorkCover and WorkCover says, "This is workplace bullying, you have to raise it with the employer." They say, "I have already done that." WorkCover says, "I am sorry, can't interview." They say, "Look, I am getting so distressed all the time by being put out to Siberia in another office." They are all highly intelligent people. One of them attempted suicide.

CHAIR: I invite you to send the Committee information on the cases you know because if it is true that injured workers are being subjected to intimidation, harassment and bullying by insurers or by WorkCover staff that would be a very serious matter. But if there has been some misunderstanding as to what those terms mean and there has been no such intimidation, harassment or bullying by insurers or WorkCover staff that would be a great injustice to them. I am sure you would agree with me on that.

Ms CHAN: Yes, and I wholly agree with you. One of the difficulties in determining bullying is, firstly, there is no legal definition of bullying. Secondly, if you look at it under health and safety one of the legal principles is that you should be proactive and not exposed because of risks to health and safety. If it is repeated then really you are contravening the legal principle of the occupational health and safety laws.

CHAIR: But that is a different issue.

Ms CHAN: I agree but I am just highlighting the difficulty in that. I can also use the system within an organisation to make life extremely hard for you. Now would you call that bullying? That is the question.

CHAIR: If you can take those questions on notice, and we will put them in writing to you, you will be able to make clear what you mean when you refer to intimidation, harassment and bullying in your response. I have taken enough time. Mr Shoebridge will now ask you both some questions.

Mr DAVID SHOEBRIDGE: In your submission you have given a number of examples. I will read only one of them onto the record. You say it is from an injured worker called James—I think you have anonymised?

Mr GRUMLEY: Yes.

Mr DAVID SHOEBRIDGE: It reads, "I have a psychological injury, live in a regional area, no public transport, no income for 11 weeks now, requested financial assistance in getting to my independent medical examiner's appointment three hours away. No reply from the insurer after many attempts to contact so I couldn't attend because I had no means of getting there. The insurer then cuts me off for being non-compliant. I complain to WorkCover who said they would look into it. Six weeks later still no reply. I quit my job and gave up on my workers comp clam to retain my sanity. They simply don't care." Can you tell me what if anything happened after that or have you had any further interaction with that worker?

Mr GRUMLEY: The problem with that example is that there were two people involved in putting this submission together: I and my manager Michelle Burgess. That is not one that I have handled specifically and unfortunately Michelle has been unable to attend today. We could take that question on notice and find out for you exactly what happened.

Mr DAVID SHOEBRIDGE: In your personal experience, with the people that either of you have dealt with, can you give any other examples that might have a similar colour and flavour to illustrate what you are talking about?

Ms CHAN: Yes, I could provide that. Again this is a self-insurer and this person has been bullied. She works in the health area. As we heard earlier, it is a very small community and when you are working in a regional city it gets even smaller. How can I put this? By way of communication her contract was terminated

because she actually raised an issue that is important. Rather than deal with the bullying issue what they did was isolate her. Not only did they do that, the moment they terminated her employment they made sure they contacted everyone on the network—because there are only so many—and she could not get a job.

Mr DAVID SHOEBRIDGE: Why was she terminated?

Ms CHAN: Because she raised an issue that questioned the integrity of the way the organisation was working. She knew that it was wrong. She knew that it was an issue that had previously attracted ICAC's attention. She was a very conscientious worker and she raised the issue.

Mr DAVID SHOEBRIDGE: How did this escalate into workers compensation matter?

Ms CHAN: They just denied her claim. They absolutely denied her claim. She put in a submission and they denied her claim. This is a self-insurer.

CHAIR: What was the claim for?

Ms CHAN: A claim for the stress, they denied it. It was a workers comp claim.

Mr DAVID SHOEBRIDGE: She had an ongoing grievance with her employer, which led to her termination?

Ms CHAN: Yes.

Mr DAVID SHOEBRIDGE: She said she had a psychological injury as a result of that?

