



**TRANSCRIPT
OF PROCEEDINGS**

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PRODUCTIVITY COMMISSION

**INQUIRY INTO NATIONAL WORKERS COMPENSATION
AND OCCUPATIONAL HEALTH AND SAFETY FRAMEWORKS**

**PROF M.C. WOODS, Presiding Commissioner
DR G. JOHNS, Commissioner**

TRANSCRIPT OF PROCEEDINGS

AT BRISBANE ON MONDAY, 23 JUNE 2003, AT 9.03 AM

Continued from 18/6/03 in Canberra

PROF WOODS: Welcome to the Queensland public hearings for the Productivity Commission inquiry into National Workers Compensation and Occupational Health and Safety Frameworks. I'm Mike Woods. I'm the presiding commissioner for this inquiry. I'm joined today by Dr Gary Johns, also a commissioner for the purpose of this inquiry.

As most of you will be aware, the commission released an issues paper in April setting out the terms of reference and some initial issues. The inquiry explores the opportunities to develop national frameworks for workers compensation and occupational health and safety. Our full terms of reference is available from our staff. The commission, leading up to these hearings, has travelled to all states and territories talking to a wide cross-section of people and organisations interested in workers compensation and occupational health and safety. We've talked to groups from a diversity of backgrounds and met directly with government organisations, unions, employers, insurers, service providers and others, listening to their experiences and their views on future directions.

We've now received approximately a hundred submissions from interested parties. I'd like to express our thanks and those of the staff for the courtesy extended to us in our travels and deliberations so far and for the thoughtful contributions so many have already made to the course of this inquiry. These hearings represent the next stage of the inquiry. A draft report will then be issued by the end of September with an opportunity to present further submissions and attend a second round of hearings. The final report is to be signed by us by March 2004.

I would like these hearings to be conducted in a reasonably informal manner that remind participants that a full transcript will be taken and made available to all interested parties. At the end of the scheduled hearings for the day I'll provide an opportunity for any persons present to make an unscheduled oral presentation should they so wish to do.

I'd like to welcome to the hearings our first participants from the Queensland Council of Unions. Could you please for the record state your name, your position and the organisation that you are representing.

MR SURPLICE: Trevor Surplice. I'm with the Queensland Council of Unions. I'm a workers compensation advisory officer with that organisation.

MS GRASSICK: I'm Pamela Grassick, Queensland Council of Unions, OHS adviser.

PROF WOODS: Thank you very much. Thank you for coming. We have the benefit of an interim submission that you have provided to us. If you'd like to speak

to that first and then if we can discuss a couple of issues that arise from it.

MR SURPLICE: The Queensland Council of Unions welcomes this opportunity to make this presentation of interim report. The Queensland Council of Unions is the peak trade union body in Queensland representing 36 affiliated unions. This initial submission was developed after consultation with the unions. The QCU has an extensive interest and experience in both workers compensation and occupational health and safety. The OHS policy of the QCU commits the QCU to seeking a fair compensation system. We have submitted this initial interim report here and we'd certainly like an opportunity to make a more comprehensive submission upon the release of the interim report.

PROF WOODS: Thank you very much. We appreciate that. Our steps would be following this public hearing, to the extent that people want to submit further material, shortly thereafter we will incorporate all that in our consideration of our draft report and then that will come out in September, so you sort of have two opportunities: one, if there's any material that you wish in the next couple of weeks to put to us arising from any discussion we have today or any further thoughts or material that you have, either or in addition to that we will put out our draft report in September and you might wish to respond to that and also provide us with further material. So we would encourage your participation at both points, and thank you for coming today.

If I can ask a couple of things: one, you state there your policy that you advocate that the state governments adopt national standards in a consistent way to provide all Australian workers with equal protection, provided that this does not entail a lessening of the existing standards. A couple of things out of that: you talk about "in a consistent way". That word "consistent" we've found in this inquiry gets interpreted two ways. One is being uniform, ie, it is the same level of benefits, the same dispute resolution procedures, the same definitions of employee and employer et cetera, or that there is a definition within each state that is consistent with a sort of bounded set of national frameworks. Do you mean "uniform"? Would you be happy to accept a uniform standard of workers compensation throughout Australia from the Queensland perspective?

MR SURPLICE: A uniform standard throughout Australia, what we're saying is we don't have an objection to that but we are concerned that there may be a lowering of standards - - -

PROF WOODS: In the process. I'll get to that.

MR SURPLICE: - - - to bring into Queensland, a system that would lower the standard of protection to injured workers. We'd certainly have a problem, we would

object to that.

PROF WOODS: Yes. So you would be quite happy with uniformity provided it didn't reduce the standards.

MR SURPLICE: That's right. As long as there's no reduction in standards.

PROF WOODS: Presumably you define the minimum standards as being those that already exist in Queensland, or roughly?

MR SURPLICE: We certainly wouldn't like to see a reduction in that.

PROF WOODS: When we talk to your colleagues in brother organisations in the other states, they have exactly the same view but they delete Queensland and insert New South Wales.

MR SURPLICE: Certainly.

PROF WOODS: Yes, we understand the situation. These are negotiated outcomes over a long history and in each state they represent a certain balance of interests.

MS GRASSICK: May I say in respect to occupational health and safety, which is the area I come from, we do a lot of work with the NOHSC negotiation process and come up with the national standards. Then we've found that we then have to renegotiate them on a state level. So it's almost like you're reducing the standard from what you want twice, and I think because this is the occupational health and safety policy that that statement comes from that mostly covers occ health and safety, that was our experience. We didn't want to have to go through a round of negotiations on the federal level and then come back into Queensland and do it all again.

So we had moved towards national uniformity and we did think that that was a really good thing. I think we have to though underline the point again that sometimes it does mean if you do it that's through a negotiated process, but if the government simply legislated on a national level or introduced, I guess, private insurance on a national level, if they're choosing between systems our concern would be that they would obviously choose the one that the employers or the insurers fancied the best.

PROF WOODS: I can understand that concern. Just focusing on occ health and safety for a moment, I mean, we do have the National Commission, it is tripartite and there is much input and serious debate and consideration given in that forum that then produces the national guidelines, but as you correctly observed, then it hits back

to the states and the same parties that are at the state jurisdictional level then say, "Yes, but not quite here. We can't have these railings or this height or these" - whatever. How do we get around that? Why does that persist and what's the solution on the occ health and safety? Put aside workers comp because I think it's a whole milieu that's different, but on occ health and safety what's the way through?

MS GRASSICK: A while ago the ministers agreed that they would consistently implement the national system.

PROF WOODS: The national strategy all signed by all ministers.

MS GRASSICK: They all signed it. I think part of the problem was that when it comes to the state policy or departmental level, people have jobs and people's jobs are to get the best deal for that particular state government. So it doesn't seem - and of course the employers are also represented on the state level as well and we're trying to get the standard up. I think it's just a natural way that the system works.

PROF WOODS: Is it mildly frustrating that we have all of this input and effort to create a system so that if you're on a cherry-picker in WA, it's the same height and railings and standards and safety procedures. Why must they be just a little different in a different state?

MS GRASSICK: The unions have consistently argued that they shouldn't be, that once something is accepted at the national level it should be put through consistently with only changes made to it that are to do with differences that exist in the different Workplace Health and Safety Act, so if there is a difference of definition you have to sort of change it. But we've also argued that those definitions in occupational health and safety legislation should be the same, and it has been a frustrating thing for us.

DR JOHNS: I'm just wondering whether successful negotiations at the national level are successful because people know they can walk away from the standards.

MS GRASSICK: Yes, there's a factor of that as well.

DR JOHNS: It looks nice on the surface and we end up with some national standards which are federally applied, so it's a bit of a gain in that sense, although uniformity is a nice thing to be doing. But if everyone with a wink and a nod knows that they're not going to actually implement it, I wonder is there much purpose? I mean, are you finding the process through NOHSC is a useful one?

MS GRASSICK: Yes, it's extremely useful. I mean, we have in Queensland some, I guess, because of the nature of the state and the diversity of the state and the large number of small businesses and stuff, it's really important that when we go in to talk

about occupational health and safety legislation that we're not simply doing it on the basis of expediency, and having those national principles agreed to which are more removed from, I guess, the economics of an individual state means that we can actually go in with a good position. I think we've mostly been very pleased with the national standards and have found the problems to be consistent implementation.

DR JOHNS: But they tend to be national principles though.

PROF WOODS: The actual safety guidelines at the industry level are fairly specific.

DR JOHNS: Yes.

PROF WOODS: I mean, yes, they have national strategy and things but they do have, you know, guideline by guideline - - -

DR JOHNS: So there are no instances where you would want to walk away from some guidelines because they don't suit conditions in Gympie or Cairns or Mount Isa or whatever?

MS GRASSICK: The way that the Queensland system is set up is we normally put in place, or as part of the negotiations, we put in place sort of the overarching legislation and then there's the industry codes of practice. Then the industry sector standing committees they put in place very specific guidelines for particular industries. So when you're looking at manual handling, the national system sets up the broad principles of what the legislation should contain, plus specific standards that need to be met, and then the individual industry sector standing committees, like the hospitality committee, will do guidelines for the hospitality industry. So I think it's a system that works well and I think in that sense we were very pleased with the decision of the ministers to obtain consistency through that process.

I think it has been mostly on the level of - I mean, I don't like to use the word "bureaucrat" but it has been on the level of the bureaucratic implementation of it and I guess the commitment of the Queensland government to see that national process through to the level of the actual working parties.

PROF WOODS: Thank you. Does Queensland take the lead in some of the areas - I mean, whether it was meat processing or coalmining or a whole range of other areas where Queensland industry employee participation is important in sort of national leadership? I'm thinking, why would Queensland want to do anything but replicate whatever South Australia comes up with, say, in the wine industry, the occ health and safety guidelines and standards, presumably there's reciprocity in that sense; Queensland takes some leadership in some of the industry sectors or what?

MS GRASSICK: There have been some. I think in the call centre - speaking about occupational health and safety - industry Queensland was the first one to actually get guidelines on that. There's been bits in the horseracing industry. I'm on the hospitality industry sector standing committee and there's been a lot of work done in I guess tourism issues and stuff. The rural industry in Queensland though was exempted a long time from the legislation and I think that's potentially one area, given the demographics of the labour market in Queensland, that Queensland probably could have led, but there were those - and I think the coalmining industry and the petroleum industry were also excluded from our Workplace Health and Safety Act.

PROF WOODS: Self-insurance. We did some visits up here a few weeks ago and got a view equally as strong as what you've put in this document here that the QCU is opposed to the introduction of self-insurance for workers comp and continues to impose its expansion and you set out several reasons. It seems a particularly strong view in Queensland - and I haven't quite detected that view in some of the other states and territories where I've posed that question, but is there a particular set of circumstances in Queensland that causes this view?

MR SURPLICE: Probably in the other states where they're more used to the private insurers and the problems with the private insurers. Here in Queensland the introduction of self-insurers is in reasonably recent times and we would certainly have problems with any further introduction of self-insurance without strong government regulations to put any brake on some of the issues and some of the problems we're already seeing within the self-insurers. The cultural rejection seems to be pretty strong amongst private insurance companies and self-insurers, bearing in mind, I suppose, the first obligation of the private insurer is to their shareholder, the premium-payer second and the injured worker comes a poor third in many cases.

That's the main reason why we have problems or difficulties with the self-insurers. We find, particularly in my role as a workers compensation advisory officer in assisting injured workers in rejected claims, quite a few of the rejected claims are coming from the self-insurers.

PROF WOODS: More than proportional to their level of employment or is it a bit hard to tell yet?

MR SURPLICE: It would be hard to tell. We haven't been able to get the full statistics on that. But we have found in the three years that we've been operating is that WorkCover seems to be putting a lot more training into their claims assessors and some of the dubious rejections we used to see in the first 12 months that the organisation was operating have dropped off somewhat and their assessments are

becoming better. We're still finding with the self-insurers some of these strange decisions that we have to assist the injured worker with the appeal process and we're having some success in the appeals.

PROF WOODS: We also have submissions from various self-insurers. They're up on our web site and they include the Westpacs and Woolworths and a whole range of others, let alone their organisation of self-insurers. The general theme that emerges from those submissions is that by having no third party intervene in the relationship between the employer and the employee, that rehabilitation can be commenced much more quickly. You don't have to wait for whether a claim is accepted or not. They can immediately deal with that employee and then they will go through the claims process subsequently and that they have a strong imperative to rehabilitate their injured workers so that they can return to work, whereas as one of the self-insurers puts it, if you have a third party insurance company or a WorkCover or something in between then some companies can take the view that if they've paid their premiums and a worker is injured, then it's someone else's problem. You know, it's the WorkCover's problem or the insurance company's problem, not theirs. Is there any validity to any of those arguments or where's the problem?

MR SURPLICE: I wouldn't quite see it that way. I do understand that some of the self-insurers are very strong in early intervention and rehabilitation, whether the injury be work related or not and that's something we must commend, the concept of getting people back in the workforce as quickly as possible and rehabilitating them. There's nothing really to prevent, under the WorkCover system, any employer to adopt those same policies, early intervention, and trying to get the injured worker back into the workplace. We're finding, even more so with the psychological injuries, the longer it takes for the assessment of the claim and the acceptance, the longer it takes for the recovery of those injured workers.

You see some examples where it might take three months to accept or reject. When a case is rejected it might be another two or three months before that decision is overturned and the injured worker starts receiving treatment and rehabilitation. So we'd certainly welcome and embrace any concept of early intervention. But the self-insurer certainly would see that as their self-interest to do that, get them back in the workplace. But so should every employer.

PROF WOODS: Yes.

MR SURPLICE: Every employer should have the same concept and WorkCover in fact started a wellbeing program some time back in an endeavour to identifying host employers and trying to get injured workers into host employer wherever it's not practical for the employer to run rehabilitation.

PROF WOODS: I see this inquiry in part as an art of aligning all the various self-interests and incentives to all focus on the right outcomes, which is sort of early intervention, good rehabilitation and return to work at an appropriate level as soon as circumstances permit. But it's a matter of getting all of the parties to work out what their self-interest is and their incentives and then trying to create a system that aligns all of those to that end. But some aspects of self-insurance I would have thought had some merit in that respect. I also take note of some of the concerns that you have in this paper.

DR JOHNS: Yes. I'm just interested in this - we're often told about the experiment with host employers: someone else tries to get an injured worker back into employment. Do you have cases, experiences, where that has worked?

PROF WOODS: Well, this is a second employer in the case?

DR JOHNS: Yes. I presume, Trevor, that's what you're referring to.

MR SURPLICE: I believe so. Obviously WorkCover would have more of that information. But just the feedback I received from the industry liaison officer to WorkCover, that quite a few of the injured workers have been placed with a host employer for probably a three-month period and after that three-month period quite a few of them have been picked up as full-time workers. So there is some success in getting the injured workers back into the workplace. But I suppose even more importantly, the workers are being given the opportunity to get somebody back in the workforce and go towards recovery.

The problem we find obviously here is that in a lot of long-term injuries, the injured workers don't have a job, particularly if they're engaged under a federal award. The majority of those injured workers are terminated after being absent for work for more than three months. The state act has an extension of six months and an opportunity for reinstatement if they're able to return to work within 12 months of being terminated.

DR JOHNS: But as a general rule who gets the workers back to work more quickly, the employer or some officer from WorkCover?

MR SURPLICE: Well, the employer. Obviously the employer is in a position to do so and that's what I say: we really need to encourage all employers to take part in early intervention and return to work. It certainly is beneficial, not only to the injured worker but to the employer and the whole system.

DR JOHNS: I guess the difficulty for a WorkCover is how many public servants can you hire to assist the process of caring for workers and getting them back into

work? I mean, it becomes a resource problem, doesn't it?

MR SURPLICE: It is part of the resource problem, I'd suppose. But it's also part of the system and whatever dollars they place into the early intervention, return to work, would certainly balance out against the overall costs. I'd suggest it would be cheaper to do that, to inject more funding and more effort into that. It would certainly reduce the overall costs of claims and management.

DR JOHNS: I'm just wondering, are you familiar with the standard of cover under Comcare, the Commonwealth system?

MR SURPLICE: Only briefly. I've had some - because we've funded the Queensland Council of the Union Workers Compensation Advisory Service we have funded to give advice and assistance to injured workers under the Queensland act. We do have some crossover people contact us with some advice on Comcare, so I'm not overly familiar with that. The only other system that I'm familiar with is the Northern Territory system where we're operating as - - -

DR JOHNS: Why I raise it - and no-one is suggesting this as any sort of standard, it's just the standard of the Commonwealth workers. But if large companies were to self-insure nationally and use Comcare as their standard of workers comp, not right now but I guess in your submission, I'd like to hear whether you would be comfortable with that as a standard.

MR SURPLICE: There are issues and there are some problems within that and I'm not in a position to go right into that at this stage. The Queensland Council of Unions certainly would be addressing it in a more substantive submission. So there are issues and problems within the state systems I believe, but they can be addressed with the full submission.

PROF WOODS: Thank you. You just mentioned then your experience, or that you have some experience, with the Northern Territory system now. There, for the private sector, they have private underwriters' insurance companies who write the premiums and undertake the claims management as distinct from WorkCover here. Do you have any views on the relative merits of either system?

MR SURPLICE: I found the years that I was employed in the Northern Territory as a union organiser, both in the meat industry and with the North Australian Workers Union, LHMU, that I found that the rejection, the system of rejection amongst the private insurance companies, was certainly higher than WorkCover here in Queensland. Some were better than others. The Northern Territory, the Territory Insurance Office - - -

PROF WOODS: TIO.

MR SURPLICE: TIO, they had a better reputation than some of the other insurers. It was a mixed bag between them. Some of the insurers took a hard line that - reject, reject, reject - and you would go through the Work Health Court to appeal it.

PROF WOODS: And Work Health Court overturned a number of them?

MR SURPLICE: They certainly would overturn quite a few but it was a very expensive exercise.

PROF WOODS: Yes.

MR SURPLICE: A lot of injured workers weren't in a position to run a risk of \$30,000 and then costs against them if they're unsuccessful.

PROF WOODS: And it just delays the whole system of rehabilitation and - - -

MR SURPLICE: Well, it delays the whole process.

PROF WOODS: Actually, we've got the National Meat Association coming along later if you happen to be around. Perhaps you might relive some past issues. You talk about under Access and Coverage the increasing demarcation of many workers who traditionally have been employees as now being self-employed or contract labour. I take it that your view is generally to broaden the scope rather than narrow the scope of coverage of those who are in workplaces, who deserve protection under workers comp.

MR SURPLICE: We would certainly like to see it broaden to cover all workers. The Queensland act was changed significantly in recent times to overcome a problem within the act, particularly in the building and construction industry where a lot of workers were not covered and the definition was changed somewhat. We still find some problems in there.

