

Appendix 4

Actuarial projections of funding scenarios for the NSW Workers Compensation Scheme

Tillinghast-Towers Perrin

Actuarial Projections of Funding Scenarios for the NSW Workers Compensation Scheme

WorkCover New South Wales, 400 Kent Street, Sydney 2000. Telephone 9370 5000 ALL MAIL TO G.P.O. BOX 5364 SYDNEY 2001



Reverend the Hon. F.J. Nile, M.L.C. E.D. L.Th.
Chairman, General Purpose Standing Committee No. 1
Legislative Council, Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Reverend Nile

The Minister has asked me to provide you with the attached letter from the Scheme's Actuary, Tillinghast-Towers Perrin, dated 7 January 2002, concerning projections in relation the Committee's funding scenarios.

You will note the Actuary's projections indicate at table 1.4 on page 7 that the effect of the recent Scheme reforms will generate a 'one off' reduction of the deficit of up to \$1.33 billion. The projections also indicate at page 7 that the reforms are expected to generate ongoing savings in the range of \$230 million to \$406 million per annum between 2002 and 2005.

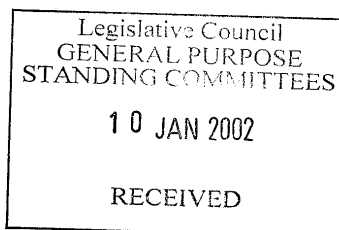
It is envisaged that the combined effect of these reforms will reduce scheme costs below premiums and commence a significant downward trend in the Scheme deficit.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michele Patterson'.

Michele Patterson
Acting General Manager

7.01.02



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Tillinghast - Towers Perrin

7 January 2002

Mr R McInnes
Assistant General Manager
WorkCover Authority of NSW
Level 8
400 Kent Street
SYDNEY NSW 2000

Dear Rod

ACTUARIAL PROJECTIONS OF FUNDING SCENARIOS FOR THE NSW WORKERS COMPENSATION SCHEME

The purpose of this letter is to provide the results of our actuarial projections for the various deficit funding scenarios requested by the General Purpose Standing Committee No. 1 ("the Standing Committee") in relation to the NSW Workers Compensation Scheme.

Background and Scope

Tillinghast-Towers Perrin ("Tillinghast") has been requested by the WorkCover Authority of New South Wales ("WorkCover") to investigate various deficit funding scenarios for the NSW Workers Compensation Scheme as requested by the Standing Committee in their letter dated 28 November 2001.

Actuarial projections were requested for the following four deficit funding scenarios as outlined by the Standing Committee:

Scenario 1. Calculate how much the current Scheme premium rate of 2.76% will need to increase on average (as a percentage of Scheme wages) if the deficit is to be funded over alternative periods from increased premium rates. The current cost of the Scheme is assumed to stay constant at 3.13% for this scenario. (Note: excludes the effects of the 2001 legislated Scheme reforms)

Scenario 2. Calculate how much the ongoing cost of the Scheme will need to reduce from the current cost of the Scheme of 3.13% of wages if the deficit is to be funded over alternative periods from a lower cost of the Scheme. The premium rates for prospective exposures are assumed to stay constant at 2.76% for this scenario. (Note: excludes the effects of the 2001 legislated Scheme reforms)

Towers, Perrin, Forster & Crosby, Inc ARBN 002 551 019 is incorporated in USA and has limited liability
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Scenario 3. Perform the same calculations as Scenario 1 except taking into account the effects of the proposed Scheme reforms. This scenario includes both a high and low estimate in order to take account of the range of possible savings in relation to the Scheme reforms.

Scenario 4. Perform the same calculations as Scenario 2 except taking into account the effects of the proposed Scheme reforms. This scenario includes both a high and low estimate in order to take account of the range of possible savings in relation to the Scheme reforms.

It is important to note that in Scenarios 3 and 4 the effects of the Scheme reforms on the prospective breakeven Scheme cost has been assumed to remain constant and not reduce over time as a result of slippage, or increase as a result of changed claimant culture.

Table 1.1 provides a description of each scenario referred to in our results.

TABLE 1.1

Description of Funding Scenarios

Scenario Name	Scheme Funding Scenario	Scheme Reform Scenario
Scenario 1	Scenario 1	N/A
Scenario 2	Scenario 2	N/A
Scenario 3 – Low Savings	Scenario 3	Low Scheme Reform Savings Scenario
Scenario 4 – Low Savings	Scenario 4	Low Scheme Reform Savings Scenario
Scenario 3 – High Savings	Scenario 3	High Scheme Reform Savings Scenario
Scenario 4 – High Savings	Scenario 4	High Scheme Reform Savings Scenario

The alternative time periods we have been requested to use in each of the above scenarios are 5 years, 10 years, 15 years, 20 years, 25 years and 50 years from 1 January 2002.

It is also worth noting that the current Scheme premium rate of 2.76% used in the above scenarios reflects the current average Scheme premium rate rather than the Government's target Scheme premium rate of 2.80%.

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Tillinghast - Lowers Paria

In the context of this letter, some further comment on the definition of "low" and "high" reform savings scenarios is warranted. This is of importance as the definitions adopted will have, through their relationship with the basis of valuing the Scheme's outstanding claim liabilities, some bearing on the estimate of the Scheme's deficit at future balance dates.

- The low savings scenario reflects the starting point for a Scheme valuation basis and might be adopted immediately after the Scheme reforms. In this basis, we would incorporate savings estimates which are based on objective analysis, that have some foundation on historical Scheme data. Hence, credit for such savings in the valuation can be taken with little or no evidence of the effects on claims costs of the implemented Scheme reforms. It is likely that this basis (perhaps with some variations reflecting evidence of the success, or otherwise, of the Scheme reforms) would be adopted for the next few valuations.
- As evidence of the effects of the Scheme reforms emerges (and, for some reforms, such evidence may take some time to emerge), progressive revisions to the low savings scenario can take place.
- Over time, it is possible that sufficient evidence of the success of the Scheme reforms may emerge to allow the Scheme actuary to adopt a valuation basis which reflects a high savings scenario. It is likely that the Scheme valuation would adopt the high savings scenario only when there is objective evidence to show that all the targets in relation the Scheme reforms are being achieved.
- The low and high savings scenarios provide a range of savings estimates arising from the Scheme reforms. It should be noted that the level of savings achieved may fall below or above this range.

Distribution and Use

This letter is provided to the WorkCover Authority of NSW in relation to the deficit funding scenarios requested by the Standing Committee. It is not intended, nor necessarily suitable for any other purpose.

We understand that WorkCover may wish to provide a copy of the letter to a range of stakeholders in the Scheme, including members of NSW Parliament and the Standing Committee. Permission is hereby granted for such distribution on the condition that the letter must be distributed in its entirety, that Tillinghast be informed of such distribution and all recipients must be aware that Tillinghast is available to discuss or explain any aspect of this letter.

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~~Tillinghast - Lewis Perrin~~

Any further distribution or reference to this document or to Tillinghast in relation to this document in any report, accounts, other form of publication or any verbal report is not authorised without our prior written consent.

We cannot be held responsible for conclusions drawn from our reports by unauthorised third parties.

Judgements about the conclusions drawn in this letter should be made only after considering the letter in its entirety.

Finally, we remain available to answer any questions that may arise regarding this letter.

Reliances and Limitations

In preparing this advice, Tillinghast has relied on historical data and other quantitative and qualitative information supplied by WorkCover without audit or independent verification. We have reviewed this information for reasonableness and internal consistency. However, such a review does not constitute a full audit or independent verification. Therefore, any material discrepancies discovered in this data by WorkCover should be reported to us and the letter amended accordingly.

Our analysis assumes that the range and cost of injuries that have occurred historically are indicative of those to appear in the future. It is possible that this may not be the case. For example, due to changes in effectiveness of risk prevention procedures, changes in industry mix, attitude of claimants, other cultural or structural Scheme changes, court settlements/precedents or other external effects, Scheme outcomes may change in an unpredictable manner.

Part of this letter provides estimates of the potential savings of reforms to WorkCover's dispute resolution system. We have not estimated start up costs or maintenance costs of implementing the changes. This analysis merely provides a guide to the potential financial effects of proposed changes and does not purport to deliver a firm estimate of the likely costs. Due to limitations, largely caused by the lack of data, and Scheme experience with the changes underlying the reform amendments, significant uncertainty surrounds our findings. The financial outcome is also largely dependent on the manner and degree in which reforms are implemented. This increases the uncertainty in our saving estimates. We have attempted to formulate implementation assumptions and scenarios by reviewing reports supplied by WorkCover and through discussions with WorkCover staff.

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However, due to the lack of relevant data, many of the underlying assumptions have been formed from what we believe are reasonable projections of outcomes from reforms. In forming these projections, we have, in our judgement, employed assumptions and techniques that are appropriate, and the conclusions presented herein are, in our view, reasonable given the information currently available. Nevertheless, it should be noted that actual savings outcomes may be outside the range of savings contained in this letter.

A range of other issues was also addressed in the modelling, most requiring various subjective or non-numerically derived assumptions. This approach was necessary since the appropriate data was not available. These are discussed in more detail in our report entitled "Financial Evaluation of the 2001 NSW Workers Compensation Systems Reforms for the WorkCover Scheme" dated 26 November 2001.

Findings

Each of the modelled funding scenarios are based upon a projected deficit of \$3,132M at 31 December 2001 as set out in our Scheme valuation report at 30 June 2001 defined, for the purposes of this letter, as the "current Scheme deficit". The economic assumptions used in the modelling of these scenarios are also consistent with those used in the June 2001 valuation.

Scenarios Excluding Scheme Reform Impacts

The results of the scenarios excluding Scheme reform impacts (scenarios 1 and 2) are discussed separately below.

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~~Therese Farrin~~

Scenario 1: Deficit Funding Using Premium Increases (Excluding Scheme Reform Impacts)

TABLE 1.2

Scenario 1: Required Scheme Premium Rate to Fund Deficit (No Reforms)

Funding Period (yrs)	5	10	15	20	25	50
Premium Rate Required	3.90%	3.50%	3.37%	3.30%	3.26%	3.18%
Change to Current Premium rate (2.76%)	1.14%	0.74%	0.61%	0.54%	0.50%	0.42%
% Change to Current Premium Rate (2.76%)	41%	27%	22%	20%	18%	15%

Note: All rates are quoted net of GST.

In this scenario premium rate increases have been applied from 1 July 2002 (rather than 1 January 2002) as the current premium rate of 2.76% is set to continue until 30 June 2002.

This scenario illustrates that it is necessary to increase the current premium rate by at least 15% to remove the current deficit over the next 50 years, all other things being equal.

For the above scenario, the current cost of the Scheme has been assumed to stay constant at 3.13% of Scheme wage roll. To ensure future policy years are fully funded (ie. do not add to the current deficit) it is necessary to charge a premium rate that is at least equal to the current Scheme cost of 3.13%.

This increase alone reflects a 13.41% increase in premium rates. Therefore, the additional premium rate increases above this amount are used to reduce the initial deficit arising from accident periods occurring prior to 1 January 2002.

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Scenario 2: Deficit Funding Using Cost Reduction (Excluding Scheme Reform Impacts)

TABLE 1.3

Scenario 2: Required Reduction in the Cost of the Scheme (No Reforms)

Funding Period (yrs)	5	10	15	20	25	50
Required Cost of Scheme	2.08%	2.41%	2.53%	2.59%	2.63%	2.71%
Change to Current Cost of Scheme (3.13%)	-1.05%	-0.72%	-0.60%	-0.54%	-0.50%	-0.42%
% Change to Current Cost of Scheme (3.13%)	-34%	-23%	-19%	-17%	-16%	-14%

Reductions in the cost of the Scheme have been applied from 1 January 2002.

This scenario illustrates that by holding future premium rates level at 2.76% of wageroll, the cost of the Scheme would need to reduce from its current level of 3.13% to at least 2.71% to return the Scheme to a fully funded position over the next 50 years.

This implies that the cost of the Scheme would need to reduce to at least the current premium rate of 2.76% to ensure prospective exposures do not add to the current deficit. In addition to this reduction, a further reduction is required to fund the current deficit resulting from prior accident periods.

Scenarios Including Scheme Reform Impacts

We have modelled scenarios including the projected impacts of the proposed Scheme reforms using a range of possible savings. The amounts used in these funding projections are given in Table 1.4 under estimated high and low Scheme reform savings scenarios. The descriptions of these two savings scenarios are:

- Low — This scenario assumes all of the critical reform initiatives being implemented effectively, with no erosion to the crucial 'building blocks' of the system (eg with rigorous monitoring and mitigation of any potential slippage). In broad terms, this position is consistent with a potential actuarial valuation basis which might be adopted immediately after the introduction of the Scheme reforms. As more information is received in relation to the impact of the reforms this position will be subject to revision. However, we expect the emergence of objective evidence with which to assess the success of the

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Table 1.4 - Projected Savings

reforms to be slow. This may limit the extent to which the valuation basis, at least in the short term, can react to the emerging experience.

- **High** — This scenario is based upon the outcome if the targets that WorkCover expect are fully achieved. In this scenario it is assumed that WorkCover meets the targets set on a broad range of measures, not just those relating to the crucial "building blocks".

Further discussion on the high and low savings scenario and their interaction with the valuation basis can be found in the background and scope section.

TABLE 1.4

Projected Savings from Scheme Reforms

Accident Period	Low (\$M)	High (\$M)
Retrospective		
Accident periods prior to 01/01/2002	809	1,330
Prospective		
Accident year 2002	232	396
Accident Year 2003	228	400
Accident Year 2004	228	409
Accident Year 2005	229	419

The estimated savings under these two scenarios have been broken into savings in relation to accident periods prior to 1 January 2002 ('retrospective savings') and savings relating to each future calendar year of exposure up to 31 December 2005 ('prospective savings'). The effect of the retrospective savings on the deficit is to generate a 'one off' reduction at 1 January 2002, while prospective savings are allowed for in the model by acting as a reduction in the future cost of the Scheme. It is important to note that these scenarios assume that the effects of the proposed Scheme reforms will remain constant over time and not reduce as a result of slippage in effectiveness or efficiency.

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Tim Mingshant - Tim Mingshant

Scenario 3: Deficit Funding Using Increased Premiums (Including Scheme Reform Impacts)

Table 1.5 provides the projection results of using a funding policy based on increased premium rates combined with the low savings scenario for the proposed Scheme reforms.

TABLE 1.5

Scenario 3 - Low Savings: Required Scheme Premium Rate to Fund Deficit

Funding Period (yrs)	5	10	15	20	25	50
Premium Rate Required	3.44%	3.15%	3.06%	3.01%	2.98%	2.92%
Change to Current Premium rate (2.76%)	0.68%	0.39%	0.30%	0.25%	0.22%	0.16%
% Change to Current Premium Rate (2.76%)	25%	14%	11%	9%	8%	6%

It is evident that to achieve full funding under the low savings scenario within a reasonable period of time, increases in the current premium are required despite the beneficial impact of the Scheme reforms.

Table 1.6 provides the projection results using a funding policy based on increased premium rates combined with the high savings scenario for the proposed Scheme reforms.

TABLE 1.6

Scenario 3 - High Savings: Required Scheme Premium Rate to Fund Deficit

Funding Period (yrs)	5	10	15	20	25	50
Premium Rate Required	3.08%	2.87%	2.80%	2.77%	2.75%	2.71%
Change to Current Premium rate (2.76%)	0.32%	0.11%	0.04%	0.01%	-0.01%	-0.05%
% Change to Current Premium Rate (2.76%)	12%	4%	2%	0%	0%	-2%

Given the inclusion of additional estimated savings under the high savings scenario, the Scheme is projected to reach a fully funded position in 23 years time without any increase to the current premium rate of 2.76%. If the Government's target Scheme premium rate of 2.80% is achieved and maintained then the

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Twininghorst - Zimms Harris

TABLE 1.8

Scenario 4 - High Savings: Required Reduction in the Cost of the Scheme

Funding Period (yrs)	5	10	15	20	25	50
Required Cost of Scheme	2.39%	2.58%	2.64%	2.68%	2.70%	2.74%
Change to Current Cost of Scheme (3.13%)	-0.74%	-0.55%	-0.49%	-0.45%	-0.43%	-0.39%
% Change to Current Cost of Scheme (3.13%)	-24%	-18%	-16%	-14%	-14%	-12%
Change to Post Reform Cost of Scheme (2.69%)	-0.30%	-0.11%	-0.04%	-0.01%	0.01%	0.05%
% Change to Post Reform Cost of the Scheme (2.69%)	-11%	-4%	-2%	-1%	0%	2%

Tables 1.7 and 1.8 compare the required Scheme cost reductions from these scenarios against both the current cost of the Scheme and the projected cost of the Scheme after allowing for the impact of the proposed Scheme reforms.

As discussed above for scenario 3, the effect of the Scheme reforms under the high savings scenario is to fully fund the deficit over the next 23 years without requiring further cost reductions (after the introduction of the Scheme reforms). However, to fund the deficit over a shorter period of time further cost reductions are required in addition to those resulting from the impact of the Scheme reforms.

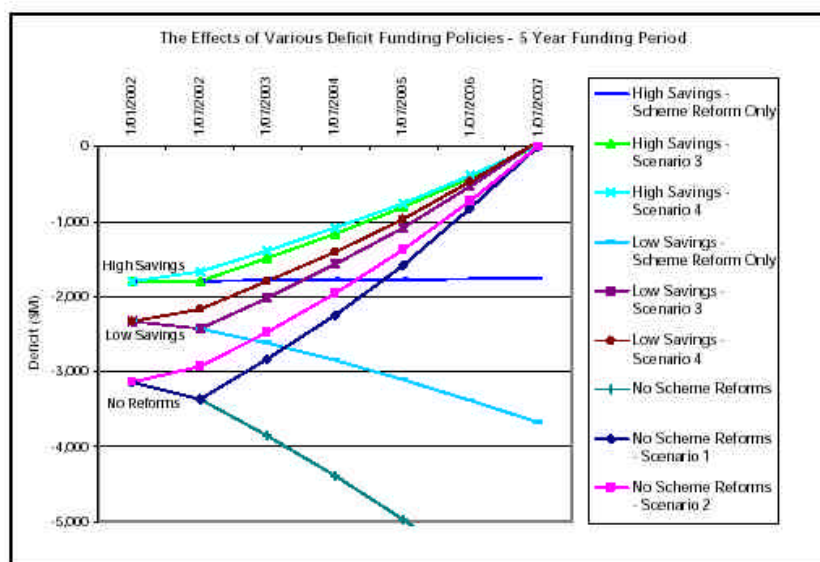
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Graphical Comparison of Scenarios

Graph 1.1 provides a graphical comparison of the effect on the Scheme deficit under various funding scenarios.



Note: The first period is a six month period from 1 January 2002 to 30 June 2002. All other periods are full years.

The main points to note from Graph 1.1 are:

- The three different 'starting' points at 1 January 2002 are a result of the different initial deficit under the three Scheme reform savings scenarios. These are:
 - No Scheme reforms (scenarios 1 and 2)
 - Low savings Scheme reforms (scenarios 3 and 4)
 - High savings Scheme reforms (scenarios 3 and 4)

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~~IN WINGHAT - ZIMMER FERRIN~~

- The funding scenarios based on premium rate increases show an increase in the deficit over the first six months. This is as a result of the current premium rate being fixed until 1 July 2002.
- The impact from the Scheme reforms under the low savings scenario is not substantial enough in itself to reduce the deficit without the aid of further premium rate increases or reductions in the breakeven cost of the Scheme. For the high savings scenario, the Scheme is estimated to reach a fully funded position after 15 years provided that the Government's target Scheme premium rate of 2.80% can be achieved and maintained.

We trust the contents of this letter are useful. Please do not hesitate to contact us if you have any further questions.

Yours sincerely


Dave Finnis


Sally Wijesundera

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Appendix 5

Workers compensation legislative reform Implementation plan

WorkCover NSW

Workers compensation legislative reform Implementation plan



2001– 2002

WORKERS
COMPENSATION
LEGISLATIVE REFORM

IMPLEMENTATION PLAN

(Outline for General
Purpose Standing
Committee No.1)

WorkCover. **Watching out for you.**

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INTRODUCTION

This 2001-02 Implementation Plan consolidates the projects that will be undertaken as part of the Workers Compensation Legislative Reform program. The Plan summarises the purpose and objectives of the reforms, the key activities, consultation with stakeholders and budgets that will be implemented by WorkCover to deliver improved services to its clients and stakeholders as part of the reform process. The Implementation Plan is a living document and as more information becomes available appropriate changes will be made.

The Implementation Plan is underpinned by, and should be used in conjunction with the **2001-2002 WorkCover Corporate Plan** -

The Plan articulates WorkCover's Vision - *Safe secure workplaces* - Mission - *To work in partnership with the New South Wales community to achieve safe workplaces, effective return to work and security for injured workers* - and Values. The Corporate Plan details the four corporate goals - *Reform, Compliance, Communication and Influence and Performance* - and details the priority activities associated with each of these goals.

SECTION 1: LEGISLATIVE REFORM OVERVIEW

OBJECTIVES

The objectives of the WorkCover Scheme are:

- prompt and effective treatment and return to work of injured workers;
- income support for injured workers and their families;
- fair and affordable premiums for employers with incentive for improved performance; and
- efficient and cost-effective service delivery.

PURPOSE

In June 2000 the Minister outlined a package of reforms to the WorkCover Scheme. The reforms are aimed at delivering a WorkCover scheme that:

- reduces the risk of workplace injury, illness and disease;
- provides prompt treatment for injury, and necessary medical and vocational rehabilitation to promote an early return to work;
- provides injured workers with income support during incapacity, pays for medical costs, and compensates workers for permanent impairment;
- provides a simply designed benefits structure which provides equitable, adequate compensation to injured workers and which supports return to work;

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- ensures that employer costs are commensurate with the inherent risks of their industry, taking into account their performance in injury prevention and management; and
- delivers these objectives efficiently and effectively while making sure that the scheme and all its participants get the best value for money.

In announcing the package of reforms to the Scheme in June 2000 it was recognised that while the past reforms to the Scheme had been effective, they were not sufficient to address all of the key problems facing the Scheme, including the increasing Scheme deficit.

Two important pieces of legislation have been passed by the NSW Parliament this year to reform workers compensation – the *Workers Compensation Legislation Amendment Act 2001* and the *Workers Compensation Legislation Further Amendment Act 2001*.

The *Workers Compensation Legislation Amendment Act 2001* was passed by Parliament in June 2001. Its primary objective was to put in place measures to prevent disputes arising and to provide a simpler, fairer and faster system for resolving disputes in the workers compensation system. The Act addresses these issues in the following ways.

Preventing Disputes

- prompt payment of benefits to injured workers through provisional liability arrangements, allowing workers to have their benefits paid and treatment commenced much more quickly;
- increasing incentives for insurers to improve their performance on claims management and penalising those who delay; and
- increasing advice to injured workers and employers through a Claims Assistance Service and funding to union and employer groups for claims assistance services.

Resolving Disputes

- a new Workers Compensation Commission that will provide an integrated dispute resolution service dealing with medical assessment, expedited assessment and general dispute resolution;
- clear consistent medical assessment through use of independent medical experts and guidelines; and
- arbitration of disputes by arbitrators who have legal qualifications or equivalent experience in a specialist field.

This legislation was a vital stage of the government's overall reform program for workers compensation in NSW however it did not significantly address claims for injured workers for damages at common law and concerns in relation to both the increasing numbers and costs of such claims.

An inquiry headed by Justice Terry Sheahan considered outstanding matters from the original reform package, primarily those regarding common law and reported to the Government in August 2001. The *Workers Compensation Further Amendment Act 2001*, gives effect to the key recommendations of the Sheahan inquiry and the outcome of a consultation process. The Act was passed by Parliament in November 2001. The Act contains measures that can be divided into three main areas as follows:

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- measures relating to the appropriate threshold for common law claims and changes to statutory benefits;
- improved processes for accessing common law; and
- miscellaneous measures including restrictions on commutations, and repeal of private underwriting provisions of the *Workplace Injury Management and Workers Compensation Act 1998*.

These significant reforms will be closely monitored, reviewed and evaluated to address any risks to which the Government and stakeholders are exposed. The Independent Pricing and Regulatory Tribunal and Legislative Council General Purpose Standing Committee No.1 will report separately on the implementation of the reforms.

Section 2 of the Implementation Plan details the specific projects to implement the legislative and associated administrative reforms.

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SECTION 2: PROJECT DETAIL & SPECIFIC ACCOUNTABILITIES

This section details the specific 2001-02 projects and activities that will progress the Workers Compensation Legislative Reform program.

PROJECT 1: WORKERS COMPENSATION COMMISSION

The Workers Compensation Commission will be established on 1 January 2002. It will be located in the existing premises of the Workers Compensation Resolution Service in Darlinghurst, Sydney.

The aim of the Commission is to ensure that disputes are resolved in a timely, fair manner. To this end, the Commission will be resourced to ensure that disputes are referred promptly to the appropriate part or parts of the Commission, for assessment and determination.

Activity	Timing	Performance Measure
1. Establishment of Workers Compensation Commission	Jan-02	• Commission deals with disputes on new claims from 1 January 02
2. Development of rules & procedures <ul style="list-style-type: none"> • to Advisory Council • consultation with stakeholders 	Nov-01 10 Oct-01 Oct-01	• Rules approved by Minister
3. WCRS ceases operating	31 Dec-01	• Seamless transition of dispute resolution process
4. Forms, brochures, web-site, stakeholder information developed <ul style="list-style-type: none"> • consultation with stakeholders 	Nov/Dec -01 Oct/Nov-01	• Stakeholder information widely available pre Jan 02

PROJECT 2: CLAIMS ASSISTANCE SERVICE

The role of the Claims Assistance Service is to provide assistance to injured workers and employers in connection with a claim for workers compensation or work injury damages. The objectives are to:

- Reduce the opportunity for disputes to arise by providing specialised assistance to injured workers and employers regarding the workers compensation system.
- Provide an interface between injured workers, employers and insurer's concerning claims for workers compensation.
- Promote the prompt processing of workers compensation claims and entitlements.
- Provide a fair, impartial and timely service to injured workers and employers.

The WorkCover Assistance Service, to be established in January next year, will incorporate the Claims Assistance Service (CAS) as well as the existing Information Centre. The WorkCover Assistance Service will provide two (2) main services:-

- Provide a central point of contact for workplace safety, injury management and workers compensation enquiries.
- Specialised assistance to injured workers and employers about claims for workers compensation.

