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TRANSCRIPT OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO NATIONAL WORKERS COMPENSATION AND OCCUPATIONAL HEALTH AND SAFETY FRAMEWORKS

PROF M WOODS, Presiding Commissioner
PROF J. SLOAN, Commissioner
DR G. JOHNS, Associate Commissioner

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON FRIDAY, 5 DECEMBER 2003, AT 11.30 AM

Continued from 4/12/03

PROF WOODS: Good morning. Welcome to the second day of the Sydney public hearings for the Productivity Commission inquiry into national workers compensation and occupational health and safety frameworks. I'm Mike Woods. I'm the presiding commissioner for this inquiry. I'm assisted in this inquiry by Prof Judith Sloan and Dr Gary Johns.

As most of you will be aware, the commission released its interim report on 21 October. In that report we set out a proposed pathway for reform and our terms of reference are available from our staff. Prior to preparing the interim report, the commission travelled to all states and territories, talking to a wide cross-section of people and organisations interested in workers compensation and occupational health and safety national frameworks.

We also held formal hearings throughout the country. We have received 200 submissions from interested parties. I would like to express our thanks and those of the staff for the courtesy extended to us in our travels and deliberations so far, and for the thoughtful contributions that so many have made in the course of this inquiry. These hearings represent the next stage of the inquiry, with an opportunity to submit any final submissions by Friday, 30 January, please.

The final report is to be signed by 13 March. I would like these hearings to be conducted in a reasonably informal manner but remind participants that a full transcript will be taken and made available to all interested parties. At the end of the scheduled hearings for each day, I will provide an opportunity for any persons present to make an unscheduled oral presentation, should they wish to do so.

I'd like to welcome to today's hearings our first participants, the Housing Industry Association. I thank you for coming and thank you for providing not only your initial submission but the supplementary submission which we received the other day. Could you please for the record state your names and the positions you hold in the organisation you are representing.

MR SIMPSON: Thank you, commissioner. My name is Glenn Simpson and I'm the executive director, industrial relations and legal services, for the Housing Industry Association.

MR KROON: Thank you, commissioner. My name is Ferdie Kroon. I'm the assistant director of compliance for the Housing Industry Association.

MS BROWN: Thank you, commissioner. My name is Marie Brown and I'm the assistant director, industrial relations and legal services, for New South Wales.

PROF WOODS: Thank you very much and thank you to the association for your

contributions during the inquiry. It's been very helpful, and we're very grateful for the work that you've put into it. Do you have an opening statement you wish to make?

MR SIMPSON: Very briefly, I do, commissioner. Firstly, we should say that the Housing Industry Association welcomes the interim report which has been issued by the Productivity Commission. We support the thrust of that report and we hope that the thrust of that report will be carried through to the final report. There are a number of minor issues which we would like to further address the commission upon, and I'll call on my colleagues to deal with specific aspects in a moment.

First, there are a couple of things I wanted to dwell on. We note that the commission has, possibly as a result of the large number of submissions made which touched on the topic, adverted to the issue of dependent contractors. We have a position nationally that we support contracting as a viable alternative way of doing work in an industry, as an alternative to employment. We don't believe that there is such a thing known to the law as a dependent contractor. It's a concept that comes from economics.

We take the view that the categories of contractors should not be needlessly multiplied, and that most of these people, when looked at correctly, are either employees or contractors, and we don't really believe that it's either necessary or desirable for the commission's final report to deal with this particular matter. It's not something that the report depends on in any way, and we would be sorry to see any additional credence given to something which we believe is a flawed concept.

Secondly, we were disappointed that the commission saw fit to not take up our suggestion of a safe haven for contractors in workers compensation terms. We believe that the control test which the commission has settled on is as satisfactory as any other, probably more satisfactory than some, but still has a problem of uncertainty, given that even if tests are specified in legislation with considerable certainty, nevertheless reasonable people applying tests which have a discretionary element, will come to different conclusions on the same factual material, and this is inevitable.

Our original suggestion, which was to take up the legislative scheme of the Queensland Workers Compensation Act, which focuses on the recognition of people as personal services business contractors for the purpose of the Income Tax Act - we ask the commission to reconsider whether it may not be able to see its way clear to including that as an additional category in the statements it makes at page 125, I think it is, of the draft report; that as a principle the commission should reconsider whether it might not recommend that there ought to be not only a test of who is an employee or who is a worker for workers compensation purposes, but a test of who

isn't, and for that purpose we believe that the Queensland approach, based on the tax status, is very helpful because it does give a knowable, commercially certain avenue for people certainly in our industry, but we would suggest in every industry, to be able to know what their status is, rather than having to have a reasonably certain view, but subject to what someone else may say at a later date and another place, and it's that uncertain element that's caused much of the not only confusion for business, particularly small business, but increased administrative costs for workers compensation authorities.

It is noteworthy that since Queensland has adopted the additional test - it's a new test but it's an additional test to the tests they already had - since they've adopted this new test, the workload for the Housing Industry Association in terms of members who came to us with problems with WorkCover has fallen away almost completely, and we understand that from Queensland WorkCover's point of view, they are also finding that their administrative problems in deciding who is a worker for workers compensation purposes have been significantly eased. So we believe that that is an area where the commission might profitably reconsider its recommendations in this area.

PROF WOODS: Reconsider or expand?

MR SIMPSON: Expand. Well, and as an additional item.

PROF WOODS: Have you got the report with you there?

MR SIMPSON: I have.

PROF WOODS: At page 115 we actually talk through the Queensland results test on codifying elements of common law, and there we're signalling that there's a way through. Is that not what you're looking for?

MR SIMPSON: Well, in our view, it ought to be elevated a little and made part of your recommendations at page 125.

PROF WOODS: So you're not unhappy with the treatment - - -

MR SIMPSON: So far as it goes, no; not so far as it goes.

PROF WOODS: Okay, but what you're saying is that you'd then like that carried through into the recommendations explicitly?

MR SIMPSON: Yes. I think that's what we are saying.

PROF SLOAN: I'm interested in this. I remember we did have a bit of a discussion about this because I was worried about a federal alienation of personal services income legislation in the sense that that legislation is designed to be answered by the workers themselves, and some of the various questions, the employer - and I'm using those terms in a very general sense - wouldn't necessarily know, like does that person work for another person. Why would an employer necessarily know that? The Queensland rules seem to be something that the employer could easily answer. Are you endorsing the Queensland rules?

MR SIMPSON: Yes, we are.

PROF SLOAN: Yes, and it's those rules that have led to the dramatic reduction in the confusion.

MR SIMPSON: Certainly from the Housing Industry Association's understanding, yes, that's right. I don't have any statement from Queensland WorkCover that I could put forward but certainly the case load that we had has fallen right off. We're not saying that you should embody a new results test. What we're saying is that you could accept that someone else - in this case, the commissioner for taxation - has made a decision or accepted tax on a self-assessment basis, and while that situation continues, then that is the status that the person should be accorded.

PROF SLOAN: Yes, just that those three dot points are only part of what constitutes the federal test. That seemed to us to be workable, and they were questions that an employer could reasonably be expected to answer. There are other bits of - whatever it's called - the alienation of personal services legislation which get a bit more complicated.

MR SIMPSON: No, I think what we're saying is that - - -

PROF SLOAN: So you take that snapshot and that's enough and - - -

MR SIMPSON: What we're saying is that you should accept the results of the federal taxation legislation and it doesn't matter how you pass the test. The Queensland legislation simply looks at the results test, as you say. In our view, it would desirable to look at the status rather than the particular test, but we're happy with the Queensland legislation. We think it's a substantial step forward. We urged them to go further, they chose not to, but it gets most of the way. But if you want to be a purist, the fact that you pass the unrelated clients test or the business premises test ought to also take there.

PROF SLOAN: There have been some problems with the federal one because, as I understand it, they will call you a dependent contractor if you happen to work for the

one employer for the year, so consulting engineers were getting roped into a status that they didn't accept at all.

MR SIMPSON: Well, with respect, there was legislation passed which had that consequence, that if you derived more than 80 per cent of your income in a given year from a particular employer or head contractor, then you needed to obtain a determination from the Taxation Office. HIA lobbied the federal government on that and subsequently the legislation was amended, so that the results test now is a self-assessment test which does not depend on receiving any particular proportion of income from a head contractor. So the 80 per cent requirement is no longer operative. That's really all I wanted to say.

PROF WOODS: Just to take that a little further, New South Wales making the principal contractor liable for workers comp premiums that subcontractors evade: where do you stand on that?

MR SIMPSON: We're opposed to that, commissioner.

PROF WOODS: But can you run through your argument other than just a blanket proposal.

MR SIMPSON: Marie, do you want to handle that?

MS BROWN: Can you just put the question again?

PROF WOODS: I'm seeking your line of reasoning for your objection to the New South Wales initiative that makes the principal contractor responsible for workers comp premiums that have been evaded by subcontractors.

MS BROWN: We say that the contractual relationship is between the subcontractor and any employees that they may engage. There should be no liability on the part of the principal contractor for those who are employed by others.

PROF WOODS: Purely on a control test?

MS BROWN: Yes.

MR SIMPSON: On a privative contractor.

MS BROWN: Yes.

MR KROON: Maybe I can add to that, commissioner. In WA there is a circumstance where we have section 175 deeming, and what that provides for is that

in circumstances where an employee of a contractor is not covered, that employee then has a right to seek compensation from the principal. It places the principal in the unenviable position, in our view, of: does he or she require workers compensation for that particular employee or not. Now, through contracts you can obviously overcome some of the problems associated with that, we're aware of that, but primarily the concept of, "Do I cover or do I not cover?" is an extremely confusing one, and what we're putting forward today would overcome that.

MR SIMPSON: I think the certification in New South Wales in an interesting attempt to resolve the difficulties of ensuring that premium is paid one way or another. Strictly speaking, it doesn't alter the liability, unless you fail to obtain the certificate that the premiums have been paid. There are a number of practical problems with this, and as I understand it WorkCover in New South Wales are grappling with those at the moment. We've been trying to advise our members about it.

Our main objection to it is privity of contract, that you can't get the people who should be paying premiums to pay, because they're multitudinous, they're small, they're hard to find when you need to find them, so you simply put everything on the head contractor and you have the head contractor do your administration for you.

DR JOHNS: I understand that, but what class of worker is left out under the Queensland rules? There are those who want to cast the net wide and are worried about those who escape, and there are those who want to keep the net narrow. Who is not being covered under Queensland, who might perhaps be otherwise? It's not necessarily a question for you, but - - -

MR SIMPSON: It's our understanding that the sort of people we were in dispute with the Queensland WorkCover about would be typically tradespersons who are working on housing sites, who have contracts to, for example, do the fibrous plastering for 20 houses, and they had a right to do that in their own time; they tended to do it for a fixed price; they had a right to employ other people to help them, and in some cases they did and in some cases they didn't; they had to do it by a certain date, but their working hours were up to them.

Inevitably when one of them was injured they would make a claim under workers compensation and we would be saying, "No, these are not people who are workers for the purpose of the Workers Compensation Act" - because they were running an independent business and it was common ground between the two parties that they were independent contractors and they wouldn't be there if they hadn't have been - "and this is an attempt to double-dip." Some of those we won; some of those we didn't.

DR JOHNS: It depended on the accident, I suppose, and whether it was caused by something on the site that was controlled by the principal builder?

MR SIMPSON: No, not at all. The only issue was were they a worker who should have been covered for workers compensation purposes, and in order to answer that question you needed to look at the contractual relationship, the documents, what actually happened, and it was often muddied by the fact that for one reason or another - often convenience but perhaps for other reasons - they obtained their material from the head contractor. So they turned up, they got their plasterboard from the company; they went out, installed it in houses; the company paid them for that, but deducted the money which was due for the materials, so at the end of the day they simply got a cheque for their labour. Those sorts of arguments were raised to suggest that they were in fact employees rather than independent contractors.

There was one case which was quite difficult, until we discovered that the person involved had actually employed other people to help them do the work, and that scuppered that particular case. But if we hadn't known that - and we only found that out by accident; when I say "we", the principal contractor found it out by accident - they may well have won. It went through about four or five negotiating sessions with WorkCover authorities and an internal appeal process.

DR JOHNS: When was the new test imposed?

MR SIMPSON: 1 July 2003.

DR JOHNS: We've only got six months to look at who's not sufficiently covered.

MR SIMPSON: That's right. But we don't really know whether it's the complete absence of complaint now is because WorkCover has stopped going around raiding building sites.

DR JOHNS: Yes. Well, if they agree to the changes, they don't want to undermine their own changes.

MR SIMPSON: Just so, and presumably people are still being unfortunately injured, but now it's a lot clearer.

PROF SLOAN: But the point about double dipping - and correct me if I'm wrong - is that when a rate is struck with a subcontractor, in a sense you're picking up all sorts of things, like implicitly their holiday pay and their recreation and arguably the insurance you would normally expect them to pay to cover injuries and income protection and the like.

MR SIMPSON: Yes.

PROF SLOAN: So for that purpose they're quite happy to be contractors and to perhaps get the taxation advantages, but then when they're injured they want to become employees. That's really the problem in your industry, isn't it?

MR SIMPSON: Absolutely - well, part of the problem. The other part of the problem is, when the plastering work runs out and they're told, "No, we've got no more work for you," they then turn around and say, "I was an employee. I've now been unfairly dismissed. I'll have severance and redundancy benefits and damages for unfair dismissal."

It wouldn't be so bad, but you can't offset any over-award - you can't look at the whole contract as it would have been in terms of the award payments that these persons should have received, because they may have been having an hourly rate, on that basis, much higher than the award, but that's simply assumed to be an over-award payment and then all the other award benefits are added on top of that.

So it's not just injuries; there are other instances of abuse in this area. Unfortunately, because people in the housing industry generally speaking go into it to build houses rather than fill out forms, the paper trail is not often as good as you would hope.