Ms CHAN: Yes.

Mr DAVID SHOEBRIDGE: And they denied her claim?

Ms CHAN: They denied her claim and because she is on contract—a lot are on contract now and are very vulnerable—all they have to do is terminate her employment. Now she has to pay for her own treatment with a psychiatrist. She is not working. She cannot get work in her area because she is a professional. So it is very insidious and it is long term. It does not end at the point of employment; it is ongoing.

The Hon. PETER PRIMROSE: You have approached the WorkCover Authority with this. They must have a file, statistics or you must have got a response. How can we get a handle on this and ask, "What actually happened here?"

Mr DAVID SHOEBRIDGE: How can we get some concrete examples to investigate?

The Hon. PETER PRIMROSE: That is what we are looking for. We want to track it down.

Ms CHAN: I understand that. This is like shadow boxing, if you do not mind me saying that, and I will tell you why. When you ring up WorkCover it is on an inquiry line. They have a database saying this is inquiry and bullying. Now we heard earlier from the PSA that the inspectors have been directed that when it is a bullying and stress claim you do not deal with it. So how do you get information on that? That becomes a challenge.

CHAIR: Did these people complain also to the WorkCover Independent Review Office [WIRO]?

Ms CHAN: Yes, they did.

CHAIR: So there should be a record there?

Ms CHAN: They did. In the case where the lady attempted suicide, she was called back into WorkCover's office. They explained that they could not prosecute the employer because it was over the two-year period. If you are interested in getting information on that case, I would be more than happy to speak to those people and get the information for you.

The Hon. PETER PRIMROSE: We need to get the cases and track them through so that we can see what happened in these examples.

Mr GRUMLEY: Please understand as well that a lot of the times when people contact my helpline I can only inquire on behalf of the person. The person has to lodge the complaint themselves, unless they give me authorisation to act on their behalf, and to date no-one has really given me authorisation. They have given me authorisation to inquire on their behalf but not to act on their behalf. So that may be a problem. I collect all the data and look at the statistics that come to the office. I could speak to the individuals we are referring to and go from there, without a doubt.

CHAIR: Does your organisation operate a full-time office?

Mr GRUMLEY: Yes. It is open Monday to Friday from 8.30 a.m. to 4.30 p.m.

CHAIR: Is it a voluntary organisation? Do you work voluntarily for this organisation?

Mr GRUMLEY: No, I am employed. I was under a work capacity assessment when I was picked up by the Injured Workers Support Network. I tried to access the WorkCover job placement program [JPP]. The problem with that is that the minute the insurer calls you and says they are now conducting a work capacity assessment you cannot access that program. So I was actually a direct hire.

Mr DAVID SHOEBRIDGE: What is the JPP?

Mr GRUMLEY: It is the job placement program where they subsidise your wage for 12 months.

The Hon. SHAOQUETT MOSELMANE: You said earlier that you would really prefer not to call WorkCover because they do not respond to you as efficiently as the WorkCover Independent Review Office.

Mr GRUMLEY: That is correct.

The Hon. SHAOQUETT MOSELMANE: What percentage of review matters do you take to the WorkCover Independent Review Office?

Mr GRUMLEY: I have been in the role now for 12 months, so I can gauge the severity of what the call is about. If it appears that they may be stepping outside the guidelines of the legislation then I can call the WorkCover Independent Review Office and get a point of contact for the injured worker to follow it up.

The Hon. SHAOQUETT MOSELMANE: There may be sufficient information there to help us. If you could provide the information that you have referred to the WorkCover Independent Review Office, it would be helpful.

Mr GRUMLEY: We can do that.

The Hon. SARAH MITCHELL: I do not think my question will have an easy answer, unfortunately, given the complexities of what you have raised today. We, as a Committee, are tasked with reviewing WorkCover. Can you suggest any recommendations that this Committee should make, further to what is in your submission, arising from your evidence at today's hearing? Is there anything that stands out to you that could perhaps be quickly and easily changed to make things better for the people you deal with?