Activity	Timing	Performance Measure
1. Consultation with key stakeholders concerning role and functions of Claims Assistance Service	Sep-01 and ongoing	• Stakeholder support for proposed model
2. Recruitment action finalised	Nov-01	• Staff recruited
3. Procedures and guidance material developed	Dec-01	• Procedure manuals completed
4. Enhancements to information technology systems	Dec-01	• System enhancements complete
5. Training program developed	Dec-01	• Key staff trained
6. Marketing and communication program commenced	Dec-01	• Guidance material distributed to key stakeholders
7. Systems and processes tested	Dec-01	• Modifications made if required
8. Claims Assistance Service operational	Jan-02	• Service fully operational

PROJECT 3: INSURER REMUNERATION

WorkCover has commenced a new insurer remuneration package which will better align insurer incentives to scheme objectives. The new model provides insurers with a stronger incentive for improved performance especially in injury and claims management. A maximum of \$93 million in specific performance fees is available to the licensed insurers for achieving premium administration, claims and injury management performance targets.

The WorkCover Board approved the new remuneration package for insurers covering the 12 month period between 1 July 2001 and 30 June 2002. The Board also decided that insurers should submit a statement of their existing operations and business plans with quarterly milestones for this year. An external independent auditor will verify insurer performance and delivery to business plans. The new package commenced on 1 July 2001 with the payment of base fees. Performance measures are progressively being finalized in consultation with insurers.

The Board also noted that WorkCover is reviewing fees paid for management of Statutory Fund investments and a proposal for this will be submitted separately to the Board. A discussion paper on performance fees was released for consultation with investment managers in April 2001. The WorkCover Board approved a new Scheme investment strategy in August 2001.

Activity	Timing	Performance Measure
1. Insurers lodge statement of existing operations and business plans with quarterly milestones to WorkCover	10 Sep-01	• Submission to Schedule
2. Report on Insurers' Business Plans submitted to Board	Sept Board Meeting	• Report submitted to Board
3. Insurer progress reports for the 1 st Quarter (September)	31 Oct-01	• Report submitted by due date
4. September Quarter Progress reports presented to Board	Nov Board Meeting	• Report submitted to Board
5. Appointment of a single firm of external independent auditor to verify insurer performance	Dec-01	• External independent audit firm appointed on schedule
6. Insurer progress reports for 2 nd Quarter (December)	Jan-02	• Reports submitted by due date
7. December Quarter progress report presented to Board	Feb-02	• Report submitted to Board

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Activity	Timing	Performance Measure
8. Independent external auditor to verify progress reports	Following submissions	• Audited to schedule
9. Insurer progress reports for 3 rd Quarter (March)	30 Apr-02	• Reports submitted by due date • Audited to schedule
10. March Quarter progress report presented to Board	May-02 Board Meeting	• Report submitted to Board
11. Insurer progress reports for 4 th Quarter (June)	31 Jul-02	• Reports submitted by due date • Audited to schedule
12. June Quarter progress report presented to Board	Aug-02 Board Meeting	• Report submitted to Board
13. 2001/2002 Insurance remuneration package ends	30 Jun-02	
14. Discussion paper on Performance Based Fees for investment management released for consultation with insurers' investment managers	Apr-01	• Discussion paper released
15. Towers Perrin to develop proposed performance based investment fee structure	Nov-01	• Proposed fee structure developed
16. Proposed performance based investment fee package consulted with investment and insurance managers	Dec/Jan-02	• Consultation with insurers and investment managers as scheduled
17. Proposed performance based investment fee package submitted for Board approval	Mar-02	• Proposed performance based fee package approved by Board
18. Proposed performance based investment fee package implemented with Cogent	Apr-02	• Performance based investment fee arrangement implemented

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PROJECT 4: PROVISIONAL LIABILITY

Provisional liability is a dispute prevention initiative and is an integral component of the reforms being implemented from 1 January 2002.

The project involves developing WorkCover Guidelines that support the intention of the legislative reform and integrate with existing claims management requirements.

A review of existing "scheme systems and mechanisms" effected by the introduction of provisional liability is required to ensure congruency within the scheme including remuneration arrangements, claims estimation guidelines and data capture requirements.

Activity	Timing	Performance Measure
1. Draft Guidelines complete	Oct 01	• Draft Guidelines completed
2. Insurer Working Party - Operations	Sep 01	• Initial work completed
3. Consultation with Council	Oct 01	• Feedback received for review
4. Amend Guidelines to incorporate stakeholder feedback	Oct 01	• Circulate for comment after approval
5. Additional guideline review to finalise Guidelines	Nov 01	• Final Guidelines established
6. Specify data requirements	Oct 01	• Finalised
7. Claims Estimation Manual Changes	Nov 01	• Target completion date 30/11/01
8. Performance monitoring system established	Jan 02 Feb 02	• Evaluation & feedback mechanism specified • Operational
9. Training of Stakeholders	Dec 01	• Training modules developed and delivered to insurers and self-insurers

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PROJECT 5: SELF INSURERS

Current licensing policy for self-insurers was implemented in 1991. It has remained largely unchanged with the exception of minor amendments in 1995. One of the principles in the Minister's Scheme reform package announced in June 2000 was to assess the use of self-insurance as a means of achieving better outcomes for employers and their employees.

In reviewing existing policy WorkCover has examined existing entry criteria and prudential requirements. Consistency with other workers compensation jurisdictions has also been examined. It is also an opportunity for the new draft policy to reflect the 1998 legislative requirements for injury management and current OHS performance expectations.

The WorkCover Board approved a draft licensing policy and conditions for consultation with Self-insurers and other interested parties at its July Board Meeting. Comments received by WorkCover will be submitted to the WorkCover Board for its consideration in finalising the Policy. Existing self-insurers and interested parties may forward their comments directly to WorkCover or to the NSW Workers Compensation Self-Insurers Association who will be providing an industry response.

The current licensing policy will remain in force pending finalisation of the new policy and conditions. Potential applicants for new licences should use the draft policy as a guide to WorkCover's intentions.

Activity	Timing	Performance Measures
1. Draft Policy approved by Board for consultation	Jul-01	• Approved by Board
2. Draft Policy released for consultation	Aug-01	• Draft Policy released for consultation
3. Meeting held with Self-Insurers Association	Sep-01	• Meeting held
4. Feedback received and reviewed	Sep/Oct- 01	• Feedback reviewed
5. Final Policy submitted for Board approval	Oct-01	• Policy finalised for Board approval at October Board meeting
6. Final policy advised to Self Insurers	Nov-01	• Final Policy issued to Self Insurers
7. Transition Plan developed for implementation of new Policy	Dec/Jan-02	• Transition Plan developed

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PROJECT 6: IMPAIRMENT GUIDELINES

The purpose of the Impairment Guidelines project is to develop:

- WorkCover Guides for the measurement of permanent impairment;
- criteria for the appointment of Approved Medical Specialists (AMS) to hear disputes within the Workers Compensation Commission; and
- training programs for the appointed AMS.

Activity	Timing	Performance Measure
1. Set up working groups for all body systems	Oct - 01 Dec - 01 Jan - 02	<ul style="list-style-type: none"> • Guides developed • Training program developed • Training program conducted
2. Complete chapters for WorkCover Guides	Nov - 01	<ul style="list-style-type: none"> • All chapters completed
3. Draft WorkCover Guide for Cabinet	Oct - 01	<ul style="list-style-type: none"> • Draft WorkCover Guides
4. Advisory Council agreement to AMS selection criteria	Oct - 01	<ul style="list-style-type: none"> • Ministerial approval of AC agreed selection criteria
5. Advertisements for AMS	Oct - 01	<ul style="list-style-type: none"> • Applications received
6. Select AMS	Dec - 01	<ul style="list-style-type: none"> • AMS's recommended to President WCC
7. Finalise WorkCover Guides for permanent impairment	Dec - 01	<ul style="list-style-type: none"> • Guides available for printing
8. Develop training program and identify trainers for AMS	Dec - 01	<ul style="list-style-type: none"> • Training schedule developed by training organisations

PROJECT 7: INJURY MANAGEMENT PILOTS

The purpose of the injury management pilots is to trial different approaches to injury management with two external contractors within an industry (private hospitals and nursing homes) and a region (central western NSW) and with two insurers (QBE and EMI).

Activity	Timing	Performance Measure
1. Industry pilot completed	Nov-01	<ul style="list-style-type: none"> • Pilot claims handed back to insurer
2. Qualitative Evaluation	Nov-01	<ul style="list-style-type: none"> • Evaluation completed
3. Quantitative Evaluation	Oct-01	<ul style="list-style-type: none"> • First evaluation report
4. Recommendation on continuation/withdrawal of regional pilot	Dec-01	<ul style="list-style-type: none"> • Ministerial approval of continuation of pilot
5. Evaluation of pilots	Mar-02	<ul style="list-style-type: none"> • Report to Minister
6. Report and make recommendations to Minister	Mar-02	<ul style="list-style-type: none"> • Report and recommendations on outcome of pilots submitted to Minister

PROJECT 8: MEDICAL MANAGEMENT

The purpose of the Medical Management project is to develop:

- an educational program for general practitioners on the management of low back injury; and
- resources for workers, employers and insurers that reflect the messages contained in the educational program.

Activity	Timing	Performance Measure
1. Trial and evaluate medical education program	Oct-01	<ul style="list-style-type: none"> • Pilot completed & report to Minister

PROJECT 9: COMMUNICATION & EDUCATION PROGRAM

The purpose of this program is to ensure that injured workers, employers and other key stakeholders are aware of the changed workers compensation system and have access to information about the changed system when they need it (for example, when a claim is made) including their obligations and entitlements. The program will also develop resources to assist insurers to train their staff and convey information to their clients.

Activity	Timing	Performance Measure
1. Integrated approach to communication of reforms • 1 st phase of the "WorkCover, Watching out for you" campaign • 2 nd phase planning	20 Nov-01 1 Jan-02	• Quantitative record completed for 1 st phase • 2 nd phase commenced on time
2. Develop information for employers, employees & service providers on obligations & entitlements • Develop information products for reforms • Employer education program regarding obligations & entitlements • Training seminar for union officials	Ongoing from Oct-01 Ongoing from Oct -01 Ongoing from Oct-01	• Brochures developed to schedule • Employer education seminars conducted • Seminar conducted to schedule
3. Work with insurers on information/education strategies for insurer staff and provision of information by insurers to their clients • Insurer staff training	Ongoing from Oct-01	• Insurer staff training sessions conducted

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PROJECT 10: PERFORMANCE MONITORING DISPUTE RESOLUTION

The primary purpose of the performance monitoring project is to ascertain if the reforms have achieved their objectives of reducing scheme cost and providing a better service to claimants. In particular the project will:

1. Provide an outline of the expected work flows through new services.
2. Identify the targets in a "mature" scheme, necessary to ascertain if the reforms have succeeded.
3. Establish regular monitoring, evaluation and reporting processes to ensure all relevant reporting demands are met.

Activity	Timing	Performance Measure
1. Finalise performance monitoring and reporting plan	Jan-01	• Plan completed
2. Identify data items required for reporting	Dec-01	• List provided to insurers
3. Production of quarterly reports	May - 02, Aug - 02, Oct - 02, Feb-03	• Reports provided

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PROJECT 11: WORKCOVER ASSISTANCE PROGRAM

WORKCOVER ASSIST is a Statewide program developed to support registered NSW trade unions and employer associations to help their members implement the *Occupational Health and Safety Act 2000*, the *Occupational Health and Safety Regulation 2001*, and the *Workers Compensation Legislation Amendment Act 2001* (as it applies to dispute resolution and claims assistance).

WorkCover Assist grantees will use the funding to assist their members in understanding and adopting new requirements arising from the new legislation. The funding provided by WorkCover can be used in a variety of ways but in the main it is expected that the grant will be used to employ additional resources or develop particular products that can be used by the organisation to help its members understand and comply with new legislative requirements. An expected outcome of the program is improved awareness of and compliance with the new legislation. This will ultimately translate into a reduction in the incidence of occupational illness and injury and the costs of workers compensation claims in NSW.

Activity	Timing	Performance Measure
1. Call for expressions of interest (EOI)	Sep 01	• EOIs called for
2. Review EOIs	Oct – Nov 01	• Reviews completed
3. Commit funding for successful groups (both employee & employer)	15 Dec 01	• Funding commitment completed
4. Announce funding via Gazette	15 Dec 01	• Gazette completed on time
5. Enter into agreements with successful groups including milestones and reporting requirements	1 Jan 02	• Agreements entered into

PROJECT 12: LEGISLATIVE COUNCIL GENERAL PURPOSE COMMITTEE

The Legislative Council of NSW has resolved that the General Purpose Standing Committee No. 1 will:

1. Monitor, investigate and report on:
 - the financial position of the workers compensation scheme;
 - the implementation and operation of the *Workers Compensation Legislation Amendment Act 2001* and *Workers Compensation Legislation Further Amendment Bill 2001*;
 - efficiency of the operation of the workers compensation system and the administration of the WorkCover Authority;
 - the impact on premiums of the bills.
2. Be authorised to engage the services of an actuary and accountant.

Activity	Timing	Performance Measure
1. Liaison with Parliamentary Committee	Ongoing	• Liaison undertaken as required
2. Preparation of briefing papers for Committee	Sep-01 Nov-01	• Seminar conducted, briefing paper provided
3. Briefing General Manager for hearings	Ongoing	• Briefings provided
4. Coordinate response to reports	17 Oct, 17 Jan, 17 Apr, 30 June 02	• Nil response required for 3 rd interim report.
5. Coordinate answers to Committee questions	Subject to Committee deadlines	• Answers provided
6. Attendance at Committee hearings	24 Sept, 10 Oct, 21-22 Nov-01	• Attended hearings and addressed matters arising

PROJECT 13: LEGISLATIVE & REGULATORY DEVELOPMENT

Workers Compensation Legislative Reform

IMPLEMENTATION PLAN 2001-02

Prepare necessary legislation, regulations and guidelines to support the Workers Compensation Commission, including compliance with necessary procedural steps and requirements and consultation with key stakeholders.

Activity	Timing	Performance Measure
1. Workers Compensation Legislation Further Amendment Bill	Nov-01	• Passage of legislation through Parliament
2. Transitional Regulations	1 Jan-01	• Making of regulations
3. Cost Regulations & Cost of Claims Regulations	1 Jan-01	• Making of regulations
4. Claims making guidelines	1 Jan-01	• Publication of guidelines
5. IPD Guidelines	1 Jan-01	• Publication of guidelines
6. Medical Assessment Guidelines	1 Jan-01	• Publication of guidelines
7. Workers Compensation Commission Rules	1 Jan-01	• Publication of rules

PROJECT 14: COMMON LAW

Following introduction of the *Workers Compensation Legislation Amendment Bill 2001* into Parliament, a process of consultation was undertaken with the Labor Council and the Workers Compensation and Workplace Occupational Health and Safety Council. During this consultation it was agreed that an independent inquiry into common law would be carried out. The Hon Justice Terry Sheahan of the Land and Environment Court was appointed to conduct the inquiry. The Terms of Reference for the inquiry asked four questions - the appropriate threshold to access common law, two questions on increasing the efficiencies for common law claims processing, and ways to reduce the incentive for pursuing common law claims.

Activity	Timing	Performance Measure
1. Sheahan Inquiry report	31 Aug-01	• Report completed
2. Implement approved recommendations of Common Law Inquiry	Jun-02	• Complete implementation of Cabinet approved recommendations

PROJECT 15: COMPLIANCE

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Workers Compensation Legislative Reform

IMPLEMENTATION PLAN 2001-02

To identify further strategies to address non-insurance, under-insurance and premium avoidance in the WorkCover Scheme. Options to address non-compliance are to be investigated and include:

- extension of WorkCover Scheme coverage over individual contractors, sole traders and partnerships;
- options to address under-insurance through monthly reporting; and
- options to address premium avoidance by related corporations and employers.

It is recognised that further consultation regarding these options is required. The Compliance Green Paper was released for public comment to consult on these options. The options identified by the Compliance Working Party form the basis of those canvassed in the Green Paper.

It is anticipated that any reforms would be implemented in line with the commencement of the 2002-2003-policy year on 30 June 2002.

Activity	Timing	Performance Measure
1. Preparation and release of Compliance Green Paper	11 Sept-01	• Project milestones achieved on schedule.
2. Presentation of Green Paper to IRG's and insurer's	26-27 Sept-01	• Recommendations for legislative and administrative changes submitted to Minister by 26 November 2001
3. Collation and analysis of comments/proposals received on the green paper	12 Oct-01 (public comment period completed)	• Approved recommendations implemented by 30 June 2002
4. Preparation of submission to Minister of recommendations for legislative, regulatory and administrative reforms	26 Nov-01	
5. Implementation of approved recommendations	30 Jun-02 approved recommendation adopted via 2001/02 Insurance Premiums Order and legislative & regulatory amendments (if required)	

PROJECT 16: PREMIUM DISCOUNT SCHEME (PDS)

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The PDS provides incentives to employers to implement programs to improve workplace safety and return to work strategies for injured workers. The incentive the scheme provides is a discount on the employer's premium. Discounts will be verified by WorkCover appointed advisors who will audit employers against WorkCover benchmarks. Advisors and WorkCover guidance material may also assist employers to implement improved OHS and IM systems.

The scheme benefits are:

- for workers and the community - improving occupational health and safety in the workplace and having better return to work programs for injured workers will play a vital role in reducing the number of accidents and improving outcomes for injured workers.
- For employers - implementing improvements will assist employers to comply with OHS obligations under the law. Cost savings will accrue from fewer future and better managed claims.

The Small Business Strategy is a companion strategy for small businesses (less than 20 employees). WorkCover is funding a limited number of OHS and IM programs designed for the needs of small business. Sponsors are approved by WorkCover to administer the programs and verify the discounts for small employers.

Activity	Timing	Performance Measure
1. Appointment of PDAs	Monthly	• Adviser briefings held and PDAs appointed
2. Appointment of SBS sponsors	Oct-01	• Funding Agreements signed by all sponsors
3. Recalculation of PDA discounts	Dec-01 Jun-02 Jun-03	• Discounts recalculated and complaints dealt with
4. Evaluation of PDS and report to parliamentary committee	Dec-01	• Evaluation completed
5. Management of PDS	Ongoing	• Information and updates provided to all stakeholders and PDAs, complaints handled
6. Management of SBS	Dec-01 Jun-02 Jun-03 Jun-04	• Sponsors reporting received and satisfactory, ongoing payments made, complaints handled

Appendix 6

Possible Models for WorkCover Organisational Structure

Possible Models for WorkCover Organisational Structure

	Current Model	Pre 1990's Model	Option 2	Option 3	Option 4	Option 5	Option 6
Agency 1	OH&S - information, advice, enforcement, regulation Workers Compensation - advice, management of insurers, agents and other providers, Premium rating-setting, design, monitoring. Workers Compensation - regulation, licencing, all policy, all scheme design HR/Admin	All OH&S - management, advisory services, regulation, enforcement, prevention.	OH&S enforcement and regulation.	A super regulator - Enforcement of OH&S and Regulation and policy management for Workers Compensation.	A super regulator - Enforcement of OH&S and Regulation and policy management for Workers Compensation.	All Occupational Health and Safety - management, advisory services, regulation, reinforcement, prevention.	All Occupational Health and Safety - management, advisory services, regulation, enforcement, prevention.
Agency 2		Workers Compensation Advice, Management of agents, insurers and other providers, setting design and monitoring of the premium ratings system and regulation of workers compensation ie monitoring compliance, establishing policies etc.	OH&S advice, Workers Compensation Advice, Management of insurers, agencies and service providers, Setting and Design of Premium Rating System, workers compensation regulation and policy making.	OH&S advice and assistance, Advice regarding Workers Compensation, Management of insurers, agents and other providers, Setting or Premium Rates, HR-administrative functions.	OH&S advice and assistance, Advice regarding Workers Compensation, Management of insurers, agents and other providers, HR-administrative functions.	Workers Compensation Advice, Management of agents, insurers and other providers, and regulation of workers compensation ie monitoring compliance, establishing policies etc.	Workers Compensation Advice, Management of agents, insurers and other providers, and regulation of workers compensation ie monitoring compliance, establishing policies, Premium monitoring compliance and design etc.
Agency 3		None	None	None	Premium rates setting, design and monitoring - would report to either Agency 1 or 2.	Premium rates setting, design and monitoring.	Premium Setting


* Note that HR and Administration functions have not been included.

Appendix 7

Outline of the Operation of the NSW Workers Compensation Scheme

WorkCover NSW

Outline of the Operation of the NSW Workers Compensation Scheme



**OUTLINE OF THE OPERATION
OF THE
NSW WORKERS COMPENSATION
SCHEME**

**LEGISLATIVE COUNCIL
GENERAL PURPOSE STANDING
COMMITTEE No. 1**

November 2001

SUBMISSION TO LEGISLATIVE COUNCIL GENERAL PURPOSE STANDING
COMMITTEE No. 1
NSW WORKERS COMPENSATION SCHEME

November 2001

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1. SCOPE OF THIS SUBMISSION

This submission has been prepared by WorkCover to help the Committee obtain an understanding of the operation of the NSW Workers' Compensation Scheme.

It is understood that in the first instance, in relation to its inquiry into the operation of the Scheme and the performance of WorkCover, that the Committee intends to focus on the matters which it considers contribute to the efficiency and financial position of the Scheme.¹

The content of this submission has been discussed with the Committee Secretariat and focuses on matters that are currently of interest to the Committee.

2. INTRODUCTION

Each State and Territory has a statutory no-fault workers' compensation scheme.² The *Workers Compensation Act 1987* ("the 1987 Act") and the *Workplace Injury Management and Workers Compensation Act 1998* ("the 1998 Act"), as amended, form the basis of the NSW Scheme.

The Scheme has many features of an insurance product, and is often referred to as NSW WorkCover insurance. However as this submission explains, the Scheme is not insurance; it is a mutual fund which has some features of an insurance product and some "non-insurance" features.

For example, the legislation creates a statutory benefits scheme for injured workers (and their dependents) who sustain a workplace injury or illness. For social policy reasons, injured workers still receive benefits even if their employer fails to take out an insurance policy to discharge their liability. The Scheme is also designed to reduce the risk of workplace injury and to help workers return to sustainable employment as quickly and safely as possible. Hence the Scheme should not be viewed as a simple insurance product.

Depending on each jurisdiction's legislative and cultural history, State governments have different views about the preferred features of a workers compensation scheme. These views are often driven by different opinions about the weight that should be given to competing social and economic objectives. In turn, these differences influence the structure of the different schemes throughout Australia.

Common features between jurisdictions include mandatory cover and premium payment, and differences include whether schemes are privately underwritten by insurers operating within a competitive market,³ governed by public monopoly arrangements,⁴ or operate as a central fund.⁵

1. Committee's 1st Interim Report at page 32.

2. There are also arrangements covering the Commonwealth's administration (Commonwealth Seafarers).

3. Eg Western Australia and Tasmania.

4. Eg Queensland.

5. Eg Victoria.

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NSW has a unique Scheme that is ultimately underwritten by employers via their own self-insurance arrangements, or via a statutory trust arrangement administered for the benefit of employers who are not governed by self-insurance arrangements, or via specialised insurance arrangements.

Licensed insurers in NSW are not underwriters and as such have no ultimate liability in respect of workers' compensation claims. In recognition of this, NSW insurers are specifically exempt from the *Federal Insurance Act 1973* and supervision by APRA.⁶

WorkCover is the statutory body that regulates and administers NSW's workplace safety system, of which the NSW Workers' Compensation Scheme is a part.

The system aims to reduce the risk and incidence of workplace injury and illness, provide fair and affordable compensation to injured workers and their dependents, rehabilitate injured workers, and enable them to return to sustainable work as quickly and safely as possible.

The Scheme entitles injured workers to obtain no-fault, statutory benefits (of monetary compensation and injury management), and in addition, enables seriously injured workers to claim modified common law damages for negligence (monetary compensation only).

Employers are required to:

- Obtain a statutory insurance policy from a licensed insurer to indemnify themselves against compensation claims by injured workers and potential awards for negligence.⁷
- To pay a premium based on a variety of factors including their size, annual wages paid to workers, individual workplace risk and industry rating; and
- Meet their obligations under OHS laws to keep their workplaces safe and participate in injury prevention and management.

Workers also have important obligations under the workers compensation legislation. They must participate in the development and implementation of an injury management plan that will enable them to return to sustainable employment as quickly and safely as possible.

WorkCover's roles can be divided into the following broad categories:⁸

- Monitoring and reporting on the performance of the Scheme and providing strategic policy advice to the Government to ensure that the Scheme's social and economic policy objectives are met;

6. Section 5 (2a) of the *Commonwealth Insurance Act 1973* excludes the operation of the Act in relation to workers compensation insurance business carried on by a company that is licensed under Division 3 of Part 7 of the 1987 Act.

7. 1987 Act section 155.

8. WorkCover's constitution and functions are clearly set out in Part 2, Division 1, 2 and 3 of the 1998 Act.

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- Ensuring compliance with the workers compensation legislation and regulating the performance of the Scheme's service providers to ensure that they deliver quality services to employers and workers (including licensed insurers) in a timely, efficient and cost effective manner;
- Ensuring compliance with OHS legislation;
- Regulating the activities of employers and workers to ensure that they manage workplace injuries and enable injured workers to return to sustainable employment as quickly and safely as possible; and
- Promoting support and advice to employers, workers and service providers to enable them to fulfil their obligations.

3. LEGAL STRUCTURE OF WORKCOVER SCHEME

Scheme Objectives

As indicated above, the 1987 Act and the 1998 Act, as amended, form the basis of the NSW Scheme. The legislation establishing the Scheme is based on a set of clear and consistent regulatory principles that are designed to be transparent, open, and contribute to the net public benefit.

The Scheme is designed for the benefit of employers and workers and has a number of additional participants including insurers and other service providers. The objectives of the NSW workers compensation scheme are set out in section 3 of the 1998 Act:

- To assist in securing the health, safety and welfare of workers and in particular preventing work-related injury;⁹
- To provide:
 - Prompt treatment of injuries and return to work for injured workers;
 - Effective and proactive management of injuries; and
 - Necessary medical and vocational rehabilitation following injuries in order to assist injured workers and to promote their return to work as soon as possible;
- To provide injured workers and their dependants with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses;
- To be fair, affordable, and financially viable;
- To ensure contributions by employers are commensurate with the risks faced, taking into account strategies and performance in injury prevention, injury management, and return to work; and

⁹ The definition of work related injury is consistent with the definition proposed by the HWCA. Promoting Excellence. *National Consistency in Australian Workers' Compensation* May 1997 at page 26.