PROF WOODS: But generally the changes have achieved what they set out to achieve?

MR SURPLICE: They certainly have. They certainly have. It has brought into coverage those people who are contracting for - it has put quite a few in this.

PROF WOODS: Your views seem somewhat, one could say, diametrically opposed to of another submission that we have with us today and are hearing at 1.30 from the Housing Industry Association.

MR SURPLICE: I would suggest it would be.

PROF WOODS: Okay. So we note your views there on opposing the diminishing ability of workers to access common law. I guess I'd raise a question. I mean, you would, particularly in your position, see a number of people, some of whom take out their benefit structures and then go through rehabilitation, others who choose the common law option. Do you have any view as to the relative rate of rehabilitation, the sort of attitude of the employees as they embark one route or the other?

MR SURPLICE: No. I believe something like 8 per cent of injured workers go down that common law path, so it's probably a small amount. Well, it's a very small amount that do access common law. We actually have a problem with any scrapping of common law because, as we've said in there, we do see it as an incentive for keeping the workplace safe and I can recall going to a seminar and unfortunately I can't remember all the figures but it was somewhat surprising, the list of fatalities in different countries including Australia. Australia was reasonably high in comparison to Europe and other countries. What really surprised me was the list of fatalities in Australia were a lot higher than the United States. You wouldn't expect that, but the simple reason being is the litigation. The costs of litigations in the United States and the threat of litigation has forced the employers be more careful and provide a safer workplace.

PROF WOODS: What has been your experience though with workers who have been through the common law process in terms of their subsequent rehabilitation recovery, rejoining with their employer in a constructive relationship?

MR SURPLICE: Personally I'm not in a position to really comment on that because - - -

PROF WOODS: You haven't followed through any of the cases?

MR SURPLICE: The common law and the common law area, it's more legalistic and we don't get involved with the injured worker when they go down that path.

PROF WOODS: Okay. That's interesting in itself. What's the chance of the workers comp area adopting the same approach that does occur, as you were describing in the occ health and safety? You've got your national tripartite council and they've produced guidelines and they negotiate outcomes. So why does workers comp seem to not have progressed to at least that level of national consensus - a hard question?

MR SURPLICE: Yes.

MS GRASSICK: Don't know.

MR SURPLICE: It certainly is a good question but unfortunately I don't have the answers.

PROF WOODS: If you could reflect on that, that would be quite helpful because what you were describing with occ health and safety, there's a lot momentum there. Sure, you then pop back into the state level and you go back through individual negotiations. But at least it's within a framework. I mean, you're only making small changes at margins. You're not having diametrically opposed systems. I got a good story from what you were saying in there. I mean, look at workers comp - an awful long way apart around the various states, without any - that I can currently identify, any clamouring by all of the jurisdictions to move into the same model. Your view of national would be terrific, provided there's no diminution - Queensland is a very common story around, but we're talking about bodies who live within a common law system or a no common law system, a journey to work system, a no journey to work system, a private underwritten system, a government monopoly system. We're talking about very different definitions of employees. The diversity is quite major.

MS GRASSICK: Might I say with that, that certainly in terms of the moves towards national uniformity in occupational health and safety agreements about things in workers comp such as definitions of the various parties and stuff, there's really no barrier to having the ministers on different states or a national, you know, workers compensation health and safety system similar to NOHSC that could sort of make decisions, those sorts of broad decisions anyway, to bring some of the more glaring inconsistencies into focus.

One of the points I wanted to say in respect to common law though, I think in terms of the framework that we have in Australia with the National Occupational Health and Safety Commission sort of doing the broad work, we really have seen that the really big changes in occupational health and safety have come through big common law claims. I mean, asbestos is obviously a clear example of that and the other thing is through things like, you know, there's a very high degree of publicity surrounding a particular accident or incident.

I mean, we've had diving deaths in Queensland and I guess because the Queensland government is sensitive to tourist deaths there has been a lot of very hard work done in those things which hasn't come out of the formally set up processes and I really think that the government has to recognise that whilst a whole lot of policy work and looking at, talking to industries and consultations necessary, you really do need to have the common law system driving it as well and the system that involves, I guess, public expectations about what will be safe or unsafe, that come through

things like highly televised incidents and stuff. I really can't see that one can possibly substitute for the other, or that you could remove the common law system or you could remove those benefits that you have in publicising things. I don't believe that a legislative system could ever - you know, a statute law system - fully replace that.

PROF WOODS: I mean, that's an interesting point, that those incidents that bring the full glare of public attention to an anomaly can therefore generate momentum for change and that can be quite a positive force. So you wouldn't want to lose that ability, but what structure you need to allow that to occur is something that doesn't immediately appear to my mind that has to be of one sort of another. But we can explore that. That would be a quite useful thought process. There's also the slightly broader question of is there in fact benefit - and we could look at occ health and safety in the first instance on this one - of having different systems, albeit marginal in the various jurisdictions, so that you allow for sort of competitive innovation as one jurisdiction discovers through whatever process, whether it's the glare of publicity or good thinking or good, solid hard work on research and development, an innovation that that can then be looked at by the other states and then ultimately picked up or even enhanced further.

Whereas if you have one system it only could be that that one system may not be the perfect system. There aren't the competitive forces that needed to change and innovate and improve.

MS GRASSICK: Frankly, it sounds a bit fancy to me, I think. I mean, I really think what's needed Australia-wide is there's a pretty solid statute law sort of in place already that's relatively consistent. I think it needs to be enforced and I think it needs to be enforced on the basis of the employer's duty of care that they have. Accidents need to be recorded, incidents need to be recorded, prosecutions need to take place and it needs to sort of be tied to the workers compensation - - -

PROF WOODS: Solid grassroots stuff.

MS GRASSICK: Yes. I mean, I think for people who - in an ideal world - ring up directly who have got problems that they're being required to lift something that they consider to be too heavy, the system is already very complex in terms of all of the documentation and the best practice scenarios. I mean, it doesn't necessarily get down to - that sort of stuff is sort of good but it seems a bit like window dressing sometimes.

DR JOHNS: Yes, I'm happy with that, thank you.

PROF WOODS: Anything finally that you'd like to draw to our attention that we

haven't covered this morning?

MR SURPLICE: No, I'll just say again the Queensland Council of Unions will certainly raise other issues when the final report comes through and we're given the opportunity to bring our final submission.

PROF WOODS: Excellent. Thank you very much for you participation this morning.

MR SURPLICE: Thank you.

PROF WOODS: Can I ask our next participants, the Queensland Law Society, to come forward, please. Thank you very much, gentlemen. Could you please for the record, each of you state your name and the position that you hold in the organisation that you're a representative.

MR MURPHY: Gerry Murphy. I'm a solicitor in private practice and chairman of the accident compensation committee of the Queensland Law Society.

MR CARTER: Scott Carter. I'm a lawyer also and a member of the society and been engaged with the committee for in excess of 20 years.

MR O'DONNELL: Good morning, my name is Bernie O'Donnell and I'm the secretary of the Queensland Law Society.

PROF WOODS: Thank you, gentlemen. We have the benefit of a submission from you. Do you have an opening statement that you wish to make?

MR MURPHY: Yes, thanks, Mr Commissioner. Before I embark on that could I just pick up a point that you perceived with the previous - - -

PROF WOODS: Feel free.

MR MURPHY: You were asking about rehabilitation and the impact of common law, people who chose common law, how that impacted - the rehabilitation impacted on that. We have referred to that in our submission and our earlier submission where we quoted psychiatric evidence. Could I just say from my own personal experience, I've been a solicitor in this area for over 40 years, specialising in accident compensation and have completed, without overstating it, thousands of common law claims. We pride ourselves in taking an interest in the outcome of those claims and how the clients go afterwards. Could I say that I'm not aware of one instance where the person pursuing a common law claim has been adversely affected in terms of rehabilitation as a result of pursuing the common law; in fact, quite the reverse.

But as the psychiatric evidence to which we referred in our paper states, that people do get on with their lives once they have received a lump sum and that has certainly been my personal experience in hundreds of cases; people have done that. So I think quite contrary to any suggestion that common law hinders rehabilitation, in fact the choice and the benefit of receiving a lump sum is an enormous benefit to persons in terms of their rehabilitation. They know where they stand and they get on with their life instead of dealing with whatever form of a pension-type mentality.

PROF WOODS: Yes, I was attracted to your statement in your submission which says in part:

In addition there is ample evidence that access to common law remedies facilitates rehabilitation rather than inhibiting rehabilitation.

I'm very conscious of your points there. But let's leave the topic for the moment and we'll come back to that.

MR MURPHY: Yes, I just thought while it was fresh in my mind.

PROF WOODS: Yes, I'm happy with that.

MR MURPHY: Okay. Could I just say in addressing it that we believe in our submission we've addressed all the issues that are raised in that very thorough issues paper. We do come here with a sense of *deja vu*. It's exactly 10 years ago. We don't think much has changed except to say, if anything - not everything has been put - the position of the Queensland scheme as a premier common law scheme over the other jurisdictions is more pronounced now than it was. At the risk of being parochial, can I just say I don't think there is any doubt that the Queensland scheme is the premier scheme in the Commonwealth. Where there's any suggestion that common law be removed from a scheme is to the benefit of the scheme, all the evidence is to the contrary.

We would say - and we believe it can be demonstrated - that one of the reasons why the Queensland scheme is in such good shape - and I'll refer to that, just so it's on the record, shortly - is that precisely because it has retained virtually unfettered common law; whereas the schemes that have continued to abolish and emasculate common law have continued to deteriorate - the New South Wales scheme being a classic example of that. They've now got to the stage where common law is virtually nonexistent. While there's technically still an opportunity to sue at common law, there's absolutely no motivation to do so. We would say that the New South Wales scheme has no prospect of improving. It's going down the path that the New Zealand no fault scheme went some time ago, simply because they've abolished common law or abolished the right to lump sums.

Could I just say for the record, the Queensland position is - and it is better than it was 10 years ago. It's a fully-funded scheme and the reference to the last annual report shows it has got a legislated statutory 20 per cent solvency. In relation to the outstanding reserves, they've got a 15 per cent prudential margin in the outstanding reserves and they've got significant investment fluctuation reserves. It's a legislated 20 per cent solvency which is maintained by reserves and in addition to that an investment fluctuation reserve.

PROF WOODS: Yes, we do follow the annual report of all of the various - - -

MR MURPHY: Yes, I just thought - - -

PROF WOODS: In some jurisdictions it's a little harder to quite track down what the financials are.

MR MURPHY: Yes, but I think the Queensland scheme speaks for itself. The only other point that I'd like to make - and then I'm happy to address any issues that you might like out of our paper - is that it does seem to the society that in the 10 years since we last appeared before your predecessor and made similar submissions addressing similar issues, that everything that's happened since then has just made our submissions even stronger and fortified us in our views, that in those 10 years the differences between the schemes have become more marked - and I just gave you that example of recent legislative changes in New South Wales which we say will be to the detriment of the scheme, where in that time the Queensland scheme has improved and has every sign - I'm sorry, I omitted of course in the Queensland scheme to say that we've got the lowest premium rate, an average of 1.55 cents. That's for two years, and it's predicted it will be the same for the next year. I'm happy to address any other issues that the commission might wish us to address.

PROF WOODS: Thank you. We are familiar with the submission that you've presented to us now and we have been going back through earlier submissions to our predecessor inquiry to make sure that we fully understand the material that they had before them and the views that they came to at that point in time. We are a new inquiry and we are looking at this matter afresh and taking into account the dynamics that have occurred since then. But I noted with interest that the committee was established in 72 and has had a continuous active life since that date. If we keep having inquiries you'll keep having something to do.

MR MURPHY: My lifespan for appearing at these things is starting to be limited, Mr Commissioner.

PROF WOODS: I'm pleased this inquiry was called so that we still have the benefit of your views.

MR CARTER: Mr Commissioner, if you could arrange some remunerative path for those who appear in this capacity we'd be here forever.

PROF WOODS: I'm sure the goodwill that it gives to you makes you sleep well at night.

MR CARTER: It was disappointing in drafting a brief response that you have, in looking at the material that we had before us, to see the policy director's paper from

this year - that's the Commonwealth Department of Employment and Workplace Relations. The underlying treasury-driven, cost-shifting jockey that sits on the back of the author of that paper is the same disappointing rider that has been common in the WACA and industry commission reports of 10 years ago. The cherry-picking, as I note this submission says, the astute avoidance of any contextual facts in a paper driven at the time that your terms of reference were being prepared is one of the reasons why I think you must have some difficulties with those terms of reference. They are unnecessarily coy. When you read it to the bottom line there is an effort to bring in a "one size fits all" and it is that effort which has been so strongly rejected by all the ministerial councils and by the premier's council and indeed by the Prime Minister in separate statements. It's just disappointing to see it recur, admittedly in a somewhat coyer background.

PROF WOODS: Let's explore that for a moment. You're strongly of the view of the benefits of the Queensland system but would you not think that a system that has intrinsic merit could therefore apply throughout what is albeit a reasonably small country by world standards anyway? I mean, must we necessarily have eight systems - well, 10 if you count both Comcare and the Commonwealth Maritime system. Is it not possible for small countries such as Australia to have one system, albeit - - -

MR MURPHY: Could I answer that, Scott?

MR CARTER: Yes.

MR MURPHY: It's certainly possible and in an ideal world it's desirable. But if you go right back to when workers compensation was introduced in Australia, all the schemes then were identical, virtually identical, with some differences - basically in relation to the dispute resolution and the no fault system where New South Wales was always different from ours. But the whole history, particularly starting from the 80s onwards, after the Woodhouse committee, they just diverged. We would say that's a direct reflection of the differences in the states. I mean, there's different bases for industry, there's different workforce, different award wages, different conditions. Queensland is sort of unique - apart from Western Australia - in the diversity of its workforce. While it's ideal and while we would say that the Queensland system should be the system which is adopted throughout the country, I think the reality of the development over virtually the century that workers comp has been going just shows it's impossible.

MR CARTER: Another way of looking at it is the national scheme in New Zealand. Early in the 90s - and your researchers could tell you when this was because of one of the facts included in this story - I was in a conference in Sydney and I had the benefit of taking a paper by the CEO of the Compensation Authority of

New Zealand. He spoke from under a banner which proclaimed loudly that we were in the presence of - whatever the full name of WACA is. Then it had emblazoned across the stage "World Best Practice in Workers Compensation". This gentleman delivered his paper and didn't refer to the fact that he had a net unfunded liability of \$7.2 billion. I raised with him the fact that he hadn't referred to that liability and that his private sector workforce was a little less than 700,000, so he had achieved under world best practice a situation where he could say to the young lad, "Welcome to the workforce, you owe me \$10,000 now."

Now in raising that, the attitude of those who were administering many of the schemes - particularly the no-fault schemes - was that if I had suggested that this gentleman may have broken wind while meeting the governor-general or something, it was just a little something in the background. That is the result of a sole, single purpose scheme run by a national government into the ground. I mean, it got worse than that, it got to \$8.9 billion the next year. But I don't see that there's any panacea in providing a strong federal unitary system, particularly in compensation and particularly if the federal government has got anything to say with its fixation on what it calls cost shifting. They have achieved it in quite a number of areas but why you should fix an employer with the long-term health disabilities of some person who has worked for them, when it is truly a matter for the widest tax base to reimburse those types of chronically disabled, is a matter that I don't understand.

I've read the former Prime Minister Keating's views of that and they're persuasively put, but I still think it's a matter for the taxpayer, and I think the taxpayer does too.

PROF WOODS: When we looked at other models - whether it's Corporations Law or road transport, food safety - I mean, aren't they examples where the various jurisdictions can actually agree that there is merit in having one system run throughout, as I say, in small world country.

MR MURPHY: Well, that's correct, but we'd say that the workers compensation area is unique and it poses problems that those areas that you mentioned do not have inherent in their operation, Mr Commissioner.

PROF WOODS: You talk about a consistent set of framework principles doesn't require legislative intervention and can be the subject of negotiation between interested parties in an endeavour to cure anomalies. Then you usefully refer to definitions of "worker", "employee" and "injury". This inquiry would quite like to explore - as one of the models - a series of steps of implementing what might ultimately turn out to be an agreed national system that you do it through identifying core components that need first attention and that a serious effort should be put. Do those three things fit into that category that if at the national level there could be

serious negotiation between each of the sovereign parties to come to a common view that that would be progress?

MR MURPHY: Yes, certainly. If I recall rightly, the definition of "injury" and "worker" - and there was a third one - - -

PROF WOODS: In your submission you had "worker", "employee" and "injury".

MR CARTER: That really is example-driven because - - -

PROF WOODS: Yes, but I'm just - - -

MR CARTER: If you bring up examples of anomalies and - - -

PROF WOODS: Yes, I'm just trying to explore what - - -

MR MURPHY: In answer to your question, I would say that that should be a fairly simple - the society would submit, a fairly simple exercise arriving out of common definition.

PROF WOODS: What I would like from you, if you so chose in subsequent material, is to assist us with an implementation path that said the first priority is to deal with - and I take your point this might be example-driven but I'd be interested in your views on what you put in category 1, let's pursue; second string, let's pursue; third, maybe doesn't ever matter, and if you never get consensus the world doesn't fall over.

MR MURPHY: Okay. Well, the first one would be the definition. There might not be those definitions. Right down the bottom would be premiums and also - I mean, if we were drawing up a scheme there would be some things which weren't open for negotiation but they're obvious from our submissions and from early remarks. But certainly in terms of the definition we would think that that was something and that could be achieved and it's happening to a large extent. The three eastern states have recently addressed the issue of cross-border accidents.

PROF WOODS: So it's a bit of unilateral action, as I understand it.

MR MURPHY: Yes.

PROF WOODS: I mean, how long - what was it - something like 10 years of debate.

MR MURPHY: Yes.

PROF WOODS: No doubt fruit for your committee - but 10 years of debate on this issue amongst all jurisdictions, but the only time there was progress was when one put the stake in the ground and said, "Well, this is what we're doing," and then several others followed quickly. Perhaps the inquiry should look at that as a model of actually making progress - somebody taking some unilateral action with a stake in the ground and watching everyone else follow quickly.

MR MURPHY: And it may be that that might be the way it has to go.

PROF WOODS: There we go. It could be a more - - -

DR JOHNS: I just wonder if I could follow something else. If we assume that each jurisdiction, each state is competent to negotiate and plan its own scheme, as they have done for a long, long time, and that the Commonwealth has genuine concerns about cost shifting of some schemes - don't pick up all the expenses in their own scheme - that each of us has an interest. However, it may be possible, for instance, for the Commonwealth to simply say, "We can assist in the following regard, but not others" - others meaning we may not draw up a national plan at all but we may give relief to some large Australian companies who operate across border and who would like to work under a single set of rules, whatever those rules are.