Mr GRUMLEY: Yes. The availability of information on what a worker who is hurt at work is entitled to could be improved. If you go to the WorkCover website, you see that it is very cumbersome. You cannot find any information about an injured worker being able to choose their own doctor, their own rehabilitation provider, and their own physiotherapist and allied health professionals. I believe it would be helpful if the operations and training manuals that the insurers hold could be made public. That information is currently concealed, so injured workers do not know how to behave and they do not know how the insurers are meant to behave. If that sort of information could be made readily available, it would give a bit more opportunity for some form of enforcement.

Mr DAVID SHOEBRIDGE: Are the people you are dealing with legally represented or are they almost never legally represented?

Mr GRUMLEY: Rarely.

Ms CHAN: They cannot afford legal fees.

Mr GRUMLEY: Given the changes in the legislation, particularly the work capacity decisions, legal people cannot get involved where an injured worker is concerned.

CHAIR: Are any of those who approach you members of a union?

Mr GRUMLEY: Our doors are open to everyone.

CHAIR: Yes, but would they not be getting assistance through their union?

Mr GRUMLEY: Some would, definitely. They are questions on the data capture form: "Are you a member of a union? Are you getting assistance from a union?" Our doors are open to everyone.

Ms CHAN: The people I have been talking about all belong to a union. But, because their union representative works in the same organisation and they are on a contract, they are compromised. They do not have the strength to stand up to the employer and say, "This is not on," because they know that they will be targeted.

CHAIR: So you are saying that the union representatives and the unions themselves are compromised?

Ms CHAN: Yes, that is what I am saying.

Mr DAVID SHOEBRIDGE: They may have members on both sides of that internal dispute. I think that is the point.

CHAIR: We are talking about disputes with employers.

Ms CHAN: Yes.

CHAIR: So you are saying that they would be compromised?

Mr DAVID SHOEBRIDGE: It seems to me that your organisation, in many ways, is doing the best it can to fill a large hole that has opened up in the workers compensation scheme for people who are no longer getting legal representation.

Ms CHAN: Yes.

Mr GRUMLEY: Yes.

Mr DAVID SHOEBRIDGE: It must place almost impossible expectations on your organisation from those people coming to you and an almost impossible burden, given your limited resources. Would that be accurate?

Mr GRUMLEY: Yes, particularly with the work capacity decisions. I get a lot of calls from people looking for assistance on how to challenge them. The only way I am able to assist is to refer them to the WorkCover Independent Review Office. They release information on various decisions that have been reviewed. Other than that, there is nowhere for them to turn. There is no-one to explain their rights and entitlements either.

Mr DAVID SHOEBRIDGE: So you are a very large but underresourced community safety net in some ways?

Ms CHAN: Yes.

Mr GRUMLEY: I believe there are more than 100,000 workers compensation claims open in New South Wales at this point in time. Whether they have been open for five minutes or five years I cannot tell you. I

believe that 1 per cent of them are over that 30 per cent whole person impairment [WPI] threshold, which means that they do not get put through the work capacity decision process. Other than that, it is open slather for everyone.

Ms CHAN: When we look at injured workers, we are actually also looking at the failure of the health and safety system within that organisation. They go hand in hand; they cannot be pulled apart. What is really lacking is the integration of good management of health and safety, injury management and return to work. They should all be in one parcel. I agree that the scheme should be viable. I understand that. But you cannot take them apart. The best example is if you take your shoes apart—the laces and the inner sole—then they do not work. You have to put them together to be able to walk in them. It is that sort of complexity and simplicity at the same time that we are talking about.

CHAIR: Unfortunately, our time for this section has concluded. Ms Chan and Mr Grumley, I thank you very much for being here with us. We will certainly take on board your submission and your comments. We will no doubt forward you some questions on notice. If you could respond to us within 21 days, that would be very helpful. Thank you for making time to be here with us today.

