



**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**

**TRANSCRIPT OF PROCEEDINGS**

**Darwin hearing via video conference  
AT CANBERRA ON MONDAY, 16 JUNE 2003, AT 9.30 AM**

**Continued from 13/6/03 in Perth**

**PROF WOODS:** This is the hearing for our Northern Territory participants for the Productivity Commission inquiry into national workers compensation and occupational health and safety frameworks. I am presiding commissioner for 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, and our full terms of reference are available from our staff.

The commission has already travelled to all states and territories and I must say it was a joy a couple of months ago to return to the Territory, when we talked to a wide cross-section of people and organisations interested in workers comp and occ health and safety. We 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 the future. We have now received nearly 60 submissions from interested parties.

I would like to express our thanks and those of the staff for the courtesy that the Northern Territory, amongst others, extended to us in our various travels a couple of months ago and for the contributions that have already been made in the course of this inquiry. These hearings represent the next stage in that process. We will then issue a draft report at the end of September, with an opportunity to present further submissions and attend the second round of hearings. The final report is to be signed by March 2004.

I would like these hearings to be conducted in a reasonably informal manner, and remind participants that a full transcript will be taken and made available to all interested parties. At the end of our scheduled participants, or even during if we have a break, I will invite any other person who is present if they wish to make an unscheduled presentation. Just to complete the formalities then, could I welcome our first participants: if you could give your name and title for the record, please.

**MR CROSSIN:** Thank you. Mark Crossin. I'm the director of NT Worksafe, and I probably should advise you, commissioner, that we were previously the Office of Work Health. We were just rebadged, relaunched with our new name last week.

**PROF WOODS:** Very good. It's always fun to change your name.

**MR CROSSIN:** I hope we haven't changed the substance. That's all.

**PROF WOODS:** Yes. Having been in the public service over 20 years, I do understand the process.

**MR CROSSIN:** In relation to the submission that we've provided, perhaps just a preliminary point: the submission, whilst being coordinated by NT Worksafe, did involve the cooperation and input of a range of government agencies that appeared before you when you were previously in Darwin, the chief minister (indistinct) Department of Corporate and Information Services and the Office of the Commissioner for Public Employment.

**PROF WOODS:** Thank you. Do you have as yet a formal submission, or is that still in the process of completion?

**MR CROSSIN:** The submission that I provided to your secretary last week is a draft. It's subject to approval of our chief executive officer. That hasn't occurred at this stage, so whilst the submission is unlikely to change in content, the approval processes need to be formalised still.

**PROF WOODS:** Okay. We won't commit it to the record, but it may guide your comments.

**MR CROSSIN:** That's fine.

**PROF WOODS:** Thank you very much. Do you want to draw to the attention of the inquiry the key points from that and then we can develop our discussion around that?

**MR CROSSIN:** Sure. You may recall, commissioner, at our previous meeting, that we basically outlined about the community-driven, market-driven nature of our workers compensation scheme. That certainly hasn't changed. I should pre-empt my comments by saying there's support from the Northern Territory for linking - or connecting, if you like - both workers compensation and occupational health and safety arrangements. Certainly that's supported. Some of the models that have been advanced in the discussion paper enjoy probably greater support than others, and I should say to you that the - I'd like to just go to those models in particular.

The preferred model for us would be the uniform mirror legislation model, and it is probably preferred because if there's political will in fact to establish this and a political will maintained to maintain it, it will probably be the third national model that we would be seeking.

**PROF WOODS:** Sorry. Can you just clarify for me, when you're referring to the third model, which one in particular?

**MR CROSSIN:** Yes. I'm referring to what is called the uniform mirror legislation model.

**PROF WOODS:** Right.

**MR CROSSIN:** In fact, it's the fourth model. I'm sorry.

**PROF WOODS:** That was just my confusion. Yes, okay.

**MR CROSSIN:** I've got to say that we also have some support for the final model, being the new national scheme proposal, which really, if everything was uniform would be the preferred position we would support.

**PROF WOODS:** We might in that process discuss the likelihood and the time it would take to develop such a new national model, but we can do that during the course of this inquiry.

**MR CROSSIN:** Sure. What I should also detail for you is that the Northern Territory has very much adopted the national occupational health and safety strategy as part of not only our strategic plan at NT Worksafe, but also our business plan as well. So there's a very close congruence between the targets that have been set, the identified target industries in terms of improving occupational health and safety performance, and the liaison that occurs between the Northern Territory and other jurisdictions (indistinct) is quite strong. We would say that that would continue to be the case.

**PROF WOODS:** While we're picking up that particular point - and I notice that you're targeting industries like agriculture and transport and various others, including the public service, I noted - the support for the national strategy is noted, but in practice what would you describe as the level of commonality between your actual occ health and safety regulations and guideline notes and the like compared to those that NOHSC puts out, because we do find from time to time that jurisdictions may indicate their strong support for national strategy, yet when we examine the detail of their regulations we find that there are always modifications to reflect local circumstance. How would you describe the Northern Territory's level of adoption of the national guidelines?

**MR CROSSIN:** We do in fact adopt the national guidelines. I've got to say that with only two exceptions do we have anything that appears to be a departure from the national approach, and they represent two codes of practice - one is for fall protection and the other is for Falls at Heights. They are the two. Whilst they are both largely related to the construction industry, the modifications are, in fact, we would say, a bit more stringent than perhaps the national approach.

**PROF WOODS:** Is that reflecting the fact that the development of your codes

preceded the national approach and you were not able to get that level of stringency into the national guidelines?

**MR CROSSIN:** I think that was generally the case. But having said that, we certainly do adopt a national approach - (1) because of the size of our jurisdiction and (2) because of the resources available in other jurisdictions. We have often tended not to play a leading role in some industries, but more often to follow and participate in the development of codes elsewhere in other jurisdictions and nationally.