So there is another game in town, if you like, which is nothing to do with the national set of rules, but that some organisations, some corporations could get access to a single set of rules. So large corporations might, for instance, agree to sign up to the Comcare set of benefits and maybe self-insure under that system or sign up and take premiums. Do you have any view as to the impact on the Queensland system if larger - or let's assume it's larger employers - want to take advantage of access to a single scheme, in parallel to all the others?

MR MURPHY: Yes - no, my answer to that would be virtually the same as I told the commission earlier, that you could certainly have a national scheme with common definitions. If what's implied in that is one level of premiums across the nation, it's difficult - I find a great difficulty in seeing that being implemented.

MR CARTER: The Commonwealth itself is still running two schemes, is it not?

DR JOHNS: Yes - no, we're not talking about a single set of premiums at all.

MR CARTER: No, I'm just saying it hasn't prompted them to get - is what I'm saying.

MR MURPHY: I'm sorry, just so I understand your point then, it's a question of if

you're signing up for a national scheme, there has to be a consistent set of premiums and you're talking about self-insurance. That's what we see as a weakness in any sort of a national - I mean, the Queensland scheme already has a significant number of self-insurers who are largely - but they are paying the Queensland premium and the Queensland benefits. Now, if you move into another scheme that will have an impact on them. That's a decision for themselves of course. But for as long as what we would say is the Queensland workers weren't - nothing achieved to their detriment, including emasculating of their right to sue at common law which would be significant, and including the benefits.

Now, the difficulty with the Comcare scheme - and there are a lot of difficulties - but the difficulty with the Comcare scheme is of course the higher rate of dispute resolution which axiomatically happens once you have a no fault scheme, without any common law superimposed on top of it. The statistics show that the dispute resolution in the Comcare scheme - and it's a highly bureaucratic and very expensive dispute resolution in what's basically a no faults scheme is very high compared to what's almost a minimal dispute resolution cost in the Queensland no fault system. That's what employers would be signing up for and they would have to be - the workers would have to be satisfied that the benefits were as good and I don't think anyone would suggest that the benefits of workers, even putting aside the common law system - the benefits that are available under a Comcare system are as good as the benefits available under the other.

It comes down basically to what is - I'm sorry, I will get started on one of my favourite hobby horses. So in designing an accident compensation scheme there are about seven philosophical issues that have to be addressed. One of them is whether you pay a lump sum or a pension benefit and we say that all the evidence for the last generation in particular is once you move to a pension-type scheme, the scheme is headed for oblivion, without overstating it. The Comcare scheme goes a long way towards that.

PROF WOODS: It has a long-tail pension base.

MR MURPHY: Yes, exactly, and once you do that the scheme is history. It does very well at the start as the New Zealand scheme does, but eventually it catches up with you. The irony of the New Zealand scheme is of course, to get rid of that deficit that they talked about when it was nearly 9 billion, the way they did that they got 30 per cent - more than half of the people who were on long-term payments and gave them a lump sum and got them out of the system. If you ever want any evidence of the lump sum system as opposed to a pension type system, that's it. The New South Wales scheme simply just moved towards that.

MR CARTER: Just returning to Commissioner Johns' option about a national

employer looking at some umbrella provided by the Commonwealth that would enable it to operate in states without - in a manner that may not satisfy state governments otherwise, there are a number of ways you can approach that of course. It's not difficult to draw a policy and have it underwritten that would cover the workers compensation risks of the employers in relation to every employee in whichever state they may be or overseas. Where you had a national employer of the size that would, in any event, be acceptable as a self-employer in various states and territories, then its policy documentation would not - I was going to say it wouldn't be difficult but it may be difficult.

But it can certainly be drafted to be seamless in the operation of benefits for the most itinerant employee, you know, tripping around the nation at the behest of his employer. It's certainly capable of an underwriting solution in a manner that would presently satisfy all states and territories. It doesn't require some statutory reinforcement to create such a contract.

DR JOHNS: Why would it be seamless? There would have to be a set of benefits though that you would statutorily have to apply?

MR MURPHY: What Mr Carter is suggesting I think is that you could perhaps do it on the basis that they just pay the benefits that are applicable in each state. So that's an underwriting - - -

DR JOHNS: I know, but in terms of a national employee you wouldn't have advanced very far. You would still be operating seven, six - - -

MR MURPHY: We accept of course that employees in different states are subject to different awards and different rates of pay, different take-home pay and all that. I mean, it's a bit simplistic to say that you can get a national employer that will pay the same benefits right across the country when the people aren't even receiving the same incomes.

DR JOHNS: But that's what they're looking for and that's what they're saying to us and we're constantly surprised and amazed that each state seems to crow about their own benefits. They all must have - which is great in a federation. I mean, it seems that each is satisfied that over X decades they've come to see each other across the table and square off and come up with a reasonably good system. Both unions and employees seem to fight for their own - - -

MR MURPHY: System.

DR JOHNS: Which is good in a way and, I'm sorry, I respect that. They're each competent within their own realm, within their own jurisdiction. But so is the

Commonwealth. In a sense these schemes don't compete at all. So I guess I'm just trying to see this observation that they're in fact separate players who are not competing. They each look at each other over the parapet. If we were to throw in a choice on the part of those who could take the benefit from a national scheme, you would then begin to get some choice between whether you sign up locally or nationally, and in a sense to have it self-proving.

MR MURPHY: Yes - well, provided there's no loss of benefits. I mean, I do feel *deja vu*. That was a submission I made when I appeared before Woodhouse J in 1973. It's all very well to say that a no-fault scheme will deliver all these benefits and I suggested that they're running parallel. But I mean, it's just not economically viable to do that.

DR JOHNS: Yes. But, Gerry, we may not be talking about a no-faults scheme. I'm just saying that there is, in a sense, the potential to have an option, another option for a large employer to look at a scheme which takes them across - - -

MR MURPHY: Subject to the benefits of it.

MR CARTER: But I mean, if they were realistic there are alternative ways to approach that.

DR JOHNS: I think last time we met we were discussing something about the fact that you really can't knobble self-interest and you do know that it's going to be running as hard as it can.

MR MURPHY: Look, we can certainly address that when we receive your report. We'll certainly address that and the point that you raised, Commissioner Woods, too.

PROF WOODS: All right. Can I come back to a little debate we were having, even before we got to the introductory comments and that was on common law and rehabilitation. I'll check the transcript, but I got the sense of what you're saying, that once a worker has a finally determined lump sum that they can then plan their future and get on with their life, and I can understand that point that you were making. But what question that begs is what about the uncertainty that the common law process inherently has up until the point of that judgment and any subsequent appeals that might arise from it? Is that period of uncertainty in itself - can that at times have a deleterious effect on the early rehabilitation of workers?

MR MURPHY: Well, in the workers compensation system that's alleviated a lot because their immediate expenses are met through the no-fault system and their weekly expenses. When you say the uncertainty, the vast, overwhelming majority of common law claims are settled without process now. I mean, in our earlier

submission we gave figures as to the settlement of common law claims without going to trial. That has now improved significantly in the last 10 years by virtue of new court processes and restrictions, so that the overwhelming majority of them are settled a lot earlier and settled without, you know, any court process at all. So that has been minimised.

I am just trying to address that again, relating it to my own experience. I don't think, certainly in the workers compensation area, or you can't say with any certainty, that that's so. But the vast majority of people have the prospect of an award from common law. You can indicate to them the amount of that award and they can know where they're going.

PROF WOODS: I don't think I've got any further points that come from this as such. You drew our attention to your submission of 93. I'm almost curious to go back to your presentation to Woodhouse J back in - - -

MR MURPHY: Evidence before the senate committee inquiring into the Woodhouse report too. The Woodhouse debate of course was purely no fault against them.

PROF WOODS: Yes, I'm aware of the history of it, but I hadn't come across your evidence to it. It might be worth researching. No, I think that largely concludes the points that - - -

MR CARTER: Yes, that's good.

PROF WOODS: Yes, thank you very much.

MR MURPHY: If there's anything further - - -

PROF WOODS: I appreciate that and we do look forward - if there's any supplementary material that you can provide to us in the next couple of weeks, that would be most helpful.

MR MURPHY: Sure.

PROF WOODS: But other than that, we would look forward to another thoughtful contribution as soon as we put out our draft report.

MR MURPHY: Then there will be another opportunity to appear.

PROF WOODS: Yes, indeed.

MR MURPHY: Thanks very much.

PROF WOODS: Thank you for your time. We'll adjourn briefly for morning tea.

PROF WOODS: We welcome our next participants from the National Meat Association. Gentlemen, could you please give your names, titles and the organisation that you're representing, for the record.

MR JOHNSTON: Commissioners, thank you. Johnson is my name, initial G for Garry. I'm the national director of industrial relations and legal affairs with the National Meat Association.

MR WOTHERSPOON: Thank you, commissioners. My name is Wotherspoon, first name Ross. I'm the Queensland manager of human resources for the National Meat Association.

PROF WOODS: Thank you very much. Thank you for your submissions. Are you speaking to both the national association submission and the Queensland division submission today?

MR JOHNSTON: Yes.

PROF WOODS: So we'll cover both, very good. Thank you for that. Then tomorrow we pick up the New South Wales division submission.

MR JOHNSTON: Yes.

PROF WOODS: So you are being well represented and we're grateful for the work that you've put into those submissions and they do raise a number of points. But do you have an opening statement you would like to make?

MR JOHNSTON: Just very briefly, commissioners, thank you. We're an employer organisation operating in all divisions of Australia. Our employer members range from very small employers up to employers that probably have 2000 employees on the books. There are a considerable number of the larger employers that operate across states and it's just not the eastern seaboard. There might be employers who are operating in Queensland and South Australia. There might be an employer who's operating in New South Wales and Western Australia and in each of those operations what I'm thinking of, where there are processing plants there may be up to 300 employees at each of the various plants. So there are cross-border issues that affect those particular employers.

As an employer association, one of our principal areas that we deal with is not so much representation from a legal point of view but representation with difficulties that arise in each of the states concerning workers compensation and OH and S issues. The difficulties or the differences that are set out in each of the systems on page 15 of our main submission that would now be familiar to members of the

commission - I must say we in the organisation and myself personally, being good or bad, a practising certificate certified lawyer, we just find it somewhat incredible that for a working population of 9 million people that there are eight or nine or 10 different workers compensation schemes and OH and S systems around the country and the differences that we outlined in our submission have to be addressed.

PROF WOODS: In that respect do I take it you have a slightly stronger view on that issue than the previous participants?

MR JOHNSTON: True.

PROF WOODS: Even though you are one of their fraternity?

MR JOHNSTON: I'm a card-carrying member of one of their fraternity. Even back in my - ages ago when I came out of law school I said, "Two areas where lawyers should not be involved. One is family law and the other is workers compensation."

PROF WOODS: We might pursue that a little as the day wears on - without getting your card torn up.

MR JOHNSTON: Yes. These differences have to be addressed around the country because of the difference of the definitions of injury, the differences of employee benefits, the access to common law in some systems and the no-access in other systems, the different approach to premium setting. Some of the systems are privately operated, others are not. But there are common faults in all the system and generally as outlined in our submission, they concern the aspect of rehabilitation and return to work, and there are - as we see it on a weekly basis, on behalf of our membership we see the obstacles placed before us all the time through the various systems of return to work. Now, I'm not going to sit here and read out our submission.

PROF WOODS: It's on the record.

MR JOHNSTON: Generally we think that these differences have to be addressed. I think our view in relation to those two matters are these, that at the end of the process if there's agreement of simply plucking the best from the best of any system we have a problem with that. That's the first particular issue. The second issue is - - -

PROF WOODS: Sorry, on that one we would need to debate whether we're talking the best of the best from the employer or the employee's perspective.

MR JOHNSTON: Yes.

PROF WOODS: Which may not be the same.

MR JOHNSTON: They may not be the same and the second particular issue is that, as we've said, we find obstacles in front of our small and large membership all the time concerning return to work programs. Now, whether that's the fault of doctors or lawyers or other service providers in each of the systems, is to be debated and I think that's really where I don't want to take it past that, because that's really our submission. We don't see, at least at this point, each of the state systems being dismantled and that there being a national regime that picks up, for example, as in other federal legislation such as workplace relations, the power of section 51 in Corporations Law.

But we do say that each of the systems that are operating at the moment have severe administrative faults and that are overly complex for employers to understand. Both in this submission to the commission and in the recent submissions we made to the federal parliamentary committee on workplace relations concerning a particular aspect of workers compensation we gave examples in those submissions and I didn't wish to repeat them here, but - - -

PROF WOODS: We have access to those submissions.

MR JOHNSTON: Yes. They're simply the tip of the iceberg. But we see there's some outstanding issues that need to be addressed concerning return to work and such matters. I heard what the previous submissions were, but we see it out in the workplace every day for employers to address and we have got a situation that Mr Wotherspoon will address. Where you've got a situation in Queensland, for example, where nearly 50 per cent of common law payouts - where one in six of the dollars that are spent are administration and that the systems are very complex, there appears to be a problem from our point of view. So I don't wish to take those general submissions any further.

PROF WOODS: Can we sort of cross between the national and the Queensland submissions?

MR JOHNSTON: Yes.

PROF WOODS: I know it may lead to a bit of confusion but we'll work our way through. Mr Wotherspoon, do you also have some introductory comments?

MR WOTHERSPOON: Yes, thank you, commissioner. Just to add to that overall view of Mr Johnston's, from a state point of view our members in Queensland, their

main concerns and frustrations lie with the overall costs of the system, starting at a very base level, and that's not just the cost of premiums but the cost of managing claims when they occur and rehabilitation of employees and are managing the WorkCover system as such. The view that people have is, it's too easy to get on the system and it's too easy to stay on the system.

There are examples of claims that come through on a day-by-day basis where the employer has very serious doubts and reports those doubts, and yet those claims will oftentimes be accepted, and when people get onto the system there are occasions - frequently, not just occasions - when claimants will remain off work despite the efforts of everybody to have them come back and get involved in some rehabilitation. It seems that some of the underlying problems of that would amount to some of the definitions that have already been mentioned, the definition of what an injury is in particular.

Coupled with that there are issues about the standard of proof necessary to justify a claim in the first instance. Quite often an employee will have medical certificate - will always have a medical certificate - but that medical practitioner has no knowledge about whether or not the injury occurred at work. He can only certify what the nature of the injury is. So there are - - -

PROF WOODS: Or that it is consistent with a certain activity.

MR WOTHERSPOON: Sorry, or?

PROF WOODS: Or that it is consistent, not only what the injury is but that the injury is consistent with a certain activity.

MR WOTHERSPOON: That's correct. For example, somebody might have a sprained ankle and it's very likely or possible that somebody could sprain an ankle at work. But there's no evidence other than his patient's assertions as to when the injury occurred or where it occurred.

PROF WOODS: Not unless there are witnesses to the injury.

MR WOTHERSPOON: So I don't know that we want to take matters much further right now, other than to say that that's where we see the main problems stemming from and that if the costs of the system can be reduced then I think through changes to some of these features of the system then a lot of these other issues are going to resolve themselves accordingly.

I might just mention the overall process of what happens to a claim and where some of the frustrations also arise. An employee will make a claim. The employer

sometimes only first hears about it once a WorkCover in fact requests that the employer furnish its report. At that stage the claim is either accepted or rejected. Invariably it is accepted. If the employer disputes that claim, or the employee disputes the refusal claim, it can be reviewed. Now, if the claim is rejected by WorkCover and the employee seeks a review through the internal review, the employer has no involvement in that review. It's not part of that process.

The system seems to be lacking in any form of mediation or conciliation where there are issues to be resolved with the claim. The employer is left on the outer at that stage and then the only way the employer becomes involved is if it challenges the WorkCover decision and takes it through the review and possible appeal processes that are available. That creates some concerns because there is simply control of the employer in trying to manage the system and ensure that the information that is provided is in fact true and accurate.

PROF WOODS: Thank you. We'll come back to this issue of third party involvement. If I forget, if you could remind me. The inquiry is particularly pleased to have these submissions from the National Meat Association, I guess for a number of reasons. One is clearly the amount of work that you've been prepared to put into this issue for us. Second though, your industry sector is of considerable relevance because of a number of features: (1) that you have a strong regional and rural presence and it can sometimes be too easy to think of the major metropolitan centres and solutions that meet their needs and not be cognisant of what happens in rural and regional Australia. So your industry keeps bringing us back to those issues and that's important.

You have quite a diversity of size of workplaces, as you say, from very small operations - in fact some of which operate virtually on a seasonal basis, I mean, go into a care and maintenance mode for a period - to very large employers with a strong core employment base. You have a number of semi-skilled and other workers, some of whom are very itinerant and follow the work around. You also have some, as you note yourselves, some members who are some of the highest premium payers in Australia. So there's a whole range of issues that you bring to this inquiry that are quite fundamental in testing the margins of what might be acceptable national frameworks. We're very grateful that you've put in the time and effort to come to us.

You certainly raise a number of issues and some of them we don't need to pursue to any great degree. But you make some assumptions, like you say, "All interested parties will agree more or less that the economics of having eight or more workers comp and parallel occ health and safety systems is a ludicrous situation." I don't think that's an overly well tested assumption. Some naturally hold to that principle quite dearly but for various reasons. Where you talk about the best of the

best, there is quite this divergent view.

From the employees' point they are worried, or particularly staff associations are worried, that the forces would drive to a lowest common denominator and yet quite often employer associations are worried that a national framework would drive to the highest common denominator. So there isn't one similar perspective on this, that depending on where you are your concern is for the country.

MR JOHNSTON: Just on that point, the meat processing industry, the commissioners will well be aware, there are many hazards involved in a processing plant and as you quite rightly point out, some of the employees are skilled; others are simply labourers or semiskilled people that simply follow the skilled people in the performance of the various functions that are usually performed on a production line. That in itself brings into play various considerations of risk management right across the board. Many of the workers compensation claims that are applied for, by far the majority is for periods of less than six months, well less than six months but the majority are less than six months.

During that period, whether it's a month or two or three or six, the issue is putting into play the rehabilitation process as quickly as one can if the ultimate aim, all things being equal, is to have the employee back on the job. Now, the first problem that one may strike, not in terms of sequence, is to whether there's a suitable light duties job, which is always a problem in an industry like a processing plant. A second particular matter is in regional Australia the employee usually goes to the family doctor and gets a certificate, and there may be in a medium-size town one, two or three doctors in that town. But one usually gets a certificate. I can give an instance where a doctor has knocked back the certificate and the person has gone around the corner and got a certificate. These things occur, as they will in any system.

PROF WOODS: Sorry, just on that one though, in some of the more remote localities presumably it's the company that provides the doctor. There would only be one or two doctors in those more remote areas.

MR JOHNSTON: That occurs on very few occasions, in our experience anyway, because a large processing plant, even though it's in regional Australia, is usually in a town which is not a town where there's no doctor.