Mr GRUMLEY: Thank you for allowing us the opportunity to give evidence today. We are very grateful.

Ms CHAN: Thank you. I think I need to emphasise that what you are doing is extremely important. Injured workers depend on you to help them. Thank you.

(The witnesses withdrew)

SUSAN SMITH, Project Manager, National Disability Services, and

SCOTT HOLZ, State Manager, National Disability Services, sworn and examined:

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

Mr HOLZ: National Disability Services is the national peak body for disability service organisations in the non-government sector. Nationally we have more than 800 organisational members and within New South Wales, through our own devices and funding from Ageing, Disability and Home Care, we operate an industry development fund providing services and support to some 690 non-government organisations. The goal of that support is to build capacity within the non-government sector as we move through some quite striking social reform in the disability sector. As you would be aware, in New South Wales there was a Government commitment to Stronger Together 2, which saw a doubling of money provided to support people with disability. The goalposts of Stronger Together 2 have not moved but they have grown considerably with New South Wales signing up to the National Disability Insurance Scheme.

Our main interest is that our members and the services for which we provide support have to deal with the dual tension of complying with work health and safety legislation—and rightly so—in an environment where people with disability are exercising increasingly greater choice and control over the types of support they receive. There has been a move from centre-based activities, where the employment environment can be controlled by an employer, often to places of the service-recipient's choosing. That could be in the community, in their own homes or doing a variety of activities. The United Nations Convention on the Rights of Persons with Disabilities, which Australia signed up to, embraces the concept of dignity of risk and actively encourages people to make decisions about their lives and the risks they will take. It is the role of disability support organisations to help facilitate those choices.

CHAIR: You referred to the tensions between compliance with workplace health and safety regulations and disability legislation. Please amplify on that to tell us about the tensions and how they can be resolved.

Ms SMITH: We have given clients more choice and control over the support they receive. A disability organisation may provide support to do community access or respite-type services. The support worker could turn up and the client says, "I really want to go rock-climbing" at a particular place the support worker has not been to and the organisation has not done a risk assessment for, so the organisation does not know the health and safety risks that might exist. The tension faced is how to ensure the safety of the client and the worker, given that it will be a workplace although the organisation has not chosen the workplace.

CHAIR: Do you come across these tensions frequently?

Ms SMITH: Yes.

CHAIR: How can those tensions be lessened?

Ms SMITH: There are mechanisms that can be used, such as the risk-assessment process when they arrive at the workplace. That is the type of advice I give organisations. They have to empower workers so that when they arrive at venues the client has chosen the worker can say no if the worker feels the venue is not safe. That is difficult and in cases where they have warning, perhaps when the client has said they want to become proficient at swimming so the worker knows what to expect from the venue and can do an assessment before the day, there are associated costs. One problem organisations have is the cost of checking out workplaces, because they do not have control over the choice of workplaces.

Mr HOLZ: There is also a commercial tension. As service systems become more deregulated and market-driven, we anticipate that if services say they will not assist with activities they have assessed to be unsafe then the portability of funding is such that people can exercise their right to find another provider. There is tension as there are always people who will do it.

Mr DAVID SHOEBRIDGE: In short, if you want to provide good person-centred care to clients in the disability sector that will often put you into unknowable situations?

Ms SMITH: Yes.

Mr DAVID SHOEBRIDGE: Can you give real-life examples that have come across your desk?

Ms SMITH: Clients, very rightly, want to do everything.

Mr DAVID SHOEBRIDGE: Mountain biking?

Ms SMITH: Bush walking, swimming, go away on holidays, going to campsites.

Mr DAVID SHOEBRIDGE: One obvious example would be on a hot summer day when they want to go to the beach. How would a disability organisation do a risk assessment of how safe it is to take a client to a beach? Do they ask: If the client gets caught in waves, how strong a swimmer am I? How much do I know about beach safety? Are there rips? You say it becomes a complex and potentially expensive process.