**PROF WOODS:** So despite the excellent wines from the centre of Australia, you're happy to let South Australia develop the wine code?

**MR CROSSIN:** I think that's a reasonable example actually, yes.

**PROF WOODS:** We do notice that other jurisdictions do, from time to time, seem to fall back on local custom and practice, so it's heartening to hear the Northern Territory's full support, not only in words but in substance, as you go about this. Thank you for that.

**MR CROSSIN:** Commissioner, if I could perhaps just inform you in terms of our targeted industries. You may notice there that we have adopted some industries as being worse performers perhaps than what other jurisdictions had said. There are some fairly genuine reasons for that. In respect of mining - both exploration and mining itself - and the same with petroleum exploration and mining, similar style jurisdictions insofar as we don't have jurisdiction over occupational health and safety in those areas - that's particularly NT Worksafe. The Mining Act and also the Petroleum Acts adopt largely the same OH and S regulation environment as generally for the Northern Territory government, but they are outside of our Work Health Act and regulations.

**PROF WOODS:** That's common in WA and elsewhere.

**MR CROSSIN:** That's right. What we have done there in industries we have identified within the submission as having priority for us, they are our worst-performing industries and you'd probably note that we've left out manufacturing whereas other states and territories haven't. We don't have a large manufacturing base, and manufacturing here tends to have a better OH and S record than perhaps some of the industries we've identified, particularly agriculture, building construction and some of the others that we've mentioned.

**PROF WOODS:** Is that a relative sense or an absolute sense? I'm aware of your manufacturing profile, having lived in Darwin for two years myself. I'm familiar with your industry structure. But when you target the others, is that because they're

worse relative to your other industries in the Territory or worse relative to national performance?

**MR CROSSIN:** Worse relative to our local industries, not necessarily national performance. For example, in the building royal commission it was noted there in comments by Commissioner Cole that our construction industry was perhaps the safest construction industry in comparison to other building construction industries elsewhere in Australia. We take some pride in that. One clear example referred to in the Cole report was the Darwin to Alice railway project, having a better performance by 10 times, if you like, than other building construction jurisdictions elsewhere in Australia.

**PROF WOODS:** Very commendable. What is the secret behind such an approach, because if we could just roll that out, in a literal sense, to some other industries, life would be a lot better for the workers?

**MR CROSSIN:** Perhaps there is a sleeping giant amongst this in terms of the definition of "worker" or "employee". "Worker" in the Northern Territory for workers compensation purposes under the Work Health Act may exclude people who declare an ABN number - ie, their tax status, being an ABN number, excludes them from access to the provisions of workers compensation. That may not necessarily be the same in other jurisdictions. It should come as no surprise to you that we have currently had a review into the definition of "worker" for workers compensation purposes in the Territory.

**PROF WOODS:** I noted in that respect that your opening comments were about your strong support for linking workers comp and occ health and safety, but given the significant divergence in definitions of what constitutes a worker between the two, I wasn't quite sure how you were going to get there. Why don't we deal with that at the moment?

**MR CROSSIN:** All right. The current review, in fact, was initiated by approaches from the construction industry in the Northern Territory to our minister, and that review is currently under way, and the working group is a cross-industry working group looking at the definition to ensure that perhaps a new definition of "worker" for workers comp purposes in the future would pick up people, regardless of their tax status. In fact, if they were employees and provided a contract of labour, they would in fact be included in future. That's largely the direction the working group is taken and that's likely to be the recommendation to the government.

**MR ANSTESS:** Just to add to that, the working group was looking at a broader definition that would probably pick up some contracts for services, so it wouldn't necessarily be restricted to the common law contract of service - anybody who

provides work or service for another under a contract of agreement of any kind, and basically who does not employ other people or sublet - but that is yet to be developed fully.

**PROF WOODS:** That's getting a lot closer to your occ health and safety definition, isn't it?

**MR ANSTESS:** Yes.

**MR CROSSIN:** That's right.

**PROF WOODS:** Which is quite broad. In doing so, is that a conscious approach? There are several ways of looking at these definitions, and let's take "worker" as the example. You can either try and harmonise your definitions within your jurisdiction so that you have a common or near common definition of "worker" for the purposes of coverage under occ health and safety, of premium paying under workers comp, and perhaps even of paying payroll tax - it has thresholds but nonetheless - for employers calculating their payroll tax and maybe even for coverage under industrial regulations.

The alternative approach would be, in looking at workers comp, that you looked at the definition in other jurisdictions and tried to collectively harmonise what constitutes a worker under workers comp across jurisdictions. Is there a particular approach that the Northern Territory is following in this respect?

**MR ANSTESS:** Yes. The approach really is to try and have a clear and succinct definition of "worker". That's why we're steering away from the common law approach, if we can, but most other jurisdictions in Australia use the common law approach for the definition of "worker". We're trying to avoid that so that we have little dispute over whether a person is a worker or not. That's what we've achieved with our narrow definitions in the past. We're going to try and achieve that with a broader definition.

**PROF WOODS:** In so doing, from my particular perspective of this inquiry into developing national frameworks, that's really not heading in any direction that I would see as useful in that respect but, nonetheless, each jurisdiction has (a) responsibility and (b) right to take its own course. Can you see some way through of your approach and coalescing to some form of national framework?

**MR ANSTESS:** Yes. Our approach will bring our definition of "worker" closer to other jurisdictions.

**PROF WOODS:** Yes, you are an outrider.

**MR ANSTESS:** Rather than having been fairly narrow in the past, it looks to be actually broader - that's if it comes out as we're planning - but it won't be precisely like other jurisdictions because at this stage we haven't based it on - well, we're not likely to base it on a common law approach. We think we might take a lead role there where other jurisdictions might follow.