PROF WOODS: No, just thinking of a couple I've been to.

MR JOHNSTON: Then there's the problem which, in a roundabout way, I'm coming back to address what, Commissioner Woods, you've suggested which is the benefits structure at its highest level. A number of the processing plants, nearly all of

them, are on incentive schemes and if you receive an average on the incentive scheme over a period of time, the previous 12 months or the previous six months, you're usually receiving more, all things being equal, than if you had have been at work because these people in all probability are daily hire employees and what they process depends on what's available to be processed.

Now, at this current point of time, where there are problems in the industry out there in regional Australia a person having submitted a claim would be in that situation and we just find it ludicrous - and I don't know how it's addressed but generally I know how we would address it.

PROF WOODS: What is your - I mean, I follow through in your submission your point that if you're able for work that doesn't guarantee you work. You work on a daily basis. If there's a stock kill and the abattoir has managed to purchase at the latest auction, then there's work to be done, and if not, you're stood down. You get your 10 per cent or whatever top-up to reflect that uncertainty. But as you say, if you're on workers comp, you're on workers comp irrespective. But what is your solution?

MR JOHNSTON: The solution is that there's an industrial award which operates in four of the six states. There's an award that operates in Western Australia, which is much the same as an award that operates in Tasmania. You take the award rate. That's what you take.

PROF WOODS: You still have the continuity issue though. But all you're saying is, you drop - - -

MR JOHNSTON: No, the continuity issue is not an issue because what happens to the particular employees that I've just described is, their employment continues but their engagement for that day ceases. So that's what is written into all the federal industrial instruments: the employment continues. You're still an employee on the books. You're still continuous.

PROF WOODS: Yes.

MR JOHNSTON: But as time has gone on through the 80s and 90s the various state legislation has changed and been altered to reflect the incentive systems that are there and if you've got a situation where they're being paid more on workers comp than them being at work it's a huge disincentive as there are in other particular benefits like accruing the particular situations. We have members who in particular states, the people are on workers comp yet they accrue rostered days off, and when they come off workers compensation they go back to work and they receive a lump sum for the rostered days off. Yet they've been home on workers compensation.

Now, that's written into - not in the legislation, it's written into industrial instruments. But the incentive scheme that I referred to is written into legislation.

PROF WOODS: No, I understand that for the workers. But you still have this anomaly between those who are workers comp and therefore getting continuity of payment and those who are able-bodied and prepared to work but if there's no work they're not engaged for the day.

MR WOTHERSPOON: Commissioner, can I just add to that and draw to your attention that in the submission that addresses Queensland issues in particular, at the bottom half of page 3 there is some discussion which relates to that issue and some suggestions were put about how that matter may be addressed.

PROF WOODS: Yes, although you are, on that basis going to be - I think it follows over onto the top of the next page, yes:

The matter could simply be overcome by recognising and either (a) excluding the 10 per cent daily hire component or (b) ceasing compensation payments when others are stood down.

Mind you, given that you don't stand down all employees, to then categorise whether the workers comp employee is one of those who would have been or wouldn't have been - and I can imagine some disputation of the margins. But nonetheless I mean, I understand the principle so we won't sort of try and solve that detail. Do you have a preference for (b), ceasing compensation payments during periods when others are stood down? That's my guess but what's your view?

MR WOTHERSPOON: I think the equity of the matter at the local level would lean towards when the equivalent employees are not receiving any earnings, then that should be the same with the person who happens to be on workers compensation and therefore it would be the latter of the two. That's the reason that the 10 per cent loading is paid anyway. I don't think that would be a difficult matter to manage because primarily if there's no cattle there's no work and if the person is a boner or a slicer or a slaughterman we know very well whether the person is going to be working or not.

PROF WOODS: Volumes are down but you keep some. That's what I was saying; there can be an issue but let's not try and - - -

MR WOTHERSPOON: Usually what will happen is that it might go to a two, three or four-day operation so that the people are working for three days and there's two off but of course - - -

PROF WOODS: No, that's fine. In various parts of your submission you make statements and it would help us if there was some way you could put some costs onto them. For instance, on page 6 of the main - the National submission, the second dot point from the top, "Whenever lawyers become involved costs dramatically escalate," and then you say, "Much of the costs of operating some of the systems end up with lawyers, doctors, witnesses, et cetera, or become eaten up on administration." The second we can actually through some data and get a handle on disbursement of funds and what gets allocated in what way - but your first of those points, if there was some case material that you could put to us - - -

MR WOTHERSPOON: The first dot point?

PROF WOODS: The second dot point but the first of the two I was referring to; "Whenever lawyers become involved costs dramatically escalate." If there are particular cases in mind that you'd want to draw our attention to with some hard data that - - -

MR WOTHERSPOON: There are particular instances that we've got where we put a lot of examples to the parliamentary committee.

PROF WOODS: Okay, we'll go back through the submissions and draw on that.

MR WOTHERSPOON: But I mean, we're here in Queensland. The experience in Queensland via the person on my left through the membership is that costs do increase where lawyers become involved.

PROF WOODS: Yes. We're just trying to track down some figures but if you've drawn actual cases to the attention of parliamentary committee we can go back through those, draw on those.

DR JOHNS: Yes, I'm most fascinated I guess by these obstacles to return to work and the disincentives there. In my experience the meat industry is a very tough one. I sort of spent some time with some unions here who don't love their employers and I've spent some time with the employers who don't love the unions that represent their workers, which is not to say it's true of all employers or all workplaces of course, but it's a tough industry with real accidents and trust is often the least thing in evidence. So, Ross, you were saying that, what, under the Queensland scheme an employee can make a claim without reference whatsoever to the employer and that leaves you out of the loop often? Give me a sense in which this occurs.

MR WOTHERSPOON: Perhaps I can give you an example of the kind of thing. An employer recently - one that's fresh in my mind - received a claim and the medical certificate said that this person was totally incapacitated. The company

involved contacted the doctor and said, "Look, do you realise that we're able to do this, that and the other thing and occupy this person and start getting them back into the workplace." The doctor said, "No, I didn't know about that. I'll give you a certificate - give him a certificate that allows him to return to suitable duties." A week went by and the person hadn't fronted up.

The person was contacted to return to work in the knowledge that they were certified to return to work. In the meantime he'd gone to another doctor and got another certificate saying that he was totally unfit. The company then contacts WorkCover to see what can be done about this and WorkCover says, "We can't do anything. It's a medical certificate and we have to accept it. So, the employer has the opportunity, has the facility and the capability of attempting to rehabilitate yet that individual is electing to live off the system. It's not an isolated case. That's the kind of thing that happens regularly.

DR JOHNS: So what's preventing you from intervening immediately is that the worker has a right to go to another party. Are you seeking to forgo his right, I presume from him?

MR WOTHERSPOON: I guess the problem is that the employer is only involved after the event in a lot of cases. No, we're not saying that - there are cases when a person is either totally incapacitated for a period or that there's no ability to provide some alternate duties. That does happen and that's accepted and understood. What needs to occur though is we need to have a system where the medical profession is accountable and understands where they fit into the system and is able to cooperate properly to ensure that people who are in a position to return to work and begin rehabilitation in fact follow through that process.

DR JOHNS: What's your proposed model though? How do you get around the table in the first instance or what - - -

MR WOTHERSPOON: Well, I guess one of the suggestions we've mentioned is perhaps a system of certification of particular medical practitioners who may have been in that particular area trained and made aware of the possibilities in that respect. If there's some evidence though of just clear avoidance of the system then maybe there needs to be some negative incentives through the WorkCover system to perhaps suspend payments and that provision is there now, but it's difficult for WorkCover to act when they have medical certificates which state certain things and we all know that it's very easy for the employee to go to the next doctor round the corner to get what he wants.

DR JOHNS: But irrespective of the doctors' abilities in this area, is there a model which you would prefer which would have you given access to the worker, if you

like, and the worker also feels comfortable that they're not just being pressured by the employer to be put back in the room.

MR WOTHERSPOON: No, I mean, just thinking about it at this point, if there were some system where at the point of certification that there be some sort of liaison with the employer from the doctor, either in the presence of the employee if necessary, so that there can be some sort of discussion about the possibilities and then some agreement about how that particular injury may be managed, then that certainly would give the employer some level of control much greater than what it is now.

MR JOHNSTON: Commissioner Johns, back to your description of the industry, I don't think it's as tough as it used to be but it's - - -

DR JOHNS: We can always go back to the old days I guess.

MR JOHNSTON: Yes, but there certainly still is a culture in some places of the me against them and there certainly is in some sections - not in all and it may not be the majority - but there's certainly a culture that workers compensation can be simply regarded as another form of leave, which we've put in our submission. This is not limited to Queensland but the employer attempts to ring the doctor who issued the certificate and is told, "We cannot speak to you." The first time the employer knows about it is when they receive the form to fill out. They don't know anything about how the injury occurred and there's simply a form. Now, at that point of time it may be like an insurance claim that's put in for a car or house or whatever, that you fill in a claim, but at that point in time something has to be different, as the process goes forward.

There's only two things that can remedy faults in the system at the moment. They are very simple. One is training and training and training at the workplace, and the second thing is mediation and conciliation as against litigation and the adversarial system. If those two matters can be improved then you will go some distance to improving the return to work. That won't get rid of the administrative burden and the complexity of the system that have to be addressed as - - -

PROF WOODS: Can I just clarify those: training of whom and what? Training of the employers in occ health and safety?

MR JOHNSTON: Yes, we've spent, the association, around the country we've spent millions throughout the 90s in conducting studies and conducting programs and seeing if they can be implemented. It might be noise reduction, it might be ergonomics, it may be use of knives, it may be protective clothing, could be anything. We've spent millions and it is an ever continuing process to try to evolve

management of risks.

PROF WOODS: So training is - well, in the first place employers in terms of occ health and safety practices, and then employees in the use of safe process?

MR JOHNSTON: The duty is on the employee just as much as it's on the employer.

PROF WOODS: Yes. Now, what was the second one?

MR JOHNSTON: Was the - in the processing of the claim, the mediation and conciliation matters. They have to be addressed. I mean, you'll deal with it tomorrow in terms of New South Wales but it really has to be addressed in all the systems and if you're going to have a national framework then it has to be a mediation/conciliation approach in terms of the processing of the claim.

PROF WOODS: We'll check tomorrow whether the Workers Compensation Commission in New South Wales is proving a useful model or not and I hope - - -

MR JOHNSTON: It may be too early but I don't know.

PROF WOODS: Okay. That's helpful. Are any of your employers self-insurers in any of the states?

MR JOHNSTON: In Queensland they are.

PROF WOODS: It's just that at the national level you make a number of comments like, "Employers pay the premium but are given little say in the process of claims. It is the employer who is paying solely for the claim and yet the employer has less contact with the doctor and/or insurer." I mean, there's quite a lot of problem arising from third-party involvement.

MR JOHNSTON: Service providing?

PROF WOODS: Whether it's WorkCover or whether it's a private underwriter or whoever doing the claims management. So is it a general view within your association that those who are self-insurers have more control over their destiny and are getting better results?

MR JOHNSTON: Absolutely. I mean, our larger members, that's what they self-insure for, to keep control of the problem. Now, it's not going to - - -

PROF WOODS: But does it work?

MR JOHNSTON: Yes. It works - - -

DR JOHNS: But sorry, the self-insurers, do they fit into Ross's example where you don't always get access to the doctor and you don't get to talk with a worker and a third person, let's say a doctor, in the first instance?

MR WOTHERSPOON: I'm not sure that it overcomes that particular issue or that example I mentioned before. Certainly the self-insurer, and there's only very few - there's only two actually in Queensland in this industry - have a greater level of control in that, in the first instance in terms of whether the claim is to be investigated or accepted or not. However, if it's not accepted they are in the same boat as everybody else from that point on.

DR JOHNS: That's right, if it's not accepted. We hear from other employers that really they have - they're telling us - a good degree of control in the first instance. They may have an in-house doctor - you were referring to before - but sure, if there's no settlement and the employee wants to go off to another forum that's reasonable.

MR JOHNSTON: It's not limited to Queensland but the number of litigations, they might not come up weekly but they would come up every fortnight where both our divisions and the National obviously is contacted and the example is, "The insurer told us to settle. We have got to settle. We don't want to settle because it's going to end up in our premium yet we can't take it forward because the insurer says not to."

PROF WOODS: Okay, in terms of those who are self-insurers and you say there are two in Queensland but there would be presumably in New South Wales - - -

MR JOHNSTON: New South Wales.

PROF WOODS: - - - I don't have the stats in front of me but - - -

MR JOHNSTON: There's one or two in South Australia.

PROF WOODS: Okay. Are they interested, are they happy to self-insure within their current state jurisdiction or are there some who would prefer to self-insure under a common national system if the latter - we haven't been hearing from them but if there are any in the latter group, it would be useful.

MR JOHNSTON: Well, the ones we've spoken to, I think it's fair to say they haven't given a positive comment to me until they presumably see what may be involved in any national scheme.

PROF WOODS: No, they're not going to blindly sign up to something which could be to their detriment.

MR JOHNSTON: They certainly say, "Yes, we agree, we're self-insured. We know the pitfalls in the Queensland system but at least being a self-insurer we have some control over what we can deal with and it may not - if we get to some alternative situation we may not have that control." Now, that's a different issue as to whether there should be the cross-border issue resolved.

PROF WOODS: Cross-border: that was a long process of discussion and debate between all jurisdictions and yet only recently some progress seems to have been made. What was the final breakthrough that actually made progress in that respect?

MR JOHNSTON: Well, up and down the eastern seaboard, the situation that I think there was pressure being mounted that there should be cross-border issues addressed but as I said, I've got examples of an employer, a large employer in regional New South Wales, has a large processing plant in regional Western Australia. We've got a number of people who are processors in Queensland who are regional operators in South Australia. Those cross-border issues I think have yet to be resolved.

PROF WOODS: But there has been some resolution on the eastern seaboard side but that comes through a national consensus process.

MR JOHNSTON: It certainly - well, there are various committees in New South Wales under the WorkCover Authority. They were addressed and we taken to a higher level.

PROF WOODS: Okay. You have a very mobile workforce for some of your operators. Does that sort of add to the costs and difficulties of putting risk-management procedures in place?

MR JOHNSTON: I don't think it's - it's not a huge problem. It's just that one employee going from one system to another, there are different responsibilities and duties that apply. I think that was a simple point to be made there.

MR WOODS: Rehabilitation also, because again there's some dismobility, there's no point trying to provide on-site rehabilitation in the off-season of an abattoir. How does one get around these issues?

MR JOHNSTON: It's not as off-season as it used to be. As I said, right around the country, plants try to keep open as long as they can because to close it down is just uneconomic, and if one is on a rehabilitation scheme and a plant is on a

three-day-a-week situation or the plant is closed, then there's no light duties available. So the matter cannot be addressed until after a period of time, usually that the statute provides; in New South Wales six months, or whatever the other statutes say. Light duties is a problem in particular industries, and this is one, but even - - -

MR WOODS: Which is where then the cooperation of other employers will have some sort of share of taking on these workers for rehab.

MR JOHNSTON: Usually the employers are a fair distance apart in terms of regional Australia.

MR WOODS: I don't mean employers within the one industry, but there are other employers in town who might be able to provide suitable - - -

MR JOHNSTON: That may be the situation.

MR WOODS: Yes, but it's not quite the same as again the metropolitan centres.

MR JOHNSTON: No.

MR WOODS: Can I move on to some of the definitional things?

DR JOHNS: Yes.

MR WOODS: Statutory definitions, you have strong views on the need for consistency. Can I ask a simple question; by "consistency" do you actually mean consistent with a framework that therefore may be a little different in each jurisdiction, or do you mean uniform across all jurisdictions when you're talking about consistency.

MR JOHNSTON: All things being equal, we mean consistency right across the board.

MR WOODS: Several uniform, several definitions.

MR JOHNSTON: Yes.

MR WOODS: Okay. It's just that some jurisdictions will sign up to consistency but interpret consistency as being within a framework, but not uniform. So I just need to clarify that distinction. You actually mean uniform. You then draw on the fact that a number of jurisdictions define the causal connection between employment and injury in various ways, like substantial contributing factor, significant contributing factor - I don't think I've missed out a whole range. Yours is the major

and substantial cause - not a major or a contributing - but "the". Is the "the" deliberate or is that just the construction of the sentence?

MR JOHNSTON: It's just the construction of the sentence.

MR WOODS: So it could still be read as "a major and substantial cause"?

MR JOHNSTON: Yes.

DR JOHNS: After "the major", wasn't that the big debate? I think so.

MR WOTHERSPOON: There could be some problems arise with "a major cause" because "a major cause" may be major in relation to other causes, but not major in relation to the total cause, if you know what I mean. So I think from the point of view at least of some of the members in Queensland that they'd be looking for - whatever the wording is, the definition being that clearly it was - the work was the major cause.

MR WOODS: It may seem slightly pedantic, but it is very relevant. So if you could reflect on - are you appearing again - - -

MR JOHNSTON: Tomorrow, yes.

MR WOODS: - - - tomorrow, yes. Can you reflect on that overnight also, and talk to your colleagues as to whether you prefer the construction of "the major and substantial cause" or "a major and substantial cause" - just to help clarify. Journey claims would be interesting for some of your plant because say if they're on a four day, and they reside in - you know, not adjacent to the plant, but some distance away, does their coming to the plant where they stay overnight for their four days represent a journey to work and then therefore home, which may be some hundreds of kilometres away?

MR JOHNSTON: It's not that itinerant any more. There certainly may be people who travel. It's not uncommon for 20, 30, 40 kilometres in the regional areas, but I don't think it's a situation like for example, you know, the old shearing industry where you'd go for five days and then go home at the weekend.

MR WOODS: I need to catch up. My experience goes back some way. Okay, but journey claims, do you have a view generally that in any preferred national framework that they wouldn't be in, would be in; aren't really a major cost issue; you just want consistency?

MR JOHNSTON: All we can say to that is in relation to - they have given rise to

some absurd interpretations now. That's all we can say. We don't put that down as a major cost.

MR WOODS: That's a view that many are holding, that really cost-wise it's not a significant issue - it's the diversity and, as you say, sometimes absurdity that are the annoying factors, but they are not a big cost driver in this process.

MR JOHNSTON: It does have some significance in this industry where they may end up on a Friday afternoon and then drive 40 or 50 or 60 kilometres.

MR WOTHERSPOON: Sorry, commissioners, I'd perhaps venture to say that - I'm not too sure what the other state systems are like in this respect, but if the cost of the journey claim payment was reflected in the premium and experiential calculation, then I think there'd probably be some more interest in the claim, but the fact that it's not included in that aspect of the premium calculation to some extent is ignoring the issue, because it would still reflect in the industry rate ultimately.