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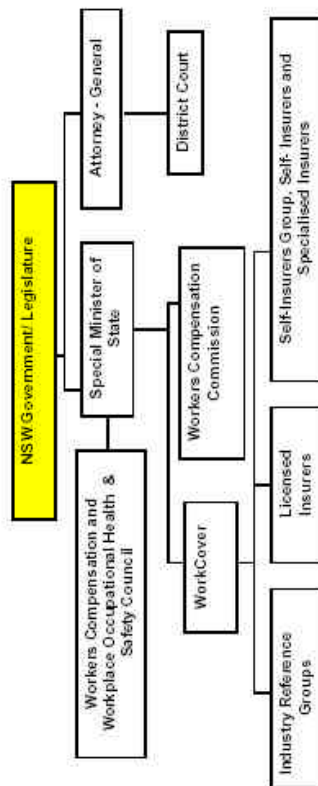
- To deliver the above objectives efficiently and effectively.

Corporate Governance

The Scheme's current corporate governance structure was implemented from 1 January 2001 and is based on the principles of Responsible Government under a Westminster Parliamentary System. The current structure was implemented as part of the Government's ten point plan for reforming the Scheme.

The Government implemented the current structure because the former corporate governance arrangements created overlapping roles and responsibilities, particularly in relation to accountability for Scheme performance.¹⁰

The Scheme's structure is illustrated in the figure below.



SPECIAL MINISTER OF STATE

WorkCover is responsible to the Special Minister of State and Minister for Industrial Relations, The Hon John Della Bosca MLC.

WORKCOVER

WorkCover manages the State's workplace safety, injury management and workers compensation systems.

WorkCover is responsible for:

- Ensuring compliance with workers compensation and OHS legislation; and

¹⁰ Minister's second reading speech for the *Workers Compensation Legislation Amendment Bill 2000* Legislative Council Debates, 1 November 2000 at page 9640.

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<p>November 2001</p> <ul style="list-style-type: none"> Monitoring and reporting on the performance of the Scheme, and providing strategic policy advice to the Government to ensure that the Scheme's social and economic policy objectives are met.¹¹ <p>WorkCover is currently structured into four divisions:</p> <p>General Manager's Group</p> <p>Comprises the Office of the General Manager, which provides executive support to the Board, Minister, General Manager and consultative bodies (including Industry Reference Groups and the Advisory Council), the Information Management Branch, responsible for WorkCover's technical infrastructure, data support and records management and the Finance Branch.</p> <p>Occupational Health and Safety Division</p> <p>The OHS Division promotes safer and healthier workplaces for employees and provides 'one stop shop' information and assistance on occupational health and safety, workers compensation and injury prevention and management to employers, workers and the public through the network of WorkCover offices located throughout NSW.</p> <p>It enforces the OHS and workers compensation legislation through: inspections; investigations of incidents and complaints and; where necessary, penalties and prosecutions; the licensing and certification of defined premises; activities and the operation of hazardous equipment; and implements targeted prevention and education programs.</p> <p>Insurance Division</p> <p>The overall purpose of the Division is to lead the continuous improvement of the workers compensation and injury management systems in NSW. The Division seeks to efficiently and effectively ensure the systems:</p> <ul style="list-style-type: none"> Assist in securing the health, safety and welfare of workers and in particular preventing work related injuries; Provide injured workers and their dependants with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses; Require contributions by employers which are commensurate with the risks faced, taking into account strategies and performance in injury prevention, injury management and return to work; and Provide prompt treatment of injuries, effective and proactive management of injuries, necessary medical and vocational rehabilitation following injuries in order to assist injured workers to promote their return to work as soon as possible and, are fair, affordable and financially viable. <p>11. WorkCover's constitution and functions are clearly set out in Part 2, Division 1, 2 and 3 of the 1998 Act.</p> <p>9:17 AM</p> <p>7</p>	<p>November 2001</p> <p>Corporate Governance Division</p> <p>The Division provides specialist information, advice and services to the Minister, the Board, the Workers Compensation and Workplace OHS Council, Industry Reference Groups, the General Manager's Group, and the two operational divisions.</p> <p>It advises on policy development; corporate and business planning; communications and marketing, including media liaison; human resource management; corporate governance; and property, purchasing and fleet management.</p> <p>BOARD OF DIRECTORS</p> <p>A Board consisting of the General Manager and six part-time directors manages WorkCover NSW. The Board is responsible for determining the administrative policies of WorkCover and ensuring that all activities are carried out properly and efficiently.</p> <p>The members of the Board of Directors are:</p> <p>Chairman:</p> <p>Hon Joe Rordan, AO</p> <p>Part-time directors:</p> <p>Greg Keating Eddie Price John Robertson Donna Staunton Doug Wright Kate McKenzie, General Manager, WorkCover Authority of NSW</p> <p>Persons recommended for appointment by the Minister must have such managerial, commercial or other qualifications or experience as the Minister considers necessary to enable the Board to exercise its functions.¹²</p> <p>The current Board directors have experience in OHS, corporate affairs, workers compensation law, industrial relations and medicine. A change in the composition of the Board is a matter of Government policy.</p> <p>WORKERS COMPENSATION AND WORKPLACE OCCUPATIONAL HEALTH AND SAFETY COUNCIL</p> <p>The Council comprises worker and employer representatives, medical and legal practitioners, insurance, injury management and occupational health and safety experts.</p> <p>The Council's key function is to give advice to the Minister on a systemic approach to the prevention of workplace injury, injury management/return to work and compensation issues.</p> <p>12. 1988 Act Section 15(3). Schedule 10(2) of the Workers Compensation Legislation Further Amendment Bill 2001 increases the number of part-time Directors from 7 to 8 and provides that a person (other than the General Manager) cannot be a member of the both the Board and the Advisory Council at the same time.</p> <p>9:17 AM</p> <p>8</p>
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The Minister's second reading speech for the *Workers Compensation Legislation Amendment Bill 2000* indicated that the Advisory Council will ensure that Scheme participants have adequate opportunity to provide timely input on policy and legislative matters. The new Council will include a broader range of representatives with an interest in workplace health and safety and compensation issues.¹³

The members of the Advisory Council are:

Chairman

Greg McCarthy (Executive Director, Workplace Injury Management Services)

Employer representatives

Garry Brack (CEO, Employers First)

Greg Pattison (General Manager Special Projects, Australian Business Ltd)

Bill Healey (Executive Director, Australian Retailers Association - NSW)

Ken Young (Executive Officer, Self Insurers Association)

Lucy Moore (NSW Workers Compensation & OHS Policy Manager, Australian Industry Group)

Employee representatives

Sandra Moxit (General Secretary, NSW Nurses Association)

Andrew Ferguson (NSW Secretary, CFMEU Construction & General Division)

Tony Sheldon (NSW Secretary, Transport Workers Union)

Russ Collison (NSW Secretary, Australian Workers Union)

Mary Yaeger (Workers Compensation and OHS Officer, Labor Council of NSW)

Legal Practitioners representative

Charles Vandervord (Law Society of NSW)

Medical Practitioners representative

Dr Ian Gardner (Occupational Physician, Australasian Faculty of Occupational Medicine)

Other Health Care Professionals representative

Eveline Innes (Lecturer in Occupational Therapy, University of Sydney)

Insurers representative

Robert Thomson (Manager, Workers Compensation, Insurance Council of Australia)

Injury Management & Rehabilitation expert

Anne Engleman (Workers compensation management consultant)

¹³ *Legislative Council Debates, 1 November 2000 at page 9640.*

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Occupational Health and Safety expert

Sylvia Kidzjak (OHS Consultant, former Chairperson, OHS Council of NSW)

Other persons appointed by the Minister

Alistair Tomlinson (Industrial Director, NSW Farmers' Association)

Paul Bastian (NSW State Secretary, Australian Manufacturing Workers' Union)

INDUSTRY REFERENCE GROUPS

Thirteen Industry Reference Groups operate to develop industry specific solutions for significant workplace OHS problems, so as to reduce the frequency and severity of workplace accidents and reduce the cost of workers compensation.

The thirteen groups are: rural; construction; mining; industrial manufacturing; consumer manufacturing; wholesale; retail; transport and storage; consumer services; government administration and education; health and community services; business services; utilities.

4. WORKPLACE INJURY MANAGEMENT

The workplace injury management system established by the 1998 Act reflects the best practice 'total injury management model' that was recommended by the Heads of Workers Compensation Authorities.¹⁴

As its title suggests, the *Workplace Injury Management and Workers Compensation Act* 1998 emphasises the importance of workplace injury management, and returning injured workers back to sustainable employment as quickly as possible.¹⁵

The latest survey by the HWCA indicates that return to work rates in NSW currently exceed the national average.¹⁶ The results indicate that during the survey period 86% of NSW injured workers had returned to work for some period, seven to nine months after making their claim (this compares to a national average of 84%, with some jurisdictions measuring at 79%).¹⁷

The survey also indicates that 76% of NSW injured workers had returned to work and are still working at the time of the survey, seven to nine months after making a claim (this compares to a national average of 74%, with one jurisdiction measuring at 67%).¹⁸

¹⁴ *HWCA Promoting Excellence: National Consistency in Australian Workers Compensation May 1997 at page 15.*

¹⁵ The 1998 Act implements the recommendations of the Gellman report concerning the implementation of an injury management process that focuses on early intervention and return to work. Gellman report at page 59.

¹⁶ *HWCA Return to Work Monitor 2000/01 National Report, September 2001.*

¹⁷ *Supra at page 1.*

¹⁸ *Supra at page 3.*

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16. HWCIA *Return to Work Monitor 2000/01 National Report*, September 2001.

17. *Supra* at page 1.

18. *Supra* at page 3.

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WorkCover's Injury Management Role

WorkCover's injury management role is to regulate the activities of employers, workers, insurers and other injury management service providers, to ensure that they manage workplace injuries and enable injured workers return to sustainable employment as quickly and safely as possible.

WorkCover's focus includes:

- Prompt treatment of injuries and return to work for injured workers;
- Effective and proactive management of injuries; and
- Necessary medical and vocational rehabilitation following injuries, in order to assist injured workers and to promote their return to sustainable work as quickly and safely as possible.

Insurers' Injury Management Role

The critical role that insurers play in injury management is reflected in the 1998 Act which requires all insurers¹⁹ to develop 'Injury Management Programs'²⁰ for workers who sustain a significant injury,²¹ in order to achieve a timely, safe and durable return to work.

Injury Management Programs provide the blueprint on how insurers are required to ensure that injured workers are returned to sustainable employment as quickly and safely as possible.²²

Insurers are required to contact the worker, employer and treating doctor (if necessary) within 3 days of notification, in order to develop an Injury Management Plan. Insurers are also required to prepare an Injury Management Program and to lodge the program with WorkCover.

This Program describes how the insurer will coordinate all aspects of injury management, including treatment, rehabilitation and retraining for injured workers, claims management of the insurer and employer's employment practices. The program serves as the blueprint for the injury management processes and procedures for that insurer.

Following the *PricewaterhouseCoopers Review of MGA Remuneration Arrangements*, a new insurers' remuneration package has been introduced for the 2001/2002 period. The

19. Licensed insurers, self-insurers, group self-insurers and specialised insurers.

20. Injury Management Program means a co-ordinated and managed program that integrates all aspects of injury management (including treatment, rehabilitation, retaining, claims management and employment management practices) for the purpose of achieving optimum results in terms of a timely, safe and durable return to work for injured workers: Section 42 (1) of the 1998 Act.

21. Significant injury means a workplace injury that is likely to result in the worker being incapacitated for work for a continuous period of more than 7 days, whether or not any of those days are work days and whether or not the incapacity is total or partial or a combination of both: Section 42 (1) of the 1998 Act.

22. Smaller employers (those with annual premiums below \$50,000) can use WorkCover's standard program.

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key element of the new package is to provide insurers with an even stronger incentive for improved injury management performance. The performance fee component of the new package has been increased considerably to provide insurers with a strong incentive to improve injury and claims management.²³

Insurers vary in their organisational structure and workflow processes with respect to injury and claims management. The key cost component of an insurer is the cost of staff. Other key categories are costs for premises, IT equipment and allocated corporate overheads (head office charges). The new remuneration arrangements are designed to give insurers a financial incentive to invest in infrastructure and research that will enable them to deliver innovative and efficient return to work outcomes.

The new remuneration arrangements form only part of WorkCover's strategy to get insurers to improve their performance. Other initiatives include the requirement for insurers to accept provisional liability under the 1998 Act.

The acceptance of provisional liability does not constitute an admission of liability by the insurer or employer, and will not prejudice the insurer's ability to cease payments if it is later found that the worker was not entitled to compensation.²⁴

Employers' Injury Management Role

Employers have a set of clear injury management obligations, including:

- Employers are required to report a significant injury (an injury expected to result in one week or more off work) to their insurer within 48 hours.²⁵
- Employers are required to provide suitable employment to workers, wherever practicable, once the worker is certified fit for suitable employment.²⁶
- As far as reasonably practicable the suitable employment should be the same, or equivalent to, the employment in which the worker was at the time of the injury.²⁷
- Employers are required to comply with their obligations under their insurer's Injury Management Programs.²⁸

Injury Management Programs are required to:

- Define the policies and procedures for that employer including notification to insurers of significant injuries within 48 hours;

23. The performance based remuneration component of the package has been progressively increased since 1995/96 from 7% to nearly 50% in 2001/2002.

24. 1998 Act Section 28(2).

25. 1998 Act section 44.

26. 1998 Act section 49 (1).

27. 1998 Act section 49 (2).

28. A copy of the WorkCover Guidelines for Employers' Return to Work Programs will be provided directly to the Committee Secretariat.

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- Nominate the employer's return to work coordinator and list the rehabilitation providers who will work with that employer.
- Describe how suitable duties will be made available for workers who are certified fit for such duties.

Employers can consider suitable duties in consultation with the worker's treating doctor or they can employ the services of an accredited Rehabilitation Provider to assist the process. Any difficulties in relation to the suitability of duties offered to workers can be referred to an Injury Management Consultant.

Employers with premiums above \$50,000 are also required to have a Return to Work Coordinator who has undertaken the pre-requisite training program. Employers are able to share a Return to Work Coordinator where they can demonstrate common interests including industry linkages or regional boundaries.

Workers' Injury Management Role

Workers have a set of clear injury management obligations, including a requirement to:

- Report injuries to their employer as soon as possible after the injury happened.²⁹
- Participate and co-operate in the establishment of an injury management plan and, when requested to do so by the insurer, nominate a treating doctor for the purpose of assisting in the development and execution of the plan.³⁰ and
- Make all reasonable efforts to return to work with their pre-injury employer as soon as possible.³¹

WorkCover initiatives to help injured workers fulfill their obligations include vocational rehabilitation programs and providing guidance on work trials, retraining, provision of equipment and workplace modifications.

Treating Doctors Injury Management Role

The 1998 Act defines an important role for treating doctors in relation to the management of injured workers. Effective injury management by treating doctors is critical to an injured workers safe return to work.

WorkCover's goal is to ensure that sustainable return to work outcomes are achieved quickly and safely. WorkCover aims to collaborate with medical providers to offer cost effective and appropriate medical services to injured workers.

Once nominated as the worker's treating doctor, medical practitioners are required to assist in the development and execution of the injury management plan. The role of treating doctors therefore includes:

29. 1998 Act section 61.

30. 1998 Act section 47.

31. 1998 Act section 48.

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- Making accurate medical assessments and managing injuries within accepted professional guidelines;
- Accurately completing Workers Compensation Medical Certificates that clearly diagnose the injury and indicate the extent of an injured worker's capacity and their suitability for return to work;
- Contacting the employer to identify suitable return to work options and duties for the injured worker;
- Co-ordinating treatment provided by other health professionals;
- Communicating with the insurers, rehabilitation providers, employers and WorkCover when required.

These requirements mean that doctors have an increased role in the workers compensation process. WorkCover has invested time and effort into educating doctors about the importance of their increased role and their accountability for participating in the injury management process.

Injury Management Consultants' Role

An Injury Management Consultant is a Registered Medical Practitioner with:

- Experience in workplace based rehabilitation;
- Knowledge of the NSW Workers Compensation system; and
- Good communication and negotiation skills.

The role of injury management consultants is to assist in managing the return to work process when differences arise between the nominated treating doctor, the employer/insurer and/or the injured worker.

Injury management consultants assess the nature of the problem, and attempt to mediate a solution. This solution should:

- Enable injured workers to undertake suitable work duties without delay, which are consistent with their functional capacity; and
- Minimise disputes, which could be referred on to the Workers Compensation Commission.

Physiotherapists' Role

Physiotherapists also serve an important role in injury management. Physiotherapists who provide services to injured workers are required to follow procedures³² that have been

³² This is consistent with the recommendations for the Development of Treatment Protocols/Guidelines for Medical and Related Services by the HWCIA Promoting Excellence National Consistency in Australian Workers' Compensation May 1997 at page 29.

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developed by WorkCover NSW in conjunction with the Australian Physiotherapy Association.³³

The guidelines also provide that:

- Prior approval should be obtained for more than 10 treatments per claim;
- Independent physiotherapists consultants will be used to review cases where insurers raise concerns regarding the level of service; and
- A peer review panel consisting of 3 physiotherapists can be convened to review physiotherapist practices.

It is intended to extend these arrangements to chiropractors and osteopaths.

Injury Management Compliance

The Act imposes mutual obligations on employers, workers and insurers, to comply with Injury Management Programs and Plans, including:

- It is a condition of an insurer's license that they comply with the Act's injury management provisions. Persistent failure to comply can result in penalties including the cancellation or suspension of the insurer's license, fines up to \$50,000 or conditions being placed on the insurer's license.³⁴
- Any increased costs associated with a failure by an employer to comply with the Act's injury management provisions, can be taken into account in the calculation of a claims experience component for the employer for use in the determination of their premium;³⁵ and
- A worker has no entitlement to weekly benefits if they fail to comply with the Act's injury management provisions.³⁶

The new insurer remuneration arrangements and premium discount scheme also provide insurers and employers with additional financial incentives to fulfil their return to work obligations. It is anticipated that these financial incentives will have a positive cultural impact on the scheme.

Recent Injury Management Initiatives

Injury Management Pilots

Injury Management Pilots commenced on 1 January 2001, employing alternative and innovative strategies and systems. The objective of the pilots is to:

³³ A copy of the WorkCover Physiotherapists Guide to WorkCover NSW will be provided directly to the Committee Secretariat.

³⁴ 1998 Act sections 55 and 163A.

³⁵ 1998 Act section 56.

³⁶ 1998 Act section 57 (subject to notice provisions under section 57 (2)).

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- Identify critical components of injury management;
- Measure improved health and increased return to work rates of injured workers and service utilisation and costs; and
- Establish benchmarks for injury and claims management.

The pilots will be independently evaluated by Monash University, with assistance from the Scheme's actuary, Tillinghast – Towers Perrin. Quantitative feedback will also be obtained from a survey of participating employers and injured workers. Value adding measures identified through the evaluation will be introduced into future arrangements.

Medical Education Pilot Program

In line with developments in other jurisdictions, WorkCover is placing more emphasis on the role of treating doctors, in particular General Practitioners, and their ability to manage common workplace injuries including acute low back pain.

WorkCover has commissioned the development of evidence-based clinical guidelines³⁷ to improve treatment and return to work outcomes from workers with low back injuries, which are the single most common type of workplace injury.

The clinical guidelines have been developed and tested with the close cooperation of the Royal College of General Practitioners, AMA and NSW Alliance of Divisions of General Practice. Once evaluated the clinical guidelines will be revised and implemented, with an extensive training program for treating doctors.

Outcomes Training Course

WorkCover has recently commissioned the development of an outcomes training course for therapists who provide physical therapy.

Therapists will be required to participate in order to receive a higher level of remuneration. It is anticipated that these financial incentives will encourage therapists to participate in the training course, and equip them to deliver better injury management outcomes.

37: This is consistent with the recommendations for the Development of Treatment Protocols/Guidelines for Medical and Related Services by the HWCVA Promoting Excellence National Consistency in Australian Workers' Compensation May 1997 at page 29.

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5. BENEFITS STRUCTURE

WORKERS COMPENSATION UNDER WORKCOVER NSW ADMINISTERED LEGISLATION

The following summary provides a brief outline of the Scheme's entitlements, coverage, and level of benefits.

ENTITLEMENT

The Scheme entitles injured workers to obtain no-fault, statutory benefits (of monetary compensation and injury management), and in addition, enables seriously injured workers to claim modified common law damages for negligence (monetary compensation only).

Benefits are available to any worker who sustains a personal injury arising out of or in the course of employment. Section 9A of the 1987 Act provides that no compensation is payable in respect of an injury unless the employment concerned was a substantial contributing factor to the injury. Matters to be considered include, but are not limited to: the time and place of the injury, the nature of the work performed and the particular tasks of that work and the duration of the employment.

The provision requiring 'substantial contributing factor' was inserted by the *Worker's Compensation Legislation Amendment Bill (No.2) 1996*. During his second reading speech the then Minister for Industrial Relations stated the provision is intended to limit compensation coverage to situations where employment is a substantial contributing factor to a worker's injury or disease.

This was in line with the primary objective of compensating workers who suffer injuries that have a proper link with the workplace, rather than those whose injuries have only a remote or tenuous connection with work. The Minister went on to state that questions relevant to whether employment was a substantial contributing factor in a worker's injury can include the time and place of injury, the nature and duration of work, whether it was merely a coincidence that the injury occurred at work and the extent of any non-employment contributing factors.

Journey and Recess Claims

Under section 10(1) of the 1987 Act workers can recover compensation if a personal injury is received on a journey, provided the injury is not attributable to the serious and wilful misconduct of the worker. This provision does not apply if the injury was received during an interruption or deviation from any such journey that was unconnected with the worker's employment or purpose of the journey.

Section 11 of the 1987 Act provides for compensation where a worker, having attended at the place of employment, is temporarily absent during an ordinary recess or authorised absence and does not voluntarily subject himself to an abnormal risk and receives a personal injury during that absence.

Diseases of Gradual Process

In some cases there may be difficulty in obtaining compensation where there are multiple employers. Section 15 of the 1987 Act provides that if a disease is of a nature as to be contracted by a gradual process, compensation is payable by the employer who last

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<p>November 2001</p> <p>employed the worker in employment to the nature of which the disease was due. The 'on risk' employer is then able to recover from the previous employers in the last twelve months.</p> <p>Section 16 of the 1987 Act also provides that when an aggravation, acceleration, exacerbation or deterioration of an injury occurs, compensation is payable by the worker's last employer, provided that the position held by the worker was a substantial contributing factor to the aggravation of the injury. Again, employers over the previous twelve months are required to contribute to payment of compensation.</p> <p>Hearing Loss Claims</p> <p>The 1987 Act has special provisions in relation to loss of hearing (section 17). Again the last employer whose employment placed the worker at risk is responsible for the payment of compensation and has a right of recovery from employers over the previous five years.</p> <p>Psychological/Psychiatric Injury</p> <p>Section 11A of the 1987 Act provides that no compensation is payable for psychological injury if caused by the reasonable actions of the employer. Compensation is therefore not payable if the injury was wholly or predominantly caused by the reasonable action taken, or proposed to be taken by the employer with respect to transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of workers or provision of employment benefits to workers.</p> <p>In the case of a weekly payment of compensation in respect of psychological incapacity, section 11A(7) of the 1987 Act specifies that the accompanying medical certificate must use accepted medical terminology and that "stress" is not sufficient.</p> <p>COVERAGE</p> <p>Who is a Worker?</p> <p>Whether a worker is an employee is determined using the common law test of employment, which involves balancing a number of facts about the relationship.</p> <p>Deemed Workers</p> <p>Certain contractors are 'deemed' to be workers under Schedule 1 of the 1988 Act. This means they are then entitled to benefits. For example:</p> <ul style="list-style-type: none">• Workers lent or on hire;• Outworkers;• Rural workers;• Timbergetters; <p>38. Section 68A, inserted by the 2001 Act, provides that no compensation is payable for less than 6% hearing loss with respect to boilermaker's deafness.</p> <p>9:17 AM</p>	18
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<p>November 2001</p> <ul style="list-style-type: none">• Salespersons, canvassers, collectors and others;• Jockeys and harness racing drivers; and• Drivers of hire vehicles or hire vessels contract of bailment. <p>Coverage of Contractors</p> <p>Under the current legislation a contractor is deemed to be a worker when:</p> <ul style="list-style-type: none">• The value of the work exceeds \$10;• The contractor does not employ workers;• The contractor does not sub-let part or all of the contracted work; and• The work is not part of a business or trade regularly carried out by the contractor in his/her own name or under a business name. <p>If the contractor-employer is uninsured and one of their workers is injured at work, the principal contractor is liable to pay compensation to the injured worker.</p> <p>It should be noted that in some cases a purported contractor will be found to be an employee under the common law employment test. This depends on the individual case.</p> <p>Self-employed Workers</p> <p>Self-employed workers are not generally covered under the WorkCover scheme. However, an individual contractor who is not a deemed worker will be required to have workers compensation coverage if they have established a proprietary company.</p> <p>The Grellman report noted in relation to coverage that there has been a shift towards self-employment and independent contracting in NSW.</p> <p>The Workers Compensation Insurance Compliance Green Paper considers a number of options in relation to coverage. The options do not represent Government policy. The Government will consider stakeholder views and submissions before progressing any legislative or regulatory changes.</p> <p>LEVEL OF BENEFITS</p> <p>Weekly Benefits</p> <p>The 1987 Act regulates weekly payments of compensation/benefits for injured workers.</p> <p>Total Incapacity</p> <p>Under section 36 of the 1987 Act, for the first 26 weeks of total incapacity the worker is entitled to be paid their 'current weekly wage rate' which is their award rate of pay or the base rate of the relevant industrial agreement.</p> <p>9:17 AM</p>	19
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If there is no award, but there is such an award under which the worker would be entitled to be remunerated if the worker performed that work under a contract of service, the worker is deemed to come under that award.

A worker who is not covered by an award or not captured by the above, is paid 80% of their 'average weekly earnings'.³⁹ In determining a worker's 'current weekly wage rate', shift work, overtime or other penalty rates, any excess hours worked or special expenses incurred by the worker, are disregarded.⁴⁰

After 26 weeks the worker is paid compensation at the 'statutory rate', which is 90% of the worker's average weekly earnings.⁴¹ The maximum that can be paid is \$296.20 per week. In the case of a worker who is over the age of 21 years, the minimum payment is \$235.60 per week and in the case of a worker whose average weekly earnings do not exceed \$214.10 per week, the payment shall be 100% of those earnings or \$192.70, whichever is the lesser amount.

In addition \$78.10 per week is payable with respect to a dependent wife or husband of the worker, or any one dependent de facto spouse or other family member.