PROF SLOAN: I can understand that. Can I just go back to that New South Wales model though. On the face of it it seems relatively simple, but I suppose what they're trying to say is that you as the lead contractor shouldn't enter into arrangements with your subcontractors unless you are assured that they have the appropriate workers compensation arrangements in place.

MR SIMPSON: Yes.

PROF SLOAN: I mean, it's not the final liability vesting with the principal contractor seen as a kind of last resort. I presume they're trying to create a set of incentives to make sure that's capped.

MR SIMPSON: I think that's so.

PROF SLOAN: So what is the problem with that model?

MR SIMPSON: Well, there are administrative problems as to when the certificates are to be obtained and how they're to be obtained, and what effect this has in other areas such as payroll tax, which is also seeking to adopt a common definition. But from our point of view it's an attempt to transfer the administrative burden from

WorkCover to the head contractor, at no discount for the head contractor who has taken on this additional administrative cost.

PROF SLOAN: Is it also messy? I suppose with building, some people will come in for a short time and there will be different people, so - - -

MR SIMPSON: I think it's fair to say that whether it will work or not remains to be seen. The good people, with good administrative systems, who currently pay, will continue to pay. The people who don't want to pay or people with poor administrative systems who don't realise that they have to pay, may continue to not pay. So it remains to be seen how successful it is. Correct me if I'm wrong, Marie, but I think our main objection to it would have to be on the basis that it undermines privity of contract, and it's seeking to make the head contractor the de facto administrator, and it's just another instance of governments loading onto private individuals and commercial organisations functions of government, which took a huge leap forward with the GST, and it seems that other government agencies have seen this as an attractive model.

MS BROWN: And I think it's caused an administrative nightmare as far as the actual paper trail is concerned; it really has.

PROF SLOAN: Yes, because the principal contractor is really not well placed at all to know what's going on, I wouldn't have thought.

MR SIMPSON: They have to obtain a certificate. Now, how it's actually going to operate in practice, as I say, remains to be seen. We've been trying to get our members up to speed in terms of what certificate they need to get and when they need to get it. It's not as if the contractual process is well adapted to this, because there are, for example, things called period trade contracts, where a head contractor and a subcontractor sign an overarching contract at the beginning of the year which sets out the relationship between them, and then during the course of the year the head contractor can immediately contract the subcontractor and give them a job, and ask for a quote, and if they accept that quote then it's done at that price, but it's done incorporating all the contractual terms. Now, most of that is done over the telephone, and the reason we have this overarching contract is that the paperwork is taken care of.

PROF SLOAN: Yes, so that you're not forever recontracting.

MR SIMPSON: Absolutely. Yes, there is paperwork afterwards in terms of tax invoices and that sort of thing, but usually the work is done before the paperwork is generated. Well, under the new arrangements you'd need to sight a certificate from WorkCover before you were able to do that, or else you just accept the risk, and if

you need to get something done by Friday - the industry is a flexible and a productive industry, and to a certain extent this is an administrative burden which it's not well adapted to cope with. From WorkCover's point of view, as I say, I can see that it has many advantages; they can only win. Ferdie was going to have a few words to say about problems with the common law definition. Is it worth pursuing that in the light of what you've said earlier?

PROF WOODS: We're happy to go through it anyway.

MR KROON: Thank you very much. Commissioner, in our supplementary submission from pages 3 through to - - -

MR SIMPSON: Excuse me. Something I forgot to do in my opening statement is to apologise for typographical errors in here, some of which you have picked up, but I just wanted to draw your attention to one: page 3, halfway down, last dot point, "Whether the worker spends a significant portion of his remuneration on business experts". Obviously it should be "expenses", although workers do spend a lot of their remuneration on business experts these days.

MR KROON: What we've tried to do in these pages 3 through to 6, commissioner, is pick up on a couple of modern-day cases which have emanated out of both the Australian Industrial Relations Commission, and we've picked up on a full bench one out of the WA Industrial Relations Commission. We've tried to steer away from the well-established cases of Hollis and Verbu, Brodribb and those sort of ones, because in our mind they've been used a lot, they've pretty much been done to death, and it's important to get a grasp of what the current industrial status is in today's environment. That's what these two cases do for us.

The facts of the cases are there before you, but I'd just quickly like to draw your attention to halfway down page 4 where it talks about Mr Abdallah being a travel consultant, and identifies some of the factors that link into an employment relationship existing. Those include various references to employment, the lodgment of an employment declaration, use of the term "casual employee", Mr Abdallah used the respondent's office equipment, provision of the Travel Agents Act and existence of business cards.

Over the page you have the other side of the coin, if you like, those sort of factors that say, "Well, hang on, is this individual an independent contractor?" The first sentence though after those dot points on page 5 is the key: "The key aspect of the case as determined by the commissioner was a lack of control." Looking at those factors, in our view it would be possible for someone to say, "Well, maybe there is control. Maybe there is a circumstance there where an employment relationship does exist." In this particular situation the full bench of the Federal Commission said, no,

it didn't. Whilst we agree with the decision, obviously at the end of the day it's a subjective one, and it's something that could be easily overturned in either appeal, or maybe a different single commissioner might have reached a somewhat different decision.

The same concept applies to the Ryder v Beaulieu of Australia Ltd case, which commences halfway down page 5. The particular interest here was that Mr Ryder, the applicant, even went as far as forming a company, even went as far as setting up all the business aspects, I suppose. But the full bench in WA said, well, no, that was just a tax amelioration vehicle; at the end of the day this person acted like, looked like, smelt like an employee, therefore was an employee. Again, a subjective call. Whether it's right or wrong depends largely upon who's making the decision at the point in time and what facts are relevant.

We've brought with us today, and we'd like to table that now if we can, the revenue ruling out of the Office of State Revenue in WA, and this the PT6 revenue ruling. I've got five copies there.

PROF WOODS: That will be incorporated into the record.

MR KROON: Yes, please. With respect to this ruling, I think mid last year, the Office of State Revenue decided to attach an addendum to this ruling, and that commences after page 7, and that's the particular document we'd like to make reference to. Can I quickly add, commissioner, that HIA were not involved in the development of this addendum, and since it's come out, which was in November 2002, there's been a significant amount of correspondence between us and WA's Office of State Revenue.

Nevertheless, the purpose of raising this document today is to just highlight some of the implicit problems with control. Specifically I'd like to draw the commission's attention to paragraphs 7 and 8 on page 2 of that addendum. I'll just read out a couple of the moot points there. Obviously the features of relationship are mentioned in paragraph 6. However, none of these reasons on their own would provide sufficient grounds to conclude that the worker is an independent contractor and on this basis to omit payments to such a worker from payroll tax calculations. In terms of whether payments made to a worker should be included for payroll tax purposes, it is necessary to examine the complete working relationship between the business operator and the worker and the decision to include or omit cannot be made on the basis of only a few features of the relationship. I'd just like to pause there for a moment, if I may. Earlier this morning we discussed briefly the aspects of the Queensland test. Specifically there were three items there.

PROF WOODS: Just doing a double-check against them. Yes, carry on.

MR KROON: The establishment of those three items says to the Queensland WorkCover Authority, "Yes, we're happy. This person, for the purposes of our legislation, is an independent contractor. They have a personal service and business determination." Contrast this with items 6 and 7, specifically item 6 where there are 10 factors. We start to get a little bit more confusion; a little bit more subjectivity creeps in on making a decision on each of those factors. I add there the first sentence of paragraph 8, "Some of these factors may suggest that the relationship is one of employer-employee while other factors might suggest the contrary." So instead of balancing three items, we're balancing 12. In some circumstances, it might be seven one way and five the other, so the completed option of the control test, whilst it's - we're not here to hammer the control test. We're just here to highlight some of the shortcomings, I suppose.

PROF WOODS: Interestingly, the first and third of the Queensland don't seem to be in the dot points of 6.

PROF SLOAN: One of it is taken up in paragraph 11.

PROF WOODS: I see. I hadn't looked down that far.

MR KROON: They actually do pick up on the given result later, commissioner.

PROF WOODS: Yes. My colleague, who read a little quicker than I, found it in paragraph 11.

MR KROON: Can I just quickly continue with the document? There are some other examples there which I'd like to draw out, specifically on page 3 of the addendum and the examples at the top of the page. This was one that we've argued quite strongly about, the third paragraph within that example box, where it talks about the construction company engaging a landscaper. It says there:

> Engages a landscaper to carry out the landscaping required for the building for a fixed fee, $10,000. The landscaper has entered into a contract to produce a given result for a fixed fee.

We don't have a problem with that. But in our industry there are many circumstances where the contractor might go out on site - the bricklayer, for example. He or she has the responsibility of laying those bricks. They might get paid a per-thousand rate or they might get paid an hourly rate. There's still a given result. At the end of the day the concept of whether it's a fixed rate or an hourly rate to us is irrelevant. It should always be a given result. The Office of State Revenue actually distinguishes that and says if we're working for an hourly rate scenario, then

the level of control is greater. If the level of control is greater, the question of whether the individual is a contractor or an employee comes into play.

PROF SLOAN: I think that's a fair point. You know yourself: the thing is, if you can specify with some precision ex ante what you're going to get for your $10,000, well, go for that kind of arrangement. But if you want to kind of play it along and perhaps be a bit more flexible, you might go for a different payment arrangement.

MR KROON: A classic situation there, commissioner, using a specific industry example, is tuck pointing, where you're going back onto a site to finish off a certain amount of brickwork or to restore brickwork. You'll find it very difficult for a contractor to come on site and quote that, absolutely quote that.

PROF SLOAN: Yes. It's better to just run informally.

MR KROON: Call it an hourly rate and away you go.

PROF SLOAN: Isn't that true with bricklayers normally, that they'd be paid on a per-brick basis anyway? That's normal.

MR SIMPSON: Yes, it is, commissioner, but again there would be an understanding between the parties that it's to lay a number of bricks which, if not knowable to the exact brick, has a ballpark figure. It's not a contract to lay bricks until they tell you stop laying bricks. It's a contract to lay bricks until the house is done. We see that the former, to lay bricks until they tell you to stop, is a contract of employment. The latter is a business. You're running a business. You're taking commercial risk. You'll lay the bricks. If they have to be all pulled down, then you'll re-lay them at your expense. That's the difference.

That's the commercial risk and we say there ought to be a channel for people to do work as a business and that ought to be recognised; and one of the places it should be recognised is in the workers compensation legislation - that you are running a business. You should have access, if you wish, to take out a workers compensation policy or to take out sickness and accident, but nobody should be compelled to cover you because you're a businessperson.

DR JOHNS: I suppose the problem here is that the offices of state revenue want definitions that will produce revenue.

PROF SLOAN: They want revenue.

DR JOHNS: As will the WorkCovers of the world, but you people don't want to have too many ropes put on you.

MR SIMPSON: Can I just mention something? The New South Wales Office of State Revenue and WorkCover are currently working together to come up with a joint definition. Marie and I spoke to the Office of State Revenue last Friday out at Parramatta. Apparently there's a paper shortly to be issued about a common definition, so yes, there is this tension between WorkCover and OSR. They have different objectives.

DR JOHNS: No, I'm saying the objective of all these regulators - - -

MR SIMPSON: Is to have the largest net with the finest fish.

DR JOHNS: - - - is to have the largest net. That list presumably will grow over time.

MR KROON: Commissioner, can I though add, in our supplementary submission to you we highlighted in our alternative insurance arrangements paragraph that we were comfortable with the concept of a contractor, whether he or she be a sole trader, partnership or company, being in a position to obtain their own workers compensation for themselves. We're comfortable with that concept. So it's not like we're trying to take money out of the premium pool. What we're saying here is, "Let's look at the privative contract and limit it to that concept," I suppose, as well as the results test and the PSB determinations.

PROF SLOAN: Can I also make the point that I would have thought in your industry subcontracting has always been the key feature.

MR SIMPSON: That's true.

MR KROON: It's a key to affordability.

PROF SLOAN: When you think of the bits and pieces that make up building a house, it's undertaken by subcontractors and has been done for a very long time.

MR SIMPSON: That's true.

PROF SLOAN: So in a sense you're kind of caught up in what has perhaps been the extension of contracting in other industries without necessarily much reference to your industry.

MR KROON: Absolutely.

MR SIMPSON: Certainly there are a number of public agencies who are

concerned about the extension of the housing industry model, if I can call it that, to other industries where traditionally it has not been used. I know that the Taxation Office are concerned because of self-assessment, that these people are claiming business deductions to which they may or may not be entitled. The Taxation Office just basically doesn't know.

So, yes, there is a capacity to convert relationships that were employment into contracting without substantially changing their nature; but we would say that under those circumstances, they're almost always still employees. In our industry it has traditionally been businesses of subcontractors, people who want to make money by taking commercial risks. Ours is not the only industry where this is done, but it's certainly been that way at least since the 1930s.

PROF SLOAN: Can I just follow up on that point, too. I hear what you say, that you're happy to see everyone covered adequately for some sort of compensation in the event of injury, however that's organised; but you don't want arrangements which impose high transaction costs because you're an industry which presumably has relatively low margins. Someone has to bear those transaction costs.

MR SIMPSON: Yes, that's certainly true, commissioner. The housing industry, unlike the commercial construction industry, has clients with very fixed amounts of money they can spend. Anything that reduces housing affordability we would be strongly opposed to, and high transaction costs - I suppose all of the things I have in mind are transaction costs from the economic point of view: surprise visits from public agencies wishing to have five years' back taxes from you, adverse rulings by courts which mean you're suddenly subject to payouts for workers compensation that you didn't think you had to take out; all of those sorts of things; the commercial risks that you didn't know you were running, and therefore couldn't price. The industry will price any risk, but we have to know what the risk is.