MR WOODS: So it may not hit the individual company, but it does hit the industry collectively.

MR WOTHERSPOON: Yes.

MR WOODS: You then go on to talk about contributory negligence of the employee:

Any framework should clearly spell out the contributory negligence by the employee; should substantially reduce any claim.

I don't understand how you pursue that as a principle at the same time as supporting no fault and not supporting common law. How do you reconcile those various views?

MR JOHNSTON: This particular matter was - obviously within the association, we discussed that it was put in, with Queensland primarily involved on this particular contributory negligence matter.

MR WOODS: So what you're saying is in a system where you have common law, then contributory negligence is important, but you're not saying that any national framework as preference should have common law, and therefore contributory negligence should be a factor.

MR JOHNSTON: No.

MR WOODS: So you're just saying that where common law does exist, then contributory negligence is important.

MR JOHNSTON: That's correct.

MR WOODS: I was reading it as somehow under a national no-fault framework, you were wanting contributory negligence, but I'm not quite sure - - -

MR JOHNSTON: I think our position is pretty clear in relation to common law.

MR WOODS: That's what I thought, and when you said that:

Any framework should clearly spell out that contributory negligence;
should substantially reduce any claim -

I was not quite clear. You're a keen advocate of step-downs. Is that because you see that they provide some incentive for return to work? Sorry, that comes on page 21 of the national:

This objective means receiving a percentage of defined earnings for a period of no longer than six months and a substantially reduced percentage for a period up from six months per year -

without holding to the particular months or percentages, but I read from that that you have a view in your industry that step-downs and benefits provide some sort of incentive for return to work.

MR JOHNSTON: You mean stand-downs?

MR WOODS: No, step-down in the level of benefit.

DR JOHNS: Dropping a level.

MR WOODS: You might just reflect on that bit if you could, bottom of page 21 - - -

MR JOHNSTON: Yes.

MR WOODS: - - - tomorrow if there's anything further that you want to add. You make mention of fraudulent claims. Do you have a sort of figure or a ratio of what you would consider to be fraudulent claims that are there of significance? I mean, are you talking of sort of one in 20 or one in a hundred? How big a concern is that issue to your industry?

MR JOHNSTON: In the parliamentary inquiry, we sought to put a figure on it, and we really extended the definition of what the committee was dealing with by talking about fraudulent, exaggerated or doubtful claims. Our general survey indicated that they thought that 20 - I'm going from memory here, that they thought that 20 or 25 per cent of the claims that were put in were doubtful or exaggerated. That has to be seen in the context of the number of claims that are put in, in this industry. For example, if one goes to the statistics we gave the committee, there's one plant - this was not isolated or peculiar. There was one plant that had a claim of 900 claims over a five-year period for a workforce of 400. Now, that workforce would be changing over - - -

MR WOODS: Did they have an industrial relations problem?

MR JOHNSTON: Not now they don't, but that is not peculiar in the size of the plants we're talking about. The number of claims - and this is what we say in our industry, that there's a culture, and - - -

MR WOODS: But it isn't a culture of deliberately cutting yourself.

DR JOHNS: You've just got to watch the word "fraud" as opposed to doubtful. I mean, if there's no injury and they claim there was, then that is fraudulent I think, but if there is a doubt about whether the injury occurred or whether it was exacerbated and so on and so forth - - -

MR JOHNSTON: It does depend on definition.

DR JOHNS: Yes.

MR JOHNSTON: When we did our survey, we have a lot of members and I think we got a 25 per cent return that we did find and concentrate on doubtful and exaggerated claims. The cost of those claims over a five-year period runs into millions.

MR WOODS: You've got some interesting figures here in the Queensland submission. You talk about:

Experience of some members -

on page 4 -

is that for every dollar paid out of claims, an additional 5 or 6 dollars is paid through increased premiums -

and then you have a suggestion of being able to directly pay small claims. Presumably you'd want - and I don't know why you can't solve this through upping the excess so that you can deal with all of these small claims before it actually hits your premium in the first place, let alone hits your experiential premium in the second place, but are those quotable figures that are based on verifiable outcomes for individual members or is there some material that you can present to this inquiry that is based on actual demonstrable premium increases that would help us in this matter?

MR WOTHERSPOON: Those figures are figures that are included in the submissions that have been reported to us. Now, whether the operations concerned or the extent to which they have some verifiable information I couldn't say because I don't know at this point. They've simply reported that to us. It's a reflection of course of the actuarial assessment of the future liability which no-one understands. The formula in principle is very simple, but the actual calculation of it and the potential for manipulation of it is beyond the understanding of the ordinary operation out there. All they see is that this year they paid out \$50,000 in statutory claims, and their premium was \$300,000 and this kind of thing.

MR WOODS: But if you could go back to those particular members and say, you know, could they pull out some figures for the last couple of years, and even if they don't want their name referred to specifically, some actual case studies would be helpful to us in that respect.

DR JOHNS: It would, and sometimes we don't compare like with like. Just because your premium jumped five or six times what your claims payout was in a particular year doesn't mean to say that two are related at all, does it? There may have been something else happening in the world that year.

MR WOTHERSPOON: That's right.

MR WOODS: Insurance markets in themselves go through - - -

DR JOHNS: Yes, and it's a problem that you don't always get a premium that reflects your management. So it would be nice to have those figures, but you'd appreciate that we've sort of put little marks around those to say, "Well, okay, but is that happening year in, year out?"

MR WOODS: Or what happened to the overall industry during that period or does it in fact - - -

DR JOHNS: To give it weight, you've got to give it some context.

MR WOODS: Yes. I noted on page 5 under point 2 that you say:

It is the association's submission that no workers compensation payments be made until a complete appeal process has been exhausted.

The question arises how does the worker and their family survive in the meantime? I assume you have a solution to address that as well.

MR WOTHERSPOON: That suggestion arises out of the circumstances we're currently in where a claim can subsequently be found to be not a claim and significant amounts of money have been paid and that money remains paid. It never comes back.

MR WOODS: I understand that, but if one took this literally - and one assumes that you wrote this to be taken literally - how do you address the needs of the worker and their family during that process?

MR WOTHERSPOON: They may have to live off current resources, they may have to live off other benefits until it's established just what the entitlement is, and then whatever the entitlement is should be the ultimate payment.

MR WOODS: I think you would generate some debate on that point.

MR WOTHERSPOON: The real issue, commissioner, can I say - I mean, if there is another solution, then we wouldn't be dying in the ditch about that one. The real issue is that there is money disappearing from the system that should not be disappearing from the system.

MR WOODS: I understand that issue, that if there is a claim entered that is ultimately not accepted, then who pays is an important issue.

DR JOHNS: You say WorkCover takes no action to recover the payments because statutorily they're not supposed to or they don't bother to?

MR WOTHERSPOON: The legislation actually provides that if a claim proceeds through an appeal process and subsequently or eventually found that their claim is rejected, then there is no liability on the employee to refund what has been paid up to that point.

DR JOHNS: So it's not a matter of non-recovery, you just accept those payments are forgone and lost.

MR WOTHERSPOON: Now, as I understand it, those payments in that

circumstance would not affect that employer's experience in the calculation, but it will end up in the industry rate sooner or later.

MR WOODS: That's a payment that has been made; someone has to cover it. Okay. Anything else that you want to raise?

DR JOHNS: No. That's very good.

MR WOODS: Thank you again. This is an important industry for a number of characteristics, and we are very pleased that you put in the time today and look forward to at least convene again tomorrow, continue it on.

MR JOHNSTON: Thank you very much for the opportunity to come and address the commission, and I've taken on board the matters to be clarified.

MR WOODS: Thank you very much, and we will go back through your evidence to other inquiries. Thank you.

Can I call for the next participant, Mr Jed Millen, please. Thank you. Can you please for the record state your name and any association with any organisation that you might have that's relevant to this inquiry.

MR MILLEN: My name is Jed Millen. I'm not associated with any association. I'm just an injured worker.

MR WOODS: Very good - well, not very good that you're injured, but thank you for stating your position. We have the benefit of your submission and have read through that. It does raise a couple of questions, but do you have any particular statement that you wish to make?

MR MILLEN: One of the biggest statements is it doesn't matter which industry you work in or you come from, and like I've stated in my preludes, one of the biggest industries going around and growing is occ health and safety and WorkCover. With all the money being spent across the board, is there any real benefits coming out of it? It's one of the things I've stated a couple of times. I haven't got any answers, but there seems to be a hell of a lot of questions out there that doesn't help the worker in the workforce. The end result is we're still getting guys falling off, dying, incapacitated, losing limbs in the construction industry.

PROF WOODS: I notice that that's where you came from, you started in 82.

MR MILLEN: I've worked throughout Australia. Most of my construction industry was in the mining industry in building plants and stuff like that and jumping from state to state, working for one company but working throughout different states, it's amazing how you do an induction underground in one state and it's totally different to an induction in another state, but you're still mining the same product out of the ground, you're still using the same machinery.

PROF WOODS: Is it coal?

MR MILLEN: I've done some work in the coal industry but mainly in the copper, lead, zinc and gold.

PROF WOODS: Yes. So you're talking Mount Isa, Broken Hill.

MR MILLEN: Broken Hills, the Cobars, Kalgoorlie - places like that. The amount of money that's spent in this area within the industry is mind-boggling and not much seems to happen on the coalface, so to speak.

PROF WOODS: So from an employee's perspective, things would be much more efficient, you're saying, if there was a single occ health and safety standard that

applied across common jobs across the country.

MR MILLEN: I believe so. Building a building in Brisbane city can't be any different from building a building in Sydney city. Digging a hole in the ground in Queensland can't be too much different from digging a hole in the ground in any other state in the country. So I can't see why there would be so much difference between everyone.

PROF WOODS: We have a little trouble ourselves in understanding that outcome. I mean, there is a national commission that diligently produces guidelines and frameworks and advices. But as we've heard earlier this morning, once a thing comes back to each individual jurisdiction, they then seem to want to fine-tune it to their own local circumstance. We're curious as to whether there's a way through that. So it's actually very helpful to us to have somebody like you come forward who has got the practical experience of working in the various jurisdictions and having to have been retrained, so to speak, in occ health and safety to do the same job, to be aware of different standards and procedures.

MR MILLEN: Yes.

PROF WOODS: You make mention that you're awaiting on finalisation of a common law claim. How important to you is having access to common law as part of your total rehabilitation process?

MR MILLEN: What's important about it is not the blood money, that's what I call blood money. I've still got to live day to day. Down the track the icing on the cake is hopefully everything is going to come forward and what the solicitors are saying is going to be well and true and happen. What's important is I've been in an industry for 17 years. I've got to a level where I was leading hand, supervisors, in different companies and job sites around Australia and I've lost a hell of a lot of money in four years and all of a sudden it would be hard to think that I'd have to live like I am now for the rest of my life, whereas I had plans and goals for my family and they've been knocked on the head. One of the comments I passed earlier in the piece, within myself and my family - I wish I had some fault towards the accident because then I could kick myself and sort of say, "You dopey bugger, look what you've done," but when that's taken away - yes, it was taken away from me. I have no control on what happened. I think it's important because I'd hate to think that I'm happy to live the way I am now with what's been taken away from me.

PROF WOODS: Do you have a goal of sort of physical rehabilitation into some alternate career and will the common law outcome help that process or is that neutral to that process - I mean, presuming you're moving ahead with your life to the extent you're able anyway.

MR MILLEN: I'm finding - once I was deemed permanently, partially disabled - - -

PROF WOODS: That was back in July 2000.

MR MILLEN: Yes, trying to get employment with people within the industry but not hands-on any more - because 17 years of knowledge, whether it be occ health and safety, be training, be supervisory skills, I tried my damndest. I sent hundreds of letters away to companies all over the place saying I'd like a job and stating the reason why I've gone from doing X amount of hours, earning lots of money, to accepting a standard job, so to speak, and explaining the reason why. I got lots of encouraging letters back but, "Don't call us we'll call you" attitude. Yes, once you've got a piece of paper saying you've got a crook back, it's hard to stay within the industry.

PROF WOODS: So where to?

MR MILLEN: I've actually, through the help of my family - I've done more schooling in the last four years and now I'm a qualified swim coach and I have a part-time 25 to 30 hours a week work all year round, because I've still got to put food on the table and keep the bank manager happy.

PROF WOODS: And get up for a reason every day.

MR MILLEN: Yes. I believe I'm a pretty positive person and that was never an issue.

PROF WOODS: You don't look like you'd be content with hanging around doing nothing. So you are finding things that you can do within your limitations and the common law process isn't affecting your ability to move through in that direction?

MR MILLEN: No, it doesn't put food on the table and keep the roof over your head, does it?

PROF WOODS: No. How much longer do you think you'll have to wait for that outcome?

MR MILLEN: Don't know.

PROF WOODS: It's good, isn't it; nothing like uncertainty. Does that uncertainty gnaw away? Is uncertainty an issue for you in terms of your outlook and your lifestyle?

MR MILLEN: More so for my children because once upon a time there wasn't an issue and now you get to say no a lot. Like, you look at your classic Christmases and birthdays and stuff like that where Joe Blow across the street is going to Dreamworld and Movieworld, "Daddy and mummy can't take us because we haven't got any money."

PROF WOODS: So that's hard. I understand that, that you are living in uncertainty through this process.

MR MILLEN: Yes, you do, because I still today - it was only a couple of weeks ago I wrote away for a job and, "No, thank you. Thank you very much for applying. I hope you have success in the future." I'm always trying to look at getting back into the industry because I enjoyed it.

PROF WOODS: Yes. Gary.

DR JOHNS: Yes, I just want to take up on your page 4 your concerns which are good because they draw me to something like this:

Rehab and retraining was addressed but not followed through.

So tell us what rehab and retraining you had and whether and to what extent it wasn't followed.

MR MILLEN: Yes. My doctor who is the normal GP, good with bandaids and Disprin, he was the first one to say, "Hey, I'm not experienced in this area, I'll send you off to" - blah blah blah - "for rehab" and stuff like that. The company I was working for were happy to go down the lines of what my doctor was suggesting with rehabilitation. Because of the industry I worked in there was no such thing as light duties. It doesn't happen unless you can sit down for hours on end answering a telephone. But, yes, as I was going through the process of rehab and it started to become an issue through my own orthopaedic surgeons and then the company's orthopaedic surgeons of tit-for-tat, it all started to come out, addressing the same issue of, "This man will not be able to do this job, what he was doing prior to the accident."

So the company did initiate some rehabilitation consultants where they sit down and say, "What are you good at? What can't you do? What can you do? Let's look at retraining" - dah dah dah dah. The company I was working for was a national company so they had bits and pieces all over the countryside and within Brisbane and the issue was brought up of redeployment within the company. They threw a few carrots around the place saying, "There's a chance that you might be able to be

redeployed to another department within the company." Yes, I got to - for an hour I spoke to a man, asking me what I did, how I did my job, and he went away and that was the last I heard of him. There was no - - -

PROF WOODS: How long ago was that?

MR MILLEN: This was while I was still employed by the company in that process. Rehabilitation has not stopped because I've still got to look after my body. If I don't look after my body I tend to end up a bit of a mess. So I've got to physically look after my body the whole time. Yes, so I'm always seeing my doctor and people concerned - like the chiropractor, a conditioner, a human movements man.

PROF WOODS: Who's paying for all of that?

MR MILLEN: This person here.

PROF WOODS: So you're not on any statutory benefits - - -

MR MILLEN: No.

PROF WOODS: - - - and no medical - - -

MR MILLEN: No.

PROF WOODS: So it's all waiting, sitting on a common law claim to then somehow reimburse you.

MR MILLEN: I've never looked at it that way. The process still has to happen. I've still got to take pain-killers. I've still got to go and get my back fixed up. I've still got to do exercises. I've still got to swim to keep the body going. So I've never looked at it in that thought. It's a simple case of, if I can't afford it, it doesn't happen; when I can afford it, it happens. I pay for it.

PROF WOODS: Was the injury in Queensland?

MR MILLEN: Yes. So you are in the Queensland scheme?

PROF WOODS: Yes.

DR JOHNS: So the difficulty of settling a common law claim - usually on these things, as I understand it - is because the injury is not yet sort of settled, if you like, or at its lowest or highest point whatever, so it rolls on.

MR MILLEN: Going by my understanding and talking to the solicitors and talking to WorkCover themselves - because one of the parents that I teach their children actually works at WorkCover. It's a simple case of once the Q board has finished its - put their stamp on you to say ye, nay or indifferent, that's it. You're static - is that - - -

PROF WOODS: Yes.

MR MILLEN: I think it's the right word to use - static. This is as good as it's going to get.

PROF WOODS: Stabilised, static, yes.

MR MILLEN: Yes, because I've written it down basically on page 3, the history, where it says, "The accident happened" and I think I messed up the DEETA. At the time I think it was Department of Employment Training and Industrial Relations. Anyway, their report came in 1999. The Q board's determination was in July 2000 and three years down the track we're still - I'm paying for myself. I'm paying for something that I had no control over. One of the saving graces at the time was many years ago - it wasn't because of my work, it was more what I did on weekends and stuff like that and helping people out - I've always had income protection insurance. It was a simple case of - it was a double insurance. I got more money back than what I paid into it over all those years which was - but it did put a bit of a smile on my face.

PROF WOODS: Yes. It wasn't what you were (a) expecting or (b) hoping for. Sometimes fate can do these things.

DR JOHNS: You say here that the company-initiated doctor specialist had no idea of the work environment, and I guess one story we're told is that companies who manage their own system have their own doctors because they're more aware of the workplace. In your instance - - -

MR MILLEN: Yes. Some of the people that they sent me to, it was really good if you worked for Woolworths or if you worked for Coles and you worked in an office, so to speak. I'm not saying that's derogative in any way, it's a simple case of when you're working with cranes - the main cranes I was working with and the crane I worked with on the day of the accident was a 330-tonne crane and like when you're looking at chains that are a tonne and a half each and you're looking at shackles that are - 50 to 100-tonne shackles that weigh 50 and 80 kilos that you're expected to toss around the place and all these sort of things, working - the worse one was 36 hours straight doing bridge beams. Like, you start the job and you don't go away until it

finishes. At the height of the time the accident happened we were doing - we had the Gold Coast to Brisbane motorway going in; the bus-way was going in from Brisbane down to Eight Miles Plains at that stage, so we were putting a hell of a lot of bridges in at the time.

When you - I was trying to think of one that was on Ipswich Road and we had to shut Ipswich Road on a Saturday night. I think we started at something like 8 o'clock on Saturday night and we finished that, I think it was 12 o'clock the next day, Sunday, because they've got the restraints of closing major roads and all that sort of thing. But, yes, it wasn't unlike to be in charge, be in control for 25, 30 hours straight of heavy machinery and doing bridge beams and unloading boats and then getting phone calls in the middle of the night to say that a 20-tonne forklift has rolled over at the rail yards, to go and roll it back over. The same as heavy transport falling over, you'd be getting calls in the middle of the night to go and pick something up.