**PROF WOODS:** Are they closely watching and indicating their strong support to sign up to your approach?

**MR ANSTESS:** Not that I'm aware.

**PROF WOODS:** It does raise a broader question that I wouldn't mind exploring at this point, and that is, if we're looking at national frameworks, whether the concept of consistency rather than uniformity is the more important from the perspective of the individual jurisdictions, do we try and pursue a framework that recognises some element of diversity that has arisen or is perpetrated through local conditions and trade-offs and bargainings and history and all the rest of it, or is there a point in trying to create a single national scheme on workers comp? I guess in some respects, if you were looking at template legislation, you would end up having uniformity.

The alternative new national regime could be introduced in a competitive sense - ie, a single national scheme that people could elect to as an alternative to the local schemes, and that might then encourage the local schemes to coalesce progressively towards whatever that national scheme was or, alternatively, have a national framework that allowed some scope for variation on some matters. Any reflections on that would be helpful.

**MR CROSSIN:** Perhaps going to your last comment first, a national scheme that allowed for some flexibility is possibly more achievable, given the jurisdictions and perhaps from time to time their brokered nature, the way in which they approach this the question. But notwithstanding that, it would very much help if we had national consistent definitions in a whole range of areas, not just in the definition of "worker", for example, but even as far as the issue about fatalities - I think we may have foreshadowed previously where, if we had a nationally consistent definition of work-related fatality, it would be very helpful.

Currently with journey claims or vehicle accidents that are work related, and also occupational disease being the basis of a fatality, it does not help to have a true and accurate record of workplace fatalities when you've got inconsistent definitions.

**PROF WOODS:** Yes, I totally agree, although we should sort of rewind the tape about seven minutes when we were just discussing the Northern Territory's approach



on defining a worker. But, nonetheless, if we were on workers comp to look at identifying the core elements of national consistency, or even national uniformity - perhaps if we take national uniformity - what would you say they should be, in what order should they be progressed, because it might be possible to develop an implementation path that says, "All right, let's take definitions of workers or employers - or the like - first. Let's take definition of diseases second" or whatever - I'd be interested in your views - but then also tempered by some pragmatism as to which ones are likely to get up, because the other approach might be pick the ones where we can at least agree in the first instance and then work our way through those that are a little harder subsequently.

**MR ANSTESS:** If we're looking at what we'd need most for national consistency or uniformity you would want access so that workers in jurisdictions would be the same, and so national access to the scheme. You'd need consistency in benefit structure, so not only do they have similar access but they have a similar sort of benefit structure to go to.

**PROF WOODS:** Yes.

**MR ANSTESS:** Of course, for underwriting purposes, I think nationally an employer would need the ability to insure all their workers under the one underwriter if they wanted to.

**PROF WOODS:** That's an interesting one. Presumably a national employer would have a preference - or most national employers presumably would want to self-insure, depending on their record. But putting aside that issue for the moment - we'll come back to it - they'll either self-insure or want to premium pay to one scheme. As long as they were able to pay premium, I guess the next best would be that they would have to pay their premiums in the various schemes but for the one definition. Yes, all right. There are issues there worth exploring. We might come back to the self-insurer model, but I understand your point then of saying that a preference would be, particularly for those who are nationally based, if they are going to be premium payers, to just pay to one company. Yes, okay.

**MR ANSTESS:** Just having said that, it brings another point. I've witnessed the cross-borders issues where all jurisdictions have been trying to work for nationally consistent cross-border legislation, and that's been given a real push lately with New South Wales and Queensland going it alone, if you like, and implementing their legislation. It's taken 10 years or more to get to a point where we really haven't got very far, and I really don't see that it's going to be any easier to have national consistency in any other area.

I think in reality the only real national consistency would be achieved by a

national scheme, otherwise we might have a particular will at the moment - at a point in time - to all get our schemes pretty much in line, but as soon as a regional problem would occur or change in government in a region, you'd find that the schemes would start diverging again. Whatever regions have the power to make their own laws as far as workers comp and occ health and safety are concerned, then they would diverge again. To have national consistency and keep it consistent would need political will from all jurisdictions, and ongoing, which I find it very difficult to see happening.

**PROF WOODS:** I enjoy talking to a seasoned observer of the process. The pragmatism is refreshing. In that respect, an interesting example you raise on cross-border - you know, 10-plus years, every will in the world, but no outcome, followed by Queensland, then New South Wales saying, "Well, if no-one else is going to do it, we'll do it by ourselves," and presumably the other jurisdictions will progressively join in, given that that's there - perhaps one needs to resort to such a model for a national scheme overall as well - ie, create a national scheme, allow self-selection into it, and then see if the jurisdictions progressively coalesce to it because there's some competitive force requiring it.

**MR ANSTESS:** Yes, that may be the way to get to a national scheme. But there could be a lot of heartache getting there, though, for schemes. As schemes gradually go broke and also the - - -

**PROF WOODS:** Yes, particularly private underwritten - well, no, not particularly private underwritten schemes. It would apply to state based schemes as in government based schemes as well. We are particularly conscious of schemes such as your own and Tasmania's which are privately underwritten and the pools are not large. We're aware of the impact that self-insurance has on those pools already. If you had progressive self-selection out of your pools, then they are starting to get a little small. You've currently got what, five or six underwriters, but the market share is a bit skewed?

**MR CROSSIN:** No, that's a fair comment, a fair observation. I think the issue is under such a proposal the viability of our own and I suspect Tasmania's as well - - -

**MR ANSTESS:** And the ACT.

**MR CROSSIN:** And the ACT - would very much be in question and, as a consequence, I believe a national scheme anyway.

**PROF WOODS:** Such a migration would have to be handled carefully so as to not disadvantage employees or employers or underwriters. If an implementation path was identified and people understood what that path and what its timing was, then

presumably it could be managed in a more orderly manner than if it was just sort of dumped on the jurisdictions overnight.

**MR CROSSIN:** I don't anticipate that would be the case. I suppose our position is that we want to be involved in the design of any national scheme.