MR KROON: There were two more points that I just wish to draw out of this document, if I may. Again on page 3 where it talks about labour-only components - can I quickly add, the Office of State Revenue deem labour-only to be a big control factor. In the examples box, towards the bottom of page 3, the last example there where it talks about the electrical contracting company, it says there:

> Engages electrician to install security alarm systems for its clients. The company provides all of the materials required for each job. The electrician collects the materials, takes them to the client's premises and installs them. Although required to use his own tools of trade, the electrician is essentially providing labour only.

That's a big ouch for us.

PROF SLOAN: Does that last sentence make sense: "Although required to use his own tools of trade"?

MR KROON: We've actually written back with major concerns for this particular example, but if you think it through logically and compare it to the housing industry generally or the residential construction industry generally, a large proportion of contractors are doing just this. The principal provides the materials, but it doesn't mean they should fail the control test.

PROF SLOAN: I just think that last sentence doesn't make a lot of sense, does it?

MR KROON: Yes. It doesn't mean they should fail the control test at all. In our view, if that electrical contracting company passes results or has the business in place, whatever the case may be, there shouldn't be a question of control at all. The last point I'd like to raise is just on the next page, in paragraph 18. This is just a general comment by the Office of State Revenue:

> However, in this context the issue to be considered is whether the business operator has the right or authority to exercise control or direction over the worker, not whether such control is actually exercised.

Again I'm going to pull that back to the residential construction environment. Supervisors wander round on building sites. They provide some aspect of control. They might provide a varied plan. They might provide a variation, instead of, "Can you do this or that?" There is the right and authority to exercise control. The builder has that right. The subcontractor has that right over his or her contractors. Yet why should that be a failing point for control? In accordance with this document, it's something that would raise the ire of the Office of State Revenue in WA. Again, they would have to consider it in amongst all their other factors, but there's a big red flag up there straightaway.

What we're saying is, "Go back to the Queensland model. Go back to the APSI model generally, apply those tests, and you won't have the same level of subjectivity. You certainly won't have the same level of confusion." That's, I suggest to you, our major argument in our supplementary submission. We've argued strongly in our initial submission on deeming. Unless you'd like me to tackle that a little bit further, I'll - - -

PROF WOODS: It does provide certainty, doesn't it - deeming?

MR KROON: I thought you meant in Queensland.

PROF WOODS: No. I said deeming provides certainty.

MR KROON: We would argue that deeming - - -

PROF WOODS: You may not like the certain outcome.

MR KROON: Yes.

PROF WOODS: But it does provide certainty.

MR KROON: I think the issue about certainty with deeming - we look at it the other way. What it says is, "If you've got two parties that have gone to the length of establishing a subcontracting relationship, why should someone come along and take that off them?" By way of background, my involvement in HIA has been as a field industrial advocate for many years. I've been in a number of circumstances where the Industrial Commission has come in and taken that away, or the union has come in, if you like, and advocated for it to be taken away and the end result has been back payment of wages, all those sorts of circumstances that my colleague has referred to earlier, and it has put businesses out of business. That is our major concern. If the efforts are being made, then please recognise those efforts. Don't throw deeming in just to undermine.

PROF WOODS: No, although the deeming would be known before they constructed their arrangement or any future arrangements. If they choose to try and construct an arrangement knowing what the deeming provisions are, then I think the risk befalls them.

MR KROON: But then we can also counter-argue to that, and that is within any state of Australia there currently may be six or seven different pieces of legislation or six or seven different deeming circumstances - - -

PROF WOODS: Go back to the national framework.

MR KROON: They mightn't know that they've opted out of a certain deeming arrangement and into another one.

PROF WOODS: Anything else? Where do you want to go from here?

MR SIMPSON: Marie has a point to make about the access to common law.

MS BROWN: Yes. This is on an entirely different aspect. In our submission we referred to the common law access and the statutory benefits. Just a few comments on what we put into our submission: basically that HIA has a view that common law

access for workers compensation, as we've said here, is time-consuming, it's expensive, and basically our position is that we prefer the statutory approach as a means of recompense for an injured worker, that approach being far preferable than common law access. We've also drawn the attention of the commission to the fact that not all states have common law access and that those differences that exist might make it problematic if there was an adoption nationally of the scheme.

PROF WOODS: You don't seem to be winning the hearts and minds of the Australian Law Council or others on this matter.

MS BROWN: Perhaps just to add to that: I've obviously been in arguments on this issue a number of times, and it always seems to me that the promise of a lump sum payment of money is something of a disincentive to rehabilitation.

MR SIMPSON: Yes, and we've had other expertise that has testified to the same effect.

PROF WOODS: In terms of our treatment of common law in our draft report, are you therefore happy to support the approach that has been adopted to this point?

MR SIMPSON: Yes, we are.

MR KROON: Commissioner, just one final comment we want to make with respect to our supplementary submissions in respect of dispute resolution. HIA at the policy level has always been supportive of ADR - alternative dispute resolution - mechanisms. Therefore, what is in your report certainly meets well with our policy position.

PROF WOODS: Very good. We don't seem to have had anyone objecting to that particular piece of our analysis. That's quite good. Thank you for that. We appreciate your support for it. Any matters that you want to raise that we haven't yet discussed?

MR SIMPSON: No, commissioner. I believe that's everything.

PROF WOODS: Colleagues?

DR JOHNS: No, thank you.

PROF WOODS: Thank you very much for your participation. We will have a brief adjournment.

PROF WOODS: Next participants, Crane Group. Could you please state for the record your name, the organisation you are representing and any position you hold in that organisation.

MS WESTDORP: My name is Grace Westdorp. I work for the Crane Group Ltd. My position is group manager, workers compensation and occupational health.

MS PATTERSON: My name is Joanne Patterson. I also work for Crane Group Ltd. My position is New South Wales injury management adviser and occupational health coordinator.

PROF WOODS: Thank you, and thank you for coming along to our inquiry. We are interested in understanding the motivations and interests of organisations in becoming self-insurers under some form of national framework, and we would be interested to hear about the circumstances of the Crane Group, if you could talk to us please.

MS WESTDORP: Currently Crane Group is insured in each of the jurisdictions under the various schemes and insurance arrangements. We have, in Australia, about 3 and a half thousand employees in every state and territory, so trying to juggle those jurisdictions is quite a feat on its own.

PROF SLOAN: Are they all in the one industry?

MS WESTDORP: No. Crane Group manufacture extruded metal products, extruded plastic pipe for the building industry and then distribute it through their organisation, Tradelink stores, for retail plumbing supply.

PROF WOODS: Which you also own - - -

MS WESTDORP: All of those, yes.

PROF WOODS: So you're both a manufacturer and a distributor - - -

MS WESTDORP: Distributor.

PROF WOODS: - - - and retailer?

MS WESTDORP: Yes, so all of those things. Because of the mix of our business, the various states have different requirements for workers compensation for people who do get injured and it is, as I said, quite a challenge to keep on top of all of that. At this point we're not in a position to become self-insured, but it is something that the company is interested in looking at.

PROF WOODS: Sorry. What's preventing that? If you've got 3 and a half thousand employees and you've got manufacturing sites in a couple of states, presumably you meet the minimum employee number.

MS WESTDORP: We would meet the minimum in New South Wales, but we're not particularly happy enough with our performance to be able to go into self-insurance at this point. We want to improve that before we would undertake something along those lines. So as I say, to be able to manage workers compensation and injury management, get the best outcomes, from my perspective a national system would be a much better arrangement.

At the moment we have local people in each of the states looking after return to work and injury management, along those lines, and also dealing with the insurer in each state and trying to manage the claims that way, but to be able to just have one system where you don't have differences between the states would really make life a whole lot easier and a whole lot better for people to understand as well.

I think from my perspective there is quite a difference in the level of benefits that the various states pay. Queensland is not particularly generous in how they go about compensating people, but they are the only state, as you know, that are in the black, so maybe they're doing something right. Really, yes, from our perspective, to be able to get to self-insurance on a national level would really assist our company, I think, greatly.

PROF WOODS: You talk though that you're happy to be a premium payer at the moment; however, your performance isn't up to the level you want.

MS WESTDORP: Yes.

PROF WOODS: Is that because you're sort of laying off that risk against the pool in general, whereas you'd then want to, once you're a self-insurer, be satisfied that you've brought your cost structure down. What are the impediments there? That seems entirely within your own control.

MS WESTDORP: Yes. From our business perspective, Crane Group has been very much in acquisition mode in the last few years, so that we have added on various parts of the business and trying to get some consistency in our - safety management is something that we're really having to work at, so until we're in a position to be able to do that - you know, you have to insure, so we're insured in that scheme, but this is something to - because it is really taking control of your organisation in a very positive way, to be able to say, well, we're prepared to meet all of our risks. So it's moving that way along down the chain, to sort of get to

self-insurance, and really I don't think we would have the numbers, in other than New South Wales, to get to a self-insurance level.

PROF WOODS: Unless it was a national one, whereby having 3 and a half thousand nationally, and if you met the prudentials and the occ health and safety standards and the like, you would meet those needs.

MS WESTDORP: Yes.

PROF WOODS: So it's both having to understand and comply with the workers comp in terms of injury management, benefit payments and the like, presumably even premium payments, to understand what your different payroll structures are.

MS WESTDORP: Yes.

PROF WOODS: But also on occ health and safety, or is it less of a difficulty? Where's the relative weighting in terms of the effect on you of having to comply with the different requirements?

MS WESTDORP: The safety side of it is not - well, my view is that it's not as difficult as trying to keep up with workers comp, because we have a health and safety management system which is based on the Australian standard which sort of covers off most of where the legislation sits anyway. So we have a management tool to be able to use that in all the various states. There are still requirements in each of the states for specific things, like blood lead testing and those sorts of things, that are different from state to state. You still have to keep up with those things, but generally it is easier, because there's a generic format you can lay across any state or territory, and you would be pretty close, apart from the odd quirks in their specific requirements.

PROF WOODS: Okay. So the core is substantial in occ health and safety, but with the odd exception that you still have to keep track of and ensure that you're complying with, whereas in workers comp they're all vastly different?

MS WESTDORP: Yes.

DR JOHNS: Sorry, did you say it was a blood lead - - -

MS WESTDORP: Blood lead level.

DR JOHNS: So there's a measure in Victoria that's different to New South Wales?

MS WESTDORP: New South Wales.

DR JOHNS: Victoria's would be a tougher test, no doubt.

MS WESTDORP: Yes.

PROF WOODS: That's very incriminating.

DR JOHNS: Yes.

MS WESTDORP: Victoria is always leading the way with being tough.

DR JOHNS: Yes. So presumably you have to apply the highest test in one, and you run that across, or you would make that your standard?

MS WESTDORP: Well, it's quite different in Victoria to what it is in New South Wales. In New South Wales I think it's every six months or along those lines, depending on what your monitoring is at, but then when you're in Victoria, again depending on what your monitoring is at, you might have to do it every three months.

DR JOHNS: So, what I'm saying, Victorians are less tolerant of workers' exposure to lead, say, and you build in a certain safety environment for them in Victoria.

MS WESTDORP: I sort of see where you're coming from. No. The standard to which we have our employees work when they're doing lead-risk products would be similar across all the states, but the biological monitoring requirement for the legislation is different in each state, so it's the same but different.

PROF WOODS: So you'd rule out the highest protective standard.

MS WESTDORP: Yes.

PROF WOODS: But you might then have to do different monitoring?

MS WESTDORP: Then the monitoring is different.

DR JOHNS: So you're only going to have to jump this high in one state; presumably you'll write a system that will cover that?

MS WESTDORP: That's right.

DR JOHNS: Yes.

PROF SLOAN: This is quite an important point for us, in the sense that from your

company's point of view the fact that there are all these different regimes in workers compensation poses much greater costs on your company than the fact that there are different regimes in occupational health and safety.

MS WESTDORP: Yes.

PROF SLOAN: Which is not to say there aren't some costs in occupational health and safety. It seems to me you'd always have to be vigilant of those little differences.

MS WESTDORP: Yes, and it's again with the local people within the states. We sort of rely upon those people to keep up with what's going in their state, but then we have the management system which is generic across everything, and then the variances come from state to state.

PROF SLOAN: That was our guess, really, that there are differences in costs between the two things.

PROF WOODS: Yes. We've had others, like Optus and that, who have also said that for occ health and safety they pick whatever is a standard that will meet all of them, and again drawing attention to the Australian standard, and then rolling that out. But it would still obviously be beneficial to you if you could get a single uniform occ health and safety system.

MS WESTDORP: It would make life so much easier.

PROF WOODS: Yes. Okay. But in terms of the costs and complexities to you, the emphasis is on workers comp - - -

MS WESTDORP: Yes.

PROF WOODS: - - - which is more problematic to actually solve, as we find it, other than offering a national alternative for self-insurance. I had a challenge put to the commission yesterday by a union group who said, "Well, if you were to propose an alternative national workers comp arrangement, yes, that provides benefits to employers," and I said, "But it would provide benefits to employees because then they would all be subject to the one company culture of rehabilitation and injury management and benefit payments and the like." They said, "Well, where's the evidence for that?" Is there any evidence for that? From your employees' perspective, how would they benefit from having one company standard on injury management?

MS WESTDORP: We pretty much have a company standard on injury management. We're quite proactive in management of our people who are injured.

New South Wales certainly makes it a whole lot easier to be able to do that because they have provisional liability, so people are covered straightaway. There's not the angst about the payments, so they're likely to be more cooperative because they know they're being covered for whatever is going on, whilst the liability is being determined.

But also in relation to injury management, if you need a new opinion in relation to somebody's progress through their rehabilitation, you can arrange that appointment with an injury management consultant and the employee needs to attend that, and can do that at any stage along the path, whereas if you're in Victoria you, as an employer or insurer, can only do that once every three months, and that's a huge amount of time in between when you've had one opinion to the next opinion, and so therefore you're reliant just on, like, a treating doctor's report, and sometimes that just doesn't go in the right direction.