One of the issues that I brought in is access and coverage. Because we were employed to a company that hired our services and then we might be actually working for the subcontractor on the site, many a time we had issues within ourselves and with the people we were hired to - who was to look after us. It was a major issue with coverage on who looked after us.

PROF WOODS: Who provided the safe work environment.

MR MILLEN: One of the issues in my case is there was four fall arrest, what we call sailor blocks, for four boilermakers. There was nothing for the riggers working on the site. But at the actual time of the accident there wasn't a fall prevalent - there wasn't a fall to be had at the exact time of my accident and it's an issue with putting bridges up. It's probably an issue with getting contractors in on building sites; the scaffolders that put up scaffold. There's lots of areas with the fall arrest area, who's to look after - and as a rigger for that many years there's a lot of rule of thumb work. If a knot is to be tied and it's to look after your life, you tie it. You don't get anyone else to tie it, you tie it. If you're going to put in a fall arrest system that is going to support you and stop you from falling, the mechanism of the fall arrest can be to the contractor, the subcontractor or employer, but it's still me that hooks onto it. That is a big issue within that part of the industry, the rigging and the guys that work at heights and stuff like that. Yes, that is a big issue.

DR JOHNS: This is not just who's responsible in terms of making a claim against them but who's responsible for your actual safety - it might be one and the same, I suppose.

MR MILLEN: Yes, it is one and the same because, like, on my particular job that I had my accident required - there's a subcontractor and then there's the principal

contractor and then I think there was another group of people on top of them in the sense that there's Queensland Rail. Then it comes down to the people who are actually building the bridges, then it comes down to the people who were hired to. I mean, yes, you look at your worker OH and S regulations and stuff like that; it is a grey area. You know, it would be all right if you were employed by one person.

PROF WOODS: A company for that one job, yes.

MR MILLEN: But where is the buck passed?

PROF WOODS: You raised that question at the bottom of your third-last page, saying who is responsible; the employer, the principal contractor, the subcontractor, and my annotation there is well, where do you - I mean, you're a hands-on, practical experience with the situation - who is best placed to ensure that safe working conditions are provided for you?

MR MILLEN: We go onto a work site, anyone's work site, it must be their responsibility.

PROF WOODS: But if you're - say you're a building company who are putting up a steel fabrication but you then subcontract to a crane hire company to lift the beams, is it the crane hire company's responsibility to ensure that its employees are provided with safe equipment or is it the principal builder who's responsible?

MR MILLEN: I believe it should be the employer.

PROF WOODS: But who is the employer?

MR MILLEN: Well, because we're hired out, that is an interesting question.

PROF WOODS: I know. As I say, you've got no - - -

MR MILLEN: I think my employer - - -

PROF WOODS: Who do you most trust to look after your safety apart from you tying your knot, which I totally understand?

MR MILLEN: I believe if I'm employed by a person to do a job and that job puts me at risk, my employer should guarantee my safety at all times when working for him.

PROF WOODS: True, I understand that, but in that situation, particularly if it gets further complicated so that you belong to a labour hire company of specialist crane

operators but the crane you're assigned to operate on belongs to another party who are then performing work for a builder, it's just a little difficult to work your way through.

MR MILLEN: It is difficult because in the area of general crane hire we have rogue operators, there's no doubt about that, but the guys that look after the upper area, as in the bigger cranes, not the little cranes running around all over the place but the bigger cranes, no mug can go in and operate and work with them. There's no doubts about that and it's the same as we look around the tower cranes. You can't get a guy who does nuts and bolts and then expect him to - he still has the same classification as a rigger dogman, but you can't expect him to look after and run a tower crane, a Favco 3000-tonne crane, all the different varieties. I noticed many years ago there used to be in the rigging industry, we used to have a ticket but you could specialise in special areas, whereas now we've sort of broken it down into three areas of a basic rigger, an intermediate rigger and an advanced rigger and a lot of people in the industry today working with the cranes would probably still have their original rigger's ticket, because that's basically the only area that they've worked in all their lives.

If I was put into a position working with a machine that I didn't think was competent or capable of doing the job I wouldn't do it and I've actually been with a crane on a job site where I've said to the boss, "We're not doing the job," and then I get my behind kicked but at the same time I know I'm going to drive away from that site knowing that nothing is going to happen because there are times we're asked to stretch the rules, so to speak, to accommodate employers - people that we're hired to.

DR JOHNS: Yes, that's very good. I don't think I have any questions.

PROF WOODS: Are there other matters that you want to draw to our attention? I think we've sort of been through most of it.

MR MILLEN: Without rereading it right at this particular moment, the paper audit, the paper trail that happens in OH and S and workers comp, it's astronomical and getting bigger and bigger and bigger and I think I said this at the beginning. It's not making us any safer out in the field. We still have accidents. Things still happen. Sometimes, yes, we're at fault as being a worker and there's other times that the employer is not putting enough emphasis on the system. It's a cut-throat - I believe it's the worker who is the one that's losing out in the whole system and we're the ones that were supposed to be protected.

PROF WOODS: What do you particularly want to come out of this inquiry?

MR MILLEN: I'd like to think that a worker, because we're becoming more and

more itinerant in this industry, in the construction industry; as one job finishes here in Brisbane the next job that your company might say, might be in Melbourne, Sydney, wherever, it would be nice to think that you could be looked after and you knew you were going to - if you work in one area for an extended period of time and you start to know what's happening, whether it be what happens with your work conditions, what happens if you get injured, what happens with your WorkCover - OH and S - it would be nice to think you could go anywhere in the countryside and know that, "Hey, I'm entitled to this," or, "This is what's supposed to happen. My boss should be doing this. Where's my day's training to help me out with what my boss wants me to do?" That's one of the things I've put in there.

I think in OH and S training should be put in there. If we're generating such an industry and it's not a case of training the trainers, it's a case of training the workers as well because I did my occupational health and safety officer's ticket two years ago I think it is now - two and a half years ago - and in that two and a half years - my 1997 regs is 100 pages long, now it's 292 pages long in a space of two and a half years and unfortunately you still read in the paper, you still get your journals from the unions that you are members of, saying, "This guy's died. This guy fell here. This guy lost an arm. This guy lost a leg. This happened, that happened," and it sort of - in two and a half years the regs have grown with amendments, 190 pages. You know, like - - -

PROF WOODS: It's becoming inaccessible to your average worker?

MR MILLEN: He wouldn't know what one looks like.

PROF WOODS: If he's given a - - -

MR MILLEN: I think it's more of a case of being aware that it's there and to be seen. You know, we see who's our guys on sites and one of the things they told us when I got my safety officer's ticket, "Never go by this, always go by the black and white." So you can't give interpretations. Nine times out of 10 - no, not nine times out of 10 - six times out of 10 they're trivial things to annoy the hell out of the safety officer, like, "Why haven't we got six water fountains here instead of five water fountains?" - things like that. But at the same time if guys knew - if the workers out there knew their responsibilities and their bosses' responsibilities, we probably wouldn't have so many accidents in the work site because the guy would be able to stand back and say, "I shouldn't touch that. I shouldn't do that. There should be a hand rail there. There should be protection of some form." If the workers across the board knew about this maybe it would be a safer place to work in.

PROF WOODS: We do hear stories in some jurisdictions, say, of them producing a single page illustrated laminated sheet that can go on the wall that says, you know,

"Here are the six key steps or 10 key steps," whereas another jurisdiction will have a 50-page manual that will be somewhere in an office or the canteen or the staff amenities room or somewhere. I mean, presumably there are some best practice models of how to ensure that the worker is sufficiently educated to know what are acceptable limits and what are, say, procedures.

MR MILLEN: I think over the 17 years I've been in the industry, I think I've seen the same video now about a drunken slob on a building site for the general induction for the construction industry and I think I've seen the same video in three states, so it's not as though it's prevalent to one state, it's across a few states and yes, it's the general induction one and then you have the site-specific induction and basically that is a guy coming onto site; "Here's your toilets. There's the smoko hut," so to speak, "Here's the first aid. Bye, see you." That's it. Like, working with the bigger cranes we need a little bit more information than that - like, where's underground cables? Where's this, where's that? Sometimes we - I've been caught out personally where a supervisor hasn't done his job or the information hasn't been passed on to the supervisor.

We nearly set up a 3000-tonne crane above gas pipelines, and not little gas pipelines, big gas pipelines, without asking a stupid question: has everyone checked underneath the ground? And they've gone, "Hang on, we'll have a look at that." If we're spending so much money in this industry, within the industry, shouldn't that money be also spent on training the people that work within the industry? It's not a case of the HOSO officers and the state government inspectors and everything. How about the person that's supposed to try and look after - the worker?

PROF WOODS: All right. Does that sort of wrap it up from your end or is there a couple of other - - -

MR MILLEN: Yes, I've sort of covered everything. I've read a lot of the submissions on the site.

PROF WOODS: Excellent.

MR MILLEN: And it's amazing how, regardless of what side of the fence you're on, as in employer/employee, a lot of them come down the same track of, "We've had a gutful of what goes on around this country," because there are so many national companies now. There's not too many state companies, and yes, it's just the comment I passed, was reading all these submissions - only expands and reiterates some of the things I've studied in my submission. You get these hob-knobs sitting in an office coming up with plans to service industry; never get their hands dirty, never have to bend their backs and suffer. It's one way to depress some people. You look at all the different industries - professions is the right word to use, like you've had

your physiotherapists have come in and this group of people have come in. Yes, it's very interesting reading and I hope something good comes out of it.

PROF WOODS: Well, thank you. We look forward to you continuing to follow the course of this inquiry. We'll be putting out a draft report in the end of September so tune in again then at least if not beforehand. If you could then find the time to read through as much of the report as is of interest to you and come back to us with your reactions we'd be very grateful.

MR MILLEN: Thank you very much.

PROF WOODS: Thank you. We're having a temporary adjournment.

PROF WOODS: Thank you. We will resume the hearing. The next participant, Workers Compensation Support Network. Welcome. Could you please give your name and the organisation that you are representing.

MS DEKKER: My name is Muriel Dekker. The organisation, Workers Compensation Support Network, also operate an advocacy title as well.

PROF WOODS: Thank you very much. Could you clarify for me who constitutes the Workers Compensation Support Network?

MS DEKKER: Mainly it's through networking with people. There's a group in Ipswich. There's another group in Western Australia. There's a man fighting his case from Germany who was injured in Queensland under Comcare. And then whoever I may speak to - rehabilitation, hospitals - wherever I meet people. A letter to the editor brought forth 40 replies some years prior to this.

PROF WOODS: The group in Western Australia - I've just been holding hearings there - which group is that?

MS DEKKER: IPASA - Injured Persons Action and Support Association.

PROF WOODS: Yes, I'm familiar with them. So you're sort of networked with them?

MS DEKKER: To some degree, yes.

PROF WOODS: To some degree, okay. But the network doesn't have sort of paid membership or - - -

MS DEKKER: No.

PROF WOODS: It's a collection of people with common interests.

MS DEKKER: Well, we have a common interest but we're not incorporated and I do not accept any money whatsoever.

PROF WOODS: Do you hold a position in this or do you just generally speak on behalf of?

MS DEKKER: I'm a founder and I generally speak on behalf of the complaints that I've heard from the injured people and their families.

PROF WOODS: Thank you very much. You've presented us with a submission

and we're grateful for that. There's some 17 pages and then you've attached various other material for our information which we have wandered through. Do you have an introductory statement that draws some of the key points of this submission?

MS DEKKER: Well, I've roughly made one here today because I wasn't quite sure of the process, to tell you the truth. But the three main points would be that I feel the procedures and laws are not being applied and this is disadvantaging genuine injured people; that the medical tribunals are not independent and should be disbanded, and that injured workers are suiciding, losing their homes and families are busting up and there's a huge injustice occurring.

PROF WOODS: Have you taken this position on through your own experience in the system or because you were a service provider to injured workers? I mean, what draws you to this area?

MS DEKKER: First of all, let me thank you for having us to speak here today. For my own case and also from discussions and letters from others I became aware of the anomalies in workers compensation.

PROF WOODS: In Queensland in particular?

MS DEKKER: In Queensland, and I investigated over two decades or so to try to find out what is going wrong in the system that so many people are making complaints about. I would only be seeing the tip of the iceberg.

PROF WOODS: Okay, thank you. You draw on a number of cases that focus on particular issues. One of the things that you draw in particular is the common law access - there should be no limits to that. What do you see as being the merits of common law over and above the statutory benefits scheme?

MS DEKKER: That legal protection, built up over centuries of law, are eroded and denied us outside of the court so that we're not in practice getting proper justice. There's supposed to be natural justice on the tribunals and so on but in practice a lot of us are finding it's not there.

PROF WOODS: When you say "us", is this from personal experience yourself or - - -

MS DEKKER: Well, the injured persons. Pardon? I have a person experience of it and I speak with many other people who have similar problems.

PROF WOODS: So you have been through the Queensland system yourself?

MS DEKKER: Yes.

PROF WOODS: Through common law?

MS DEKKER: No, I didn't go through common law.

PROF WOODS: Statutory law.

MS DEKKER: I attempted this but there were some problems in other areas too, so I didn't get into court.

PROF WOODS: When you see people who have been through common law and they finally come out with some form of lump sum, what in your experience then is the consequence of that? I mean, does this allow them to start a new life and to sort of have a solid financial footing? What from your vast experience in this area do you find to be the sort of outcome?

MS DEKKER: I don't think it's really terribly vast but maybe 300 people have contacted me over the years. Most of them are not getting their compensation so a lot have problems in this area, but those that I know were compensated, they were able to buy a small cheap unit in one case, and another person did something similar and settled in with a carer to help care for his - because he had this back injury. So of those that have been compensated - but I have to say this was earlier when compensation was more reasonable - it has been gradually eroded now to where many people only get \$2000 for a lifetime injury or so they say.

PROF WOODS: Does that mean the percentage of lifetime injury is fairly small?

MS DEKKER: I don't know exactly how - what I'm saying is that I'm understanding a lot of them end up with 2000 because - even though they have a lifetime injury. But workers comp would say that they had paid them so many months compensation, therefore there's only \$2000 left to pay them. But that would only have been their basic wage. They may not have even got their full wage. Then at the end they get the \$2000. It doesn't seem quite right to me.

PROF WOODS: You mentioned about medical tribunals not being independent. What's the solution? Presumably these are honest, hardworking people on these tribunals who are trying to turn up every day and professionally do their work. Why isn't it working and what is the solution?

MS DEKKER: First of all I have to say that it appears that not all the doctors are behaving properly. I'm not making a sweeping, generalised statement. One has been recently debarred, I understand, through a psychiatrist getting the evidence and to

show that he's saying people are not injured when they are. That would be one who workers comp sends them to on The Terrace, not necessarily the medical board. So having said that, the other problems are, for example, they're not independent of WorkCover. WorkCover pays them. I'll say no more about that.

But the second part which is very important is that WorkCover obtains the evidence they put before them. Therefore if WorkCover doesn't do its job properly, doesn't follow the procedures to tell you that the employer has contradicted you and said, "No, they didn't do that work," or, "They didn't report the injury," or, "They didn't complain about being affected at work" - if WorkCover doesn't follow that procedure, which is a statutory procedure, then quite clearly they're going to put the wrong evidence before the medical tribunal and the injured worker doesn't know they haven't had the natural justice.

The good law is there to give them the natural justice. It's the failure to apply the laws which is more serious than not having the law there at all. I understand Family Law has got nothing to do with this hearing today. People are starting to complain similarly that some of the laws are not applied that are there.

PROF WOODS: That is a little outside of our jurisdiction.

MS DEKKER: So it's a matter of not having the facts of the case there, so we can't blame the medical tribunal if the facts are not there. We can blame them if they don't apply natural justice. As quasi judicial tribunals they should apply natural justice and we can blame them when they misrepresent injuries which we have records they have misrepresented injuries and said they're not injured or they're merely mental or something along these lines.

PROF WOODS: I notice you draw on the worker Mrs Gracie Grace in support of that particular issue. Do you generally find that your views and those of the union movement are more closely aligned than say your views and those of the employer associations?

MS DEKKER: Well, I think I'd have to agree with that. I've had a few employers phone me - I didn't expect it - unexpectedly, and they have said that whenever a worker is injured they ask, "What caused it? What can we do to prevent it in the future?" But, you know, this is a very good employer so in that way I've had that sort of contact with an employer.

PROF WOODS: Has your putting in this submission generated any further interest in the network or it hasn't yet sort of spread around?

MS DEKKER: No, I don't think I've sent this to Western Australia yet. I've sent

Western Australia some material, like from a medical journal and so on, and from Ulm University. Ulm University apparently has a method now of being able to tell how badly the person is injured and what pain they're in. I would like to get this in the system, if I've read it correctly, and I have to have more discussions with the doctor because I have no expertise in this area. This would stop any doctors or medical tribunals saying a person is not injured to the degree they are. It would also stop any unjust injured workers who are saying, "I'm more injured than I am." So if it's as good as it appears, it would be wonderful to get that in the system.

DR JOHNS: I guess I can understand your desire that everyone be given access to the courts and to what you call natural justice which I think as I understand it right really means the right to be heard. But often after people have their case heard, someone makes a decision and it doesn't always give them the answer they want. I can't see why medicos sitting on a board would not understand their duties properly. I mean, do you understand particular cases where you find there's a bias by medicos in decisions against the worker?

MS DEKKER: Yes.

DR JOHNS: What was the nature of the bias?

MS DEKKER: Well, one was a workplace injury and the person was labelled "personality defective". Now that would even be ultra vires because a medical tribunal would have no power under the terms of the act to make any decision on character or personality. So not only are they beyond the law, because you can't appeal to courts, but they even went beyond the amount of power they were given and were ultra vires to that extent.

DR JOHNS: Not to be too particular, when did this occur? Was this a recent - - -

MS DEKKER: That was quite a number of years back.

DR JOHNS: Yes, the language sounds familiar but it's some years ago. I think doctors used to use it when, "We don't really know what's happening here," so they used to give it a label. It was an offensive label, it was not a good label, but it was really an admission by doctors that they just didn't know why a particular person was acting as they were and they would attach a label. It was a most unfortunate label.

MS DEKKER: But you see, they should know the facts of what the work was. The facts, having reported things at work should have been known. All this was missing. This is my point with the tribunals. That's one of the avenues whereby the injustices are occurring.

DR JOHNS: Do you have any recent cases that you're particularly worried about?

MS DEKKER: Well, the gentleman in Germany, but that's a federal issue, isn't it?

PROF WOODS: That's all right. That's within our jurisdiction.

