



**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 SYDNEY ON WEDNESDAY, 25 JUNE 2003, AT 9.18 AM

Continued from 24/6/03

PROF WOODS: This is the resumption of the Sydney hearings of the Productivity Commission inquiry into national workers compensation and occupational health and safety frameworks. Our first participant for the day is LMR Roofing Pty Ltd. Could you please, for the record, give your name, position and organisation you are representing.

MR MARTIN: I'm Michael Martin from LMR Roofing. I'm a director of the company.

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

MR MARTIN: Yes. I'd just like to thank the Productivity Commission for creating this vehicle for small business enterprise to have their say. Representing 44 and a half per cent of the workforce, they seem to be a little bit underdone in issues and what they say with the government, and there's a good vehicle for us to create reform and let the voices of the small companies of the world - of Australia, I should say - have their place and take effect. So thanks very much for setting up the commission.

PROF WOODS: That's all right. Do you want to speak to a summary of your submission? We have the benefit of your submission here, but are there key points that you wish to draw out?

MR MARTIN: Well, I was just going to ask you guys - you've read the submission. Is there any comment you want to make so I don't go over ground, you know, that you've already maybe covered that you want to talk about?

PROF WOODS: Yes. Well, we can do it that way. I'm quite happy with that.

MR MARTIN: And I can expand from there if there's any gaps in what you've asked, I suppose, that I feel - that is pressing.

PROF WOODS: Perhaps if I can raise a couple, then my colleagues can pick up from there. I think, Dr Johns, you were particularly impressed with the submission - - -

DR JOHNS: Yes.

PROF WOODS: - - - so you can go through some of that in some detail. Under Macro Problems, you refer to national workers compensation premium increases as being:

politically-based attempt by left-wing unionists to fuel their parties' agenda: WorkCover, Labor, state and federal governments.

MR MARTIN: Yes.

PROF WOODS: You presumably also have a view that employees have a right to compensation and rehabilitation?

MR MARTIN: For employees?

PROF WOODS: Employees.

MR MARTIN: Most certainly. I think the focus is wrong. I think it's after the horse has bolted, a lot of this stuff, and there should be a clear focus on prevention of accidents and a safety culture in smaller businesses and large businesses, and it's very hard to achieve when you're paying premiums and you don't get any discounts for improving - money you spent on safety. In my business, we work on roofs and also build houses, and we have anti-fall sarking. We actually reach safety rail. We have mentorships with our apprentices and we want them to do good, safe work. I mean, that's a good thing for us, because we don't want them to be off work, because they're off - at the moment, there's 63 days of the year, between RDOs, tech days, wet days, public holidays, that really go against our productivity, I suppose. So we want them to be on deck all the time. Plus we don't want them to be injured, I suppose.

PROF WOODS: But injuries, accidents, unfortunately do happen sometimes, so you're not objecting to paying premiums as such, just that - - -

MR MARTIN: No. What I'm saying is that I think the Council of Small Business - my point focused on and sort of encapsulated that, that we really need real site assessment. Now, in my company we have three or four in administration, and their premium is 14.1 per cent, as though they were a jackman on a roof. Clearly the main risk there is paper cuts. I know that's very dangerous, but it doesn't reflect a workers comp rate of 14 per cent. So this needs to be a rate, if there is danger, assess the risk and takes steps to eradicate that danger, like ladder brackets, anti-fall sarking, you know, safety systems, and that should be an incentive and should be a discount.

If you've got a certified auditor that comes and sees your site and says, "You are carrying on safe work practice," you should get an incentive, and not the type of incentive that the PDS scheme offers its - certainly pockets and underpants, if I might be so brazen to say. It doesn't give an incentive for people to spend money on safety and develop a safe culture in small business, you know, and obviously most small business people are using - they've got their own assets on the line and it's their own money and not other people's money, as in big businesses, as I've referred to in the submission. So it's their money. They want to see their assets employed, so people are working, and getting good return on investment, just to cover costs.

PROF WOODS: Thank you. You talk about establishing self-insurance guidelines for small business. Now, presumably the inherent nature of small business is such that they wouldn't have the prudential strength to guarantee that they will be in existence for the 30 or 40 years that sometimes can be involved, or that they could, by self-insuring, meet the cost of a large, significant claim. I mean, presumably that would bankrupt you.

MR MARTIN: That's right. Well, obviously there's an underwriting factor there for both dangerous and bad accidents that you'd be audited on to make sure they didn't happen. So underwrite on major accidents but small accidents, small business is prepared to actually - well, I know that we'd have no claim. We just want to repay the hospital bills, get the guy back, send him to physiotherapy, get that done so he gets back on the roof. We haven't had that many - touch wood - not that many accidents. So, you know, we're judged as a construction industry by commercial, which is high-rise and a lot of Lebanese back syndrome, so referred to - people faking and frauding the insurance business, and that's what's putting up premiums, and that's part of, I suppose, the big deficit in the workers comps in New South Wales, which doesn't seem to be shared by any other state. So there's a bit of mismanagement there, I suppose, that I mentioned.

I just know that small business with an underwriting of - with capping of payouts, with an underwriting of serious injury, we could cover most other claims. We might actually not make a claim and just sort of pay out of our own business. Make the insurance payments to a super-light fund that we can invest and make a profit on, and maybe do better than what the state government is doing now, just investing it in houses and leaving it alone with protective regulations about what he can do with that fund. Just like a superannuation fund, it should be put aside and attract interest, and maybe in the current housing market you can earn 30 or 50 per cent, up to 100 per cent return on investments. So it would be quite a viable fund that would be left alone.

PROF WOODS: Well, the housing market, I think if we invested at certain times in its cycle, you'd see your funds wiped out.

MR MARTIN: Yes. Then again, you might see the business side work out with the amount of ethics going around with big business, with HIA and all those sort of things, to have a little - the amount of takeovers and you don't know who your money is invested with. So having worked at a big company and worked in my own business, I can see both sides of the fence as an employee and contractor. An employer - I can see the whole gamut of the business themes, and as I say, I'm at a stage now where I've been to university, seen a lot of different workplaces, and I feel I'm qualified to make comment on the workplace as it is, assuming the building industry.

PROF WOODS: Okay. The last one from me. You say:

Insurance companies don't enjoy the best profile because they take money from everybody and never pay out.

Is that strictly correct?

MR MARTIN: Well, I suppose I've never made many claims. I had a hip operation last December. I had a sickness and accident policy and because I didn't inform them that I played football and had a knee injury in, I don't know, 70-something or whatever, that affected my claim for a hip injury and there's ongoing - I mean, I just put the claim in because I was off work for a month and, yes - so I don't expect to get that, you know. The ethics - I was just paying my premiums. I might have been paying it - I should have been paying it into my own fund, and I would have been there to claim it with interest, instead of - they're accusing me of being unethical and trying to be a fraud, and I felt embarrassed and complicated over a normal hip injury and a couple of hernias fixed up, you know? I suppose with a claim, not an accident, a vehicle accident, you know, so - but if it's under \$500, why would you worry? I've got to say, I don't think insurance companies enjoy a high profile of ethics and trust in the community. Everybody I know in the industry takes that regard.

PROF SLOAN: You were a good footballer once upon a time.

MR MARTIN: I can't remember that far back.

PROF SLOAN: Isn't Mick Martin the player who used to play for the Kangaroos and now plays for Carlton? But he's at the end of his career, so, you know - - -

MR MARTIN: No, the Wallabies - - -

DR JOHNS: Different code.

MR MARTIN: Actually, I was going to be - Ray Price was on today. He works with our company as our builder, and I thought we might hold him back for it later. He champs at the bit a bit. But most certainly, you know, and I go back - I think I made reference to Graeme Brown. I was going to finish with that remark. When you go through society and law and all that sort of stuff - and there's a lot of rules and regulations. When you can see something and you can say, "There should be a law against that," there pretty well should be a law against it, and if that's not happening, there's something wrong. You know, the lawyers have got to - they've been acting very badly, you know, trying to line their pockets with a percentage of the cut on high insurance claims. They need to be codified in a code of conduct. If there's double yellow lines there, which I made reference to - just like the RTA. If

you speed or do something wrong, you go over those yellow lines, you're fined.

DR JOHNS: Just to come to some specifics. I'm interested in this current - the discount scheme whereby I presume you can get a reduction in your premium if you have an audit.

MR MARTIN: Yes.

DR JOHNS: So your figures, would the audit cost you 7 to 8 thousand dollars?

MR MARTIN: Costs about 1500 bucks a day. I've gone around - I'm actually getting one done now, a company manual, so we can get part of this PDS, premium discount scheme, for insurance. I think I'll most probably get out of that for about 2 and a half grand. I shopped around. This bloke is just doing it - he said he spent a lot of time on it - he's just doing it straight off a photocopier, just changing a few names and doing a policy that has been passed before, and has got the discount. He said to me that I'd get a discount of 15 per cent in the first year, 15 per cent discount, then an audit, I should have 10 per cent and then a further 5 per cent. So 15 per cent in the first year, then your premium is there, and second year, another 10 per cent, then the third year another 30. So you would get a premium that was 30 per cent less than the industry standard. Now, I spoke to my broker and he said, "No, you'll only get 5 per cent each year. That's all they will pay out." So, you know, it's hard to - - -

DR JOHNS: Who is the person who is doing the audit, from WorkCover or is it private?

MR MARTIN: The guy setting it up is a private guy, certified WorkCover consultant, used to work with WorkCover, and then I've got to bring in an auditor, which will most probably cost me another two and a half. So he's saying I'll get a benefit of 15 per cent in the first year, and the broker is saying 5 per cent, you know? I'm inclined to agree with the broker, but I'm just going through it so I've got a safety net, you know, so it's there as a backdrop. I suppose that's peanuts. It's not peanuts, but it's worth considering. But if there is an injury, if I've got a system to say that, "Hey, that contractor was told that if he had an untagged drill again on this site and, you know, we were told last week and he was a bad contractor and all of a sudden he has an accident which I already told him, we covered our duty of care by telling him that." So things like that were - - -

DR JOHNS: So it's partly as a legal defence but it's partly to minimise your premium.

MR MARTIN: It's a legal defence of the big ones. I've got my house, with the other three directors - I've got my house on the line, and if something big like that happens, we lose our houses. So - - -

DR JOHNS: How do you undertake an audit? Presumably you work at a different site every other day, or often you're moving around. How do you - - -

MR MARTIN: I used to work for Boral and - - -

DR JOHNS: But how do you and your roofing business have an audit?

MR MARTIN: Well, we have a risk assessment. We have a work method statement of how we do things.

DR JOHNS: So it's a work method?

MR MARTIN: Yes, on how to lift tiles, how to bend your knees, lift up tiles, and that's a standard thing that goes to every apprentice and they're told how to do things and they sign off things as they go. So that covers our - you know, the back injury thing and all the other things, and we have quite a big crew so all the guys are doing little things and not getting bogged down, bending over, coming up early, which does hurt your back. So you're all - we cover a roof in a day and everybody does a little bit so you don't get bogged down, because I was a tiler myself, so I can understand that. So he's sort of taking action to get around that. Also when we get to site, we have a risk assessment and we tick off the form with, "Yeah, it's pretty standard. Oh, there's electricity wires on the PFA. We need to put tiles up," and they go over near that, and falling off, you know, high storeys is maybe the most dangerous thing that can happen with roofs.

In actual fact, after football, I used to feel more comfortable on the roof than I did walking on the ground, because you can walk at angles so - you know, it's just once you're on a roof, we've got anti-fall sarking guardrail. So it's like walking on the ground and our premiums are going up.

DR JOHNS: So you're going to go ahead with the audit, you think, and you will get your discount, however much that is?

MR MARTIN: Well, it would cover the big things but the little things, you know - like, it's not fair and it's - - -

DR JOHNS: But if you've spent your money on the audit, presumably you'll submit the result.

MR MARTIN: Well, yes. That will cost me two and a half but it's 2 and a half or 5 grand, and other guys are 7 or 8. The IR industry is just - I don't know. It's just self-deprecating rules. Safety is great and I don't mind doing safety, but they're prescribing from up there on a work site down here. They've never been to our site.

The don't know what risks there are, and they're judging us, and they're setting premiums from commercial site. That's high-rise stuff with, you know - - -

DR JOHNS: I guess your problem is there are 50,000 of you sitting around New South Wales until - - -

MR MARTIN: Clearly that's the - - -

DR JOHNS: It's a big, dispersed system.

MR MARTIN: It is, and I've got to tell you, if I got an icon like Steve Waugh or a footballer and said, "If you want something done about workers comp, get on this work site and put a submission in." That's the only way it will happen.

DR JOHNS: Sure. I'm just making the point that - - -

MR MARTIN: Yes. It's hard.

DR JOHNS: - - - if anyone wants to regulate the system, there are 50,000 of you, different work sites around New South Wales. It's a complex system.

MR MARTIN: I think part of the model I said in there was because there is so many, it's just like a tax return registration, not a box on a BAS statement or anything. I mean, the government - the Tax Department's going great. I reckon they're doing a great job. They've got every business on a string. They've got a statement coming out. They're just going to put another box there, Workers Comp. They've got the wages. They know what it is. It's just a straight, "Yes, here's what you need to pay."

DR JOHNS: Just the other bit. So you can't distinguish between your tilers and your office staff in the premium, even though - - -

MR MARTIN: No, no, it's an industry - yes, yes. We've actually started another company, an administration company that does investment to - administration to LMR Roofing because of that fact. I mean, that's - - -

DR JOHNS: So you separate - you can separate them out but you have to go through this business.

MR MARTIN: I have, and we've had thus far - well, it's actually made us invest and start building, which maybe is a good thing, so - - -

PROF SLOAN: Sorry, what have you had to invest in?

MR MARTIN: Well, LMR Marketing is an investment company.

PROF SLOAN: Yes.

MR MARTIN: Investing in super funds and also buying - buying and building - building houses and all that sort of stuff just to make the roofing profitable because it's very competitive and - - -

PROF SLOAN: But, so that means - - -

MR MARTIN: - - -workers comp premium is just a cost to the tilers - \$200 a week. You know, instead of \$200 a month.

DR JOHNS: \$200 a week in - - -

MR MARTIN: In workers comp.

DR JOHNS: Premium?

MR MARTIN: 75 grand, the premium 14 per cent is \$225 a week.

DR JOHNS: Out of how many - for how many workers?

MR MARTIN: Of this one guy - one 75, our leading hand, 75 - 75 grand. That's what it is, 14 per cent 75 - that's what it is. That's what I have to pay. Then I've got superannuation of 9 per cent. So I'm up for \$350, you know, then I pay him - then he loses - it's challenging. Tax is a major - - -

DR JOHNS: Yes.

MR MARTIN: There must be - there might be another government starting up that will give us all this money, I suppose. So - it's a lot of money and it's being wasted and I did make reference of the three tier situation. If we see, in fifty years time that companies are getting rid of middle management - if we don't get rid of our middle management and use the technology that the tax department is using now we're going to be a sunk - as far as the national, you know, international companies, we're going to be- - -

DR JOHNS: Yes.

MR MARTIN: And if we adopt all these non-productive, unionised, you know, things of along the lines of a 38 hour week and, you know, safety and all these rules without any productivity change around - I mean, enterprise bargaining is great, you know. If you say to a - if you say to a guy, can you move that chair for \$10. He

says, "No." Well, "What about eight?" He goes, "Yes, I'll do it." But the award rate might be six. You're still getting more than the award rate.

PROF SLOAN: Because I was going to make the point that with the inclusion of the admin staff in your premium, I presume - I must admit it's a presumption - that effectively what WorkCover does is that they kind of think, well, there is a certain percentage of admin staff within any industry and so in fact the 14 per cent is some kind of average, but - - -

MR MARTIN: Well, it is an industry average.

PROF SLOAN: So, in effect, you're not really necessarily being charged an excessively high rate for the admin staff because that's kind of in the average rate. So you might be being actually being charged 18 per cent for your tilers and - - -

MR MARTIN: So that means if you earn \$100,000 you get charged nearly a fifth of your money in workers comp.

PROF SLOAN: Yes, yes, I know.

MR MARTIN: So, you know - and if you're getting - and workers comp you get covered when you're at work, not to and from. You only get - there's a cap payout and you only get paid a certain amount of money during that payout, and also it runs out. Whereas sickness and accident it's a cheaper policy, you're covered 24 hours a day and you get more of a payout without all the - all the other stuff. If you do claim on workers comp - so if you - you get a payout - you claimed \$150,000 you would pay that back over the next couple of years.

PROF SLOAN: Yes.

DR JOHNS: But I guess if they've taken the admin staff out and it's still 18 per cent you get the true mark, but if everyone took their admin staff out your premium for your tilers would probably go up, is what the - - -

MR MARTIN: Well, that's okay. That's what I'm saying. If there's a risk there - if we reduce risk and spend money on safety our premiums should go down. There's got to be - if you don't get that incentive in the workplace no one is trying to try to get safety as an issue. They're just going to say we're going to try and get around it the best we can. We'll get all this paper to disguise the safety and hope for the best and try and not let accidents happen.

Now, I can only talk - I've been - I've been an auditor, I've been in Boral and I've been on the roofs, so I've sort of got a bit of a wide spectrum there, that - I wouldn't be complaining if my industry rate was, you know, three or four percent

because, you know, why worry about it, a discount. I can say that if we make a safe workplace our percentage rates should be down around that, you know.

PROF SLOAN: Because - it might be bad now - there's also a view in your submission that it's going to get worse - - -

MR MARTIN: Yes.

PROF SLOAN: - - -because we're sitting on a huge unfunded liability, so - - -

MR MARTIN: That's exactly right. The other point was is that they're slugging us, small business, for mismanagement of a government policy and they're wasting money in three tiers of government when it could be allocated - you can't even go to hospital and get served properly by a doctor or a nurse. I mean, there's other areas of - there should be spending and they're sort of wasting money on tiers of money when there should be - and I think the figure that Mark Drummond came up - was \$30 billion. Now, a billion dollars is a thousand million dollars. Now, there's 30 lots of those that are wasted. Now, if that couldn't fix up the hospital system or one system in the government in a couple of years well, I'd be very surprised. That's also \$1789 per person per year. I think that would be a fairly good kick in the tourism industry for a family going on holidays for 5 or 6 grand each year, you know.

So just the amount of waste - as I said, the country has got a good accounts receivable situation with the tax department, but the accounts payable needs some cutting down because there's money that's being wasted there with bureaucracy. The more people that - and the thing is people won't say anything about it because they know they'll say something and they haven't got forums like this for it to get to the top. That means issues like environmental things where - I don't know if you guys have got kids, but I'm worried about my kids in 50 years time being involved in a war between America and Russia and if we can't take steps to make - stop that happening I think I - I viewed a lady on Andrew Denton's show who was an activist and - yes, we could have a nuclear war and that means everything else we're doing now is, really, well, a bit of a nonsense.

PROF SLOAN: That's right. We probably won't be worried about workers compensation, but - - -

MR MARTIN: Well, that's certainly right. But I mean to say, if issues like that can't - if the Australian people can't be represented because of tiers of government and politics of one party going one way and one saying black and one saying white there's something wrong. Issues need to be voted on by maybe regional governments where you can get issues decided on in an area where it makes a difference to that area and one voice can actually be heard and make a difference in Canberra.

PROF SLOAN: You talk about fraud within the system - - -

MR MARTIN: Yes.

PROF SLOAN: - - -but surely a business like yours it would be very hard for one of your workers or contractors to fake a claim?

MR MARTIN: Well, we're got an interesting guy, a guy we picked up with a bit of a sore back and he's been having a bit of time off and I said, "Look, go to physio," and we've got him going to physio. I said, "Look, all I want you to do is come to work and mentor the guys, point your finger, and that's not too hard. If there's any problems at all I want you to train the guys because you've got skills that I want these guys to learn."

So - back injury is very hard to detect. We have a situation where we're doing an AWA now, an enterprise bargaining agreement with our apprentices to say, "If you come to work all the time we'll give you a bonus," you know.

PROF SLOAN: Right.

MR MARTIN: They've all got this mentality of sick days and it's a God-given right to take a sick day. I - when my first child was born I went to work, went and saw Kerry then went back to work. I think - well, I think I was sick for three days in 15 years of work at Boral and the guys came and laughed at me in bed because I've got an ethic of not being sick. Everybody has got this easy, "Yeah, we'll be right. No, don't worry about it," and it's got to change.

PROF SLOAN: So what you're saying is that there is still scope for fraud even in small business?

MR MARTIN: Yes, well, doctors filling out dummy, you know, I'm on - next doctor who fills out one I'll go and confront him and say, "Listen, next time one of these comes in I'm going to get you checked out and see what it - and get another guy to check it." Because, I mean, they - they're just - you know, I'm making the guys pay for their visits now if they're getting sick, you know, or if it's not work-related, if they've got a cold or did something on the weekend. It's just - if everybody is concentrated on, "Yes, it's an easy ride, rolling my arm over" - contractors are the most productive people in the workforce and I think - I think in 1945 we went the IR way or the unions way and the wage way and America went the contract way. They are who they are and we are who we are. We're not looking too bad at the moment and they are going - which is also nice.

But, I mean, I think there should be a clear focus on doing work and getting

rewarded for doing work, not - and I've been in an employment situation. I've been chastised by occupational health issues by management, middle management and they stick - putting your brain on the side of the wall as you work into work and just rolling your arm over. That's got to stop and I think big companies are seeing that now and they're now outsourcing a lot of their services so they can be productive. So the workforce is changing. These rules need to go along with those changes. I'm not getting through much - many of my stuff here.

PROF SLOAN: Sorry?

MR MARTIN: I'm not getting through most of my stuff here but that's okay.

PROF WOODS: No, that's all right. We've read it. I don't have any further questions. Professor Sloan?

PROF SLOAN: No, I like the - just - I suppose just to finish up, just go through the background of your company. You - - -

MR MARTIN: Well, my company started back in 78. I had a separate company and I worked for a while as a contractor. Then I went into Boral and my brother - I brought my brother in to take over the business while I worked in Boral and he kept the business going and we incorporated in 1995 because the company wanted us to do that because of regulations coming up and they wanted to draw the line with superannuation and workers comp and that's - you know, that was the start of the work cover thing, sort of making regulations here. We met the regulations and worked our way along.

I came back into the company in 99 and I sort of - just supplied its supply and fix arm to the company and expanded it and also taken on a building capability to keep it viable, to, you know, not have the one focus on roof tiling and build houses to keep it viable. And that's - I suppose we're third generation roof tilers and my grandfather was also a developer so I suppose it's just in the blood.

PROF SLOAN: Great.

MR MARTIN: But most certainly I'm just saying there's too many people being apathetic in the inside and out and mainly caused because they're talking at a pub, "Yeah, what do those bastards do dah, dah, dah." They can't do anything about it because there's not the framework there to do it, and I suppose forums like this I do applaud. I mean, I wrote to Joe Hockey and he, he referred me to this and sent me information so I responded. So it gave me a vehicle to voice my opinion. And, I've got to tell you, out of all the 91 responses, I was very disappointed that small business wasn't represented, as 44 and a half per cent of the Australian workforce - because they're all busy.

PROF SLOAN: Yes.

MR MARTIN: I mean, I get up 4.30. My daughter gets up to go swimming and I finish at 7.00, I watch the ABC news and fall asleep in my chair. I mean, small business is - - -

PROF SLOAN: I hope that's not because of the news.

MR MARTIN: - - -that busy just making ends meet, you know, and - so that's - and it's a dynamic, perfect market - I mean, that's a perfect competitive market and I don't know if you can say the same for big business. I did mention donations to the political parties. Both parties take - I think it was on one of the ABC shows we saw donations to political parties. Every time one of the guys gets nattered on it they walk away from the microphone. Our donations - section looks after that and they get off the air. If \$100,000 is given to a party you can't tell me there's not a political favour in return, or some sort of information or whatever, and that's because big business is 52,000 strong and small business is 1.2 - that's spread over and competing against each other.

I mean, I've got friends in the business but, I've got to tell you, it's a game of cards because, 10 grand on the table, they'll be playing the cards to win. So that's how competitive it is and that's the way it should be - with insurance deregulation also.

PROF WOODS: Are there any other matters that we haven't covered this morning that you'd like to draw our attention to?

MR MARTIN: There is, I suppose. There's quarter of an hour left, I suppose, so if I could speak on a - day on one of these issues, I suppose. But I think just the framework - so small business can be re-represented. I was impressed with a few submissions and I think the HIH submission was quite good. The national insurance brokers brought up some great points and I think - I come from a sporting - - -

PROF WOODS: If you wait long enough you can listen to their presentation, which is next.

MR MARTIN: Is it? Okay, I'll be quite interested to see it. I mean, those guys work with employers and small - and tell them to get around things and how to cover themselves and cover risk, you know. Brokers - they're the sergeant between the lieutenant and the soldiers, I suppose. So I was very impressed with their submission. I come from a sporting background. Australian - given sidelines, try lines, rules, referee - best in the world.

PROF WOODS: That's rugby, is it?

MR MARTIN: That's right. Well, we'll get back at the Poms, don't you worry about that. The World Cup is not over yet. They don't know - but given those parameters.

PROF SLOAN: We don't understand either of those codes, as a matter of fact, but don't worry about that. Yes, go on.

MR MARTIN: It's a boy thing. The thing is that given parameters, clear guidelines, if you put your foot over this sideline you're out and the ball goes to the other side. Clear guidelines, try lines, a referee, let's do business. That has got to be given to the Australian public and they've got to be given their voice on what's fair and what's not fair. Given that place the Australian business - small business community and the big business community will perform and outperform anything from overseas, which they are doing on the sporting fields. They are not being given a fair go by workers comp. This in an unfair tax. There is other issues that - but reform is hard, you know. You've got to get people involved in it to make it happen, because - you know, if you want to say, "You go and do that," if they're not involved in change then these things are good for starting it but if you can't get all the people involved in change, change is not going to happen.

So just some clear guidelines, definitions of workers and employers and its contractors. There's a changing workplace at the moment. Big companies are outsourcing all their stuff because of the regulations. We need to have set rules on how contractors and consultants and barristers and are all treated the same. If they're classified as a contractor by the tax department and by the workers comp they're different. If the Australian Security Commission says they're different there's a bit of a problem there because we're jumping through all these hoops trying to comply with all these regulations and you know, we've got two different thoughts on contractors, and the tax department has got one contractor's thought and the workers comp has got another contractor's thought re deemed employees, which is very grey and vague and needs to be clear and concise and in plain English so people can enforce it and score the tries and not go out, and I applaud safety. I don't want to see anybody going home hurt. That's why we should be rewarded for spending money on safety. That's the main message I wanted to make I suppose and I do applaud the HIR's submission and the Insurance Brokers Commission.

There was some good stuff there that sort of echoed my thoughts. So reading through a few of the submissions there is a common thread there of, you know, "No fair," so it needs to be straightened out and made clear and there was a few mentions of the debt, of the mismanagement of WorkCover in New South Wales for the government public servants in New South Wales spending all that money. I don't know how it happened but it was a gross mismanagement. They're sending the HIR guys - well, they're trying to send them to jail. There's a lot of this going on in public

which should - they've got to be held accountable. If they're wasting taxpayers' money, which is our money that we're paying to them, that's just as bad as the shareholders' money.

So it does need to be addressed - a lot of waste there that could be reallocated to schools and hospitals and other things that will make our standard of living and even I suppose the new thread of tourism, all that sort of stuff I suppose. So there's ways it can be better spent. So I think that's the message and as I say, I've been the subject myself of a WorkCover infringement which got me a bit riled and we had a partnership, directors working in a partnership as a - in our accounting system, if we've got sales less costs of sales and small overheads it's very easy to manage. When you have overheads, the employees and all that sort of stuff, you've got to make your gross margin and it can't be job specific.

So we made it - off an American model I said, "We'll make it all cost of sales and cost every contractor to that job. Pay them out and then most likely there will be small overhead so we can see where we're going, so we keep above water." I had an administration partnership and a roofline partnership with the other directors and other partnerships that worked for us and they would get together in groups or go off in sections with work orders and all the rules that WorkCover had at that time and they nussed us for 44 grand for working - the directors, that they should have been paying workers comp, when we had sickness and accident, public liability, works orders, all the contracts, all the stuff.

So that grey area, that they're saying, "No, you were deemed employees," and we're contesting it. So that's what brought me to the table and I said, "Listen there should be a law against this," and there's so many people in the building industry which is the most effective productive business unit in the workforce, as far as I can see, and I've worked in both, and they certainly haven't got snails crawling up the back of their legs when it comes to rolling up their sleeves and having a go. So there is a cancer in the system. It needs to be cut out, and making these fair workers comp decisions and guidelines is the easiest part of that, I suppose. So I think that sort of encapsulates it and so if we can just get - if the premium is okay, but if we get a discount for increasing safety down to reasonable levels, and I'm paying 225, nearly 350 a week with super and workers comp, it's over what the tax bill is. So I suppose there's a concern.

PROF WOODS: Thank you very much. I appreciate the time and effort that you've put into bringing your views to us.

MR MARTIN: I'd like to thank you guys and hopefully the Productivity Commission can actually get something done and make these things stick, because that can be also very frustrating when you have a bit of a go and nothing happens, you know. Okay, thanks, guys.

PROF WOODS: Thank you.

DR JOHNS: Yes, thank you.

PROF WOODS: Thank you very much. Could you give your names, any title that you have and the organisation that you represent.

MR HANKS: John Hanks. I'm a consultant to the National Insurance Brokers Association of Australia.

MR WILSON: I'm Brian Wilson, the senior consultant in AON Consulting in Sydney.

PROF WOODS: Thank you very much. We have two submissions. Do you wish to deal with them concurrently or consecutively?

MR HANKS: I think we're very much in your hands but if it helps - - -

PROF WOODS: It's probably easier if we just swing to and fro and see where we get to, but do you have opening statements or encapsulation of your submissions that you wish to provide?

MR HANKS: Yes, a short statement. I'm speaking largely on behalf of the National Insurance Brokers Association and Brian is speaking more from a practical point of view from a broker who is hands-on. The National Insurance Brokers Association of Australia - NIBA - welcomes the inquiry. The current state-based system not only leaves employers exposed through gaps and inconsistencies, they are costly and the arrangements are inefficient. NIBA is the voice of the insurance broking industry in Australia. It represents 500 member firms and 2000 individual qualified practising insurance brokers - QPIBs, as they're known.

Insurance brokers represent and assist employers. To ensure the highest possible standards, NIBA members are bound by a code of practice and are required to undertake continuing professional training through various accreditation programs. NIBA members are well placed to assist with the implementation of an effective national framework for workers compensation and OH and S.

MR WILSON: AON Consulting would be one of the biggest broking institutions in Australia and covers insurance right across the whole board. Workers compensation is an area in which we work and we find that the differences in terms of insurance procedures for workers compensation differ vastly from other forms of insurance and therefore we believe that some sort of consistency needs to be brought in. There needs to be, in my opinion, some clarity as to whether workers compensation, which was instituted shall we say almost in the industrial ages, is considered an insurance or whether it's considered to be a health benefit or is it something that has arisen out of industrial relations. I think they are the root cause as to the situation we're in at the moment.

PROF SLOAN: You have national clients too, would you?

MR WILSON: We have clients right throughout Australia in all jurisdictions.

PROF SLOAN: So you're having to deal with the complexity of the different jurisdictions.

MR WILSON: The only jurisdiction we don't have clients in is seafarers, that's all.

PROF SLOAN: They have their own little schemes.

PROF WOODS: Yes. That's quite helpful because you can bring that perspective to bear in our discussions.

PROF SLOAN: Are you also involved in assisting clients seeking self-insurance licences?

MR WILSON: My main role is actually self-insurance. In my previous life before this one I actually worked in Comcare in the self-insurance unit, where I was a valuation self-insurance officer.

PROF SLOAN: We can wring your brains mercilessly in that case.

MR WILSON: So instead of understanding one form of self-insurers I now have nine up here, scrambled.

PROF WOODS: Yes, well, I think the schemes might be. Thank you for that. It is quite helpful having the perspective of your sector before us in this inquiry and I notice there's reference to NIBA brokers located - regularly visiting all regional areas in Australia and a point that we are very aware of is the importance of reflecting not only some form of national framework model that would work in Sydney, Melbourne or Brisbane et cetera but will work in Dubbo and Taree and the various other places. So it has got to have applicability in regional rural Australia, as well as in the major metropolitan centres, so that's helpful.

In terms of cooperative frameworks, in the NIBA submission you put forward two models: one is through cooperative arrangements at ministerial council level at which point you then conclude:

The ministerial council could be the genesis of a national scheme. It is suspected that its delivery would be meshed in decades.

I think one could reflect on the past history of inquiries and responses to inquiries

and no doubt that was what drove that comment. You offer then a second model - and this is particularly relevant then, Brian, in view of your past life, as you put it - I know you have many more:

A second way of establishing a national scheme would be to utilise the existing federal scheme by altering the restrictive membership requirements.

One assumes that was a reference to Comcare.

MR WILSON: Yes.

PROF WOODS: Do you want to expand on that a little, and also whether that therefore would work for large employers, whether they were in one jurisdiction or in multiple jurisdictions. It doesn't overly matter but is that a model where you would start with large insurers who could self-insure and maybe not only in the current restrictions of whether they're in competition with or a former Commonwealth authority et cetera et cetera. But what does one then do about small business? You've heard from a small business earlier today.

MR HANKS: I guess what we're looking at is flexibility and the more market oriented system, and if we can start at some point with that then the states and other schemes may follow. So I think we'd be looking at an example or progressively moving to a more effective system in that regard. There are a number of features of the Comcare system that do meet those requirements. It's not only self-insurance in the prudential sense, you can also self-insure in terms of claims management, do your own claims management. So it does allow greater flexibility than a lot of the state schemes in respect to their self-insurance. So we would see it as a starting point for larger companies to at least make the start, but it doesn't necessarily mean it has to be very large companies in the sense of - because of the flexibility that it does have to administer your own claims or outsource those to other people.

PROF WOODS: Let's explore that bit of it in a moment. But you're well placed to understand the various cost drivers of the state schemes. Are you identifying Comcare because you consider it an efficient, effective and equitable scheme as such in its various design components and its cost or because it has the characteristic of potentially being able to be opened up. What are the prospective waitings in your consideration?

MR HANKS: The latter would be the more important thing. The benefits under the Comcare system are probably more expensive to administer in terms of benefit payments than some of the other schemes. So I think that there are other issues but what we're looking at is largely the system itself is a more effective system.

MR HANKS: Would you like to add anything?

MR WILSON: I don't like talking about a Comcare system, I'd rather talk about a federal system because Comcare is just the administrator.

PROF WOODS: It's just that for many others that we're dealing with they sort of have that that understanding. Yes, the federal system.

MR WILSON: The Comcare scheme can work for the bush but the reason that it already does work for small groups, even though the Commonwealth scheme is for government departments only of which there are something like 14 or 15 or something, there are actually almost 300 premium payers in that scheme. So you get the small commissions like the Murray Darling Basin Commission that might have six people in it. They're actually in the scheme, that can translate to a small person in Dubbo or Bourke or anywhere. But it also does allow for the major clients who do have the capacity to be self-insured when they reach a viable financial position of having to pay around about \$2 million in premiums, there are advantages from there up.