So we try and encourage people, and quite strongly in some cases say to them, "We want you to go," but the legislation in Queensland and Victoria and those sorts of places doesn't really support what we're trying to do in relation to getting sound injury management and progressing people back to their pre-injury job. So it is easier from an injury management perspective in New South Wales than it is in the other states.

PROF WOODS: So if you could roll out a common culture of that nature across Australia - - -

DR JOHNS: As long as it wasn't the wrong common culture.

PROF WOODS: That's the concern of the various parties.

DR JOHNS: You can only take him to the doctor once every three months.

PROF WOODS: If it's a race to the bottom, if you roll out a system that's got the least generous benefits, is the most restrictive, et cetera - - -

MS WESTDORP: Then you're going to upset the - - -

DR JOHNS: The most restrictive, yes.

MS WESTDORP: It's very much about educating our employees that this is for their benefit; that we are trying to get the best injury management. We're sending people to specialists in relation to injury management. This is why we're doing it. What we need to consider when we do that is that a lot of the time, if there have been other issues in industrial relations, those sorts of things, then the view can be that,

well, you're just trying to skimp on costs or you've got some other reason for what you're doing, and we're trying to step back from that, saying, "This is what we want, because we want you to get better, because we need you to go and seek expertise." It's constantly educating people and trying to keep out of whatever else might be going on within the organisation. You would know that as well, but that definitely affects how you go in workers comp.

PROF WOODS: Yes, there are many agendas all brought in together.

MS WESTDORP: Yes.

PROF SLOAN: What's been the record of the Crane Group? Obviously if you're acquiring various bits and pieces, that's always a challenge in itself, isn't it?

MS WESTDORP: Yes, to keep trying to bring people up to the level which we see is acceptable.

PROF SLOAN: So has this traditionally been a problem area for your activities?

MS WESTDORP: Which? Just the general education?

PROF SLOAN: Well, for workers compensation claims or occupational health and safety.

MS WESTDORP: Yes, it is - - -

PROF SLOAN: The unions paint a fairly dismal view of this.

MS WESTDORP: Well, it is, but the thing about organisations, not just my organisation, is that the legislation changes and then you're trying to meet up to the legislation, the latest lot of changes in New South Wales. It's all very much based on self-assessment, based on a risk assessment. No organisation is perfect, but you've got to keep moving towards doing that and trying to show that progress, to show people that you actually are genuinely interested in creating a safe workplace. So it's a journey; it's not a destination. Just keep moving down the path, and moving as the requirements change, and setting your own standard.

PROF WOODS: What is your experience with Comcare? Do you have an understanding of Comcare and its benefits?

MS WESTDORP: Not a huge understanding. Really, I guess, my point from an earlier discussion was when you read the various professional publications that come out in the journals and those sorts of things, when they make reference to the

Comcare system, it's a bit like South Australia; it's really pretty easy in South Australia. You know, you only have to just be at work and you're on the workers comp system if something happens to you. It seems to be when there's a challenge under the Comcare system, pretty much always the claim gets put through, when it comes to a tribunal or hearing or whatever - those sorts of things; the things that, from my experience of New South Wales or Victoria or other states, would not necessarily get through under those rules.

I don't know specifically about their benefit structure but just in general conversation with some other people who we use as consultants, they were talking about someone who had come out of the Comcare system into whatever the states were, and they were a whole lot better off financially than had they stayed under the Comcare system.

PROF WOODS: Anything else that you'd like to draw to our attention?

MS WESTDORP: Yes. With the catastrophically injured people, I just don't see that any of the systems take care of people who are catastrophically injured.

PROF WOODS: Common law? Does that look after them?

MS WESTDORP: No.

PROF WOODS: Give us your views on the common law and then we'll get back to the catastrophically injured.

MS WESTDORP: My view on common law is that - well, they're together. If you're catastrophically injured, then I think you probably should be able to access common law. Until recently particularly, New South Wales was always our largest cost. The largest part of our organisation is here but also prior to the last round of changes it was becoming an epidemic of people going to common law for things that really shouldn't have gotten over the threshold. A lot of people were getting money which probably they shouldn't have been getting, or to an amount that they shouldn't have been getting.

But for people who are catastrophically injured, the current benefit systems in any of the states don't take care of them. They get to a certain point, there's a step down or there's a limit to the amount of benefit they can get, depending on what state you're in. If you can never work again, you're not being taken care of at all, so my view is that perhaps if you could never work again, yes, maybe you should be able to access the common law system to get some sort of general damages amount, but as far as future economic loss payments, I think that would be better served to be done in structured payments over time, rather than in a lump sum.

PROF WOODS: Just from experience with workers who have had access to a large lump sum?

MS WESTDORP: Yes. Generally, the people that I've known about, we don't really know what happens to them after the hearing date and how well they do after that, but my feeling is that a lot of people don't know how to manage a large amount of money, and it's taken years to get to a lot of the time as well.

PROF WOODS: So the delay in getting the lump sum is part of the problem, and then how to manage the lump sum?

MS WESTDORP: Yes, because they're on statutory benefits or whatever they are, and then statutory benefits are not very generous, and if you've got a family or a mortgage and those sorts of things, it's incredible pressure on your family to try and maintain some reasonable level of existence that might have happened before; plus you're dealing with significant injury and recovery from that. That's, I guess, my view of it.

PROF WOODS: So you'd go a structured settlement route if there was common law as part of that?

MS WESTDORP: Yes.

PROF WOODS: But the alternative would be longer tail statutory benefits as an alternative? In Queensland, five years and you're off, Tasmania 10 years and you're off, if you can't prove negligence, but you still may be catastrophically injured.

MS WESTDORP: Yes.

PROF WOODS: So your argument there for that group would be to look at adequacy of economic support?

MS WESTDORP: Yes, for the people who are really injured, genuinely really injured. They don't get looked after well enough under any of the schemes.

DR JOHNS: Is this a real example you have in mind, this Queensland head injury which took four years? Do you know if it took so long because of the nature of the injury and it took a long time for the condition to settle and stabilise and so on? There are those sorts of circumstances where it's no-one's fault. You have to wait until you can assess the person.

MS WESTDORP: Yes. It was a lot of trying to figure out exactly what was the

maximum medical improvement for that individual because it was very difficult, but in amongst all that, the running of the common law claim wasn't very fast either - you know, months going between, and then you get various doctors' reports and then more time goes on. It wasn't very expedient, and I think in retrospect the level of impairment for that individual was probably apparent 18 months, two years down the track. Four years on, he was no better than he had been prior - - -

DR JOHNS: He would have received some payments from WorkCover.

MS WESTDORP: He'd received some - - -

DR JOHNS: And then basically you're in this waiting game while the injury stabilises, which is a medical - I'm not arguing the case either way. Sometimes these things are terribly frustrating but you can't - - -

MS WESTDORP: Well, you don't want to rush in and make an assessment too soon.

DR JOHNS: No, you can't.

MS WESTDORP: I agree.

DR JOHNS: Because you can undercook them. You can say, "Well, we think this person has settled," and you settle monetarily on that basis.

MS WESTDORP: And they get worse.

DR JOHNS: And they're a lot worse.

PROF SLOAN: You can overcook too, though.

DR JOHNS: That's what I mean, so I don't automatically say that delay is caused by a particular system.

PROF WOODS: Anything else you'd like to draw to our attention?

MS WESTDORP: That's about it.

PROF WOODS: That was very useful, thank you. Much appreciated. We will resume at 2.15.

(Luncheon adjournment)

PROF WOODS: Our next participant is Injuries Australia. Could you please for the record state your name, the organisation you are representing and any position you may hold.

MR TAYLOR: My name is Robert Taylor and I'm a substitute for George Cooper, who sends his apologies. He's not here because of illness in the family. I accepted to come here at very short notice and I just typed up a couple of things before I came here.

PROF WOODS: It's good to see you again. How are you? You are well?

MR TAYLOR: Yes, thank you.

PROF WOODS: That's good.

MR TAYLOR: There are just a few things I would like to say.

PROF WOODS: Yes, please.

MR TAYLOR: George has prepared a number of documents which he had hoped to introduce and speak to, and I understand he has phoned the commission in Canberra to explain that he would like to send the material in and perhaps have a telephone call or something to explain how it hooks together and the background of it.

PROF WOODS: We also have this further submission from Injuries Australia, so we do have some material already.

MR TAYLOR: Yes. I haven't got that.

PROF WOODS: That's all right.

MR TAYLOR: It's only from some brief conversations with him. There were some things that George and I have been speaking about. We have focused primarily on New South Wales because that's where the majority of members are, and that's where my experience is. Injuries Australia exists because the system isn't functioning optimally or very well and the agencies tend to believe that injured workers are best represented by the union representatives. Well, it's despite the best endeavours and actions of the unions that Injuries Australia does exist, and it feels that it has a closer link to people whom the system hasn't served well than the unions, and can speak, drawing upon individuals' experiences and explaining how problems do emerge.

The feeling is that there's been such an emphasis on injury management, and on paper everything looks fine, but there was a case which came to my attention where a person had fallen down steps and injured their leg. Their doctor had wanted an MRI scan, which costs about $150. They received numerous calls from the insurer telling them not to go back to work until things were fine, but it took three weeks or a month for the approval for an MRI to come through. I don't think Injuries Australia promotes wanton expenditure of money, but if a specialist says that he needs something for his diagnosis to be informed and reasonable, there should not be any impediment like that. The person actually returned to work before this test could be carried out. It's a bit of nonsense which is in the system. There is a lot of communication from the insurers to injured workers, but unfortunately it doesn't seem to be followed up with effective action.

One other thing which is a concern for Injuries Australia is that there are many doctors who charge an addition to their normal schedule of fees for people who are involved in accident compensation cases. There is an organisation, Big Bear Medical Centre at Neutral Bay, which hands out a document saying - people have to understand this, I suppose - that they are charging a premium on their services for people subject to injury claims. I think it's only appropriate that there's one fee for each particular service. If they have to fill in reports and make additional reports, certainly they should get remunerated for it, but I don't think there should be any differential cost for a person who recreationally is involved in an injury which breaks their leg, and somebody at work or in a motor accident.

It seems that the schedule of fees for the panel doctors to give medical reports is extremely generous. There is a perception that this may somehow influence the doctors to perhaps be - one can't say biased, but predisposed to the person who's paying the fees rather than giving an absolutely objective assessment. One rule seems to be the best system that fits everybody and - - -

PROF WOODS: Does that mean workers benefit by having doctors who take their side in the process?

MR TAYLOR: Well, no. I'm sure the insurers and the workers compensation authorities would say they don't want biased reports, but in practice whoever pays the bills may unconsciously receive some beneficial treatment.

PROF SLOAN: Just on that point about the higher schedule fees for workers compensation claim patients compared with others, I think traditionally that had something to do with the fact that it took a long time for the doctor to get paid by the workers compensation authorities and therefore there was some sort of loading in it for that. Now, I understand that that kind of delay has been perhaps not eliminated but certainly reduced.

MR TAYLOR: How the system functions is, Medicare is involved in paying the claim, the injured worker pays whatever is the addition to the schedule fee, but if there is a delay it's certainly not because of the injured worker and it's up to the authorities to - - -

PROF SLOAN: No, I'm not saying it's anything to do - - -

PROF WOODS: It used to be the bureaucratic system.

PROF SLOAN: Medicare does not pay the medical bills, you see. This is quite separate.

MR TAYLOR: No, but initially.

PROF SLOAN: Well, maybe.

MR TAYLOR: There's a recouping.

PROF SLOAN: Maybe.

MR TAYLOR: When the claim is settled, the injured worker has to recoup. It's undecided whether it is a work injury or there may be a court case involved. I think that New South Wales agencies pay all their bills within 90 days and I think agencies boast in their annual reports that they are well within this period. If there's an intermediary between them - the insurance company - I see them as merely agents for WorkCover or the other agencies involved, and whatever problems there are, there are efficiencies that can be made there and it shouldn't result in higher fees in the system or any burden on the injured worker, who may not be getting any salary at all.

PROF SLOAN: No. I just think that incentives are very complicated. It seems to me that you could argue that if doctors are more highly remunerated for workers compensation cases, that provides them an incentive to overtreat those patients relative to the others. There does seem to be some evidence that, for any given condition, workers compensation people get a lot more treatment than others.

MR TAYLOR: A lot of the agencies are talking about evidence based medicine, and again the injured worker doesn't have the expertise to know if he's getting overtreated, so he can't solve it.

PROF SLOAN: No. I think we are in agreement. I am saying that just because the WorkCover Authority is effectively paying the medical bills doesn't mean that

they're necessarily beholden to the WorkCover Authority, in my opinion, because, unless there are controls in place about treatment plans and the like, they might have some funny incentives.

MR TAYLOR: I don't have absolutely direct experience in this, but for medical reports I've been quoted 6 or 7 hundred dollars if I, as a private individual, get an expert report from the treating doctor or a person involved in forensic medicine, whereas I think the fees offered by WorkCover New South Wales are of the order of 1300 and 1600, so it's a substantial premium. I don't have the statistics to look at that, but they should be put on notice to explain why this is so. There should be one charge for the same service, irrespective of who handles it. Again, I can't speak for the latest figures, but there were private hospitals - I think the Seventh Day Adventists set up one in the inner western suburbs. They had emergency treatment for injury claims and they had a flat minimum fee which was $350, whereas the scheduled fee for, say, a cut or something could be $20 or $25. WorkCover negotiated these fees. Either it seems like lack of control or one could read that there's something sinister in that.

The second point I'd like to talk about is rehabilitation services. Back in 92 I think it was, WorkCover sent one of its managers on an extensive overseas trip to examine rehabilitation facilities, and they came back and decided to fund a state-of-the-art rehabilitation facility at the Royal Rehabilitation Centre at Ryde. It was estimated that the cost would be $20 million. In architectural and engineering fees and site clearing fees I think they spent about $8 million, and then it was starting to become clear, when this work had been done, which was in 1995, that the WorkCover insurance scheme was in financial trouble, so that scheme was scrapped. You can go out there and see all the earthworks they have done.