MS DEKKER: From what I can understand, speaking to him from Germany - it's a bit difficult - is that he feels that compensation is far too low when he feels he will have lifetime ongoing effects, affecting both his work and health. I don't know what the percentage was because I didn't want to go right into that with him but that's his main problem from what I can understand. He expects to be able to go to the English court which we couldn't do from Australia and maybe set a precedent there.

DR JOHNS: Muriel, do you have any role of acting as a friend or attending tribunals and so on with injured workers?

MS DEKKER: I have attended it a couple of times with a woman from Sydney who asked me to attend with her. I understand she was compensated but I haven't got in contact with her since.

DR JOHNS: That was a tribunal in Brisbane?

MS DEKKER: A medical tribunal. It was here in Brisbane. She was very upset that I didn't go in with her to the doctors because she said they were really unnecessarily rough and hurt her and I have heard this before this. It sounds terrible against the good doctors but I'm saying what - the complaints I'm getting.

DR JOHNS: So you couldn't attend her medical examination but you could attend the tribunal?

MS DEKKER: Yes, I went with her. From the tribunal she was given permission to go - somehow or other, how it works out - to the magistrate and I then went with her there. She went back to Sydney and sent me a card but didn't say whether it had been settled or not because she had to wait to see what came out of it.

DR JOHNS: And you've had some other instances where you attend with people to a court or tribunal? They're always the most fascinating things I think.

MS DEKKER: Yes. Somebody wanted me to attend. She was coming down from Townsville. It seems to be people that are coming in that feel they need the support. But the tribunal did not want me to be there. She also had a solicitor which I'd told her to try and get and which she did get. So I said, "I'm quite happy, because you do have somebody, if that's what you want." So that's how that turned out. But I'm

willing to go with anybody who asks me.

DR JOHNS: I don't have any more questions, thanks.

PROF WOODS: Are there other matters that you particularly want to draw to our attention or we have the benefit of your fairly detailed submission.

MS DEKKER: Yes. I won't go through things that are in there. I've mentioned the effects on them, the losses to the injured workers, and I've mentioned that I'm very concerned that procedures and laws are not being applied by WorkCover. The other thing I'd like to say that's sort of around that area is if I can just mention from Africa a very brief statement of Judge Albie Sachs, that over there they're having people damaged when there's been no charge, no indictable offence and no evidence proving guilt. I want to extrapolate that and take it over to the Medical Journal of Australia 1969 but it's still current, what I'm talking about, nevertheless, that barrister Paul Gerber says that:

The medical tribunals are like a Kafka-like nightmare without prosecutor or court. The injured worker has to try to prove himself innocent of a crime he may never have committed without the employer there -

and so on. It sounds good to have the medical tribunal but there's some serious anomalies that really need to be addressed.

PROF WOODS: Thank you very much. Thank you for making the time available and for the detailed presentation and the submission that you've made.

MS DEKKER: Thank you for your time.

PROF WOODS: We will adjourn until HIA turn up which is currently estimated at 1.30.

PROF WOODS: We will resume the hearings and invite the Housing Industry Association to make a presentation. Gentlemen, could you please state your names, the organisation you are representing and the capacity in which you are representing it, for the record.

MR FUTER: John Futer from the Housing Industry Association and I'm the national executive director for occupational health and safety.

MR SIMPSON: I'm Glenn Simpson and I'm the national executive director for industrial relations and legal services from the Housing Industry Association as well.

PROF WOODS: Thank you very much. Do you have an opening statement you wish to make to the inquiry?

MR FUTER: Probably just a very, very short summary, Prof Woods, in relation just to the points that we've put. First of all, we'd just like to thank the commission for the opportunity to speak today on these issues. We've indeed gone through the issues paper in detail and come back to this commission with a number of points and probably just to highlight just a few things, we've submitted that we believe that workers compensation and occupational health and safety should not be managed together. We believe they should be managed as two distinct systems. We believe that workers compensation deals with different issues than OH and S. We believe workers compensation deals mainly with things like injury management and occupational health and safety deals with a safe working environment.

We've indicated that we do support a national uniformity in OH and S standards. We've indicated through our paper that we need to be careful how that should be done. We support the adoption of mirror legislation by the states that would adopt national OH and S codes, if you will, codes that have basically been developed by the National Occupational Health and Safety Commission. We need to be careful of putting in more legislation over time to the industry. We believe at the moment it is already highly regulated. We believe it is already difficult for our members to comply in some circumstances and we therefore recommend caution in relation to the issue of national consistency.

The major part of our report touches on the issue of workers compensation, particularly in relation to common law definitions of employee and employer, and throughout the paper you may have noted that we have developed a standard which we think would be relevant for the housing industry and for other industries we've made reference to, and of course the standard for determining who is an employee or employer should basically reflect on new taxation rules in relation to personal services income and we believe that would be the appropriate test.

We have made other submissions in relation to the fact that we support alternative dispute resolution. We believe that workers compensation in particular has been highly litigious; it has been very expensive to run. Then we've also made comment on the issues of premium, alternatives to common law access that we can certainly address in question time. Thank you, gentlemen.

MR SIMPSON: Gentlemen, if I could just briefly dwell on the main reason I'm here. My own baby is the definition of employer and employee. This is a problem for our members of quite substantial proportions throughout Australia, knowing whether a particular person needs to be covered by policy. It's a major factor in our view of underpayment of workers compensation premiums. Builders and contractors in the private sector are faced with this question of whether somebody needs to have a policy. At the moment state legislation varies from state to state and none of it is objective apart from the Northern Territory. What we say is that you need an objective, verifiable, knowable test so that competitive pressures of saying, "Will I or won't I take a policy out in respect of this person?" can be put aside, so that inspectors when they call can be quite clear, quite certain whether somebody needs to be covered by a policy or not, and we believe that the best test is that in the Commonwealth Income Tax Assessment Act 1997 which takes a step away from the traditional question of who is an employee, who is a contractor?

It talks about personal services business. It has the virtue of being knowable. It isn't a question of whether you are or are not a personal services business. It's a question of whether you pay tax on that basis and that's an objective fact which can be ascertained at any given time, so that we don't have to wait for two years for a judge to decide whether somebody was or was not a person who would be covered by workers compensation. It's something you can know on the spot. It's a presently existing fact. We don't say that this is necessarily the cleanest test but it's the best we come up with and it seems to work in a number of areas. Queensland has now moved to follow up, accept that definition in a slightly different way for its Workers Compensation Act.

Western Australia was looking at it and had draft legislation. Ultimately it decided not to go down that track but we would believe that there are substantial advantages for the workers compensation system to have a single national test. We would go further then to say that there would be substantial economic advantages for Australia as a whole if it was the same test as in the Income Tax Assessment Act, so that people can know what their status is for a number of different purposes and structure their businesses accordingly. That's all I wanted to say, thank you.

PROF WOODS: Thank you. On that you said substantial economic benefit to Australia. Is there any way you can quantify that in whole or in part that would be useful to the commission?

MR SIMPSON: I think it's essentially unquantifiable but it goes beyond mere anecdotal. I've already said that the amount of workers compensation premiums that are unpaid or underpaid because of the doubts as to status, there's certainly something in that. The additional administrative costs both for WorkCover authorities and for businesses themselves in deciding whether or not they do or do not have to cover or be covered by a policy of workers compensation would not be small, but as to how you would put numbers on that, I don't know.

PROF WOODS: That's part of the challenge for the commission, statements like that, whereas we can understand the general intent, unless we can pin them down a little harder we have trouble in balancing them against competing claims and getting some quantification. So if you could exercise your mind to how one could go about identifying even some components of that, even in some sectors of industry, that would be helpful to us.

MR SIMPSON: We'll take that away.

MR FUTER: Yes, and a starting point for that and maybe for ourselves or even the commission could be these elements in each of the jurisdictions that actually deal with these particular inquiries, if you will, or infringements.

PROF WOODS: Northern Territories definitions, you mentioned them in your list.

MR SIMPSON: Yes, the Northern Territory definition was originally - - -

PROF WOODS: Whether you have an ABN or not.

MR SIMPSON: It was originally whether you were a payee to go or a prescribed payment system taxpayer, which was fairly clear. Now they've moved to the Australian business number we don't necessarily think that's defensible. It might be for a place like the Northern Territory. I personally doubt whether it would be satisfactory for Australia as a whole. The Australian business numbers are not - and the Taxation Office would be the first to say this. They are not a definition or an indicia of who is an employee and who is a contractor. There are many, many people who are employees yet have Australian business numbers and if you were to use that as a test there would be many people who would not be covered by workers compensation, who on any view ought to be covered.

PROF WOODS: Okay. So what you're saying is, it has a characteristic which is the characteristic you referred to in your personal services test, that it is knowable.

MR SIMPSON: Indeed.

PROF WOODS: And that was the primary test that you were using: it's an established fact. But my illustration of that is to demonstrate that established facts might be based on loose foundations. Now, my concern is that if the ABN, which is a neatly established fact at point of employment, is based on a loose foundation should we not be concerned to test whether your alternate definition, using the recognition as personal service business, also may have some looseness in its footings.

MR SIMPSON: We believe not. The Australian business number, it's in the interests of the Taxation Office to hand out as many Australian business numbers as they can because it maximises their tax. Australian business numbers are handed out to people who are both employees and contractors. By contrast, the personal services income test is something that it's very much in the interests of the Taxation Office not to multiply unnecessarily because it reduces the income from - reduces tax revenue and it can only apply to people who are not common law employees. So the test under the personal services business legislation is a way of singling out contractors who are clearly running independent businesses.

By definition it does not apply to employees so there can be no employee running a personal services business and it's our policy position - and I think the policy position of most other organisations - that employees ought certainly to be covered for workers compensation purposes. So the advantage of this test over the Australian business number test is twofold, in our view: firstly, it does not and cannot include employees and secondly, it will be administered rigorously by the Taxation Office because any slackening on their part, any allowing people through the gate who shouldn't get through the gate, will also mean that they're losing tax revenue. So it's a rigorous - - -

PROF WOODS: No, that's helpful because in the process you've elaborated on some of the inherent criteria of choosing particular definitions. Thank you for that. Now, presumably when you were talking of that definition you were talking in relation only to workers compensation because, as you say, with occ and safety, safe work environments are for all persons. So you're making a very clear distinction.

MR SIMPSON: I ought to mention to the commission also that we're articulating this definition, not only for workers compensation but also for payroll tax purposes and as a way of providing a safe haven for contractors in relation to possible liability under the industrial relations legislation of every state. So in our view it's a test that can be pretty well all purpose and it's not just for workers compensation purposes that we're advancing it as a model.

MR FUTER: Yes. As an organisation we get a lot of calls from members, usually

smaller members in the industry, that are questioning their status and whether it's for tax purposes, payroll tax, workers compensation, you've got to be careful how you answer the question because the tests are very different and it does certainly lead to some, I suppose, uncertainty in the industry.

PROF WOODS: Now, that raises an interesting question because we're charged with looking at models of national frameworks. In so doing we are concerned about some implementation paths, as to how one might progress toward them, and it seems there can be two broad approaches. One is that within a jurisdiction you harmonise your definitions so that workers comp, payroll tax, even IR, have some consistent basis. I think there are thresholds in things like payroll tax. But putting that issue aside - so you could go that way, but in so doing each jurisdiction may coalesce around the different mode of definition, or alternatively you can - as you also argue here at the same time - try and, in your words, "develop a uniform template workers compensation legislation to ensure uniformity."

So that would mean, in these definitional issues, having a common definition within the workers comp area across jurisdictions. Now, if you do that you're going to destabilise its relationship with payroll tax and other employee definition issues in the various jurisdictions. I mean, unless everyone in all areas, all at once all agree to one definition which - so which path do we take?

MR SIMPSON: Can I suggest that this is a middle path? We're not seeking to define by inclusion. We're seeking to define by exclusion. But whatever the definition might be for people who are required to have policy for workers compensation or who attract payroll tax - - -

PROF WOODS: You don't include these people?

MR SIMPSON: You could say these people are immunised against it. But I should observe that only - - -

PROF WOODS: So you're reducing the subset.

MR SIMPSON: Yes. Western Australia, Queensland and the Northern Territory don't seek to test contactors and payroll tax legislation. All the other states and territories do, but they differ.

PROF WOODS: Yes.

MR SIMPSON: This would be one - we had this argument with the West Australian government and they saw some merit in the proposition that we could leave their existing definitions alone but put in another subsection which simply says

that if you fall into this class of persons who are a personal services business then you get a get-out-of-jail-free card.

DR JOHNS: How have you gone in terms of - have you argued this right around the states?

MR SIMPSON: We've lobbied all of the state government. We lobbied the Commonwealth commission. We lobbied the Commonwealth. The Commonwealth are thinking about it. Western Australia nearly did it, but at the end of the day they backed off. The minister backed away.

PROF WOODS: For reasons of?

MR SIMPSON: Reasons best known to himself unfortunately. He didn't enlighten us as to his reasons. But we did have meetings. I wasn't present at the meetings. HIA staff and Western Australia did have meetings and it was agreed this would be done, but the minister later chose to pursue a different course.

DR JOHNS: What other objections have you received on the way around?

MR SIMPSON: Queensland of course have adopted it in a way, in ways that probably went further than we would have even contemplated ourselves. South Australia is currently reviewing its Industrial Relations Act. That is to say, there was a report which was handed to the government in January and we've lobbied the minister and the government there about this in relation to industrial relations but suggested it should flow on, and the minister is considering it. We've also lobbied the New South Wales and Victorian government, I'm sorry to say, to very little effect.

PROF WOODS: Part of the process of developing that definition is to say who are people for whom the business does not have a responsibility? Therefore in reverse, who are those people working for the business for whom it does have a responsibility, is who you are trying to capture. Is there some semantic or perhaps even pedantic issue that I'm missing when you state on several occasions that workers comp therefore should not be a form of business insurance or insurance undertaken by the business? I don't understand your point.

MR SIMPSON: I think it's because businesses take risks because by definition a business in its commercial activities. It's responsible for arranging its own insurance against public liability. We see this as simply another area where a business can choose or ought to make its own decision about how it insures. By contrast there are people who are employees in the vast bulk but perhaps other people as well for whom the business does have an obligation, for whom they have to pay

superannuation, a guarantee for whom they ought to provide insurance as a worker, and we don't have any quarrel with that.

It's simply that where someone is identified as carrying on an independent business and behaving in a businesslike way and taking businesslike risks, this is simply another risk business ought to be managing and it ought not to be something that the community would be obliging the business to manage in a particular way.

PROF WOODS: Too hard for me, I'm not sure of the core to your argument - anyway. You talk about supporting uniform template legislation to ensure uniformity of all core aspects of workers comp. Now, you use "uniform" in some cases and consistency in a couple of others. But you do mean a single national standard or procedure or definition or code, depending on what it is we're talking about. We're not talking about consistency in - some jurisdictions think of consistency as being, "Well, let's have a framework but it's all right within that to differ a bit here and there." You're talking about a single uniform - - -

MR FUTER: Well, that would be the most helpful way that we could go.

PROF WOODS: Yes, okay, that's all right. It's just that the words get interpreted in different places slightly differently.

MR FUTER: I suppose it's like a lot of things. That would be the number one choice but obviously if we had to look at other tests, similar tests for something that could, I suppose, relate to a national model of interpretation as a second choice then I guess that's the path we'd have to go down.

PROF WOODS: All right. That raises then the next question when we're looking at implementation paths. One option is to say, "Here's a national scheme." You know - bang, it's uniform in all respects and applies to all people who are eligible. Another alternative is to say, "What are the core elements and in what prioritisation should they be addressed and turned into uniform elements so that you evolve some form of national scheme?" In that case what would you start with? Presumably you'd start with defining your employer and employee by exclusion, as you've done. I assume that's number 1. Where would you head next? Would it be into dispute resolution, would it be into whether you do or don't have common law? Would it be - I mean, where would you head as your next priorities?

MR FUTER: Certainly you'd start with definitions. So that's the first one. You've excluded a certain class. You've included a certain class of people from there. From that point on, you'd probably look at issues of dispute resolution perhaps as a second choice. If we looked at it in terms of say a critical path if you will - - -

PROF WOODS: That was precisely what I was thinking, and can I also say before you sort of answer further that where you head today if you want to reflect further and with the benefit of time come up with a more precise critical path - - -

MR FUTER: Yes, we'd probably have to give that a little bit more thought I would say, but - - -

PROF WOODS: Yes, but any initial views would be welcome.

MR FUTER: Yes, because we're looking at - first of all if you look at some of the problems that we have, first of all it was compliance which was explained. The second thing is the cost involved in it, which would come into dispute resolution. I'm not sure I'm going to have these in order, but then premium setting has got to be in there, and risk assessment has got to be in there. Trying to prioritise that, we probably haven't turned our mind to that a great deal because we'd probably do a little bit more analysis, but I would say those would be the essential ingredients of what we'd be looking for.

PROF WOODS: If you could take that away with you as an issue and come back to us in the next couple of weeks we'd be very grateful, because one way through this process may well be to try and prioritise some level of uniformity rather than the big bang approach. You then move on to talk about the occ health and safety system, and you need to talk about reconsidering that:

The suggestion in the issues paper that it is appropriate to reconsider the question of nationally applicable occ health and safety laws is therefore unhelpful.

Do you want to elaborate on that?

MR FUTER: We're operating in a system where we do have the National Occupational Health and Safety Commission which does work towards in many ways I suppose coming to a national framework in some respects but we've also got the states doing their own thing in relation to occupational health and safety. It does create I suppose some inconsistencies. We don't think the states are going to basically give up their role in occupational health and safety in some respects. What we don't want is if we end up in a situation whereby we've got national rules, we've got - each and every state has their own rules - in other words, we're over-legislating and nothing seems to be connecting because we found that in the past, and we've had some discussions on national levels, but still the states went away and did their own thing anyway.

PROF WOODS: Well, they still do.

MR FUTER: Yes.

PROF WOODS: What we've got to look at is the various incentives that drive that behaviour and see if we can devise some incentives that drive single uniform behaviour instead - an interesting challenge. So your objection is that it would provide another layer but if instead it was substituting one set of rules, ie, that the National Commission's guidelines became the template which was adopted without variation by the various states, so it's substituted for the states - - -

MR FUTER: That's right.

PROF WOODS: - - - then you'd be deliriously happy.

MR FUTER: Yes, much happier than we are, correct.

MR SIMPSON: It's fair to say we wouldn't be happy, we wouldn't be deliriously happy, there would need to be differentiation anyway. I mean, the reason - - -

PROF WOODS: That's an interesting question because here you're heading into the path that says, "Well, maybe national is good but let's all have our little bit of differentiation." Now, tell me why?

MR SIMPSON: Well, it is inherent in the nature of the reality that building houses in the Northern Territory is different from building houses in Tasmania.