**PROF WOODS:** Yes. You don't want to reflect on the likelihood of creating a national scheme? One of the benefits of the third model, which is the opening up of Comcare to self-insurers more broadly, is that that's a scheme that already exists. Some have pointed out some strengths of it, some have pointed out some weaknesses of it but, nonetheless, it exists. If all the jurisdictions were to sit down and devise an agreed common scheme, what sort of decade do you think we would be talking about?

**MR ANSTESS:** I see your point there. In fact, the Comcare model probably wouldn't be too hard for the Northern Territory to take because it isn't that dissimilar to our own.

**PROF WOODS:** And also a number of employees in your jurisdiction are covered and certainly a lot of them probably have access back into Comcare through their - are there still any residual entitlements back into the APS for some of your employees, or has that all been exhausted?

**MR ANSTESS:** Not as far as workers comp is concerned. There are still some claimants that are on Comcare benefits from many years ago, but no ongoing entitlement - not for new claims.

**PROF WOODS:** Fair enough. That's a quite helpful reflection on those issues. Do you want to progress through a couple of other topics? We were, until we got distracted, talking about targeting some industries. Is there anything further you want to talk on there? Is there any particular industry where the Territory is taking the lead role? I could imagine that abalone fishing might be Tasmania's prerogative, if not South Australia or Victoria, whereas the wine industry I understand is generally agreed that they will follow, at least broadly, what South Australia develops. Is the Northern Territory doing any of that?

**MR CROSSIN:** We're not taking on any lead agency. We are prepared to work in a NOHS framework with any particular industry. We are obviously participating in some of those, or development with working groups in particular industries - ie, road transport and I think agriculture, in terms of we're playing a very good role nationally. But I've got to say just on our target industries, they are our worst performers, they are the ones that we've put most of our resources to, and they are the ones where we hope to make more significant inroads to compensating performance.

Since I think the last time we spoke, our minister has asked us to adopt an approach to identify resources for the child care industry and tourism and hospitality. I think that has largely been driven by approaches from the industries here, having not so much poor OH and S performance as much as the specific issues that we try and address.

**PROF WOODS:** I noticed child care had popped onto the bottom end of your list there, and I was wondering what was driving that. It caused me to wonder whether it was child care specifically or whether there was a personal services broader industry perspective, because I'm thinking of your nursing homes as well. A number of years ago I did an inquiry into nursing homes and visited homes, not only in Darwin but at Katherine and other centres, so I'm a bit aware of some of the occ health and safety issues that come up in that industry. Is it child care through specific representation or is it looking at possibly then broadening out to the personal services industries?

**MR CROSSIN:** At this stage it's just focused on child care and my understanding of the approach by the industry was more on a tender segmentation.

**PROF WOODS:** Right, yes, whereas the nursing homes is, in part, gender oriented just because of the structure of the workforce and the age of the workforce, but it's the heavy lifting and personal safety and other issues, so a different agenda. Where would you like to head next in our discussion?

**MR CROSSIN:** I particularly recall at our last meeting a question you put to us about the issues about remote areas - remote delivery, regional centres.

**PROF WOODS:** Yes.

**MR CROSSIN:** I'd like to make the observation - since that question, I thought, was very relevant to us - that we do identify and recognise that we need to pay far more attention to delivering services in regional and remote areas. It again is an issue of not only access to the range of services - be they vocational providers, be they dispute resolution - but just generally the issue of access to both occupational health and safety visitation, understanding and general education about health and safety in the workplace and workers compensation rehabilitation processes.

We would concede that remote areas require far greater attention and, in part, our next business plan is going to reflect more greatly those issues, to the point that the government in its budget announcements two weeks ago here in the Northern Territory provided us additional positions, and one of the requirements be that two of the regional centres - being both Katherine and Alice Springs - are to have additional staff resources and additional funding resources to address issues of remote localities

as a priority.

**PROF WOODS:** I notice, if my memory serves me correctly, that your current staffing is all based in Darwin, with the exception of three in Alice and one Katherine. Is that right?

**MR CROSSIN:** That's right, and we're expanding Katherine. For example, two officers will start in the new financial year.

**PROF WOODS:** A hundred per cent increase.

**MR CROSSIN:** A hundred per cent increase; a 25 per cent increase in Alice Springs, one staff member going there, particularly with a road transport background. You might note that there has been a conscious decision of ours to shift the management of our road transport program from Darwin to Alice Springs where it will be where the hub of the transport industry is in fact in the Territory. That has been approved as well.

**PROF WOODS:** That's very good. Having driven up and down the Stuart Highway a couple of times, I can only commend that. It does raise the broader issue, though, of access. I'm very familiar with your representations to the Commonwealth Grants Commission to have recognition of this issue, but it is inherently difficult, isn't it, to ensure that workers - you can talk about your main centres up and down the highway, but once you head off the highway out into your communities and things, then to give an injured worker physio or OT services or the like, you either have to bring them in, in which case it's not only expensive but disruptive to them and their lives, or try and deliver them out in the community, in which case they will be very infrequent, depending on just how you can schedule somebody to do a tour of duty. I understand that, but I don't know what the solutions are, other than the application of dollars and goodwill.

**MR CROSSIN:** I think you're correct in the application of dollars. There's no doubt that our focus, particularly in remote communities, where not only those access issues come up and equity issues about their access to services but I think, more importantly, the language and cultural issues that are realities in those remote communities are ones that we have not yet fully come to grasp and to deal with effectively.

**PROF WOODS:** Yes, and who you choose to - well, (a) who is available and then (b) sending them to communities and their level of acceptance and sensitivity and a whole range of cultural issues - let alone language, I agree - is very problematic. Any national scheme has to recognise that. A national scheme talks about either uniform or consistent framework, whereas responsibility for implementation

obviously still rests with all the jurisdictions. There's no suggestion to the contrary on that. But it has to do more than provide for the metropolitan areas of Australia.