Ms SMITH: Yes, it can be. If they have waring they are in a better position to assign a worker who knows how to manage beach-type hazards and hopefully choose a safe beach, but the problem is when a client chooses a beach on a hot day and the worker does not know the beach and does not like going to beaches. They are obliged to provide that service, because of the person-centred approach and the time to be spent with the client has been funded for that client. The client does not want the funds used while the worker goes to check out the beach for any hazards. One of the tensions is that clients do not want their money, as they see it—and rightly so—to be used on doing detailed risk assessment of a venue.

Mr DAVID SHOEBRIDGE: But how do we deal with that tension? What is the recommendation to deal with that tension? One answer would be to just remove that occupational health and safety or workplace health and safety obligation for disability service workers, and then we might see five of them drown at Tamarama Beach. The other would be to provide additional funding. What is the solution to it?

Ms SMITH: Partly it might be a funding issue, but also we can provide training and support to the support worker so that they have the skills to identify hazards when they arrive at different locations, and they have the skill to then negotiate with the client around the activity that the client has chosen to do.

Mr DAVID SHOEBRIDGE: Is this where you are saying that there needs to be a very focused disability sector working from WorkCover? Are you getting that, or are you not getting that?

Ms SMITH: One of the concerns is that the WorkCover Authority does not understand those sorts of difficulties, especially now that there is no specialised team that we can relate that information to. When you are looking at the whole of New South Wales and inspectors right across New South Wales, how do you provide that information about the issues that the sector is facing? It is difficult to provide that. You have WorkCover inspectors who have come from an industrial factory-base type of background and do not have any understanding of what it is like working with someone who may have challenging behaviours or may have complex physical needs, and providing a service for them in an uncontrolled environment, and the issues that are faced in those sorts of cases as well as the lack of predictability. As much as you can do a risk assessment, you can have something go wrong on the day. As much as you plan and look at the staffing levels required and the equipment required, on the day something can go wrong.

The Hon. PETER PRIMROSE: Following on from precisely the point raised by Mr David Shoebridge, given the abolition of the sector-specific teams and the industry reference groups, are you calling for something like that to be reinstated, or is the issue to better train the more generalist WorkCover inspectors? How should that be done?

Mr HOLZ: We certainly think that within the context of the national disability strategy and the New South Wales implementation plan for that, the WorkCover Authority should indeed have a response to how it will work with the disability sector so that, to meet the ends of the inclusion bill that will probably come before the Parliament this year at some stage, people with a disability can take their place in society in a fully inclusive way. That is really about having a response of government working with the sector to provide mechanisms by which people who work in the sector can conduct the work that they do in a safe manner and there is a greater understanding of the issues that exist in this particular sector.

The Hon. PETER PRIMROSE: If that is an objective—and it is a good one—what mechanisms that do you recommend should be there? How should it be structured?

Mr HOLZ: Look, I think it is around—and please jump in, Sue—training and a greater understanding of what is often the silent people in our society, who are not known. We do not see people with disability out in society as much as we should. We will, as the National Disability Insurance Scheme rolls out, see more and more people. In fact, in New South Wales, the numbers are that we currently support about 55,000 people with a disability. With full implementation of the National Disability Insurance Scheme by 2018-19, we will see that rise to 140,000 people. This is going to be a doubling of the workforce, for example, where we need to put some supports and processes in place to ensure a safer workforce.

Ms SMITH: One of the things that we have been trying to do is to obtain guidance material so that disability service organisations can understand their level of responsibility in relation to providing services where they do not have the control over a lot of these issues, and where they are just there to hold the funds in some cases. Then what is their level of responsibility? We have been trying to get assistance from WorkCover and we have from Safe Work Australia as well in providing that guidance-type material. It is difficult because of the complexity of the sorts of situations that they are faced with, but they are in this sort of no man's land almost in some regards.

The Hon. PETER PRIMROSE: Maybe this should be a matter that we also raise with WorkCover and ask them for their process.