Injuries Australia is of the belief that all of the accident insurance agencies should provide and fund rehabilitation centres at major regional hospitals and city hospitals. If it's done on a public basis, it should be relatively efficient and much more cost-effective than if it's done privately. There's a clinic at Balmain Hospital not related to injuries called the Strong Clinic, which is for strength training for elderly people. That's operating on a shoestring, having to fight for its budget every year. Well, it seems like there are needs for these specialist clinics for injuries, and I think that might be a gap which hasn't been followed by any of the New South Wales insurers.

A third point is occupational health and safety plans and accountability in occupational health and safety. There was a document which I don't think was mentioned in the interim report. It's Comparative Performance Monitoring, Comparison of Occupational Health Arrangements in Australia and New Zealand, second edition, published in August 2002 by the Workplace Relations Ministers

Council, which is a very good summary of the statistics for the various states and New Zealand and the Commonwealth.

From searching the Internet I came across the Irish Health Safety Authority, and their annual reports and various reports are available from the Internet, and I will supply a photocopy of extracts from it, but this does seem far superior to anything in Australia on their planning for inspections and their accountability. Each year they draw up a detailed plan and by geographic location and industry they show how many inspections and various follow-ups they expect in each type of industry and geographic area.

In their annual report they follow this up by showing how many are actually carried out, doing "expected" against "actual" and explaining the differences, and there's quite a voluminous report of actual cases in very summary form, but it does ensure that people who have breached their responsibilities under the act have some minor public disgrace associated - you know, it's in small print. I guess the readership isn't that big, but somebody does read it and the industry bodies read it, and it seems that's very fruitful.

But from what I see from my experience, working with WorkCover for about 10 years, Ireland does seem generally to be in the forefront. I'm not sure of the other European countries but as far as English-speaking countries, Ireland seems to be up with the best of them, and they point out in their annual report that they set out to be an exemplar in occupational health and safety, injury prevention and injury management for their own staff.

I have taken out the statistics for WorkCover New South Wales and WorkCover New South Wales has a worse experience than the mining or logging. I think they're both the worst industries, but WorkCover New South Wales has more accidents as a percentage of their workforce and a relatively higher cost, and WorkCover two or three years ago opted out of their own scheme. Now, they are large enough to become a self-insurer, and if they wanted to be an exemplar they could have done all these things as a self-insurer.

What they did was opt into the treasury managed fund scheme. Now, after they had done this, they were questioned in the Nile committee in the New South Wales parliament on the treasury managed fund and they were asked to explain it, and the answers were, "We don't supervise the treasury managed fund so we know nothing about it," but they'd made the decision to transfer their own insurance to that, so either that suggests a level of negligence which is disgraceful or less than truthful answers under oath to a parliamentary inquiry.

I will provide some figures for WorkCover New South Wales to highlight the

injury incidence and the cost, but it's no longer possible on the public record to get these statistics because the New South Wales government has brought into their senior executive service performance management occupational health and safety performance, so as soon as that requirement came in, it stopped being published in the annual report, so as far as the general people are concerned - - -

PROF SLOAN: Why would that be correlated? I mean to make occupational health and safety/workers compensation claims part of performance management? It's quite common in private industry.

MR TAYLOR: Yes.

PROF SLOAN: Why would that prevent the publication of - - -

MR TAYLOR: I can't say that there's a cause and effect but there seems to be very little reason why you would elect to give less information than you had previously done. It just corresponds with the fact that in some forums this has been mentioned about WorkCover's performance, and this specifically featured aspect of performance management for the New South Wales public sector has come in. I am a bit nitpicking and a critic of New South Wales WorkCover, but each year in their annual report - and I think this may have been corrected in the latest annual report - their occupational health and safety statistics for injuries and so on are not for the year to 30 June which the annual report refers to. They are for the previous 30 June. So there's always been at least a 22-month delay in these statistics coming on the record. There was some complaint about WorkCover in Victoria, and New South Wales chided them by saying, "Not everybody is as transparent as WorkCover New South Wales." That was said by the then general manager of WorkCover, under oath, and it just seems that the less information on the public record, the less scrutiny there is to these statements one would take at face value normally.

PROF WOODS: Transparency and accountability.

MR TAYLOR: Yes, and the Irish system I think is very very good. The report by the Workplace Relations Management Council is a very good amalgam of the statistics, but the statistics aren't available in sufficient detail to match what is available in other countries, which seem to be of a higher standard than what's available in Australia and particularly New South Wales. From my observations, it seems that Queensland, Victoria, South Australia and Western Australia and perhaps Tasmania - this might be just a personal, superficial view, but it seems that they are a little more proactive than New South Wales, or substantially more proactive.

Another point Injuries Australia would like put on the record is that they would like - well, it may be a constitutional problem about prudential surveillance of state

insurance schemes, including motor accidents and workers compensation, and they are of the belief that the APRA standards should apply across the board to all insurances agencies. I don't know if it has been tested, whether the Commonwealth has the right to legislate for insurance conducted by the states, but if it is within their jurisdiction, I think a case could be put for exercising some muscle there, to expect minimum standards to apply.

Just referring back to one of the previous points I made, the politicisation in injury management and compensation: it seems that there was a representative of an injured persons advocacy group who was appointed a director of the Motor Accidents Authority, and I'm not privy to the board's deliberations, but there was some reorganisation, and that independent person was removed from the board, and it does seem that when one looks at the - again, New South Wales is a particular case - that there are some employer representatives, union representatives, and it's on the record that the chairman told Injuries Australia that the unions were the sole representative voice to be heard on injuries management, and these other agencies which are closer to the injured workers needn't waste their time pushing particular issues.

Now, the fact that Injuries Australia does so - it's a very thinly managed organisation and it's a very meagrely financed organisation and, as is demonstrated today, there is nobody to stand in to make the presentation. You can't advocate for yourself, and we're not saying Injuries Australia should be represented on these groups, but it does seem as though an independent agency, speaking solely on behalf of injured workers should be allowed to have a voice on these various committees and boards.

A further point is grant schemes. All of the workers compensation agencies, it seems, have some grant scheme for funding research. From my personal experience at WorkCover, the grants were given out on a far less rigorous basis than Medical Research Council grants or funding for university research, and I feel that a substantial amount of money has been wasted on these grant schemes but, in addition to this, there is - I'm not sure what the agency is called - heads of workers compensation. Now, it would seem as though it would be a very modest reform to publicise their intentions to give grants amongst themselves, and for one agency which is in the best field or the best suited to undertake and manage and fund the research.

An area in which I'm particularly interested is stress, and particularly bullying in the workplace, and I'm arguing against my own interests in saying that we need less work on this, but there have been substantial studies by Western Australia, Queensland, Victoria, South Australia, substantially carried out or funded by occupational health and safety and workers comp agencies, where it would seem as

though one report, perhaps with additions from each state to allow for particular laws and conditions and precedents set in that state, would be better suited for this, but in addition to duplication, WorkCover doesn't have any of these reports on the Internet.

When I was an employee of WorkCover, now Prof Diana Kenny at the University of New South Wales received a very large grant and did a report. A chapter of that report was deleted; the page numbers are not shown. So even ordinary WorkCover staff couldn't see the full report.

PROF SLOAN: Why was that?

MR TAYLOR: I can't speculate, but from the naming of the chapter, which was Injury Management, one would think that there might have been something which set a higher standard - well, that's only speculation but there's some reason it was edited. Many of her reports have been published. It would seem that if they fund these reports, the cost of putting them on the Internet and making them available to everybody in Australia is a marginal cost, and by not doing so they are denying people useful information. Also, the standard of the work is open to greater scrutiny and perhaps the standards would improve if this was known to occur.

PROF SLOAN: You tend to focus on New South Wales and it's a bit hard from our point of view, I think, to necessarily accept the proposition that the New South Wales WorkCover Authority is an outlier in the sense it's miles worse than anywhere else.

MR TAYLOR: I'm sorry? I've got a slight hearing problem.

PROF SLOAN: It seems to me that your critique of New South Wales WorkCover is partly based on familiarity with that organisation rather than a real comparison with the others.

MR TAYLOR: I admit that. I think it is much better if people talk from their own direct experience.

PROF SLOAN: No problem. It's just that there seems to be a bit of a tone in the submission - - -

MR TAYLOR: I have looked at particular things in the other states. I haven't seen much from the Northern Territory. Comcare has a number of very good publications and programs. It does seem that, for the volume of resources - WorkCover New South Wales is not represented in the upper quartile.

PROF SLOAN: You do make quite a bit about the role of private insurers, although of course they're not undertaking an underwriting function in this state, but

of course the other systems involve private insurers as claims managers and agents and stuff, so it's not as if that arrangement is unique to New South Wales at all.

MR TAYLOR: No, I'm sure. Most systems can be improved. I was responsible for the financial management and reporting of the New South Wales workers compensation system, and I was to report to the board, the minister and the executive. When I joined there, for the first time they elected to set a premium which was less than the expected cost of claims, and I raised that. They had surplus funds; they had about $1200 million surplus funds. I can understand if somebody does an assessment: yes, you've got so many surplus funds; you can use that to subsidise premiums for a short period. But there was no answer to it. I was put in my place and I was not allowed to have any direct contact with the actuaries from then on. I was not allowed to make any reports to the board from then on.

PROF SLOAN: You're actually giving us a good example of the political contamination of the premium-setting process when you have a government monopoly.

MR TAYLOR: I'm sorry?

PROF SLOAN: You're just giving me a good example of how the premium-setting process can be contaminated when you have a government monopoly like WorkCover, because a private insurance company wouldn't set premiums like that.

MR TAYLOR: HIH did. In Western Australia and Tasmania they did.

PROF SLOAN: They did, that is true, in the sense that they sought to get market share.

MR TAYLOR: Speaking statistically, financially - all from the long term - it is imprudent to give a false market signal.

PROF SLOAN: I agree with you. You are telling me it happened.

MR TAYLOR: The government could say, "We're allocating 250 million. We're going to subsidise," and I wouldn't argue with that if that's separate. But if you are putting the security of the fund - in New South Wales they lost $4000 million before they did anything about it. I was so unnerved by this. When the scheme was on the brink of insolvency I wrote to the divisional manager and said, "I believe there's going to be an inquiry into this, and because of my qualifications" - I'm an associate of the Institute of Actuaries, I've got an MBA and I've lectured in finance at New South Wales - "I'll have to explain why I had the duty to report on these things, I had the qualifications and the knowledge, and I didn't do anything. The best answer I can

give is that I sat on my hands for five years." I said, "Will you write and state that I have not been able to exercise these controls, that I've been directed not to do these reports?" Of course not. And the person took over three weeks to arrange a meeting with me. I had to send a letter out to about 30 people to embarrass him into meeting with me.

PROF WOODS: I'm conscious of the time. Are there other key points that you particularly wish to raise today?

MR TAYLOR: The grants scheme, and the information available on the Internet. WorkCover had - that I've made much of - this conference at Bathurst in 2002, and there is a report which is available on the Internet, but you can only download it in hard copy. The cost of making it so that one can quote extracts out of it without any - again a very marginal cost. It may be just an attitude of mind, it may be just a mistaken belief by somebody, but these things haven't been done, so information is very hard to get and to critique as easily as it should be.

WorkCover has a bad performance list. WorkCover Victoria talks about a bad performance list. I believe WorkCover did this list and then, before the New South Wales parliament, they said they redesigned the criteria for this list and did it again. I suspect the first criteria showed New South Wales WorkCover as being one of the bad performers. That's speculation, but it certainly isn't transparent; it's not accountable.

One final point is that I would like to see the final report of the Productivity Commission list performance criteria for workers compensation and occupational health and safety, and hopefully they could induce the ABS to incorporate this in their survey and reporting, to make sure that statistics are available so that there is proper comparison of outcomes between jurisdictions within Australia and, hopefully, to raise the standards.

If one looks at WorkCover annual reports, there are mentions of plans and programs, but there is absolutely no follow-up. The statistics from year to year vary. There is a statistical manual which I hope is consistent from year to year, but many public statistics are varied from year to year, so it's just impossible to make comparisons of injury trends, and changes to the legislation have cut out various forms of injury - hearing loss, psychological injury - or downplayed these. The statistics show that there have been improvements in injury management and in injury incident, but I'm of the belief that all or a large portion of these improvements are because of statutory changes, not because of underlying changes. If the basic statistics can't be relied upon, then nothing following that can be relied upon.

PROF SLOAN: I'm not sure it's as dismal as that, actually. It's certainly true that

the number of claims does reflect what's compensable, so in a sense the number of claims over time I think can be dramatically altered by changes to the schemes. I accept that. But we do have ABS statistics to run alongside, so I think you can get a view of the trends.

MR TAYLOR: But from an outsider's viewpoint, or mine - and I'd say I'm at least semi-informed on these matters - you look at a table in the annual report of WorkCover and one year it shows claims, the next year it shows major claims, the next year it shows claims where at least seven days were off work, and superficially they're all the same. They change the definition without explanation and apparently at will. For the WorkCover annual report they get an extension of time every year, ostensibly because they have to report the insurers' performance. Now, in the act the insurers have six weeks to give audited reports after each calendar quarter and 30 June, and all the insurers get their own annual reports out within the guidelines of APRA or the stock exchange. WorkCover are solely using this thing, "We rely on the insurers," and it's totally within their control to get the annual report out.

Not only is that unfortunate, but the annual report is released after the end-of-year recess for parliament. One year it was released in April the following year. That was the 1996 annual report. The 1996 annual report - despite the New South Wales auditor-general - doesn't show the detailed financial results for that year. WorkCover always reported the financial - - -

PROF WOODS: We have seen the annual report, so we understand.