The way the Comcare scheme works is that these small people - a premium model in that scheme is such that the small players are actually pooled within that scheme and therefore it's a bit like the industry rates but it is based not so much on the industry as on the size and the capacity of these people to pay. The big advantage in this whole thing is at the moment the Comcare scheme only covers the Commonwealth. If it encompassed the whole of the workforce in Australia then obviously you have the bigger pool, you then have stability in the bigger pool, you then have the opportunity for those who can retain their workers compensation to become self-insurers to some extent, but the small people are not left - if a player moves out of the big pool then the small pool don't have to pick up increase in administrative costs by what's left.

I would say that the other thing that would, in my opinion, need to happen to that scheme would be a free market insurance enterprise - - -

PROF WOODS: Private underwriting.

MR WILSON: - - - would need to be opened up, not to be run by an authority.

PROF WOODS: Would you retain the ability of the Commonwealth to have a government underwriter for those organisations who are government who chose that underwriter or would you just say, "All right, private underwriting across"?

MR WILSON: My position is that if it's a free market then it's either a commercial insurer or a government underwriter. Like you can have a government agency

saying, "Yes, okay, we are going to offer this service on the same playing field as GIO or Allianz or anyone."

PROF WOODS: Provided it's competitive neutrality.

MR WILSON: Yes, and then it would be up to - I would suspect the pressure for government agents would be to go to the government office for their insurers, but that's okay as long as they're on the same playing field and delivering the same services as the commercial insurers.

PROF WOODS: Then ultimately the government could then make a decision as to whether it needed to be in that game or not.

MR WILSON: Exactly. They would then make the decision hopefully based on the economics of the proposition.

PROF WOODS: But small business inherently are premium payers, aren't they?

MR WILSON: Yes, they can't get away from that fact. It's the same as a house and a car. We are small players in that. The people who do fleet cars get good rates.

MR HANKS: But there still can be greater flexibility in the premiums they pay, how they're calculated and so on than there is in most schemes.

PROF WOODS: In what sense?

MR HANKS: More regard to claims, the history of claims, burning cost basis of premiums, there are ways in which - - -

PROF WOODS: Which is where they pick if their claim experience goes beyond - - -

MR HANKS: Exactly. Higher deductibles, there are a number of risk management pools that can be used and insurance tools that can be used which are not readily available to small businesses in most of the systems that we have in Australia at the present time.

PROF WOODS: We do currently have what, four, five jurisdictions that are privately underwritten. Are they all perfect models of that sort of flexibility for small business?

MR WILSON: No, small business is in a trap, let's face it. It gets down to economies of scales and it gets down to how much dollars you're putting into that company as to what you get back from that company. That's business right

throughout when you're handling that side of workers compensation, so that a small business person would be in the situation of paying a single lump sum for an insurance coverage. As they go up the scale then you can move into these other options such as burning costs methods or something where you can take on a little bit of the risk yourself and share the profits with the insurer and then as you get bigger still you then get into self-insurance, so the point that I'm making is that there is not one solution in terms of a policy that is going to cover small business and very large business.

PROF WOODS: No.

MR WILSON: There will be variations but again I would say to you the bigger the pool - I believe this is the crux of the whole problem within Australia, these 10 different pools all over the place. The bigger the pool, the better it's going to be for the small person because eventually there is a pool distribution and they would, in my opinion, be picking up a little bit of subsidy from the larger flows.

PROF WOODS: Current figures demonstrate that level of subsidy in various schemes.

MR WILSON: Yes.

PROF SLOAN: Except there's a kind of ceteris paribus to that argument, isn't there, and, like, you take South Australia which is my state. They've always countenanced a very high proportion of self-insurance so they got 40 per cent of employers outside the scheme and of course it's a small pool and it seems to me that there are a kind of lot of other parameters. It's how you kind of manage the scheme and what benefit structure. It's kind of a complicated issue and I mean, I don't know if you've read the IAG submission, that South Australia for a sprain or a bad back or something is paying out considerably less than in Victoria and New South Wales. So there are kind of other parameters. In some way it's not the only issue. You could have a bigger pool with lousy parameters and this is one of our - - -

MR WILSON: I'm with you 100 per cent.

PROF SLOAN: One of our issues is that: are we better with all these little competing schemes and their weaknesses and their differences, compared with having one really lousy scheme, you know?

MR HANKS: That comes back to the question. We think that the fundamental thing is choice, flexibility in the arrangements, and how you handle it within that. If you've got the choices then you're a lot better off, whatever your size.

PROF WOODS: But once you introduce choice, if it's jurisdictional based choice

then the benefits of having a uniform national scheme deteriorate quite rapidly. As Prof Sloan said, if you have a single national scheme that's a lousy scheme then everyone suffers equally.

MR HANKS: What we don't want is a single national scheme which replicates the inflexibility of the state schemes. What you want is a national scheme that does give flexibility.

PROF WOODS: By flexibility where are your priority areas? I understand flexibility in the sense of identifying what would be average weekly earning benefits because that varies from jurisdiction to jurisdiction. Mind you, I'd also add that it varies considerably if you live in Sydney versus if you live in some of the western centres of New South Wales. So it's not a jurisdictional issue, it's a locational issue. So that should be one obviously that you would want somehow to tailor the level of benefits to the circumstances. But where else would you identify flexibility, given that every time you create diversity you create potentially cost.

MR HANKS: We mentioned we have gone through some of the premium issues, they're examples. Whether you manage the claims yourself or who manages the claims for you and there are a whole pile of issues.

PROF WOODS: Yes, I understand that.

MR HANKS: And your choices in claims management, your choices in rehabilitation, selecting of your own provider, selecting of your - - -

PROF WOODS: That's quite useful. If you could provide a sort of succinct summary of that just as a follow-up piece of paper that said you can retain national uniformity where it counts and that would be your definition of workers and all of those various characteristics and whether common law and what threshold and et cetera, et cetera.

MR HANKS: Yes.

PROF WOODS: But within that you can introduce or have flexibility in these areas. I guess it's choice of form or insurance and choice of form of rehab and choice of form of claims management is what you're looking at.

MR HANKS: Yes.

PROF WOODS: So that distinction would be helpful to us.

MR HANKS: I'm happy to do that.

PROF SLOAN: Presumably one of the benefits of the federal system though - I don't know whether that's on both the submissions - is the effective block on access to common law. How important do you see that as a feature of desirable arrangements?

MR WILSON: First of all, the federal system does have access to common law for non-economic things. They're very small. In the paper we have put that the access to common law under workers compensation - to me, I see it as completely redundant because everybody has access to common law in tort anyway outside of the system and what we are finding - typical case, I'll give you an incident now where someone is self-insured in Queensland. They had a worker injured in the Northern Territory. The person put in a claim for workers compensation under the Queensland policy and therefore they got their medical and everything else. Now, five or six years later they said, "Okay, we want to put in a common law claim." They went to put a common law claim in under the Queensland act.

Queensland says, "Sorry, you're not covered any more because it's out of the time limit." The person can't go back to the Northern Territory and claim under common law for workers compensation because there's no common law. So they just say, "Okay." Her solicitor said, "We'll just go to the common law in tort anyway," and the act in Queensland says, "Yes, we have common law," but a section of the act says, "If you want to take action outside of this act, go right ahead." So to me having common law in workers compensation doesn't serve too much purpose at all.

PROF SLOAN: No.

MR WILSON: Except it provides a division between employer and employee. It also sets up antagonism in terms of return to work plans and to me, as I've put in the paper, lump sum common law is against the philosophy of workers compensation as a distributed paying system.

PROF SLOAN: This is an important issue, isn't it? I mean, you have statutory workers compensation schemes based on the notion of strict liability and if you add on common law, which is based on proving negligence, does that not fly in the face of the idea of strict liability? I mean, how did those - - -

MR HANKS: There is a conflict.

PROF SLOAN: Yes.

MR WILSON: Yes. I don't know how to answer that one, to be honest, because the person already has access to benefits for injury, pain, suffering, time off work, rehabilitation. What's common law doing there? What's it adding to this whole

thing, except an ability to pick up a lump sum of money instead of receiving a distributed wages down the track. They will come to a settlement. The person will resign and walk out the door with three or four hundred thousand dollars in their pocket. The federal scheme, they can't do that. They stay in there and they will get their 75 per cent until they're 65, if you like.

But that doesn't happen because they have medical reviews every 12 months, two years: have they improved? And if they're capable of being deemed to work to a certain percentage then the benefit drops down. So that still stimulates the person to get back to work. The other one alienates people to get back - - -

PROF SLOAN: So does the law of a lump sum under common law extend people's time off work, do you think?

MR WILSON: I have no doubt, but if you're asking me to prove it that's a different thing.

PROF SLOAN: But I mean your experience in insurance - - -

MR WILSON: But I think if you did an analysis of what happens to a person who is injured and puts in a claim for common law and for the time the claim for common law goes in until the common law case is heard, I would suggest to you that 99.9 per cent of the cases, that person will get medical evidence from a practitioner to be off work, for some reason.

PROF SLOAN: What's your issue though on commutations? We've had some big employers speak to us yesterday who were quite keen on the use of commutation in a limited number of cases and were kind of unhappy with the restrictions, particularly here in New South Wales, on the commuting option.

MR WILSON: There's a big situation in New South Wales at the moment with a mining company. I don't know whether you're aware of that one - no? Well, a mining company bought out another mining company. That mining company was actually self-insured. Because of the commutation the new mining company was actually told they had to pick up something like \$16 million worth of workers comp from the company they had just bought. But in fact all they did buy was just assets. They didn't buy any trading, any contracts, no staff, no nothing. Now, because of that, the purchasing company said, "We can't operate. We'll immediately have to declare ourselves broke."

Fortunately for the moment there's a loophole in the New South Wales system, which was used, where that company was then broken up into about 15 different companies and the commutation dropped from \$16 million down to \$5 million just by using loopholes. Therefore the rest of it has to sit in the WorkCover scheme and

has to be funded right across the pool and this is where people get hit, because of commutation. Commutation, to me I think - it's hard to say, it gets down to scale again. If you're big enough you can do it.

PROF SLOAN: Yes.

MR WILSON: But as you go down the scale you lose the potential to do it.

PROF SLOAN: This was a big self-insured national company.

MR WILSON: Yes.

PROF SLOAN: And I think they felt the judicious use of commutation had some definite benefits for them and they were railing against the regulatory barriers to them using it.

MR HANKS: Obviously the pension is a more effective way, we believe, of compensating people for workplace injuries.

PROF SLOAN: Yes.

MR HANKS: At some point though the size of it, it may make commutation an acceptable solution.

PROF SLOAN: Well, they were making the point that, you know, instead of having these yearly or half-yearly medical and other checks and also the kind of psychological cost to the injured worker of not being able to kind of close the matter and get on with their life, that there were instances where commutation was quite a sensible strategy for everyone actually.

MR HANKS: Yes.

PROF WOODS: Which is the point that you were raising about the federal system because it does require your annual medical review and adjustments to your level of benefit, depending on the assessed ongoing level of disability. But in one sense that seems to psychologically tie the employee to the system, that, you know, they're forever linked in. I mean, in one sense, yes, that's appropriate because they are being compensated for their inability to work. But in another sense there's no opportunity to break free of the system, go find a new direction and start another life.

MR WILSON: Could I suggest to you that there is?

PROF WOODS: Please, that would be helpful.

MR WILSON: It's called redemption.

PROF WOODS: Yes.

MR WILSON: Now, at the moment in the Commonwealth scheme redemption does occur but it only occurs at a low level and the level is basically set on the administrative costs. "Where somebody is getting \$100 a week, let's pay them out."

PROF WOODS: That's right.

MR WILSON: My proposition to you would be distributed payments with a redemption option, not common law option but with redemption option, and I believe that fulfils the requirement you want and the workers - like, some workers are fairly smart to be able to say, you know, \$10,000 today is worse than \$10,000 down the track. So yes, if it's distributed payments with a redemption option there would need to be some rules around those redemption options - and yes.

PROF SLOAN: Because you see, in one of the submissions - I mean, effectively what has grown up is a really quite substantial, what I'd call service provider industry around workers compensation. This is really quite a big industry now because, you know, you've got the lawyers and the doctors and the physios and the rehab providers and stuff, and of course they're quite a powerful force now, that group. You would have to say - and I mean, you could probably work it out - there's a very significant additional layer of costs there. Okay, there's a significant additional layer of benefit, one would hope. But, you know, you've got to be careful I think when you're thinking of design that you're not actually adding too many additional layers of costs with that provider industry and when you think of how the employer are often cut out from the return to work and rehab process, you know, you kind of worry about that. So they're going to the rehab provider three times a week when in fact if they just actually kept in contact with the employee you might get a better outcome.

MR WILSON: Well, we would like to see employers taking a greater responsibility and having the access and the flexibility to be more selective in who their providers are and - - -

DR JOHNS: Where does that occur? In what system, in your experience, does that - - -

MR WILSON: It occurs for self-insurers.

DR JOHNS: Not under all - oh, yes, sorry.

MR WILSON: It doesn't occur, it doesn't happen, when you are insuring through a commercial insurer.

DR JOHNS: But leaving self-insurers aside because they're the big end of town, can it be replicated elsewhere down the scale amongst smaller employers?

MR WILSON: Yes, the thing with smaller employers - I'm getting the feeling it's very important, a very important subject, and a very important issue - - -

PROF SLOAN: Well, it is because that's where all the employment is.

MR WILSON: - - - is that all people paying workers comp, be they small or large, if they were in these risk management stages, which we have now, they get a premium notice from an insurer. If they don't like it or if their service is not right or if they're taking too long to get their employees back to work that small employer can then go to another insurer, which is performing better. This is part of the result in free market competition.

PROF WOODS: In Queensland?

MR WILSON: Is that they get things back together. Sorry?

PROF WOODS: Not in Queensland?

MR WILSON: No, I'm talking about those four states there are. Now, in Queensland, yes, it's locked out and all that sort of thing. I completely understand that, but the small business person is not slave in those states to an insurer. They have a choice to move around between insurers and a small business might get advice from a broker, right, and they say, "Okay, we will get this for you." So what I'm saying to you is the small business person gets hit in the sense of they're down the bottom of the line, therefore it's a lump-sum payment, up-front payment, there's none of this burning costs or anything else available to them but in the end if they're not satisfied with the service they can move. So they do have an option there.

PROF SLOAN: So that's an important thing.

MR WILSON: It is. The other thing - could I just go back to what you were saying before about all these layers, there's layers there now which in my opinion are quite silly as far as workers comp goes and that's - which I put in my paper relating to the legal profession and the medical profession. We have costs against the workers compensation not for treatments but for opinions. The legal person will come in and give an opinion and that is put against the cost of workers compensation. Then the insurer or someone will go and get a medico-legal opinion; nothing to do with the treatment of the disease of injury or anything like that. It's in the system.

When you look at the annual reports or the reports coming out of NOHSC for instance, or the annual reports of all the restrictions, you'll always see legal and medical there put down as a percentage and all this sort of thing. What you don't see is how much of the legal is actually to do with the treatment and how much medical is actually to do with the treatment. If that was lifted out to me there would be considerable costs out of a national scheme. If there was a national scheme and those two things came out - they can still occur, but they occur outside the costs of the workers compensation claim.

PROF WOODS: Who pays for them?

MR WILSON: Premium payers at the moment.

PROF WOODS: I understand at the moment but you were saying "lift them out of workers comp". I mean - - -

MR WILSON: It then becomes the business decision of whoever wants to use them as to whether they want to spend the extra money getting extra legal opinion. Some workers compensation you'll get three or four different legal opinions, even up to QCs, giving you legal opinions. At the moment that's all loaded onto the workers compensation system and to premium payers. My suggestion is that, you know, you may leave in the system, like, one opinion - one medical opinion - but beyond that it's got to become a business decision of the employer or the employee to go down that track.

PROF WOODS: But that's different from medical treatment as such.

MR WILSON: That's exactly what I'm saying to you. It's got nothing to do with it.

PROF WOODS: Okay. So you would leave in medical treatment for the purpose of rehabilitation.

MR WILSON: Treatment, terrific.

PROF WOODS: But you're saying that when somebody then makes a judgment that it could be in their interests to get various opinions they're taking a risk, they evaluate that risk, they incur that expense and either they then recoup it through their reward or have lost their dollars.

MR WILSON: That's it. They're not being subsidised by other premium payers.

PROF WOODS: Yes, I understand that.

PROF SLOAN: Mind you, there's still an issue in terms of what is - what are the

kind of brakes on the use of even the treatment regimes. I mean, we've heard it said that, you know, heard about injured workers going to the physiotherapist, you know, 350 times a year, and literally - - -

MR WILSON: If I could respond to that one - - -

PROF SLOAN: And, you know, that there's not enough discipline in the process whereby here's the management plan, here's what we expect at week 4, week 8 and stuff - you know, that essentially this can be kind of like an open cheque for these providers.

MR HANKS: The employer doesn't own the process. He's outside of the process.

PROF SLOAN: Or there are sort of not good brakes on the process.

MR WILSON: Could I suggest to you that just about every profession, every professional body, has standards of treatment and they set what a physio - if they do a physio on a certain thing that should be six treatments or that should be 10 treatments. This is where we get down to a premium-payer employee, no matter how big or how small they are, saying to the insurer, "What is going on? Look after me or I'm moving my money elsewhere." At the moment I think employers to some extent are a bit too passive and that also I think reflects the system. As I put in here, you talk about, you know, a system of no-fault. I don't believe that. You know, employees can sue an employer; an employer can't go the other way. That's just not on. So I believe that people will get away with it if they can but the person who's paying the money does have the right to stand up to an insurer or anyone and say, "What is going on, please, or I move my service and take my money next time I do a policy away from you."

MR HANKS: And the system has to be such that it encourages the standing up and voicing your opinion and moving to wherever you get the better deal.

PROF WOODS: You say in that respect that where government-licensed insurers are engaged there is a propensity for the employer to be shut out of the model. We do have variations amongst government licensed insurer schemes around the various states. Are there any that in your experience involve the employer more directly and get better results? I mean, are there scheme designs within the concept of government licensed insurance that work better than others in this area?

MR WILSON: It's more negative rather than positive I think. If you take Victoria now, for instance, an employer - if an insurer is running a rehab plan for the employee an employer can't even find out what's going on under privacy provisions now and yet they're paying all the money. If we're trying to find the opposite of that I would have to say to you that probably the federal system in Comcare would be the

closest I could get to being the best but again, that's limited because the Comcare scheme at the moment is federal departments - - -

PROF WOODS: It's in-house, yes.

MR WILSON: It's really like one big self-insurer. I'd like to think of the Comcare scheme as one big self-insurer. If you move to Queensland the only play you have there as an employer is you have to provide the facilities for whatever it is WorkCover wants you to do. You become the - sort of a client of yourself in a loop. You're paying them the money but you've got no control of what they say, what they do. New South Wales, you're working through - New South Wales is not too bad because they have licence insurers - - -

PROF WOODS: Who are the claims managers.

MR WILSON: One of our services, if you like to employees, be they small, large or anything, is we might have quarterly claims reviews where we sit down with the premium payer and we sit down with the insurer and because of the intellect we bring to the table on how things could be managed better we say to the insurer, "This needs to be done," or "that needs to be done" or "you've missed something here," therefore the estimates go down, therefore the premiums go down. We often do that in New South Wales.

MR HANKS: But as an insurer, doesn't bear the risk involved - it's not its money it's spending. There's limitations to how far they will be - - -

MR WILSON: There are limitations. The other thing with that is that the insurers are responding to WorkCover's performance indicators and benchmarks - - -

MR HANKS: Rather than employers'.

MR WILSON: That's at the back of their mind all the time.

PROF SLOAN: Essentially one of the things that I - because I actually was on the board of an insurance company, and some of my friends are there, and one of the things I learned about insurance - I didn't know much about it when I started - was, you know, the need for data really. It's all about information and processing that information into appropriate policies, premiums and practices and the like. It seems to me that the state monopoly kind of failed that test too, don't they? Think of a self-insurer; they're going to want to have really good information systems, okay, so they don't want anyone not telling them about incidences - you know, they don't care if that incidence doesn't lead to a claim, you know, they want the whole thing. Whereas with these state monopolies there are kind of incentives to not kind of come up with - you know, be providing the right information or timely information and

then the information that's available to employers is not really the kind of information they need, it's not really the information that the insurance industry needs and - - -

MR WILSON: I think via the information in Queensland now, it's something like nine months out of date by the time you get it. So if you're using that sort of data for what you might call tactical management of injuries, forget it. It's all right in the big picture stuff - this is what's happening in Queensland - but for actually helping an employer down the track and actually helping employees through better systems, forget it.

DR JOHNS: Can I just ask, how prevalent - and we may well get some data from others no doubt - how prevalent is the business of EBAs being negotiated to undercut or override step-down provisions? I mean, are you seeing this?

MR WILSON: Yes, I'm coming across it more and more. All I can suggest - I thought you might ask that question and I thought, "How do I answer it?" I guess the answer is can you go to the government employee advocate and find out.

PROF SLOAN: Yes, we probably can.

MR WILSON: That's about the best I can offer, but it's going on.

DR JOHNS: We'll get the data. Your experience though and your - - -

MR WILSON: It's becoming more and more. It's even happening - I don't know how commercially sensitive this is so I'd better watch myself as to what I can or can't say.

PROF SLOAN: Just talk generally. You can just talk generally.

MR WILSON: Yes, well, there's a joint venture at the moment between a government agency and a utility supplier. They came together. The employees who are in that joint venture under the government scheme are still getting paid benefits under the Commonwealth scheme, the federal scheme. The employees of that joint venture who were previously with the supplier are under the ACT-states scheme, getting different benefits. So in the EBA they get topped up to the Commonwealth benefits if they get insured - if they get injured I should say. There are also other EBAs we know of that are there. If somebody is away from work then they can receive top-up money through the EBA.

PROF SLOAN: Can I just make the point though based on my experience with these industrial relations matters, is that I would have thought make-up pay arrangements were very typical through mining and construction and most of

unionised manufacturing going back many, many years.

MR WILSON: But not applied to workers compensation. This is what we get in - - -

PROF SLOAN: Certainly, I think it was in Victoria, those make-up pay arrangements - - -

MR WILSON: This is what we're getting now.

PROF SLOAN: I mean, I concede the possibility that EBAs with make-up pay arrangements are not extending into areas that didn't exist before, because you kind of see it from the employer's point of view. It might look quite like a kind of relatively cheap concession, if you don't think you're going to have too many injured workers, "Oh well, why not?" But your point is that it removes the incentive effect of the step-down if you - - -

MR WILSON: To return to work, that's right. It takes away what you might call the drivers for return to work, under the workers compensation scheme.

PROF WOODS: But those who do the top-ups claim the step-down isn't in fact a motivator; that they're much better off having a good relationship with their employee body as a whole and that that will create a culture of wanting to return to work and provided that it can be seen that rehab is offered and that everything is made available to maximise the return to work of the employee; that that trade-off is worth not having a step-down as a sort of more draconian incentive.

MR WILSON: I would like to see that to be honest. I think that relationships between the employer and employee is much more important than trying to punish an employee by saying, "You're going to lose this amount of money." I agree with that point.

PROF WOODS: In concept but where that relationship doesn't exist you see that step-downs do have an instructive focusing of employees?

MR WILSON: I see it as a motivator to do something about getting either back to work with the current employer or moving on to a host employer under the return to work program where you move from this employer to that employer and get a new job down there. I think that's where the step-down provisions are probably the most effective, is when you're moving to the host employer under a rehab plan. That's quite good.

PROF WOODS: Dr Johns, anything else?

DR JOHNS: No, I don't think so. That was very good.

PROF SLOAN: It was a very thorough submission. We could probably talk for the rest of the day.

MR WILSON: I think so too.

PROF WOODS: They are quite helpful and - - -

MR WILSON: Just don't get me going, that's all.

PROF WOODS: - - - putting the two together has been quite helpful too because the broader submission from NIBA has been developed into some depth through AIF. Thank you for that. Are there any particular areas that we haven't covered sufficiently? I guess the comments, a single national premium model can be achieved if there is a political will. We note your point.

MR WILSON: I guess that's - yes, I'll stop there before I say too much.

PROF WOODS: Thank you very much. I appreciate the time and we will adjourn for morning tea.

PROF WOODS: If we can resume the hearings our next participants are Insurance Australia Group and we have a submission from you, thank you, gentlemen. If you could each for the record give your name, position and organisation you are representing.

MR MOORE: Gary Moore, manager workers comp product, WA and Northern Territory and I'm representing Insurance Australia Group.

MR PEARCE: Douglas Pearce, group executive for personal injury and health for the Insurance Australia Group.

MR SWAN: Peter Swan, I'm the head of workers compensation product for IAG.

PROF WOODS: Thank you very much. Can I say we're very grateful for the amount of work and time that you've put into the material that you've presented to us. It's amazingly comprehensive, as we would expect from IAG of course. Do you have an opening statement you wish to make?

MR PEARCE: I do and we've prepared it.

PROF WOODS: Thank you.

MR PEARCE: Mr Woods, Prof Sloan, Mr Johns, thank you for the opportunity to appear today and to speak to our submission. By way of introduction it's worth pointing out that most of these issues are not particularly new. The previous inquiry in 1994 put forward what seemed to be a reasonable way forward and appears to have had quite widespread support. It's important at the outset to ask why are we still debating the key issues almost 10 years on? It's true that there has been a great deal of reform at a state and territory level and a lot of progress has been made in improving the performance of individual schemes, but it's also true that throughout Australia we are seeing continual increases in cost and duration of workers compensation claims, despite a steady decline in the frequency of workplace injury. We are really no closer to achieving national consistency in workers compensation and reaping the benefits that will flow from that.

Probably the main reason we have made so little progress is that the task was left mainly in the hands of the states and territories. This is not intended as a criticism of the people running state and territory schemes. They are rightly more concerned with managing the current schemes and have no real incentive to aggressively pursue national policy agendas. The missing ingredient has been a sufficiently high level of engagement from the Commonwealth. I think the time has now passed where the national government can take a hands-off approach to workers compensation and I suspect that this reference to the commission may be a tacit

acknowledgment of that.

The HIH Royal Commission made it clear that the Commonwealth is primarily responsible for regulation of all types of insurance, including workers compensation. More importantly the Commonwealth has overall responsibility for economic management in Australia. The workers compensation system is an important part of our economic infrastructure and we see it as unfinished business from a microeconomic reform agenda which has underpinned so much of our current prosperity. The benefits in terms of GDP indicated in the 1994 industry commission report are as significant as any other major reform of the past two decades. So how can the Commonwealth take an effective leadership role in workers compensation? A cooperative model with the states responsible for day-to-day administration may seem attractive in a federal system and in the current political environment but will it work and how long will it take?

The Workplace Relations Ministers' Council and the proposed Insurance Ministers' Council provide a framework for resolving questions about scheme design in your issues paper. We have dealt with these issues in some detail in our submission. I will not go to the specifics now but I want to make it clear that we are not about cutting benefits to injured workers, rather we see a fair, stable and predictable benefits structure as critical to the efficiency of any workers compensation system. If you can reduce the transaction costs that flow from uncertainty and adversarial systems then a greater proportion of the dollars paid by employers in premiums will actually flow through to injured workers. That said the range of stakeholder positions means it is unlikely to be - it is likely to be some years before there is enough agreement on enough detail to create anything remotely resembling a national framework.

The recent attempts at national court reform show how difficult it is to translate high-level political agreement into a uniform or even consistent legislation. Unless there is agreement on the detail we will achieve very little. So the Commonwealth must do more to force the pace of change. The first thing is to immediately act on the recent House of Representatives' inquiry by establishing a genuinely comprehensive national database. This will highlight best practice in scheme design and management and settle arguments about what works and what doesn't. The Commonwealth also has a vehicle for driving change in workers compensation in the Comcare scheme which already has scope in its legislation to cover any private sector - to cover many private sector enterprises. Comcare is not without its problems and has seen some very large premium increases in the last two years so we would strongly suggest that the Commonwealth move to amend the Comcare scheme so that it can be open as a real alternative to the various state-based models.

Private insurers have the capacity to deliver services competitively under Comcare. We also have the capital to cover the risk without exposing the

Commonwealth. The prudential framework is already in place or will be as soon as the relevant recommendations of the HIH Royal Commission are implemented. With some relatively minor but critical changes to promote faster return to work outcomes and more efficient dispute resolution we believe Comcare can provide injured private sector workers with benefits equal to or better than most if not all of the state schemes and the potential savings to employers have been documented in other submissions to this inquiry. Our submission acknowledges that any exodus from state schemes will have implications for those who stay behind but it will also force those responsible to deal with their fundamental flaws. It will act as a catalyst for change and create a sense of urgency around genuine national reform.

The pressure from employers to leave state-run workers compensation schemes is growing as more and more businesses come to understand their exposure to the unfunded liabilities of these schemes. Understandably they have difficulty with the idea that their long-term competitiveness should suffer because of a problem that they did not create. They also have difficulty with the idea that after investing in safety and preventing injury they still have to subsidise businesses with no real economic incentive to do so because of the way the premiums are regulated. There is no such pressure in privately underwritten schemes where the premium usually reflects the actual risk of the individual enterprise. The recent experience in Western Australia should put to rest any doubts that the competitive market can deliver a more efficient scheme. Premiums have come down by a third and Gary Moore from our Western Australian operation is here today if you wish to explore in more detail how it was done.

As a community we are starting to understand the consequences of Australia's aging population; the increasing labour-market participation has been identified as the key element in Australia's response. This must include more effective return to work strategies for injured workers. The psychological importance of work and its place in providing people with meaning, purpose and a means to enhance their quality of life is just as important as any economic outcome. Better and more effective ways of assisting injured workers to regain financial in the workforce should be regarded as delivering an important social benefit. Providing opportunities for meaningful work is at the core of a fair, stable and rewarding social fabric. We cannot continue to tolerate systems where people are taking longer and longer to rebuild their lives after work accidents and ever growing cost to the community. Thank you.

PROF WOODS: Thank you very much. Again, can I say that the wealth of information you've provided is very helpful to this inquiry and your cooperation right from the start of the inquiry has been particularly useful to us. Perhaps we can start at some higher level issues and then burrow down into some of the detail in the material you've provided. One for me is that sometimes you switch between consistency, uniformity, harmonisation, those sorts of concepts. For instance, in one

dot point just as an example, "Uniformity between jurisdictions, ie consistency irrespective of where the accident occurred" - there's been use of that sort of terminology by various participants but sometimes we find they mean different things. Where you're talking uniformity, ie consistency, you're meaning the same rules applying throughout the nation. So you don't see consistency as being sort of some framework within which there can be variation? Is that a correct interpretation of your use of the terminology?

MR PEARCE: That is a correct interpretation. We're using uniformity and consistency as synonymous.

PROF WOODS: Okay, that's just a small point.

MR PEARCE: I suppose the other - just to add to that, our starting point or primary position is that uniformity should be the starting point. Any deviation from that needs to be argued on fundamental differences in local economic conditions rather than the other way around.

PROF WOODS: But in such a way as to not add additional cost to administration but purely a reflection of say different wage rates prevailing or some other such characteristics.

MR PEARCE: Yes, different employment conditions.

PROF WOODS: Yes, but not different benefit structures or - - -

MR PEARCE: No.

PROF WOODS: - - - the like. Okay. In that respect it would be interesting, although I think we could probably distil it from what you have here anyway, your perspective on what are the core components that should be uniform and where there are opportunities for flexibility within that it won't destroy that concept, but if we need any further clarification of that we'll come back to you on it. You mentioned as a sort of starting point for developing a national framework one way of approaching this is to look at the Commonwealth scheme and - but opening it up as I understand private underwriting. I mean, one way is to look at an implementation path that says open up Comcare to those who within the legislation as it stands could be eligible, and that might include some banks in competition with the Commonwealth which was a previous GTE - telcos in competition with Telstra, which is - maybe soon - was to have been - so you know, you can follow that path and then you can open it up to other self-insurers who don't have those characteristics but are large and prudential.

Then I detected from your position here and in your opening comment that you

could see that it could be opened up to all employers in which case you then get into premium payers, in which case you're getting to private underwriting. How would you convince say the Commonwealth treasury that such an approach does not leave a residual risk to the Commonwealth which it currently doesn't have? So picture a Commonwealth official in the treasury briefing their minister and you providing a convincing argument that there is no increase in some form of risk, however contingent on the Commonwealth through such an approach?

MR PEARCE: Well, I don't think I could - - -

PROF WOODS: So think of it as part of your task.

MR PEARCE: - - - because I suppose what I'm advocating is an overall expansion of the private insurance industry. There is no direct increase in risk but it is the same risk that the Commonwealth now faces by the insurance industry. So should IAG fall over as HIH did and we were in that situation we would be a larger insurer with greater long-term liabilities. So it's only that increase in residual risk. Now, arguably - - -

PROF WOODS: But if you can differentiate between that risk being something that the Commonwealth already carries, albeit in a different form, is one point, but if the good treasury official can point to your evidence and say, "No, well, here's IAG saying that through such a model the Commonwealth will be bearing greater risk," then I think that will be used quite clearly. So we need to be very careful as to what's the actual situation.

MR PEARCE: In fact I think in terms of direct risk our proposal would reduce it in that rather than having more self-insurers we're advocating having more insured employers in a true free market.

PROF WOODS: Although that would remain a matter of self-selection and choice by large companies?

MR PEARCE: Yes, but in the end if the - well, Western Australia is good example. We were talking about this yesterday: how much self-insurance is there in the West? Gary's estimate, it was about 15 per cent which is low compared with the other states. Then if you remove the big national employers from that who take on self-insurance nationally as a sort of a policies position, it would probably drop to - what, I don't know - 7 per cent.

PROF WOODS: Half that, yes.

MR PEARCE: Half that, 7 per cent. So in a free market where the risk is properly reflected as a claims experience and prospective risk is reflected in premium there's

not the same incentive to self-insure and in fact I would argue that if the insurance business is doing its job properly it should be able to provide better claim services and better back-to-work services than a self-insurer because we're doing it on a much larger scale.

PROF WOODS: But that would be a matter of market choice.

MR PEARCE: Yes. But I suppose what I'm saying is though, although there are prudential requirements on a self-insurer they are not nearly as high as those on an insurer, so that if a large employer falls over, yes, you're supposed to have all the bank guarantees and capital in place. But if the capital is gone the bank guarantees are only limited. In the end those people who have long-term workers comp claims will end up in social security.

PROF SLOAN: Yes. Self-insurance is not for everyone, is it?

MR PEARCE: No.

PROF SLOAN: Indeed you might be getting some almost artificial increase in self-insurance at the moment because they're wanting to flee the state premium systems which are pretty awful, but in the face of better choice - I mean, because you've got to put up your own capital.

MR PEARCE: That's right.

PROF SLOAN: You know? Some of these companies are using their captives anyway to do this and then you've got to have sort of in-house capabilities to be managing - well, I suppose you can outsource that. But a lot of companies would legitimately take the view that this is not their core business.

MR PEARCE: That's right, and that's the position that we take, that it's not only the claims management but in fact the management of the capital behind an insurance operation is one of our core skills and it is not a core skill of an employer like Woolworths, or BHP for that matter.

PROF SLOAN: Yes. But given the current alternative, self-insurance isn't looking too bad.

MR PEARCE: Very, very attractive. In fact under the current arrangements we are marching down that road ourselves.

PROF SLOAN: Yes, that's an interesting point, isn't it, because I understand that IAG itself is not self-insured. Is that right?

MR PEARCE: That's right, but we are - - -

PROF WOODS: I was going to ask that.

PROF SLOAN: I know, I know. Your managing director told me that the other day.

MR PEARCE: That's more a matter of history. But we have a program and project in place to do that. We're a little bit odd. Everywhere we can be though we are our own insurer.