The Hon. SHAOQUETT MOSELMANE: Thank you, Chair. I think the question I was going to ask already has been referred to by the Hon. Peter Primrose. Earlier you raised in your statement that some of the inspectors really come from industrial backgrounds. You imply in your submission on page five under "WorkCover Inspectors" that some members have reported feeling harassed and intimidated. Is that because they come from that sector? If so, what is the solution to it?

Ms SMITH: The reports that we received were related to inspectors who did not understand that people that our disability service organisations were working with have unpredictable behaviours, and that they cannot always prevent those behaviours from resulting in an incident. Again, we cannot solve that problem, really, except that it is having the understanding from the inspectors that they cannot design out. Designing out those risks means confining people to locked rooms or locked houses, and that goes against the whole theory of what we are trying to do.

The Hon. SHAOQUETT MOSELMANE: You have referred this issue to WorkCover. I am wondering what the response has been?

Ms SMITH: It was previously discussed with WorkCover when they had their industries-respective teams. They certainly agreed to with the issue but, yes, it has not been taken any further.

Mr DAVID SHOEBRIDGE: Do you have any idea how you could raise this with WorkCover? Do you look at the website or do you talk to inspectors? Has it ever been put to you, "Well, why don't you meet with this person? That's how we deal with these kind of industry issues."?

Ms SMITH: No. I would not know. At the moment I would not know who to approach at WorkCover.

Mr SCOT MacDONALD: Thank you for coming. I have just one question about the first recommendation. You have lost the premium discounts, have you?

Ms SMITH: The premium discount scheme was an old scheme that finished in about 2005, I think, but a lot of the disability service organisations took advantage of that scheme and it provided a really good incentive. When I deal with organisations that took advantage of that scheme they have far better work health and safety management systems than those that did not participate in the scheme.

Mr SCOT MacDONALD: So there is no price signal between the good, the bad and the indifferent in terms of workplace health and safety.

Ms SMITH: No. I do not know what you mean by price signal.

Mr SCOT MacDONALD: Like you are saying, there is no incentive or there is not a lot of incentive there, until you get penalised.

Ms SMITH: WorkCover sees the incentive as a reduction in premium. If you have a good health and safety management system, your premium will go down. There is that logic in that, looking at that, but as I said in the submission, our organisations can have just one unexpected event and their premium can explode.

Mr DAVID SHOEBRIDGE: That is because they are so small.

Ms SMITH: Because they are small. That is right.

Mr DAVID SHOEBRIDGE: One injury as against a small cohort of employees looks statistically very large.

Ms SMITH: Yes. When you think that a serious claim can be capped at $150,000 for a small employer, when their normal premium was maybe $40,000, then it is a massive increase and they have to find the funds from somewhere.

Mr SCOT MacDONALD: Earlier today we heard from the NSW Workers' Compensation Self Insurers Association. Are there any self-insured in your sector?

Ms SMITH: No.

Mr HOLZ: I believe historically there may have been a couple of organisations, but it is a very minor update.

The Hon. SARAH MITCHELL: My question relates to recommendation 9, which says, "Limit the opportunity for claiming workers compensation to cover a pre-existing condition where the worker has failed to reveal the existence of the condition to the employer." Has that been an issue in your sector?

Ms SMITH: Because they work in the disability sector, in a lot of cases they want to assist people with potential health problems or they may be in a disadvantaged sector of the community, so they will employ people and then suddenly there is a claim for an aggravation of a pre-existing condition. In a lot of cases it is a lot of costs before it is sorted out that it was a pre-existing condition. Of course, because of the issues around discrimination the difficulty in actually asking those sorts of questions and getting that sort of information in New South Wales creates problems for employers.

Ms TANIA MIHAILUK: It is serious enough or has been raised frequently with you that you felt it important to include in one of the recommendations?

Ms SMITH: Yes, definitely. I know several organisations that have been faced with that situation.