MR TAYLOR: Yes. It was always for the previous 12 months, and they were 22 months out. This year, when things were particularly bad, they caught up to the next year and 1996 only ever showed as comparative figures. All of the comments and the directors' obligations that everything is true and fairly reported mean nothing because the figures aren't there to report. It seems like minimum standards of corporate governance just do not exist. Anyhow, I admit that I'm perhaps a bit nitpicking on New South Wales.

PROF WOODS: You're speaking from your experience. Thank you very much.

MR TAYLOR: I have two pages which really just have the headings.

PROF WOODS: That would be helpful. Are you making that available so we can incorporate that in the record?

MR TAYLOR: Yes. There are two copies there.

PROF WOODS: Thank you very much. We appreciate your time in coming

down, particularly at short notice.

MR TAYLOR: Thank you very much. Accept my apologies on behalf of George. He very much looked forward to coming here.

PROF WOODS: Yes. We have had discussions before. He can pass on to our staff relevant information.

MR TAYLOR: Yes, he will.

PROF WOODS: Can I call forth our next participant, please. Could you please for the record state your name and any organisation you may be representing.

MS O'DONNELL: My name is Carol O'Donnell. I'm Dr Carol O'Donnell, working in the Faculty of Health Sciences at Sydney University, but I don't represent the university in any sense. These are personal views.

PROF WOODS: Thank you very much. You've given us the benefit of three submissions to date. Do you have an opening statement you wish to make?

MS O'DONNELL: What I would like to talk about today in particular is the research direction in the future, because I think workers compensation and occupational health and safety have both been characterised, for about 20 years now, by an ongoing process of public inquiry and research which has been extremely valuable in educating people about insurance matters and about prevention of injury, and I think that that should continue in an international framework.

I think the recent effort of George Bush and Hu Jin Tao demonstrates that Australia is poised in an incredibly potentially important position in a world which is changing very rapidly; and I suppose the points that I would like to make today are related primarily to the paper that the last submission that I provide you with on the China-Australia nexus, so what I'd particularly like to talk about is Australia-Chinese partnership potentials.

PROF WOODS: I know that Dr Johns has been taking particular interest and will lead the discussion on that. So, thank you, if you could proceed, please.

MS O'DONNELL: Thank you. Could I first say, just briefly, that my background was starting off as an academic. I then spent 10 years working in the WorkCover Authority. I'm now back at Sydney University. It was very interesting to hear my colleague, Prof Kenny, spoken of, because I think she's done some wonderfully important work. She now faces a situation where she's working with juveniles where she has to face four different organisational ethics committees and the prison officers who are involved - or who are not involved in her project but who are supposedly assisting her to meet with her subjects - are resisting her efforts to undertake her research, in my view for very good reasons because they have their own industrial and OHS concerns and the juveniles are not represented on any of these ethics committees.

The point that I'm trying to make is that I think we have a whole series of dysfunctional systems in research, where one may find that research instead of being useful simply becomes a sink for public money where one goes through multiple organisational ethics committees and yet the people who in a democracy should be

most involved in ethics issues - ie, the representatives of the research subjects themselves and also representatives of workers who are involved in the situation - are not represented.

DR JOHNS: Could I just ask what was your role when you worked for the - was it the New South Wales WorkCover Authority?

MS O'DONNELL: Yes. I went in firstly under Pat Hill's - the New South Wales Department of Industrial Relations, and assisted the establishment of the women's directorate to influence programs. Then we set up the prevention programs branch in 1987. The job of that branch was basically to work with all the inspectorates to teach, with the inspectorates, the principles of the act, which was of course, you know, much broader than formerly, but also to try to go into what was then the Workers Compensation Commission to get hold of data, so that we could actually begin the targeting process. So I had a research section, I had a training section, I had an OHS committee section, and I had a plain English promotion section. Before that, at that time, before 1987, there was no plain English information of any kind. There was no data-driven management in OHS, of any kind.

DR JOHNS: What is your academic background?

MS O'DONNELL: My academic background is a fairly straight sociology background. I did sociology at Macquarie University. Prior to that I was a high school teacher.

DR JOHNS: It would be very useful for us, because we've gone to the trouble of producing an interim report, if you have any specific comments on our report. That might be useful for us.

MS O'DONNELL: I have read your interim report but in the intervening period I have been more concerned with trying to draw attention to this whole issue of potential research paths in the future and, from the perspective of Sydney University, what those possibilities are. I can do that for you in 10 minutes if you would like. Should I do that?

PROF SLOAN: Yes, that sounds good.

DR JOHNS: Sure, thank you.

MS O'DONNELL: All right. If you look at the Australian-Chinese interests, support of the aged is of mutual concern and social insurance is of mutual concern. In 2001 our Prime Minister announced research and development tax concessions to high spending companies. In my view, OHS and workers compensation should be

viewed in this trade related context because, in my view, OHS and workers compensation has been a social leader in Australia and I think it has a potential to put Australia at the forefront of a development of a new world order where standards related to health and environment protection are taken seriously. I think in order to do that, one has to clean up the mess which is currently research in this country, which is enormous amounts of money spent on a disorganised gaggle of separated projects, some of which are a total waste of money.

When Hu Jin Tao came in October we had the natural gas deal. The obvious areas for the further cooperation in research of the kind that I would like to see more of would be in commodities, telecommunications, culture, technology, science, education and sport, as well as new opportunities for Australian investment in the rural west and the north-east. I think it's important to take an industry based approach to research where the stakeholders are involved, because at the moment there's just this mass of professionally driven and academically driven stuff, and you wonder why it was ever funded and you wonder what the workers and the Australian people get out of it, whereas at least with research which is undertaken by government, it's undertaken - you can see the clear purpose that government has in mind when it's undertaking research.

DR JOHNS: Is this the Australian government or the Chinese?

MS O'DONNELL: The Australian government. I know nothing about - - -

PROF SLOAN: The state governments, too.

MS O'DONNELL: All governments in Australia, in my view, make serious and helpful attempt in their committees and commissions, by and large, to actually deal with social questions and try to come up with useful answers.

PROF SLOAN: I wonder whose fault that is? I mean, I've been an academic for most of my life and it seems to me that, if you provide research funding in an area and it's seen to be reasonably easy to access that, then you'll get all sorts of Johnny-come-latelys coming into that area, and if it lacks focus and purpose and meaning, the groups that I would be complaining about are the people who are giving out the research money, not really the researchers who themselves are just really responding to that incentive.

MS O'DONNELL: Basically in collegiate cultures, in my view, you've got to whinge to anything that moves, because they're a mob of headless chooks.

PROF SLOAN: But you see what I mean?

MS O'DONNELL: Yes, I do.

PROF SLOAN: If we're going to kind of try and take the argument forward - I mean, if the research output has been kind of useless and all over the shop and the like, I'm not sure I'm blaming the researchers for that. I'm blaming the people who gave out the research money in the first place.

MS O'DONNELL: Well, absolutely.

DR JOHNS: That might be your argument. Is it?

PROF SLOAN: You might agree with me.

DR JOHNS: I think that is your argument, yes.

MS O'DONNELL: Well, it is. I certainly - don't let me disagree with you.

PROF SLOAN: If they're not establishing the right research objectives and identifying the priority areas, you can't blame the researchers for - - -

MS O'DONNELL: Except that it's the colleagues who give out the money. I don't want to go down this road. I agree with you and disagree with you.

PROF WOODS: I think we've dealt with that, Prof Sloan.

PROF SLOAN: I know that.

MS O'DONNELL: It seems to me pointless to give money out and say, "Okay, you are this particular professional or academic group. You give these funds out in any way you think fit."

PROF SLOAN: So there's also the issue of subcontracting the dispersion of research grants, which creates issues too.

MS O'DONNELL: I'm basically saying that we have an enormous opportunity at this point in time in the world and one of the biggest things that people will need to know, and particularly the Chinese will need to know, is what kinds of insurance structures are in the public interest. So it's very sensible, because Australia, in my view, has been very sophisticated in Medicare and in workers compensation and I think we should really make use of and push that sophistication and talk about it as has been occurring. That's why alliances with China are very important.

PROF WOODS: Are you aware of the work that's being done with the national

Ministry of Labour and Social Security and the Beijing Bureau of Labour and Social Security on these issues of insurance and social support generally with the Australian universities?

MS O'DONNELL: I'm aware of work from the Social Welfare Research Centre at UNSW, a lot of that. I'm sure there is a lot going on that I'm not aware of.

PROF SLOAN: The Chinese might find it hard to accept that - for example, the New South Wales scheme is one that - - -

PROF WOODS: Yes, but they are certainly spending a lot of time with Australian academics on these issues and understanding the principles if not the detail of operation.

PROF SLOAN: Of course, it is extraordinary to think, as I understand, there's basically no workers compensation insurance in China. I know Australia can be - - -

PROF WOODS: Have you seen a Chinese building site?

DR JOHNS: You can ask everyone about that.

PROF SLOAN: Well, Australian companies have gone up there and they're saying, "Now, well, look, so what do we factor in for workers compensation?" And they say - - -

DR JOHNS: Survival.

PROF SLOAN: Yes. "Your point?"

PROF WOODS: Anyway, please proceed, given the time we have available.

MS O'DONNELL: I suppose what I'm basically saying is you've got people like Stiglitz, Yue and Wolfensohn all saying the same sorts of things about the importance of world stability, financial stability, and there's plenty of people who don't want to talk about that and it's important for us to want to talk about it. In that context, I also want to draw your attention to Sichuan University in Chengdu province. It's basically very much involved in, has been involved in, education in China and it sees itself as part of the new way forward. It's the only university outside Beijing which is a national standard set-up, and particularly the work of Prof Yuan. He's the professor of health promotion. He's currently involved in major projects and has spent his whole life researching with the Tibetan people and with minority groups, village groups. He's now involved in major projects researching the needs of the elderly, with international and EU support, and he basically does

participatory rapid appraisal, which is just simply going out to the people and basically getting feedback from the people about what their needs are. I think one of the very frightening things about universities now is that they have become so increasingly sophisticated and computer driven that they are increasingly likely to become playgrounds for the privileged rich in a way which will massively increase inequalities.

I sit here in the faculty of health sciences, and it sickens me to see in my view the poor quality of the postgraduate product and what is to me the apparent disinterest in actual production of the work or service to the people. That is obviously a generalisation, but I think it's obviously an enormous danger, an enormous danger.

So I think it's really important to kind of latch onto the kind of grassroots perspectives of people like Prof Yuan, because he's basically doing flexible, informal, on-the-spot analysis, undertaken in the community, using knowledge people already have; promoting community level work, all the sorts of things that people have been trying to do in government in New South Wales, in my view.

I think it's really important to remember that there's an illiteracy rate in rural communities in China - and China is a very well-educated country in comparison with many - there's an illiteracy rate of 46 per cent in rural communities and 27 per cent in urban communities for the over 60s. So basically we're talking about enormously high illiteracy rates in a country which is a comparatively developed country in a world scale. We're talking also about a country though where 80 per cent of the households - of that group of people, even though there are such high illiteracy rates - have got TV, and TV is the main source of education.

Now, what's frightening me about research and about computer development - I can't see any sensible computer planning development at Sydney University. It seems to me that what should be possible, if there was any political will, would be to actually look at, "Well, what do the populations that we really want to service look like and how should our computer planning back that up?" and yet there seems to be no interest in doing that, so it's all being dragged the other way, where people come here and they learn to do things like in vivo and - I won't go down that route.

PROF WOODS: No. I think in view of the time, if you could keep to the focus.

MS O'DONNELL: Yes, I certainly will. What I'm saying basically is, IT development is extremely expensive. You can use it to turn universities into playgrounds for wealthy, professional academics, who build their increasingly dubious careers off the backs of those they should be serving.

Now, basically Yuan's research suggests that video or TV development should be the supporting educational development, and we see so many examples, but isolated examples. At Sydney University there's a woman, a doctor associated with Sydney University, who has been running a fistula hospital in Addis Ababa since 1948. A fistula is basically a common tear during pregnancy, where a woman is left incontinent of urine or faeces, so basically she's just cast aside. Now, it's incredibly common - you know, a woman has a baby, she dribbles urine or faeces for the rest of the time afterwards, and they just pass her over.

Now, we've got a woman there working at Addis Ababa who's 90 now. When I first came into the WorkCover Authority we had inspectors who were extremely clever people, who were going to die. If you had any intelligence, if you had any seriousness, you'd go out and you'd actually photograph the expertise of those people and you'd make a genuine and serious effort to teach other people using the videos of people like this woman. Does anybody do that? Well, not to my knowledge. Maybe some of them do. But is this done by this society in any kind of coordinated or intelligent or obvious way, and the answer is "No" because the political will is lacking.

PROF SLOAN: Of course the reason the women have a high rate of fistulas in that country is because of the high rate of female circumcision.

MS O'DONNELL: Yes.

PROF SLOAN: In fact it's not a common complication in a country like Australia; pregnant women don't get that.

MS O'DONNELL: No, I'm not saying it is in Australia.

PROF SLOAN: But I think the point is that it's a very complicated story to do something about. I mean, she's done a great job.

DR JOHNS: Yes.

PROF SLOAN: But until you somehow change the culture where female circumcision is regarded as an acceptable practice - - -

MS O'DONNELL: Yes, but it's really simple to repair a fistula.

PROF SLOAN: Yes, it is.

MS O'DONNELL: The thing about going into the WorkCover Authority is that they gave me 35 people and they said, "Okay, go," and so because my boss was a big

man, you could say, "Right, do this, do that, do that," and it got done, and you could change things, and you could do things, and you could see thing happen. In academia there is no equivalent of that. So basically this is my last statement:

> In 1986 Wilenski saw China's approach as seeking integration of health education and health work into the overall political and economic development of the nation. He admired the Chinese emphasis on putting prevention first and the creation of service delivery models to meet the needs of people rather than professional interests.