MR MOORE: So in the risk states we insure ourselves.

MR PEARCE: Yes, and in New South Wales we manage ourselves. In South Australia we do, but in Victoria we're not allowed to.

MR SWAN: Just going back to the increased risks to the Commonwealth, I mean, I think as Doug has articulated that's, say, coming out of the self-insurance base and any failure there ultimately probably falls into the social security environment for the Commonwealth. Privatising that risk puts it in a much greater pool of liabilities which are diversified by definition, puts a much greater capital base behind it as well. So arguably, from an economic perspective it reduces the overall risk. In fact I think arguably is understating it.

PROF WOODS: You might want to usefully sort of prepare a one-page concise statement of your best estimate of the consequence for the Commonwealth of such an approach. I think that could be helpful.

PROF SLOAN: I think it was a consideration when there was a possibility of a lot of employers moving in under the Comcare umbrella: what would this do to the potential Commonwealth liability? Now, the answer is nothing maybe and particularly in association with private underwriting where the risk then basically rests with the private company.

MR PEARCE: That's exactly our contention.

PROF WOODS: But if you could articulate that to your best - - -

MR SWAN: But if that's a question, that question I would imagine was in the context of, say, an employer under the current Comcare provisions seeking to, say, self-insure under Comcare.

PROF SLOAN: Exactly.

MR SWAN: Whereas we're talking about something beyond that.

PROF SLOAN: Yes.

PROF WOODS: Even though we may get there in steps.

MR SWAN: Yes.

PROF WOODS: Okay. This isn't in any particular order, for which I apologise. But you say in one part there is growing acceptance backed by medical evidence that the injured worker's best long-term interests may not necessarily be served by adversarial processes designed simply to maximise their entitlements. A bit later on you say:

The inappropriateness of the criteria combined with the problems of cost containment of common law leads us to conclude that access to common law damages should not form part of any national workers comp scheme.

And they're two parts of a related issue. You refer to medical evidence but again are you able to present some conclusive material to the commission on the rehab return to work behaviour of those who at a point in time choose then to become claimants under common law, compared to a base body of those who continue with the structured settlements?

MR PEARCE: We can point to one piece of research. We helped fund a study undertaken by the Royal Australian College of Physicians.

PROF WOODS: All right, yes.

MR PEARCE: Into the comparative health outcomes between those in compensation schemes and those not.

PROF WOODS: Okay. Well, we've seen the outcome of that one.

MR PEARCE: You've seen that one, yes.

PROF WOODS: So if that's the one you're referring to, we have access to that already.

MR PEARCE: If we've got anything else we'll definitely provide it, because we have done or tried to do some work in this area.

PROF WOODS: If you wish to draw anyone else to your table to assist you, you're most welcome.

MR MOORE: Yes, it's a difficult one to draw a line on because effectively if you look at the nature of the claim itself and how it develops in terms of longevity, generally they do go through a cycle and if that cycle involves common law there can be a couple of factors: (1) it could be because it's a more serious injury anyway and therefore they're going to be off on compensation longer in any event, or secondly - perhaps this is a more important one - it's the driver. The injury is not that serious but it's the driver to keeping the worker off longer and that's the one that's the main problem here, those not so serious injuries that stay on longer because there is this lump sum that they're chasing at the end of the day.

PROF WOODS: In some respects then that might be consistent with a general theme that seems to be emerging as we hear various evidence, that as a general principle a number of participants say common law shouldn't be there. But then they fall back to saying the reason for that is in part because of the impact on rehab. Others say in part it's the impact on the cost of the scheme. But they acknowledge, or a number of participants have acknowledged, that where a person is permanently seriously incapacitated, that there is no return to work prospect, that common law in those cases may offer an additional venue for that worker to sort of have their day in court, resolve the issue and move on in their life. Alternatively you could say but you need workers comp to do that. Can they do that through civil actions outside of workers comp anyway?

MR MOORE: Well, that's our point.

PROF WOODS: Yes. So how do you address those issues?

MR MOORE: You need common law - - -

MR PEARCE: Yes, exactly.

MR MOORE: Common law does provide a finality of a claim, we agree with that. But it's the cost to the system of getting to that common law action and the distractions, I guess, that it causes are the main issues. What we say is that you could replace common law with still a suitable compensation mechanism that provides for those seriously injured workers without the need to establish negligence.

PROF SLOAN: So a kind of a table of - - -

MR PEARCE: A pure common law system means that where there is no negligence then in fact the injured worker isn't entitled to that level of benefit and we're not advocating that at all. I think there's a distinction to be made between common law and lump sum. I think for the seriously injured worker lump sums do have some benefit and they definitely do from an insurance perspective of finality to

the claim. Interestingly the impact of removal of commutations from the New South Wales scheme, it's a schizophrenic position in that it worked very well at the small end and I think Coopers and Lybrand produced - - -

PROF WOODS: What, the removal or the commutation?

MR PEARCE: The removal of. It had, almost to the dollar, the reverse effect at the large end of the scheme from a financial point of view.

PROF WOODS: Yet isn't it at the small end of the scheme where commutation actually has some benefit in wrapping up otherwise long-term administration and relationship with scheme and psychological attachment and the like?

MR PEARCE: Arguably no. At the small end of the scheme no, they're exactly the injured workers who should be getting back to work.

PROF WOODS: But doesn't commutation sort of help bring them to a finality?

MR MOORE: If there's a permanent partial incapacity, in other words, there's a permanent injury there that - - -

MR PEARCE: But if it's very small, I mean, that's - - -

MR SWAN: They get back to work with someone else maybe.

MR MOORE: Alternate duties and they may not be earning as much and then you can say they're back in the workforce but they've still got a residual claim under compensation to top them up to their pre-accident earnings. In those cases I think that's what you're getting at: a redemption in those cases can finalise that.

PROF WOODS: Yes.

PROF SLOAN: But isn't it generally the case though, the thing is that commutations is one of the tools in the kit bag of the insurance industry?

MR MOORE: It is indeed.

PROF SLOAN: Then it can be appropriate to close claims and if you put regulatory barriers to it you get some sort of potentially weird outcomes.

MR MOORE: Yes. I think WA provides a good example of this because pre 99, pre the changes in 99, one of the driving forces for people to take common law was the removal of redemptions from the system.

PROF SLOAN: Yes.

MR MOORE: So you couldn't redeem. So where do you look to settle and where do you go to? Common law was the only avenue which then drove those workers to think about common law, whereas if they had the ability to redeem may not have gone down that track, and that was certainly one of the stimulants for this increase in common law activity plus the ease and access to common law. Those two combinations drove a substantial increase in the number of common law claims in that system up to 99 and the change.

MR PEARCE: I think that the key to it is that the agent negotiating the commutation should also be the agent who's on risk.

PROF SLOAN: Yes.

MR PEARCE: So that you've got complete alignment. If I'm an agent for someone else and I'm not remunerated on anything to do with this, then commutations all of a sudden become an easy administrative tool rather than a proper - - -

PROF SLOAN: Yes, exactly. Yes, that's right, and then if they can provide some really nice incentives in terms of closing off claims - I mean, I can close a lot of claims as long as I'm prepared to spend a lot of money and if it's not my money - - -

MR PEARCE: That's called selling, yes.

PROF SLOAN: I don't think you have to be a rocket scientist to do that and I think that actually happened at one point in the Victorian scheme, that they provided the claims managers with a set of incentives to close claims and of course - - -

MR SWAN: It happened in New South Wales as well.

MR PEARCE: It happens from time to time in private insurance all over the place, where someone will set up an incentives scheme for their employees and drives a behaviour that's not desirable.

MR SWAN: Yes.

MR PEARCE: But for us, we see the results pretty quickly and pick it up.

MR MOORE: Yes, redemptions have to be managed very, very well or they will cause what you're saying, exploding claims costs through just the desire, if you like, to get rid of the claim without thinking about was it more cost-effective to actually leave them on comp or whatever, or try and encourage the return to work as distinct

from settling this claim and paying a bit more. So redemptions need to be very carefully managed. In the West Australian system you cannot redeem until the worker has been off six months.

So the idea is to try and recognise that the fact is that you are trying to deal with those workers that are in the system for some time, are incapacitated and therefore are at a time in the claim's life that a lump sum or redemption needs to be considered, rather than allowing redemptions too early on, which then encourages the worker to think, "Well, I'm going to get a lump sum somewhere along the line here if I stay off a bit longer." So this issue about redemptions needs to be very, very carefully managed.

PROF WOODS: Can you just elaborate for me on, then, the New South Wales results? You were part way through saying that there have been two effects, one for the small end claims and one for the large end. But can you just encapsulate what - - -

MR PEARCE: Well, it did have the desired effect for small end claims, that it has reduced the cost of those claims overall. But the contra is that it has had the almost equal and opposite effect for the larger claims, that there has been a noticeable blow-out in the cost of those.

PROF WOODS: Even through the greater restriction of availability?

MR PEARCE: Well, directly from the greater restriction of availability of redemptions.

PROF WOODS: Yes.

MR PEARCE: It clearly showed that for larger claims redemptions was actually, economically anyway, quite a powerful tool for reducing the cost.

PROF SLOAN: I'd like to pick Gary's brains a bit about Western Australia, because it's a nice little example for us because it's compare and contrast, because it's always had private underwriting and it's never had - I mean, it's got a WorkCover authority thing with that. It doesn't have state monopoly underwriting. I mean, well, as you know, it created a lot of heartache for me, and one of the conclusions I came to was private underwriting is probably a necessary condition of an ideal scheme, but it is not sufficient, and the regularity parameters that the government is establishing in relation to benefits and entitlements and all sorts of things can really blow those schemes out of the water.

MR SWAN: Absolutely.

PROF SLOAN: The only thing that in a sense saved that scheme was that there were very few restrictions on premium setting, and indeed it seems to be one of the strongest cases for private underwriting is simply that, that the premium setting schemes are much less contaminated than they are with state monopolies. I mean, it did get pretty bad, didn't it?

MR MOORE: Yes, well, I think you've hit the nail on the head, and it was in fact the premium increases that eventually drove the change, because it became unsustainable from a cost point of view for employers and it was recognised that you just couldn't keep going like this.

PROF SLOAN: Yes.

MR MOORE: The principle is an insurer has to remain fully funded, therefore has to charge premiums that are adequate to retain that fully funding which then means that the system is always fully funded, albeit it might be costing too much to do that. So what happened in this particular situation leading up to 99 when eventually there was an act change, the premiums eventually caught up with the cost of claims. In 1993-94 there was a change in legislation which was supposed to restrict access to common law and remove redemptions. That change then, effectively, was ineffective, and we saw all through - probably a two-year lag - after the change we saw the lag of all those claims come through the system and then the premiums caught up with the cost of that. So that effectively meant that employers in that state were facing increases in the order of around about 35 per cent average increase in the rate in 98-99. This just could not continue, and a number of reviews leading up to that came up with a number of solutions and eventually the government and the opposition agreed on a package of amendments to resolve the situation.

But one of the other very interesting elements to this was that the increase in premiums also drove the behaviour of employers. It actually forced employers to think about how they could actually start to control the costs themselves, and we saw that as a result of that greater emphasis on occupational health and safety. So this dynamic within the system started to have, in this particular case, a very good element to it in embracing or getting employers to embrace what really is fundamental in the manner of reducing the number of claims in the system. We saw during that period of time the number of claims - forget common law for the moment - the number of claims in the system drops from around 60,000 claims in the system to less than 40,000 claims this year. Some of that is attributed to other factors, but a lot of it is attributed to the flow-on impact of that work and effort that was put into by employers to try and address the actual number of claims in the system.

So that was a consequence that's now allowed the system to remain stable. So you've had a reducing number of claims, you've had a stable common law

environment and you've had falling rates as a result of that, and since 99, the average rates are reduced by about a third in response to those changes.

PROF SLOAN: I think another lesson seemed to be that it takes a little while to see what the weaknesses are in the system.

MR MOORE: Yes.

PROF SLOAN: I think when the system came in, I think the initial expectation was that common law would be quite severely restricted, but the kind of provider industry caught up with - - -

MR MOORE: That's right.

PROF SLOAN: What we'll find are potential loopholes - - -

MR MOORE: This is where this national - - -

PROF SLOAN: Then, you know, like, okay, so it's a trickle and then all of a sudden becomes a waterfall, doesn't it?

MR MOORE: Information is power. One of the problems was you couldn't prove the case, you know. You could see what was happening, but to actually prove that, because you might have individual insurers being able to provide data, but you couldn't provide it at an industry level to actually satisfy the political argument that you needed a change, because the industry data wasn't available. So it took a couple of years to actually get enough data to actually put a compelling argument that this is a problem that needed to be solved, and I think that's where one of our points that Doug made in his opening comments, the need to really get a very, very strong national database so as you are actually collecting the right data that allows you to fine tune the systems on an ongoing basis when things start to get out of balance, as they will. Every system will go through a situation where it will start to deteriorate again, and if you've got the data to respond appropriately, you can do that without these knee-jerk ups and downs, large increases of premium and trauma for the workers and the unions in trying to deal with what generally happens, a slashing of benefits as a result of trying to control what they perceive as benefits, whether that's access to common law or whatever it might be, but it's perceived as benefits by the worker in these situations that are being attacked.

PROF SLOAN: It's not clear that the barriers to entry into the private underwriting market are all that high out there. It's really quite a competitive market. I mean, one of the things that, you know, we as economists might worry about is that you hand it over to private underwriting but that's not going to be very competitive. It seems quite an easy industry to slip into, really, isn't it?

MR MOORE: Not really now - Doug?

MR PEARCE: Well, I'd actually agree in that if there was, you know, a good national market, you'd see the likes of Liberty Mutual and other of the international players that specialise in workers compensation here overnight, and they would bring to bear expertise and systems that would really shake up the market. I mean, I think it would be a good thing economically, a good thing for the industry.

MR MOORE: Doug raises a very interesting point there, because there's no doubt some of the big American insurers would be looking at this with great interest, the outcome of this inquiry, because they've been waiting for the opportunity to move into these states. For New South Wales to open up would be a means for them to actually justify applying for a licence to underwrite within Australia.

PROF SLOAN: Yes, because they're not going to be interested in coming in as claims managers.

MR MOORE: No.

MR SWAN: Those that have tried, haven't enjoyed the experience.

MR MOORE: Well, it might be a starting point to get the experience.

PROF SLOAN: Presumably, you know, the name of the game for them is actually getting to the underwriter.

MR SWAN: But Australia's not a big market by, you know, say, US standards, but the privatisation of the workers market in Australia would be a very significant increase in the general insurance industry premium pool and therefore the capital base required to support that.

MR PEARCE: 5.3 billion, I think.

MR SWAN: Yes.

PROF SLOAN: If you think of the funded net liability here in New South Wales, I mean, what would you put that down to?

MR SWAN: The too-hard basket, maybe.

PROF SLOAN: Bear in mind you're talking - this is all on transcript.

MR MOORE: We are talking terms. It's the WA model except they haven't

charged enough premium. If the premium was recognising, was in line with the exposure and the cost, then you would have had greater emphasis and need for change, but the fact it just sits there and the premiums don't get charged in accordance with the costs means that there's no urgency about addressing issues like WA - - -

PROF SLOAN: It comes down to the contamination of the premium setting process. But is there a kind of lack of ownership of the problem? Whose problem is this?

MR PEARCE: Well, it's a very good point. I mean, we've looked at it very closely. It's almost a trust, the way it's been set up.

PROF WOODS: Without beneficiaries.

MR PEARCE: Well, the beneficiaries are the employees, injured workers. Benefactors are employers, and the trustee is sort of WorkCover.

PROF WOODS: Sort of.

MR PEARCE: Sort of, but they aren't underwriters - - -

PROF SLOAN: It sort of sits in the - - -

MR PEARCE: So the under-funded liability - well, it's owned collectively by the employers of New South Wales. My own personal view is that it will - - -

PROF SLOAN: Past and future.

MR PEARCE: Well, I think it is current and future.

PROF SLOAN: Okay.

MR PEARCE: How can one recover anything from a past? They might well have been responsible for creating it, so it's that. When was it - it was a few years ago there was a big to-do around companies about sick leave liabilities, and one firm of accountants forced one company to bring unaccounted for sick leave benefits to bear on their balance sheet, and, bang, it was a ripple effect. Every company the next year, through every audit, had to do exactly the same. I think the same will happen with this. When one company's unfunded liability, or share of the unfunded liability is large enough and they are clearly bound to New South Wales and an auditor says - and there's the reason to say, no, it's a better than 50 per cent chance, and they have to bring it to bear on their balance sheet, then right across the state, every other employer will as well, and that will bring it to a head, if nothing is done beforehand.

PROF WOODS: Can I head back to your option, which is your third option, which is the Comcare approach, and you identify there - this is on page 15 of your submission - you identify there some key areas for reform and you identify two, one an earlier step-down of weekly income replacements of 26 weeks, and we understand the nature of the Comcare scheme and the long tail and the pension-type approach that it has. So that point is understandable. We then have as a second dot point, "establishment of specialist alternative dispute resolution forum" which then takes me to later on in your submission where you deal with dispute resolution and you go through informal conferencing, conciliation, mediation et cetera. Do you have a particular view as to what constitutes a good model? I notice that when you're talking about conciliation and mediation, you find the West Australian system has considerable merit, and we've had several streams of thought put to us. One is the New South Wales Workers Compensation Commission in its early days is showing some promising signs but not quite sure where it will end up, and not necessarily a contrary point of view but a second point of view by some that the West Australian system is overall a generally robust model.

Now, you're in a good position to have looked through the dispute resolution mechanisms across all of the states, territories and in fact the Commonwealth, which is why you've identified that as an area where you'd want to change Comcare. But how would you best sort of summarise your perspective on those issues?

PROF SLOAN: You can talk, Mark, by the way. I've heard you talk before. You could give us your name.

PROF WOODS: Yes. You would have to give your name for the purpose of the record so that we'd be able to track who you are.

MR LEAVER: Mark Leaver, IAG personal injury policy.

PROF SLOAN: I didn't mean to embarrass you.

MR PEARCE: Well, Mark was just saying a hybrid - in fact we bolt together the conciliation and mediation of West Australia, and basically, if that doesn't work, then it would go into a New South Wales dispute resolution system, which is pretty much - - -

PROF WOODS: In its current form.

MR PEARCE: Yes, it was modelled on the one developed for the CTP scheme, basically the same, and it, sort of, a bit further - although it's still early days, not that many disputes have gone through, it is appearing to work, and particularly the medical assessment side of it. It we do know is working exactly as planned.

PROF WOODS: So you'd give it a front end of the Western Australian conciliation mediation?

MR PEARCE: Yes.

PROF WOODS: Then you'd move through the remaining parts of the process as per the New South Wales - - -

MR MOORE: Just on the WA, one of the proposals that's coming through the current reform package in the WA system is to move the dispute resolution system closer to New South Wales so it's actually recognising some of the benefits that's coming out of the New South Wales system and taking it back into WA. So that's - - -

PROF WOODS: But not losing the advantages of your conciliation and mediation.

MR MOORE: No, exactly right, indeed, but reducing all this to a two-tier system, so you're picking up a lot more of the advantage of conciliation at the earlier stage, rather than going into a review phase where it becomes almost like a formal court case. That part is going to be amended to make it more conciliatory in the way in which it deals with those disputes.

MR LEAVER: The point that we try to make in the submission is that you don't look at dispute resolution in isolation from the other aspects of scheme design. You've got to try and understand the types of disputes that will be coming up and then you develop resolution processes to try and push those through as quickly as you can. So depending on the nature of the disputes, if they're medical disputes, an assessment process; if they're about treatment or if they're about continuing entitlement to weekly benefits, a form that is able to deal with those issues with the expertise to deal with them.

PROF WOODS: Thank you, because what you've done is neatly bolt together for me, two streams of perspective that have been coming.

DR JOHNS: Well, Justice Terry Sheehan was saying was that - I guess it was his aim was to keep as many disputes on matters of law out of the courts, not make them appealable, and he seems to have been fairly successful there, so we're talking about out little mate Comcare and its model and some modest changes you might want to make to it, you're really talking about keeping business out of the AAT.

MR PEARCE: Yes, our understanding is that it has - a great many matters are settled very much - - -

DR JOHNS: It's a plaintiff forum.

MR SWAN: That also recognising that the AAT wouldn't be an appropriate tribunal to deal with the scope of what we're describing as well.

PROF SLOAN: Private sector.

DR JOHNS: Well, I'm trying to - I guess what's in the back of my mind is, you can roll up option 3, but everyone says, "Well, I'd like that but with a little bit of tinkering here and there," and it's the tinkering where we get into trouble. I'm thinking of the senate. So let's say in fact you - well you'd have to - - -

PROF WOODS: Is this personal experience, Dr Johns?

DR JOHNS: No, I never go there. But the AAT will remain in place, let's say, but the trick is to, of course, handle all of those matters, 99.9 per cent of them, before you ever get there. So let's look at the first dot point though where you'd seek a bit of change, the step-down at 26 rather than 45 weeks. What if you can't get it? How important is it? Is there an alternative?

MR PEARCE: I think that becomes merely a cost issue. It's not a stability issue in the sense that I take on it.

MR SWAN: It's a return to work issue.

MR PEARCE: But it's a return to work. I mean, my understanding of where the 45 came from, I think Comcare was pushing 35 - was it 35?

MR LEAVER: Something in the 30s, I think.

MR PEARCE: 30s, in fact, I can work it out.

MR LEAVER: Peter Walsh.

MR PEARCE: Peter Walsh; the union pushing 52 and Bob Hawke went bang in the centre, which is no rhyme nor reason.

MR LEAVER: No, that's a good reason. A good reason to settle it.

MR PEARCE: No, it must have been - 38 I think, they were pushing. No, I understand that, but again let's assume, you have to assume you don't get all you ask for in these games, don't you, there are other ways to manage regardless of the design of the scheme. That's seems to be the message we've been getting the last couple of days; good ways to manage that almost regardless of the level of step-down or the

point at which it cuts in. So again, it might affect the cost, you're saying, but if it's well managed - - -

DR JOHNS: Yes.

MR PEARCE: - - - if you're close to the worker and you're with them all the time, that design feature may not be particularly important, or the change you're seeking to that design, that feature.

MR LEAVER: It's the incentive, I think. It's getting the incentives right.

PROF WOODS: Could you quantify for us that step-down change, both in a cost sense and in a behaviour, return to work, incentive alignment sense, just a little more clearly than is currently in your submission, so that we can weigh up - I mean, every time you want to make a change you've sort of compounded the complexity and reduced the probability of achieving what you want to achieve. Now, we have evidence from those who are on the public record going for a self-insurance licence under the federal scheme, call it the Comcare scheme for this purpose and they say that the uniformity is more important than the particular cost characteristics of Comcare and, you know, they may freely admit that it's not their perfect and most desirable scheme, but they can live with it in the circumstance. Now, admittedly some of those have an industry characteristic which is similar to the current Commonwealth profile, so, you know, we're not talking heavy manufacturing or abattoirs or roof tilers, we're talking predominantly clerical, so there may be some alignment there anyway. If it can be a persuasive argument that this - you know, one, two or three changes are of such crucial importance because they achieve equity, return to work, cost reduction, whatever, whatever, then that would help.

MR PEARCE: I have to agree. I don't think this is a show-stopper for us. I mean, what terrifies us is the West Australian experience, it was the CTP experience in New South Wales, but it is the introduction of a weak threshold to access to a significantly improved benefit, whether it be lump sum or permanently, that creates - and particularly where you have alignment of incentives between lawyers and the claimants, so that the lawyers, quite rightly, are very good at shooting for those thresholds and getting claims over them and that creates the disasters.

MR MOORE: The key is to get stability and predictability in the outcome and the cost of the claim. Now - - -

PROF WOODS: Unless they were predictably high and expensive.

MR PEARCE: If that's the case - - -

PROF WOODS: If that's the social outcome of the problem, well it's there.

MR PEARCE: - - -then so be it.

PROF WOODS: That is the government's business, not ours.

MR MOORE: This is the point we're making, but the important thing is to recognise that the system would need to be fine-tuned. Now, whether it's this one or whether it's something else that may be causing duration issues and people staying on comp, if it's not this one then something else has to intervene to actually get a better outcome in terms of return to work.

DR JOHNS: Could I just, tiny little bit, just on page 10 of your submission, there's a word missing and we'd better get it right. Third bottom paragraph, "Perhaps more significantly a national scheme would also help to" - I guess "reduce" - "overall ongoing" - - -

MR SWAN: Yes, we were leaving it out, but - - -

DR JOHNS: Just, you know, we may want to quote it is what I'm - so, can we just read it in, "Help to reduce overall"?

MR SWAN: Yes.

DR JOHNS: Okay. And I guess - if I might just - - -

MR MOORE: Sorry, I picked it up down here, quite right.

DR JOHNS: Just a little comment back, I guess, "Under a national framework the frequency of legislative changes would be expected to drop significantly." I think that's probably true inasmuch as you're talking about one scheme V6, but if a lot of people sign up to this it will become a political focus and it will be subject to its own changes. So there's no way around that.

MR MOORE: Unless you can have a situation where you can fine-tune a system from a frustration point of view.

DR JOHNS: No, it's a politically dynamic system, that's all I'm saying, but at least one being fiddled with rather than six, plus one, is better.

MR PEARCE: I suppose our point of view on that is, fiddling prospectively is fine, I suppose, that's the business of government. Where changes are made retrospectively and that is a huge issue for us and the governments ability to do so. There are ways where that can be restricted or the risks associated with it can be shared.

PROF WOODS: In your concluding statements you say, first step, reform Comcare and open up the scheme. Step 2, step 3?

MR PEARCE: I suppose the argument we're putting forward here is that step 2s and step 3s will follow, driven primarily by the states.

PROF WOODS: Can you elaborate on that a little?

MR PEARCE: Well, I think we're reasonably clear in one section here, "What would follow when large numbers of, I suppose the lower risk or those employers that take a far more positive attitude to OH and S and claims reduction, leave the state-based schemes, it would create the necessary pressure on those schemes to significantly reform.

PROF WOODS: Can you clarify that for me? We've had evidence put to the inquiry that if there was a significant withdrawal of larger and presumably better performing - because of the self-selection process - organisations into some national scheme or into self-insurance, that the claim cost component of the premium for the remainder - even in the small states where there are small, privately underwritten pools, we think of Tasmania or Northern Territory, ACT Private, whatever - that the admin cost component would go up and have to be spread across the others. Are you painting a picture of, sort of collapse of the small, privately underwritten schemes, or are you also of that sort of approach?

MR PEARCE: No, see I don't agree and I think to say that the admin cost would reflect a large component of the premium and in that instance would say that the current administrative cost structure is fixed in nature and I'm not sure I understand that. To a large extent it's a function of the number of employers. So I would argue that that's not the case. I mean - - -

PROF WOODS: Except, presumably in servicing a large employer, the cost overheads on a "per employee" or "per premium" dollar basis might be less than servicing the multitude of small businesses, or not really.

MR PEARCE: We deal with that now.

PROF WOODS: Yes, precisely, that's why I'm looking - - -

MR PEARCE: And we deal with them in different ways. We don't have people go out and visit small businesses on an annual basis, but we do hold seminars where we would get 30 or 40 of them into a room and talk to them at 6 o'clock at night. There is a bit of an overhead in claims management in the sense that most small employers - or the incidence of claim is very, very low and so they've never experienced it, so

that there is more of hand-holding process, particularly early on, but where we're trying to get to with a more of a health and recovery model, it is more intensive, but it shows itself in reduction in claims costs. Anyway, that difference is starting to go away as well, so no, I would - yet to remain - - -

PROF WOODS: Okay, so what would be your view then on the impact of a viable, privately underwritten pool in places like Tasmania, Northern Territory, ACT Private, if there was a significant withdrawal of the larger mediums and the large out into a national alternative scheme?

MR PEARCE: My guess is it wouldn't be significant in that in each of those states there is very little regulation of price. We charge, basically, risk premiums in each of them so that there aren't the inherent cross-subsidies that you have in the state monopolies, so a premium under a Comcare benefit structure as opposed to a premium under the Tasmanian structure would merely be a function of the different benefits available. So - - -

DR JOHNS: And there are not too many head offices sitting in those places, I suppose.

MR PEARCE: No.

DR JOHNS: Not too many players - - -

MR PEARCE: Wesfarmers and there's - - -

DR JOHNS: Certainly Western Australia - - -

MR PEARCE: - - - that we have in Tasmania

MR SWAN: Having discussed this internally, I think we feel - and wouldn't have any evidence to back this up - that it's likely that those small - and not coincidentally - privately underwritten environments, if there was an alternative then the governments in those states might see that as an opportunity to not - to choose a time when they won't be offering an alternative to this new federal offering.

PROF WOODS: All right, but I'm having trouble, a little, reconciling the perspectives, because you were earlier saying that if you had a federal alternative or a national alternative, that that might drive the states to reform their schemes and yet at the same time you're saying that maybe it won't have a big impact on the viability of those schemes. So how do I put all that together?

MR PEARCE: We've been - the first statement was primarily aimed at the big state monopolies, New South Wales, Victoria and, to a lesser extent, South Australia.

PROF WOODS: Not Queensland?

MR PEARCE: Queensland is the unknown to all of us. Yes, Queensland.

PROF WOODS: You're not a claims manager, you're not an underwriter - - -

MR PEARCE: No, so we - - -

PROF WOODS: - - - you're not a - - -

MR PEARCE: It's not the same top line, but yes, it would have the same effect. Off the top I wouldn't think it would have that much impact on Tassie, Northern Territory or the ACT. I mean, they're robust little schemes. I mean, the size of them and the administration that then goes around them is a bit of an anachronism and I agree with Peter, I think it would be a driver for the state and territory governments to actually saying, "Yes, here's an alternative, we'll go with that." Our experience is that they very much feel is they're lumbered with this situation, but they're not that wedded to it.

MR SWAN: The driver of what we're suggesting will happen there, you know, the cross-subsidisation in premiums which is inherent in the state monopolies and almost completely absent in the privately underwritten environments, simple as that.

MR PEARCE: We do want to make ourselves clear on that too: we're not saying that it is not the role of state governments to I suppose subsidise some industries it chooses to. You know, clearly child care, aged care industries which do incur quite high claims incidences and basically through back and heavy lifting that goes with both of those industries, it is entirely appropriate for governments to subsidise those. What we recoil from is those subsidies being buried in a workers comp scheme and being completely in - - -

PROF WOODS: Yes, it's got to be transparent back to the industry, not dealt with through the premium process.

MR SWAN: And if you look at aged health care for example there are already mechanisms in place through the federal social security infrastructure which does that so there's mechanisms even in place to make that more transparent.

PROF WOODS: Every time premiums go up I can assure you all the nursing homes in the world go and knock on the door of the federal government saying, "Your rebate doesn't give us this increase."

PROF SLOAN: But there's Gary's point that when the premiums go up it does

drive incentives to try and look at your occupational health and safety - - -

MR PEARCE: Exactly right.

PROF SLOAN: - - - record and being, you know, the director of a company that owns hospitals, believe me there are things you can do which, you know, for example you have to actually allow the patient to fall rather than try and catch the patient because then you have two injured people rather than one, you know. They're actually quite simple rules but they're often violated.

MR PEARCE: If I could make - I guess we can only speak for ourselves but we've had, I suppose when you look at financial services, not a very good record but - in occupational health and safety - but as a group we have well and truly embraced the safety concept. We are forming a partnership with Dupont who are probably - well, I would say the world leaders in this area - and we're adopting zero as our goal; zero tolerance to workplace injury. There are lots of little things we can do about just the way people carry boxes around the place.

PROF WOODS: So you all go home at 5 o'clock in a stress-free mode?

MR PEARCE: Yes, except none of us go home at 5 o'clock.

MR SWAN: If you go at 5.00, yes.

PROF WOODS: Very good. Anything further, Prof Sloan?

PROF SLOAN: No, look, there are plenty of things but it was a good submission.

PROF WOODS: Yes. Dr Johns? Excellent. We didn't deal with the particulars of your financials but we're very grateful that you've put them in because we will draw on those but they were sufficiently self-evident that we didn't need to. We notice that you had - and that's also very helpful - a table of estimates of potential savings for some clients of yours. You refer to them as being under one government monopoly under written scheme. I assume that's in close proximity to where we are at the moment?

MR PEARCE: Yes, indeed. New South Wales.

MR MOORE: No, it's Victoria.

MR PEARCE: It is Victoria, I apologise.

PROF WOODS: Is it? It's almost close to Sydney.

MR MOORE: Hang on, we'll get you one answer. Victoria.

PROF WOODS: Thank you. Any final statement that you wish to make or draw our attention to?

MR PEARCE: No, I don't think so.

PROF WOODS: We look forward to your ongoing participation in this inquiry and thank you for your cooperation today.

MR PEARCE: Thank you for the opportunity.

PROF WOODS: - - - position and organisation that you are representing?

MS GAILEY: Lynn Gailey, federal policy officer, Media, Entertainment and Arts Alliance.

PROF WOODS: Thank you. Thank you for providing us with a submission and also for drawing our attention to and attaching your submission to the recent parliamentary inquiry. So thank you for those. Have you got an opening statement you wish to make?

MS GAILEY: Thank you. I think our industry bears some cause for examination in that the work patterns in your industry for most of the last century are increasingly becoming more common across other industries, in that we work in an industry that is identified for the most part by short-term engagements and those engagements can be as short as half a day. That creates real issues particularly in areas like return to work. Quite often there is no work to return to, quite often there isn't the ability to provide suitable duties because quite often the person might be the only person working on the particular production in that particular job and all the other jobs are simply unsuitable for a range of reasons, be they an actor and their appearance or a carpenter being unable to be deployed to the costume department.

PROF SLOAN: Well, often all the workers, not just the injured workers don't have work after a short time.

MS GAILEY: That's right. The other thing that's becoming increasingly an issue is determining when an injury has arisen and we're increasingly seeing a number of people who remain without cover although injured because they can't really look back and have never made a notification because their injury has developed over time. So it's the result of having worked in the industry say for 10 years rather than - and work practices that should be changed and haven't been changed. So there's been contributory negligence in terms of an OH and S approach to the way in which jobs are undertaken that is across the industry.

So, I mean, if we look back some years there are a number of men dying from skin cancers because culturally it was, like the rest of the country, you would work - say you're working on a film and you're working out at Coober Pedy or you were working in the Northern Territory, you would work in shorts and that would be it. It took a few - in particular grips - to die before the cultural shift occurred in the industry that said it was okay to wear long-sleeved shirts. I mean, that's an example. So in that kind of thing you're looking back over the history of the industry to see why that person has developed this illness or injury. That means that for a large number of people they're not making any claims and when they do become unable to work they're faced with, well, either death, which has happened on a number of instances, or looking to a completely new career or falling back on the safety net of

the social security system.

Those kinds of issues I think are going to become - you know, will have relevance increasingly to a large number of other industries which are increasingly moving towards short-term employment and I think those kinds of considerations need to be taken into account in any kind of development of a national framework.

PROF WOODS: Yes, it's not as if you'd turn up to one location 48 weeks of the year and you've had the ergonomist in to create the perfect work environment. I mean, diversity of situations, locations, requirements. Presumably you have been working with the industry generally in terms of the heavy lifts and, you know, the safety equipment relating to lighting and those various things but, nonetheless, there are limits. I understood through your submission a number of the quite evident difficulties that you face, like with return to work; if it's a three-week job and you're injured then at the end of that three weeks there is no job to continue a return to work process. What is the way through? Where do the solutions lie? Is there a need somehow to identify a pool of alternate host work that may be either within the industry or has a skill base that can draw on those who are injured from the industry?