**MR CROSSIN:** That's right. I would suggest to you that a system at the very least of piloting a number of selected communities would be a good first step in extending the process of national and consistent arrangements.

**PROF WOODS:** If you could explore that - I don't want to hold up progress of your current submission, I understand the joy of finally getting to an agreed common submission. If you were able to supplement it with further material that picked up your idea of piloting some regional or remote programs, that's an area where the Northern Territory's experience, I am quite sure, would be looked at very positively by other jurisdictions. We're not just talking WA, Queensland, but I'm thinking of some centres I've been to in New South Wales, for instance, where your experiences not only would be invaluable but, knowing the people in those centres, they would be very keen to learn from them.

**MR CROSSIN:** I'm more than happy to supplement the submission perhaps at a later date. But could I say to you that we're taking some steps in our education programs, for example, to pilot some safety management awareness visitation and training in remote communities, particularly with indigenous people. Several communities in Central Australia and in the Top End are being considered for targeting during the next financial year, and we're confident there's going to be a great deal of work there. We do hope to develop case studies to pass on to other jurisdictions.

**PROF WOODS:** Yes. A closely-written 50-page manual on procedures is not going to be particularly helpful, whereas a laminated illustrated single sheet that could be tacked on the wall and once every few weeks workers are taken through and reminded of might have some benefit.

**MR CROSSIN:** I think you're right. I had this discussion on Friday evening in Alice Springs with some people from Hermannsburg who actually said very much what you just said.

**PROF WOODS:** Very good. In fact, I wasn't at Hermannsburg all that long ago, and it's pleasant as always, especially in the right time of the year. All right, where to from here?

**MR CROSSIN:** Commissioner, unless you've got some particular questions on our submission, I'm not too sure that there's much more that we need to go to. I think at this stage we've perhaps touched on most issues that we want to touch on.

**PROF WOODS:** All right. Return to work early intervention is a common mantra as we go around the various jurisdictions, and it's a seriously supported and agreed perspective that the earlier the intervention the better the outcome for all concerned. Yet jurisdiction designs sometimes have third party processes that can delay recognition of liability, can lead to rehab providers not being engaged for four weeks or more. All of those things seem, despite the best intentions in the world, to frustrate early intervention and not to support it. How important is jurisdiction design compared to commitment by employers that, irrespective of whether a claim is ultimately to be agreed to, that they and the employee work closely and with their GP and other specialists?

**MR ANSTESS:** I think your second point is dead right - that workers and employers should be working towards resolving whatever issues they have and getting the worker back to work, regardless of liability. To that extent, we encourage our insurers to do just that. They recognise the importance, even though they have denied liability of the claim, to implement vocational rehabilitation - both treatment and vocational rehabilitation - at an early stage, in the event that they may well be accepting the claim sometime when they get further information.

In fact, we have actually legislated in one area there, and that's to do with stress-related claims, whereby the insurer on behalf of the employer can make one of three decisions: they can accept the claim, they can deny the claim, or they can defer a decision on the claim for a period of up to 56 days to get further information. Where a deferral is made, it's a paid deferral, where weekly benefits are paid from the date of the decision to defer, but a recent amendment to the act also says that it's mandatory for vocational rehabilitation in the case of stress-related claims, for rehabilitation in the case of stress-related claims where they've deferred. So that's put a bit of strength in that.

But the culture that is around at the moment anyway - particularly with insurers; I'm not so sure with employers at this stage - is that they implement treatment and vocational rehabilitation even if they haven't accepted liability. They do it on a without-prejudice basis.

**PROF WOODS:** Is that showing results, or is it too early to tell yet?

**MR ANSTESS:** It's a bit early to tell yet. But we believe so, in that our system is a long-tail system - that is, it's a pension based scheme rather than lump sums - and one of the cost drivers in our scheme is that tail is growing. Not many claims go on for a long period, but a number each year do and of course they add on to that tail every year.

**PROF WOODS:** Yes.

**MR ANSTESS:** What we've found is that our long-term incapacity benefits have reached a plateau. We're actually paying less in long-term benefits now than we were two years ago, whereas the front end of our scheme has got more expensive. So that means more resources are being put in to getting people back to work, rather than keeping people on workers comp at the tail end.

**MR CROSSIN:** Which is consistent with the objectives of our scheme when we moved from a common law based scheme to a no-fault scheme. The focus is to be on rehabilitation in terms of the work process, and to that point, that part of the act has been amended.

**PROF WOODS:** Yes. You drew a bit of a distinction between employers and insurers. Presumably you don't want to go into that in too great a detail, but is that just a process of progressive education of the employers because you've got six insurers and you can work with them closely? You've got several thousand employers, most of whom in fact are small and medium employers.

**MR ANSTESS:** I suppose in a way that's the case. The other one is that the insurers, under our scheme anyway, have full rights of subrogation over the employer and, therefore, manage the claim on behalf of the employer, which is not necessarily a good thing in the overall scheme of things but for claims management - I guess from their point of view it's a good thing. But they're the people we can get to and influence more readily than large numbers of employers. Having said that, employers in many cases will take a much more stronger view towards getting their worker back to work than the insurer, because employers don't always agree with the insurer's decision on a claim. So an insurer may deny liability for various reasons, whereas the employer wants that worker to receive compensation.

**PROF WOODS:** How do you deal with that?

**MR ANSTESS:** The insurer has legal precedent, has legal rights to manage a claim as they see fit, but the employer can always offer work to the injured worker.

**PROF WOODS:** So they can go outside of the scheme in a sense, but presumably they're then setting themselves up for second-session injuries and all sorts of liabilities.

**MR ANSTESS:** Yes, that's right. That's the education process whereby the worker should be returning to work, to duties that are suitable. So employers should be talking to doctors as part of the education process for this further down the track.

**PROF WOODS:** There are some strengths and some weaknesses in your insurer



having that legal precedence, and I could imagine some situations where employers say, "Well, I've paid my premium. It's now the responsibility of the insurer," and basically disengage from the process. I'm not suggesting that's common but I could envisage some situations where that occurs. How do you get around that?