So I suppose I'm just saying that I think Australia has a potential and a chance to make a real difference, and that the distinctions between the commercial culture, the regulatory culture and the collegiate culture - a more effective coordination of those interests is extremely important.

PROF SLOAN: Thanks for your contribution.

MS O'DONNELL: You're welcome.

PROF WOODS: That's fine, and thank you for those comments.

MS O'DONNELL: Thank you.

PROF WOODS: Our next participant is the Insurance Council of Australia. Welcome. If you could please for the record state your name, the organisation you are representing and any position you hold in that organisation.

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

PROF WOODS: Thank you. Nice to have you before us again. We have the benefit of your earlier submission of June, which we found very helpful. You will notice that we have drawn on it in developing our interim report. We have an outline of the sorts of points you wish to talk through today, and we've also communicated to you some other areas of interest to us. Do you have an opening statement you wish to make?

MR BOOTH: Commissioner, I was not intending to make an opening statement as such. What I was hoping to do was to largely just work through the interim recommendations and offer some comments in a number of areas.

PROF WOODS: Yes, please.

MR BOOTH: I'd be happy to stop and discuss at any point if that was convenient.

PROF WOODS: Why don't we do that. Can I just clarify - you will be presenting a final submission to us though in written form, or will this constitute your input?

MR BOOTH: I think we'll gather together our key thinking - - -

PROF WOODS: Yes. If you could consolidate that into written form.

MR BOOTH: - - - in terms of the commentary and other issues that we might see coming out of the current hearings, and provide that in a written form, I think. We'll certainly endeavour to do that.

PROF WOODS: I'm sure you can find somebody to draft it for you. 30 January is our deadline.

MR BOOTH: Right.

PROF WOODS: We appreciate that. Please proceed.

MR BOOTH: Thanks, commissioner. Firstly in terms of occupational health and safety, the Insurance Council does not have a direct interest, but I wanted to emphasise what I see as three functional areas of OHS which I think are important.

Firstly, the setting of standards. I'm sorry, if I could just pause. Once again I think I need to disclose that I'm a member of the WorkCover Board of Tasmania and I'm appearing today in no way representing the WorkCover Board of Tasmania; I am here representing the Insurance Council of Australia. I just want to make that very clear for the record.

PROF WOODS: And the Tasmanians have benefited us with some submissions, which I have to put on record as being very very helpful. So they have spoken of their own accord.

MR BOOTH: That's a very good little scheme. In terms of OHS, there are three functional areas which I think are important. The first is the setting of standards, and I think that's recognised in the interim recommendation in terms of having a technical committee of experts to assist the whole development of occupational health and safety standards in Australia.

The second function is the provision of information, assistance, education in the OHS area, and I believe that's particularly important for employers who wish to do the right thing but are not quite sure in terms of technical standards, other services and so on. The third functional area is enforcement and prosecution. The point I wanted to make is that I see it as important for processes to be in place whereby employers have the capacity to seek assistance, either in terms of just gathering information or assistance directly on the work site, without fear of potential prosecution as a result of people coming into the work site to assist them in the process.

It occurs to me sometimes that it may be desirable for OHS authorities - for there to be quite a distinction between the education function and the enforcement and prosecution function, because if the employer is confused as to who in fact is coming into the workplace they will always be enormously defensive and really won't get any benefit at all out of any assistance program which might be tendered.

PROF WOODS: Is one model the sort of subcontracting of the education role, in fact through a third party process? I know some of that is done by industry and by unions and things anyway, but perhaps even more of a clear separation of those who are there to ensure, and quite legitimately so, that there is proper compliance with the law, as compared to those who are there to provide guidance and assistance.

MR BOOTH: At the end of the day I suppose there are various ways in which it could be done, but I think it's important that employers have the capacity to seek and gain assistance and information in a genuine sense. I know some OHS authorities do go into industries on a moratorium basis from time to time, and that's the sort of thing which is also of assistance. But I do wonder sometimes whether it may in fact

be desirable to take the prosecution function out of the OHS authority and give that to industrial relations or some other agency or government.

I also would like to make the point that it's important for workers compensation systems to have a link between the insurance process and the occupational health and safety process. The link I'm talking about is a situation where insurers, either through their - the insurance process, public or private, either through the underwriting side or the claims management side, become aware of a significantly dangerous workplace, where clearly OHS intervention might be warranted.

I think it's important that the systems have the capacity for the insurance process to provide information into the OHS process, so that where the OHS process has targeted attack on particular workplaces in terms of their riskiness and their danger to workers, there is the capacity - - -

DR JOHNS: What did you have in mind? I suppose publishing statistics once a year is too slow, cumbersome, not sufficiently detailed. What mechanisms are you thinking of in particular? What links?

MR BOOTH: Well, if an insurer or a claims manager becomes aware that there is a consistent pattern of injury coming out of a particular workplace, and the employer is not responding either through premium signals or any other signals, that that fairly quickly becomes the sort of circumstance where it really does require OHS intervention, and potentially ultimately quite serious OHS-type remedies, and ultimately possibly even prosecution if a workplace is consistently failing to take worker safety seriously. My point is that the insurance process is often a very early and very important warning signal that there may well be a systemic failure of workplace safety at a particular venue.

DR JOHNS: Well, I agree. But is there insufficient incentive for the insurer to blow the whistle, or are they not sufficiently aware?

MR BOOTH: The information I've had, of generally an anecdotal nature from insurers, is that where they've tried to do this, there's been often little reaction from the OHS authorities to respond to that, and often that can be a resourcing issue. But I think it is important to recognise that through the claims process you can actually get very good early warning of systemic failures within workplaces.

DR JOHNS: Yes. I suppose that's why I'm a bit attracted to the self-insurer, because it's almost a closed system, where they manage the whole show - - -

MR BOOTH: Indeed.

DR JOHNS: - - - so it's immediately in their interests to do so. In a disaggregated system, where worker, insurer and worker and OHS person are all separate, you think they'd be talking to each other. It doesn't necessarily occur. But why would an OHS authority not take into account what an insurer has told them about a bad, poorly performing workplace?

MR BOOTH: My recollection is that three or four years ago in New South Wales WorkCover was case-managing, from an OHS point of view, no more than 12 or 15 workplaces at a time. Now, there has to be the situation in New South Wales where there would be significantly more dangerous work sites than 12 to 15, and it's probably ultimately a resources situation. I just wanted to indicate that I think the insurance process can make a very significant contribution to identifying effectively unsafe workplaces, and that's something which needs to be included or needs to be considered as part of the process.

DR JOHNS: Thanks.

MR BOOTH: In terms of the national framework for workers compensation, I think overall - - -

PROF WOODS: Sorry. Just while we're on occ health and safety, we are having a further look at the structure of that as to whether, for instance, the advisory committee should report to the ministerial council or in fact back to the NOHSC board and things. So we're still in the throes of examining the particular flows and reporting in that, but your points are more generic than that, so we understand those.

MR BOOTH: Sorry. There was one more point on OHS, which is, I've been debating with myself - - -

PROF WOODS: Did you get an answer!

MR BOOTH: My personal view is that it's probably desirable to maintain existing OHS structures on a coordinated basis, rather than creating a new additional structure. I have to acknowledge that my thinking is guided by the state of Tasmania where I think it would be quite impractical to have the OHS authorities - having effectively two OHS authorities operating within the state, potentially sending confusing signals into workplaces.

PROF WOODS: Although those who are under the Commonwealth legislation - you know, Commonwealth authorities, et cetera - do have their own occ health and safety in Tasmania, but the numbers are small compared to what would happen under this.

MR BOOTH: That's right.

PROF WOODS: We're conscious of that.

MR BOOTH: Yes. In terms of the national frameworks, essentially we welcome the interim recommendations of the commission in developing or applying the current Comcare frameworks, extending those in the medium term and ultimately for a broad-based national scheme privately underwritten by insurers.

I did want to discuss and question a little bit though the emphasis on self-insurance. Firstly, the state schemes carry essentially no risk for the state, because if a self-insurer fails, the nominal insurer in each jurisdiction assumes the workers compensation liabilities of the self-insurer, and through the nominal insurer arrangements those liabilities are then spread across the entire workers compensation scheme, and no doubt the commission is familiar with those processes.

PROF WOODS: And there haven't been too many failures.

MR BOOTH: There have been some in Tasmania.

PROF WOODS: Yes, Tasmania and South Australia.

MR BOOTH: But at least there's a fall-back position of spreading across a broad base.

PROF WOODS: Yes, quite.

MR BOOTH: At the moment under Commonwealth Comcare arrangements there's no such facility, so I'm presuming that there would be effectively a financial risk to the Commonwealth.

PROF WOODS: We have tried to address that by going to the Commonwealth actuary and seeking advice, and we've included that.

MR BOOTH: The advice from the government actuary I believe raises quite a range of very important issues of how you actually prudentially regulate a self-insurer for the context of workers compensation. He particularly draws attention to the fact that workers compensation liabilities under current Comcare benefit structure are very long-tail, including the potential for periodic payments through to retirement age. The obligation therefore for prudential regulation of self-insurance is immense.

The report from the government actuary refers to the difficulties of establishing

just what the workers compensation liabilities might be for a very long tail. The difficulty with prudential regulation of self-insurance is that you need to understand and determine both the workers compensation exposure of the self-insurer, but you also then need to understand and observe the overall financial viability of the business of the self-insurer.

PROF WOODS: The health of the balance sheet, yes.

MR BOOTH: The health of the balance sheet. That's actually an enormous task which not even ASIC goes anywhere near attempting, and my concern is that if there are significant numbers of self-insurers, a regulator simply would not be able to undertake both of those tasks effectively. My suggestion in terms of providing an alternative - firstly, we've got no great difficulty for the large organisations with a long-term future, and Telstra obviously always runs the risk of failure, but it's the sort of organisation which is reasonably unlikely to fail in the medium or longer term. But as soon as you start to get to other organisations - a lot of people probably thought it was incredibly unlikely that Ansett would fail.

PROF WOODS: HIH.

MR BOOTH: Well, insurance companies are always suspect, but not under the current regulatory regime. But there are other institutions which might well have been institutions in the 60s and 70s and are no longer part of the economic framework of Australia today, and it is a very long-term framework that workers compensation liabilities take. So my suggestion from that point of view is that perhaps much greater reliance should be made on a self-insurance type process, but a prudential response whereby there would be capacity for significant reliance on the self-insurer to in fact buy insurance and cover their liabilities through the insurance process. Now, clearly that's a self-serving statement in terms of our members but - - -

DR JOHNS: I think we've picked that up.

PROF WOODS: I think we got that - yes - well, reinsurance down to a level that gives comfort.

MR BOOTH: Yes. Effectively reinsurance, it's first party, it's not - yes, reinsurance down to a low level, or perhaps even down to ground level, because in the way - or at least having the potential for that to occur, and having it optional.

DR JOHNS: So take us through it a bit. You know, we've got this shopping list. I mean, whether the Commonwealth could be reassured through a post-event levy or something, or whether it's to be reinsurance carried by each player, those are the

things we have to weigh up. Do you have a sense of how many self-insurers would have to be in the Commonwealth scheme, or doesn't that matter; they just insure with someone else who's prepared to insure them as someone sitting self-insured in Comcare arrangements? Does it matter about the numbers who are coming in?

MR BOOTH: I don't see it as a huge issue. From the information available, the current private sector Comcare licensees would be carrying some form of insurance. If some more were granted licenses and purchased insurance, that would be entirely valid.

DR JOHNS: I know they're not a pool unto themselves, but I just want to get a sense of the dynamics.

MR BOOTH: The important point is that by transferring the financial risk into the insurance process, the insurance process is then fully regulated by APRA, it's covered by the July 02 increased APRA prudential standards. APRA has recently issued a discussion paper for further strengthening those prudential standards for insurance companies.

We have recommended policyholder protection at 100 per cent benefit levels; the commission has endorsed that in the interim report. There are mechanisms which can be put in place in the now highly unlikely event of another insurer failure. But we believe it's a more appropriate mechanism for managing the financial risk of the longer term associated with workers comp than establishing a significant number of self-insurers within a Comcare-type arrangement.

By following the steps that the commission has recommended in the interim report, it would also give the insurance sector a gradual increase in exposure to those financial risks over time. It would mean that significant amounts of capital would not be required immediately. It would also mean that insurers and self-insurers could gain experience of a new framework or a new system for covering workers compensation, and as experience was gained and as the experience was observed, hopefully that experience would be seen to be stable and predictable and manageable over time. That would provide strong encouragement for further support to become available from the insurance industry over time. So the phasing-in through the progressive steps that the commission has recommended would actually make a huge amount of sense for the providers of capital in an insurance context.

PROF WOODS: Now, capital is a bit variable in terms of its availability, depending on the perceived state of the market. Go back a few years and there was concern about availability of capital. Can you just briefly take us through some of the immediate past history and the circumstances relating to that, and what you see in the future in terms of availability of capital for the insurance industry if this process

is followed.

MR BOOTH: The availability of capital: the insurance industry firstly has gone through a process, in the last three or four years in Australia - five to 10 years ago there were virtually no, or very few, general insurance companies, either directly or ultimately listed on the Australian stock exchange.

We now have the situation where four of the five biggest general insurance companies in Australia are listed on the Australian Stock Exchange and the capital for those companies is provided by Australian and overseas investors, so there has been quite a structural change within the insurance industry over time to the point where it is now quite imperative on the senior management of general insurers to manage their companies in a way that recognises the role of their investors and provides those investors with the return on the capital they provide to those companies.

The history of the insurance sector in the last five to eight years has not been one of significant profit by any means and a number of structural events have occurred. That level of lack of profit ultimately counted against HIH and was one of the reasons for its failure. The pricing situation as identified by the royal commission: the pricing was not sufficient to cover the liabilities and ultimately the liabilities caught up with the company and it failed.