MS GAILEY: I don't - I have to say I don't really have the answer other than to say, well, the obvious one is eliminate injury and illness in the workplace.

PROF WOODS: Well, yes, let's focus on that first.

MS GAILEY: OH and S have obviously got to drive that but that being said, I mean, maybe the model of group training organisations for new apprentices which I have to say does not work in our industry at all but I know it works in other industries, so that could be - - -

DR JOHNS: Sorry, it doesn't work or is not available?

MS GAILEY: It has been tried and it failed. That's another problem for this industry. New apprenticeship scheme just simply doesn't - isn't suitable for this industry which I think is an altogether separate issue. But at least that model that has been proven to work in other industries for the new apprenticeship scheme is something that potentially I think could be explored in terms of how you deal with people needing to return to work but not having - their pre-injury job simply not existing or there not being suitable injuries. If you had - you could maybe look at that as a kind of model where that - the equivalent of a group training organisation could be then looking at placing people and identifying work that may be available with other employers.

PROF SLOAN: It is a difficult industry. I know, I come from South Australia and there seemed to be some great blow-up just as I was leaving about the use - the

imposition of WorkCover levies on, you know, bands playing for one night in a hotel, the hotel was going to be levied some premiums.

MS GAILEY: Look, we get a lot of problems with overseas performers - - -

PROF SLOAN: Is it a kind of furphy?

MS GAILEY: - - - coming into Australia and these people have come in and the government and the union says, "There's got to be a workers compensation policy in place in case they're injured." To be fair to a number of employers it's incredibly difficult to get in a number of states - Queensland and WA being the hardest - and so they're falling back on taking out - which you have to take out anyway - medical insurance cover for their non-workplace related injuries. But that quite often is the only thing that's available to them.

PROF SLOAN: I don't know, I mean it was creating quite a furore, actually. It seems to me that - I mean, I suppose the obvious thing to do is kind of say to individuals who work in this industry that in a sense you have to self-provide but then hopefully recoup the costs of that self-provision through the fees that you might charge to the hotel at which you're playing. Whether that's all just in a perfect world - - -

MS GAILEY: Pie in the sky. Well, unfortunately I don't have the statistics here but I can certainly make them available to you. The other issue with that is it's simply not affordable because if you look at the - - -

PROF SLOAN: I was going to say, it must be almost impossible to get income protection insurance if you're an actor.

MS GAILEY: If you work where your employment opportunities are so uncertain - - -

PROF SLOAN: Yes, what insurance company at a reasonable premium is going to offer that product?

MS GAILEY: The latest - I can't quote them with any authority because I simply can't remember them, but the latest investigation into the income levels of performers, musicians and like people has just been completed and has yet to be published by the Australia Council but the average incomes are so low. I mean, dancers are around there, from memory, down around the 26,000 a year mark. Now, they're simply not going to be able to afford anything more than your basic living costs. So that is a real issue.

PROF SLOAN: So they're not going to take out some sort of disability insurance

or - well, they probably couldn't get income protection insurance.

PROF WOODS: If you have some figuring that could assist us in understanding what scope, capacity and opportunity there is for, you know, self-cover that would help and put it in the context of wages. I'll take your earnings figures back to one of my daughters and appraise her of the prospects she's facing.

MS GAILEY: A future of poverty.

PROF WOODS: But happiness she says. Yes, fulfilment and that's fine.

PROF SLOAN: Isn't that the joke: what's the difference between a pizza and an actor? You can feed a family with a pizza.

PROF WOODS: Now, now, now.

MS GAILEY: So yes, it's an enormous problem and the answer is not easy to find. You know, it will come as no surprise that the union's view will be that every person who is working should be covered by a policy of workers compensation.

PROF WOODS: But you do draw on this group training model and I was attracted to that in your submission there and it gave me food for thought as to, you know, exploring ways through. As you rightly point out these are issues that you've dealt with for a very long time but more and more parts of industry are adopting some of the characteristics in terms of work attachment that you've had over these times so that if we can understand ways through that may be beneficial to you then there will be follow-on - - -

PROF SLOAN: What would be your observation in relation to the sort of industry's commitment to occupational health and safety? Has it changed over time?

MS GAILEY: Yes, it's certainly changed over time. It's still got a long way to go. In the film and television industry I think it's been generally speaking pretty responsible and it moved historically fairly early on to set up a safety code for the industry, but because the film industry covers so much I suppose from the period from 83 onwards - well, for the last 20 years, I guess the focus has been much more on the high-profile risks, so stunt, special effects, hazardous filming where it's manifestly obvious that it's very dangerous and there's a high likelihood that if it's not well managed people can be injured. In fact that's not where - apart from three notable incidents - the majority of the injuries are occurring. There are far more injuries occurring in construction workshops, ergonomically related injuries and those areas aren't quite so much seen to be a problem and there's a big cultural shift that we're trying to push to create an awareness of all of those issues.

Because it's a mobile industry they are often working in premises that were not designed for the purposes for which they're being used. So regularly you will have construction departments working in unventilated buildings. You know, the production office and costume working in a scout hall and that kind of thing and you just get by; make do. I mean, that's also across the industry, there is that show biz thing of it must go on.

PROF WOODS: And that's a powerful point that you mention there too, that the culture is, "Let's work around the situation, let's not stop, and solve the situation and then move on," because here's a deadline, here's opening night, here's whatever - or here's, you know, got to be in the can and sent away by - - -

MS GAILEY: Or the sun's setting, let's just keep going.

PROF WOODS: Yes, that's right; the light's at the right point and the right time. You've got a nice cloud so let's go. Yes, so we understand that.

MS GAILEY: But to finish answering your question: it has improved a lot but there's still a long way to go and if you look at some of the deaths we've had say in live theatre, the most recent one was work practices that had been in place for a century and there's a bit of that - again, that's the other cultural issue: that's the way it's always been done, no-one's died, and you would go, "Yes, but the potential for someone to die is actually quite high and it is going to happen." The death at Her Majesty's, that's exactly what did happen but the work practices were no different to what you would have found anywhere around the country and now they've obviously changed. There's a lot of work to be done. There's also so often - bands is a good example: coming into venues that aren't really designed for anything that they're doing, and making do. The bands will accept it and the hotel - the club, pub, whatever - is not going to reaccommodate it. Then you can also be working in absolutely outdoor venues or those kinds of thing, where there's very little thought about - - -

PROF SLOAN: You cover journalists too, though, don't you?

MS GAILEY: Yes, we do.

PROF SLOAN: So are there occupational health and safety issues relating to - - -

PROF WOODS: They drink huge amounts.

MS GAILEY: Well, if you look at the bushfire - - -

PROF SLOAN: Well, okay, but drinking is kind of a self-imposed thing, isn't it?

DR JOHNS: I'm sure there will be a claim around at some stage.

PROF SLOAN: But I would have thought there were some aspects of - well, particularly journalists out on assignments and - - -

MS GAILEY: If you look at - yes, exactly, because you're not knowing the circumstances that you might be walking into, and if you look at the big bushfires there is another issue that isn't solely restricted to journalists, of asbestos, because the bushfires in Canberra, a whole lot of those sites that were burned to the ground there was asbestos in the building and there was an awful lot of exposure to asbestos suffered by fire-fighters, volunteers, journalists - - -

PROF SLOAN: Sort of floating around, was it?

MS GAILEY: Yes.

PROF SLOAN: Probably went into the water supply.

DR JOHNS: No, no.

MS GAILEY: That actually wasn't thought of at the time. It wasn't thought of in advance. What people were thinking about was heat, dehydration, fire obviously; being burnt to death and being caught and not being able to escape but asbestos hadn't been thought about. Then obviously war is the big one. But again there's been much more work done in those really obvious areas of danger than there is down at the day-to-day - - -

PROF WOODS: On the day-to-day heavy lifts - - -

PROF SLOAN: Sitting in the newsroom in Sussex Street, but presumably there are some issues there too.

MS GAILEY: Yes.

PROF WOODS: Can I clarify one point: you talk about the, "Thrust of the three national inquiries referred to above" et cetera and you say that, "These matters are best handled at a state and territory level," but then you say, "within a national framework that delivers consistency between the jurisdictions" and then later on you talk about national codes of practice that are industry specific and nationally adopted definitions. There seems to be a whole spectrum of perspectives in that little selection of quotes. I'm not quite sure whether you're advocating state and territory jurisdiction-specific schemes, but that they more closely align, or that you have one national scheme or that you have at least national uniformity or sameness - for those who want it absolutely clear - as to certain things; various definitions of what

constitutes an employee or a work-related injury or whatever, but that other things can be in the realm of the individual jurisdictions. Where do you sit in that pile or isn't it really all that important to you anyway?

MS GAILEY: What we would like to see is harmonisation between the states. That's incredibly important to us because - - -

PROF WOODS: What does harmonisation - does harmonisation mean broadly similar but doesn't have to be the same or does it mean for some things having - - -

MS GAILEY: What you've picked up reflects a little bit of this tension - - -

PROF WOODS: - - - the same.

MS GAILEY: - - - between the states. It also reflects what I think the union generally views as an inevitability, that there doesn't seem to have been and continues to - as far as we can see, the likelihood of disbanding state-based systems. There is some merit in OH and S and workers comp being handled at the state base because there's obviously going to be regional differences and you can apply the expertise that - I mean, New South Wales for instance doesn't need to have authorities with great experience in gold mining. WA probably does.

PROF WOODS: No, but you could have the one set of standards in that New South Wales doesn't have to worry about that bit but at least it's still within one specification.

MS GAILEY: So it could be administered at a state level and continued with the state authorities but national consistency. Well, for us it's obvious that it is completely unreasonable in our view that somebody who is deemed an employer in New South Wales might not be deemed an employer in another state so we'd like to see nationally consistent definitions of employer/employee and we'd like to make sure when our members are moving across borders that they don't fall through a crack and find themselves uncovered simply because there isn't a link to the state or the employer wasn't based in that state or - - -

PROF WOODS: But generally there's a lot of productions that use locations in a variety of jurisdictions and, you know, they might only be there for a day or two days to film a particular shot or site or, you know, a travelling performance that goes right round the country. I mean, there's all sorts of - I would have thought you would be arguing for a national sameness, uniformity, but there does seem to be this tension - - -

MS GAILEY: Acceptance that - yes, there is.

PROF WOODS: - - - or something.

MS GAILEY: An acceptance that state-based management is probably the most likely future.

PROF WOODS: So it's a pragmatic perspective not necessarily a preferred ideal.

MS GAILEY: That's right, but the national consistency of definitions is really important.

PROF WOODS: Yes, I mean if a gaffer gets injured in WA you would want them to be treated the same as if they get injured in South Australia.

MS GAILEY: That's exactly right.

PROF SLOAN: You're very good at these terms, aren't you?

PROF WOODS: I know gaffers and grips.

DR JOHNS: You've watched a lot of movie credits.

PROF WOODS: I always wanted to be the best boy. Sorry, we're being distracted.

MS GAILEY: But from our point of view when we're negotiating safety codes or sets of guidance notes, we will always try and do it nationally for the simple reason that all of our members are so mobile.

PROF WOODS: Yes, I understand that. I was just curious as to the various formulations of words that you had through that section but I think you've made clear why they are there and for what purpose. I understand where your principle lies in that perspective so that's helpful. I don't have any - - -

PROF SLOAN: I find this very interesting and I think you're right to point out that, in a sense the issues that have faced your industry forever, probably, are now kind of facing others as well. I'm not sure there are as many lessons as we might have liked out of it.

PROF WOODS: Are there other matters that you particularly want to draw to our attention or reinforce?

MS GAILEY: Consistency of benefits, because again that goes to your point about we'd like somebody treated the same, and a number of the previous inquiries have pointed to the fact that pre-injury average wages is the appropriate way to approach benefits and we agree.

PROF WOODS: We noted your point on that. That's quite clear. We've very grateful that you've put in the time and effort both for the submission and coming today because your industry does have some valuable perspectives for us. Thank you for the time that you've made available.

MS GAILEY: Thank you. Would you like me to provide that information about average wages?

PROF WOODS: Yes, yes, that would - just because it provides a context as to - well, if somebody says, "Why isn't the option that they self-insure," then you can look at it in that context. Thank you very much. At this point I get to adjourn us for lunch.

PROF WOODS: Our next participants are the United Group. Thank you. Could each of you please state your name, position and the organisation you are representing.

MS BIGLIN: Yes, it's Lisa Biglin. I'm the national health services manager for United Group and I reside in WA.

MR SCHOFIELD: My name is John Schofield. I work with the United Group and I manage the workplace health and safety team for our outsource clients predominantly in the Commonwealth sector.

MR SHARPE: Graeme Sharpe from United Goninan. We were the company that built the Tangara trains and I manage their workers compensation. We are a licensed self-insurer in New South Wales.

PROF WOODS: Thank you very much. If you could just give us a profile of your business that would help us understand.

MS BIGLIN: Yes. That's what I was just about to do. United Group has varying identities. We have other companies called United KG, we have United Goninan, United KFPW - I always get that wrong - and United Gooder in New Zealand. United Employees has a group about four and half thousand people through Australia and Australasia. United has - it's predominantly mechanical, structural engineering, fabrication, maintenance, electrical work, waste water, building of trains, resource and energy in the minerals and metals, oil and gas, petrochemical industries. We do mining, sort of - that's various so we've got it throughout, basically all over Australia.

United Gooder is a New Zealand company so they aren't obviously relevant for our national system, but it was just an idea to let you know. We have companies in Hong Kong with the trains. So it's rather vast and we have offices in every state. I guess what I wanted to share, if I can say a bit more - - -

PROF WOODS: Is that enough on that one, Dr Johns?

MS BIGLIN: Do you want to ask something else?

DR JOHNS: No, that's good.

PROF WOODS: Yes.

MS BIGLIN: From United Group's perspective and having a national role trying to deal with national workers comp I'd just like to share a couple of incidents that stick in my mind and these are just two of them, examples of the issues between the cross-states' varying legislation. We employ - - -

PROF WOODS: Sorry, just before you do, you are represented in each jurisdiction?

MS BIGLIN: Yes, we are.

PROF WOODS: But you're a self-insurer in New South Wales only?

MS BIGLIN: That is the only - yes. We have a retrospect policy which covers WA, Northern Territory, ACT and Tasmania.

PROF WOODS: Thank you, sorry, continue on.

MS BIGLIN: We - having such a vast array of people that work for us, we are transferring people from projects to projects. So we have that - a person gets injured and this is one of the examples: he was employed from Victoria, he came to New South Wales; he sustained an injury on a construction project and construction projects only have short life-spans. Whilst the injury was significant to the fact that he had to have a rotator cuff repaired, so we padded him back down to Victoria. He had his rotator cuff repair. He was then picked up in one of our facilities management companies down there to do his rehab. Whilst he was doing his rehab he tore his opposite rotator cuff.

So we then had a claim that began in Victoria so we were running two claims in two states. The guy didn't know what his pay was because it's different in each state. You know, "Why can't I just have one claim?" is what we ended up getting an insurer to do because we insure in the same insurance in each state to try and help to make it easier. I guess, you know, he had different waiting periods. We were trying to juggle what we're going to with him. The other one was a guy that had a couple - - -

PROF WOODS: Sorry, what was the outcome of that process? Did he get rehabilitated? Is he still employed?

MS BIGLIN: He's still employed. We have a philosophy at United that nobody gets terminated until they are either, depending on the jurisdiction, paid out or, you know, repadded into another position in another company. We try to keep everybody on the books because we find that that's one way of keeping our premiums down. As soon as they're made redundant or terminated they go, "Well, you don't care about us so why should we bother to participate in anything?" even though the legislations sort of tell them that they have to. We have the same injury management philosophy across Australia so it doesn't matter what state you work in, you will be subject to the same criteria for when you get hurt.

We have a huge safety management system which is on an Internet system where everybody has access to it. The occ health and safety procedures are then adopted. They're the minimum requirement, that you can't go outside those guidelines. But then they're adopted for each of the different business sectors to go with it. The other incident was, a gentleman was employed from New South Wales and he went to Queensland. He had carpal tunnel syndrome which was settled, as in he was asymptomatic at the time when he went to work for us in Queensland. He had an aggravation of that injury. He put a claim in, in Queensland. Queensland said, "No, sorry, it belongs to New South Wales." New South Wales said, "No, sorry, it belongs to Queensland," and the only way he could get it sorted out was - because we couldn't convince the insurer either way - he had to get legal representation in to get his claim sorted out.

So I guess the point I'm trying to make is, a national system for United Group would have great advantages because we only have to pay one premium, not a premium in every state. It doesn't matter whether we employ someone from Queensland and send him to West Australia or send him from West Australia to the Northern Territory. You know, the legal minefield, the amount of information we've got to try and remember of excesses on different states, payments, it's a paper nightmare basically for us.

MR SCHOFIELD: It also impacts on our issues relating to bidding for international contracts where our productivity and our ability to employ Australians is impaired by the fact that we have eight times the requirements across our jurisdictions because we're across Australia. Our competitors overseas don't have these issues and they can compete and underbid on the basis of the fact that they can go cheaper be they either don't have the same regulatory models that we have in this country or they have a model which is more efficient and more effective.

PROF WOODS: Are you able to provide the commission with some costing of what you would save if you were under a single national model?

MS BIGLIN: We could work that out, yes.

MR SCHOFIELD: We could do some digging into costings, yes.

PROF WOODS: I mean, I don't want United to suddenly expend vast resources. But if there was - and I draw your attention to some of the other submissions that are already before us. So to the extent that they provide a bit of a model or guide, if you could replicate that to the extent you are able, that would be particularly helpful to us, just so that we understand quantum.

MS BIGLIN: Yes.

PROF WOODS: We understand the principle and we can understand its practical application. What we don't understand is the degree to which it does cause you disadvantage.

MR SCHOFIELD: It would also go to the number of different - as Lisa was saying, the inconsistencies in the legislations within the states in terms of how many days of excess does an employer have to pay for it - maybe three days, five days, 10 days - the amount of reporting time. When do you have to report? I mean, all of those issues about - - -

PROF WOODS: The cost of each of the audits, the fact that you may need legal retainers.

MR SCHOFIELD: And we have to maintain expertise in every jurisdiction so that we always comply. I mean, I'll ask Graeme to talk about our 30 years of experience as a self-insurer in New South Wales with Goninans.

PROF WOODS: Yes, please.

PROF SLOAN: But I mean, can I - just before you do that, which will be interesting, it's kind of interesting because in some ways you're not actually that big. I mean, you said you had what, four and a half thousand?

MS BIGLIN: Four and a half thousand.

PROF SLOAN: If we go to Woolworths they had what, nearly 200,000 workers? So it seems to me that they're having to kind of understand eight jurisdictions for 200,000 workers. You're having to understand eight jurisdictions for four and a half thousand workers.

MR SCHOFIELD: But by having the volume that Woolworths would have, they would probably have a business case to actually effectively resource somebody to look after those issues.

PROF SLOAN: Yes, I'm sure they do whereas - that's right, you know.

PROF WOODS: You've got all the overheads but less to spread it across.

MR SHARPE: United Goninan Ltd have held a self-insurer's licence in New South Wales since 1974. I've administered the licence for them since 1983 and we've had no major problems all the way through. We have had other companies where we've half-owned them and they have been insured through the normal workers compensation system and our company is a lot happier as a self-insurer than going through the other system. It gives us better control of the claims. It gives us the

opportunity to move more promptly on the claims, to provide treatment promptly and issues like that.

PROF WOODS: Would you or do you outsource some of that functionality, whether it's the actual claims management or the rehab or - - -

MR SHARPE: Coordinate the claims, and for medical information we go to doctors, for legal information to solicitors. For most of our internal injuries we have our own in-house return to work coordinators. However, for serious injuries or difficult injuries or if the worker is working in a difficult area to find suitable duties, we bring in outside providers.

MR SCHOFIELD: The role that I play within the United Group is within the KPW division which is a business process outsourcing arm, the old Knight Frank Price Waterhouse, and I actually provide outsourced workplace health and safety services to two Commonwealth departments and a couple of smaller private companies, and we provide a total workplace health and safety solution for the Commonwealth jurisdiction. I mean, my background, I had 11 and half years in the Commonwealth and from 94 basically I've been working in workers compensation in the Commonwealth jurisdiction.

PROF SLOAN: Did you work at Comcare?

MR SCHOFIELD: I did for six months as the national business manager in 98. But prior to that I was in the Department of Health and we had to consolidate the therapeutic goods administration, SARA staff, SARA's clients and the Health Department into a single premium paying entity. That rationalisation over three years led to us coming down from an average premium of 2.2 down to .87 between 96 to 98. The ANO did an audit on - we were an organisation that was part of an ANO audit in 1998, I think it was, and our systems that we designed, a relational database system for better information management - and that system was acknowledged as a tool that could be used to better investigate Comcare data and provide better advice to organisations who needed the data.

Just lastly, we created an organisational health strategy which had the basic principles that we've included in our paper there about communication, accountability, prevention, injury management, resourcing and that strategy ran from 97 to 2000 and had a significant positive effect on that department. I left the department in 98 to work at Comcare for six months and then left the federal government in mid 98.

PROF SLOAN: I mean, information and data and the like are clearly a key aspect of running both an effective workers compensation management system but also occupational health and safety. Self-insurance tends to generate good data for the

internal requirements but the other systems seem to kind of fall down. There seem to be some huge delays in notification in some of the jurisdictions.

MR SCHOFIELD: Yes. It's all obviously subject to the responsiveness of the workplace, of the supervisor, manager and of the staff member themselves. But that's my experience with my Commonwealth clients. But Lisa's experience is - - -

MS BIGLIN: I would agree with United probably six years ago. We had a terrible reporting injuries, getting claims forms, you know that. But we have set it up that we've got certain forms from the safety side of things that have to be filled in for notifications within an hour of any incident injury happening and then that excavates straight into the workers comp form. If a workers comp form happens it's either faxed directly in or in these states you ring now and you can lodge it straightaway. On all of our projects we nominate a rehab coordinator or officer, whichever you would like to call it. They are trained in what the expectations are and then they will indirectly sort of report back through my role so that we can keep an eye on it from a national perspective, doesn't matter where they are, what's happening, and if they're not following it up.

So we have come a long way from, you know, six years ago when the guys used to get hurt and stay at home. We did it and we sort of took the health compartment away from the safety and away from HR and IR and just made it its own because we managed the pre-employment medicals with drug and alcohol and that was one way of us trying to reduce our costs. It was costing us to medical them but it was saving us on the other end, because we could tell what we had basically to start off with and what we had to deal with. So we kept it as its own independent area.

DR JOHNS: Could I just ask you what services do you provide to or for the Commonwealth?

MR SCHOFIELD: United KFPW HR Services is the company that provides a total HR solution to currently the Department of Finance and Administration and the Department of Agriculture, Forestry, Fisheries Australia. There is going to be a change.

PROF WOODS: So that's payroll recruit?

MR SCHOFIELD: Yes, just the health and safety aspects, sorry. We don't just provide health and safety, that's all. The health and safety aspects with relation to the Department of Finance and Administration is a total health and safety solution, so that's handling of OH and S incidence and reporting, management of their OH and S committee, assisting them with policies, procedures and guidelines and helping them have - we designed and implemented an occupational health and safety management

system for them. We manage their rehabilitation and manage the compensation payments to the particularly difficult - - -

PROF WOODS: So are you the interface between them and Comcare?

MR SCHOFIELD: Correct. But that ceases as at 30 June, whereas we weren't renewed with the contract there, but we were there since 1999, so the last four years.

DR JOHNS: The system hasn't changed, you just didn't happen to - - -

MR SCHOFIELD: No. We do maintain the contract with Agriculture, Forestry, Fisheries, and we provide similar services to their ACT-based staff and the national office staff, because you've AFRA - AFRA has got AFRA and AQIS and Merrill Stanton heads up AQIS, but it's still a part of AFRA as a premium-paying entity.

DR JOHNS: What insights then, do you have, into the Comcare system and its strengths and weaknesses?

MR SCHOFIELD: Sure, I believe the Comcare model has a number of strengths in the context of both the safety aspects, in relation to the Occupational Health and Safety Act 1991 and the fact that they have a clear separation of safety and regulation prevention with the Safety, Rehabilitation and Compensation Act then covering the workers compensation side of things. I feel that the strengths of Comcare include Mr Leahy's leadership, at the moment, in terms of driving through the Commonwealth leadership and accountability as part of the strategy to improve health and safety across the Commonwealth. I would have to say that there are issues relating to the processing and the management of transactions, but I would expect any service provider has those issues with the volume that the Commonwealth and Comcare would have to deal with.

I believe their customer information service is very strong; it provides a significant amount of information that's relevant and can be actively managed to help people understand the costs of workers compensation and how to target prevention activities using this information that's on that system. And I do believe that with the paper that you produced that it is possible that you're considering that Comcare model as a potential framework that could be used as a national model and I would certainly concur that model, or perhaps an amalgam of the Comcare model and the strengths, perhaps, of the Queensland model, which is the other jurisdiction that's performed particularly well.

PROF WOODS: Can you explore that? Because we had a submission from Insurance Australia Group who said Comcare, but more because it happened to be a model that you could get into on a national basis than the strengths of its benefit structures or whatever and they identified two areas where they'd want to make

change. One was dispute resolution and one was getting a step-down part way through the process, so 26 weeks they said, but some earlier step-down. Now, I'd be interested in following through Dr Johns' questioning, what your views are on those two aspects? Are there other changes that you'd want to make to Comcare and for what reason and what are the particular strengths of Queensland that you'd like to draw into such a scheme?

MR SCHOFIELD: The strengths in Queensland, if I can start there, the fact that they are quite focused on their regulation model. I have to admit a relative amount of ignorance in - I've only managed to read what's been available in the public domain, I'm not a practitioner in Queensland and my colleague may be able to speak perhaps better on how - some of the strengths of Queensland.

MS BIGLIN: You keep going.

MR SCHOFIELD: Okay. Their performance through the Heads of Workers Compensation Authority's reports demonstrate that their financial performance is quite sound. They have just reviewed their claims management process and made the decision that they'll retain their system as a government state based system, however, they will outsource the claims processing, that's fine, that's a transaction outsource, it will probably make some efficiencies for the scheme. But the financial robustness - and the elements that lead to that - is one of the issues and I think that - I don't know the intricate details and you probably need to ask the Queensland Workers Comp Authority to give us those in more detail, but that model, as such, it certainly encourages people, if you like, employers and employees, to play by the rules and work to the guidelines, because they have a good enforcement policy and it's known that they do enforce their policies and their regulations.

Your question relating to Comcare, cutting back from 45 weeks to 26 weeks, I mean, that - sure, that's something that could be taken into consideration. I think the benefits and the "no fault" aspects of the SRC Act - the benefits, I would, from some perspectives, consider to be a bit generous, the 45 weeks on full pay and the sliding scales to get back to work, I think that could be an area that could be worked on. But I do like the fact that Comcare is in fact a model that exists right now and could be used for trialing, or piloting, just to see how things work. The opportunity for self-insurance does exist in Comcare, however, we attempted to seek Comcare self-insurance and were declined.

PROF WOODS: With whom are you competing? Who is or was - - -

MR SHARPE: ADI. Australian Defence Industries.

MR SCHOFIELD: National Rail. And EXTAS, Department of Admin Services, Asset Services.

PROF WOODS: Lots of opportunities. Are you willing to put on the record what the reasoning was for the decline?

MR SCHOFIELD: Don't know, sorry.

MR SHARPE: Sorry, it wasn't declined; we didn't proceed with it.

PROF WOODS: Okay.

MR SHARPE: We made extensive inquiries.

PROF WOODS: But did you not proceed because you expected not to be approved, or did you not proceed because, as a business case, it didn't stack up?

MR SHARPE: We declined - sorry, we decided not to proceed because of a couple of reasons. (1) we were a bit wary of the Commonwealth benefits, under the Comcare system and we had heard that no other company had been approved as a self-insurer. ADI, I think, took their licence from when they were a government instrumentality to when they were sold privately.

PROF WOODS: Okay, so it was a mix of the two.

DR JOHNS: Which benefits in particular, did you balk at?

MR SHARPE: We were told - we had someone look into the Comcare system or give us advice on the Comcare system and the advice was that their benefits are very generous and it was limited to that.

MR SCHOFIELD: Sorry, did I finish your - - -

PROF SLOAN: But would you - do you think under different circumstances you might reconsider that? I mean, given what you were talking about, the sort of inter-jurisdictional movement of workers, that problem is not going to go away for you, is it?

MR SHARPE: I'm sure our company would look at a Commonwealth - Comcare national licence for self-insurance.

MR SCHOFIELD: We are, as a company, seeking to be able to be totally accountable and responsible for health and safety and be able to make efficiencies and return those dividends to our shareholders through the more efficient way we manage our people.

PROF WOODS: Do you have anything further to add on that previous question?

MR SCHOFIELD: I guess I wasn't 100 per cent clear on the - - -

PROF WOODS: The last bit was the dispute resolution.

MR SCHOFIELD: I do understand from my experience in the Commonwealth that the dispute resolution process through the Administrative Appeals Tribunal is lengthy, it's costly and it's probably skewed, perhaps in some way, towards the claimants, in that they have very - minimal effort to be involved in that process and there's an extensive resource allocation required from the department to - some of these claims go two, three, four years and then they have to - they go to a settlement procedure prior to the AAT actually hearing, so I guess that dispute resolution could perhaps look at the ADR for New South Wales that Justice Sheehan was talking about earlier this year, that maybe a model - I mean, it's a new model so we don't have longitudinal data to assess its effectiveness yet, but I think before we jump up and down too much about its successes, we need to give it time to see if it's - get over the honeymoon period and see how it flows through after maybe two or three years, to measure its effectiveness that way.

PROF WOODS: Sorry, Ms Biglin, you were going to make a comment.

MS BIGLIN: I was just going to say that United people are KPI'd with the workers comp and how they're doing and - so it's part of their key performance indicators, so they are fully informed of - and it's charged back to the business unit, so they actually have to pay out of their business unit as opposed to a group base funding, so it hits the business unit's pockets and they definitely take an interest in, you know, what they have to pay.

MR SCHOFIELD: One of the thoughts I was contemplating as part of this as well was the issue of how would the states, or why would the states choose to cede the rights that they have as far as running their workers compensation jurisdictions to a Commonwealth or national model.

PROF WOODS: A very good question.

MR SCHOFIELD: I actually feel there is a good approach to take with that, perhaps, and that is the approach being that if all the jurisdictions were able to get some financial advice through an approved person, perhaps APRA or somebody like that, to see what would be the effect of pooling the amounts of premiums that are currently paid by all jurisdictions into a single unit trust of some shape and using the graded returns on investment dividends that would come as a result of a larger pool of money being made available to pay back the unfunded liabilities or the long tail claims of some of the jurisdictions. Most jurisdictions aren't making money on their

schemes; most jurisdictions may be happy to get rid of some of their debt and perhaps over a five, seven, longer year process it could be negotiated. I certainly don't think this is an elephant we'll eat in a couple of weeks. This is something that may need to hang off the NOHSC 10-year timetable perhaps as a broad parameter, to sort of look at existing frameworks that are currently being run that maybe we can adopt some of the timetables and timeframes to try and step by step take these changes and obviously consultation is a key part of that process.

PROF WOODS: I don't think I particularly want to rely on a sense of superior investment returns as the way of bailing it out, but I understand at least your point about a larger pool of funds.

MR SCHOFIELD: I think also that taking away that unfunded liability issue for all the states may be a very - a very attractive aspect.

PROF SLOAN: I'm not sure the Commonwealth would be wildly keen on handing that over.

PROF WOODS: You are a self-insurer in New South Wales. Are you applying for or thinking of applying for self-insurance in any other jurisdiction?

MR SHARPE: We have some problems within our company. Each of the companies is an individual company owned by the United Group Ltd and so as far as our company United Goninan is concerned we do have some problems. We only have 43 workers in Victoria and of course we can't do anything in Queensland and the other two states we operate in are South Australia and Western Australia. We have two operations in South Australia and we have a permanent site in Bassendean in Perth and I think three service centres in the Pilbara region. But the administration side of trying to administer self-insurance in each of those other states for the small numbers would not be a workable situation.

PROF WOODS: Better just to pay the premium and be done.

MS BIGLIN: With the retrospect policy, were you doing that at the moment to get a feeling for whether we think we're right to go to self-insurance in these other states, because basically we all understand the retrospect policy, so we actually manage - have control of the claims, we just pay the insurer, you know, a deposit premium and they just make sure we don't break the laws outside the workers comp. So we are wholly responsible - - -

PROF WOODS: So you're part way there - - -

MS BIGLIN: We're part way there.

PROF WOODS: - - - in the sense that you pay them a - basically a retainer and then you incur your own costs.

MS BIGLIN: That's right.

MR SCHOFIELD: And this process, commissioner, has actually been - the timeliness of this has sort of - we're looking to this process to hopefully further that national scheme for our business and maybe walk a bit of new ground, perhaps, if there's the opportunity.

PROF SLOAN: What about the integration of occupational health and safety and workers compensation? It seems to me that in this inquiry we often talk about those things as if they're completely unrelated.

MR SCHOFIELD: They're certainly not unrelated. They're key and key parts of any integrated model that you would use. Your prevention effort should lead to better cost-effectiveness for your injury management. Injury management statistics should lead to better targeting of prevention effort, so I see them as an absolutely - - -

PROF SLOAN: And in your experience, you know, going back to your days in the Commonwealth, is that part of the strategic direction?

MR SCHOFIELD: It's certainly very effective strategic direction and as recently as last week I - sat in on the executive of the Commonwealth Safety Management Forum and Hasham El Nasri, I believe his name is, from Air Services Australia, he's the financial controller and has responsibility for workers compensation, made a presentation to that forum and over the last five years their organisation, through an integrated model, effective communication, OH and S and injury management, not the same people doing that work but the people who do the work collaborating together for the benefit of the organisation, they've had an 80 per cent reduction in their incapacity and only a 20 per cent reduction in the claim numbers, so they've clearly demonstrated that effective injury management and better targeted prevention has led to over five years a significant saving and they're down at .5 or .6 or something for their premiums and they've been between .45 and .71, I think, for that five-year period. So they - I mean, I did it for myself with the Health Department, you know, the late 90s. They're doing it now. They're examples of how it is being done effectively and another step, I suppose, that shows that perhaps this issue of managing people is not necessarily correctly fitted into a HR environment, per se, is the model that the Defence Safety Management Authority have adopted with making it a governance issue, a people governance issue as opposed to a HR matter and that also separates it out, it makes it more accountable for the managers, because it's now an issue that has to get managed as a governance issue, not a people issue and I think that is another strength of what the Defence Safety Management Authority are actually doing, taking forward their situation.

MS BIGLIN: I think United KG, which was formerly known as United Construction and Kilpatrick Green, they can demonstrate over the last 15 years that going from having very few occ health and safety procedures to where they are today, we've gone from high premiums, high lost time injury frequency rates down to - obviously we all target for a zero lost time injury frequency rate - we're sitting at about 2.5, I think, at the moment throughout Australia, which 15 years ago, there's no way that we would have been there, because we just didn't have the procedures in place, and they're vital to make any organisation operate. Without them, you're going to have the injuries. The implementation and the education of it is so important in how you do it.