With respect to dependent children, an additional amount is payable. The rates are set out in section 37 (1)(c) of the 1987 Act, with, for example, one dependent child attracting an additional amount per week of \$55.80 and two dependent children, in total, \$124.80 per week.

The maximum weekly payment of compensation with respect to any period of partial or total incapacity (indexed as at 1 October 2001) is \$1,259.20.⁴²

Partial Incapacity

Statutory compensation is also payable for workers who are partially incapacitated.⁴³ To encourage injured workers to return to work, provided it is safe to do so, injured workers can carry out 'suitable duties' and receive 'make up pay'.⁴⁴

If suitable duties are not available, section 38 provides for a maximum 52 weeks, which has the effect of providing for the total incapacity rate to apply.

39. As defined in section 42 of the 1987 Act.

40. 1987 Act section 42(6).

41. Rate prescribed under section 37 of the 1987 Act.

42. 1987 Act section 35.

43. A worker is 'partially incapacitated' where he or she is able to perform some but not all of their pre-injury work or is capable of performing a different type of work. A worker who is partially incapacitated cannot be paid more than the maximum amount payable if they were totally incapacitated. 1987 Act section 40(5).

44. This is a payment to cover any difference between the weekly amount which the worker would probably have been earning as a worker but for the injury, and the average weekly amount which the worker is earning, or would be able to earn in some suitable employment, from time to time after the injury'. 1987 Act section 40.

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If a worker is partially incapacitated and unreasonably rejects 'suitable employment' their weekly earnings can be reduced accordingly.⁴⁵

Termination Of Weekly Benefits

The 1987 Act provides for discontinuation of weekly payments for partially incapacitated workers who have already received at least 104 weeks of partial incapacity benefits.⁴⁶ This applies to workers who are either not seeking suitable employment, have unreasonably rejected suitable employment, or who have been unable to find suitable employment "primarily because of the state of the labor market".⁴⁷

Payment of Medical/Hospital/Rehabilitation Expenses

Insurers are required to reimburse costs for treatment considered to be 'reasonably necessary'.⁴⁸

Maximum rates for particular types of treatment or services at hospitals and by physiotherapists have been set by order.

LUMP SUM COMPENSATION

Under the 1987 Act, lump sum compensation may be paid for non-economic loss suffered by an injured worker.

Permanent Injuries

The following arrangements apply for injuries prior to 1st January 2001. Under section 66 of the 1987 Act, a worker will qualify for compensation for injuries resulting in a permanent injury if they can show they have sustained a permanent loss as the result of a compensable work injury. A 'loss' means the loss of a thing or the permanent loss of the use (or the efficient use) of a thing.

The Table of Disabilities under the 1987 Act contains a list of injuries to various parts of the human body and uses percentages to calculate what proportion of the maximum amount is payable for any given loss. Not all work related conditions are covered, e.g. injuries to internal organs (assessing such loss is problematic in that the overall functioning of the person may not be affected).

The maximum amount payable for a single loss is \$100,000 and for multiple losses \$121,000. In determining the compensation payable for non-economic loss there is a deduction for any proportion of the loss that is due to a previous injury or that is due to a pre-existing condition or abnormality. A deduction is made for impairment resulting from

45. By the difference between the current weekly wage rate for the worker's pre-injury employment and the current weekly wage rate for some suitable employment for the worker from time to time after the injury. 1987 Act section 40(2A).

46. Section 52A.

47. 1987 Act sections 38 and/or 40. Section 54 of that Act also provides that notice is required before termination or reduction of payment of weekly compensation.

48. 1987 Act section 60.

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pre-existing injuries or conditions. If the amount of a known loss is unable to be calculated it is assumed to be 10%. There is also a 6% threshold for industrial deafness claims.

The *Workers Compensation Legislation Further Amendment Bill 2001* introduces a new system for compensating permanent injuries on or after 1st January 2002. After that date benefits are paid to workers who suffer a permanent impairment.

Further new provisions extend permanent impairment benefits to a range of injuries that are not currently compensable. The 2001 Act introduced special provisions for certain psychological and psychiatric injury so they can be compensated under section 66. Organ damage that results in impairment is also compensated. The level of benefit will be determined by determining a percentage "whole person impairment" rating under WorkCover impairment guidelines.

The new provisions provide for greatly increased benefits under section 66, particularly for the most seriously injured workers, by increasing the maximum amount of compensation from the present figure of \$121,000 to \$200,000.

When there is a dispute as to the degree of permanent impairment of an injured worker, the dispute must be referred to an approved medical specialist (AMS), who will issue a conclusive medical certificate.

Pain and Suffering

Lump sum compensation is also available for pain and suffering. For pre-January 1st 2002 injuries, the worker must be entitled to permanent loss benefits of at least 10% of the maximum amount payable under the Table i.e. \$10,000. The maximum amount payable for pain and suffering is \$50,000, and is payable in only the most extreme case.

For injuries after 1st January 2002 the *Workers Compensation Legislation Further Amendment Bill 2001* provides a 10% permanent impairment threshold for pain and suffering compensation. Psychological or psychiatric injury will have a 15% permanent impairment threshold.

Compensation Payable on Death

When a worker dies leaving dependents wholly dependent for support on the worker, section 25 of the 1987 Act provides that a lump sum of \$253,650 is payable. A further amount of \$79.70 per week for each dependent child (indexed twice yearly) is also payable. Section 31 provides that compensation payable under section 25(1)(b) in respect of a dependent child shall be paid to the widower or widow or, if no widow or widower, to the Public Trustee in trust for the benefit of the dependent child.

When a worker dies leaving dependents partially dependent upon the worker for support, the compensation payable by the employer is set out in section 26 of the 1987 Act. If the employer agrees, compensation is payable in the amount that would have been payable under section 25 if those dependents had been wholly dependent on the worker. Agreement may be reached for the payment of a lesser amount in accordance with section 26(b).

When a worker dies leaving no dependents, compensation for funeral expenses is payable to the deceased's legal representative or other person to whom compensation is payable. Section 27 prescribes that the maximum lump sum payment for funeral expenses shall not

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exceed \$4,400 or, where some other amount has been prescribed by the regulations, that other amount.

COMMON LAW

When a claim is made after 27 November 2001 new rules apply for calculating damages. The injured worker must have a whole person impairment of 15%. The recovery of damages is restricted to damages for past economic loss due to loss of earnings and damages for future economic loss due to the deprivation or impairment of earning capacity.

In relation to damages for non-economic loss, claims are now only available through the statutory scheme. Therefore the requirement to choose or elect between statutory non-economic loss compensation under sections 66 and 67 of the 1987 Act and common law damages has been removed.

The legislation continues to provide that if an injured worker's common law claim for economic loss is unsuccessful, the worker continues to be entitled to the full range of benefits in the statutory scheme, including non-economic loss lump sums, weekly payments and payment of medical care.

6. DISPUTE RESOLUTION

New South Wales has the highest rate of disputed claims in Australia. Approximately 32,000 or 45% of major claims were referred for conciliation in the 2000 year.

Only 10% of disputes were settled through conciliation, with over 20,000 disputes lodged with the Compensation Court. Of those disputes lodged with the Court, less than 10% proceed to a judgement.

These disputes undermine return to work initiatives and have an adverse impact on the Scheme's performance.

The 2001 Act addresses this unsatisfactory number of disputes by putting in place measures that will prevent disputes arising, and provide a simpler fairer and faster system for resolving disputes.

The 2001 Act also provides for changes in the advice and assistance to injured workers and employers, and improved claims management processes.⁴⁹ Other initiatives include:

- The Claims Assistance Service will provide a hotline and on-line advice and referrals to help injured workers and employers navigate the system; and
- WorkCover Assist will provide funding for unions and industry groups to provide training, advice and information services for their members.

The legislation provides for streamlined injury notification and insurer claims management processes. Insurers are to accept 'provisional liability' and commence payments of weekly compensation prior to determining liability. Provisional liability can also be accepted for medical expenses (up to \$5000). Increased incentives for improved service delivery by insurers, and increased penalties for delay in decision making have also been introduced.

⁴⁹ 1998 Act Chapter 7 inserted by the 2001 Act

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Establishment of the Workers Compensation Commission

The legislative changes in dispute resolution provide for the establishment of a new, integrated dispute resolution service that will replace the Workers Compensation Resolution Service and the Compensation Court (for the majority of matters).

The Workers Compensation Commission will be established and commence dealing with new claims from 1 January 2002. It will be located in the existing premises of the Workers Compensation Resolution Service in Darlinghurst, Sydney.

The registry and expedited assessment service will operate from these premises. Arbitrators and Approved Medical Specialists will be appointed throughout the State.

Commission Objectives

The objectives of the Commission are to:

- Provide a fair and cost effective system for the resolution of disputes under the Workers Compensation Acts;
- Reduce administrative costs across the workers compensation system;
- Provide a timely service ensuring that worker's entitlements are paid promptly;
- Create a registry and dispute resolution service that meets worker and employer expectations in relation to accessibility, approachability and professionalism;
- Provide an independent dispute resolution service that is effective in settling matters and leads to durable agreements between the parties in accordance with the Workers Compensation Acts; and
- Establish effective communication and liaison with interested parties concerning the role of the Commission.⁵⁰

The Commission will be resourced to ensure that disputes are referred promptly to the appropriate part or parts of the Commission, for assessment and determination. All parties to the dispute will have the right to legal representation in arbitration.

Members of the Commission

The Commission consists of the following members: a President, two Deputy Presidents, a Registrar, and Arbitrators. All members of the Commission, other than the Arbitrators, are to be appointed by the Minister.

50. 1998 Act section 367.

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President

The President, who must be a Judge⁵¹, will:

- Exercise judicial functions;
- Hear appeals (as set out below for Deputy Presidents);
- Consider the referral by the application of a party or by arbitrators of "novel or complex" questions of law;
- Appoint medical practitioners to be Approved Medical Specialists; and
- Appoint and remove Arbitrators.

On 13 November 2001 the Minister announced the appointment of The Hon. Justice Terence William Sheahan as President of the Commission. Justice Sheahan is a judge of the Land and Environment Court and a former Attorney General.

Deputy President (2)

A person is eligible to be appointed as a Deputy President only if they are, or have been, a judicial officer (within the meaning of the Judicial Officers Act 1986) or they are a legal practitioner of at least 5 years standing.⁵²

On 13 November 2001 the Minister announced the appointment of Mr Gary Byron and Ms Gabriel Fleming as Deputy Presidents of the Commission.

Any Presidential member can hear appeals regarding a decision of an Arbitrator. The member hearing the appeal is required to grant leave to hear an appeal.

Registrar

The Registrar is accountable for:

- The development, delivery and quality of the services provided by the new Workers Compensation Commission; and
- Ensuring disputes regarding claims and medical issues involving injured persons (within the meaning of the Workers Compensation Acts) are resolved in a streamlined and fair manner, in accordance with the legislation.

On 13 November 2001 the Minister announced the appointment of Ms Helen Walker as Registrar of the Commission.

The Registrar, in their statutory role, will make interim payment directions in respect of applications for payment of weekly compensation or medical expenses (up to \$5000), deal

51. 1998 Act section 369 (1).

52. 1998 Act section 369 (2).

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<p>with disputes regarding workplace injury management, and register consultation agreements, in accordance with the legislation.</p> <p>The Registrar has broad powers to call on the WorkCover Assistance Service and Injury Management Consultants in the resolution of these matters.</p> <p>Under the legislation, the Registrar is responsible for making arrangements as to the Arbitrator who is to assess any particular claim or class of claims.</p> <p>Arbitrators</p> <p>The role of Arbitrators under the legislation is in relation to determining disputes. They will be appointed to a Panel (by the President) and assigned matters on a case by case basis by the Registrar. Arbitrators are to be appointed throughout the State.</p> <p>The legislation provides that to be appointed as an arbitrator, a person must be a legal practitioner or have such qualifications, skills or experience as may be determined by the Minister.⁵³</p> <p>The Minister, in his second reading speech, clarified that these skills, qualifications and experience would generally be in relation to disputes regarding workplace injury management.⁵⁴</p> <p>The WorkCover General Manager wrote to professional associations on 7 November 2001 (including the legal profession, medical profession, PSA, Labor Council and employer groups) seeking their assistance in ensuring that interested persons were aware of the opportunity to provide expressions of interest for appointments as arbitrators.</p> <p>Expressions of interest were advertised in the main metropolitan and regional newspapers, commencing Friday 9 November 2001. Expressions of interest closed 27 November 2001.</p> <p>The legislation provides that the appointment of person, who is not a legal practitioner as an arbitrator, may be made on terms that limits that person to dealing with matters of a particular type or types.</p> <p>It is envisaged that non-legally qualified arbitrators would deal with the resolution of workplace injury management disputes.</p> <p>Approved Medical Specialists</p> <p>Approved Medical Specialists are medical practitioners appointed by the President, in accordance with the criteria developed by the Minister in consultation with the Advisory Council.</p> <p>The terms of any such appointment may restrict an approved medical specialist to medical disputes of a specified kind.</p> <p>^{53.} 1998 Act section 369 (3).</p> <p>^{54.} Minister's second reading speech for the Workers Compensation Legislation Amendment Bill 2001 Legislative Council Debates, 26 June 2001 at page 15281.</p>	<p style="text-align: right;">November 2001</p> <p>The President is to ensure that, as far as reasonably practicable, arrangements are in place to facilitate the taking place of medical assessments in the regional areas of the State.</p> <p>The Authority may arrange for the provision of training and information to approved medical specialists to promote accurate and consistent assessments.</p> <p>Operation of the Commission</p> <p>The general objective of the Commission is to provide a more flexible dispute resolution system. The Act and Rules are directed towards facilitating the settlement process to occur as early as possible. Some of the provisions that will facilitate this are set out in the Act, including information exchange, role of the registrar and offers of settlement for section 6687 claims. The details of the process will be set out in the Rules.</p> <p>The Rules will set out the requirements for and manner of lodgement of disputes, and the information exchange provisions. The purpose of these requirements is to encourage settlement and to require the parties to narrow the issues in dispute. Failure to comply with the information exchange provisions will prevent documents being admitted into evidence and constitute an offence, except under particular circumstances.</p> <p>The draft rules are currently undergoing a process of consultation with stakeholders, prior to consideration by the Minister.</p> <p>The issues in dispute will be narrowed through the information exchange provisions as far as possible prior to the 'triage' stage of allocating a matter to an arbitrator, expedited assessment officer or approved medical specialist.</p> <p>The Commission will use case management methods to enable simultaneous management and resolution of disputes in a streamlined manner.</p> <p>Resolution of Disputes</p> <p>Any party to a dispute about a claim may refer the dispute to the Registrar for determination by the Commission. However, only the claimant can refer a dispute about permanent impairment compensation.</p> <p>The Commission will have three main roles:</p> <ul style="list-style-type: none"> • Expedited assessment to enable payment of weekly compensation benefits (up to 12 weeks) and medical expenses (up to \$5000), as well as resolution of disputes in relation to workplace injury management; • Resolve medical disputes; and • Arbitrate disputes <p>The triage function to determine which of these roles is appropriate is undertaken by the Registrar.</p>
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Expedited Assessment

The payment of weekly compensation and medical expenses through the provisional liability provisions is one of the most important initiatives in the 1998 Act, as it enables the early management of injuries, prior to liability regarding a matter being determined.⁵⁵

The 1998 Act encourages a loss leader approach, with the presumption of payment in favor of making orders in certain cases. Because many claims for weekly benefits involve less than 12 weeks incapacity, the commencement of payments under provisional liability, or the making of an interim payment direction order for this by the Commission, may actually resolve a large number of disputes.

In cases where the Registrar declines to make an interim payment direction, the injured worker will still have the dispute determined by the Commission.

Return to work disputes will be dealt with primarily by expedited assessment officers. Where steps at an earlier stage in the process, such as development of an injury management plan, workplace assessment or return to work plan, have not been undertaken, the Registrar will arrange for these to occur by an Injury Management Consultant, or other suitably qualified person.

In the case of a medical dispute regarding the suitability of a return to work program, this will be referred to an approved medical specialist.

Where appropriate, recommendations will be made to parties to comply with obligations of an injury management plan. Where required, the dispute will be referred to the Commission for determination.

Arbitral Commission

Under the legislation, Arbitrators are not to make an award or otherwise determine a dispute referred to them for determination, without first using their best endeavours to bring the parties to the dispute to a settlement acceptable to all of them. The arbitrator has broad, flexible powers to determine the best way to resolve a dispute.

Proceedings are to be conducted with as little technicality and formality as the proper consideration of the matter permits to ensure natural justice. Proceedings need not be conducted by way of a formal conference between the parties. If they are satisfied that sufficient information is provided, they can proceed on the papers, and can proceed even if the parties do not cooperate. Arbitrators are provided with powers to take evidence on oath, and order the production of documents and attendance of witnesses.

Facilities for hearings, and teleconferences will be arranged through the Commission. Other work will be undertaken by arbitrators at their own premises.

Medical Disputes

A medical dispute is defined as a dispute between a claimant and the person on whom a claim is made as to:

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- The worker's condition (including the worker's prognosis, the aetiology of the condition, and the treatment proposed or provided);
- The worker's fitness for employment;
- The degree of permanent impairment of the worker as a result of an injury;
- Whether any proportion of permanent impairment is due to any previous injury or pre-existing condition or abnormality, and the extent of that proportion;
- The nature and extent of loss of hearing suffered by a worker;
- Whether impairment is permanent; and
- Whether the degree of permanent impairment of the injured worker is fully ascertainable.⁵⁶

The process for referral of a medical dispute is specified within the legislation. A medical dispute may be referred for assessment by a court, the Commission or the Registrar, either of their own motion or at the request of a party to the dispute. The Registrar is to give the parties notice of the referral. The Registrar must refer disputes about permanent impairment to an AMS.

The parties to the dispute may agree on the approved medical specialist who is to assess the dispute. If the parties have not agreed within 7 days after the dispute is referred, the Registrar is to choose the approved medical specialist who is to assess the dispute.

Medical advice is considered to be a conclusive (or binding) decision when it concerns:

- Whether impairment is permanent;
- The level of permanent impairment;
- The proportion due to previous injury;
- The nature and extent of hearing loss.

Medical advice is considered to be evidence, but not a conclusive (non-binding) decision if it concerns:

- Worker's condition (prognosis, cause, treatment provided or proposed);
- Worker's fitness for work;
- Any other medical question referred.

55. 1998 Act section 280.

56. Proposed Section 319 inserted by Schedule 1(7) of the Workers Compensation Legislation Further Amendment Bill 2001.

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<p>Transitional Arrangements</p> <p>November 2001</p> <p>The Act draws a distinction between 'existing claims' and 'new claims'. In broad terms, the Compensation Court will continue to handle matters for which dispute applications have been lodged with the Compensation Court prior to the commencement of the Commission. It will also, for a time, continue to deal with 'existing claims' (those claims lodged before commencement of the new provisions and any further related claims in relation to the same injury). The Workers Compensation Commission has jurisdiction in relation to the 'new claims'.</p> <p>An 'existing claim' is a claim for compensation made before the commencement of this section or a claim that is related to that claim whether before or after.</p> <p>'Related claims' are claims or further claims for compensation in respect of the same injury. If the initial claim is made before the commencement of the Act then the dispute about that claim, and any related dispute, will be dealt with in the existing system.</p> <p>The legislation provides for the transfer of matters from existing claims to new claims within the Commission through a regulation making power. The categories of matters that may be suitable for transfer by regulation, and the timeframe for transfer, have yet to be determined, although a draft Regulation released in November 2001 proposes to make 1 January 2002 the date for transfer. There is recognition of the need to keep the transition for stakeholders and service providers simple, and to minimise disruption.</p> <p>Once an existing claim is settled or determined, any further disputes or claims will go through the new system. Review of existing orders of the Court will then be carried out in the Commission.</p> <p>The intention of this approach is to ensure that the Commission has an orderly and staged commencement period. By having a period where only new claims proceed to the Commission, any problems can be identified early and resolved. Because of the claim making process, weekly benefits/medical expense claims should start to flow in late January 2002, with permanent impairment compensation claims starting to flow through in early April.</p> <p>The existing Workers Compensation Resolution Service will be closed on 31 December 2001.</p> <p>Commutations</p> <p>The <i>Workers Compensation Legislation Further Amendment Bill 2001</i> provides that a liability in respect of an injury cannot be commuted to a lump unless WorkCover is satisfied that:⁵⁷</p> <ul style="list-style-type: none"> • The injury has resulted in a degree of permanent impairment of the injured worker that is at least 15% (assessed as provided by Part 7 of Chapter 7 of the 1998 Act); <p>^{57.} 1987 Act Clause 6 of Part 18C of Schedule 5. ^{58.} Schedule 8. The provision arises as a result of a concern raised by (the final report of the inquiry into common law) to protect the Scheme from potential pressure points. Minister's second reading speech, Legislative Council Debates 28 November 2001.</p>	<p>November 2001</p> <ul style="list-style-type: none"> • Permanent impairment compensation and pain and suffering compensation to which the injured worker is entitled in respect of the injury has been paid; • A period of at least 2 years has elapsed since the worker's first claim for weekly payments of compensation in respect of the injury was made; • All opportunities for injury management and return to work for the injured worker have been fully exhausted; • The worker has received weekly payments of compensation in respect of the injury regularly and periodically throughout the preceding 6 months; • The worker has an existing and continuing entitlement to weekly payments of compensation in respect of the injury (whether the incapacity concerned is partial or total); and • The injured worker has not had weekly payments of compensation discontinued or reduced.⁵⁹ <p>New arrangements for the registration of commutation agreements apply from commencement. The requirement to register commutation agreements through the Commission applies to all claims regardless of date of injury, including matters under the 1926 Act. The Court's power to commute liabilities will cease on and from the commencement date, unless an application was before the Court prior to 27 November 2001. The Court has until 31 March 2001 to dispose of those matters.</p> <p>Settlement negotiations will proceed in the Court for matters filed after 27 November 2001. However once an amount is agreed, the commutation agreement will then be referred to the Commission for registration. Transitional arrangements are in place to ensure a seamless transition for stakeholders through this process.</p> <p>Section 66/67 Benefits</p> <p>The new benefit structure for permanent impairment compensation only applies to injuries incurred after commencement of the Act. There is no transitional regulation making power to apply the new benefit structure retrospectively.</p> <p>Where a permanent loss dispute for an existing claim is transferred to the Commission, the matter can be referred to an approved medical specialist for conclusive medical assessment.</p> <p>Transitional provisions provide that where a previously non-compensable loss is partly attributable to a period before commencement, compensation is to be apportioned (Clause 3(2) of Part 18C of Schedule 6 of the 1987 Act). This will apply particularly to diseases of gradual process or on set where often the date of claim is deemed to be the date of injury.</p> <p>The Commission (instead of WorkCover) will now carry out registration of 66A agreements.</p> <p>59. Under sections 62A and 38A of the 1987 Act.</p>
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Impairment Guidelines

The use of Impairment Guidelines will allow a range of permanent loss/impairment to receive a section 66/67 benefit under the no-fault scheme, which are currently not compensable under the existing legislation. The impairment guidelines are a modifying document based on the AMA V Guide.

Guidelines have been developed by working parties of leading medical specialists, relevant medical colleges, and the Labor Council and the Advisory Council.

The assessment of impairment requires that the injured worker has reached maximal medical improvement (unlikely to change in one year). The Guidelines will consider loss, or loss or use or derangement of body part, organ system or organ function from normal capacity. They will not consider disability (functional capacity for personal, social or occupational demands) or employability.

Appeal procedures***Appeals of Decisions of Arbitrator***

Decisions of arbitrators may be appealed if the additional amount of compensation at issue is \$5000 and 20% of the claim.

Appeals are lodged with the Registrar, and heard by the President or Deputy Presidents.

If an appeal by an injured worker is "unsuccessful" the Commission is prevented from making an order for payment of appellants costs of the appeal.

An appeal is considered to be "unsuccessful" unless worker improves their position by at least \$5 000 and 20% of the amount sought on appeal.

This applies to lump sum, weekly benefits and medical expenses. Weeklies are likely to be calculated by reference to amount and period of incapacity.

Appeal of Decision of Presidential Members

Appeals regarding decisions by Presidential members about questions of law are heard by the Court of Appeal.

Appeal of decision of Approved Medical Specialist

Under the legislation, a party to a medical assessment may appeal against a medical assessment, where this is conclusive, ie the decision concerns⁶¹.

- Whether impairment is permanent;
- Level of permanent impairment;
- Proportion due to previous injury;

60. 1998 Act section 326(1)(a) to (d).

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- Nature and extent of hearing loss; and
 - Whether the degree of permanent impairment is fully ascertainable.⁶¹
- The appeal must be lodged within 28 days of the medical assessment. An appeal is to be made by application to the Registrar.

The grounds for appeal of medical assessments must be:

- (a) Deterioration of the workers condition that increases the degree of permanent impairment;
- (b) New evidence;
- (c) Assessment was made on basis of incorrect criteria; and
- (d) Medical assessment criteria contains a demonstrable error.

The Registrar may refer the medical assessment for further assessment if the grounds for appeal are either (a) or (b).

An Appeal lodged under the grounds of (c) or (d) will be heard by an Appeal Panel, constituted by 2 approved medical specialists and 1 Arbitrator. The Panel will review the original medical assessment, and confirm the certificate of assessment or revoke this, and issue a new certificate. The decision of the Panel will be by way of a majority.

Legal Costs

Cost provisions largely retain existing principles for recovery of costs with some modifications. The general principle that injured worker is not liable for costs without an award of the Commission is retained.

An order can only be made against an injured worker where a claim is frivolous, vexatious or without proper justification.

Costs unreasonably incurred can be disallowed:

- After a reasonable offer of settlement was made to the party;
- Failure to comply with a request for a report/information;
- Failure to participate in conciliation; and
- Where challenge is made to an AMS non-conclusive certificate and the Commission is satisfied the claim is frivolous or vexatious.

The provisions have been modified slightly to take account of the new system. The reference to conciliation refers to the process whereby an arbitrator seeks to bring parties to agreement before determining the dispute. The reference to reasonable offers of settlement refers to the requirement for an insurer to make a reasonable offer of

61. Proposed section 326(a) inserted by Schedule 1(14) of the Workers Compensation Legislation Further Amendment Bill 2001.

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settlement within two months of a claim. It is an offence if they fail to make a reasonable offer within this time period.

The Act provides a power to prescribe by regulation the maximum cost recoverable by a legal practitioner/agent for workers compensation matter. This power is already provided for. The legal representative is prevented from recovering more than the maximum amount, with no contracting out of this restriction.

There is a power to restrict recovery for the cost of reports by health service providers through regulation.

The legal practitioner will now be liable for costs in cases involving serious neglect, incompetence or delay. This provision is based on similar provisions in the District Court Act, and responds to concerns expressed by the Compensation Court that there is no sanction under the current system.