PROF WOODS: We had a crane driver previously who had driven cranes or been a rigger on cranes in Kalgoorlie, in Mount Isa, in various other things and he says every time he turns up to new jurisdiction he's got to go and get a retraining in the particular occ health and safety in that jurisdiction. He says, "But I do the same job in every location. I've worked on construction sites everywhere."

MR FUTER: And we're trying to manage this problem from an organisational point of view. As a matter of fact induction training could be what he's talking about.

PROF WOODS: Precisely, it was.

MR FUTER: We actually are getting some cooperation now between the inspectorates in, for example, Queensland and New South Wales. We're working towards that, but of course you can see that's between two states and it's a lot of work to try and tie it up nationally.

PROF WOODS: I agree but surely it's not beyond the ability of people to sit down and say, "All right, Northern Territory building codes have got to tie down the roof rather than prop up the roof," those sorts of things. But the procedures, the safety standards - I mean, it's hot and tropical there and it's cold in Tasmania, but - - -

MR SIMPSON: They use different equipment.

PROF WOODS: But do they have to? Do they need to?

MR SIMPSON: Because of the heat and because of the cold, yes, they do. It's not a big issue, with respect. It's when you get down to the fine detail. When you get down to - not the regulations, not even the codes made under the regulations or prescribed under the regulations but the guidelines made under the codes, prescribed under the regulations. You do get some differences and there will always be some differences, but the universality of the occupational health and safety obligation is the same throughout Australia and methods are broadly the same, but there are differences in detail. Some of them, for no apparent reason such as the safe working height, as if gravity was different in different places in Australia, but in other cases it seems to us - in my limited experience anyway - that there will be areas where it is justified in having different, fine detail. To a certain extent it depends on whether your regulations are in terms of, "You shall do this or you shall receive this result."

PROF WOODS: I mean, if there was a broader menu so that it encompassed both building in Tasmania and building in Darwin that said, "If in Darwin use this subset and in Tasmania use that subset," then surely - - -

MR FUTER: It all depends on how you get there as well because when you talk about national uniformity the danger there is that if you look at all the jurisdictions, the last thing you'd want to do, or the last thing we would want to do, would be to take the highest level of, I suppose, liability in any one jurisdiction and just for the ease of actually getting a system you make your system out of that because then we wouldn't be supporting that sort of a system. We don't think it would work. But that's just a danger when you look at sort of nationalising a system like that.

PROF WOODS: Would your colleagues in the union movement with whom you sort of have close relations have exactly the opposite perspective, ie, that they wouldn't want it if it was only the bare minimum that applies in any one jurisdiction rolled out anywhere else.

MR FUTER: Well, it's probably hard for us to speak for them but let me put this to you: they would probably have different priorities than we would have in relation to the issues of occupational health and safety.

PROF WOODS: I invited them to speak on your behalf this morning and they were of a similar nature to yourself.

MR SIMPSON: I should point out that we don't actually have very much to do with unions. It's not an industrial association.

MR FUTER: We do in certain policy areas but - - -

PROF WOODS: We do understand your industry relationship.

MR SIMPSON: It's three or four years since I've seen John Sutton.

DR JOHNS: Well, it's a wonder that someone hasn't modelled up a national agreement where the trade-offs between unions and various states, with employers in various states haven't worked their way through. Presumably it's possible, but as we're all saying there seems to be no incentive for someone to work towards a model. But I can't believe that someone hasn't worked it through.

MR FUTER: Let me put it to you this way: this would be a very radical approach in some respects because the people that would necessarily be involved in those sorts of discussions have their own political agendas maybe, and I think you might find it difficult to get a number of people around the table that all have their own patch, if you will, trying to agree on a standard that went below what they think they spilled their blood for over the years.

DR JOHNS: Well, I guess what I'm saying is, if there's no interest group that finds a benefit here - and maybe there's just some national public benefit that we're looking for - it makes it very difficult for anyone to suggest there's a benefit.

MR SIMPSON: It may well be that you're quite right that there's a national public benefit. As far as - - -

DR JOHNS: But no-one can capture it.

MR SIMPSON: An association like the Housing Industry Association deals with its members and the members come to us and complain about workers compensation. By and large they don't complain about occupational health and safety except where it's used for an industrial reason, such as your crane driver having to do induction courses. We suspect the purposes in many cases of induction courses is to allow the union to check who's coming to work and make sure that cranes don't get erected without a union permit, for example, which is what happens in Brisbane.

DR JOHNS: His point was not to say that induction courses are not good things,

but it's just a pity that there had to be so many variations of the course around all the various jurisdictions.

MR SIMPSON: It's a pity, for example, in Perth that the union don't recognise induction training carried out by any organisation other than the CFMEU which is clearly an industrial purpose. The purpose of induction training is not to train anyone, the purpose of induction training is to check up on people.

PROF WOODS: Moving along with our current agenda. I think that's probably all on the occ health and safety side. Your common meaning of "worker", apart from your comment that it's a great mistake to analyse the industry in Marxist terms, but you do - - -

DR JOHNS: I haven't read that for a long time.

MR SIMPSON: I usually try to work in a quotation from Lenin as well, if I can.

PROF WOODS: But you do talk about commercial transactions which were fairly and freely entered into and arrangements which the parties willingly and knowingly entered into et cetera. So there's variations on that theme. I'm just wondering if that's slightly overplaying the asymmetry of power and information.

MR SIMPSON: As I say, from our point of view the most irritating thing is to have to tell a member that there is nothing they can do, when they've had a contractor on for 12 months, at the end of the 12 months, the contractor who's been paid 15 per cent above - or say 20 per cent above the award wage but no holidays - the contractor turns around and says, "I was really an employee, I'll now have my holiday pay." You have to tell them there's nothing they can do about it. It is a response to an irritant, perhaps it was overly played up.

PROF WOODS: All right. Your idea of the common, clear, knowable definition is something that we fully support, it's just that some of the argumentation I'm a bit conscious of drawing on. You mentioned ENT there, I notice. I think we've dealt with the definitions. Common law, do you want to kick off on that?

DR JOHNS: I'm interested in your example here, section 5, Access to Common Law:

Alternatives to common law access could be offered to self-employed persons.

Can you take me through that? What's the form of the scheme?

MR FUTER: This is certainly a topic that could be, I suppose, expressed in a much longer paper. It's highly philosophical in some respects but, look, we thought we'd have a stab at it in some ways.

PROF WOODS: We're grateful that you have.

MR FUTER: Sorry?

PROF WOODS: We're grateful you have. I mean, it was quite interesting reading.

MR FUTER: Yes. The issue is, I suppose, if you look at the - and I'll just discuss New South Wales for the moment. There's been a lot of litigation and I've mentioned that earlier and I've also talked about the cost of having solicitors involved in all this sort of thing. But if we were to come up with an alternative, now, this is not for your employees as such, this is for self-employed persons that basically wanted to have a choice. These people run their own businesses. They know the risks that they have. If they were able to make a calculated choice for themselves, if you will, to say, "Look, I've sort of assessed what it is that we do here in this business and I'd be happy to more or less have a product with capped benefits involved," that sort of thing - "and if I was able to get that product I should be paying less for it because obviously there would be most likely less litigation in it. I would know the final outcome of it. There should be no reason why I shouldn't be able to select that kind of product if I thought it would suit me in my business."

As you can see, I haven't extended that now to employees at all. I mean, we've indicated earlier that we think employees should be covered by the general workers compensation system. But when you're dealing with self-employed people that basically can operate with, I suppose - they know what the risks are and they want a specific outcome if something happened and they're willing to more or less go along with that and have a premium that would be, I suppose, reflective of that, then that is something that we could consider. But, I mean, there is a lot in it and within a few paragraphs it's pretty hard to get to the bottom. I haven't explored all of it in relation to it myself.

DR JOHNS: So are these solo operators?

MR FUTER: It could be a solo operator, it could be a director of a small business, for example.

PROF WOODS: A principal of a consulting firm.

MR FUTER: That's right - who could sit there and say, "Look, we know what our risks are and we know that we would like to have a product that offered us XYZ."

There is a benefit scheme, it's got a maximum payout of X or whatever, so we know what that is, and we as business people would like to have a choice to actually make that for ourselves - as I say, not to extend it off to your employees.

DR JOHNS: So to cover themselves personally, not any employees?

MR FUTER: Unless an employee wanted to elect to have the same thing but it could be - as I say - - -

DR JOHNS: Narrow it down, that's all we're talking about.

MR FUTER: Sure. I mean, it's open to that and I mentioned it could be done in the same vein as an enterprise agreement. I think in the paper I've mentioned when the bill came down, the workplace relations bill came down, there had been some reference in there to having even workers compensation through some sort of an enterprise agreement. So it is possible - I've left it open basically, you know, for it to be extended. But I do submit to you that a lot more work would have to be done. I simply raise the principles though that if people do choose that sort of, I suppose, product if you will, it could be done by an agreement and no disadvantage test; less litigation. The benefits would be known ahead of time instead of somebody going through six years of litigation and sitting before a number of tribunals, the costs associated with it. It could certainly be a cheaper product.

But, you know, we'd have to be very careful how those things were put - if it was to go into the realm of the employees, how it was put to them, because even through there is a no disadvantage test, you'd have to be very careful there were mechanisms in there to avoid, I suppose, undue influence, if you will, to get people to agree to those things. But, you know, I mention that as a danger point only.

PROF WOODS: They would have to be entered into freely and fairly and willingly and what have you. Do you want to raise the no disadvantage?

DR JOHNS: Well, in the context of that?

PROF WOODS: Well, just clarify for me, when you're talking about on a no-disadvantage basis, is that as in relative to being incorporated into a workers comp scheme?

MR FUTER: It could be and that would be where you would look at - I suppose you'd have to measure out what has been given out in the past.

DR JOHNS: It would be an actuarial - - -

MR FUTER: Study, yes, that's - - -

PROF WOODS: That's your benchmark.

MR FUTER: Yes, that's right.

MR SIMPSON: You might want to trade off journey claims, for example, for a higher defined benefit?

MR FUTER: That's right, yes.

DR JOHNS: But against a particular state jurisdiction.

MR SIMPSON: Or against some benchmarks; some benchmark that a public authority has decided is fair.

DR JOHNS: International guidelines perhaps.

MR SIMPSON: Yes.

MR FUTER: As I say, someone could certainly write their PhD thesis on this, but we throw up the ideas anyway.

PROF WOODS: Have you explored this in any papers at any conferences or at any stage, or is this the world premier?

MR FUTER: Really only in - the only reference I've made to this before is in a letter to ACT minister for urban services. That was it really. So it's really at its infancy stage as far as we're concerned but - - -

PROF WOODS: Is that because of a particular inquiry?

MR FUTER: It was basically, we raised it as an alternative to workers compensation. We did get an audience of course with the minister and his advisers but they were - - -

PROF WOODS: How long ago was that?

MR FUTER: Two, two and a half years ago.

DR JOHNS: I guess our problem is our time frame is quite short and I think there's a wealth of good ideas in there but if we can't work them up sufficiently or put some dollars on them we can't do a great deal with them.

MR FUTER: Yes, I understand that.

DR JOHNS: Still, I mean, they're worth considering.

PROF WOODS: It is. Medical professions: you raise some concerns about the role of medicals and the allied health professions. Do you have a view on what constitutes a good model for medical tribunals et cetera? I mean, you're nationally based and familiar with the various schemes - what works, what doesn't, what bits of things work.

MR SIMPSON: I don't really think we're in a position to help the commission very much with this. That comment arose out of a particular West Australian review which we took up particularly because it had made recommendations that had not been implemented. It's not an area in which we have a lot of expertise, nor are we likely to be able to acquire it.

PROF WOODS: Yes. Competition issues where you're looking for competition in the marketplaces: I assume on that basis that you prefer the privately underwritten models to the single government authority models?

MR FUTER: Yes, absolutely.

PROF WOODS: It's interesting because, I mean, I know you're not an employer. Well, presumably you do some group training schemes, do you, or - - -

MR SIMPSON: Yes.

PROF WOODS: So you are an employer in that sense but putting that aside, a number of employers have told us that they are quite neutral to whether it's privately underwritten or government monopoly - but you have a clear view. What underlies that perspective?

MR FUTER: Our view would just reflect the economic principles of supply and demand. Look, I think a lot of businesses - and I'm not quite sure exactly how they'd measure this but I'm sure cost is just the biggest issue and they might not care either way, which I'm sure is a good argument - but we'd argue the course that if you're going to get any cost advantages, you're going to have to have competition.

MR SIMPSON: I think it does come from the underlying philosophy of our members because essentially our members are people who are competing in the marketplace.

MR FUTER: In the marketplace generally, yes.

MR SIMPSON: And they're certainly convinced of the benefits of competition, even if it's not always painless. Where one can see competition operating in markets for insurance, it seems to provide a better product at a cheaper price. We're not saying competition is always the panacea. You don't - - -

PROF WOODS: The Productivity Commission itself has a history of support of the concept of competition.

MR SIMPSON: Bring back Ned Kelly.

PROF WOODS: Nonetheless, that doesn't lead us to the view that markets always work perfectly.

MR SIMPSON: Well, we believe that this is an area where the market certainly isn't in need of guidance but any market is going to be working more satisfactorily than no market.

PROF WOODS: I was wondering what was underpinning it but now I understand.

MR SIMPSON: There's simply no way to tell whether the premiums are set at a reasonable level or the level of reserving is appropriate; whether the administration is efficient. One of the things we can use in Australia of course is interstate comparisons. If we didn't have those we would have little cause to - little ability to influence governments in terms of premium setting.

PROF WOODS: But will they hold on to all those eight different schemes just for that one benefit if we can point at - - -

MR SIMPSON: I think in any scheme in Australia there needs to be an ability to experiment.

PROF WOODS: That's a more interesting question as to, if you have one national uniform scheme, where is the pressure for innovation?

DR JOHNS: Just so. Perhaps we could exempt Tasmania from it.

PROF WOODS: That didn't come from the commission.

DR JOHNS: Not a big pool to sort of look at for a start, is it?

MR SIMPSON: No, I think it is an interesting question.

PROF WOODS: But, no, it is.

MR SIMPSON: If you have a uniform scheme how would you know if it was being the most effective if in fact there was no competition and there was no ability to experiment. To a certain extent the ability of companies, at the moment large companies to run their own schemes in New South Wales, for example, provides a very valuable way of looking at whether the New South Wales premium-setting mechanisms are working effectively.

PROF WOODS: Which is why they have self-selected to become self-insurers.

MR FUTER: That's right.

PROF WOODS: But you also have companies in Queensland that self-select to become self-insurers, presumably because they also see that there is net benefit. That may or may not be right but that's the judgment that they make and they operate in the commercial world. Do you have any material on this question because I mean, it is a fundamental question that if you just have a single national uniform scheme and it happens to be wrong, then everybody has to live with the wrong scheme. If you have schemes in all of the various jurisdictions and they are right or wrong to varying degrees, then there can be a process of innovation and leapfrogging and copying that could coalesce to better and better schemes. But then there's a cost to that of - particularly for national companies - having to suffer the consequences of all the various different schemes and administering them.

MR SIMPSON: If the premiums are set through competitive mechanisms, that's a major step forward. If the benefits are defined and they need to be modified in some way, that's certainly not an appropriate area for competition to operate.

PROF WOODS: Right. Well, could you reflect on that a little further and if you - I mean, it's not compulsory to submit an essay on, but if you did have some useful thoughts on that in the next few weeks, I'd be most receptive to them because it is one of those sort of underlying issues. It's not strictly in the terms of reference but it does help set the perspective. Commissioner Johns, how are you going?

DR JOHNS: Well, I'm just - one of the debates in the states, or concerns, is that not sufficient individuals, be they employees or employers, are covered by some form or workers compensation insurance and sometimes I lie awake at night worrying that not enough people are covered under any form of insurance. Some may be escaping the system and so on. Now, come back to your definition of employer and employee. Are you seeking to ensure that the largest number of persons will be covered by some form of insurance, be they insuring for themselves or for a group of

people? I'm not saying you're starting with that concern but are you helping us down that track?

MR SIMPSON: Numbers aren't the criterion. The criterion is whether a person is in a position of dependence; whether they are not in a position to self-insure because they're essentially working in an employee-like relationship, vis-a-vis someone who is operating as a business. Now, I took from what Mr Woods said before that the HIA's philosophy on this point is something for which some people may have reservations but we recognise that if you exclude certain groups from the workers compensation scheme there will be injuries and there will be hard cases where people have not insured. But wherever you draw a line, some folk are going to fall on one side and some folk are going to fall on the other. We don't believe that's a reason for not having the line in an appropriate place.

In our view the appropriate place for the line is where businesses are operating as a business, paying tax as a business and managing their risk as a business. Now, whether there are - whether the vast bulk of work in Australia is at some future date performed by contractors and not employees, seems a little fanciful to me, but it isn't to my view a numbers thing. It's more a relationships issue.

DR JOHNS: No, I mean, there's some really good discussion in this so it's a matter of perhaps your critical paths and so on, to help us through a bit further.

PROF WOODS: Are there any concluding comments that you want to make or things that you want to draw our attention to?

MR SIMPSON: We may have mentioned it in the submission already but in our experience one of the problems in funding the scheme is because it's so easy for people to say that there is a doubt as to whether a policy is required, that where there is a commercial interest in having a doubt, then people will have doubts.

PROF WOODS: You mean uncertainty allowed for the scope for broadening the financial base.

MR SIMPSON: I believe that certainly in our position that it's always easier to collect from people who you can see and identify and there is no doubt as to their liability. It's a bit like the window tax in the middle ages. You can count the windows, there's no argument about it; that's what you pay. Whereas at the moment people, as I understand it - and I'm not very familiar with the Queensland situation, I'm more familiar with New South Wales - the premium is calculated on an estimate of the number of people you're going to employ in the next year and the people who are injured are always within that number. Your actual workforce is a matter of considerable debate in an industry like the building industry where it fluctuates daily.

Now, where there is uncertainty people will tend to seek to be competitive, and particularly as they're under competitive pressures from other folk who may be less scrupulous - so the more you can take the uncertainty out of the system, the better result you'll get in terms of revenue collection.

PROF WOODS: That's a theme throughout business, is wherever possible reduce uncertainty. We understand that.

MR FUTER: One of the problems too is that where there is uncertainty it never gets fully debated until it's too late and then we have the problems of compliance.

PROF WOODS: Right, thank you, that was a very useful submission but also a very robust discussion which we enjoyed and have learned from.

MR FUTER: Thank you for giving us the opportunity to - - -

PROF WOODS: We look forward to your further contributions. Are there any persons present who are not scheduled who wish to come forward? That being the case I will adjourn the hearings for today and resume tomorrow in Sydney. Thank you.

AT 2.28 PM THE INQUIRY WAS ADJOURNED UNTIL
TUESDAY, 24 JUNE 2003

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