Mr DAVID SHOEBRIDGE: This has all been about your employer and industry role. I ask you to turn your mind to the experience of employees within the industry who are the subject of the workers compensation scheme. From your observation, does the workers compensation scheme at the moment deliver the kind of person-centred care for which the disability sector should be aiming?

Ms SMITH: For the injured worker?

Mr DAVID SHOEBRIDGE: For the injured worker?

Ms SMITH: Certainly, yes. We actually have had a discussion around that. There are some limits in being able to really do a person-centred approach for an injured worker because of the legal requirements. If an injured worker feels they need a particular type of treatment or a particular amount of time for recovery, they cannot choose that because of the requirements under the workers comp scheme. So the ability to person centre is limited; it is attempted but it is limited because of the constraints. Also from an employer's point of view, of course they want the person just to get back to work to reduce their costs.

Mr DAVID SHOEBRIDGE: What about the inability to exit the statutory scheme with a payment and then make the best of your life? Do you think that would be an improvement towards a person-centred scheme?

Ms SMITH: It could be in some cases, especially for more severely injured workers because the demands of work in the disability sector are quite high from the physical and psychological point of view. It is often difficult for workers to get back to pre-injury duties. Having another mechanism that would not tie them to continuing to try to do that would be helpful for those complex serious injuries.

The Hon. PETER PRIMROSE: Earlier you mentioned the option of training WorkCover inspectors. How could they be better trained? What things would they need to focus on in their training to provide a better service for your sector?

Ms SMITH: One thing really is the awareness that some people with disabilities will become employers or are already employers when they are actually employing their own support workers and having an understanding of what that sort of arrangement will be like. The issues around those arrangements would be important as much as understanding the roles and responsibilities of people within the disability sector. How could you do that? You could produce paper-based material around that. You could produce e-learning video-type material, which I think would be better because the best way of learning is actually seeing. In some regional areas, they especially invite the inspector to their work sites. They get a better understanding when they see people in a group house environment or in a community access environment. That would be another option.

Mr DAVID SHOEBRIDGE: In the course of your answer it became apparent to me that an individual with a disability who has someone come to provide services for them at their house may actually find they become what is known as a PCBU—a person conducting a business or undertaking?

Ms SMITH: Yes.

Mr DAVID SHOEBRIDGE: They may have many work health safety obligations about their own home simply because they have a worker come in to provide them with assistance at their home. Have you come across that as an issue?

Ms SMITH: They have obligations whether they are a PCBU because it becomes a workplace. So they have an obligation as another person in the workplace whilst the service is being provided but, especially when they are actually directly employing, they then have PCBU obligations. That is something that we are trying to obtain information and provide supportive information to people with disabilities around that.

Mr HOLZ: There is a further complication in that under New South Wales State funding there is an opportunity for a person to exercise the right to employ the support worker they want. But a third party organisation, a disability service organisation, is actually the employer and holds all of those obligations to the employee. However, it could be that they have no say in the recruitment, training and induction of the person.

Mr DAVID SHOEBRIDGE: The Hon. Scot MacDonald asked about how labour hire firms have little control over the place where they are doing work.

Mr HOLZ: Yes.

Mr DAVID SHOEBRIDGE: In many ways this is a kind of strange replication of that?

Mr HOLZ: It is not dissimilar in that respect in that as the employer you do not have absolute control over the work place.

The Hon. SHAOQUETT MOSELMANE: As a national disability service, do you have any relationship with the Safety Return to Work and Support Board?

Ms SMITH: No.

CHAIR: That brings us to the conclusion of today's hearing right on time. Thank you for attending today. Your evidence certainly will play a part in our deliberations. There may be some questions on notice forwarded to you. If that is so, we would appreciate a response within 21 days.

Mr HOLZ: Yes. We certainly undertake to do that. We thank the members for your time.

(The witnesses withdrew)

(The Committee adjourned at 3.55 p.m.)