PROF SLOAN: Have you got views about, though, NOHSC and the kind of national approach to - - -

MR SCHOFIELD: I do. I think we should look at it and I believe adopt very strongly what that outline, that timetable that's outlined in the targeted reductions on the injury types, workplace deaths and workplace injuries across the board, improving governance, improving reporting, improving compliance.

PROF SLOAN: This is the national strategy.

MR SCHOFIELD: Yes, health and safety, I would see health and safety as a more advanced set of parameters to work with as far as if you're looking at safety and health, the health, the compensation side of things, the injury management side of things should very much be the focus, I believe, of attention, because health and safety is fundamentally nationally consistent. The jurisdictions, if you read some of the HOWCA reports they show there's the obligations and responsibilities in all jurisdictions that are very consistent, and I believe also that it's a part of most workplace cultures now, that safety is a part of work. That's important because that is, if you like, leading the charge, is trying to stop people getting hurt in the first place.

But the inconsistencies in benefit entitlements, the inconsistencies between the states and the difficulties you have, I mean, there's three different pieces of legislation in New South Wales alone that you have to be on top of to be able to manage your self-insurance. It just simply doesn't make any sense. We've got six or seven million workers and we've got 10 jurisdictions, and that just does not make any economic sense, and it's the incredible bureaucracy you deal with to try and overcome all those issues as a private - as a, sorry, publicly listed company. This could be very much a significant benefit to our organisation and to the general employing groups that have more than one jurisdiction to deal with, and the workers themselves, if the worker has only got one scheme to worry about, he doesn't have to or she doesn't have to worry about "which state do I make a claim in, which state am

I going to get a greater benefit from"? There also shouldn't be competition between the states as to who provides the cheapest workers comp. I mean, that's not exactly a correct incentive, if you like, for business.

You mentioned earlier about the nursing homes and their workers compensation schemes, I actually worked for the Aged Care Department when that implementation change came through and the nursing home proprietors certainly did go kicking and screaming to the state averaging scheme with penalties and bonuses. However, I think that they also benefited from that because they had to implement better safety for those organisations that had eight, 10, 12 per cent premiums, looking to the better organised groups that had, you know, they were earning bonuses as a result of it.

PROF SLOAN: We have had though, I think, some expressions of unease about what you might call the bureaucratic administration of occupational health and safety is concerned that some of the states have changed from what you might have seen as a kind of assisting business, providing consulting advice to businesses to much more policing and imposing penalties and - - -

MR SCHOFIELD: Tyre kickers.

PROF SLOAN: What's that?

MR SCHOFIELD: Tyre kickers, sorry.

PROF SLOAN: Tyre kickers, well, I mean, if you look at the figures in New South Wales, I mean, the amount of penalties has gone up dramatically and the average size of the penalties has gone up dramatically, so it does kind of suggest that there has been some change in thinking about policy emphasis.

MR SCHOFIELD: I'd suggest, perhaps, the national 10-year targets may have been a trigger for all jurisdictions to have a good look at what they're doing. I mean, penalties and prosecutions are vital - - -

PROF SLOAN: Are they?

MR SCHOFIELD: - - - because they demonstrate that there is a consequence to poor people-management, and there never should be a situation where an employer who is ineffective gets away with it. Safety is a fundamental right. I have a fundamental right to have a safe workplace, and I have an obligation and responsibility to work with my employer to make sure that they are fully informed of any issue that I see as a risk. It's that mutual obligation aspect that is a fundamental tenet to the successful health and safety in an organisation.

PROF SLOAN: Do you think prosecutions do provide a deterrent effect?

MR SCHOFIELD: Most certainly. Money always talks.

PROF SLOAN: Well, the average size of prosecution in New South Wales is up to \$20,000, which I wouldn't have thought - well, it's not exactly a drop in the ocean to many businesses.

MR SCHOFIELD: I think it's mostly an embarrassment as well. It's a bit like wearing a T-shirt saying, "I'm a thief," and standing on the harbour bridge. You know, it's an embarrassment publicly to have failed at a health and safety context, and now we're in the realm of triple bottom-line assessments, it's not just financial performance that matter, it is your social performance that matters, and part of your social performance is how you manage your people and the impact you have on their lives. Now, if you're a company that is prosecuted, you know, week in, week out or, you know, year in, year out, you're not going to keep people, you're not going to be a good business and you're probably going to go belly up. I mean, I believe there should be prosecutions as a deterrent. However, part of the process before you whack people with the stick should be perhaps an education process to make sure that if you're going to bring any change in, it should be phased in and it should be a genuine effort to communicate that change so it's effectively implemented.

PROF SLOAN: I think it's a matter of balance, that's the only thing, that I think there's been some complaints that it's actually very hard to access services in terms of, like, advice and consulting, in terms of establishing a safe workplace, but they've got the resources to prosecute.

MR SCHOFIELD: Yes, I guess there is the responsibility of employers at law to provide those safe workplaces, and that is not a new thing. That's been around since 83 when the ACT brought their legislation in. But the - sorry, I had a thought, sorry, I got distracted.

PROF SLOAN: That's all right.

MR SCHOFIELD: I did lose the thought, yes.

PROF SLOAN: I always lose the thought.

MR SCHOFIELD: Sorry.

DR JOHNS: I'm just a bit intrigued - you mentioned that there'd be consultation opportunities that might arise under a national scheme, a national framework or whatever. Why would they be significantly different than what you could ply among the various state schemes? In other words, where is this a new opportunity for you

to, what, provide services under a national framework? Is that what you're referring to, or have I read that - - -

MR SCHOFIELD: Well, we are a service provider, but that's certainly not the driver for us at the moment. We're here as the United Group seeking the opportunity for our organisation to have one set of rules and regulations that are consistent, benefits are the same, our workers have, you know, got the same rights in every state they work in, and for our premium setting purposes, there's defined benefit limits. Benefit entitlements are fixed. A back injury is a back injury whether it's a Queensland back injury or a WA back injury, and through re-insuring it or through retrospect policy, you actually have the opportunity then to pay those costs of those claims at the point in time to try and settle them and try and give certainty. I mean, part of the issue is giving certainty to the actuaries to try and set effective premiums and not have deficits.

DR JOHNS: Yes, thanks.

MR: Any other matters?

PROF SLOAN: No, that's - I think it's - - -

PROF WOODS: That's excellent, thank you. Are there other matters that you wish to draw to our attention?

MR SCHOFIELD: One only other thing I'd like to say, really, I have unfortunately got a reputation of liking to speak and I am passionate about health and safety - - -

PROF WOODS: Don't indulge yourself here.

MR SCHOFIELD: I believe one of the key things we will need to have a national system is a national knowledge management system or a single database of information management. We have a set of national data set codes. We have the capacity. We have incredibly intelligent people with information technology in this country, Australian businesses who are winning international awards. I believe we should engage them and take advantage of best available technology. It's the greatest evolution since the printing press and we should take advantage of that and capitalise on the efficiencies and use that information to drive the safety improvements, and probably more than anything, is clear definitions, definitions of who are employer, employee, contractor, what are your obligations for those different people - clear definitions, I suppose, and it's an unending list, depending which jurisdiction you're in.

Probably the final thing I'd like to say is that we can, I believe, achieve this through effective consultation, approaching it from perhaps a tiered approach

perspective so we're not threatening jurisdictions or states or people's patches, but we want to collaborate together with all the stakeholders to achieve that outcome which is safe workplaces and effective management. We've still got industrial relations processes for that process. We've still got performance issues, performance management to deal with poor performance. Health and safety is a bit of sacred ground and it should stay that way, and it should be looked after at a national level for the benefit of Australians.

PROF WOODS: Thank you, very succinctly and clearly put.

MR SCHOFIELD: Thank you.

PROF WOODS: Thank you for your time and for the contribution of your submission. It's been very helpful.

MR SCHOFIELD: We'll be following up our submission, if that's okay.

PROF WOODS: Yes, please, we would like you to.

PROF WOODS: Gentlemen, could you for the record please state your names, positions and organisation that you represent.

MR BARRON: Jim Barron, CEO of Group Training Australia.

PROF WOODS: Thank you.

MR PRIDAY: Jeff Priday, national development officer, Group Training Australia.

PROF WOODS: Thank you very much. You've provided us with a submission for which we're very grateful. Do you have an opening statement you wish to make?

MR BARRON: Yes, I do. Thank you very much. We welcome this opportunity to appear before the commission hearings into National Workers Compensation and Occupational Health and Safety Frameworks. As outlined in our submission, Group Training Australia plays a critical role in the skilling and up-skilling of this nation and it is from this perspective that we have sought to contribute to this inquiry. The twin issues of workers comp and OH and S are having a substantial impact on the operational capacity of various group training organisations across the country. As a result both issues threaten the future viability of these GTOs and as such threaten the future development of skills in parts of this country.

More and more in the vocational and educational training fields governments are looking for nationally consistent approaches. Group Training Australia has generally supported such efforts. Yet in this critical operational area for all group training companies there exists the typical dog's breakfast federated approach to things. As group training expands, many group training organisations are investigating the possibility of trade training across state and territory boundaries. Yet the current workers compensation and OH and S rules in different jurisdictions complicates the issue so much that it just becomes too difficult. Today's New South Wales budget announcement concerning the withdrawal of workers comp exemption for all trainees is just the latest example of this.

A nationally consistent and affordable framework for workers compensation and OH and S in the group training arena would be desirable and we would also welcome a more realistic recognition of the varying roles and responsibilities of group training companies and the host employers that they place apprentices and trainees with. Doing something positive and constructive in this important area can only be a big plus for the whole training agenda. Thank you.

PROF WOODS: Thank you very much. Yes, we did notice the New South Wales decision as announced in its budget. Does that reflect in part - and not only in New South Wales but the fact that there isn't also similar recognition in other jurisdictions - the role of GTOs isn't somewhere high on their radar screen? I mean, what

underlies that sort of decision-making?

MR BARRON: Well, I could have my two cents' worth but Jeff would probably like his as well. I just think it reflects an ongoing sort of under-recognition, dumbing down of individual governments' knowledge and understanding of just what involves (1) a running of a business these days and (2) particularly that it involves training and apprentices and trainees. I think they seem to see these issues as separate ones, not part of a larger picture, that one component such as a workers compensation or OH and S issue could fundamentally undermine a company's overall capacity to enter into training.

So as I said, it's a dog's breakfast approach. It is often I think just a lack of understanding and appreciation of just what is involved in the overall training commitment these days, and these issues, taken in isolation of others, tend to confirm our view that we are well and truly overdue for assessment of a national system rather than a federated system, which is proving more and more complex and really devaluing a company's capacity to train effectively in the first place.

MR PRIDAY: That concession of course was available to all employers, not just for training organisations.

PROF WOODS: Yes.

MR PRIDAY: And was introduced in the late 80s to try and kick-start the implementation of the traineeship system and some would say of course that it worked in spades, that and other measures that were taken by governments. It's still, from the perspective of our members, a shame that that's lost and it will be interesting to see what impact it has on traineeship numbers. I don't think there's any doubt that there had been some abuse of the system. Certainly the policy was increasing steeply in price, 40-odd million to the New South Wales government, like all workers comp premiums, so like many employers or people paying these premiums they've thrown their hands up in the air in horror and called a halt to it. But as I say, it's a shame from our perspective and it will be interesting to see what impact it has on traineeship numbers.

PROF WOODS: Yes, because I can't put my finger on it immediately but somewhere in your submission you are suggesting that any significant increase in premiums or, in this case, withdrawal of subsidies was going to lead to closures of GTOs. Now, if we come along in six months' time will we be able to observe those closures?

MR BARRON: We couldn't say. I think the point we are making is that this is becoming a real impost, a burgeoning impost on some GTOs, and at a time when we've got major concerns about skill shortage, to have an operational impost like this

fundamentally threatening some company's capacity to look into the future and say, "Will I still be around?" is a major concern. Whether we can say to you in six months' time that (2) fell over in this jurisdiction as a direct result, I couldn't sit here and say yes, but - - -

PROF WOODS: It was just that - and I apologise that I can't put my finger on it immediately at the moment. But it was some wording in your submission which suggested that one would follow the other as sure as day follows night.

MR BARRON: No, I have no doubt that in the end that will happen.

PROF WOODS: Okay. Your first recommendation that governments implement a nationally consistent occupational health and safety framework, I take it that's an indirect commentary on the current performance of the National Occ Health and Safety Commission, is it? Can you expand on that recommendation in the sense of how it relates to what we currently have nationally?

MR PRIDAY: It certainly wasn't intended as such and I think, if anything, it's really referring to the fact that - probably in that sense poorly worded, but referring to the fact that for instance in Queensland, as we mentioned in the submission, the occupational health and safety legislation actually specified that host employers will be the employers for the purposes of the placement of apprentices and trainees through group training arrangements, which removes the ambiguity that has existed between the relationship between the labour hire function and the labour hire entity, in this case the group training organisation and the host.

PROF SLOAN: What do you think of that idea of the host employer being the deemed employer?

MR PRIDAY: So what we were looking at here, I guess, is that we ideally would like to see some national consistency and that Queensland approach being replicated across the country so that that was made clear, that ambiguity was removed across all jurisdictions for the benefit of group training organisations. It hasn't been tested in the courts. We know that our Queensland colleagues were pleased when they managed to get that change into legislation in Queensland. They feel that they are a lot safer as a result of it, but we note that it has never been tested in the courts and ambiguity I think still exists in the WorkCover legislation so that they haven't ironed out that ambiguity there in terms of the relationship or the respective responsibilities of the labour hire entity and the host employer.

PROF SLOAN: I suppose though the only issue is that, you know, does this actually diminish the incentive for the host employer to take on the apprentice and the trainee?

MR PRIDAY: There's no evidence of that in Queensland and I don't think that would happen. It has been suggested that there might be an element of moral hazard if the group training organisation is absolved of responsibility. But again there's no evidence of that and I think most group training organisations still implement an induction process and have a certain degree of responsibility about the first placement. But the difficulty is that in many industries, like building and construction, they can't follow through on what are effectively dynamic work sites that are changing all the time with kids being transported all across town to different work sites. Really it's incumbent on host employers who have got day-to-day control and power of direction and so on to take principal responsibility for the work site.

PROF SLOAN: I don't know. I think this is such a problematic area. I mean, it's easy to point to the problem but it's very hard to solve, isn't it, and labour hire companies seem to be set up in various ways. Sometimes in a way they are actually accepting responsibility for all the oncosts and occupational health and safety and workers comp and other times where that's essentially transferred to the host employers. That's a bit of a dog's breakfast area too. But what you're saying is that the treatment of this issue is also variable across the jurisdictions.

MR PRIDAY: Absolutely, yes. I mean, the concern that we have of course is the impact that it's having on our member companies who are, as you can see from evidence we've provided, effectively underpinning the national effort in traditional trade training. We can ill afford to have host employers walk away from trade training.

PROF SLOAN: Yes, that was my point, I guess.

MR PRIDAY: Yes, and we can ill afford to have any adverse impact pass back to the group training organisation that attempts to carry out its functions.

PROF WOODS: Can we explore this recommendation one a bit further then, because it's not heading in the direction that I had first read it as heading. So it's not relating to the tripartite national development of occupational health and safety guidelines, standards, procedures and the like. It's more the procedural implementation. Are there other examples? You drew on the - that you'd like to see the Queensland model of responsibility replicated throughout the other jurisdictions. Are there other particular features that you would draw our attention to?

MR PRIDAY: No, not in particular unless Jim has.

MR BARRON: No.

MR PRIDAY: But that's the key one. I guess there's a philosophical view that the more consistency in the system, the better off we all are and more and more of our

companies of course are operating interstate. So the more consistency there is in the system, the easier and better it is for them. So anything that engenders national consistency is something that we probably support. This recommendation specifically related to that ambiguity in terms of host employers and legal aid or entity.

MR BARRON: I think there's no doubt that in the next five to 10 years there will be more of a push in this area of training for a national approach and seeing a lot of companies trading across borders, and our concern is that if that's the way that the system is going, which we in principle don't have a problem with, that barriers like this where you have virtually eight different approaches is fundamentally running in the opposite direction to that. So you've got these tensions pulling against each other.

PROF WOODS: Now, you're drawing our attention to that in respect of occ health and safety. When we come to workers comp I know you have a particular, specific recommendation, looking at legislating a national workers comp scheme for group training industry. Just exactly how would you see that working? Is it along the lines of common interest industries such as pharmacies who in New South Wales for instance have a pooled insurance arrangement or local councils in New South Wales who collectively pool their workers comp?

MR BARRON: Mutual finances.

PROF WOODS: That style of thing. Is that what you're referring to? If you could flesh that out for me that would be helpful.

MR PRIDAY: The reason for this is that we were constantly besieged by member complaints about what workers compensation is doing to them and it certainly differs from jurisdiction to jurisdiction. We, for the most part, have left this problem to our state and territory associations because of course it's a state function and they do what they can at the local level to lobby their governments to introduce concessions of one kind or another. But because they have essentially failed to achieve the kind of concessional treatment they're looking for, they keep coming back to us of course and we've taken some advice on what we can do at the national level, apart from lobbying the national government which in some respects often then flicks it back to state governments.

It has been suggested to us that one of the things that we could look at is the possibility of getting a federal government to legislate an industry scheme similar to the one that apparently exists for the merchant marine or seafarers. We don't know a great deal about that, as we say in the submission, in terms of the specific criteria or conditions associated with that. But it has a superficial appeal, obviously depending on what rate was struck and if it proved to be more attractive to most of our members

than the costs that they currently incur, then it's something that we think would be of interest to them and something we would like to put to the government. In some senses we really would like to start the ball rolling on getting an analysis of the industry, of our industry, and what can be offered by government in terms of legislation and the national rates.

PROF WOODS: Presumably the analysis you can start doing yourself. That doesn't require any need to do anything other than yourselves.

MR PRIDAY: That's true, and we've spoken informally about doing something along those lines.

PROF SLOAN: But there is the kind of exquisite tension here, isn't there, that really in a sense you're exactly what the government wanted in terms of promoting training and addressing what they see as emerging skill shortages. So, you know, the group training strategy was born of the decline of public utilities, manufacturing, and - you know, we had to get another model to keep the training effort going. So, that's on one hand and on the other hand there really hasn't been any addressing of the issues related to how to deal with the workers compensation issues for trainees and apprentices.

MR BARRON: No, and I think the recent review of group training which Angela undertook with MIMCO ministers, that identified this issue as being one that was deserving of further investigation and as far as we're aware that has basically been dropped like a hot potato and has not been sort of mentioned in the last report that was taken to MIMCO ministers. So clearly, I think, from the state training authority's viewpoints and state treasuries, I don't think they really want to touch it. That's why we think if it's possible that we could sort of continue to investigate the possibility of some national approach which the federal government could run with. You know, I think this is a big concern and I think over the next couple of years when group training companies will be called upon I suspect to deliver a lot more in the traditional trade area, that one of the reasons they may not wish to enter into further sort of involvement could well be this issue getting out of control in some jurisdictions. We'd like to see that not happen of course.

PROF SLOAN: It says here somewhere that there aren't really any free lunches much around the countryside. Well, you've now lost the free lunch in respect of trainees here in New South Wales. In Victoria you don't have to pay workers compensation for apprentices and trainees but then, do they have a bad accident record - apprentices and trainees, compared with trained workers?

MR BARRON: Well, it's a high-risk group. They're young people.

PROF SLOAN: Yes, yes, my feeling would be that they do because they're kind of

inexperienced and - - -

MR BARRON: Yes, that's right. I'm aware of no particular work that's been done on that. There's anecdotal evidence but I've not seen a report specifically dealing with this issue. But I think it would stand to reason that - - -

PROF SLOAN: It does stand to reason although that's an interesting issue. You'd think that if they were going to set premiums properly they might need the data to actually establish what is the accident rate of apprentices and trainees. If you look around the country there's no much - Western Australia offers a stamp duty rebate. Well, great. I suppose that's worth a few bucks a week or something.

MR FRIDAY: It's pretty negligible and I don't think it's started yet even.

PROF SLOAN: Victoria, you don't have to pay the premium but if then you have accidents that affects future premiums.

MR FRIDAY: Apparently. No, you don't count the apprentices and trainees. Any employer into payroll, if there is an accident somehow or other it's then taken into account in recalculating premium on your professional staff.

PROF SLOAN: So in a sense there's a one-off gain but over time - - -

MR FRIDAY: I assume that's some sort of concession underwritten by the Victorian government.

PROF SLOAN: Then basically nothing anywhere else?

MR BARRON: And Queensland you heard that there might be some - - -

MR FRIDAY: Well, there's no concessional treatment in Queensland either. We heard today that they're all complaining that their workers comp premiums have just gone up again significantly and that New South Wales is about to as well because of a redefinition of wages. Wages is now going to include apparently all forms of remuneration, not just wages, so long service leave and any fringe benefits and superannuation guarantee charges and so on. That may well be happening in Queensland.

PROF SLOAN: Well, I suppose not many apprentices get share option plans.

MR FRIDAY: Well, they wouldn't get too many of those, no. Professional staff would no doubt benefit from cars and fringe benefits.

PROF SLOAN: That's an interesting point about there not being good data. I

mean, you'd think there would be good data about the occupational health and safety status of apprentices and trainees.

MR BARRON: There may well be but we just haven't seen them.

PROF WOODS: You'd be well positioned to come across it.

MR BARRON: I think Geoff would have heard by now if any major research had been done into it. I haven't seen anything.

MR FRIDAY: No, I haven't.

PROF SLOAN: I think it goes back to the point that was made by the previous participant, that there is probably a crying need for national data on this stuff because how can you run the system if you haven't actually measured it in the first place.

PROF WOODS: Clearly your thoughts on legislating a national scheme for group training industry is at its embryonic stage but to the extent you developed that concept during the life of this inquiry and wish to submit update papers to us that would be helpful. We'd be interested in the direction of your thinking as a guide to the opportunities that we also could explore. So please keep us informed as that develops. Are there any issues that you particularly want to draw our attention to that we haven't otherwise covered?

MR BARRON: I don't think so. I think we've covered the recommendations.

MR FRIDAY: No, our principle concern is the increasing cost, the impact it's having on the companies, their relationship between the training organisations and host employers, the anomalies and the way in which the occupational health and safety frameworks are constructed around the country, the concession in Queensland and the difference between the other jurisdictions. They're our principle concerns and what it's doing is part of the difficulty of the operating environment. It's another difficulty for them and in view of their contribution to national skills formation it's important we do something about it.

PROF WOODS: Very good. Thank you very much for your submission and the time you've made available today.

MR FRIDAY: You're welcome.

PROF WOODS: Take a short adjournment for afternoon tea.

PROF WOODS: We'll resume the hearings and welcome our next participants, the Insurance Council of Australia. Could you please for the record state your name, position and organisation you're representing?

MR BOOTH: Yes, good afternoon. My name is Dallas Booth. I'm the deputy chief executive of the Insurance Council of Australia.

PROF WOODS: Thank you and thank you for making yourself available this afternoon. We have a very detailed submission which we're very grateful for. It has a wealth of information and there are some matters that we'd like to explore in it but do you have an opening comment that you wish to make?

MR BOOTH: I'm happy to be guided by you, Mr Chairman, in terms of how much you want me to touch upon. There is a couple of matters I'd like to emphasise.

PROF WOODS: I think it would be useful if you could give us the flavour of the sort of strong themes that are coming out in this.

MR BOOTH: Indeed. Firstly I'd like to make a disclosure. I have recently been appointed as a member of the WorkCover Board of Tasmania. I would like to make it very clear that my appearance here this afternoon is as a representative of the Insurance Council of Australia and I do not purport to speak on behalf of the WorkCover Board of Tasmania or the Tasmanian Department of Infrastructure and Energy Resources or the Tasmanian government. I am here only in my capacity as deputy chief executive of the Insurance Council of Australia.

PROF WOODS: There's no doubt that - - -

PROF SLOAN: Are you Tasmanian?

MR BOOTH: I beg your pardon?

PROF SLOAN: Are you Tasmanian?

MR BOOTH: No.

DR JOHNS: It's not compulsory or anything.

PROF SLOAN: He didn't look Tasmanian.

PROF WOODS: Thank you, Mr Booth. Please continue.

MR BOOTH: We welcome the opportunity to provide the expertise of the insurance industry to the Productivity Commission. The insurance industry is

involved in workers compensation we think in all of the jurisdictions across Australia in one form or another, either as underwriters, as scheme managers, as reinsurers, as claims agents. There is an enormous method or enormous range of activity that the insurance industry is involved in workers compensation in Australia and a wealth of experience which we're hoping to bring to the commission.

Insurers are also involved in workers compensation around the world and part of the work that we do is to liaise with international colleagues and contacts in the overall provision of workers compensation and the challenges it presents to governments, employers, businesses and economies. The key messages that we wanted to emphasise, firstly occupational health and safety and workers compensation we believe are linked through the insurance model. The insurance model does two things in relation to occupational health and safety. Firstly it sends price signals to employers with unsatisfactory work practices and significant claims records. So where the pricing mechanism is working properly and the insurance underwriting mechanism is working properly there is a very clear and direct process which sends correct pricing signals to unsafe employers.

PROF WOODS: Those being two important caveats.

MR BOOTH: Correct, very much so. There are many examples and I'll touch on one later, where that does not occur. So firstly there is an important process through the underwriting and pricing of underwritten insurance to support occupational health and safety through appropriate price signals. There's a second spin-off as well, not so much in underwritten schemes but in workers compensation generally, in the claims experience where there is good monitoring of claims experience and good data analysis, that experience provides targeted direction for occupational health and safety authorities to pursue activities and programs and targeted injury prevention programs in accordance with the claims experience identified through the monitoring of the number and costs of claims across industries and across employers within industries.

So there is an important link there but overall, other than noting those links we don't go into - we don't greatly concentrate on the occupational health and safety side, we concentrate primarily on the insurance side. As I mentioned, insurers are active in one form or another in virtually all the schemes. I'd like to make it very clear that it's - - -

PROF WOODS: In Queensland is that as, what, reinsurer for - - -

MR BOOTH: They would certainly be acting as reinsurers of self-insureds in Queensland. The last time I looked in detail which was a little while ago Queensland WorkCover did not purchase reinsurance but it may be purchasing reinsurance so even the statutory authorities themselves also purchase reinsurance and therefore

involve the private insurance industry in providing additional cover. I'd like to make a very strong point early on and that is when people from the position of employers, workers and other stakeholders outside the insurance sector often see workers compensation as a single thing, in Australia that is not the case.

We have a huge range of mechanisms whereby workers compensation is provided. The very simplest of forms is through the statutory monopoly in Queensland WorkCover. The opposite end of the spectrum is the underwritten - where insurers are acting as underwriters and acting as insurance companies and carrying risk. They do that in Western Australia, Tasmania, ACT, Northern Territory. In other jurisdictions there is an enormous blend of differing circumstances and I'd like to make the point early on that if people make a comment about the operation of a scheme or about the operation of insurers in a scheme one also has to ask the question, are the insurers exercising their own discretions and acting under company policy or are they acting under direction and guidance from an authority or a regulator or is there some other control mechanism, because the behaviour of insurers differs quite markedly according to the circumstances of the jurisdiction in which they operate.

We have a strong point in the submission which touches upon the regulation of insurers generally and in particular the regulation of insurers as it relates to workers compensation. ICA made a major submission to the HIH Royal Commission which pointed out massive issues and concerns in relation to regulatory gaps and overlaps in insurance and in particular in statutory classes of insurance. I didn't want to go - spend a lot of time on that other than workers compensation is a classic example where there is a combination of regulation at the federal level, primarily through Australian Prudential Regulation Authority, regulation at the state level through various WorkCover authorities and other forms of involvement in activity, whether it's through tax and so on.

The Financial Services Reform Act also has provisions relating to the delivery of - sale and delivery of financial services products to small business, not to large business, although - I didn't check this but my understanding is workers compensation is specifically excluded from that. So that then raises the question for the relatively uninformed employer that on the one hand they get a whole series of statutory mechanisms and protections under FSR for all of their other insurance products but when it comes to buying workers compensation they don't. So it's an interesting - again an interesting conflict or overlap in that area.

ICA has made very strong submissions to the HIH Royal Commission which by and large were picked up by the commissioner and we are in the process of continuing to lobby the federal government to implement some of those things and many of them are directly relevant to workers compensation. We strongly believe that there should be a single prudential regulator of insurers operating as

underwriters through APRA and that the state regulators should not have the potential to impact the solvency or capital position of insurers acting as underwriters and therefore the states and territories should relinquish their role in that regard. The states and territories do have an interest in ensuring that the claims are paid when an insurance company fails as HIH did, and the states and territories have a process called the nominal insurer which takes over. ICA has strongly recommended and the Royal Commissioner has supported the introduction of a policy-holder protection scheme which would provide 100 per cent coverage for statutory compensation classes of insurance and would replace existing nominal insurer arrangements and would therefore preclude the need for state regulators to be involved in solvency and capital regulation.

We believe that the single regulatory framework would establish a sound network for prudential standards for insurers and in fact we believe those standards should be applied across the board to all other schemes as well and particularly the state underwritten schemes and similar prudential standards should also apply to self-insurers and I believe the self-insurance submission has largely supported that suggestion as well. We understand that in the area of workers compensation there is already the Workplace Relations Ministerial Council but that tends to focus more on industrial relations issues, although it does oversee the preparation of the comparative performance monitoring exercise. We also support the recommendation from the Royal Commissioner that there be a ministerial council on insurance issues to make sure there is an overall federal-state coordination of insurance matters which tends not to be the case or until recently hasn't been the case, but the recently formed ministerial council on public liability and related matters - ministerial meeting, sorry; is not yet a formal ministerial council but the ministerial meeting on insurance issues we believe would be the appropriate body to continue efforts on the coordination of national consistency and related matters.

The submission addresses the regulatory framework for insurers and I've touched upon that. There is a difference between the regulation of capital insolvency and related matters on the one hand and the performance of individual workers compensation schemes, claims management issues, injury management issues, premium issues and so on. So to the extent to which the states remain interested in having a direct control of their workers compensation systems we have no objection to that process occurring and for the states to develop what they believe are appropriate structures within their jurisdictions subject to further comments on a national framework for self-insureds and related matters.

It is vital in our view that insurers where they are acting as underwriters have the full capacity and are not inhibited in any way from fully pricing the product that they sell and fully covering the costs and the risks that they assume when they issue the policy. We also support a largely very open and competitive market and they certainly exist currently in the four underwritten jurisdictions and we believe the

markets are operating effectively in those jurisdictions. Currently, certainly in Western Australia and Tasmania, the markets are operating to reduced prices following reforms a couple of years ago to reduce the overall costs in those jurisdictions. We believe premiums should be set on a risk basis with few if any cross-subsidies or where there are cross-subsidies that there should be - they should be explicit, publicly debated and declared for all to see.

I draw your attention - you may already be aware of it but I draw your attention to the New South Wales Workers Compensation premium order which was published on 12 June 2003 and gazetted on that day. It's now a public document. It sets out the cross-subsidies or it requires cross-subsidies within and between industries. It prescribes a range of factors which inhibit an open and risk-priced market. It recognises that the pricing for workers compensation in New South Wales has been inefficient for quite some time and is moving to a more risk-rated basis, but that is occurring over a number of years and there are restrictions on the extent to which premiums move up or down, as they gradually move to a more risk-rated basis. So, I just mention the workers compensation premium table in passing as an example of a way in which in a regulated jurisdiction there are a range of issues surrounding the pricing issue.

In terms of benefits including common law, insurers believe that at the end of the day it's a matter for government to determine the balance between the overall level of benefits and the overall level of premiums. That's a debate which has traditionally occurred in relation to workers compensation, compulsory third-party insurance for injuries on roads and more recently in the debates on public liability. Insurers will price - so long as the costs of compensation is really clear and consistent and predictable over time - insurers will cost that and apply a premium accordingly. At the end of the day it is not a matter for the insurance industry as to what that level is so long as it's clear and consistent over time. If, however, the government of the day forms the view that the benefits and prices are too high it could take action to deal with that or on the other hand it might also form the view in certain circumstances the benefits and costs might be too low and that might be doing jeopardy to injured workers.

What we do say is that the benefit structure needs to be clear, consistent, objective, predictable over time and that needs to be the case whether it's in an underwritten scheme or a state - or a state monopoly. It is important for that to occur. The benefit structures in most jurisdictions are a mixture of periodic payments of no-fault benefits, lump-sum payments of no-fault benefits and lump-sum payments of common law damages. We believe that there needs to be a careful mix of each of those types of benefit structures and where the mix is unbalanced there is often an outbreak of one form - of one of those three areas and often becomes excessive claims cost inflation develops as a result of that. So there needs to be very clear definition and balance between the three core areas.

We believe that there is an appropriate role for common law compensation for more serious injuries so long as it operates in the cases of genuine negligence and not operating on a virtual strict-liability basis. We do not understand why the Commonwealth government precluded workers compensation common law lump sums from structured settlements. We believe it's entirely appropriate that structured settlements be available for workers compensation common law lump sums as they are for other sorts of lump sums and we would urge a recommendation to that effect. We support the call for consistent definitions across jurisdictions for definitions of worker, definitions of employer, definitions of work-based injury and so on; the core fundamental definitions. We believe that it should be directed to achieve consistency across jurisdictions. At the end of the day we all are facing the same challenges of compensating or assisting injured workers and restoring their health and their ability to return to work and providing compensation where appropriate. We believe it is the same challenge and the same definition should be used.

We strongly believe in proactive injury management once injuries have occurred. We strongly believe that the structure of the benefits and the design of the system should promote early return to work, as soon as appropriate, in terms of the health conditions of the injured worker. We believe in integrated injury management as appropriate. We support evidence-based treatment protocols. We support very close liaison working with workers compensation systems and the health system and health professionals to support effective injury management and early return to work where appropriate and the longer term support of those who sustain very serious injuries in the workplace environment.

We believe that in all the workers compensation systems there will be disputes. There will be disputes about the factual circumstances of an injury, there will be disputes about the nature and extended medical - of the injury itself and resulting impairments and there will also be disputes as to the appropriate level of damages or benefits that might be available or might be appropriate in a particular case. We believe it's important that there should be, in each jurisdiction - have an appropriate and efficient dispute resolution mechanism. We think it's important though that the dispute resolution mechanism should be there only for the resolution of disputes and the court process or a tribunal process should not be the process by which claims are made. A claim should be made directly to the insurer via the employer and dealt with essentially on a direct basis and only where there is a genuine dispute should there be resort to a tribunal or a court. It's appropriate for Australia - there's no reason why there shouldn't be a consistent set of mechanisms across Australia in that area.

Can I say one thing about dispute resolution and so on. There was a lot of commentary to the House of Representatives' Committee, recent report about the activities of insurers and the way that claims were treated and so on. I just wanted to

make the point that by and large insurers believe that the great bulk of workers compensation claims are valid and they're paid accordingly. Unfortunately insurers experience on a regular basis instances where a claim is not valid, where it's either a direct fraud or an injury sustained outside the workplace or where the amount being claimed is a serious exaggeration. We don't make a big thing of this but it's a day-to-day occurrence within the claims departments. The point I wanted to make though is that by and large insurers do give people the benefit of the doubt when the claim is first made.

The fraudulent claim, the exaggerated claim, is never immediately apparent to the insurer and the most difficult challenge that insurance companies have in their claims departments is to determine and to work through all the claims that come in; try and identify the ones that are valid and pay them and pay them quickly, but also to weed out the ones that are not and to make sure that they are resisted or that only an appropriate amount is paid. It's a very difficult process. Claimants tend not to reveal on their claim form that this is a fraudulent or an exaggerated claim. It is a very difficult process to do and I challenge anybody to try and come up with a simple process.