This applies to both solicitors acting for workers and insurers. The options include disallowing costs, ordering the legal practitioner to repay the client, or indemnify other parties.

Regulations can be made to provide for the taxation of costs within the Commission, rather than under the Legal Profession Act 1987. These options are currently being reviewed, and will largely depend upon the type of cost regulation used.

7. SETTING OF WORKERS COMPENSATION PREMIUMS

The WorkCover Scheme premium pool is approximately \$2 billion per annum. Workers compensation premium rates for all employers insured under the Scheme are determined by the NSW Government on an annual basis.

Each year an Insurance Premiums Order is gazetted, which commences 4pm 30 June and applies to all insurance policies renewed in the following 12 months. The Insurance Premium Order includes premium rates (expressed as a percentage of wages) for a range of industry classes, and the formulae for calculating claims experience-based premium adjustments for medium to large sized employers.⁶²

Small and medium employers are protected against high claims costs by the "two times" rule. Under this rule the employer's experience-adjusted premium is capped at twice the amount of the basic tariff premium. This rule only applies to employers whose basic tariff premium does not exceed \$112,000 per year.⁶³

The HWC A has recommended that:

- Coverage should not be extended to the self-employed;

62. A copy of the Insurance Premiums Order for 2011/2002 will be provided directly to the Committee Secretariat.

63. The Workers Compensation Compliance Green Paper September 2001 includes a proposal (option 9) to address premium avoidance by companies splitting their operations by amending the application of the "two times" rule so that it does not apply to related corporations.

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- Coverage should be extended to include contractors who are incorporated, but who operate as a sole proprietor or in partnership, in circumstances where they are denying a personal service income from predominantly one organisation; and
- There should be standardised categories through which deemed coverage could be granted to certain classes of worker while deeming other categories of worker not to be workers.⁶⁴

The strategies outlined in the Workers Compensation Compliance Green Paper include options for addressing these compliance issues.⁶⁵

Industry premium rates are developed by the Scheme actuaries on the basis of the relative claims experience of each industry class. Insurers are required to lodge monthly claims and policy data tapes with WorkCover. WorkCover maintains a central database that contains data on every claim and every policy in NSW.

The Scheme's actuary uses claim and policy data (such as claim payments, claim numbers, wages paid, etc) from WorkCover's central database to model premium rates for each type of industry.⁶⁶ WorkCover, in conjunction with the actuary conducts a valuation exercise for the Scheme every December to set premiums via the Insurance Premiums Order. The Insurance Premiums Order contains gazetted tariff rates for each type of business or industrial activity.⁶⁷ The WorkCover Board recommends premium rates to the Government for approval by the Governor.

In theory, industry premium rates should be set at a level to cover all estimated future costs associated with all claims expected to be incurred in that year, including claims costs, WorkCover administrative costs (including dispute resolution services and Compensation Court) and the management fees paid to insurers to manage premiums, claims and investments.

Since 1997/98, to ensure that NSW employers can remain competitive, the NSW Government has set the average premium rate at 2.8% of wages (net of GST). This is less than the actuarially estimated "break-even" premium rate.

Licensed insurers are required to classify employers according to the tariff classification that most accurately describes the employers business or industrial activity.⁶⁸ Insurers then calculate the premium payable for individual policyholders in accordance with the industry tariff rates and formulae set out in the Insurance Premiums Order.

Individual insurers are not permitted to vary the premium rates or formulae set out in the Order or apply a loading or give a discount on employer premiums in respect of their

64. HWC A Promoting Excellence: National Consistency in Australian Workers Compensation May 1997 at page 18.

65. The Workers Compensation Compliance Green Paper September 2001 options 1 to 5 and 9.

66. WorkCover maintains a central database that contains data on every claim and every policy in NSW.

67. Specialised insurers underwrite their risk and are therefore exempt from the Insurance Premiums Order.

68. This is consistent with the recommendations for the Industry Classification Structure by the HWC A Promoting Excellence: National Consistency in Australian Workers Compensation May 1997 at page 26.

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administrative costs or for any other reason. Employers in NSW should obtain a similar premium quote from different licensed insurers. Licensed insurers are expected to compete for employers business based on quality of services provided and not on price of premium.

8. LEGAL STRUCTURE OF THE WORKCOVER SCHEME FUNDS

NSW workers compensation insurance arrangements may be defined as belonging to four distinct classes or funds:

- **Statutory Fund:** covers employers (not covered by self-insurance arrangements) who insure their workers' compensation risks by paying premiums to licensed insurers;
- **Treasury Managed Fund:** covers the NSW Government (in its capacity as an employer of NSW Crown employees) that self-insures its own workers compensation risks;
- **Self-Insurance Funds:** cover employers who self-insure their own workers compensation risks through self-insurance or group self-insurance arrangements; and
- **Specialised Insurance Funds:** covers employers who insure their workers' compensation risks by paying premiums to licensed specialised insurers.

The Statutory Fund

The Statutory Fund is a unique legislative arrangement that is established as a self-funding trust for the benefit of NSW employers and workers (who are not covered by self-insurance arrangements).⁶⁹

Workers compensation insurance is a long tail business (claims may be paid over a period of up to 50 years) and the current Scheme has only been in operation since 1987.⁷⁰

Successive NSW Governments have recognised that workers compensation schemes take time to mature and stabilise, and may accrue surpluses or unfunded liabilities over the life of a scheme.

The Statutory Fund has therefore been carefully designed to ensure that NSW employers can remain competitive, but continue to meet their long-term social and economic responsibilities.

69. The Minister's second reading speech for the *Workers Compensation Bill 1987* indicated that the trust is designed 'to stabilise and secure premiums for the benefit of employees and employers'. Hon. P.D. Hills, MP, Minister for Industrial Relations and Minister for Employment, Legislative Assembly Debates, 14 May 1987 at page 12212.

70. The 1st Scheme was established in 1910 and was based on the United Kingdom arrangements that offered limited coverage for workplace injuries arising in employment that was deemed to be 'dangerous'. This Scheme was replaced in 1926 by a model including compulsory insurance for employers, licensing and regulation of insurers, and a Commission to assist in the conciliation and arbitration of disputes. The 1926 Scheme remained essentially unchanged until the mid 1980s.

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The Statutory Fund is therefore structured as a trust like arrangement to protect employers from volatile short-term increases in Scheme costs, but ensure that they ultimately accept responsibility for the long-term viability of the Scheme.

The Scheme is also designed to ensure that the Government cannot appropriate any surpluses, and that deficiencies must be funded by employers or by targeting Scheme inefficiencies that artificially increase underlying Scheme costs.

The introduction of the Scheme in June 1987 required insurers to maintain separate statutory trust funds for employers' premiums and outstanding claims. Liabilities are, therefore, secured by this statutory mechanism.

The features of the Statutory Fund include:

- Insurers are required to establish and maintain a single statutory fund for assets that are accumulated (by charging employers a premiums for their workers compensation insurance policies).⁷¹
- Assets include premiums received, moneys recovered in connection with a policy of insurance, investment income, and money transferred from the Premiums Adjustment Fund.⁷²
- Assets are held by insurers on trust and can only be used for specified purposes (insurers have no beneficial interest in or entitlement to the assets of the fund maintained by the insurer).⁷³
- Insurers must protect the trust's assets by keeping them distinct and separate from their own assets.⁷⁴
- The trust's assets can only be used for specified purposes, including meeting claims under the policies of insurance covered by the fund; the payment of direct expenses associated with these claims; insurers management expenses; and rebates to employers for overpayment of insurance policies.⁷⁵
- The trust assets cannot be used to pay a dividend to the Consolidated Fund,⁷⁶ and
- The liability for any fund deficiencies rests with employers via insurers who can be charged 'catch-up premiums'.⁷⁷

71. 1987 Act section 195(1).

72. 1987 Act section 196.

73. 1987 Act section 195(2). The Explanatory Memorandum for the *WorkCover Legislation Amendment Act 1995*, which inserted this provision, stated that the Bill makes it clear that insurers licensed on a statutory fund basis do not have beneficial ownership of the statutory funds managed by them, but hold the assets of the fund on trust for the purposes of the Act. These purposes include meeting claims under workers compensation insurance contracts, which insurers enter into with employers whose premiums are paid into the statutory fund concerned.

74. 1987 Act section 199.

75. 1987 Act section 197.

76. 1987 Act section 198(3).

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The current structure of the Statutory Fund is in the net public benefit, because it will enable the Scheme's current unfunded liability to be held on trust (and ensure NSW employers remain competitive), until it can be funded by the savings that will be generated from the Government's ten point plan for the reform of the Scheme.

Treasury Managed Fund

The Treasury Managed Fund (TMF) is a self-insurance scheme operated by the NSW Government. It provides a full range of insurance covers and services for all participating Agencies.

The overall purpose of the TMF is to provide a structure and services that will assist Agencies to reduce the impact of risk exposures and maximise resources available to support services to the NSW community.

The assets, liabilities, rights and obligations of TMF, Pre Managed Fund Reserve, Government Workers' Compensation Account and the Transport Accidents Compensation Fund were part of the business undertaking of GIO Australia Holdings Ltd (GIO), which were transferred to the New South Wales Insurance Ministerial Corporation on 30 June 1992.⁷⁶

Insurance Funds of the New South Wales Insurance Ministerial Corporation are currently managed, under separate contracts, by GIO.

The TMF provides unlimited cover for five classes of risk worldwide:

- Motor Vehicle⁷⁷;
- Workers' Compensation;
- Property (full replacement, new for old, including consequential loss);
- Public liability (including but not limited to Professional Indemnity and Director/Officers liability);
- Miscellaneous.

The cover provided by the "contract of coverage" is unique and would be unobtainable in commercial insurance, which would normally include numerous exclusions. The only exposures not included are illegal operations; wear, tear and inherent vice; and pollution (other than sudden and accidental).

The Fund is also protected by a wide ranging reinsurance programme providing cover above a pre-determined retention amount, currently in the order of \$10 million. The Fund

77. 1987 Act s 68(b)(208).

78. The Insurance Ministerial Corporation is constituted pursuant to section 24 of the Government Insurance Office (Privatisation) Act 1994.

79. Following a recent competitive tendering process with all licensed insurers, Treasury appointed Zurich Australian Insurance Ltd (Zurich) to provide CTP insurance cover for the Government fleet for the period 1 July 2000 to 30 June 2002.

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has done well in containing the costs of risk for individual agencies and the Government generally. The basis of the Fund's strength is:

- A commitment to risk management to focus on risk prevention and post-loss control;
- Devolution of responsibilities for performance to agencies with financial incentives to promote effective risk and claims management; and
- Commitment to full funding of liabilities whereby full financial provision is made for the cost of claims and expenses in the year that the incident causing the claim occurs.

The success of the TMF will continue to revolve around the close relationships built over the years by its three key participants, namely:

- Treasury which oversees the operation of the scheme and has ultimate authority. It acts as a mediator in the event of differences of opinion between clients and the Fund Manager. It also controls the funding process which plays such a key role in the incentive scheme;
- GIO, the Fund Manager⁸⁰, which has the day to day responsibility of managing the Fund, especially in the areas of claim administration, communication, coordination, technical assistance and risk management education and support; and
- Most importantly, the Agencies, fulfilling their responsibilities effectively in risk management and claims management.

The Fund is based on the principles of self-insurance and, as such, places high priority on the implementation of sound risk management practice.

Broadly speaking, premiums paid into the Fund by the agencies are designed to fully fund the claims costs and expenses of a particular Fund year. These premiums are actuarially calculated and take into account inflation and are discounted for future investment earnings. Expenses include reinsurance costs, the Fund Manager's fees and levies charged on premiums and wages by WorkCover.

Premiums for Workers' compensation and Motor Vehicle are experience-rated, whereby some weight is given to the agencies own claims experience. The larger the agency, the greater weight is placed on its own record; the smaller the agency, the more its premium is based on its external industry benchmark.

Treasury allocates funds to Budget sector agencies according to an external benchmark applicable to each agency. The majority of agencies in the Fund are "benchmark" against the experience of the NSW WorkCover Fund. This is being done by allocating to an Agency the industry tariff rate in WorkCover which best reflects the risk profile, size and claims experience of the agency. For example, many agencies have been placed in the

80. Management of the Fund was subject to a competitive tender process and GIO General Ltd was successful in securing a 3 year tender from 1 July 2000, with an option at the Government's discretion for a further extension of 2 years. Treasury Managed Fund Financial Statements for the year ended 30 June 2000 at page 4.

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WorkCover Industry Classification for "financial institutions", which embraces all private employers within industries which are essentially clerical or administrative.

It is not feasible to benchmark every Agency solely against the NSW WorkCover Fund because some large agencies have no comparable equivalent in the private sector or the private sector experience is inappropriate. For those Agencies, a set of benchmarks incorporating interstate experience has been developed. Benchmarks are reviewed at the beginning of each Fund year and, as previously mentioned, budget allocations will vary according to changes in the benchmarks.

At the beginning of the Fund year, agencies pay a deposit premium based on a mix of benchmark premium and experience premium. The mix is determined by the "experience" factor of each agency. This factor indicates the extent to which an Agency's own claims experience is included in the premium calculation. The factor increases with an increasing size of the benchmark premium. The smaller the Agency, as measured by its benchmark premium, the less of its own claims experience is included in the premium. Therefore, this approach protects the smaller Agencies against large claims and/or random adverse experience.

Claims are capped individually (at \$118,000 for the Primary Pool (ie budget agencies) and \$140,000 for Health) when included in the agencies experience. The reported costs are actuarially adjusted to allow for claims yet to be reported to the employer, inadequate case estimates and expenses. Journey claims, where a recovery is clearly identified, are excluded from the agency's claim experience.

A hindsight premium is calculated in much the same way as the deposit premium. It is a mix of the original benchmark premium adjusted for actual wages and experience premium adjusted by the "experience" factor. A system of hindsight adjustment is also used in the Statutory Fund.

The Fund's structure contains financial incentives to drive best practice management in the areas of occupational health and safety, as well as rehabilitation. Agencies will receive a dividend when their hindsight premium, adjusted for the WorkCover benchmark (external factors), is less than their original deposit premium.

GIO, as the designated Fund Manager, administers the Fund on behalf of the Government, for which it is paid a management fee. GIO does not operate as an insurer in respect of the Fund, save in the prudent manner that it manages the claims. The major responsibilities of the Fund Manager are:

- General risk management advice and assistance ranging from a simple telephone call to a major hands-on project;
- General education and coordinating functions;
- Reporting to Treasury of financial results;
- Management of claims, including loss adjustment services, arranging legal and medical support;
- Assessing premiums;

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- Coordinating the risk identification process of the member entities and reporting changes and trends to Treasury;
- Managing the reinsurance programme; and
- Maintaining and providing data to agencies.

Treasury encourages agency participation in the management of the Fund through its TMF Advisory Board and Service Level Working Group.

These groups are representative of the broad spectrum of agencies participating in the Fund and a representative of the Public Sector Risk Management Association, Treasury and the Fund Manager. Members are from the finance area or occupational health and safety area of their agencies.

The major roles of the representative groups are:

- Serve as a consultative forum through which agencies can provide feedback to the Fund Manager and Fund owner;
- Facilitate greater participation by agencies in processes affecting the operation of the Fund;
- Review and make recommendations on issues affecting members' performance;
- Receive and foster best practice across agencies;
- Provide agencies with a forum in which concerns can be raised and information disseminated on issues impacting on Fund members;
- Recommend the allocation of TMF risk management resources, monitor the performance of sponsored projects and provide a forum where agencies can appeal the recommended allocation of resources; and
- Monitor Fund Managers performance in accordance with contract undertakings and Service Level Agreements.

The Financial Statements of the TMF for the year ended 30 June 2000 indicate that the Fund retained a unfunded liability of \$384 million, representing an improvement of \$65 million.⁸¹

Self-insurer and Group Self Insurer Funds

Self insurance relieves an employer or corporate group of employees from obtaining a workers compensation policy of insurance and allows such employers to carry their own underwriting risk. Self-insurers are responsible for the payment of their claim liabilities and for the management of those claims. WorkCover has a responsibility to ensure that workers outstanding claims are adequately protected and will be met.

81. Treasury Managed Fund Financial Statement for the year ended 30 June 2000 at page 4.

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Self-insurers are not required to maintain separate trust funds to secure outstanding claims liabilities. Assets representing provisions for outstanding claims are not separated from the other assets of self-insurers.

The WorkCover Board has adopted a licensing policy that is designed to balance the needs and expectations of the Scheme's stakeholders (employers and workers), the broader community and the insurers operating the system.⁸²

Self-insurers are an integral part of the Scheme. Their status is derived from the 1987 Act which provides for employers to be licensed by WorkCover subject to meeting certain licensing criteria.

These licensing criteria have been established to ensure that self-insurers and group self-insurers are:

- Financially viable and strong in order to minimise the possibility of their insolvency (which would adversely impact on employers and workers);
- Covered by reinsurance arrangements that are appropriate for their workers compensation risks;
- Secured by bank guarantees that cover their outstanding liabilities in the event of their insolvency;
- Able to demonstrate that they have a capacity to undertake workers compensation business (including experience in underwriting, policy administration, injury management, claims handling, and complaints handling);
- Able to demonstrate that they have the necessary infrastructure and resources required to meet their obligations;
- Able to demonstrate that they have appropriate systems in place to meet (minimum) stakeholder expectations and service standards, and to monitor their own performance against those expectations and standards (including OHS standards, injury management, claims management, and supply of actuarial and other data); and
- Subject to the above, able to conduct their business and operations with minimal restrictions and intrusions.⁸³

Specialised Insurer Funds

The *Workers Compensation Legislation Amendment Act 2000* provides for the licensing of additional new specialised insurers and for them to contribute to the deficit before they exit the scheme.

82. A copy of the WorkCover Licensing Policy for Self-Insurers And Group Self-Insurers Licensed will be provided directly to the Committee Secretariat.

83. This is consistent with the recommendations for the Regulation of Self-Insurers by the HWCA *Promoting Excellence: National Consistency in Australian Workers' Compensation May 1997* at page 26.

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The objectives of the Board's licensing policy for specialised insurers is to ensure that they:

- Can demonstrate their financial viability strength and minimise the possibility of their insolvency (which would adversely impact on employers and workers) by meeting APRA solvency levels;
- Are covered by reinsurance arrangements that are appropriate for their workers compensation risks;
- Are secured by bank guarantees that cover their outstanding liabilities in the event of their insolvency; and
- Have appropriate systems in place to meet (minimum) established stakeholder expectations and service standards to monitor their own performance against those standards.⁸⁴

9. ROLE OF INSURERS UNDER THE SCHEME

Insurers have different roles depending on whether they act as a service provider, or whether they self-insure their own workers compensation as a self-insurer, group self-insurer, or underwrite risk as a specialised insurer.

Licensed Insurers

Licensed insurers are not underwriters and as such have no ultimate liability in respect of workers compensation claims. Licensed insurers are required to be single-purpose companies and only conduct business in NSW workers compensation insurance.

Licensed insurers are responsible for:

- Classification and assessment of premiums and premium collections in accordance with the Insurance Premium Order;
- Claims payment and administration of the statutory fund;
- Injury management and return to work; and
- Investment of statutory funds.⁸⁵

The WorkCover Board has formulated a licensing policy to ensure that licensed insurers are capable of fulfilling their role. Under the Board's current policy an insurer needs to meet certain conditions to obtain a licence. The key conditions are:

- A minimum share capital of \$500,000;

84. A copy of the WorkCover Licensing Policy for Specialised Insurers will be provided directly to the Committee Secretariat.

85. The Committee Secretariat has informally indicated that this submission should not canvass this topic in detail because it will be considered during the Committee's 3rd interim report.

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- The immediate or ultimate holding company of a licensed insurer must hold an authority granted by APRA to carry on insurance business in Australia under the *Insurance Act 1973*; and
- Workers compensation experience.

There are also ongoing requirements such as:

- Working within certain levels of market shares;
- Requesting approval from WorkCover with regard to changes in control and ownership;
- Providing policy and claims data, as well as accounting and actuarial returns; and
- Complying with WorkCover's directions, guidelines and additional licence conditions.

As licensed insurers are not underwriters, the main financial benefits they gain from the Scheme are the management (remuneration) fees they earn from providing policy, claims and investment management services.

Each insurer has a different structure, and defines staff roles differently. These differences are viewed as proprietary advantages by some insurers, and the diversity of approaches is probably healthy for the Scheme overall. It does, however, make it difficult to compare workloads and productivity across insurers.

The key cost component of an insurer is the cost of staff. Other key categories are costs for premises, IT equipment and allocated corporate overheads (head office charges).

Self-Insurers and Group Self-Insurers

Employers can apply to become self-insurers, and group self-insurers,⁸⁶ provided they can demonstrate that they can meet their financial and social policy obligations.⁸⁷

The effect of these insurance arrangements is to:

- Relieve the employer of their obligation to pay insurance premiums;
- Allow the employer to carry their own underwriting risk;
- Allow the employer to take control of their own claims administration, injury management and return to work programs.

The WorkCover Board has adopted a series of licensing policies that are designed to balance the needs and expectations of the Scheme's stakeholders (employers and workers), the broader community and the insurers operating the system.

86. A group self-insurer licence covers a holding company and all of its wholly-owned subsidiaries, which are employers in NSW.

87. Approximately 30% of the NSW workforce is covered by these arrangements.

88. Licensing Policies (3) for Self-Insurers, Group Self-Insurers, and Specialised Insurers, including industry schemes, under the 1987 Act. See Legal Structure of WorkCover Scheme Fund above.

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10. INSURERS REMUNERATION PACKAGE UNDER THE SCHEME

A detailed history of the remuneration arrangements for insurers under the Scheme is set out in the *PricewaterhouseCoopers Review of MGA Remuneration Arrangements*.⁸⁹

Historically, insurers earned remuneration under a fee package that was determined by WorkCover each year and authorised under section 197 of the 1987 Act.⁹⁰ This fee package had 3 components:

- Base service fees allocated to insurers on a market share basis to cover the routine processing of claims and premiums;
- Performance fees paid for achieving Scheme benchmarks performance measures for claims/injury management, premium assessment, debt collection, data quality; and
- Investment management fees.

The PricewaterhouseCoopers review was designed to examine existing remuneration arrangements and develop and recommend new arrangements that will:

- Provide adequate remuneration for licensed insurers to achieve the Scheme's social and financial objectives;
- Ensure that remuneration arrangements are aligned to Scheme objectives;
- Ensure that remuneration levels correspond to performance;
- Be simple and transparent; and
- Minimise the risk of gaming and other aberrant behaviour.

Following the review, a new insurers' remuneration package has been introduced for the 2001/2002 period. The key element of the new package is to provide insurers with an even stronger incentive for improved performance in delivering Scheme outcomes as well as a stronger penalty against continued poor performance.

The performance fee component of the new package has been increased considerably to provide insurers with a strong incentive to improve injury and claims management.⁹¹

The total insurer remuneration package for 2000/01 consisted of base fees of \$109 million plus performance fees linked to specific performance measures of some \$46 million plus

89. *PricewaterhouseCoopers Review of WorkCover NSW MGA Remuneration Arrangements at page 24*. A copy of the review was provided to the Committee on 13 November 2001.

90. The insurer remuneration package is negotiated on an industry basis with the Insurance Council of Australia and fee levels are standard for all insurers. Fees are not negotiated separately for each licensed insurer.

91. The performance based remuneration component of the package has been progressively increased since 1995/96 from 7% to nearly 50% in 2001/2002.

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Investment management fees of 0.25% per annum of the market value of the investment portfolio. There is also a tail management fee of 8% of the reduction in a specified category of outstanding claims liability.

The new remuneration arrangements are designed to give insurers a financial incentive to invest in infrastructure and innovation that will enable them to deliver outcomes that are consistent with the Scheme's social and financial objectives.

The new remuneration arrangements only form part of WorkCover's strategy to get insurers to improve their performance. Other initiatives include a new range of penalties under the *Workers Compensation Legislation Amendment Act 2000*, and the requirement for insurers to accept provisional liability under the *Workers Compensation Legislation Amendment Act 2001*.⁹²

⁹² Details of these initiatives have already been provided in earlier answers to questions asked by the Committee and appear in appendices 2 and 3 of the Committee's 1st interim report.

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Appendix 8

Answers to questions on notice

Answers to questions on notice

Revd Nile asked Ms Kate McKenzie, General Manager, WorkCover NSW—

Commutations

- (1) Why has WorkCover allowed insurers to commute claims that have increased the cost of the scheme? (eg claims with no payments in the 6 months prior to commutation)

Answer:

Under the previous workers compensation system, workers had the right to redeem their entitlement to weekly benefits into a lump sum. This right was abolished with the enactment of the Workers Compensation Act 1987 and replaced with a more restrictive commutation provision, which required WorkCover's approval.

As part of its strategy to reduce the long-term liability of the Scheme, the Advisory Council recommended that these restrictions be removed. The restrictions were subsequently removed in 1998. The Council also considered the question of what guidelines should be provided to insurers regarding which claims should be commuted. Ultimately the Council resolved that no direction should be given to insurers.

The Final Report of the Inquiry into Common Law raised concerns that the 1998 commutation provisions represented a significant pressure point for the Scheme, and that an appropriate measure was required to ensure that commutations were targeted to appropriate cases.

Schedule 8 of the Workers Compensation Legislation Further Amendment Bill 2001 provides that a liability in respect of an injury cannot be commuted to a lump unless WorkCover is satisfied that:

- The injury has resulted in a degree of permanent impairment of the injured worker that is at least 15% (assessed as provided by Part 7 of Chapter 7 of the 1998 Act as amended);
- Permanent impairment compensation and pain and suffering compensation to which the injured worker is entitled in respect of the injury has been paid;
- A period of at least 2 years has elapsed since the worker's first claim for weekly payments of compensation in respect of the injury was made;
- All opportunities for injury management and return to work for the injured worker have been fully exhausted;
- The worker has received weekly payments of compensation in respect of the injury regularly and periodically throughout the preceding 6 months; and
- The worker has an existing and continuing entitlement to weekly payments of compensation in respect of the injury (whether the incapacity concerned is partial or total).

WorkCover will now be able to use these provisions to ensure that commutations are restricted to appropriate cases, and that insurers do not commute claims of the kind referred to by the Committee.