**MR CROSSIN:** Can you just repeat the last part?

**PROF WOODS:** The question is where you have the insurer having legal precedence over the employer, how do you get around the situation that may occur with the occasional employer who says, "Well, I've paid my premium, the worker's injured, the insurer is the claims manager; not my problem"?

**MR ANSTESS:** That problem is endemic in our scheme and, I dare say, others similar to that. You find that case particularly with the smaller employers that see the workers comp issue as a problem they'd rather stay right away from. Larger employers seem to recognise that getting their worker back to work is the cheapest option. But over the last several years - and it's not necessarily a good thing - our premiums have probably more than doubled over the last five years. While that's had a bad effect as far as the average employer is concerned, and their costs, it's going to probably have a good effect in terms of their individual and small employers' thoughts about occ health and safety and thoughts about rehabilitation.

**PROF WOODS:** It's impacting on the bottom line, therefore they're focusing on it a little further.

**MR ANSTESS:** Yes, that's right.

**PROF WOODS:** We had an interesting situation with another jurisdiction who drew our attention to the same thing. They were a large public service based scheme. They said that over a number of years they'd worked closely with department managers and others, and had got premiums down but they'd got them down to a stage where they'd disappeared from the radar screen of departmental managers in a budgetary sense and, therefore, there wasn't quite the focus. As such, the momentum is building up and it seems that whereas it can take quite a while for premiums to come down and good practice to be put in place, it only takes a couple of years to look behind you and find that you're getting yourselves into trouble again.

**MR CROSSIN:** I make the observation that while premiums have gone up and business has no doubt paid greater attention to safe performance, that's certainly true in the government sector as well but there's opportunity - there's room for us to improve there. As a lead agency for OHS and workers comp in the Northern Territory, we have a task to ensure that our agencies get a focus on health and safety outcomes, and some do it quite well. Some of the small agencies perhaps don't have

the resources and rely on groups such as our Department of Corporate and Information Services, which coordinates and oversees OH and S activity across the public sector. They rely on other agencies to assist them, rather than focusing on health and safety outcomes as a priority themselves.

There's a lot of work for us to do there, no doubt, but I think it wouldn't be fair of me to say that it's just premiums that have improved the OH and S performance. I'd like to think that our preventative programs also played a role. But in an environment with growing premiums it's certainly assisted our preventative programs to have that premium support, if you like - or at least the market situation - better focusing employers.

**PROF WOODS:** I wasn't wanting to suggest that premiums played any more significant role than they do. It's just that they can help encourage employers to take particular note of the educative and practice procedures that organisations such as yourselves put in place.

Self-insurers: what's the view of the Northern Territory in terms of the role they play of their own particular performance, of the impact they have on the scheme generally by not being part of the pool, but presumably they pay some contribution for occ health and safety, et cetera?

**MR ANSTESS:** Self-insurers in the Territory - we only have six of them. They're all very large with three banks, the Catholic Church, Woolworths and Chubb. I think they manage their workers comp and occ health and safety pretty well because we don't have many problems with them. They don't contribute to our scheme in the sense of providing funding for occ health and safety across the scheme. The only contributions they would make would be to our nominal insurer, which would be on a market share basis where we'd work out a premium that they would have paid if they'd been insured and they'd been given a market share.

**PROF WOODS:** But you did make the point that their performance is reasonably good. Is that on a per-industry standard or just on a general Territory broad basis?

**MR ANSTESS:** I think on a broad basis. My point of view, as rehab and compensation manager, I see it mainly through the fact that we get very few complaints from their workers. They seem to operate quite efficiently, the block of them, most of the time. Now and again there's a problem with their claims management. So from that point of view self-insurers do have a big incentive for rehabilitation and getting their workers back to work. Of course they're in effect doing all that work an insurer does with hands-on. But the other side of it, we see that if there were too many self-insurers around we could have a real problem with the viability of our scheme. The scheme would be just left for all small employers

and it could be a problem for us.

**PROF WOODS:** That's an inherent difficulty, isn't it, because by definition small and medium employers are going to be forever premium payers. There's no way out of that, although I'll explore group schemes in a second, but you mentioned three banks and one large retailer. I can think of another large retailer who's up there and I can think of at least one other bank who's up there, and a couple of transport companies. Is there a view in the government - I don't mean at the political end but at the operational end - to encourage or discourage or be passively neutral to self-insurer applications?

**MR ANSTESS:** I don't know at the political level what that is, but certainly at the administrative level we view the sort of scheme we have, which is a long-tail scheme - which means that claims can go on for many, many years. If a young worker is injured they could be on benefits until they're 65. When we're looking at an employer to self-insure, we want one who's likely to be around for a long time, who's got the financial ability to manage very large claims.

**PROF WOODS:** But I can think of a few others who would meet those prudentials.

**MR ANSTESS:** Yes. As a matter of note, them applying for self-insurance - the ones you're thinking of - they haven't at this stage.

**MR CROSSIN:** At least one of the large retailers has indicated to us that in future they may well apply for self insurer status.

**MR ANSTESS:** Yes.

**MR CROSSIN:** I won't name who it is.

**PROF WOODS:** No, I can't possibly guess, but there are some nice shops out at Casuarina and places. On that though, in part they would be looking at their level of receptivity in the jurisdiction, as well as their own calculations. While ever your premiums are low, that might remain an encouragement. Presumably, if they are newly self-insuring, you would expect them to cash out their own tail and take that on as their own liability.

**MR ANSTESS:** No, the insurer that existed at the time would keep the tail.

**PROF WOODS:** All right, yes.

**MR ANSTESS:** The self-insurer starts from day one and they just wear the claims

from the date that they came in as a self-insurer.