My point in saying this is insurers are accountable for their claims handling because in the workers compensation system any decision to reject a payment very quickly ends up before a dispute process in workers compensation, with insurers invariably bearing the costs of that for both sides of the fence as well. Decisions are rarely taken lightly to reject payments but decisions have to be taken because at the end of the day people do occasionally tell lies and do occasionally attempt to rot the system. It is a very difficult system to actually administer in practice but they certainly work very, very hard to make sure that they operate on a fair and reasonable basis. At the end of the day though insurers will deny valid claims on the basis of the information before them and there is an accountability process behind that through the dispute resolution mechanisms and we absolutely support the role that they therefore play.

We believe it's important to have a strong prudential regulatory control framework for self-insurers. The fact that the risk is not insured does not mean that the risk is not there. We believe it's particularly important that those responsible for regulating self-insurers apply equally stringent prudential tests to the self-insurers as are applied to insurance companies, particularly through the APRA prudential regulatory process. We believe care needs to be taken particularly in the design of benefits and the design of workers compensation generally, to be careful and to have an open and honest understanding about cost sharing and cost shifting. There is a comment in the executive summary of the House of Representatives' report, called *Back on The Job*, and in the area of Commonwealth social security benefits the executive summary says, "Social security was not established to subsidise insurance companies." Executive summary, page XXV.

Workers compensation provides benefits as defined under the various legislations. If the legislation does not specify those benefits to be paid it's not appropriate for the benefit to be paid under the workers compensation system. If therefore people have needs which they need to revert to the social security system and other support processes so be it. I find that sentence really quite extraordinary. Insurers implement the workers compensation systems and the workers compensation benefits which are defined by state legislation. If there is a degree of cost transfer, that is if the workers compensation benefit structure is not covering all of the benefits or all of the losses sustained by the injured worker that is hardly the fault of the insurance company, it's actually an issue relating to the design of the benefit structure itself.

Allied to that is the fact that often in the case of workers compensation, and again this was an issue touched upon in the House of Representatives' report - often in the case of workers compensation workers achieve a return to health and a capacity to work, often in circumstances where work is not available. It then becomes a very difficult issue and a debate, and I think a suggestion in the House of Representatives' report, that those people should stay on workers compensation. That effectively means that workers compensation may be used as unemployment insurance and I think that's an issue that needs thought and consideration. I'm not arguing for or against it, I'm just saying there needs to be careful delineation between the role of workers compensation in terms of aiding and fostering the recovery from the injury, and the placing of the worker in a position to return to work, but if no work is available there needs to be a careful debate as to whether that is then the role of the workers compensation system or the social security system or some other income support process.

The core submissions that we make, there are a number of principles that we set out for the overview and the review of workers compensation in Australia there in the report. We strongly support the recommendations of the HIH Royal Commission in terms of the overall regulation of insurance and including the relationships between federal and state insurance regulators. We believe that if governments underwrite workers compensation or operate and manage workers compensation it should be done on a competitively neutral basis in accordance with competition, national competition principles, and that there should be proper pricing of risk and I have instanced the New South Wales premium order. We believe premiums should be risk-based across the schemes regardless of whether they're underwritten or otherwise, because if they're not they do not send the correct pricing signals and they do not foster the prevention and minimisation of injuries and disease in the workplace.

We believe there can and should be a greater consistency and predicability of benefits across Australia and we believe common law is appropriate if it's limited to

genuine negligence and cases of serious and catastrophic injuries. We believe there can and should be clear and consistent definitions across schemes. We fully support strong, effective and early injury management. We support effective dispute resolution and we support - we do support an alternative national framework for self-insureds. There is a capacity, a limited capacity, for some national firms who were Commonwealth agencies, or compete against Commonwealth agencies under the Comcare legislation. We have indicated in our submission that we believe it's appropriate to expand in an appropriate way, in a balanced way, with an appropriate and skilled regulatory oversight of that process for those national employers who wish to opt out of current state-based schemes to have national coverage through a single regulatory structure and on a more efficient basis. That was the general thrust that I wanted to make.

PROF WOODS: All right, thank you very much. We appreciate the time and effort and skill that's gone into the submission that we have and to your very detailed opening comments which have addressed many of the questions that I had. There are a couple of areas I'd just like to clarify with you and my colleagues may also have some matters. In the first instance, on this question of uniformity, consistency, you talk early on about, "In principle ICA is committed to the long-term aim of a nationally regulated and consistent workers compensation framework." A bit later on you refer to a process of harmonising the existing state and territory regimes. Further in the submission you use phrases like "greater uniformity". In your opening comments you were talking about some core areas such as definitions of worker, work-related injury, et cetera as requiring a uniform or same definition applying nationally. Can you clarify for me as I look through those various formulations just what in essence is your perspective of whether there should be ultimately one national scheme or a national framework within which states have variations, but are there within that elements that should be the same, eg some core definitions? If you could bring that range of perspectives to one point?

MR BOOTH: I suppose the submission has an ideal approach but it also has a realistic recognition that workers compensation in Australia is an area where there are very strong interests at the state and territory level in terms of benefits operations, and in many cases the workers compensation system forms an integral part of the broader industrial relations framework operating within that particular jurisdiction. So therefore, whilst we do have a broad principle as an ideal goal, and either a national system or a national framework with very high consistency, either would achieve a similar outcome. For example, the nationally consistent corporations law was administered through various state offices is an example of something that can occur, and there are other examples in Australia.

PROF WOODS: Okay.

MR BOOTH: That's an ideal, but we also believe that that's an ideal a long way

away and that it would take some time to achieve that and that in the short-term a number of things could be done to at least start the work on approaching that.

PROF WOODS: You'd prioritise definitions of core elements as the first thing that you'd address.

MR BOOTH: We'd prioritise definitions of core elements and secondly the general operation of the non-underwritten agencies to start the process of bringing them to a competitively neutral basis and to make sure that the pricing processes within those schemes are brought to a more risk-related pricing structure.

PROF WOODS: In several areas you make the entirely valid point of the importance of pricing and risk-based pricing as conveying very powerful signals of performance and the like, true. Would you also acknowledge, however, that the insurance market itself goes through cycles, and therefore pricing will vary not only in direct relationship to the performance of individual businesses, but reflecting some broader cycles in the insurance market and levels of competition and hard and soft markets that are well known characteristics of the insurance industry?

MR BOOTH: The insurance cycle is being widely discussed in all sorts of fora, and certainly - I'm not an expert in the history of workers compensation pricing in Australia - but my understanding is that prior to the establishment of WorkCover authorities in New South Wales, Victoria and South Australia, that probably workers compensation was subject to broader insurance cycles.

PROF SLOAN: Yes, that was all privately underwritten, effectively.

MR BOOTH: Yes, it was essentially in the private sector and subject to the broader insurance cycles.

PROF SLOAN: Which is not to say that there aren't insurance cycles that effect the state monopolies, mind.

PROF WOODS: Indeed, indeed, no, it's just a point that we have to understand that the price - - -

PROF SLOAN: Well, they might try and ignore that that - - -

MR BOOTH: Two points. Nowadays, workers compensation invariably involves very good data. Each of the schemes are collecting and publishing very good data. So that even in the underwritten schemes, particularly, for example, West Australia, the two larger underwritten schemes of Western Australia and Tasmania, both of those jurisdictions have a scheme actuary appointed by the regulator who looks at the total scheme performance and develops recommended industry rates and is able to

report to the community and to employers and government on the performance of that scheme. So there is a well informed situation on the underlying true cost of claims and what that should be. So there is now good data, and I think an issue for the insurance industry in the past, one of the reasons why there has been insurance cycles to the extent to which they occurred was insufficient data to give insurers a full understanding of true claims cost development.

The second issue I'd refer to is - in the underwritten jurisdiction, certainly - is the impact of the APRA prudential standards that have been in place since 1 July 2002. They are very onerous on insurers, not only in terms of the provisions that insurers carry for outstanding claims, but also that the provisions that insurers must now carry, for example, for inadequate premiums. If an insurer becomes aware that a premium has been inadequate, they must now apply additional capital to that business to cover for the fact that the premiums were not sufficient in the first place. So there is a very strong control, both on the pricing side and on the liability side, right across - in terms of operational risks and other risks - that now require a much heavier focus by insurers on the actual conduct, identification, all of the risks across the operation of their business and the proper pricing of all of those risks, including premium risk.

So the feeling within the Insurance Council of Australia at the moment is that, certainly within the Australian market, it may well be the end or close to the end of insurance cycles as we have previously known it, primarily because of the APRA prudential standards. Australia, though - and that will be the case for workers compensation - Australia, in a broad insurance sense, is impacted by the availability of overseas cover, and to that degree, Australian insurance generally will continue to be affected by worldwide insurance cycles, and that's a phenomena which we can't resist. But in terms of workers compensation, we believe that the extent of operation of cycles will be much less significant than in the past.

PROF WOODS: Thank you. I notice on common law you talk about striking a balance between it and various other elements of compensation, and I judge that you were referring to where there is permanent incapacity of some degree so that it's for those where return to work is not an option and the like, and I understand the principles behind that. Where it's restricted to those cases, does it still constitute a large cost driver of schemes or not, and how certain can the system be about accurately capturing those who fall either side of whatever threshold happens to be adopted. I mean, is the process of assessment sufficiently robust to feel confident that we are correctly allocating people into the group to whom common law in those circumstances is available and those who might miss out?

MR BOOTH: Each of the jurisdictions has had their own difficulty of trying to get the balance right between common law and statutory lump sums and other benefits. Often the difficulties within each jurisdiction have been quite peculiar to the various

natures. New South Wales went through a period where when the first severe restrictions on common law caused a blow-out in statutory lump sum claims then there's restrictions put on them so there's an apparent swing back to common law and so on. There's various switching. Western Australia had issues in relation to the second gateway which has effectively been remedied in the recent changes. They're all different changes, and that's why at the end of the day it's actually a huge analysis of each of the jurisdictions and the problems that have occurred within jurisdictions, and rather than burdening you with the chapter and verse, I think we just wanted to make the point that you have to try and find an appropriate balance which will produce a stable outcome in terms of overall claims costs but will still be fair for the injured worker and provide appropriate compensation.

PROF WOODS: I can't quite detect the same view in relation to journey to and from work other than you talk about there being some inconsistency in treatment which is entirely factually correct, but can you clarify for me whether journey to work, I mean, is it a significant issue anyway, and do you have a view as to whether it should or shouldn't be part of a workers compensation system?

MR BOOTH: We frankly don't have a strong view. We believe that's more a broad matter of policy.

PROF WOODS: And not overly significant in the grand scheme of things?

MR BOOTH: To a degree, significant. There are recovery processes that occur anyway so that if a worker is injured in a journey accident where, particularly where some other recovery process might be available, those processes occur. So the cost recovery processes operate anyway. There may be potential recoveries against a CTP insurer, or for other purposes, so those processes tend to operate anyway. But we don't have a strong policy view on whether journey claims should be in or out.

PROF WOODS: My last question relates to dispute resolution that you set out a set of principles there as you have for many other aspects of workers compensation, but in the experience of your members, are there any models of state practice that draw accolade or commend themselves that we should be aware of?

MR BOOTH: I haven't conducted a detailed study of the specific systems in each jurisdiction. My understanding is that the Western Australian directorate appears to be working very well in terms of an efficient but fair determination of relatively straightforward matters and disputes. Other matters, more serious matters still have access to the court system. New South Wales is in the process of trying to establish a similar sort of framework through the Workers Compensation Commission. I frankly have not got a view. I'm not sufficiently familiar with how that new commission has been working to be able to offer a comment. It's hard to make a definitive statement - - -

PROF WOODS: I mean, those two observations themselves, I would have to say, do happen to align with various other observations that have been brought before this inquiry, but if members wish to through you express a particular view, that would be helpful. If they're well placed to look at the mechanisms that apply across the various jurisdictions, their views would be valued.

MR BOOTH: I'll respond to that in this way though, and I'll say that because the systems are often so different, the companies do have a national workers compensation manager, but below that, it is all pretty well state based, and it's because everything is different that they really don't get the benefit of broader synergies within the companies, and therefore the claims manager for New South Wales probably has no idea about the West Australian directorate and vice versa.

PROF WOODS: If they are asked to go across and manage the Western Australian office in a particular circumstance, they've got a whole lot of learning to do.

MR BOOTH: There may be a little bit of that, but probably not a lot. So it's one of the pitfalls or one of the outcomes of the different structures that we have is that you don't get the benefit of those sorts of synergies.

PROF WOODS: Yes. Prof Sloan?

PROF SLOAN: I think it's a terrific submission, Dallas, and dare I say it perhaps wasn't just your work?

MR BOOTH: I will claim very little credit for that.

PROF SLOAN: So I think we should congratulate those who were responsible for putting it together, because it is very thorough and very well set out too. The argumentation is excellent, so thanks very much for that. You don't really take a very strong view, or position, I suppose, on private underwriting. I mean, does the Insurance Council of Australia, you know - I mean, basically private underwriting exists in smaller jurisdictions but not where the big gains could be, and is there a view there, I mean, apart from it being an obvious kind of a prospective business area for your members? I mean, it seems to me that there are some cases perhaps for and against that you can - - -

MR BOOTH: I think at the end of the day the policy of the Insurance Council is for the private underwriting of insurance business in Australia. Two important comments that need to be made though, firstly workers compensation is long tail business and is therefore intensely capital hungry.

PROF SLOAN: Yes.

MR BOOTH: Different companies will form differing views about the level of capital required, and at the end of the day that is a corporate view, but the example which is often given in the industry is that for your comprehensive motor crash and bash, for every dollar premium that an insurer sells, they need probably about 30 cents of capital. In workers compensation, for every dollar premium, they probably need around \$1.50 capital. So it is intensely capital hungry, and our understanding is at the moment there is actually a shortage of capital in the worldwide insurance market, and that's reflective of Australia as well. So that's a natural - that's just the reality of today.

The second issue is if you look more closely at the state underwritten and managed schemes, you will find that the pricing is actually so subsidised and so controlled that it would be a major disruption for the state economies to move to a fully underwritten and a fully priced, a properly priced model overnight.

PROF SLOAN: I hear that, but isn't that a kind of strong point on the other side, that what the state monopolies do is basically - either there is political contamination of the premium-setting process and therefore employers aren't actually facing the true costs, and - - -

MR BOOTH: Look, that's absolutely right.

PROF SLOAN: And okay, there is that transition element, but it seems to me that one of the strengths of private underwriting - and you saw that in Western Australia, even when they got into a pickle, that the premium-setting process was relatively unfettered, and the insurance companies just had to price up the product, given what the politicians had decided at the benefit level.

MR BOOTH: That's right, and there is a - I believe there's a very strong argument now - there are three good examples in Australia in statutory classes where there have been major problems in claims cost inflation, followed by government response in terms of controlling claims costs, followed by a market response. I'm talking about New South Wales CTP post-1999; Western Australia workers comp post-1999/2000; Tasmania workers comp post-2000/2001. In all of those areas, the insurers - to the extent to which losses were sustained, those losses were the losses of the insurance company, not the state government and nobody else, so those losses were there. To the extent to which claims costs are seen to be under control and allowing the cheaper prices, those cheaper prices are flowing through the market process.

In the state schemes, there has been such tight control of price, but not cost, that the net benefit has been in some cases massive unfunded liabilities, and all of that is a massive inter-generational transfer of costs from the employers of the 1980s

and the 1990s to the employers of the 2000s and the 2010s. So ultimately a new major business starting up in New South Wales in some way is going to face the cost of paying for workers compensation claims incurred five to 10 years ago.

PROF SLOAN: Yes. I think a lot of employers are sort of telling us that, that they know they're sitting on a time bomb. But then, of course, what were they expected to do? I mean, if someone says, "This is the price," I mean, back in the 90s, were they supposed to put their hand up and say, "No, we think that's the wrong price"? You know, they're the kind of - - -

MR BOOTH: Well, employers have had a wonderful benefit of having a capped price in most of these places, so that's - they've had the benefit of that. Now, I believe - I have a personal theory. I can't actually demonstrate this, but I have a personal theory that one of the net results of prices being far too low in public liability is that Australia took the eye off the ball in injury prevention and risk management. Australia generally took the eye off the ball for about five or six years. Now, as the true price is coming back into the public liability market, people are actually looking quite hard at actually how you prevent claims from happening in the first place, the signals happening and driving that. Workers compensation - the more the states limit and cap prices, the more you're going to blur the signals in terms of risk management and injury prevention, and that's - - -

PROF SLOAN: Yes. I mean, that seems - well, I mean, the Western Australians seem to support that. The premiums went up dramatically and then they fell in - - -

MR BOOTH: But it forces the governments to react.

PROF SLOAN: But the claims have now actually declined dramatically, as obviously employers - - -

MR BOOTH: They've fixed a second gateway. But the same thing had happened in New South Wales CTP, 93, 94, 95; the prices went up. The government responded in 95 by saying, "We don't want this any more. We will fix the costs side," and the market held prices steady; there were no further increases. The government ultimately decided we didn't like the level of claims costs, so they did further legislation, and the prices came down. So there is a very strong argument, I believe, to say that if, in the statutory schemes, and to a degree now in public liability, if the costs side of the equation is being controlled properly through good benefit design, the market can actually deliver an effective response on the price side, and you don't actually need price regulation, which is often assumed to be an essential element of this.

PROF SLOAN: I mean, it's an interesting - I mean, because, you know, we have a government faced with this dilemma of who owns the un-funded deficit in New

South Wales. Well, no-one seems to actually own it, or no-one seems to regard it as - well, I think people do regard it as a problem, but perhaps not theirs. I mean, it seems to me that if you'd had a private underwriting scheme and the insurance companies had underpriced the product, well, the problem is there.

MR BOOTH: The insurers lost about \$600 million in Western Australia. Now, they lost it. They had to find the money, which they did. The money was found elsewhere from the companies. The provisions are there; the claims are being paid. The current prices are reflecting the current costs. So there was no recovery of previous losses. In New South Wales, the losses are there. They're being retained. They have to be paid at some point.

PROF SLOAN: So it's a kind of transfer from, you know - I mean, basically the current and future crop of employers are going to have to be funding the deficit that's arisen from the past.

MR BOOTH: Yes, unless by some incredible feat of magic, you can trade out of it, but that's yet to be seen. But the problem is - and this gets back to your first question about privatisation - it would be very, very difficult to privatise New South Wales today without a major negative impact on the state economy. Same in Victoria; same in South Australia.

PROF SLOAN: On that issue though of the shortage of capital in the insurance industry, does that mean, you know, let's kind of fast-forward and think things are in a better state, that overseas insurance companies wouldn't be attracted to the Australian market? I mean, they have kind of - well, there are some players already, but they've kind of dipped their toe in the water in the past, haven't they?

MR BOOTH: At the moment, we now have four of the five largest companies in Australia listed on the Australian Stock Exchange, with the recent listing of Promina, which is interesting. Never before has there been such a local ownership of the general insurance industry, which is really quite interesting. But the next biggest is Allianz, and that's very much - they're there and they're committed to Australia, and then we have a number of others, Zurich and so on. So there is very much still interest from abroad, and particularly also the support provided by the re-insurers who are all internationally owned.

The interest in Australia will depend very much upon the confidence of the industry to generate a return on the capital. It's capital-hungry. If there's confidence in generating return on capital, the capital will be provided. If the feeling is that the capital won't be able to generate a return, the overseas companies will take their capital to another country, the Australian companies will take their capital and put it into other business.

PROF SLOAN: Yes, and that goes back to - I mean, there's obviously quite a high degree of regulatory risk in these statutory classes of insurance, so they'd like to see some sort of certainty or some predictability and some sort of satisfaction with the parameters established.

MR BOOTH: That's why we strongly argued for the overarching regulatory control of APRA, because the focus of APRA is the financial security and stability of the insurance company and its capacity to pay claims when they fall due. That's their focus and that should be the overarching regulatory control of the insurers. I should go back, and I did touch upon this, but it is important though, our suggestion of the need for the state underwritten schemes to move to a competitively neutral basis. The states committed to do that when they signed up for national competition policy. They are not priced on a competitively neutral basis and they all have a long way to go to achieve that process. If at the end of the day - and it probably would take - New South Wales has started that by starting to move to a more risk-rated basis, and that's to the credit of WorkCover and the state government that they're doing that.

In five years' time, if these schemes are being properly priced and properly structured on a competitively neutral basis, it then might be a very simple decision for states to take to say, "We no longer want to carry this financial risk," and that's what they're doing. They're carrying - and they say, "Well, it will be actually quite easy to transfer it to private sector." But at the moment, it's not really a valid option anyway because it would cause massive economic disruption.

PROF SLOAN: I don't want to hog the time, but just on the national framework, which is obviously something of considerable concern to us, the example put up of a model for national self-insurance - I mean, to me that looks quite doable, all right? There's obviously some things that have - but the truth is that self-insurance is only ever going to be suited to a relatively sort of narrow group of companies. Not everyone wants - you know, not everyone wants to really be in the insurance game, not everyone wants to be taking, even with their captives, taking this onto their books. I just wonder whether you need to give some more time to there being a national scheme, and insurance scheme.

MR BOOTH: I think we would like to see it as a staged - I mean, it could be the start of a staged process. If it works, you could then expand it. I mean, initially the focus - we haven't actually defined it as such, but the focus would be national employers. But if it makes sense and it works, it could be extended a bit further and extend it further and it just continues to be extended. So it could happen as a staged process over time. Needs a fair amount of further work, definitional work, but I think the core elements are in the submission.

PROF SLOAN: I'm just worried if we kind of stopped at a national self-insurance - okay, that's great for the people for whom self-insurance works, and that, I think, is

going to produce an awful lot of compliance. I mean, these companies that are involved in all these different licences and different requirements, it's a complete headache, but, you know, just - if we go back to the theory of it, self-insurance is only suitable, even with some catastrophic insurance add-on, it's only going to be suitable for certain types of company.

MR BOOTH: We believe it's - - -

PROF SLOAN: But there are many more companies who would be attracted to a national insurance scheme.

MR BOOTH: Well, we believe that the national scheme should be available for those companies who self-insure, essentially become self-insurers, but then cover their situation by ensuring 100 per cent of their risk. So that at the moment self-insurers would inevitably buy catastrophe, cover or ready, and retain some, and for many larger employers, it probably makes sense to retain the first level of cover. We call it the first layer of cover or the first layer of loss. But there may well be other employers who think, well, even then it makes sense, for whatever reason, to actually have no retention at all and to insure the money, and our suggestion is if they grace their cover with an APRA-regulated insurer, that should be entirely sufficient for regulatory purposes, and we would suggest that those wishing to operate on a national basis should have the capacity to go down to zero retention.

DR JOHNS: Thanks - all of which is well, but I'm just looking at your model E, the extended financial circuit regulation model. You're saying that existing workers comp issues should be looked after by APRA, and yet they're operating according to different state rules. So they're really bound - I mean, their performance is bound by the rules written by each state, and yet you want them to have a single, rational regulation, which seems to me to be at cross-purposes.

MR BOOTH: I think the national competition policy process caters for that. So at the end of the day, most of these - - -

DR JOHNS: This is sort of prospective in a way, when they all - - -

MR BOOTH: Yes, yes.

DR JOHNS: That's the quibble. I mean, essentially at the end of the day they will be subject to state rules, but we believe that the proper consistent pricing across the board would be pricing that would accord with the obligations on insurers under APRA. Then it makes sense. Now, just quickly under the expanded Comcare model, "Everyone wants to have a piece of it and change it. There would need to be some amendments to the benefits structure." What did you have in mind there?

MR BOOTH: Comcare is a very long-term, period payment structure. Traditionally, unless they are very, very carefully managed, they can become very expensive models to administer over time, and in many cases - most schemes have the capacity for some form of commutation or redemption of a long-term, periodic payment, and, worked appropriately, that's an effective tool for controlling the overall cost, still providing, you know - only doing it where the injured person wants to do that, making sure that it's still fair and appropriate, but it's that sort of benefit. Also from - - -

DR JOHNS: Where the injury is stabilising and you want to get them psychologically or otherwise off that sort of pathway, wrap it up, pay it out.

MR BOOTH: That's right, let the people - often the people themselves want to get on with their lives, and with the benefit of some capital that a lump sum will provide - - -

DR JOHNS: Thank you.

PROF WOODS: It has been a very helpful submission and your answers to our questions have been quite fulsome. So we appreciate the time and resources that have been invested in this. We look forward to your ongoing participation in our inquiry. We've tasked you with a couple of things, if you could come back to us on those, but if you could continue to monitor our performance and from time to time we might also be seeking additional input from you.

MR BOOTH: I'd be very happy to assist whenever required.

PROF WOODS: Thank you very much. We appreciate that. A brief adjournment.

PROF WOODS: Our next participants are CSR Ltd. We do have a submission from you. It seems to have partly got lost in the ether but nonetheless we do have a version of it in front of us. If you could give your names, positions and the organisation that you represent for the record and then if you have an opening statement you wish to make.

MR RYERSON: Thank you. My name is David Ryerson from CSR. I'm the national claims adviser for CSR across Australia.

PROF WOODS: Thank you.

MS SCHRODER: My name is Debbie Schroder. I'm the national workers compensation manager at CSR Ltd.

PROF WOODS: Thank you very much. Do you have an opening statement?

MR RYERSON: Yes, a short one. We're not quite sure how to proceed now that you haven't read the paper, because - - -

PROF SLOAN: We've kind of read it now.

PROF WOODS: We know where we're heading.

MR RYERSON: First of all, an apology for the fact that modern technology doesn't do exactly what it's meant to do every time. This submission has been drawn up, based on CSR's experience as a national self-insurer. We don't pretend to have the grand plan for solving the workers compensation problems of Australia. But we do have some points that we do wish to make in relation to how we react or act within the systems within which we operate. As a national self-insurer we operate in all states in Australia other than the Northern Territory and Tasmania.

PROF WOODS: Do you operate in that state and territory but as premium payer?

MR RYERSON: Yes, we do but not as a self-insurer. We don't have sufficient people to warrant it. So the submission is based on our experience and our findings and I guess our wants and desires, if you like, within reason. We'd like to make four points to start. The first is that we advocate one system of licensing for national self-insurers. First of all, we believe that self-insurance is the best way for a national company to operate. It has all of the incentives to have a safe workplace and to operate responsibly within the workers compensation system. But in order to operate within Australia at the moment one needs to have separate licences and basically that is inefficient, in our view.

Across Australia we have different ways of reporting to the authorities. We

have different ways of making licence renewals. We have to provide different information to each of the authorities and we have to change nearly everything we do in a particular jurisdiction when the legislation changes. So we're bound by changing our procedures and our processes if the legislation changes in one of the jurisdictions. It would be far simpler if we could operate as a licence holder for the whole of Australia and it may in fact mean that we would then not insure in Northern Territory or Tasmania but would just treat our workforce as a single workforce, which we try to do anyway, across Australia.

PROF WOODS: I mean, isn't that a point that a number of like organisations are making to us, that they want to have the one safety management system, the one compensation rehabilitation system, for their company and its various components and not have individual parts of their company configured in different ways to comply with different jurisdictions?

MR RYERSON: That's correct.

PROF WOODS: Thank you.

MR RYERSON: We also advocate one system of workers compensation insurance, one system of workers compensation benefits and operations throughout Australia, again for the national employer. But there may be a case to be made for small businesses to have a choice of going into that system or operating on some other system. We don't feel it's our place to advocate one or the other. I'll now ask Debbie to - - -

MS SCHRODER: I'd like to make two points. The first point I'd like to make is in relation to the criteria to qualify as a self-insurer. CSR submits that there are really two criteria by which potential self-insurers should be judged. The first is their financial capabilities to meet the liabilities, their financial backing essentially, and secondly the provisions that they have to manage those claims. So each potential self-insurer should be able to establish that they've got qualified claims advisers in there to manage those claims. CSR cannot see why the OHS criteria is there in relation to self-insurance. We submit that the financial benefits alone of having an effective OH and S system is of itself enough incentive to work very hard on your OH and S criteria.

Just in relation to that, CSR self-insures in Western Australia, New South Wales, Victoria and Queensland. Western Australia has no OHS criteria to get a self-insurance licence. In CSR the safety performance as measured by lost time, injuries, total recordable frequencies and workers comp claims per million man-hours is the best or the second best of all the states in which we operate. So that to us - and admittedly it is a CSR measure only - is significant in the sense that we don't see the need for the OHS requirement.

The fourth point I'd like to make is in relation to the national workers compensation scheme. We're all aware that workers compensation schemes across Australia operate to conduct a no-fault scheme and the benefits that are to be delivered are consistent pretty much across the state. They aim to deliver medical benefits, weekly payments of compensation and lump sum benefits. Some states have an allowance for common law. All states at some point or other have expressed dissatisfaction with the way common law is operating in those states. CSR submits that for what workers compensation aims to do, all the states are similar, therefore operating at a national framework in terms of producing benefits to workers would be the same across - and the transition would be quite easy.

CSR does believe that there is a place for common law in the workers compensation scheme. We submit that it needs to be fairly heavily regulated and the laws of negligence need to be very carefully defined and assessed, and also the criteria for entry being that it should be a very serious and disabling injury also need to be clearly defined. They're the only points I wanted to make at this time.

PROF WOODS: Excellent, thank you, and thank you for the amount of sort of on the ground detailed information that you've provided in this submission. You've got actual costs which we can then turn into real examples of where savings can be made and the costs of coping with six, seven or eight different jurisdictions. So we much appreciate the material that you've included here and that it's not covered by commercial in confidence which is also particularly helpful and we commend that to many other organisations as a model of how to present the information.

A couple of issues: I'm attracted by the various arguments you make in relation to the occupational health and safety criteria not being part of the self-insurance criteria. But you did refer to the prudentials and they've understood, but then you also talked about the capacity of the firm to manage claims. Now, presumably that's not a once-only entry test but there would be some ongoing monitoring so that if for some reason your claims management capacity was deteriorating or even if your claims performance started escalating significantly, that that would call into question whether you could retain a self-insurance licence.

MS SCHRODER: Yes, and we'd support that. Currently we are subject in some states to claims audits, at which time they will measure our performance and give us feedback and that, and we believe that that should be part of any self-insurance regime as the capacity to maintain claims and manage them effectively is crucial.

PROF WOODS: I'm just wondering if some states, maybe not now but initially, were using occupational health and safety audits as some surrogate for claims management performance or at least a sort of double-check to make sure that you had good occ health and safety and therefore by consequence should be able to have

low claims experience.

MS SCHRODER: No, the current occupational health and safety audits that we go through do not even look at the reflective claims experience. So if they go to audit a particular site they don't look at the claims experience of that site at all. They wouldn't have a clue what it's like, whether it's a good site or a bad site.

PROF WOODS: So just whether the manuals are there and whether the safety equipment is there and well functioning?

MS SCHRODER: It's totally focused on OH and S and prevention of the injuries. They never look at the injuries of that site or the claims experience.

MR RYERSON: A similar thing can be said about the claims audits and the injury management audits. Again we have no objection to injury management audits because we obviously try to do the best we can to get people back to work after injuring them in the first place. But the auditors that look at claims management and injury management don't look at occ health and safety. So they're quite separate and independent.

MS SCHRODER: And the auditors aren't even qualified. Usually they're qualified in, say, Try Safe or Safety Map but they have no claims expertise that requires them to become qualified to be an auditor. They certainly don't need that.

PROF WOODS: All right.

PROF SLOAN: It's just another hoop, I think.

PROF WOODS: Yes.

MS SCHRODER: Yes.

PROF SLOAN: Really I think - I mean, someone probably thought it was a good idea but in a way it's just another hope.

MS SCHRODER: Yes.

PROF WOODS: Whereas you do support that to retain a self-insurance licence, however described, that your claims experience and your injury management experience should always be up to scratch, that if there's significant deterioration there that could jeopardise your licence.

MR RYERSON: No, I don't think - - -

PROF WOODS: So if you have a very poor record of injury you should be able to remain as a self-insurer?

MR RYERSON: That's a moot point, I think.

PROF WOODS: Thank you.

MR RYERSON: But that is an incentive.

PROF SLOAN: Well, if the company is making the provision?

MS SCHRODER: Yes.

MR RYERSON: Yes, if the company is making a provision sometimes bad patches occur and sometimes the steps require that the dollars appear through the claims blowing out before someone actually notices that the injuries are as bad as they are, because sometimes it's not obvious that that's the case.

MS SCHRODER: There's significant pressure internally within the company to keep claims prices down.

MR RYERSON: Yes.

MS SCHRODER: From my point of view that weighs far heavier on my determination to keep them down. It's obviously a risk if we were to lose our licence but the internal pressure alone is more than enough to keep us very vigilant in monitoring the claims experience and we certainly monitor our sites, and where they may have a bad claims experience we would get onto that, whether it affected the licence or not.

PROF WOODS: No doubt if I spoke to the mining industry 10 years ago and said, "Is there internal pressure for you to manage your occ health and safety and keep your claims down?" they would say, "Yes, very strong pressure and we do it." Yet you look at their performance now, 10 years later, and it is vastly different. Why do I therefore question whether that pressure always translates into performance? I would have heard, I suspect, those same words from the mining industry 10 years ago, that their performance was not good. Their performance happily now is a lot better. But the same pressures were still there. I mean, the miners still had bottom lines and the miners still - they had shareholders to satisfy.

MS SCHRODER: Yes, and conversely I guess on that point, if we did have a very bad performance and we were to lose our licence and it were to go to a claims agent how would that, I guess, affect the issue? Would it all of a sudden make us more vigilant because we had lost the licence? I think the financials of it probably would

have something to do with it. But that financial pressure is already there.

MR RYERSON: The financial pressure is pushed under the businesses because they are charged for the accidents that occur in their business at their places of work. We meet with our businesses at least every three months to discuss all the claims that they have and try to point out to them at that time the similarities between claims and what they should be doing in relation to safety. So there is that interaction. We are part of the business of CSR. We're just not a remote phones operation.

PROF SLOAN: Yes, but the business unit results are all - you know, all the claims costs are slated back to where the accidents occur.

MR RYERSON: Correct.

PROF SLOAN: I sympathise with you that you've had that additional frustration by de-merging. You've had to basically reapply for all your self-insurance. Did you lose any through the - - -

MR RYERSON: Yes.

PROF SLOAN: Yes, because I'm a director of Mayne and by de-merging the company - particularly in Queensland where I think you have to have 2000 employees, which is a bloody lot - we lost our self-insurance licence up there.

MR RYERSON: One of the parts of the company lost its licence in Queensland and CSR lost its licence in South Australia.

PROF SLOAN: Yes, and they have these manoeuvres, speaking personally. This is not something - this not just a compliance cost, you lose your self-insurance licence. That alters the values of the separated companies.

MR RYERSON: It has come as a shock to our Queensland businesses that are now having to pay insurance premiums, as to how much those premiums are and exactly the same comment could be made in South Australia.

PROF SLOAN: But, you know, you're effectively the same business, it's just that you're demerged, you know, so there's a certain illogicality to it, isn't there?

MR RYERSON: Yes.

PROF WOODS: Very good. You talk about:

The best aspects of each current scheme should be taken into account in framing the legislation.

And you do, I should note for the record, put "best" in inverted commas. "Best" for some parties may not be "best" for other parties. You then go on to provide a definition of "best", which talks about:

The simplest, most efficient way of returning injured workers to the workplace whilst delivering reasonable benefits to them for a reasonable time.