Agent (Insurer) Remuneration

- (2) (a) How does WorkCover rate the performance of insurers?
- (b) In what areas have they performed poorly? (Please provide details)
- (c) In what areas have they performed well? (Please provide details)

Answer:

- (a) It is difficult to rate the overall performance of insurers. To rate the insurance industry as a whole does not reflect the performance of individual insurers but rather indicates a general status of collective insurer performance. Furthermore, the industry performs better in some performance areas than in others. In short, insurer performance on average has been found to be of a mediocre standard.
 - (b) Areas in which insurers have performed poorly as an industry include timely and accurate decision making and service delivery to claimants, particularly timely decisions on liability and timely offer of permanent impairment lump sums (s66).
 - (c) Areas where insurers have tended to perform well include correct allocation of premium tariffs and debt collection.
- (3)
- (a) Has WorkCover assessed the performance of each insurer?
 - (b) If so, please provide details of the results for each insurer?
 - (c) What actions are you taking to improve performance of under-performing insurers?

Answer:

- (a) Yes.
- (b) The specific details of insurer performance results are subject to privacy constraints under the Privacy and Personal Information Protection Act 1998 and the Workplace Injury Management and Workers Compensation Act 1998. As previously indicated to the Committee, WorkCover has received Crown Solicitor's advice that written consent must be obtained from each individual insurer before this information can be provided to the Committee. This approval is currently being sought from those insurers.
- (c) WorkCover has a number of initiatives to improve insurer performance including:
 - The new remuneration arrangements;
 - The implementation of the injury management pilots;
 - A new range of penalties under the Workers Compensation Legislation Amendment Act 2000; and
 - The requirement for insurers to accept provisional liability under the Workers Compensation Legislation Amendment Act 2001.

The Government is also considering review of scheme design to identify the preferred options for underwriting the Scheme, and for achieving better Scheme outcomes in relation to the various functions performed by licensed insurers and other service providers.

- (4)
- (a) Can you quantify what impacts WorkCover expects changes to the remuneration of insurers to have on the scheme?
 - (b) If not, why not?

Answer:

- (a) The PricewaterhouseCoopers Remuneration Report modelled the impact of changes in insurer performance and the corresponding effects on the Scheme's performance. WorkCover anticipates that the changes would be consistent with the assumptions made in the report, but recognises that the actual effects may vary under different environmental conditions.

(b) Not applicable.

(5) What other options are available to improve insurers performance?

Answer:

Please see answer to Question 3(c).

(6) (a) Has WorkCover considered separating the various functions agents perform and having specialised agents for investment management, claims management and policy maintenance as some other schemes do?

(b) (i) Do you believe such a separation would improve the performance of the scheme?

(ii) If so, by how much?

Answer:

(a) Yes. As part of the final stage of the Government's reform agenda, the Government is proposing a review of scheme design to identify the preferred options for underwriting the Scheme, and for achieving better Scheme outcomes. It is anticipated that the review will specifically consider the option which is being proposed by the Committee.

(b) It is anticipated that the review will examine whether the separation of these functions will improve the performance of the Scheme. It is difficult to speculate how much the Scheme's performance could be improved by the separation of these functions, and to do so could prejudice the outcome of the review.

(7) What instructions has WorkCover given insurers on claims management strategies (not processes)?

Answer:

WorkCover provides a wide range of guidance material to insurers in various forms on a daily basis, including guidelines, training material, procedures, directions and formal and informal advice as required.

In providing this advice WorkCover aims to strike an appropriate balance between issuing "instructions" to insurers, and giving them flexibility to develop their own strategies that will enable them to deliver on the below Scheme outcomes at an expected standard:

- fair and correct assessment and timely collection of premium;
- timely and effective injury management;
- timely and appropriate decision making on claims (in particular on liability and quantum);
- effective claims management and minimisation of claims liabilities;
- effective risk management; and
- satisfactory service levels to clients (in particular injured workers and employers).

WorkCover's strategy is designed to give insurers an incentive to invest in infrastructure and research that will enable them to deliver innovative and efficient claims management and return to work outcomes.

Insurers vary in their organisational structure and workflow processes with respect to injury and claims management. Each insurer has a different structure, and defines staff roles differently. These differences are viewed as proprietary advantages by some insurers, and the diversity of approaches is probably healthy for the Scheme overall.

Miscellaneous Questions

- (8) Has WorkCover considered introducing evidence-based medicine as an approach to reduce disputes and claims costs?

Answer:

WorkCover is introducing evidence-based medicine as an approach and is placing more emphasis on the role of treating doctors, in particular General Practitioners, and their ability to manage common workplace injuries including acute low back pain. WorkCover has also piloted an educational program to assist General Practitioners focus on the management of low back pain.

WorkCover has commissioned the development of evidence-based clinical guidelines to improve treatment and return to work outcomes from workers with low back injuries, which are the single most common type of workplace injury.

The clinical guidelines have been developed and tested with the close cooperation of the Royal College of General Practitioners, AMA and NSW Alliance of Divisions of General Practice.

Once evaluated the clinical guidelines will be revised and implemented, with an extensive training program for treating doctors.

- (9) Please you provide the Committee with an organisational chart (down to unit level) of WorkCover NSW depicting the following items:
- (a) Divisions: the number of equivalent full time staff, roles and responsibilities of the division, outcomes of the division as linked to the corporate plan (where outcomes are different to WorkCover's response of 4 September 2001 please advise)?
 - (b) Departments or Units: the number of equivalent full time staff, roles and responsibilities of the department or unit, outcomes of the department or unit as linked to the corporate plan?
 - (c) Other bodies within WorkCover: the number of equivalent full time staff, roles and responsibilities of the department or unit, outcomes of the body as linked to the corporate plan?

Answer:

The attached organisational chart provides details down to a unit level. The attached 2001/2002 Corporate Plan indicates that WorkCover is committed to an integrated organisational approach to achieving WorkCover's vision of safe secure workplaces.

The Corporate goals for 2001/2002 have therefore been deliberately structured to enable the priority activities for 2001/2002 to be integrated across the whole organisation down to a unit level.

An example is Priority Activity No. 9 which is currently being implemented by units including: Legislative Development and Review Branch, Legal Services Branch, Insurance Strategic Management Group, and the OHS Services Delivery Group.

- (10) Please provide a copy of the 1998 Deloitte & Touche report on restructuring WorkCover as referred to in Minister Della Bosca's response to the Committee dated 4 September 2001.

Answer:

A copy of the report will be provided directly to the Committee Secretariat.

- (11) (a) Has WorkCover made any system or policy changes in anticipation of the move to private underwriting which may now have to be modified?
- (b) If so, what were they?
- (c) How will they be modified?

Answer:

In the lead up to private underwriting WorkCover had developed system changes for the new of premium methodology (developed by the Premiums Rating Bureau) and amended IT systems, licensing policy and procedures to reflect the new role of insurers as underwriters.

Following the deferral, and pending repeal of the 1998 Act's private underwriting provisions, WorkCover reverted to existing systems. WorkCover has modified these systems to reflect the most recent legislative changes. WorkCover is also planning to redevelop its Workers Compensation systems over the next 12-18 months.

- (12) At the hearing on Wednesday, 21 November 2001, Ms Kate McKenzie made reference to initiatives being undertaken by WorkCover to prevent employers from committing fraud with regards to their workers compensations premium payments.
- (a) What initiatives does WorkCover have underway to identify which organisations are committing fraud?
- (b) What initiatives has WorkCover implemented to stop employers from committing fraud?

Answer:

WorkCover is using a strategic approach to achieve the best outcomes for improving compliance. Inspection activity of employers has been increased, including the doubling of employer wage audits. WorkCover has a number of targeted compliance blitzes underway. A table listed the blitzes underway and their results to date was provided to the Committee on 15 October 2001 and was included in appendix 3 of the Committee's 1st interim report.

The Workers Compensation Insurance Compliance Green Paper canvasses a number of options in relation to compliance. The options do not represent Government policy. The Government will consider stakeholder views and submissions before progressing any legislative or regulatory changes.

- (13) (a) Does WorkCover anticipate that scheme liabilities will differ from those projected by Tillinghast on page 70 of their June 2001 valuation?
- (b) If so, please quantify to what extent the liabilities will differ?

Answer:

- (a) Yes.
- (b) Please refer to the responses to the scenarios that were developed by the Committee and to the draft report entitled "Financial Evaluation of the 2001 NSW Workers Compensation Systems Reforms for the WorkCover Scheme" (copies of which will be provided directly to the Committee Secretariat).

- (14) (a) Please identify all legislative and policy programs associated with the implementation of recent reform package?
- (b) Please document each program's current status and the expected completion date.

Answer:

The attached Workers Compensation Legislative Reform 2001/002 Implementation Report details progress to date on 16 significant projects contributing to the legislative reform program.

Most projects have progressed to the specified timelines and those projects with a commencement date of January 2002 are on target for implementation or commencement.

Special note to question (15) – private and confidential status

- (15) *On 15 January 2002 the Committee resolved that the presentation of this question and WorkCover's response be identified as private and confidential.¹*
- (16) (a) What are the proposed changes which the Government is to make to statutory benefits in respect to the Workers Compensation Act 1987 and ancillary acts?
- (b) What are the actuarial costings that will result from the changes in respect to:
- (i) Common Law entitlement?
- (ii) Statutory benefits?

Answer:

- (a) An outline of the Scheme's statutory benefits under the 1987 Act (as amended) has been included in Part 5 of the Outline of the Operation of the NSW Workers Compensation Scheme, dated November 2001.
- (b) A copy of the actuarial costings will be provided directly to the Committee Secretariat. Analysis to date has only been done in respect of a single year and has not yet been translated to assess the bottom line deficit impact and the full effect for the 2002/03 policy year. This analysis is currently being done by the Scheme's actuary and will be provided directly to the Committee Secretariat once received.
- (17) What amended costings have been undertaken and provided referable to analysis of the cost of the WorkCover scheme of the utilisation of Commutations?

Answer:

A copy of the actuarial costings will be provided directly to the Committee Secretariat.

- (18) In his evidence before this Committee on 24.09.2001, The Minister (The Hon John Della Bosca MLC) discussed the impact of premium avoidance and stated that the advice he had received on "the impact on the scheme of premium avoidance, premium evasion and underpayment of premiums" had varied "widely".

What advice has WorkCover provided to the Minister on this?

¹ Minutes of the proceedings of General Purpose Standing Committee No 1, no 67, item no

Answer:

WorkCover has advised the Minister that whilst there is currently no recognised, accurate methodology to assess the cost of under-insurance, it may constitute a significant financial risk to the WorkCover Scheme. It is not possible to quantify levels of non-compliance per se. It is only possible to quantify levels of non-compliance detected. In 2000/01 additional premiums of \$15 million has been billed as a result of compliance audits (this represents less than 1% of total premiums collected).

- (19) (a) Have any studies been done on the effect on the scheme's deficit of the avoidance/evasion/ underpayment of premium?
- (b) If so, what did those studies report at to the likely cost to the scheme and what action could be taken to rectify the problem?
- (c) If no studies have been done on this, why not?

Answer:

Part 3 of the Workers Compensation Insurance Compliance Green Paper dated September 2001 provides details of previous and ongoing studies into the effects of non-insurance and under-insurance.

The Green Paper also canvasses a number of options in relation to compliance. The options do not represent Government policy. The Government will consider stakeholder views and submissions before progressing any legislative or regulatory changes.

- (20) (a) What action does WorkCover presently take to monitor the action taken by fund managers to recover underpaid premiums?
- (b) How effective is such action?

Answer:

- (a) Licensed Insurers are required to undertake an annual program of wage audits of selected policies in their portfolio. These policies are to be selected on the basis of perceived risk criteria. Insurers are also required to lodge Form 6 statutory returns with WorkCover each month. These returns contain details of wage audits initiated by insurers including employer name, policy number and the results of the wage audit in respect of the amount of wages over-declared/under-declared and any additional premium billed. These returns were provided to WorkCover in hard copy format.

As outlined previously WorkCover is moving to a more strategic approach to targeting audits using data mining software and analysis technologies to select employers with characteristics more likely to generate a return. These targeted audits are initiated by WorkCover but conducted through the insurers (as the insurer calculates the premium). This strategy has proven effective and WorkCover has been scaling up targeted audits while scaling back insurer initiated audits.

In mid 2000 WorkCover commenced development of a new database to consolidate all historical electronic data on wage audits onto a single platform. The new database contains new fields for additional information and will enable WorkCover to:

- monitor insurer performance in initiating and progressing wage audits;
- evaluate the effectiveness of insurer targeting of employers for wage audit in terms of additional premium billed as a multiple of audit costs;
- evaluate success of the annual wage audit program; and

- monitor performance of external auditors used by insurers for conducting wage audits.

The new database commenced operation in November 2001 and is complemented by an internet e-business link which will enable insurers to forward all new wage audit data electronically to WorkCover each month.

- (b) Annual returns from wage audits have been steadily increasing over the last three years from \$4.5M in 1998/99, \$7.4M in 1999/2000 and \$14.8M in 2000/2001. This improvement stems from WorkCover's targeted audits.

- (21) (a) Has the increase in wages over the past few years been matched by the increase in premiums?
 (b) If not, does this indicate that there has been an under collection of premiums?

Answer:

- (a) The below table indicates that there has been a steady increase in premiums from 1993 to the present. In any case, any modelling undertaken on trends over this period, should also take into account shifts in industry mixes and changes in employment relationships.

Financial year	Premium written \$000
1993	\$758,623
1994	\$832,078
1995	\$945,319
1996	\$1,341,265
1997	\$1,563,476
1998	\$1,701,126
1999	\$1,991,675
2000	\$2,068,923
2001	\$2,165,323

- (b) Not applicable.

Rehabilitation

- (22) What level of funding is WorkCover devoting to the rehabilitation of injured workers?

Answer:

Total rehabilitation treatment payments for 1999/2000 amounted to \$59.4M (or 2.2% of total payments of \$2.7B).

Commutations

- (23) (a) What is the incentive system for insurers to commute claims?
 (b) What remuneration do they receive for commuting claims?
 (c) How is the remuneration calculated?
 (d) (i) Is there any process by which insurer use of commutations has been monitored in the past to ensure that they are used appropriately?
 (ii) If so, what is it?

Answer:

- (a) There is no direct financial incentive for insurers to commute claims. The PwC Analysis of trends in NSW Workers Compensation Commuted Claims indicates at page 90 that:

Insurers would often prefer to terminate the relationship with the claimant to eliminate the ongoing expense and administration of maintaining the relationship;

Insurers have had a powerful financial incentive to reduce the tail deficit because of the way the remuneration arrangements have been structured in recent years. Insurers view commutations as a mechanism to help them achieve this goal;

Insurers genuinely believe that by commuting claims they are also saving the Scheme money. This belief has a number of facets:

That claimants will often accept a significant discount on their theoretical present value of their future benefit entitlement;

That a commutation eliminates ongoing administration expenses; and

That the dispute process favours the claimant and commutations secure a better financial outcome to the Scheme than the courts would have determined.

(b) Nil.

(c) Not applicable.

(d) Please see answer to Question 1.

(24) (a) What are amounts paid in incentive payments to insurers in respect of commutations for the financial year ending 30 June 2001? (Please provide figures for each individual insurer, if these figures are available)

(b) If figures are not available, why are they not available?

Answer:

Nil. Please see answer to Questions 1 and 23.

(25) (a) What is the average size of a commutation?

(b) What is the average claim estimate on those claims commuted? (Please provide figures for the financial year ending 30 June 2001)

Answer:

(a) The PwC Analysis of trends in NSW Workers Compensation Commuted Claims indicates that the average commutation size for the 2000/01 settlement year was about \$47,000.

(b) The PwC Report indicates that the average case estimate on claims commuted in 2000/01 as at 30 June was \$145,000. In addition to commutation payments other payments were made on these claims and a small residual liability also remained at 30 June 2001. Please see section 10 of the PwC Report for analysis of the cost impacts of commutations.

Psychological/Psychiatric impairment

(26) What evidence exists that the Psychiatric Impairment Rating Scale [PIRS] has scientific merit? (Please provide data on its scientific validity to measure psychological or psychiatric impairment.)

Answer:

An earlier version of the PIR scale is currently being used by the Motor Accident Authority and preliminary data indicates there is a reasonably high level of consistency. The PIR scale to be adopted under the new workers

compensation legislation was enhanced in consultation between the forensic psychiatrists who developed it and independent experts in the field of forensic psychiatry.

The Heads of Workers Compensation Authorities (HWCA) have agreed to support research into the evaluation of the validity and reliability of **all** scales that measure the permanent impairment that results for psychiatric injury that are currently in use.

- (27) The developers of the PIRS have claimed in a letter to one Member of Parliament that their scale provides a “more objective” measure of impairment than the Australian Psychological Society [APS] Guidelines – guidelines that use the Global Assessment of Functioning [GAF] - an internationally recognised and scientifically tested scale – yet they themselves are not trained in the use of psychometric evaluation that would allow an informed opinion about objectivity.

On what basis can the scale be shown to be “more objective”?

Answer:

The GAF scale is used in the United States to assess functioning in a Managed Care environment. There is no known research indicating its use in a medico-legal context.

PIRS was developed for the specific purpose of avoiding the problems associated with relying on claimants' subjective accounts and subjective interpretations by psychiatrists. PIRS relies on criteria that can be verified by external observers. It is up to the psychiatrist to detect discrepancies between history and symptoms described and presentation at interview. There is currently no scale for measuring permanent impairment that is “internationally accepted and validated”. GAF was developed as a means of classifying mental health problems, similar to the way ICD 9 is used for classifying physical disorders. It is not a scale for measuring impairment.

Self-reports by themselves are considered unreliable in the medico-legal context. The developers of PIRS wanted to have a scale, which recorded levels of functioning that would be able to be verified by others in the claimant's environment.

- (28) The APS claim that the PIRS could not be based on the American Medical Association Guides (4th and 5th Editions) because the categories they use are substantially outdated, irrelevant and against the advice of the AMA Guides themselves. Psychologists and Psychiatrists dealing with psychological & psychiatric impairment (from the largest professional bodies in Australia, the APS & Royal Australian and New Zealand College of Psychiatrists) have said that they cannot, and will not, use the PIRS because it would be indefensible in a court of law and would be unethical.

What is WorkCover's response to this criticism?

Answer:

PIRS was adapted from the American Medical Association Guides to Permanent Impairment (Edition 4). The functional areas selected for measurement are those that can be verified by external observers such as social interaction and employability. Those that are more difficult to verify, such as sleep or sexual functioning, were omitted. The term “adaptability” in AMA 4 was replaced by the term “employability” as this is in fact the dimension being measured.

The scale has been developed to be consistent with the measurement of whole person impairment of the other body systems, and adapted to be relevant in the NSW Workers' Compensation context. Assessment of permanent impairment resulting from psychiatric injury can only be performed by psychiatrists who have completed the WorkCover training. There are already 25 psychiatrists who have completed the MAA training in the use of PIRS. There are also a number of psychologists who have completed the training.

- (29) The APS have indicated that the statistical technique chosen by the developers of the PIRS to arrive at a score – the median measure – deliberately eliminates extreme cases of impairment in a statistical method that ‘mutes’ the scores. They consider that this will increase the risk of misclassification and unfairly discriminate against the most impaired people.

What is WorkCover’s response to this criticism and the concerns of the APS that this is a misuse of statistical method?

Answer:

It is considered that the median method is the fairest of the three statistical methods available by which the overall level of whole person psychiatric impairment can be calculated, based on each of the six items reflecting functional level.

The other possibilities are the mean or average, or the mode, the value appearing most often. The mean is more influenced by an extreme value, and the mode is not suitable for this application. For example, the mode of the set of values 1,2,3,4,5 is 1, which clearly does not reflect the overall level of function in this case. The median is the value with as many scores above it as below it. In the example above, the median is 2.5, which is rounded up to 3.

- (30) The APS have analysed the method used in aggregating scores using the PIRS and consider that statistically it is virtually impossible to score a threshold of 20%, or 21%.

What is WorkCover’s response to the claim that PIRS is statistically flawed?

Answer:

The above statement was based on the belief that the scale was intended to measure a threshold of 20% impairment. This is not the case. PIRS was developed and further modified for the WorkCover context to give a whole person impairment rating derived from the total score given to a claimant by the median class that best describes the person’s level of functioning.

- (31) (a) Is WorkCover in favour of 6 or less psychiatrists being hired to advise on a set of guidelines for Mental & Behavioural Problems?
- (b) If so, is this against the advice of the premier professional bodies in the field of psychological and psychiatric impairment – the Australian Psychological Society & the Royal Australian & New Zealand College of Psychiatry, as well as the NSW Medical Service Committee?
- (c) Will the psychiatrists then run training courses for doctors (as advertised in the Sydney Morning Herald, 27 October 2001) allowing them a pecuniary gain?

Answer:

- (a) The 4 psychiatrists who developed PIRS were part of a 12-member working party (6 psychiatrists, 3 psychologists, 2 WorkCover representatives and a chairperson).
- (b) The working party was unable to reach agreement on a preferred scale. Independent experts were consulted to provide their opinion and give input on each of the scales. The Medical Services Committee and APS were part of this consultation process. Feedback was then given to those who developed each of the scales. Changes were made to the PIR scale, in response to concerns expressed.

APS did not respond to the issues raised in relation to the APS / GAF scale and it remained as originally presented. A letter of support for the use of PIRS was received from the Forensic Group of the Royal Australian and New Zealand College of Psychiatry.

The Medical Services Committee has recently indicted its support for the Guides with the knowledge that research is to be conducted into the reliability and validity of scale for measuring permanent impairment and

after WorkCover agreed to the inclusion of a phrase indicating that psychometric testing conducted by qualified clinical psychologists would be part of the consideration of the assessing psychiatrist.

- (c) The advertisement in the Sydney Morning Herald was to seek expressions of interest in developing the training program for specialists in use of the WorkCover Guides. A competitive selection process was conducted and a contract awarded. The psychiatrists who developed PIRS were not amongst the bidders for the contract. They will however be consulted in the development of the training program as will other specialists in relation to all the body systems.

- (32) The PIRS was based on a similar scale currently in use by the Motor Accident Authority. The MAA General Manager has recently said that the results of their evaluation of that scale will not be released until after the WorkCover Guides are finalised and put into the regulations.

- (a) Will the results of that review be taken into account before WorkCover guidelines are put into regulations?
- (b) If not, why not?

Answer:

Any results of assessments conducted for the Motor Accident Authority will not occur until they have sufficient numbers to report on. The timing of release of the Motor Accident Authority data is not related to the finalisation of the WorkCover Guides. The MAA does not have enough completed assessments to date. It is understood that the MAA intends to participate in the HWCA research to study the scales for assessment of permanent impairment resulting from psychiatric injury.

Mr Pearce asked Ms Kate McKenzie, General Manager, WorkCover NSW—

- (33) What is the number and percentage of the workforce employed by employers that are self-insurers in New South Wales?

Answer:

Australian Bureau of Statistics data indicates that as at 1 July 2000 the NSW Scheme covered approximately 2.5 million employees.

As at 1 July 2000 the number and percentage of the NSW employees covered by self-insurance, group self-insurance and specialised insurance arrangements was (rounded to the nearest 1000 employees):

Class	Estimated Number of Employees	Estimated % of NSW Workforce
Self-insurance	106,000	4.24%
Group Self-insurance	97,000	3.88%
TMF	250,000	10%
Specialised-insurance	240,000	9.6%
		<u>27.72%</u>

Dr Wong asked Ms Kate McKenzie, General Manager, WorkCover NSW—

- (34) What guidelines does WorkCover provide organisations that invest funds on behalf of the Workers Compensation Scheme?

Answer:

Section 178(1) of the 1987 Act imposes licence conditions on licensed insurers, including:

- compliance with the investment objectives and authorised securities criteria issued by WorkCover for the investment of statutory funds;
- compliance with conditions not to:
 - i. sub-contract the management of investments of statutory funds without the written approval of WorkCover;
 - ii. receive any commissions in relation to the investment of statutory funds that are not disclosed to WorkCover. For the purpose of this condition, commissions include any form of remuneration;
 - iii. contract any debts, charges, encumbrances or liabilities whether contingent or otherwise other than liabilities to policy holders in connection with policies or liabilities in connection with the administration of statutory funds;
- keep such accounting records and correctly record and explain the transactions and financial position of the Statutory Funds and the company and maintain such records in accordance with commercially acceptable standards.

Section 198 of the 1987 Act also requires insurers to invest Statutory Funds in accordance with WorkCover's Investment Mandate.

The current Investment Mandate (effective April 2000) was approved by the Board on the assumption that private underwriting would start on 1 October 2000, and envisaged the Scheme would be in a run-off position requiring increased liquidity and reduced tolerance for risk. With the indefinite deferment of the private underwriting provisions (and subsequent repeal), it was considered that the investment strategy was no longer optimal for the current arrangements and should therefore be changed.

The new Investment Mandate will apply from 1 February 2002. The following table represents WorkCover's current strategic asset allocation and the new strategic asset allocation that will apply from 1 February 2002:

Asset classes	Current Strategic Asset Allocation %	New Strategic Asset Allocation %
Liquids	25.0	2.0
Australian fixed interest	30.0	23.0
CPI Bonds	15.0	15.0
Australian listed property trusts	8.5	10.0
Australian shares	17.5	25.0
International shares (unhedged)	4.0	12.5
International shares (hedged)	0	12.5
Total shares & property	30	60

WorkCover's new investment strategy is designed to maximise the return on assets of the Scheme within prudent risk parameters having regard to the nature of the liabilities.

The main aim of the new investment strategy is to improve expected outcomes by accepting some increase in risk as a trade off for expected better investment returns.

The following principles and constraints have been adopted as bearing on the WorkCover Scheme investment strategy:

General principles underlying the objectives

- The same mandate and objectives are given to all licensed insurers; and
- Simplicity.

Specific Principles

- Risk averse;
- Whilst any review should be based on a medium to long-term outlook, the strategy should not appear unreasonable in relation to a tactical (say 12 months) viewpoint;
- "Balanced" investment management structure. Insurers should consider how the various components of the balanced portfolio are brought together. At the most basic level, the objectives for a component part should obviously not be inconsistent with the portfolio achieving the overall objectives;
- Actual asset allocations should be taken into account. Churning should be avoided unless there are tangible benefits; and
- The investment strategy of an Insurer should have regard to the total situation of the WorkCover Scheme, and Investment Strategy and not the position of the particular insurer.

KEY AREAS COVERED IN THE INVESTMENT MANDATE

WorkCover Scheme investment responsibilities can be categorised into three main areas:

- Strategic asset allocation (Reference Portfolio)
- Tactical asset allocation
- Stock selection

Strategic Asset Allocation (Reference Portfolio)

WorkCover is responsible for the composition of an asset mix for the Scheme Portfolio, with the objective of meeting the long-term liabilities of the Scheme rather than being based on short-term views of relative performance

of the various asset classes. The strategic asset allocation (Reference Portfolio) is derived from asset liability modelling and other considerations. The reference portfolio is the model portfolio for comparing insurers' risk/return performance, and reflects WorkCover's preferred level of risk for Scheme investment funds over a complete market cycle.