**PROF WOODS:** That's true.

**MR ANSTESS:** We don't actually discourage self-insurance in that sense but, if we get an application or inquiries about self-insurance, we do point out the type of scheme we have; explain that we're looking for employers that will be able to manage a claim not only for the next five years but for the next 40 years. We've had very stable self-insurance where numbers have been four, five and six for 15 years - around that area - the same ones. We've had three new self-insurers over the last five or six years, and that's the Commonwealth Bank - of course they came in from being a government-owned agency - and I guess the other two new ones were due to increasing premiums, basically. We get a reasonable amount of interest shown and inquiries made. We don't get very many go on with it, but that's not us stopping them.

**PROF WOODS:** No, that's just their own internal decision-making.

**MR ANSTESS:** Yes. But if we did have hordes coming in and wanting self-insurance, we'd have to make some very serious considerations with the view to the viability of our scheme.

**PROF WOODS:** I understand that trade-off.

**MR ANSTESS:** To make sure that our scheme remains viable .

**PROF WOODS:** Yes, fair enough. All right, nothing further that you want to draw our attention to? I've identified one or two areas where I wouldn't mind some supplementary material but I wouldn't like it to hold up the process of your submission as such, and we'll welcome that when we receive it, but if you could give some further thought - if you could also keep an eye on our web site generally and other issues that are coming in other jurisdictions that you think may have an impact on the Territory, even if it's a short note just to draw our attention to it would be helpful. Then we will produce a draft in September and certainly look forward to your reaction to that. Are there any concluding comments at your end?

**MR ANSTESS:** Perhaps something we should bring up is a worry we have with commutations. Commutation is a redemption of - - -

**PROF WOODS:** Yes.

**MR ANSTESS:** We have provision in our legislation where people who aren't totally incapacitated can apply to the Work Health Court to have their weekly benefit

redeemed as a commutation. We recently expanded that commutation because it was working as - it's a good tool to get people off benefits that do have a capacity to work but the Commonwealth are considering taxing commutations. They haven't in the past been taxed and that of course is a concern for our scheme and others that are similar to our schemes. They're taxing it because they can identify that the payment is for a weekly benefit, an income type of replacement, whereas in a common law scheme whereby a worker is entitled to payments under law, their lump sum isn't identified. That proportion of it that's income replacement isn't identified in that lump sum and, therefore, that won't be taxed. We see inequities there but really, whether it's inequitable or not, it will be a real cost concern for our scheme if that's brought in.

**PROF WOODS:** It seems the secret of that is to have included in any lump sum an unidentified but clearly nominated component that is capital. Once you've done that, then problem solved - not that I am offering you tax advice.

**MR ANSTESS:** We've already thought of that.

**PROF WOODS:** That comes as no surprise to me.

**MR CROSSIN:** Just before we close, another issue is in our reluctance to see a move away from the return-to-work and rehabilitation focus. We really think that they are principal objectives (indistinct) in legislation and also a desire not to see further cost-shifting onto the community for what essentially are industry responsibilities.

**PROF WOODS:** I thought you were going to say cost-shifting onto the Commonwealth, a separate game that the Territory contemplates.

**MR CROSSIN:** That would probably conclude our submission. I pick up your point about supplementary advice on remote areas. I think that's still something we could give further advice on.

**PROF WOODS:** That would be good. I did very much enjoy and benefit from the discussions I had in Darwin a little while ago, and again from today. I find the Territory's approach refreshingly pragmatic and you have some valuable lessons, so I do appreciate the time and the manner in which you've assisted the inquiry. Thank you very much.

**MR CROSSIN:** Thank you.

**MR ANSTESS:** Thank you.

**PROF WOODS:** We have as our next participant Ms Barbara Bradshaw from the Law Society.

**MS BRADSHAW:** How do you do?

**PROF WOODS:** Very well, thank you. It was a pleasure to catch up last time and nice to be speaking to you again. Could you, for the record, please give your name and the position that you're occupying for the purpose of this inquiry?

**MS BRADSHAW:** Yes, I'm Barbara Bradshaw. I'm the chief executive officer of the Law Society of the Northern Territory.

**PROF WOODS:** Thank you very much. Is it the intention of the Law Society to provide, however short or long, a formal submission? Or will this hearing constitute your contribution?

**MS BRADSHAW:** I think we probably will be producing a submission. That is likely to be done in the next week or so.

**PROF WOODS:** That would be very helpful because, as I recall from our discussion in Darwin, you have a number of particular perspectives that are helpful to this inquiry and so we would encourage if you could put them in writing as well as having today's discussion. Are there some opening comments? What particular matters do you want to discuss today which you might then want to flesh out in your submission?

**MS BRADSHAW:** I think I'll be relatively brief today. Basically we've still got really the same perspective, that we think it might be very difficult to have a national scheme. We want a state based scheme based on uniformity and definitions and the like that is fair and as affordable as possible. As I said before, I note that the Northern Territory doesn't have any common law and that raises issues for us. I note the people from Work Health mentioned the commutation issue. We, like them, are very concerned that it will result - that they're going to possibly change the taxation on that. We've found commutation has been very desirable for the clients of our members. It does assist in a quick return to work, which is something we would obviously generally support.

**PROF WOODS:** Okay. Can I pick up a couple of those points?

**MS BRADSHAW:** Yes.

**PROF WOODS:** First, on the definitions, are you targeting in the first instance particularly commonality of definition across occ health and safety and workers

comp? If the answer to that is yes, are you then contemplating that that should be rolled out more generally across industrial relations in the Territory and maybe even payroll tax, or is that not an interest of yours?

**MS BRADSHAW:** I think it should be, if at all possible. I note there's an issue about the definition of "worker" and there's been a bit of an inquiry into that. I haven't actually got the results of the inquiry yet or followed it particularly, but I think it is a major issue in the Northern Territory as to whether somebody is a contractor or a worker, and what their general position is. OH and S I think is an area that needs it and also you're probably aware, too, we had a number of specific OH and S issues in the Territory that probably only occur in other remote areas, such as OH and S situations in other remote communities, and how employees are able to go into a safe workplace in those rather sometimes fairly extreme situations.