No doubt from the views of a reasonable person. You then proffer a view the Queensland system provides greater certainty - you know, certainty is a very important characteristic, isn't it - - -

MS SCHROEDER: Yes.

PROF WOODS: - - - so it's not only the sort of bottom line dollar of the configuration of benefits, but it's the stability, certainty, predictability of a scheme that has a very high commercial value to you.

MR RYERSON: That's correct. I didn't define "best" - because "best", as you say, is all things to all people and what's best to me is quite different to what's best to an injured worker or to an injury management person or a judge and therefore I hesitate to define it, but I would say that "best" is certainly not an agglomeration of all of the existing workers compensation sections to end up with something that's a bureaucratic nightmare.

PROF SLOAN: So what are the features of the Queensland system that makes it so attractive?

MR RYERSON: A short tail, in the statutory sense, but a guarantee that if a worker is badly injured they can access common law.

PROF SLOAN: Okay. So the fact that, you know, there's a five-year limit, is that - - -

MR RYERSON: Yes.

PROF SLOAN: Yes, that's attractive, but the fact that there can be some commuting.

MR RYERSON: Yes.

PROF SLOAN: So those two - I mean, those two constitute very desirable features, do you? Is the alternative where there's a potentially long tail and ongoing

weekly benefits? That's not seen by you as so desirable?

MR RYERSON: No, and I don't believe that that's the best for the workplace or the worker, but that's - again, that's a view that I hold, perhaps because I work for an employer and I'd like to see the tail as short as possible.

PROF SLOAN: Yes.

MR RYERSON: But I don't - - -

PROF SLOAN: Well, I mean, the long tail clearly makes it a much more complicated scheme to manage. I mean, you'll be dealing with people who work for CSR 35 years ago, you know.

MR RYERSON: Yes, that's right.

PROF SLOAN: Potentially.

MR RYERSON: That's right. But at the end of the day the system still has to be fair.

DR JOHNS: And you're not worried about the worker's ability to pursue at common law and gain a lump sum and the costs associated with that.

MR RYERSON: No.

DR JOHNS: What's your experience been in that regard?

MR RYERSON: We've had claims that have cost us over a million dollars at common law. We've had - most of them don't. Most of them settled at what I would call reasonable - for reasonable amounts, given the injury sustained by the workers that we've dealt with, their age and the vicissitudes of life that they could encounter and maybe discounts that are there because of factors that are known to the worker and the employer. But I don't see it as a real problem.

MS SCHROEDER: The frustrations we may have experienced with common law tend to relate to the fact that in some states common law is almost as "no fault" a scheme as the statutory scheme, in terms of the way that negligence is defined and also the lack of thresholds or certainty about the nature of the injury that should get access to common law so that we may have some claims where it seems like a relatively minor injury attracting quite large damages, which sometimes leads to frustration, but we have had some cases where there has been a very serious injury and the worker has pursued a common law claim and it's been finalised to the satisfaction of both CSR and to the injured worker, fairly quickly and with a good deal of certainty.

DR JOHNS: So you're not unhappy about the ease of access to common law in the Queensland system. You're not looking to suggest a model where you could tweak it a bit. I'm not suggesting you should, but you'd take it as it is?

MR RYERSON: We take it as it is now. We would like to see some more clearly defined negligence, if you like. We'd like to see that perhaps codified in some way so that it's not just open go.

DR JOHNS: Well, the lawyers tell me you have to prove it, but I always took it as a virtual "no fault", I mean, really, there are not too many defences on the employer against negligence, or against the accusation of negligence.

MS SCHROEDER: Yes, that's been our experience.

DR JOHNS: It's virtually - it all ends up in a negotiation with the lawyers about how much, doesn't it?

MR RYERSON: That's right. It does.

MS SCHROEDER: Yes.

DR JOHNS: So you could forget the actual law.

PROF SLOAN: I think that's right. I mean, a bad accident has happened at work, therefore it's the employer's fault.

DR JOHNS: It does, it does.

MS SCHROEDER: Yes.

DR JOHNS: So, anyway, the long and the short of it is you're happy with those negotiated outcomes, that's your preferred way to do business.

MR RYERSON: Yes, as long - I believe there should be a stricter definition of negligence.

PROF WOODS: And you'd see common law having a threshold to get through in terms of - we're talking significant permanent impairment.

MS SCHROEDER: Yes.

MR RYERSON: Yes.

PROF WOODS: And that that's its only role to play in those situations.

MS SCHROEDER: And that would need to be fairly carefully assessed by some sort of medical panel, certainly not a treating specialist or anything like that. The criteria for that would need to be fairly stringent.

PROF WOODS: Are you satisfied that medical capability, as such, that there would be some fairness and certainty about appraisals and whether people do or don't fall either side of the threshold.

MS SCHROEDER: In terms of a medical panel?

PROF WOODS: Mm.

MR RYERSON: I don't want to comment on that. I think we take it as it comes. I believe that the people appointed to those panels are appointed with the best - - -

PROF WOODS: Yes, I agree, but if they produce, from time to time, less than consistent results, then you'd have to say, "Well, it might be fine to devise a system where say 15 per cent or 20 per cent whole body impairment threshold is used," but if in fact you can't define between a 12 per cent and a 25 per cent, then what's the point of setting a 20 per cent as the perfect solution. So the model has to be tempered by what is pragmatically achievable that has, again, your greatest of virtues, certainty.

MR RYERSON: Yes, I agree with that, if that's the case.

PROF WOODS: I was just seeing if drawing on your experience I could have some sense of comfort that the experience to date shows that this is achievable, but I don't yet have that comfort.

DR JOHNS: So you're dealing across - I mean, with all the states, but are you both Queenslanders and, sort of, happy with the system - - -

MR RYERSON: No.

DR JOHNS: Why do you love it so much?

MS SCHROEDER: It's the sunshine; it's warm.

MR RYERSON: Neither of us are Queenslanders - - -

DR JOHNS: So this is an objective assessment of the Queensland model - - -

MR RYERSON: Yes.

DR JOHNS: - - - and you're happy with it. That's good. I don't doubt it, but I just - - -

PROF SLOAN: Well, it's really the fact that it's a shorter tail scheme than the others. That's really what you're saying.

MR RYERSON: Correct.

PROF SLOAN: It basically doesn't - - -

DR JOHNS: But also not being worried about access to common law and the occasional large payout for the big ones.

PROF SLOAN: Yes, but with some kind of gateways with it.

DR JOHNS: It's all about gateways.

MR RYERSON: Yes.

DR JOHNS: Good, good. Right, I've seen the light.

MR RYERSON: Mr Chairman, getting back - - -

PROF SLOAN: The truth is, there's a kind of issue, it's not "horses for courses", this stuff. I mean, CSR have businesses which are kind of - you know, there's hazards in some of your activities, aren't there.

MR RYERSON: Sure.

PROF SLOAN: And there is the potential for some workers to be very seriously injured.

MR RYERSON: Correct.

PROF SLOAN: So you have an ethical obligation to see that those persons are well compensated and probably the only way for that to be achieved is through common law.

DR JOHNS: It's the means of compensation.

MR RYERSON: Correct. The - - -

PROF SLOAN: Whereas, if we're dealing with mainly a white collar workforce then the issues are slightly different, aren't they?

MR RYERSON: Mr Chairman, you said about workers lying on just one side or the other of the threshold, my experience is that that doesn't happen. They don't just lie on either side, they're either on one side of the other or the straddled, quite significantly, the threshold and I guess it's the straddle - - -

PROF WOODS: It's the straddlers that I worry about.

MR RYERSON: The straddlers that are the difficult ones - - -

PROF WOODS: It's a very painful position to be in.

MR RYERSON: Yes, and at the end of the day there has to be the ability to test that.

PROF WOODS: Yes.

MR RYERSON: In some dispute - - -

PROF WOODS: Indeed. And that's where the panel structure seems to be producing some better results than argumentation by specialist employed by various parties.

MS SCHROEDER: Yes.

PROF WOODS: I understand all of that. That's helpful. Your comments on early intervention, rehabilitation, return to work, I think they're quite sound. You didn't wish to comment on dispute resolution. Is that because you're sort of - don't have a view that any one jurisdiction is better than the other in terms of the structure of their model or you don't have sufficient experience with it or - - -

MR RYERSON: I have a lot of experience with it. I just didn't wish to comment.

PROF WOODS: You didn't wish - - -

MR RYERSON: No, we didn't wish to comment. A dispute settling system is a dispute settling system and at the end - - -

PROF WOODS: Some work better than others.

MR RYERSON: Some do work better than others. I noted Mr Booth's comment about the West Australian system. I believe it has worked well for us when we've

used it. We've used it so infrequently.

PROF WOODS: Okay. But that's valuable insight for us from somebody who does operate in a range of jurisdictions. Thank you for your comment. Prof Sloan.

PROF SLOAN: No, I'm very happy you've made the effort.

DR JOHNS: Yes, very to the point.

MR RYERSON: Could I just make one other comment?

PROF WOODS: Yes, please.

MR RYERSON: And that is that again I agree with Mr Booth in relation to the regulator. I believe that there's no need to set up another - get another regulator and that CSR would see APRA as being more than adequate to the purpose.

PROF WOODS: Yes, no, I think that was a strongly argued case and what you're doing is endorsing that approach. We do very genuinely appreciate the inclusion of hard and fast data from your operations to give us some guidance as to the importance of these matters. So if you could convey that back to your organisation. Thank you very much.

MR RYERSON: Thank you, Mr Chairman.

MS SCHROEDER: Thank you.

PROF WOODS: We will adjourn briefly until we have our next participant.

PROF WOODS: Australian Business Ltd, could you each for the record state your name and position in the organisation you are representing?

MR ORTON: Paul Orton, general manager policy, Australian Business Ltd.

MR PATTERSON: Greg Patterson, general manager, workplace solutions, Australian Business Ltd.

PROF WOODS: Thank you very much, gentlemen. You have provided us with a three-page set of dot points. Do you want to take us through that document?

MR ORTON: Perhaps I might start, Mr Commissioner. Australian Business Ltd is vitally interested in both workers compensation and occupational health and safety issues. We represent 17,000 businesses mainly in New South Wales and as if we didn't know from the informal contact we had from our members we certainly found out in a recent survey that we did of our membership, in fact in the lead-up to the New South Wales election, that the issue of I guess what we term workplace compliance and certainly in this case issues around the workers compensation system and occupational health and safety regulation were amongst the top three issues that were exercising our members' minds.

To help inform our deliberations on these issues we're advised by a committee, a policy - an occupational health and safety policy committee of members, and our affiliated industrial organisation, Australian Business Industrial, also has a vital interest in both workers compensation and occupational health and safety issues. We're proposing to deal primarily here if we can with workers compensation issues. Happy to take questions on occupational health and safety framework matters. We will address both in a more detailed submission that we will be lodging within the next week. So perhaps I might ask my colleague, Greg Patterson, to take us through the issues that we've raised here that are I guess perhaps enough for the purposes of eliciting some questions.

PROF WOODS: Indeed.

MR PATTERSON: Thank you. If I could just say a couple of things. First of all our final document will need to be read in conjunction with the submission of ACCI, an organisation that we are a member of, and secondly that our comments in relation to this issue are informed not only by the feedback from our members but of course I think the experience in New South Wales since 1995, where we've been endeavouring to bring an out-of-control workers compensation system under control. That has been both time consuming and illuminating. In my case I - - -

PROF SLOAN: And met with limited success?

MR PATTERSON: Well, we'll see. I should also add that I do sit on the - what do we call ourselves these days - the Occupational Health and Safety and Workers Compensation Advisory Council of New South Wales. So for better or for worse I've been a little bit close to some of those changes. If I can just perhaps take some points from the dot points that we have put to you and make some additional commentary. In terms of national consistency, and there were a number of options outlined in the discussion paper, it would be our view that endeavouring to get a single national workers compensation system at this stage is not feasible. It's extremely difficult. We know from our own experience in New South Wales how hard it is to change one system and trying to do something on a national basis I would rather suspect would be exponentially more difficult than in just one state. At the same time that objective or an emphasis on that objective we believe could divert attention from less ambitious but important changes, and we've already seen some evidence of that with the agreements between New South Wales, Queensland and Victoria to cover workers going across state borders.

So there are some pretty, I think, practical advances that can be made without necessarily having to swallow the whole issue in one go. I think there are other initiatives that can probably be taken down that line. In terms of the nationally consistent definitions, the ACCI submission identifies a number of particular areas. We would support those and I think the importance for getting consistency in the definitional area is to enable some reasonable comparisons between systems. It is not uncommon for us to receive feedback from our members comparing system with system and headline rates with headline rates and of course that can in fact be misleading if you have quite a different structure underpinning those headline rates.

Journey claims are a continuing source of dissatisfaction with employers. In the scheme of things the inclusion of journey claims to and from work probably doesn't add substantially to the cost of a scheme, nonetheless it I think - if I can put it this way - puts a psychological barrier in front of employers in terms of the credibility of the scheme and whatever arrangements might be in place because they see this as something - those sorts of incidents as being something entirely beyond their control and influence. On the issue of premium setting, I think the theory tells us it would be nice to have everybody true-risk rated and the like, but we need to align that with the reality facing the business community and the size of businesses. Drawing from the New South Wales experience there are something like 350,000 workers compensation policies on issue; about 75 per cent of those are below the threshold for experience rating at \$3000 and I think roughly the number would be no more than about 10 per cent pay premiums of more than 25,000.

So really to try and apply a true-risk-rating approach to the vast majority of Australian businesses I think would be to expose them to all sorts of unacceptable risks and exposures.

PROF WOODS: That's why they pay premiums into a pool.

MR PATTERSON: Precisely. So I think that the theory is fine, the practice is a little different. At the same time I think there is probably scope for consideration of alternative approaches and certainly at the time New South Wales was contemplating a move to private underwriting one of the proposals on the table from the insurance industry is that - is perhaps the industry sectors needed to be broken up by size and you may have different premium arrangements depending on whether you were small, medium or large; whatever criteria you might use to better reflect - cost the scheme - of those sectors.

Again, based on the New South Wales experience there is a presumption it seems to me in a lot of the material that comes out that the premium system is used as a primary signal to improve OH and S performance amongst businesses. The reality is it doesn't act as that signal for most businesses because it doesn't accurately reflect cost of scheme and secondly, the mechanisms by which the signal is sent are not always easy to understand. We did some survey work - it's now a little dated - as a result of some seminars we ran some years ago with our members in relation to workers compensation, and when asked about half of the participants really didn't understand how the premium system worked, how the premium formula worked and how their claims experience might affect their premium in the current year or in future years. To me there is a real challenge in getting the signal out to employers in a way that they can understand it.

PROF SLOAN: That's less of a problem though where they are risk rated, isn't it?

MR PATTERSON: Yes, provided they - - -

PROF SLOAN: Or are you saying that, you know, premiums - - -

MR PATTERSON: - - - they understand how it works.

PROF SLOAN: - - - are going up anyway? There's a kind of confusion - - -

MR PATTERSON: Where they're risk rated one would have hoped so, but there were employers amongst that group who were risk rated or who were experience rated and were struggling with the formula and its relationships and how it worked. So they sort of - you can see eyes roll at times when you start talking about the premium formula and what are F factors and all those sorts of things. In terms of benefit structures, quite clearly it would be our view and I think one that's borne out by some experience, that we've somehow got to get the message across in workers compensation that the primary objective should be a sustainable return to work or back to the community. It is not about dollar amounts and it would be our view and I think again you would find that there is reason to believe that there's substance to this

view, that a focus on the dollar outcomes does run the risk of producing results which are not necessarily the best medically, socially or economically.

There was some interesting work done some time ago I think by the Royal Australian College of Occupational Physicians on that, bringing together some of the literature which I think was quite informative. Lump sums and common law: not surprisingly as an employer group, for us to say that we don't see that common law really does have a role - - -

PROF WOODS: But your exception in your second dot point is important because that's also a message we're getting from employers, that as a general principle you may not like common law but pragmatically you accept that in the case of permanent serious injury it has a role.

MR PATTERSON: Yes, absolutely, yes.

PROF WOODS: It's interesting that - I mean, your membership, and it's quite substantial and is of a particular structure, that they also take that view which is consistent with some very large businesses. So that commonality of viewpoint coming to this inquiry is quite important.

MR PATTERSON: Yes. There is in my experience, I've yet to come across any employer who would not support the delivery of proper benefits to genuine needs of workers and a concern for people who are seriously injured. That's a consistent view that I get. In terms of insurance regulation, I think the variance or the addition that we would make to our colleagues in ACCI is that where it is possible we are not of the view that delivery of these services should be restricted to the insurance industry and in publicly underwritten schemes where the provider is not on risk we can see no reason why other providers should not be admitted, (1) for reasons of competition, but also importantly, we believe, to introduce different skill sets and approaches to the management of workers compensation claims.

At the end of the day, and the New South Wales experience I think bears this out. The key to having a scheme which is both affordable and delivers proper support to injured workers very much revolves around what happens in the post-injury phase and the delivery of those services, and I don't believe that is a problem that we have yet solved in New South Wales. I can't speak for other schemes but I would not be surprised if that is not also the case, hence again in New South Wales we find the paradoxical situation of an improving OH and S environment in terms of accidents and incident rates and until recent times an increasing cost. That is a function of the number of people that are still off work at the 26-week mark and the lengthening of the post-accident phase.

PROF SLOAN: In the public liability area there are actually a small number of

specialist claims management firms which are not insurance companies. They are not in that - one is American and actually operates out of Brisbane so I don't actually see why there shouldn't be that type to emerge in Australian workers compensation field. I mean, they have no aspirations to underwrite, they just do the claims management side.

MR PATTERSON: I think that's also one of the issues that's being considered at the moment in New South Wales with the McKinsey review so that should be out shortly and that will no doubt make some interesting reading. Licensing arrangements for national companies, I think we do need to find a better way to accommodate those employers who are self-insurers across national boundaries.

PROF WOODS: Would you have any self-insurers in your membership?

MR PATTERSON: We do, yes, we do. They struggle at times with the cross-border issues, and I know from my own industry experience, you can have a circumstance where - well, you weren't self-insurers - but you can have a circumstance where you may have a major operation, or your operation is focused in one state and you have smaller operations in other states, it would be nice to think that you could somehow embrace that within the one structure and not have to cope with multiple jurisdictions for relatively small numbers of people.

PROF WOODS: Yes, you could be a large miner in one jurisdiction and have a small office in another and - - -

MR PATTERSON: In our case we're a manufacturer and you have a small warehousing and distribution and sales force in another state.

PROF SLOAN: It's quite a common pattern, actually.

MR PATTERSON: Yes, yes. Rehabilitation and return to work, all I would simply say to that is that I think the evidence would suggest that as a community we're not good at managing the post-accident phases, and I use the word "community" generally. There are many players in the delivery of those services, and I don't think we get it right, and I suspect that if we can get that right then some of the pressures on a number of the schemes around the country would be substantially reduced.

PROF WOODS: To what extent is this a feature of there being a third party in the process, apart from the employer and the employee? Say you take the New South Wales scheme, do your members generally feel that they lose contact with their employees and that processes start to go out of their control?

MR PATTERSON: I think there are probably a couple of dimensions to that. The

first one would be if you recognise the shape of the employment, or the size of businesses - for most businesses, and for most employees, fortunately, an industrial accident is an unusual event. For most businesses, they are not going to have the skills, sets and the capability to effectively manage accidents, and they're never going to have them.

PROF WOODS: It might happen once every 10 years and so - - -

MR PATTERSON: Precisely, and if they ever acquired them, it's a skill and it degrades. So for that group I think there is a pressing need for the sorts of skills that are required to be available on a non-demand basis, and we try to get to that, and I guess we look to the insurers and the rehab providers to provide some of that stuff. But in a way, that does not displace the employer. Now, I think it's true to say that there would be an employers, there's an accident, it's all a bit much for them, someone else is taking care of it, and they do drop out of the process. But there is also evidence and research to suggest that the primacy of the relationship between the employer and the injured worker is absolutely critical in achieving that return to work. So there's a need at that level. There's also - we do get feedback from time to time that the actions of some of the service providers is such that they tend to inject themselves in the process and perhaps may displace the employer.

Now, that might be those service providers, the way they choose to define their customer service package, and the intentions may be honourable, but it doesn't necessarily produce the best outcome. Again reflecting, I think there was some research done some years ago up in Newcastle on this very point, and when a range of people, injured workers, providers and employers were asked that question, there were multiple answers, and you had doctors thinking they were managing it and rehab providers thinking they were managing it, and in some instances the employees saying, "Well, they're managing it because nobody else is."

PROF WOODS: Yes, and the employer saying, "We don't know who's managing it."

MR PATTERSON: That's right, yes.

PROF WOODS: Yes.

MR PATTERSON: So it's a difficult area. In terms of dispute resolution, the early indications are that the move into in New South Wales to the Workers Compensation Commission is working. We are certainly seeing flow-through in terms of premium costs with actuarial assumptions about reduced legal costs, but my understanding of the early results also show fairly prompt resolution of matters, and that's being achieved without excluding the legal profession. So rapid resolution of disputes doesn't mean that you have to keep the legal profession out but it's in the way that the

system is designed. So I think we have reason to be encouraged by what we're seeing, albeit it is still relatively early days yet, and I guess more of that history will be written.

I have two final points, in terms of the duty of care, my only comment there will be from the point of view of an organisation that endeavours to encourage its members to adopt the best possible OH and S practices, it gets pretty difficult to convince employers that they should be making these investments when at the end of the day they say, "Well, does that cover our responsibility," and the answer has to be, "Well, we really don't know because you have this absolute duty of care." Again using, I guess, a psychological approach, it really does set up a barrier to get engagement, "Try the best I can, but I still don't seem to be getting there," and there seems to be no out, and I don't mean out in the sense of avoiding reasonable obligations but more in the sense of whatever you do, you will still be hammered.

PROF WOODS: But your dot point at the top of the next page, "Employees responsibilities for their own safety are inadequately recognised." Under a no-fault scheme, how do you propose to remedy that?

MR PATTERSON: Well, unless one starts to go down the route of, I guess, the penalties that employers can sometimes be exposed to when an incident occurs, to embrace those within the payment of the compensation benefit I think it creates an insurmountable difficulty because you then push yourself back into an adversarial system because - we may as well go back to the common law and we'll have long and detailed and expensive legal arguments about who did what to whom and when? But certainly, it's not, again, not uncommon for us to hear from our constituency that such and such happened. In the employer's view, there was some contribution.

PROF WOODS: Yes.

MR PATTERSON: It just doesn't, you know, they might have been fined or penalised, but - it's about balance.

PROF WOODS: I'm just wondering what your solution was.

MR PATTERSON: Yes.

PROF WOODS: I mean, I understand the point. I can understand the frustration, I just don't understand the solution.

MR PATTERSON: Yes, yes.

DR JOHNS: It's not worth suing a worker, that's the - or a worker suing a worker.

MR PATTERSON: Yes, yes. I think we're talking as much about OH and S regulations as we are about - - -

PROF WOODS: Okay, well, in that area, yes, I understand some of that.

MR PATTERSON: - - - liability to workers compensation.

PROF WOODS: Yes.

MR PATTERSON: In terms of funding arrangement, I mean, obviously full funding is a name that is something we should all pursue, but again, to raise your New South Wales experience, it's something that has to be balanced over time, and certainly we've had arguments advanced in this state that we should get to full funding sort of almost overnight - - -

PROF WOODS: But you don't want to write the cheque.

MR PATTERSON: No, no.

PROF WOODS: Or at least not tomorrow. Maybe over 10 years, but not tomorrow.

MR PATTERSON: Well, it's achievable. I mean, yes, so you've just got to get a way to balance that.

PROF WOODS: The sooner you start, the sooner you will have got there.

MR PATTERSON: True.

PROF SLOAN: That does kind of delay the introduction of private underwriting though, doesn't it, really? I mean, that's on the books in New South Wales, but - - -

MR PATTERSON: It's under debate. The government is yet to make a decision, but my betting would be that private underwriting won't come in in New South Wales for some time.

PROF WOODS: Long-term, short-term?

MR PATTERSON: Long-term.

PROF WOODS: Long-term? Well, there you go. Not that you're on any relevant body that might sense some judgment on this.

MR PATTERSON: No, it's - well, we actually, we gave some evidence to the

upper house committee, the NILE committee, on this matter, and just if you take the objective evidence that if you go to private underwriting there's an immediate cost to scheme because you've now got to service the capital, and we are not seeing any evidence - - -

PROF SLOAN: Except there's some implicit capital in the current scheme, or there should be. Yes, but go on.

MR PATTERSON: Yes, but, I mean, that's employers' money, not the insurers' money. But there is no evidence that we've seen that there are efficiency gains to be had at this point that would overcome that additional premium hike. When it was first talked about in New South Wales in 97-98, there were estimates then of premium increases of .7 up to 1 per cent, so going from 2.8 to 3.8 with no off-setting productivity gains to - - -

PROF SLOAN: Mind you, New South Wales has very high premium rates.

MR PATTERSON: True, true.

PROF SLOAN: Higher than those with private underwriting.

MR PATTERSON: True.

PROF SLOAN: Yes. There's some sort of history, though, to your organisation's involvement in this. Didn't you actually - - -

MR PATTERSON: We used to run - - -

PROF SLOAN: You used to run a big workers compensation - - -

MR PATTERSON: We used to own one. We didn't run it - I mean, it ran itself - but we used to run MMI, yes.

PROF SLOAN: That's right, that was the one.

MR PATTERSON: Yes.

PROF SLOAN: And you made a lot of money when you sold it.

MR PATTERSON: Yes.

PROF WOODS: Let the records show.

PROF SLOAN: I thought my memory served me correctly.

MR PATTERSON: It was all another time.

PROF SLOAN: It was quite a long time ago.

MR PATTERSON: We started to move in the mid-90s.

PROF WOODS: Very wise. I've actually asked my questions as we've gone through. Prof Sloan, have you got any - - -

PROF SLOAN: I mean, I'm kind of surprised in a way that you're adverse to private underwriting in that, you know, you obviously have got some terrible contamination of the premium setting process in the past 10 years in New South Wales.

MR PATTERSON: Mm.

PROF SLOAN: I mean, there is no free lunch. It's just when you have to pay the price.

MR PATTERSON: Mm.

PROF SLOAN: I mean, there seems to be some kind of issues of equity that, you know, present and future employers are in fact going to have to pay for something that, you know, was enjoyed by the employers back in the 90s.

MR PATTERSON: Yes, sort of the intergenerational cross-subsidy.

PROF SLOAN: Yes.

MR PATTERSON: That was a conscious decision at the time that the premiums were getting away. '95 they went up by 40 per cent; '96 by another 12 per cent; so very quickly went from the average of 1.8 to 2.8. As the work was done, and I think the various representative groups started to understand what the issues were, the broad strategy that emerged was that if you could get the day-to-day operational cost back to break-even or better, isolate the tail and work on the tail, that over time you could redirect some of those savings to help further address the tail. There's no doubt there was a trade-off between the capping of the premiums at 2.8 and the build-up in the tail and then knowing we'd have to come back later to deal with it. Now, that was in a context of the rapid increase, issues about jobs, and we, in conjunction with a number of other industry associations, did some research, surveyed members, which indicated at that time the increases of 40 per cent or more, or the 55 per cent that were having a substantial impact on employment, and we were apprehensive about it going - - -

PROF SLOAN: Yes, but aren't you talking to my book. I mean, what's happened is that in fact it hasn't produced predictability. It's now, I mean, and in fact if you look at a lot of our submissions, a lot of New South Wales employers are extremely toey, because they think, you know, they're sitting on a volcano.

DR JOHNS: Well, they managed it for a while, I guess, would be the evidence. It's a political response to price rises.

MR PATTERSON: Yes.

DR JOHNS: It doesn't buy you a long-term solution.

PROF SLOAN: Yes, they don't see it as predictable.

DR JOHNS: But you were saying that perhaps long-term, was that just an answer that, you know, we all in the long-term, things happen, or do you see it possible, given the following - - -

MR PATTERSON: Well, if you look at the circumstance now, we have a situation where last year the New South Wales scheme came in at below the break-even rate, but now it's the first time in 10 years, if that trend continues, there will be a gap emerging between the - I guess the headline rate, the target rate and the actual - sort of what's collected and what - the cost of the scheme, so that gives an opportunity to partially address aspects of the tail. The other difficulty with the tail is how real is it and I'm not, in any way, suggesting that it's not a substantial sum, but you really don't know until you get in and work it down.

PROF SLOAN: But isn't that the other trouble, because all it's net liabilities, if that you know they've made a bloody meal of the investment side of the book, too, and you see, it's a monopoly and so all the funds, they made a meal of it and so, you know, they've actually probably stabilised the liabilities - a problem about the asset now. You know, whereas if you had a competitive, private underwriting market, there'd be all these different investment strategies in the insurance company and you'd just - you wouldn't get - you know, by putting all your eggs in one basket you're arguably imposing a bigger risk on New South Wales employers than if you had private underwriting, so some of those companies would be doing better in the investment market because they wouldn't have got into equities when it was precisely the wrong time to get into equities and because you'd have a competitive market people could shop around for better rates, you know. I'm just kind of surprised that you're an organisation representing business and you're opposed to private underwriting.

MR PATTERSON: Well, I mean, what scheme in Australia over the last 10 years

hasn't had difficulties? Whether they be private or public? I mean, they've all had their issues and at the moment on the evidence coming to us and again looking, I guess, within the boundaries of, you know, south of the Tweed and north of the Murray and east of the rabbit fence, we haven't yet seen anything to convince us to - - -

PROF SLOAN: I couldn't agree with you more in the sense that private underwriting is not sufficient. I mean, the Western Australian government made a complete meal of their scheme by providing too easy access to common law and so the premiums were going up by 35 per cent and the like. But of course that then actually provided a crisis which forced the government to act, and act in a pretty powerful way, as a matter of fact. Whereas here it seems to me that, you know, there's a bit of a nibble here and a bit of a nibble there and it's - over the long run we're going to deal with a deficit.

MR PATTERSON: I don't know that the unionists who crowded into Macquarie Street last year would have regarded it as "a bit of a nibble".

PROF SLOAN: Oh well, they've got to get their place in sun somewhere, don't they?

DR JOHNS: But if you can dampen the price increase it takes the pressure off you to do anything about fixing the benefit structure of dispute resolution of whatever.

MR PATTERSON: Sure.

DR JOHNS: I guess that's the - if you've got one of those tools in your hand you don't have to do anything about the other one, which is the politically most sensitive one.

PROF SLOAN: By the same token we did go to see the Workers Compensation Commission and they do seem to be moving on with the alternate dispute resolution, which is presumably one of the ways you can try and clear up the tail a bit.

MR PATTERSON: I think - - -

PROF SLOAN: And that seems to be what I call "active management".

MR PATTERSON: Yes. No, it's - I mean, we sit on the outside of it, but personal reaction would be that I'm quite impressed by what seems to be going on down there.

PROF WOODS: So do we take that as a vote of confidence in the Workers Compensation Commission in its early days?

MR PATTERSON: Yes.

PROF WOODS: Another vote in favour of the honourable Justice.

MR PATTERSON: And that would be - we've actually had the opportunity as an organisation to have the services of Justice Sheehan on a number of occasions to speak to members and they also walk away, after an hour with him, being quite - - -

PROF WOODS: Yes, we've also had our hour with him, with the good Justice.

MR PATTERSON: Yes. He's passionate about his subject.

PROF WOODS: And I mean he is getting strong accolades. Very good.

DR JOHNS: No, that's very useful. Thank you.

PROF SLOAN: No, I think it's - - -

PROF WOODS: It's been quite helpful. Your timing of your full submission?

MR ORTON: Within the next week and we'll be certainly saying more about, I guess, the impact of OH and S regulation which, frankly, for a lot of our members is at least as big an issue as the operation of the fund.

PROF SLOAN: Yes, we like that, especially here in this state.

MR ORTON: Yes, because there's a new regulation coming into force on 1 September this year that has brought it to front of mind for a lot of businesses, particularly smaller businesses. For example, the requirement for them to introduce risk management strategies, which for smaller businesses, without a fair bit of guidance, might well be an ask that they're unable to comply with.

MR PATTERSON: I think in a lot of these areas there seems to be solutions and structures which, if you will, make more sense at the bigger end of town and we haven't found ways to get that message down to where most businesses live.

PROF WOODS: Actually, that raises a very good point, that some of your membership will be in rural and regional Australia. If you could, in your submission to us, draw attention to any issues that particularly reflect in those areas, because our inquiry is not just to solve the problems of metropolitan Sydney and Melbourne and Brisbane and wherever else, but to be applicable across Australia. So that if there are specific issues there that warrant our attention your membership base is well placed to draw that.

MR PATTERSON: I guess if I could just respond too - about the underwriting model, just as a question or an issue.

PROF SLOAN: Don't let it end there, they like to give people a hard time.

MR PATTERSON: No, no, I'm not being defensive, but and I don't profess to know the answer, but one of the questions that goes around my mind is, is it really the underwriting model or the environment that's built around it and is more that we really need to focus more on that, rather than the underwriting model and my inclination, after eight years of trying to get - helping to get New South Wales sorted out - when I started it had a \$60 million surplus, it's now got a \$3 billion deficit.

PROF WOODS: You've done well.

MR PATTERSON: If that's any recommendation. But I rather suspect it's the second rather than the former and it really relies more on and it's really more about the structures and the service delivery and those things that promote the best of that, rather than the underwriting model.

PROF SLOAN: I think it's the whole parameters of the scheme and that's right.

DR JOHNS: A lot of variables.

PROF WOODS: That's fine. Any other concluding comments you may wish to make.

MR ORTON: No. I'm done.

PROF WOODS: Thank you. That's most excellent and as I say, we do look forward to your full submission in a timely manner. Thank you.

PROF WOODS: Thank you. We welcome our next participants. Could you please, for the record, state your name and any position and organisation that you may be representing.

DR KAMALAHARAN: My name is Dr S. Kamalaharan. I work for myself. I'm a self-employed specialist occupational health physician.

PROF WOODS: Thank you.

MS DAUBRAS: My names is Therese Daubras. I'm an occupational therapist. I work with Dr Haran.

PROF WOODS: Thank you very much.

MS DAUBRAS: Can I introduce the other two potential participants?

PROF WOODS: You can introduce them in their absence.

MS DAUBRAS: Okay. The other one was Graeme Osbourne. He is the CFMEU president lodge secretary in one of the coalmines that we work at and he's about to take over to become the senior vice-president of the south-west district of CFMEU. He's travelling from Katoomba and unfortunately there was an accident. So he was supposed to be part of this presentation. We're hoping that he will still be able to arrive, maybe at the end. The other person is Craig Gillard. He's the regional services manager west for Centennial Coal Company and he's going to be here by the telephone hook-up. So he's our employer representative. We have a union representative, treating therapist and a doctor.

PROF WOODS: Excellent. We don't have a submission from you at this stage although will we be receiving a formal submission or - - -

DR KAMALAHARAN: Yes. I understand - I stand corrected - that if I give you a written submission that can be asked to be kept confidential.

PROF WOODS: You can if it needs to be confidential. If it's confidential then that makes us aware of the material but it means that we cannot quote it and we cannot use it to justify, in a public sense, the views that we have come to and the recommendations we make. We also, because of the importance we place on transparency and openness in our processes, if we don't consider that it is inherently commercially in confidence then we would take a view as to whether we accept that information or not.

DR KAMALAHARAN: Sure. Given that information, I definitely will be putting something in writing and I would take this opportunity to present most of what I

want to say.