Tactical Asset Allocation

Insurers are required to tactically allocate assets by changing asset allocation on a short-term basis to take advantage of perceived differences in relative values of the various asset classes. Tactical asset allocation is limited by the minimum/maximum parameters around the Reference Portfolio set by WorkCover. The parameters are shown in the table below:

Asset Sector	Minimum %	Reference Portfolio %	Maximum %
Liquids	0	2	40
Fixed Interest	10	23	40
Indexed Bonds	10	15	20
Property Trusts	5	10	15
Australian Shares	15	25	35
International shares (unhedged)	10	12.5	15
International shares (hedged)	10	12.5	15
Total Shares & Property	40	60	70

Stock Selection

Insurers are also required to select an individual security within an asset class. Stock selection is limited by the requirements of the "Authorised Securities" mandate set by WorkCover to control the quality and diversification of Scheme securities. Together with tactical asset allocation, stock selection is a key way in which insurers add value and have the potential to outperform the WorkCover reference portfolio.

Appendix 9

Submissions

Submissions

No	Author
1	Mr Mark Williams
2	Mr P Woods
3	Dr John Graham, <i>Graham Occupational Medicine Pty Ltd</i>
4	Mr Richard Gilley, <i>The RiskNet Group</i>
5	Dr Ian Gardner
6	Mr Greg Pattison
7	Mr Mark Richardson, <i>The Law Society of New South Wales</i>
8	Dr Hannah Middleton, <i>Australian Plaintiff Lawyers Association Ltd (APLA)</i>
9	Mr Alex Salomon, <i>NSW Self Insurers Association</i>
10	Ms Elizabeth Crouch, <i>Housing Industry Association (HIA)</i>
11	Mr Fred Morris
12	Mr Rod Gribble, <i>Australian Grain Harvesters Association Inc</i>
13	Mr John Tucker, <i>NSW Minerals Council</i>
14	Dr Lyn Littlefield, <i>The Australian Psychological Society Ltd</i>
15	Mr George Cooper, <i>Injuries Australia</i>
16	Mr Rodney Stinson, <i>Occupational Analysis</i>
17	Ms Ruth McColl, <i>The New South Wales Bar Association</i>
18	Ms Helen Weston, <i>Kairros Pty Ltd</i>
19	Mr Doug Pearce, <i>NRMA</i>
20	The Hon Morris Iemma MP, <i>Minister for Public Works and Services</i>
21	Mr Harry Neesham, <i>WorkCover Western Australia</i>
22	Mr Tony Hawkins, <i>WorkCover Queensland</i>
23	Mr Bill Mountford, <i>WorkCover Victoria</i>

Appendix 10

Witnesses

Witnesses

Monday, 24 September 2001 (Parliament House, Sydney)

The Hon John Della Bosca MLC *Special Minister of State, Minister for Industrial Relations, Assistant Treasurer, Minister Assisting the Premier on Public Sector Management, and Minister Assisting the Premier for the Central Coast*
NSW Parliament

Ms Catherine McKenzie *General Manager*
WorkCover NSW New South Wales

Mr Rodney McInnes *Assistant General Manager*
Insurance Division of WorkCover

Wednesday, 10 October 2001 (Parliament House, Sydney)

Mrs Mary Yaager *Workers Compensation and Occupational Health and Safety Officer*
Labor Council of New South Wales

Ms Rita Mallia *Senior Legal Officer*
Construction, Forestry, Mining and Energy Union (CFMEU)

Mr Andrew Ferguson *New South Wales Secretary*
Construction, Forestry, Mining and Energy Union (CFMEU)

Mr Jonathan Fowler *National Spokesman*
Small Business Association of Australia

Mr George Katsogiannis *New South Wales Workers Compensation Manager*
QBE Insurance

Mr Gregory McCarthy *Director*
Workplace Injury Management Services

Mr George Cooper *Director*
Injuries Australia Ltd

Mr Christopher Wynyard *Barrister*
Australian Plaintiff Lawyers Association (APLA)

Ms Allison Robertson *Solicitor*
Australian Plaintiff Lawyers Association (APLA)

Ms Eva Scheerlinck *Public Affairs Manager*
Australian Plaintiff Lawyers Association (APLA)

Wednesday, 21 November 2001 (Parliament House, Sydney)

Mr Richard Grellman	<i>Former Chairman</i> Motor Accidents Authority
Mr John Walsh	<i>Actuary and Partner</i> PricewaterhouseCoopers
Mr Michael Playford	<i>Actuary and Director</i> PricewaterhouseCoopers
Mr Daniel Tess	<i>Actuary and Director</i> PricewaterhouseCoopers
Mr Dave Finnis	<i>Principal</i> Tillinghast-Towers Perrin
Mr Andrew Cohen	<i>Manager</i> Tillinghast-Towers Perrin
Mr Gary Moore	<i>General Manager, Commercial</i> NRMA Insurance Ltd
Mr Douglas Pearce	<i>Chief General Manager, Commercial Insurance and Financial Services</i> NRMA Insurance Ltd
Ms Kate McKenzie	<i>General Manager</i> WorkCover NSW
Mr Rodney McInnes	<i>Assistant General Manager, Insurance Division</i> WorkCover NSW

Thursday, 22 November 2001, (Parliament House, Sydney)

Mr Richard Gilley	<i>Managing Consultant</i> RiskNet Group
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(via tele-conference)

Mr Anthony Hawkins	<i>Chief Executive Officer</i> WorkCover Queensland
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(Department of Information Technology and Management, Sydney, via video-conference)

Mr William Mountford

Chief Executive Officer

Victorian WorkCover Authority

Mr Henry Neesham

Executive Director

WorkCover Western Australia

Appendix 11

Tabled Documents

Tabled Documents

24 September 2001

Ms Kate McKenzie

WorkCover New South Wales

NSW Workers Compensation Scheme – An explanation of how the Scheme works

10 October 2001

Mrs Mary Yaager

Labor Council of NSW

NSW Workers Compensation System - PowerPoint Presentation

Mr Andrew Ferguson

CFMEU

- *Correspondence*
- *Response to the Government's Green Paper on compliance by the Construction, Forestry, Mining and Energy Union, 10 October 2001*

Mr George Cooper

Injuries Australia

AMA Media release

Mr John Wynyard

Australian Plaintiff Lawyers Association Workers Compensation Group

- *Workers Compensation Legislation Amendment Bill part 7*
- *Graph*

21 November 2001

Mr John Walsh

Partner, PricewaterhouseCoopers

PwC Actuarial work in NSW Workers Compensation

22 November 2001

Mr Richard Gilley

The Risk Net Group

- *Workplace Relations Ministers' Council Comparative Performance Monitoring Third Report Australian & New Zealand Occupational Health and Safety and Workers' Compensation Schemes August 2001.*
 - *Risk Net Group – PowerPoint Presentation.*
 - *Guidelines for the management of employees with compensable low back pain, Victorian WorkCover Authority.*
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Appendix 12

Minutes of the proceedings

Minutes of the proceedings

Minutes No. 64

Wednesday 21 November 2001
At Parliament House (Room 814/815) at 8.45am

1. Members present

Rev Nile (Chairman)
Mr Kelly
Mr Gallacher
Mr Pearce
Ms Saffin
Mr Tsang
Dr Wong

2. Confirmation of draft minutes

Resolved, on motion of Mr Gallacher, that: the draft minutes of meeting no 63 be confirmed.

3. Substitute member

The Chairman noted correspondence received from the Opposition Whip, dated 29 October 2001, advising that Mr Gallacher would be replacing Mr Colless (substitute for Mr Harwin) for the remainder of the inquiry into the NSW Workers Compensation Scheme.

4. Inquiry into the Review and Monitoring of the NSW Workers Compensation Scheme

TABLED DOCUMENTS

SUBMISSIONS IDENTIFIED AS PUBLIC

The Chair tabled two submissions identified as public:

Submission 18, Ms Helen Weston, Director, Kairros Pty Ltd, received 13 November 2001.
Submission 19, NRMA Insurance Limited, received 16 November 2001.

Resolved, on the motion of Mr Gallacher, that: the Committee make the submissions publicly available.

CORRESPONDENCE RECEIVED

The Chair tabled the following items of correspondence received:

Letter from the Hon John Della Bosca MLC, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations, received 15 October 2001, providing responses to questions on notice from the public hearing on 24 September 2001.

Letter from Mr Dave Finnis, Tillinghast-Towers Perrin, consenting that Tillinghast-Towers Perrin's Actuarial *Review of the Outstanding Liabilities of the WorkCover Scheme Statutory Funds as at 30 June 2001*, dated 26 September 2001, be appended to the Committee's First Interim Report.

Letter from Mr Sam Treffiletti, Director, Trazmet Pty Ltd, received on 26 October 2001, in reply to the Chair's correspondence dated 19 October 2001 in relation to adverse reflection arising in evidence taken during September 24 hearing.

Letter from Mr Bryan Gething, Chairman, NSW Self Insurers Association, received on 1 November 2001, in relation to the conduct of the Committee's inquiry into the NSW Workers Compensation scheme.

Letter from the Hon John Della Bosca MLC, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations, received 13 November 2001, providing additional responses to questions on notice from the public hearing on 24 September 2001, and identifying 13 documents contained within the WorkCover Board papers that WorkCover and third parties requested the Committee hold in-camera with restricted access.

Resolved, on the motion of Mr Kelly, that: the documents be identified as private and confidential.

CORRESPONDENCE SENT

The Chair tabled to following items of correspondence sent:

Letter to The Hon John Kolbelke MLA, Minister for Consumer and Employment Protection, Western Australia, dated 7 November 2001, seeking the assistance of WorkCover WA in providing information to the Committee in preparation for the second interim report.

Letter to the Hon Monica Gould MP, Minister for Industrial Relations, Victoria, dated 7 November 2001, seeking the assistance of WorkCover Victoria in providing information to the Committee in preparation for the second interim report.

Letter to the Hon Gordan Richard Nuttall MP, Minister for Industrial Relations, Queensland, dated 7 November 2001, seeking the assistance of WorkCover Queensland in providing information to the Committee in preparation for the second interim report.

Letter to the Hon Michael Armitage MP, Minister for Government Enterprises and Minister for Information Economy, South Australia, dated 7 November 2001, seeking the assistance of WorkCover south Australia in providing information to the Committee in preparation for the second interim report.

Letter to Mr John Van Dyke, Director, Prestige Cranes, dated 23 October 2001, forwarding a copy of the document tendered by Mr Andrew Ferguson, State Secretary, CFMEU, at the Committee public hearing on 10 October 2001.

Letter to the Hon Morris Iemma, Minister for Public Works and Services and Minister Assisting the Premier on Sponsorship, dated 23 October 2001, forwarding a copy of the document tendered by Mr Andrew Ferguson, State Secretary, CFMEU, at the Committee public hearing on 10 October 2001.

Letter to Mr Russel Perkins, State Manager, Hansen Yuncken Pty Ltd, dated 23 October 2001, forwarding a copy of the document tendered by Mr Andrew Ferguson, State Secretary, CFMEU, at the Committee public hearing on 10 October 2001.

Letter to Ms Jane Goodwin, Trazmet, dated 23 October 2001, forwarding a copy of the document tendered by Mr Andrew Ferguson, State Secretary, CFMEU, at the Committee public hearing on 10 October 2001.

Letter to Mr Faramarz Keshuadoust, Director, Betaform Construction, dated 23 October 2001, forwarding a copy of the document tendered by Mr Andrew Ferguson, State Secretary, CFMEU, at the Committee public hearing on 10 October 2001.

Letter to Mr John Van Dyke, Director, Prestige Cranes, dated 19 October 2001, inviting response to possible adverse reflections made by a witness at the Committee public hearing on 10 October 2001.

Letter to the Hon Morris Iemma, Minister for Public Works and Services and Minister Assisting the Premier on Sponsorship, dated 19 October 2001, inviting response to possible adverse reflections made by a witness at the Committee public hearing on 10 October 2001.

Letter to Mr Russel Perkins, State Manager, Hansen Yuncken Pty Ltd, dated 19 October 2001, inviting response to possible adverse reflections made by a witness at the Committee public hearing on 10 October 2001.

Letter to Ms Jane Goodwin, Trazmet, dated 19 October 2001, inviting response to possible adverse reflections made by a witness at the Committee public hearing on 10 October 2001.

Letter to Mr Faramarz Keshuardoust, Director, Betaform Construction, dated 19 October 2001, inviting response to possible adverse reflections made by a witness at the Committee public hearing on 10 October 2001.

Letter to the Hon John Della Bosca MLC, Special Minister of State, Assistant Treasurer and Minister for Industrial Relations, dated 15 October 2001, seeking a comment on whether any reservations or concerns are held on appending the Tillinghast-Towers Perrin valuation of the WorkCover Scheme Statutory Funds as at 30 June 2001 to the Committee's first interim report.

CONSIDERATION OF ADVERSE REFLECTIONS ARISING FROM THE EVIDENCE OF MR ANDREW FERGUSON AT THE HEARING OF 24 SEPTEMBER 2001

The Committee considered responses received from parties named by Mr Andrew Ferguson and the Committee's public hearing on 10 November 2001, and whether or not names should be reinserted into the transcript and made publicly available together with responses received.

Resolved, on the motion of Ms Saffin, that: the Committee reinsert names into the transcript of the Committee's public hearing on 10 October 2001 and make publicly available any accompanying responses received by the Committee.

Resolved, on the motion of Ms Saffin, that where the name first appears in the transcript of the Committee's public hearing on 10 October 2001, reference is made to any accompanying response.

HEARING

Resolved, on motion of Mr Kelly, that in accordance with the Resolution of the Legislative Council of 11 October 1994 the Committee authorises the sound broadcasting and television broadcasting of its public proceedings held today.

The public and media were admitted.

The Chairman welcomed the gallery and reminded the media of their obligation under Standing Order 252 of the Legislative Council in relation to evidence given before, and documents presented to, the Committee. The Chair also distributed copies of the guidelines governing broadcast of proceedings.

Mr Richard Grellman, Chairman, Motor Accidents Authority, was sworn and examined.

Evidence concluded and the witness withdrew.

Mr John Walsh, Partner and Mr Michael Playford, Director, both of PricewaterhouseCoopers, were sworn and examined. Mr Daniel Tess, Director, PricewaterhouseCoopers, was affirmed and examined.

Mr Walsh tendered one document in support of his evidence. Resolved, on motion of Mr Tsang, that: the document be accepted.

Evidence concluded and the witnesses withdrew.

Mr David Finnis, Director and Mr Andrew Cohen, Manager, both of Tillinghast-Towers Perrin, were sworn and examined.

Evidence concluded and the witness withdrew.

Mr Gary Moore, General Manager, Commercial Insurance (WA), and Mr Doug Pearce, Chief General Manager, Commercial Insurance and Financial Services, both of NRMA Insurance, were sworn and examined.

Evidence concluded and the witnesses withdrew.

The Committee agreed to set a timeframe of 5pm Thursday 22 November 2001 for Members to place additional questions on notice arising out of the day's hearing.

Ms Kate McKenzie, General Manager and Mr Rod McInnes, Assistant General Manager, both of WorkCover NSW, were examined. The Chairman reminded them that they remained under oath from their previous appearance before the Committee.

Evidence concluded and the witnesses withdrew.

The public hearing concluded. Media and public withdrew.

Resolved, on motion of Ms Saffin, that: pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and under the authority of Standing Order 252, the Committee authorises the Clerk of the Committee to make tabled documents and corrected transcripts of today's hearing publicly available.

5. General business

Provision of Chairman's questions on notice to witnesses and WorkCover NSW prior to hearings

Resolved, on the motion of Ms Saffin, that: the Chairman use his discretion in providing questions on notice to witnesses and WorkCover NSW prior to public hearings

6. Next meeting

The meeting adjourned at 5.15pm, until Thursday, 22 November 2001, at 10am in Room 1108, Parliament House.

Steven Carr
Director

Minutes No. 65

Thursday 22 November 2001

10:02am – 11:45am at Parliament House (Room 1108) and then 3:30pm – 4:45pm at Department of Information Technology, Level 3, 1 Prince Albert Road, Queens Square, Sydney from 12:30pm – 2:45pm

1. Members present

Rev Nile (Chairman)

Mr Kelly

Mr Gallacher

Mr Pearce

Ms Saffin

Mr Tsang

Dr Wong

2. Inquiry into the review and monitoring of the NSW Workers Compensation Scheme

HEARING

The Committee deliberated.

Resolved, on motion of Mr Kelly, that in accordance with the Resolution of the Legislative Council of 11 October 1994 the Committee authorises the sound broadcasting and television broadcasting of its public proceedings held today.

The public and media were admitted.

The Chairman welcomed the gallery and reminded the media of their obligation under Standing Order 252 of the Legislative Council in relation to evidence given before, and documents presented to, the Committee. The Chair also distributed copies of the guidelines governing broadcast of proceedings.

Mr Richard Gilley, Consultant, The Risk Net Group, was sworn and examined.

Mr Gilley tendered one document in support of his evidence. Resolved, on motion of Mr Gallacher, that: the Committee accept the document.

Mr Gilley tendered two further documents in support of his evidence. Resolved, on motion of Mr Tsang, that: the Committee accept the documents.

Evidence concluded and the witness withdrew.

The public hearing concluded.

BRIEFING

The Chairman advised the gallery and media that material presented before the Committee was part of a public Committee briefing.

The Chairman welcomed Mr Tony Hawkins, Chief Executive Officer, WorkCover Queensland, via teleconference from Brisbane, Queensland and reminded him that comments made in the briefing would not be afforded parliamentary privilege under the *Parliamentary Evidence Act 1901*.

Mr Tony Hawkins, Chief Executive Officer, WorkCover Queensland, provided a briefing to the Committee.

Briefing concluded and Mr Hawkins withdrew.

Short adjournment.

The Chairman welcomed Mr Bill Mountford, Chief Executive Officer, Victorian WorkCover Authority, via video-conference from Melbourne, Victoria and reminded him that comments made in the briefing would not be afforded parliamentary privilege under the *Parliamentary Evidence Act 1901*.

Mr Bill Mountford, Chief Executive Officer, Victorian WorkCover Authority, provided a briefing to the Committee.

Briefing concluded and Mr Mountford withdrew.

The Chairman welcomed Mr Harry Neesham, Executive Director, WorkCover Western Australia, via video-conference from Perth, Western Australia and reminded him that comments made in the briefing would not be afforded parliamentary privilege under the *Parliamentary Evidence Act 1901*.

Mr Harry Neesham, Executive Director, WorkCover Western Australia, provided a briefing to the Committee.

Briefing concluded and Mr Neesham withdrew.

Public briefing concluded, the media and public withdrew.

Short adjournment.

ERNST AND YOUNG BRIEFING

The Committee was briefed by Mr Peter McCarthy, Director, General Insurance and Mr Warrick Gard, Director, both of Ernst and Young.

The Committee deliberated.

The Committee agreed to seek concurrence from Mr Hawkins, Mr Mountford and Mr Neesham for the transcribed proceedings of their briefings to be recognised as submissions to the inquiry.

Resolved, on motion of Ms Saffin, that: pursuant to the provisions of section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* and under the authority of Standing Order 252, the Committee authorises the Clerk of the Committee to make corrected submissions (where applicable), tabled documents and corrected transcripts of today's hearing and briefings publicly available.

3. General business

NEXT MEETING

The Committee agreed to meet on the following dates to consider the chairman's draft second interim report:

Thursday 10 January 2002
Tuesday 15 January 2002 (if required).

4. Next meeting

The meeting adjourned at 4:45pm, until Tuesday 10 January 2001, at 2:00pm.

Steven Carr
Director

Minutes No. 66

Wednesday 9 January 2002

A Parliament House (Room 1108) at 2.13pm

1. Members present

Rev Nile (Chairman)
Mr Kelly
Mr Gallacher

2. Apologies

Mr Pearce
Ms Saffin
Mr Tsang
Dr Wong

3. Confirmation of minutes

Resolved, on motion of Mr Kelly, that: the draft minutes of meetings numbered 64 and 65 be confirmed.

4. Inquiry into the review and monitoring of the NSW Workers Compensation Scheme

TABLED DOCUMENTS

SUBMISSIONS IDENTIFIED AS PUBLIC

The Chair tabled three submissions identified as public:

- Submission 20 – The Hon Morris Iemma MP, Minister for Public Works and Services, dated 16 November 2001.
- Submission 21 – Mr Harry Neesham, Executive Director, WorkCover (WA) received 7 December 2001 (comprising amended transcript of briefing held on 22 November 2001).
- Submission 22 – Mr Tony Hawkins, Chief Executive Officer, WorkCover Queensland, received 4 December 2001 (comprising amended transcript of briefing held on 22 November 2001).

Resolved, on motion of Mr Gallacher, that: the submissions be made publicly available.

CORRESPONDENCE SENT

The Chair tabled the following 18 items of correspondence sent:

- Letter to the Hon John Della Bosca MLC, Special Minister of State, Minister for Industrial Relations and Assistant Treasurer, dated 28 November 2001,

requesting the Minister facilitate Tillinghast Towers-Perrin conduct actuarial assessments on a number of scenarios developed by the committee.

- Letter to Mr Doug Pearce, NRMA Insurance, dated 27 November 2001, seeking responses to questions on notice arising from appearance before the committee on 21 November 2001.
- Letter to Mr Tony Hawkins, Chief Executive Officer, WorkCover Queensland, dated 27 November 2001, seeking responses to questions on notice arising from appearance before the committee on 22 November 2001.
- Letter to Mr Harry Neesham, Chief Executive Officer, dated 27 November 2001, seeking responses to questions on notice arising from appearance before the committee on 22 November 2001.
- Letter to Mr John Walsh, Pricewaterhouse Coopers, dated 27 November 2001, seeking responses to questions on notice arising from appearance before the committee on 21 November 2001.
- Letter to Mr Dave Finnis, Tillinghast Towers-Perrin, dated 27 November 2001, seeking responses to questions on notice arising from appearance before the committee on 21 November 2001.
- Letter to Mr Bill Mountford, Chief Executive, WorkCover Victoria, dated 27 November 2001, seeking responses to questions on notice arising from appearance before the committee on 22 November 2001.
- Letter to Mr Richard Grellman, Chairman, Motor Accidents Authority of New South Wales, dated 27 November 2001, seeking responses to questions on notice arising from appearance before the committee on 21 November 2001.
- Letter to Hon John Della Bosca, dated 27 November 2001, seeking responses to questions on notice arising from WorkCover NSW's appearance before the committee on 21 November 2001.
- Letter to the Hon John Della Bosca MLC, Special Minister of State, Minister for Industrial Relations and Assistant Treasurer, dated 19 November 2001, inviting representatives of WorkCover NSW to appear before the committee at its public hearing on 21 November 2001.
- Letter to Mr Greg McCarthy, Director, Workplace Injury Management Services, dated 12 November 2001, providing questions on notice arising from the committee hearing of 10 October 2001.
- Letter to Ms Alison Robertson, APLA, dated 12 November 2001, providing questions on notice arising from the committee hearing of 10 October 2001.

- Letter to Mr Brian Gething, Chairman, NSW Self Insurers Association, dated 8 November 2001, in response to correspondence received 31 October 2001.
- Letter to Mr John Walsh, Pricewaterhouse Coopers, dated 6 November 2001, advising that the committee had agreed to offer Ernst and Young ABC the opportunity to provide accounting and actuarial services and thank them their interest in the bid process.
- Letter to Mr Rory O'Connor, Partner, Deloitte Touche Tohmatsu, dated 6 November 2001, advising that the committee had agreed to offer Ernst and Young ABC the opportunity to provide accounting and actuarial services and thank them their interest in the bid process.
- Letter to Mr Adrian Gould, Director, Taylor Fry, dated 6 November 2001, advising that the committee had agreed to offer Ernst and Young ABC the opportunity to provide accounting and actuarial services and thank them their interest in the bid process.
- Letter to Mr Dave Finnis, Principal, Tillinghast-Towers Perrin, dated 6 November 2001, advising that the committee had agreed to offer Ernst and Young ABC the opportunity to provide accounting and actuarial services and thank them their interest in the bid process.
- Letter to Mr Jason Slade, Director, Andersen, dated 6 November 2001, advising that the committee had agreed to offer Ernst and Young ABC the opportunity to provide accounting and actuarial services and thank them their interest in the bid process.

CORRESPONDENCE RECEIVED

The Chair to table the following 15 items of correspondence received:

- Letter from the Hon John Della Bosca MLC, Special Minister of State, Minister for Industrial Relations and Assistant Treasurer, received 9 January 2002, commenting on actuarial projections requested by the committee and expressing a willingness for WorkCover NSW to assist in conducting a seminar on the third stage of reform.
- E-mail from Mr Rod McInnes, Assistant General Manager, received 9 January 2002, advising that approval has not been given for the committee to publish the document *Financial Evaluation of the 2001 NSW Workers Compensation System Reforms for the WorkCover Scheme*, dated 26 November 2001.
- Facsimile from Mr Rod McInnes, Assistant General Manager, received 7 January 2002, incorporating letter from Ms Michele Patterson, Acting

General Manager, WorkCover NSW, dated 7 January 2002, providing actuarial scenarios in response to committee request.

- Letter from the Hon John Della Bosca MLC, Special Minister of State, Minister for Industrial Relations and Assistant Treasurer, received 19 December 2001, providing responses to questions on notice.
- E-mail from Mr Michael Playford, Pricewaterhouse Coopers, received 18 December 2001, advising on threshold claims for commutations and common law.
- E-mail from Mr Peter McCarthy, Director General Insurance, Ernst and Young ABC, received 14 December 2001, providing advice on the main functions of WorkCover.
- Facsimile from Ms Sandra Dunn, Clinical and Counselling Psychologist, received 18 November 2001, providing a copy of her curriculum vitae.
- Letter from Mr John Van Dyke, General Manager, Prestige Cranes Pty Ltd, received 30 November 2001, responding to the Chairman's correspondence dated 19 October 2001 in relation to adverse reflection arising in evidence taken during 24 September 2001 hearing.
- Letter from the Hon John Della Bosca MLC, Special Minister of State, Minister for Industrial Relations and Assistant Treasurer, received 6 December 2001, advising that the committee's request of 28 November 2001 will not be completed by 6 December 2001.
- Correspondence from Mr Tony Hawkins, Chief Executive Officer, WorkCover Queensland, received 4 December 2001, clarifying points made during his briefing to the committee on 22 November 2001.
- Correspondence from Mr Bill Mountford, Chief Executive, Victorian WorkCover Authority, received 11 December 2001, clarifying points made during his briefing to the committee on 22 November 2001 and responding to the committee's request for comparative information dated 10 December 2001.
- Correspondence from Mr Harry Neesham, Executive Director, WorkCover Western Australia, received 11 December 2001, clarifying points made during his briefing to the committee on 22 November 2001.
- Correspondence from Mr Bill Mountford, Chief Executive, Victorian WorkCover Authority, received 12 December 2001, responding to questions on notice arising from his briefing to the committee on 22 November 2001.
- Correspondence from Mr Richard Grellman, Chairman, Motor Accidents Authority of New South Wales, received 17 December 2001, advising that the General Manager of Motor Accidents Authority of New South Wales

would respond to committee questions on notice arising from his appearance before the committee on 21 November 2001.