**PROF WOODS:** As well as them providing rehabilitation and other services in the event of an injury.

**MS BRADSHAW:** That is correct, yes.

**PROF WOODS:** Okay, so your commonality is particularly between occ health and safety and rehab.

**MS BRADSHAW:** Yes.

**PROF WOODS:** Okay, commutation: you made the reference to its association with a speedy return to work. Could you elaborate on that a little for me?

**MS BRADSHAW:** Again I think in some cases, rather than somebody getting workers comp benefits stretching into the immediate future, sitting at home and probably - well, it wouldn't actually be in the best interests of the worker, let alone a place of employment. Commutation apparently does encourage some to return to work on a quicker basis and they use this sum of money as sort of capital. It might help them pay off their mortgage or something like that. Having done that, in some cases they return to work on a quicker basis. It appears the insurance companies and the worker both find that a very good way to go.

**PROF WOODS:** Is there involvement of your members, the society, in that process? Is it disputational? Where does the Law Society membership come into that process?

**MS BRADSHAW:** My understanding is they have to be at the Work Health Court stage. I think that's when our members are involved and our members actually encourage settlements along those lines.

**PROF WOODS:** Yes, that has to be approved through the Work Health Court.

**MS BRADSHAW:** Yes, and I think, from my understanding, members who operate in the area tend to facilitate it, both those acting for the workers and those acting for the insurance companies. Of course our members appear on both sides of the equation.

**PROF WOODS:** Sure, I understand that. Are there other areas of either occ health and safety or workers compensation that your members are particularly involved in that should be drawn to our attention?

**MS BRADSHAW:** They certainly have been involved in providing advice on claims and that sort of thing. That's before the matters actually go as far as the Work Health Court. They might provide general advice on a matter, then they're heavily involved once a matter gets up to the stage of the court proceedings. I don't think it's a major area of work for them but I think they do have a steady sort of involvement in that.

**PROF WOODS:** From the perspective of your members, do they feel that the absence of common law in the Territory is particularly depriving workers of just compensation or is there a general agreement in the Territory that your no-fault scheme with its statutory benefits and the long tail is reasonably recognising the disability?

**MS BRADSHAW:** I think from a philosophical point of view our members feel that our worker clients have been disadvantaged by the removal of the common law element, particularly when it still exists in a number of other jurisdictions, but I think they've probably accepted it. If the government was to change and say, "We're introducing the common law," unlikely as that would be at the moment, I think they'd certainly support it.

**PROF WOODS:** I don't notice any great ground swell in the Territory for significant change. That's an observation from afar but it's probably reasonably based.

**MS BRADSHAW:** I'd say it is probably reasonably based and, that being the case, they want to make the current one work to the best interests of their clients, whether they be insurance companies or workers themselves, and taking into account the special situations that apply in the Northern Territory. Another issue they have is that - just from talking to them - a number of the clients who are making claims tend to be a little bit - they might be unaware of their rights. In some cases they might be semi-literate or they might be illiterate. They might have English as a second or



third language and they probably do need the advice of a lawyer to get through the system.

**PROF WOODS:** So you're playing a facilitating role where there is some form of limited access to appropriate information or services.

**MS BRADSHAW:** I think so, yes, and I think the lawyers concerned see that that's part of their general roles as members of the profession, too.

**PROF WOODS:** Very good. What about the dispute resolution procedures in the Northern Territory? Are they matters that you're comfortable with or that you'd want to see some change to?

**MS BRADSHAW:** I think they work reasonably well. I think I might have mentioned last time in my previous job I had personal experience in one where we had an employee who was effectively trying to dud the system and I don't know that it particularly coped very well with that, although in the end we were able to work out an appropriate sort of settlement. I think generally they don't work too badly. I'm not sure what the Work Health people said about it but it's not too bad really.

**PROF WOODS:** They didn't raise it as an area of particular concern.

**MS BRADSHAW:** Both Geoff Anstess, who was here before, and myself worked on new Work Health Court Rules. That was when I was in government. It was getting on for 1997-1998 and that was a result of several years' work and I only came in at the end. Since those new Work Health rules have been in place I think things have been working reasonably well, though there are certainly issues of court priorities, although it's dealt with basically by the Local Court and they have a lot of other responsibilities as well. That might cause delay in some instances but I suppose it's really a matter of court procedure as much as anything else. Generally it could be said they work reasonably well, yes.

**PROF WOODS:** There's no significant design failure that you've identified?

**MS BRADSHAW:** No.

**PROF WOODS:** Are there other matters that you'd like to raise before the inquiry at this hearing, or do you envisage that your submission will be canvassing the matters that we've already discussed?

**MS BRADSHAW:** I think our submission will just be canvassing most of the issues and certainly we await with interest - you're now issuing a discussion paper, are you?

**PROF WOODS:** No. A draft report will come out in September and we would certainly encourage you to go through and respond to it because we're particularly keen to have the perspective of the legal fraternity on these matters, particularly from a range of jurisdictions. We would appreciate that.

**MS BRADSHAW:** Certainly we'll be further commenting on that stage and we'll get something else in writing to you within the next week or so, if that's okay.

**PROF WOODS:** That would be most gratefully received at this end. Thank you very much. I appreciate the time that you've given.

**MS BRADSHAW:** There don't appear to be any other speakers here.

**PROF WOODS:** Thank you very much. I appreciate that and I'm sure somebody will turn off the system at your end for you. So in the absence of anyone else wishing to make a submission, I will adjourn these hearings and they will recommence in Canberra on Wednesday. Thank you.

**MS BRADSHAW:** Thank you.

AT 10.48 AM THE INQUIRY WAS ADJOURNED UNTIL  
WEDNESDAY, 18 JUNE 2003

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