PROF WOODS: Thank you.

DR KAMALAHARAN: But I will give you a written presentation.

PROF WOODS: If you could do that, that would be helpful. But you could understand from our point of view that transparency and openness is an integral part of community debate on matters that we're considering.

DR KAMALAHARAN: Yes, I appreciate that.

PROF WOODS: Thank you, please proceed.

DR KAMALAHARAN: I thank you on behalf of the people who are here and the people who are not here, and basically I gave more shape to the issues paper to link up why we are here.

PROF WOODS: Thank you.

DR KAMALAHARAN: I take you to the issues paper and I will not waste the time by just quoting what is already there but I'll make some brief comments. Basically the Commonwealth government has asked the commission to assess possible models for establishing national frameworks and in the background you talk about the work-related injury, that's on page 2. They talk about the work-related incident, injury, a serious problem relating in significant human suffering. Then I move on from there to the basic crux of the story. In 94-95 there have been two former reports, 36, 47, on workers compensation, occupational health and safety. Since then a number of state and territory jurisdictions have made a number of legislative and operational changes.

But the important one I picked out of this was a number of other developments of significance including the following: HIH collapse raising major concerns in accountability, regulation of the insurance industry and so on. Very importantly there really, of the negligence laws passed by the IPp report including medical negligence laws, associated medical indemnity crisis, United Medical Collection collapse - which I still believe is significantly unresolved in the medical profession's minds, which is a contributing factor to a lot of what these issues come up later on - and of course the public liability crisis affecting the public enterprises like counsels, thus going to the heart of our society and lastly of course the OHS inquiry into construction industry.

Now, I have actually done a presentation at the commission inquiry into needs of workers compensation and I briefly will quote to you from the briefing paper to

bring out what is always a recurring theme when any compensation is reviewed periodically.

PROF WOODS: Can I also ask is that submission a publicly available document?

DR KAMALAHARAN: Once again this was done in 2001 and it was done in - - -

PROF WOODS: Okay, so you've updated since then.

MS DAUBRAS: In confidence - yes.

PROF WOODS: Okay, thank you.

DR KAMALAHARAN: I think I just caught the relevant part. He said at that point:

What is probably of most interest is that the pattern appears to be cyclical. A scheme is established, runs smoothly and according to expectations in the early stages, then gradually starts to experience difficulties and costs begin to escalate. Reform measures, some more drastic than others, I implemented and once again order is restored. Whether it is possible to eliminate this cyclical pattern remains to be seen.

Now, he defines a success at that stage as:

A success of a compensation scheme is determined by the overall level of benefits it provides and the ability of the scheme to offer a reasonable level of benefits over time without incurring large amounts of superimposed inflation.

However, another commentator has said in relation to the workers compensation scheme that:

Whether the costs of the workers compensation system are too high, they are in the end a matter which depends on the perspective and values of the commentator, and caution should be exercised before assuming that the costs of the system are so high that urgent remedial action should be taken on that ground alone. A strong case can be made out for the proposition that the costs borne by employers and ultimately the community are simply the price to be paid for a good system of compensation for work-related injury and disease.

Obviously there's a mid-point compromise which is to permit the most

economical method of providing adequate compensation to the victims of motor vehicle accidents at a premium that would remain reasonable and affordable by all. This sentiment would appear to have equal application for both statutory compensation schemes today. This is written by the honourable Justice Sheahan on 10 May 1984. Now, I interestingly doctored these documents, replaced the words, "Costs of the workers compensation system" with "health care costs". I could see from that it's no different whatsoever when you replace just that word, the sentiments of what Justice Sheahan said is even more powerful. Now, the paragraph that he talks about where - he talks about the cyclical changes - it aptly describes the flaws in a system that involved impairment, disability, compensation and entitlements. Some, of course, are worse than others.

The parallel can be seen in many similar reviews over time when people have looked at systems that involve the same ingredients. What happens is the following. The person gets injured or becomes ill. He gets treated by the healthcare industry. If he fully recovers and returns to full pre-injury or illness function everybody is happy. Very often, some do not recover fully, leading to impairment and/or disability. That's interesting because there are times when people get impaired and get disabled but in a society like ours very often there's a lot of debate because people are disabled without discernible impairment. He or she then naturally seeks - this person doesn't fully recover, seeks compensation. If it is work-related then it is brought into the workers compensation arena but there are a number of other systems such as personal injury protection, social security, motor accidents where it may end up.

This paragraph, referred to - cited in the pattern implies that there are fundamental flaws within the system. Now, in my opinion and experience how the injured or the ill worker is looked after at the point of entry by the initial treating doctor - it could be a GP and/or a specialist is a crucial factor in the causation and continuation of disability compensation and litigation. There are a variety of reasons for this unfortunate situation and today's presentation will go a long way in addressing this inadequacy. Thus the injury/illness, both work-related and non work-related is a first step in what is often a costly process that also results in poor health incomes for the individual, community and society.

Getting back to the background information I just referred to that relevant point, number 5, point number 5 on the page 2, just talks about the lack of national consistent approach. Point 6 raises the important question, about six or seven lines down - more broadly, that is, a need to consider whether any alternative systems to the existing arrangements may be appropriate to support the employees and others who suffer a workplace injury or disease. The framework models should be - should also deliver better outcomes for business of different sizes employees and the central, general community while recognising the differing economy characteristics of the states.

Point 7 just defines the goal of the new model. Point 8 refers to implementation. When you go down the scope of inquiry this section simply lists the specific areas where possible models for establishment of national framework for both systems are to be looked at. I refer you to item D and E on page 3 - once again picks up that theme of an injured or ill person, subsequent care, management, rehabilitation and possible compensation. I therefore conclude that the key issue is how to prevent injury and illness in the first place, how to intervene early and appropriately once someone is hurt or sick, how to rehabilitate to maximise recovery and thus minimise both impairment disability, which is what leads to compensation anyway.

PROF WOODS: Okay, can I just call your colleague up at this point?

MR GILLARD: Hello?

PROF WOODS: Mr Craig Gillard?

MR GILLARD: Speaking.

PROF WOODS: We're just having introductory comments. My name is Mike Woods. I'm presiding commissioner. Are you happy to take part in this presentation.

MR GILLARD: Yes, I certainly am.

PROF WOODS: Thank you very much. Please proceed.

DR KAMALAHARAN: A good question to ask at this stage is, "Is it possible for one model to effectively deal with all these components of prevention, injury management, rehabilitation and compensation.

PROF WOODS: Mr Gillard, are you able to hear that?

MR GILLARD: Only just. It's very quiet.

PROF WOODS: Okay, thank you.

DR KAMALAHARAN: Okay, I'll try that again. A good question to ask at this stage is, "Is it possible for one model to effectively deal with all these components of prevention, injury management, rehabilitation and compensation?"

PROF WOODS: Is that fine, Mr Gillard?

MR GILLARD: Yes, only I'm - I'm not getting it totally very clear, I'm sorry.

PROF WOODS: I think the problem is that it's - - -

MR GILLARD: All I had was - was that a question pointed to me, or - - -

PROF WOODS: No, this is a statement -

DR KAMALAHARAN: Is that a bit better?

MR GILLARD: Yes, that's a bit better, doctor.

PROF WOODS: Please proceed.

DR KAMALAHARAN: Okay, I have given just a basic introduction, as I told you, about the issues paper, and I'm coming to the good question that needs to be asked at this stage. Is it possible for one model to effectively deal with all these components of prevention, injury management, rehabilitation and compensation? The answer is "yes" and I would like to present to you the model that I have developed and which has been in operation since 1990. This model has consistently provided prevention, injury management, rehabilitation and exit programs as one holistic service.

Now, before I present this model I would like to invite Mr Craig Gillard to - basically the main consumers are Mr Gillard, as the business manager, the employer, and Mr Graeme Osbourne, the union rep. I would invite Mr Gillard to say from his point of view what he sees as the good things or the benefits and the downside of this model and its working in the workplace.

PROF WOODS: Thank you, Mr Gillard.

MR GILLARD: Thank you. First of all, I'll just give an overview of where we've actually used this model at and I speak on behalf of Angus Place. We are a coal mine which is located near Lithgow. We're a fairly large, modern, long-haul operation which - with employment over 200 employees. We produce 2.2 million tonnes a year and we operate 7 days a week. Our aim through all this has been to aim for an injury-free operation.

Why the importance of this injury management? What we aim for is that Angus Place exists for the people. We've got a dynamic and sometimes very unpredictable environment and society rightly expects that we operate safely and, as I said before, our aim is for injury free operation with the greater use of rehabilitation. As Dr Haran will go through and explain his model to you later on, it's a consensitive, inclusive model which involves the employees, the employer - and that's the role I play - the employee representatives and also, in the middle of that, we have the doctor.

What are the benefits of the injury management system we currently are using and we have developed over the last 13 years in conjunction with Dr Haran? The benefits, as I see them, are that it identifies the injury problems early. It allows for an early suspension result and it then allows for an earlier return to work. It's an extremely good network system. We've got the ability to handle very complex cases. We've developed a trust with the workforce acceptance of the whole model and we also involve respective family members when we've got complex cases. We provide for retraining and overall we've got more detailed, managed return to work programs which allow the employees to come back to work earlier.

The outside problems as I see them is that the GPs only work with one party and that's the employee, whereas this model actually works with the three. Establishing relationships with the treating doctors is extremely difficult and also then we get tangled up into the legal system and that's where the costs mount up extremely high. As I said, our aim being the employee is to reduce the costs of OH and S and workers comp. I can talk on behalf of Angus Place where we've had this model and I can prove to you that we've just combined two companies. Now, I'm in charge of another mine which is located very close to Angus Place; similar conditions, similar operation, similar number of employees and just as a comparable our workers compensation premium is \$5000 less per employee at Angus Place compared to the other colliery I'm talking about. When you've got 200 employees employed and you're talking about \$5000, there's a million dollars in 12 months that Angus Place has saved as a result of this model being in place.

Some of the key outcomes is the trust and credibility from the employees. As I stated before, it not only handles the injured employee but if there's other underlying problems with that employee or family problems, we also have got the ability to handle those. That's about all I can say at this stage.

PROF WOODS: Okay. Thank you very much.

DR KAMALAHARAN: Unfortunately Graham couldn't turn up because there was, you know, an accident on the road so I've got two choices: I can actually read what he saw as the things or - - -

PROF WOODS: I think in view of the time if you just table that.

DR KAMALAHARAN: Okay. So I'll table that as a - - -

PROF WOODS: If you could give, you know, a brief summary.

MR GILLARD: I'll just make one final comment and that's - the comment is, I believe this model would work no matter how big or how small the operation is.

PROF WOODS: Okay. Thank you very much.

DR KAMALAHARAN: Okay. So going on to the model; the model is called a Problem-solving Consensus Inclusive Participatory Model. This model identifies an interest as to the majority of existing barriers/issues that are the driving force behind the escalating costs, both in human and dollar costs, in the workers compensation systems, nationally and internationally. What's unique about this Problem-solving Consensus Inclusive Participatory Model is that it identifies and deals with all the issues that it identifies. Further, the process involves appropriate stakeholders, patient, employer, doctor and insurer. It continuously grapples successfully with all the complex vested-interest stakeholder biases that continuously undermines one of the most important outcomes, which is to provide the best possible environment that encourages wellness-focused behaviour. Furthermore it identifies very early those that deviate from the expected wellness behaviour and the reasons why.

This allows all other participants in the system to agree on a process that minimises the fallout. This in my experience minimises disability in general and thus also decreases associated problems of poor health outcomes, major stakeholder dissatisfaction - that is the employer, employee, treating doctor, family, et cetera. Evidence bears medical principles as well as moral, ethical and natural justice principles along in current occupational health and safety laws, anti-discrimination laws and human rights laws et cetera, are applied consistently and fairly to solve problems, most of which are very complex. Underpinning every end of this service is a problem-solving approach which embraces non-adversarial, consensus inclusive participatory principles. This I believe to be one of the fundamental reasons for successfully achieving desired outcomes. Thus disputes are mainly prevented because of the framework within which stakeholders carry out their functions.

Furthermore, all stakeholders, depending on their varying degrees of exposure have embraced the philosophy thus ensuring the success of the model. Disputes are an integral part of life, even more so in a workers compensation system which is adversarial by nature, thus adding an enormous cost to the system by way of litigation. Such disputes when they do occur in this model, they're very efficiently and effectively dealt with within our model. It's pertinent to note as the years have gone by this model has gone from strength to strength, such that all parties representing the model own it, nurture it and add value to it.

It's my firm conviction that we need a radical shift in the way primary health care is provided, practised at the coalface if we are serious about reducing disability in our society. Another value point is that both medicine and the workers compensation system has more grey areas than black and white areas, thus when we the society - including lawyers, medicos, media and other vested players - make it black and white unnecessarily, only adversarial practitioners benefit by it. Societies have always been comfortable with grey areas in the past but relied on commonsense

and wisdom to solve problems.

I think I'll just fast-forward this a bit. A few words about my background and qualification and experience and beliefs that helped develop this model. I graduated from Sri Lanka, I practised medicine there, went to Africa and practised medicine for a giant mining company for a number of years. I've been in the UK and USA and the past six years in Australia. Thus I worked in health care systems that are free like in Sri Lanka where health care, including medication, is free to a fully private system, like in the United States and a mixture like in Australia.

I've also worked with people from different cultural backgrounds with different beliefs, additives and values. I believe health which equals wellness is a dynamic balanced state with physical, mental and spiritual components of our lives. My professional qualifications - I'm a specialist physician and rural practising GP. I'm a disability evaluating physician, an injury management consultant and an approved medical specialist under WorkCover. Under the Motor Accident Authority I've been appointed as a member of the medical disputes panel. My recognised specialities are musculoskeletal medicine which covers most injuries, pain management and work capacity. The disputes I currently adjudicate on are treatment disputes, earning capacities, stabilisation of injury and level of permanent impairment.

Why did this model come about? My first job was in the Department of Veterans Affairs in 1985. My first exposure to disability compensation indictment systems, I did a masters in occ health in 1986 and then I worked in multidisciplinary occupational health service in 87. Here the patients were referred from all walks of life but we had a Rolls Royce model but the outcome was very poor. The problems were never resolved, disability was high and no-one was happy. These problems exist even today in some manner, form and shape in the year 2003. This prompted me to ask the following question: why is there often such confusion and conflict when injuries are handled in the workplace. Further, the process often leads to frustration, anger, litigation and hostility and is costly, yet everyone in the world is trying hard to succeed.

Thus I embarked on my own research in the area of disability in some depth. Some of my key findings were: initial treating doctor is extremely important but is a reluctant stakeholder who was unable or unwilling to get involved fully and thus a golden opportunity was lost in problem-solving. There are lots and lots of reasons. I learned from everybody's mistakes in the centre - medical issues, as well as non-medical issues were involved. Neither were identified properly, nor were they dealt with appropriately. This is the year 1987, I'm talking. It's long before the current literature all over the world is documenting all this - relevant to the subject.

Major stakeholders - employer, employee, insurers, doctor - a reluctant participant, often doesn't see himself - the treating GP often doesn't see himself as a

stakeholder, although he has got the maximum power in the whole process. They were talking different languages, they had brought different roles and responsibilities and they were all unclear to each other and often they had different and opposing agendas. No-one stopped for solutions but fragmentation of care. Litigation and therefore common law matters were due to many reasons that once started was impossible to turn the clock back: adversarial nature, harmful to successful solution of problems, especially if they were complex; patients not empowered are often passive participants and lots of reasons for that; fragmented health care out in the community adding confusion and leading to poor outcomes.

Some patients were difficult and needed to be handled very differently. The standard medical model could not help them as well as the majority of injured and ill workers. A different approach was needed. There was a culture of illness; medical and treatment overservicing; process-driven and not outcome-focused; inappropriate and ineffective treatment; legislation is not the answer. The legal issues were - a number of them: expert witnesses and other inappropriate behaviour and their inappropriate behaviour, conflicting medical opinions, territorial arguments between lawyers, doctors. Example: definition of illness and injury - what is serious injury, and so on; bias of judges; gains in processing legal claims.

So I came to the conclusion at the end of this all that a committed, socially conscious, multiskilled treating doctor with a passion, as well as skills, not only in technical medicine but also with all other attributes of a good doctor, a leader, a reformer could make a significant but difference in decreasing disability and increasing ability, that is increasing wellness behaviour as opposed to illness behaviour was my desired goal. I then set out a table of one model that can deal with most if not all the problems. I'll just list a couple and as I said I want to rush - - -

PROF WOODS: No, no, don't rush make sure we do understand.

DR KAMALAHARAN: Sure. I started with the following basic philosophies: complex problems need a holistic approach. Adversarial approach hinders resolution of complex problems. Those affected both directly and indirectly have to be included in the process. Leadership has to be provided for this change. Whilst attributes such as vision, courage et cetera are mandatory, ability to apply moral, ethical and natural justice principles, as well as man-made laws are extremely critical. All these systems in nature coexist and have a complex interrelationship, example, biodiversity, sustainable economic, eloquent ideas, global warming, as well as workers compensation systems.

One needs deep understanding of this relationship to make this work. Trust is an ingredient that has to be earned. Credibility, consistency, determination and predictability are all key elements. This is an evolutionary process and thus takes time. Grassroots level planning is significantly better than top-down forced changes.

Behaviour changes are more desirable and durable than punishment models. Key stakeholders should have ownership if the process is to succeed. Clear, subjective thinking focusing on outcome first and then deciding which process can achieve them is very important. Very often participants get caught up in the processes which often is detrimental to achieving planned outcomes. Whilst knowledge is important, effective implementation is critical for success.

Subsequent to this I was lucky enough to meet other people in the central west area over a number of years who have been able to implement this model - and as you heard from the employer and from the comments given by the union rep, you can see most of the key successes that we have got is now out there on record. Again this is another document I will be tabling. The key successes from the PSEAP model implementation has been - it gave all the consumer stakeholders the best available scientific based evidence, health care practice. It reduced disability by empowering the patient. It did not support unnecessary, unproven treatment regimes. It identified all the issues involved in the problems and offered solutions as options. It reduced the need for litigation. It did not medicalise issues that were not medical issues. Mutual trust development has been sustained over time. Stakeholders embraced principles of natural justice and human rights comfortably. Unions, workers and management supported it - that is the consumers. All other stakeholders supported it too but previous support is critical.

It included all stakeholders in the process from the outset. It was outcome focused and then the appropriate processes were utilised rather than focusing on the process. It worked closely with unions, managers and the same information is given with each partner from the outset. It was consensus based, not adversarial and it identified all key cost drivers. The validation I'm talking about now is that a number of documents, which again I'm going to give you - - -

PROF WOODS: Thank you very much.

DR KAMALAHARAN: - - - which is interestingly the Perisher inquiry in 2001 brought a whole lot of information out of that with the site and Mr Steve Mark, the legal reform commissioner, has made some comments, and at times I wonder whether he actually has visited my model because this is what he's saying is necessary to address the complex workers compensation issues. I will be tabling a book by Dr Wadell who is a very famous orthopaedic surgeon from the United Kingdom. He's been in the forefront of dealing with the plague of back pain and disability and costs associated world-wide.

Dr Wadell in his latest book talks about that we actually need an entirely new health care system to approach - if you're going to make inroads into resolving this back pain problem we need a completely different medical approach.

DR JOHNS: I just wonder - I'm a bit conscious that this is a big story. Two questions come to mind: to what extent - (1) I don't quite understand the model yet because I want a real live example; (2) I want to understand to what extent it relies on extraordinarily multiskilled medical people like yourselves; and then (3) what stops it being applicable in many cases in - you know, are there limits of scale here and so on. So perhaps start with a real life example and - - -

DR KAMALAHARAN: A real life example basically is that I tell you today what has happened. Today one of the mines have come and asked me to come and do the same model there, so over the last six to eight weeks I have made personalised contacts through the network that exists in the town, through the union movement and to the management, and today I had a meeting with the management. I sat down with the management group and asked them what's the outcome they want to achieve when they get me to work with them.

I have three fundamental rules before I work with the management. (a) I'm not a company doctor; (b) I work for myself. I'm independent; (c) no patient is forced to see me. So I make a clear distinction who I am and what I do. So this generates a huge amount of debate that lasted two and a half hours between the employer, because the employer they says to me, "What the hell am I going to pay you money if you're not my doctor?" So I explain, again, I use this entire presentation I've done to you in different language which they can connect it to make them see the reality of the world in which we live, that if I'm not seen as a person who is committed in trying to work with both sides and stay in the middle it's just not going to work.

Secondly, then they tell me the outcome which is basically typical employer language, which is, "We know who the bad people are. We know who the bludgers are. We need to do this, that or the other." So then I will take them like you said just now through a case study. "Okay, can we talk about the last particular difficult person you had." Then they tell me what happened - what happened with - whatever. So I write that up on the board and then patiently take them through and say, "Now, what was the outcome that happened?" And it might be, "He didn't last long here, doc," or that, "We have a \$750,000 common law claim." So then I use those things to make them - I don't want to pretend that it's a walk in the park but it takes - because I've done it for 13 years the credibility is there, the trust is there. It's much faster now when I talk and when people listen to me because the town is full of people who have been saved from disaster.

Usually also the number of patients whom we have helped - I have only operated on two back pain patients in 13 years in the mines I looked after. Both are doing their normal job. That's 100 per cent success rate in back pain management in a coal-mining town full of back pain that has never got better it's a record that speaks for itself. It is basically trying to go behind the medical illness and trying to understand what are modern psychosocial models.

Now, what then is my model? If I could jump from that - what I really do when a patient walks through the door I introduce myself, I explain who I am, what I do and what I can do and I can't do. I say to him, "You don't have to see me because the employer tells you to see me. Now, I'll tell you how I approach it." I explain, with my model. "I'll look at you not through your knee or your hip. I'll look at you as a whole person." So I'm basically going to take a history that is going to tell me a little bit about you, your life, your personal life, your social life blah blah blah. And at the end of that process I will be able to examine you and give you not only a good diagnosis but what are the other issues and where do we go from here. These I will discuss with you in detail and they will be all in the form of options with plus and minuses and you don't have to do anything that you don't want to do. Are you happy to see me now?"

Very often the patient says, "You are the first doctor that's just sat down and spoken to me." It takes a minimum of one hour to one and a half hours to - in a new patient situation - so at the end of the diagnosis basically - that's usually is a big huge problem. Lots of medicine happens in our society - there is not really diagnosis, and I don't really want to make this into a medical discussion, but it raises the issues in all workers comp systems - invisible soft-tissue injuries now occupy the largest component of cost visibility to the society, yet all of our safety systems are working. We have decreased, without a question, the visible injuries and the fractures and the - you know, naming injuries. So it is always a dynamic, robust system that keeps evolving. So you have to be three jumps ahead.

So once I finish talking to him - through the process it might appear that there are issues in his personal life, there could be problems impacting on his - between him and a supervisor. There could be an ongoing problem in the workplace. He is terrified of losing his job. He is worried that he's 40 years of age, he's got a mortgage and what happens if this shoulder doesn't get better. So this is the sort of an opportunity and a model where we honestly talk. So at the end of it we then say, "Okay, where do we go from here?" So then I play - I give him the guidance and then he will say, "Okay, doc, I'm happy to go along with this, that or the other."

If the issues are complex I will involve the union on day 1 and say, "Look guys, I can see a problem down the road because in this particular workplace there's a rule that says, 'If within six months he doesn't - six weeks he doesn't go back to his normal job they won't like him - and I can already see it's going to take a lot longer.'" So then the union says, "Doc, we have this idiotic manager. How are you going to get around this guy, first of all?" That's what I'm here for. So then you get around that person.

So you have to always have a clear thinking of the medical issues, non-medical issues and time and time again we have used this process as the manager said just

now, to get successful outcomes. Outcomes is not necessarily always they've gone back to their normal job happily ever after. There are times, sadly, we do see people can't make it back, but then they are humanely managed so their sense of anger, woundedness, disability, everything, is still handled. So even if they finish at the workplace - and coal industry, also, I must say, is an old-fashioned, community based - a lot of family tradition. So it's where a lot of old values are still around. So I will use anything and everything to make it work.

DR JOHNS: What are the impediments for this process?

DR KAMALAHARAN: Impediments are the biases and the multiple stakeholders coming into the system. If you start out with just two people, a doctor and a patient - now, just two - I digress - really important, a lady who has written a book on what's wrong with medicine today and if you read that book you understand why that world, doctor-patient, is not working. Then she gives recommendations what is needed and she's talking about passionate medical doctors taking a leadership role in putting some commonsense back into medicine, even though it's very hard. Medical negligence is one example. The pressures on general practitioners today is humungous and they do not see work-related injuries as part of their forte. A lot of them lack the skills, training and expertise. So the impediments start off on that first consultative process. So I have set myself up that I recognise very early that a 10-minute consultation will never fix a problem. Invariably the 10-minute consultation generates a WorkCover certificate, which is a starting point of pandemonium and tricks.

Now, some of these patients are quite happy to come and see me and ask me to change their original WorkCover certificate because they recognise that they didn't want whatever sometimes - sometimes, not often, that the WorkCover certificate that was written they said, "I don't agree with that doctor. That's not what I told my doctor." So the impediments are - one is time. Finding, as the union person has said - this model will only work if people can see the long-term benefits and willing to put in the hard yards. In the modern environment of economic rationalism and globalisation where companies are walking in and walking out, especially in the coal industry - I've been part and parcel of this - people at one particular mine I used to look after - now I have installed my worker - they're going to do a fitness to work assessment on the entire workforce before they sign an enterprise agreement.

So I can assure you there will be a 10 per cent workers comp claims that will probably will cost them heaps of money, but the story is such that these companies will say, "Look, it's maybe 10 million. That's nothing. I'm happy to get rid of the 10 million because if I can get what I want" - so these models are basically very futuristic models in terms of you're looking at it from a total picture. That is, you're only shifting the cost. If you get other workers the problem is these people end up in some other system anyway. It could be Centrelink, it could be wherever. So the

view I take is that the impediments that are in that list, which are already with you anyway, are all those things that arise and are defined at the start why things go wrong. They were the impediment. They still are. People are tinkering with all that at the edges but my model - basically, I knew one thing was unless you're going to do it altogether you're not going to get a sole satisfaction of seeing outcomes.

PROF WOODS: Thank you very much.

MS DAUBRAS: Can I interrupt? I'm a treating therapist so one of the - from an injured worker - I get injured workers and - prior to working with Dr Haran - and the biggest thing that they will always say is, "I don't know what's wrong with me." If I get a patient who says, "I know that this is the physical component and I can do exercises," then, "Yes, I understand stress is aggravating. Yes, I understand that's the workplace." Once a patient doesn't say, "Just give me some tablet and take away my pain and my life will be hunky-dory," it makes life a hell of a lot easier for me and to return. And now when I go to the employer - if you tell the employer the same thing no longer does the employer, if they're part of the system say, "Well, 5 per cent of this is non-work related. It's the family. Therefore, let's deny the worker compensation. Let's - it's non-work-related therefore" - and it doesn't work that way any more.

I think employers are realising - once everybody understands and the treating person says - and the injured person says, "Yes, I can get 80 to 90 per cent. I may have to live with some discomfort but what do I want out of life? Yes, if I choose this pathway, while I may go through litigation, one other cost is socio-economic." So they make informed decisions. I find, from my perspective, it makes life so much easier if you get a good clinical diagnosis and they'll say to me, "He's the first person I can talk to."

So part of the impediment is to have those doctors. But doctors aren't all, because therapists - if you ever go to five therapists they'll tell you, "No, no, I've seen this x-ray, it's definitely - you need this shoulder. No, no, it's definitely this." So it's not just the doctors. The treating therapists all have their own views of what may be wrong and when somebody comes to you and you try something and it doesn't work better it's easier to say, "There must be some other problem that we haven't found. It's got to be some physical problem," rather than sitting back and saying, quite realistically, "You have gotten - the physical is one component. These are the other reasons of why you're having problems and let's address that." It's not saying that you're making it up. It's not blaming you. It's just getting the person to realise how complex it is and then looking at all those options to address it. But it has to be coordinated.

Fragmenting the health care is where we've really gone wrong. The injured person - nobody wants to get hurt. Nobody stays - when they come to the doctor

they want to get better. When they don't get better then they get everybody else telling them, "Try this, try this, try this," is when they get confused and then they get angry. Then they get hostile. By the time they realise the costing of what it's been they lose a lot more. If you tell them at the beginning, "These are the options and these are the consequences - yes, you can go through litigation." This may be some of the consequences. Yes, if you go through learning - these are some" - and they make an informed decision. They own it. They empower it and the results are heaps better.

PROF WOODS: Thank you very much.

DR JOHNS: That's it?

DR KAMALAHARAN: So the validation, as I said, I will put all this together for you and Merlene Walton's book, I recommend for the debate should anybody want to know why the doctor-patient relationship has gone completely bonkers, that book talks about it from page 1 to the last page. But you are also - I welcome you to read what she suggests as recommendation. Very nice, flowery words, very difficult in the real world. The second one is, as I said, Dr Waddell's book - Mr Mark - and the other one is - I'll also table is - John Della Bosca, the then industrial relations minister, he has written a couple of articles and he talks about the same thing, that these are cultural change. So what I would like to basically conclude by saying is that this model, already for the last 13 years, has been firmly dealing with these issues at a practical level and in the last five to six years a lot of these newer recommendations towards the future has already been happening in this model.

To round off, the last question - you were asking me about the impediments - I initially made the first presentation on this model in the Minerals Council just to a mining audience. Then I took it, next step, to the state parliament and I made a talk just to interest the political people, just off the top of my - just on my own bat with my local member of parliament helping me. Third one I did was to the Perisher Inquiry and this is the first time I have actually come out into a national - so naturally the model - and people need a much more comfortable - we can answer questions and I genuinely believe that - I serious believe that I need some joint venture partnership - and I'm still continuing to do these presentations to very serious and senior insurance people, departments of health and different bodies because of overlap. There's a huge overlap between what you do in workers comp, in health care and disability and one cannot go past that initial start. Patient comes to the doctor. What happens in that initial stage? That is the one that blows up into all the different systems.

PROF WOODS: Okay. Thank you very much. In the material that you present we'll gain some understanding of what the actual model is within the limits that you're prepared to reveal in a public manner.

DR KAMALAHARAN: Can I just - can I just go back on - - -

PROF WOODS: Yes, please.

DR KAMALAHARAN: One other thing I want to also table is there was a conference put together in New South Wales called Law Plus Money Plus Medicine. This was put together by the insurance industry, the AMA, the different colleges and I was a participant. I wasn't a presenter. It identified all the problems of why people have poor health outcomes and subsequent to that it was put together as a compensable injuries and health outcomes document, and the governor of New South Wales actually launched this book. Once again I will be tabling this book. All these books are talking about exactly what I've said but they're talking futuristically how we should be dealing with it and I've done it for the last 13 years with my social partners.

PROF WOODS: Thank you. And we look forward to that material. If we may, once we have perused the material that you're tabling and that you will present to us subsequently if appropriate and necessary, if we can come back and inquire further from your team to help us, an understanding of that, that would be very helpful. I much appreciate your time.

MR KALAN: Thank you.

PROF WOODS: Thank you, and thank you, Mr Gillard.

MR GILLARD: Not a problem, thank you.

PROF WOODS: Are there any persons present who have not been scheduled who wish to make a presentation? Please make your way forward.

MR MORTON: I'm representing the Forest Product Association which is basically the timber industry.

PROF WOODS: Thank you very much. Just before you proceed, Mr Morton, if staff could check what is to be tabled that would be helpful. Yes, please proceed - and thank you for your company for the last two days.

MR MORTON: I have enjoyed it. Actually I am now retired and the Forest Product Association asked me to come back and to get a synopsis of what has been going on so I can sort of let them know. My background is I spent 40 years in shipbuilding and then they closed Cockatoo dockyard down and then after that I was approached to introduce a workers comp and OH and S systems for the timber industry. The timber industry covers a wide range from the harvesting through sawmilling and through manufacturing doors and windows and then the merchandising of timber. So it's the whole ambit of the industry.

PROF WOODS: Yes, we understand the sector.

MR MORTON: I've agreed with almost everything that I've heard over the last two days. I would like to stress that with such a high percentage of the industry being small employers that any considerations that go on just don't get designed for the top end of town, that the small operators get considered as well.

PROF WOODS: The top end of town make their views known. One of the earlier participants commented that we seemed to have a bias for the small end of town. We don't have a bias in that direction but we're just ensuring that we understand their view as well.

MR MORTON: Yes. In my time with the timber industry - a lot of which is in the country area - you're dealing with people who are third, fourth Australian generation where the information has been passed down father to son, and a great number of them don't have a great deal of education, yet they're running a sawmill or they're running a harvesting area in the forest. These people are the ones who are really going to need the greatest help. I have found even with the introduction that was talked about with the legislation that's going to effective on them by September, the only way we could do it was basically go around to the companies one to one and do that, and we did that in the last year that I was with them.

So they do need a full understanding. But some observations that I've seen, to have all of these companies involved in the system in some way, involved in the return-to-work system, involved in the understanding of their workers comp

premiums and going through those areas - because at the moment they get their workers comp premium, they just see it's another bill. It's most probably one of the biggest bills they have to face during the year, and they have three instalments to make and they groan, "Oh, dear, where am I going to get the money," but they push on. They never worry about calculating it out as to where it's correct. They wouldn't know what the components are that are even there, even though it's down in front of them.

So they do need to get involved in that type of activity so that they do understand. Then on the return to work side, I've seen the companies that have become most involved in it are the ones where they have had hands-on experience with it. We had CSR in, and one of our companies was owned by CSR for a period of time till they sold out the Hudsons, their timber section of the industry, and the people there suddenly had to run their own return to work program. They had to deal with the rehab provider and they could select the rehab provider where at the moment it's the insurance company selects it. They might get one who's good, they might get one that might have a big workload and it's just a rush through events going on, particularly if they're remote, out of town somewhere.

This particular company, once they had to do it and they saw that they were responsible, it changed their attitude within their management dramatically and the results were shown to produce what we're all wanting and their incident rates fell quite dramatically. On return to work people, there's a number of companies up in the Bathurst area and there's a rehab provider in that area who is a sports medicine guy. This fellow, because he can motivate, they are finding they are getting fantastic results from that area. So I think it's along the line of what we were talking about here. There's a lot more to it than just the medical side.

PROF SLOAN: Yes, that was kind of social model really.

MR MORTON: When somebody goes to their own doctor, the doctor most probably thinks, "If I upset this fellow and don't let him stay off work a little longer, I might lose the business of the whole family." Where if there were dedicated doctors, rehab providers who are specialists in dealing with - and are trained in how to motivate people, we would be a lot better off. I'm sure this is the way sort of things are really needing to go. Regarding the model, whatever is done, the legislation needs to be sorted out first. In the timber industry we are basically in New South Wales but we cover South Australia, we cover companies that spill over into Victoria and also Western Australia and Queensland. So we see the legislation of all of those states. They are constantly coming and asking questions because they're a little bit different here, a little bit different there, and they certainly go on through that way. So they're just a few comments I'd like to make at this stage.

PROF WOODS: I much appreciate that. Thank you very much. That will now be

recorded in the transcript, so thank you for contributing.

MR MORTON: Thank you.

PROF WOODS: There being no other people who wish to make presentations I'll adjourn the hearings at this point and resume in Melbourne tomorrow morning.

AT 6.20 PM THE INQUIRY WAS ADJOURNED UNTIL
THURSDAY, 26 JUNE 2003

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