- Correspondence from Mr David Bowen, General Manager, Motor Accidents Authority of New South Wales, received 17 December 2001, responding to committee questions on notice arising from Mr Richard Grellman's appearance before the committee on 21 November 2001.
- Letter from the Hon John Della Bosca MLC, Special Minister of State, Minister for Industrial Relations and Assistant Treasurer, received 6 December 2001, providing a report from WorkCover NSW, *Outline of the operation of the NSW Workers Compensation Scheme, Legislative Council, General Purpose Standing Committee No 1*.

ACTUARIAL "WHAT IF" SCENARIOS

The committee noted references in the 8 January 2002 editions of the *Telegraph*, *Australian Financial Review* and *Sydney Morning Herald* (internet site) concerning the findings of actuarial assessments prepared for the committee by Tillinghast Towers – Perrin on behalf of WorkCover NSW and the Hon John Della Bosca MLC, Special Minister of State, Minister for Industrial Relations and Assistant Treasurer.

Resolved, on motion of Mr Gallacher, that: the Chairman write to the Hon John Della Bosca MLC, Special Minister of State, Minister for Industrial Relations and Assistant Treasurer advising that no report specifically prepared for the committee may be released without committee authorisation.

CHAIRMAN'S DRAFT SECOND INTERIM REPORT

The Chairman tabled his draft report entitled "NSW Workers Compensation Scheme, Second Interim Report". Once circulated, the report was accepted as being read.

The committee deliberated.

The committee considered the following item of correspondence received:

- E-mail from Mr Rod McInnes, Assistant General Manager, received 9 January 2002, advising that approval has not been given for the committee to publish the document *Financial Evaluation of the 2001 NSW Workers Compensation System Reforms for the WorkCover Scheme (draft)*, dated 26 November 2001.

The committee deliberated.

Resolved, on motion of Mr Gallacher, that: the Chairman write to the Hon John Della Bosca MLC, Special Minister of State, Minister for Industrial Relations and Assistant Treasurer to advise that the committee intends to publish the document *Financial Evaluation of the 2001 NSW Workers Compensation System Reforms for the WorkCover Scheme (draft)*, dated 26 November 2001.

Further that the committee considers release of this material is in the best interests of the inquiry and stakeholders as it is believed that the findings of this document were relied upon during the passage of the *Workers Compensation Further Amendment Act 2001* and correspond to comments made during public committee proceedings.

The committee deliberated.

The Committee resolved, on motion of Mr Kelly, that: the words “as at 30 June 2001 of \$2.76b” be inserted into the first sentence of Conclusion 1 after the word “deficit”.

Resolved, on motion of Mr Gallacher, that: Conclusion 5 be amended by inserting the words “up to and including June 2002” after the words “Implementation Plan”.

Resolved, on motion of Mr Kelly, that: the last paragraph in Conclusion 6 be amended by replacing “stakeholders” and inserting instead WorkCover, the Government and other stakeholders.

Resolved, on motion of Mr Kelly, that: the report be amended to include “draft” where Tillinghast Towers-Perrin’s report of 26 November 2001 is referred to.

Resolved, on motion of Mr Gallacher, that: Conclusion 7 be amended by deleting “private” wherever it occurs.

Resolved, on motion of Mr Gallacher, that: Conclusion 7 be amended by deleting paragraph two.

Resolved, on motion of Mr Gallacher, that: Conclusion 11 be amended by deleting the word “unknown” and inserting instead with “uncertain at this stage”.

Resolved, on motion of Mr Gallacher, that: Conclusion 12 be amended by deleting the word “unknown” and inserting instead with “uncertain at this stage”.

Resolved, on motion of Mr Kelly, that: Conclusion 14 be amended by deleting all words after “The” and inserting instead “current average premium of 2.76% is insufficient to cover the current costs of the Scheme. The average premiums have been insufficient since 1991-92.”

Resolved on the motion of Mr Gallacher that: Conclusion 18 be amended by deleting all words after “Advisory councils,” and inserting instead, “such as in Western Australia and Queensland, which are representative but not cumbersome, can be an effective means of increasing stakeholder ownership of workers compensation schemes.”

Resolved on the motion of Mr Kelly that: in paragraph 5.15 the name of the ACC be written in full and that it be made clear that the organisation is in New Zealand.

Resolved, on motion of Mr Gallacher, that: additional comments on the text of the Chairman’s draft report document be forwarded to the committee secretariat by 5pm Friday 11 January 2002.

Resolved, on motion of Mr Kelly, that: the committee meet on Tuesday 15 January 2002 at 2:00pm to consider Ernst and Young’s report to the committee and any additional information that may be provided by the Hon John Della Bosca MLC, Special Minister of State, Minister for Industrial Relations and Assistant Treasurer.

5. Next meeting

The meeting adjourned at 4:05pm, until Tuesday 15 January 2002, at 2:00pm.

Steven Carr
Director

Minutes No. 67

Tuesday 15 January 2002

A Parliament House (Room 1108) at 2.10pm

1. Members present

Rev Nile (Chairman)
Mr Kelly
Ms Fazio (Saffin)
Mr Gallacher
Mr Lynn (Pearce)
Mr Tsang

2. Apologies

Dr Wong

3. Substitute Members

The Chairman noted advice received from the Opposition Whip, dated 14 January 2002, advising that Mr Lynn would replace Mr Pearce for the purposes of today's meeting.

The Chairman noted advice received from the Government Whip, dated 15 January 2002, advising that Ms Fazio would replace Ms Saffin for the purposes of today's meeting.

4. Confirmation of minutes

Resolved on motion of Mr Kelly, that: the draft minutes of meetings numbered 66 be confirmed.

5. Inquiry into the Review and Monitoring of the NSW Workers Compensation Scheme

TABLED DOCUMENTS

SUBMISSIONS IDENTIFIED AS PUBLIC

The Chairman tabled one submission identified as public:

- Submission 23 – Mr Bill Mountford, Chief Executive Officer, Victorian WorkCover Authority, received 3 January 2002 (comprising amended transcript of briefing held on 22 November 2001).

The Committee deliberated.

Resolved, on the motion of Ms Fazio, that: the submission be made publicly available.

CORRESPONDENCE RECEIVED

The Chairman tabled the following three items of correspondence received:

- Letter from Ms Kate McKenzie, General Manager, WorkCover NSW, received 14 January 2002, attaching the document entitled *Financial Evaluation of the 2001 Workers Compensation Scheme Reforms* (final).
- Letter from Mr Rob Lucas MLC, Minister for Industry and Trade, Minister for Government Enterprise, South Australia, received 15 January 2002, providing information about the South Australian Workers Compensation Scheme.
- Facsimile from Mr Rod McInnes, Assistant General Manager, received 8 January 2002, incorporating a letter from Ms Michele Patterson, Acting General Manager, WorkCover NSW, dated 8 January 2002, forwarding responses to questions on notice from Tillinghast Towers-Perrin.

HARBISON QUESTION ON NOTICE

The Committee considered whether WorkCover's response to committee question on notice number 15, received 19 December 2001, should be made public.

Resolved, on motion of Mr Gallacher, that: the response be treated as private and confidential.

CHAIRMAN'S DRAFT SECOND INTERIM REPORT

The Chairman tabled his draft report entitled "NSW Workers Compensation Scheme Second Interim Report". Once circulated, the draft report was accepted as being read.

The Committee deliberated.

Resolved, on motion of Mr Kelly, that: the quote by Ms McKenzie which appears following paragraph 2.10 be amended by inserting at the end: "...is part of an overall strategy. I do not think you can look at any of these individual bits of the scheme in isolation. What we are trying to do is come up with an overall scheme design that balances fairness and affordability, and this is just one part of that overall plan."

Resolved, on the motion of Mr Kelly, that: paragraph 2.30 be amended by inserting at the end—"The Minister's letter to the Chairman dated 8 January 2002 indicated that the Government is committed to improving Scheme design, and that the Minister has indicated that as part of the final stage of the Government's reform agenda the Government is proposing a review of scheme design to identify the preferred options for underwriting the Scheme, and for achieving better Scheme outcomes".

Mr Kelly moved that:

a) Paragraphs 2.35 - 2.48 be deleted and replaced with the following text-

“In relation to savings to be achieved by the 2001 Act, passed in July 2001, Mr Finnis estimated the saving was between \$200 million and \$210 million, dependent on reasonable implementation. In relation to the Further 2001 Act, passed in November 2001, Mr Finnis gave the Committee an estimate ranging from zero to \$214 million.²

The Committee received a draft report on the financial evaluation of the 2001 reforms dated 26 November 2001 which estimated annual savings to be between \$88m and \$210m.

However, on 14 January 2002 correspondence was received by the Committee from WorkCover and Tillinghast requesting that the 26 November draft report be withdrawn as it had been superseded:

Tillinghast-Towers Perrin has indicated that there have been significant changes from the 26 November 2001 draft evaluation report, which should be withdrawn forthwith.

and

There has been significant changes from our 26 November 2001 draft report. After the Further Amendment Act was passed (in December 2001), a number of regulations and guidelines were developed, finalised and issued. These include provisional liability guidelines, the rules and start dates for the Workers Compensation Commission and the legal cost regulations.

The legal fee basis for dispute resolution was also negotiated and finalised after 26 November 2001. This has altered our costings. After discussions with WorkCover and the Motor Accidents Authority, we have also allowed for a marginal improvement in claims costs due to better return to work outcomes. The final report also includes analysis by accident year and an assessment of the impact on the Scheme deficit.

These issues have been more clearly resolved since our draft report of 26 November 2001 and the draft report should be withdrawn forthwith. This report also supersedes any previous advice to the Parliamentary Standing Committee. Also note, our 7 January 2002 letter in regards to actuarial projections of funding scenarios for the Scheme refers to our 26 November 2001 draft report; this should now be considered to refer to this report.

The final costing by the Scheme's actuary dated 14 January 2002 indicated that the successful implementation of the recent reforms will have one-off savings on the deficit of up to \$1.33 billion and ongoing savings of up to \$400 million per annum.

None of the above figures have been tested by the Committee and the Committee will be conducting hearings into the findings of the 14 January document in preparation for the Committee's third interim report.”

Ms Fazio moved that: the motion of Mr Kelly be amended by replacing the words “the Scheme's actuary” in the fourth paragraph with “Tillinghast Towers-Perrin”.

The Committee deliberated.

² Evidence of Mr David Finnis, Principal, Tillinghast-Towers Perrin, 21 November 2001, p 41.

b) Paragraphs 2.56 - 2.57 be deleted.

c) Paragraphs 2.64 - 2.66 be deleted and the following text inserted instead: "Ernst & Young provided the Committee with comments in relation to the actuarial costings of potential savings from the 2001 reforms, and have provided the Committee with options for the Committee's future consideration."

d) 26 November report by Tillinghast Towers Perrin, entitled, *Financial Evaluation of the 2001 Workers Compensation Scheme Reforms* (draft) be removed.

Debate ensued.

Question put.

Ayes: 3
Mr Kelly
Mr Tsang
Ms Fazio

Noes: 2
Mr Gallacher
Mr Lynn

The question resolved in the affirmative.

Resolved on the motion of Mr Kelly that: the quote from Mr Pearce at paragraph 3.19 be amended by inserting at the end— "Before I answer that, the reforms put forward earlier this year and the current round of reforms are headed in the right direction for fixing the flaws."

Mr Kelly moved that: "The Minister's ten point plan, as set out in the Committee's first interim report (pp14-20) encapsulates the principles of good scheme design" be inserted as a new paragraph after paragraph 3.21.

The Committee deliberated.

Mr Gallacher moved that: the motion of Mr Kelly be amended by deleting the word "good".

Question: that the amendment of Mr Gallacher be agreed to—put and passed.

Original question of Mr Kelly, as amended—put and passed.

Resolved, on the motion of Mr Kelly, that: "If the Government's reform program is given time to be successfully implemented, it is expected that the NSW scheme will meet these principles" be inserted after paragraph 3.22.

Resolved, on the motion of Mr Kelly, that: "The Minister's letter to the Chairman dated 8 January 2002 indicated that the Government is committed to improving Scheme design, and the Minister has indicated that as part of the final stage of the Government's reform agenda, the Government is proposing a review of scheme design to identify the preferred options for underwriting the Scheme, and for achieving better Scheme outcomes" be inserted after 3.21.

Resolved on the motion of Mr Kelly that: Conclusion 7 be amended by inserting – “and in the Minister’s letter to the Chairman dated 8 January 2002” after – “During the 2nd rereading speech repealing the measures for private underwriting”.

Mr Kelly moved that: Conclusion 7 be amended by inserting the following the secondary paragraph - “The Committee recognises that the Governments ten point plan for reforming the scheme encapsulates the principles of good scheme design and that if the Governments reform program is given time to be successfully implemented that the NSW scheme will satisfy these principles”.

The Committee deliberated.

Mr Gallacher moved that: the motion of Mr Kelly be amended by deleting the word “good” and “given time to be”.

Question: that the amendment of Mr Gallacher be agreed to—put and passed.

Original question of Mr Kelly, as amended—put and passed.

Mr Kelly moved that: paragraph 4.33 be amended by inserting after the quote– “ the Minister in his letter to the Chairman dated 8 January 2002, indicated that as part of the final stage for the Government’s reform agenda, the Government is proposing a review of the scheme design to identify the preferred options for underwriting the Scheme, and for achieving better Scheme outcomes;”

The Committee deliberated.

Mr Gallacher moved that: the motion of Mr Kelly be amended by deleting the word “the” before the word “preferred” and replacing with “their”.

Question: that the amendment of Mr Gallacher be agreed to—put and passed.

Original question of Mr Kelly, as amended—put and passed.

Mr Kelly moved that; the 4.33 be amended by inserting at the end of the quotations- “ the Government has a multifaceted strategy for improving stakeholder ownership in the Scheme, including the new insurer remuneration arrangements, injury management pilots, medical management pilots, the premium discount scheme and small business strategy, general premium reform and compliance initiatives; and if the Government’s multifaceted reform program is given time to be successfully implemented that stakeholder ownership in the Scheme should be greatly improved.”

The Committee deliberated.

Mr Gallacher moved that: the motion of Mr Kelly be amended by deleting the words “given time to be”.

Question: that the amendment of Mr Gallacher be agreed to—put and passed.

Original question of Mr Kelly, as amended—put and passed.

Mr Kelly moved that: Conclusion 8 be amended by inserting after the second paragraph the words- “The Government’s proposed review of scheme design and the successful implementation of the Government’s ten point plan for the reform of the Scheme should improve stakeholder ownership in the Scheme.”

The Committee deliberated.

Mr Gallacher moved that: the motion of Mr Kelly be amended by deleting the word “should” and inserting instead “may”.

Question: that the amendment of Mr Gallacher be agreed to—put and passed.

Original question of Mr Kelly, as amended—put and passed.

Mr Kelly moved that: Conclusion 9 be amended by inserting after the second dot point- “The Government’s proposed review of scheme design and the successful implementation of the Government’s ten-point plan for the reform of the Scheme should improve stakeholder ownership and clarify accounting and legislative responsibility for the Scheme’s finances.”

The Committee deliberated.

Mr Gallacher moved that: the motion of Mr Kelly be amended by deleting the word “should” and inserting instead “may”.

Question: that the amendment of Mr Gallacher be agreed to—put and passed.

Original question of Mr Kelly, as amended—put and passed.

Mr Kelly moved that: paragraph 4.60 be amended by inserting the following quote- “In recognition of this, the Minister in his letter to the Chairman dated 8 January 2002, indicated that as part of the final stage of the Government’s reform agenda, the Government is proposing a review of scheme design to identify the preferred options for underwriting the Scheme , and for achieving better Scheme outcomes.”

The Committee deliberated.

Mr Gallacher moved that: the motion of Mr Kelly be amended by deleting the word “the” before the words “preferred options” and replacing it with the word “their”.

Question: that the amendment of Mr Gallacher be agreed to—put and passed.

Original question of Mr Kelly, as amended—put and passed.

Resolved, on the motion of Mr Kelly, that: a new paragraph be inserted following paragraph 4.71- “The Committee notes the Government’s initiatives to improve insurer claims management performance, including the review of insurer remuneration arrangements, the requirement for

insurers to accept provisional liability, injury management pilots and the establishment of the Workers Compensation Commission and Claims Assistance Service. The successful implementation of these initiatives should significantly improve insurer claims management performance and make a considerable impact on the overall performance of the Scheme.”

Resolved, on the motion of Mr Kelly that: a new paragraph be inserted following the quote at 4.106 – “The Minister’s letter to the Chairman dated 8 January 2002 notes that Tillinghast’s actuarial projections confirm that the effective implementation of the recent reforms, the Scheme should for the first time in ten years, collect more than it will spend. Tillinghast’s final costings dated 14 January 2002 indicated that the successful implementation of the recent reforms will have one-off savings on the deficit of up to \$1.33billion and on going savings of up to \$40million per annum.

Mr Kelly moved that: Conclusion 14 be amended by inserting after the words “1991-92” - “The final actuarial projections on the 2001 reforms indicate that the effective implementation of the reforms will reduce costs below premiums and commence a significant downward trend in the deficit.”

The Committee deliberated.

Mr Gallacher moved that: the motion of Mr Kelly be amended by inserting the words “high” and “optimistic” between the words “final” and “actuarial” and that the following text be inserted in brackets at the end of the sentence – “however, these costings have not been tested by the Committee”.

Question: that the amendment of Mr Gallacher be agreed to—put and passed.

Original question of Mr Kelly, as amended—put and passed.

Mr Kelly moved that: paragraph 5.5 be deleted and inserted instead-

“Group improvement rebate programs have been used by some North American jurisdictions as a method to improve workplace occupational health and safety, and engage small business employers to pro-actively help each other to achieve superior occupational health and safety standards.

The concept of a group improvement rebate program has been examined by the NSW Government, which has looked at similar programs in North American and other Australian jurisdictions, including South Australia. The NSW Government subsequently introduced the Premium Discount Scheme (PDS), which has been available to NSW employers since 30 June 2001.

The PDS provides incentives to employers to implement programs to improve workplace safety and return to-work strategies for injured workers. The incentive scheme provides a discount on the employer’s workers compensation premium.

WorkCover Victoria has also recently been examining the concept of adopting a group improvement rebate program but has not implemented the program to date. It is

understood that WorkCover Victoria wants to look more closely at the NSW PDS before it implements its own program.”

The Committee deliberated.

Mr Gallacher moved that: the motion of Mr Kelly be amended by-

- a) Deleting the word “subsequently” in the second paragraph and inserting “has”.
- b) Deleting all words in paragraph 2 after the words “Premium Discount Scheme (PDS)” and inserting instead- “which has different features to a group improvement rebate program. This has been available to NSW employers since 30 June 2001.”
- c) Deleting the final sentence of paragraph 4.

Question: that the amendment of Mr Gallacher be agreed to—put and passed.

Original question of Mr Kelly, as amended—put and passed.

Resolved, on motion of Mr Kelly, that: paragraph 5.6 be deleted.

Mr Kelly moved that: Conclusion 15 be amended by deleting “However as with Victoria, the extent to which a particular program could be applied in New South Wales requires further analysis” and inserting instead: “ To this end the Committee notes that NSW Government has implemented a Premium Discount Scheme and Small Business Strategy and the Committee considers that the implementation of these programs should be monitored more closely before further consideration is given to other programs, such as the pending Victorian Group Improvement Rebate Program, which has not been implemented or tested to date.”

The Committee deliberated.

Ms Fazio moved that: the motion of Mr Kelly be amended by deleting the word “pending” and inserting instead “proposed”.

Question: that the amendment of Ms Fazio be agreed to—put and passed.

Original question of Mr Kelly, as amended—put and passed.

Resolved, on the motion of Mr Gallacher that: the section entitled “The Partnership Plan” (paragraphs 5.15 - 5.17 and Conclusion 16) be deleted.

Mr Kelly moved that: the following new paragraph be inserted after paragraph 5.36 – “ The Minister has indicated that as part of the final stage of the Government’s reform agenda, the Government is proposing a review of scheme design to identify the preferred options for underwriting the Scheme, and for achieving better Scheme outcomes.”

The Committee deliberated.

Mr Gallacher moved that: the motion of Mr Kelly be amended by deleting the word “the” from before the words “preferred options” and replacing it with the word “their”.

Question: that the amendment of Mr Gallacher be agreed to—put and passed.

Original question of Mr Kelly, as amended—put and passed.

Resolved, on the motion of Mr Kelly, that: Conclusion 19 be amended by inserting as a second paragraph- “The Committee notes the Minister’s letter to the Chairman dated 8 January 2002 indicating that the Government is committed to improving Scheme design, and that the Minister has indicated that as part of the final stage of the Government’s reform agenda, the Government is proposing a review of scheme design to identify the preferred options for underwriting the Scheme, and for achieving better Scheme outcome.”

Resolved, on the motion of Mr Kelly, that: Conclusion 20 be deleted and inserted instead- “It is noted that under the current arrangements the Board is responsible for providing the Government with independent advice about premium rates, and that this role may be reconsidered during the Government’s review of Scheme design.”

Resolved, on the motion of Ms Fazio, that: paragraph 6.3 be deleted.

Resolved, on the motion of Mr Kelly, that: paragraphs 6.4 be deleted and that the following text be inserted -

“The Government’s ten point plan for the reform of the Scheme pursues a multifaceted strategy designed to reduce the underlying costs of the Scheme and for targeting the deficit. The Committee notes that:

- Tillinghast’s final actuarial projections confirm that successful implementation of the recent reforms will have one off savings on the deficit of up to \$1.33 billion and ongoing savings of up to \$400million per annum and that these reforms will have a real impact on the deficit;
- The recent Scheme reforms only form part of the Government’s strategy to reduce the underlying costs of the Scheme.

These strategies (including the incentives provides under the new insurer remuneration arrangements, the injury management pilots, medical management pilots, the Premium Discount Scheme, Small Business Strategy and premium reform) are expected to generate further savings and or improvements, that will further contribute to the reducing the underlying costs of the Scheme and reducing the deficit.”

Resolved, on the motion of Mr Kelly, that: paragraph 6.5 be amended by deleting the word “Broadly” and inserting instead “According to Ernst and Young’s advice” and including at the end of the paragraph “The Committee has not endorsed any of these approaches”.

Resolved, on the motion of Mr Kelly, that: the following text be inserted as a new paragraph following 6.47- “It is understood that the Government recently conducted an expression of interest process in order to consider options, including reinsurance options for reducing the deficit.”

Mr Kelly moved that: Conclusion 21 be amended by inserting at the end “after the recent reforms have been given sufficient time to be successfully implemented, and the Scheme has been given time to stabilise.

Mr Gallacher moved that: the motion of Mr Kelly be amended by deleting the all words after “been” and inserting instead “successfully implemented and the Scheme is displaying significant positive trends)”.

Question: that the amendment of Mr Gallacher be agreed to—put and passed.

Original question of Mr Kelly, as amended—put and passed.

Mr Kelly moved that: the text of Conclusion 22 be deleted and inserted instead- “The Government has a multifaceted strategy to reduce the deficit, and if the recent reforms and other strategies are effectively implemented, they should reduce the underlying costs of the Scheme and have a tangible impact on the Scheme’s deficit. In the meantime, the Committee notes that any further options to reduce the deficit, should only be considered after the recent reforms have been given sufficient time to be successfully implemented and evaluated.”

The Committee deliberated.

Mr Gallacher moved that: the motion of Mr Kelly be amended by inserting the words “The Committee notes that” at the beginning of the first sentence and by deleting the second sentence.

Question: that the amendment of Mr Gallacher be agreed to—put and passed.

Original question of Mr Kelly, as amended—put and passed.

The Committee deliberated.

Consideration was given to the following resolution of the Committee at its meeting on 9 January 2002.

the Chairman write to the Hon John Della Bosca MLC, Special Minister of State, Minister for Industrial Relations and Assistant Treasurer to advise that the committee intends to publish the document *Financial Evaluation of the 2001 NSW Workers Compensation System Reforms for the WorkCover Scheme (draft)*, dated 26 November 2001. Further that the committee considers release of this material is in the best interests of the inquiry and stakeholders as it is believed that the findings of this document were relied upon during the passage of the *Workers Compensation Further Amendment Act 2001* and correspond to comments made during public committee proceedings.

The Committee deliberated.

Resolved, on the motion of Mr Kelly, that: the Committee’s resolution be rescinded.

The Committee deliberated.

Resolved, on the motion of Mr Kelly, that: the report, as amended, be adopted.

Resolved, on the motion of Mr Kelly, that: the report be signed by the Chairman and presented to the House in accordance with the resolution establishing the committee of 13 May 1999.

Resolved, on the motion of Mr Kelly, that: pursuant to the provisions of section 4 of the Parliamentary Papers (Supplementary Provisions) Act 1975 and under the authority of Standing Order 252, the Committee authorises the Clerk of the Committee to publish the report.

Workers Compensation Forum- Scheme Design

The Chairman discussed the possibility of the Committee conducting a seminar on aspects of Scheme design.

The Committee considered correspondence received from the Hon John Della Bosca MLC, received 9 January 2002, advising of his willingness for WorkCover NSW to assist the Committee in organising a seminar on Scheme design and his willingness to appear before the Committee in February 2002 to discuss further improvements in the Workers Compensation Scheme.

The Committee deliberated.

Resolved, on motion of Mr Kelly, that: the Committee Secretariat consider options for conducting a seminar on Scheme design in consultation with WorkCover NSW.

The Committee agreed to circulate a calendar identifying members availability for a public hearing during the first two weeks of February 2002.

Resolved on motion of Mr Gallacher, that: the Committee liaise with the office of the Hon John Della Bosca MLC, to facilitate a suitable time for the Minister to appear before the Committee during the first two weeks of February 2002.

Resolved on motion of Mr Kelly, that: the Chairman draft a proposed strategy for the third interim report including suggested hearing dates.

6. Adjournment

Meeting adjourned at 5.15pm, *sine die*.

Unsigned