PROF WOODS: Which affected the profitability of all other companies in terms of having to follow some of the pricing.

MR BOOTH: I suspect that in many areas of the market the companies were not following HIH pricing and, in actual fact, in some areas of the market HIH was quite dominant with very little competition from Australian companies because they weren't prepared to go there and, I think, ultimately, to their benefit - that they weren't there. What it did force on the Australian insurance market was a significant readjustment in price to more viable levels, which is one of the causes of the so-called insurance crisis.

The experience - and this is talking essentially a quick examination of APRA data for the last five years - will show that there hasn't been significant profitability in the general insurance sector. There has been a need for restructuring to occur and that that has been occurring because of the need now to recognise the role of private investment and the provision of capital into the marketplace. The workers compensation is long-tail business, where claims are paid over a reasonably long period of time. The bulk of claim payments for any one given policy period would be paid within five years, but there would be also a significant tail of claims which would extend well beyond five years and perhaps even up to 25 to 30 years after a

policy period.

Because it is long-tail in nature and therefore subject to the vagaries of economic developments over a long period of time it is capital intensive. As a general rule of thumb, workers compensation would require the provision of capital in the nature of 100 to 150 per cent of premium income, so other forms of insurance would be sufficiently supported, particularly short-tail insurance, like motor car property damage, householders and so on might be supported by capital of a level of the area of 35 to 40 per cent of premium income.

Workers compensation would require capital in the level of 100 to 150 per cent of premium income. Liabilities tend to develop over a period of time and the longer the involvement in the business the greater the liabilities that tend to develop over time and the greater the amounts of capital which would be required over time to back up the liabilities which would be carried on the balance sheet. So it is capital intensive and, for that reason, insurers take a very careful view as to their involvement in the business - firstly, their participation in the business; what I mean by that is whether they participate at all - and, secondly, how they participate in the business in order to ensure that they would be able to participate in a way which will meet the needs of policyholders and claimants, but also ultimately meet their duties to their investors and shareholders. So if there were to be a full privatisation of the public sector schemes immediately, as it were - by "public sector" I mean Queensland, New South Wales, Victoria, South Australia - I think it would be fair to say there is not sufficient surplus capital in the market at the moment to cover that business. There simply is not that level of surplus capital.

PROF WOODS: That's not going to be an event that occurs?

MR BOOTH: I would have thought not.

PROF WOODS: Certainly not under this scheme, where we talk about those schemes operating in parallel.

MR BOOTH: That's right, but by the same token, to the extent to which the commission is recommending a phased introduction of a national insurance scheme ultimately to be underwritten by private insurers, the phased introduction of private insurance into a greater level of involvement in workers compensation under a national scheme - to the extent to which the business is seen to be stable and predictable and manageable over time, I think it would be fair to say that there would be an appetite by insurers to participate in that business and that there would ultimately be an appetite by investors and insurers to actually provide the necessary capital to support the business, but it very much does depend upon a constant ongoing assessment of stability and confidence in an insurer's ability to determine the

liabilities it has to carry once it issues an insurance policy and calculates the premium. It has a once-only chance of charging a correct premium for a given policy period and that premium has to cover all liabilities assumed under that policy period. If that can be done with a reasonably high degree of confidence the insurers will be in the market and they will be happy to provide the cover.

PROF WOODS: So you think step 3 is a viable proposition that in appropriate circumstances the industry would be willing to participate in?

MR BOOTH: Very much so, provided that the national insurance scheme - and it would be particularly viable if steps 1 and 2 involved private insurers providing cover and support to a reasonably significant degree and therefore gave them the capacity to make first-hand judgments on the viable operation of a national scheme that it was developing.

PROF WOODS: I understand the importance of that.

MR BOOTH: Yes. I think that we acknowledge and would support the recommendation that existing schemes operate on a parallel basis for the time being and I think it would also make enormous sense for a formal national body to be established to overview workers compensation, with responsibility to a ministerial council, so that there was quite strong national coordination of the business. We would certainly support that, as well.

PROF WOODS: Do you intend somewhere else in your wander through these to talk about the likely impact on state small-medium enterprises? I mean, you have the Tasmanian experience personally, but your industry is the insurer for a number of the states. If a number of significant bodies become self-insurers under step 2, what would that mean for the viability of the insurance market and impact on premiums of those remaining who, by definition, are more likely to be small and mediums than large? And just one other point in that: of course under step 2 you may be a large national company but you may only have a small presence in a state, so we are not talking about only say in Tasmania, for example, those who are large employers, but they might be large, national employers who currently have 80, 100, 200 or 300 people contributing to the premium pool in Tasmania, but would come out because of being part of a national self-insurance scheme. To either comment now or comment some part-way through your presentation would be helpful.

MR BOOTH: It is probably worthwhile discussing that at this point. For a start, I think, as is recognised in the interim report, there is already a significant degree of self-insurance in workers compensation. That's the current Comcare licensees, but it's also the self-insurance framework which already exists in the state scheme, so there is already a significant portion of the business which is in the underwritten

jurisdictions which is not directly insured as part of the ordinary insurance process. As I said earlier in my remarks, I would raise a hesitation as to how much further that should go in terms of prudential supervision of self-insurers.

PROF WOODS: Yes, I understand that.

MR BOOTH: But it's important to acknowledge that in the underwritten jurisdictions there is no insurance pool, as such, for the state. Each insurance company accepts the liability; the insurance pool is the insurance pool of the company and not of the state scheme. The issue that becomes relevant for the insurance company and the insurance company's insurance pool is clearly subject to prudential supervision by APRA and everything that that entails.

PROF WOODS: And made up from a whole series of premiums from different businesses.

MR BOOTH: Different lines of business, different jurisdictions, and so it ultimately forms the insurance pool of the company. The issue for insurers is primarily one in the smaller states of the viability of supporting a local infrastructure from a small remaining premium pool, and that's the thing that worries - - -

PROF WOODS: Claims managers and - - -

MR BOOTH: Both from an underwriting perspective and from a claims management perspective. From an underwriting perspective, in the underwritten jurisdictions the bulk of the business would be placed through insurance brokers, but there is also a need for the underwriters, for sufficient capacity and knowledge and expertise, to have particularly the underwriting side in terms of the pricing and underwriting of the business, and that's an overhead which the insurers have to meet.

Secondly, claims management is reasonably expensive in the personal injury area and reasonably demanding for claims which are alive for potentially long periods of time and where there are, quite appropriately, injury management obligations on the insurer, which add to the - you can't assess and pay a workers compensation claim as easily as you can assess and pay a motor vehicle damage claim, so there are clearly cost overheads for the management of their claims, and that's appropriate but the costs are there. If you are taking out reasonable slabs of business, your expense overhead starts to become - can become or could become - quite significant in terms of your participation in the business in a jurisdiction, and it's the expense overhead which I think is the real issue in smaller jurisdictions if there were to be sufficient reductions in the level of business available.

PROF WOODS: I guess what we need some understanding of though is whether

that would cause premiums to rise by 50 per cent, 5 per cent or 1 per cent to pick up the distribution of overheads over a smaller number of clients, recognising that workers comp is but one line of business that an insurance company usually has with a company and so offers it as - the ability to offer part of a total package.

MR BOOTH: The underwriting of the business is normally quite specialised through specific workers comp administration and, equally, claims management is quite specialised through workers comp claims departments and tends not to be supported by other areas or other product lines within a jurisdiction.

PROF WOODS: And in terms of impact on premiums. Do you want to reflect on that question and get back to us?

MR BOOTH: I would need to give that some - - -

PROF WOODS: But it would certainly be very helpful to us if you could give some indicative guidance as to having to respread those overheads over a smaller premium pool for the company, what that might do, because I suspect that will be a point of debate in this inquiry.

DR JOHNS: But also presumably to discount potential impact on the bigger pools - New South Wales, Queensland, Victoria - I presume we're only talking Northern Territory, ACT, Tassie?

PROF WOODS: Yes, we're talking the small - - -

DR JOHNS: Anyway, trying to rope it up a bit.

MR BOOTH: It's a question that perplexes me because there are more workers comp insurers in the ACT than there are in Tasmania.

PROF WOODS: Yes. It's a very small pool.

MR BOOTH: I actually don't understand that.

PROF WOODS: That's the marketplace. They make big decisions.

MR BOOTH: So the market is making a decision that the companies are happy to provide whatever resources are required within the competitive context and the prices that they're able to charge, that they're still able to provide the necessary resources for the underwriting and for the claims management and compliance with local regulatory obligations. It's actually not clear to me what is the point where it becomes unviable from a size point of view.

PROF WOODS: I think that's a very telling issue itself, and the point that Dr Johns was making, of course, is that whatever the percentage impact might be in the ACT or Tasmania of Northern Territory is much greater, more significant than whatever the percentage impact would be in very large state schemes, such as New South Wales.

MR BOOTH: Indeed. We'll give that further reflection. We'll discuss it with our members and we'll try and provide some further input to the commission.

PROF WOODS: We'd appreciate that. Please proceed.

MR BOOTH: On defining access and coverage, in relation to a definition of employee the second dot point acknowledges the need for certainty and clarity on the definition for both workers and employers. I wanted to suggest that it's appropriate to add to that, it's actually important for insurers because ultimately, invariably the insurance premium is a function of the industry rate multiplied by the number of employees. So it's actually quite vital that in the negotiation process, the pricing process as between the employer and the insurer - for pricing purposes and premium purposes it's very important to know who are the employees being covered under the policy. It's absolutely vital for the insurers to know that in terms of the risks that they're taking on board.

I don't recall the extent of the discussion in the paper, but it's not specifically mentioned in the recommendations - and that is, the issue of contractors and other more flexible employment relationships which are increasingly being seen in the economy. We haven't got strong empirical data for this, but the insurance industry is increasingly seeing claims arising out of workplace injuries falling outside workers compensation systems and falling into public liability systems, because the ultimate nature of work is not employment but is one of contracting or some other form of more flexible employment.

There is, in fact, quite a lot of leakage for workplace-type injuries into the public liability insurance sector in Australia at the moment. That's particularly occurring - I know that it's a concern in Western Australia where, in a number of industries, you've got very significant levels of contracting and other forms of employment. I think generally as more flexible employment relationships are being developed across the economy that the original and easy nature of applying workers compensation for employees is starting to fall apart. I wanted to flag that.

PROF WOODS: If you had some data on that, that would actually be quite useful, because we do have a discussion on it from a definitional point of view - who's in or out of workers comp - but what we really haven't explored in some detail then is

where does it go to and what other impacts is it having?

DR JOHNS: Maybe that's the answer to the query this morning as to why the Queensland WorkCover were relaxed about this new definition.

PROF WOODS: Yes, because they've cut them out and they go onto public liability.

DR JOHNS: They'd excluded them and they'd gone to public liability.

PROF WOODS: It was just raised this morning.

MR BOOTH: The reason why I'm raising it is not so much to suggest an answer, and frankly I haven't got one, but I actually think that in the context of discussions, whether it's through workplace relations ministers or other fora, Australia needs to examine the issue.

PROF WOODS: Yes.

MR BOOTH: I think it's a discussion that may require 12 months' or two years' worth of research and analysis and examination.

PROF WOODS: We're certainly happy to flag it, but if we could have some data to hang it off, whatever its quality - there are certain limits, obviously.

MR BOOTH: It's more likely to be examples of the thing rather than an empirical valuation of the issue.

PROF WOODS: Yes. Just something to hang the issue off, to demonstrate that there is an underlying validity to the point, could then be a springboard for further work.

MR BOOTH: Yes, thank you. In relation to the definition of work-related injury, I just wanted to comment on the issue of journey claims. From an insurance point of view, the workers compensation systems endeavour, wherever possible, to recover workers compensation claims costs from the transport compensation schemes, if coverage is available from the transport scheme. For example, if a worker in New South Wales is injured in a motor vehicle crash on their way to work, they may well seek to run a journey claim on a no-fault basis. They may well seek to run a journey claim under workers comp because that gives them very easy access to compensation on a no-fault basis and immediate payments. The workers compensation insurer will then look at the circumstances of the injury and the circumstances of the crash and will seek to recover from a CTP insurer if a liability situation arises.

DR JOHNS: So you're not fussed about whether the journey to work is covered or not by workers compensation.

MR BOOTH: We are, because we have the situation, therefore, where the ultimate liability will rest with the CTP system, but the claim initially and mostly is actually handled under the workers compensation system. From an insurance point of view, where the liability is ultimately going to rest under the transport compensation system, we would much prefer the claim to be made under the transport system initially. That's probably an insurance industry preference for not having journey claims, at least in relation to motor vehicle crashed. It's an insurance industry preference for not having journey claims as part of the workers compensation system.

We do acknowledge that from the point of view of benefits to workers, New South Wales, Queensland and the ACT, which are privately underwritten CTP schemes, are fault based. We do acknowledge that there would be a potential loss of benefits because if journey claims involving motor vehicles were only available under the transport scheme - - -

PROF WOODS: And you ran off the road by yourself - - -

MR BOOTH: No no-fault benefits would be available, and that is therefore an issue which may ultimately be fatal in any discussion of the issue; but from an insurance claims management and an insurance management perspective generally, our preference is that, if the ultimate liability is going to rest with the motor scheme, the claim should be made through the motor scheme. There are administrative and other all sorts of difficulties arising simply because workers comp benefits around Australia are not identical to CTP or to motor benefits. Therefore, there are constant discussions and debates on what the true recovery rights are, whether the claim was handled properly and so on. There are differing obligations on workers comp insurers and CTP insurers in a whole range of claims management obligations, so that does cause practical problems when the recovery matters are pursued.

DR JOHNS: Yes, I guess I sort of read it the other way, to the extent that at least if a journey to work is included under a workers compensation scheme, the moneys if you like can be recovered under accident compensation. When it's between two different insurers, that may not be comfortable.

MR BOOTH: There's a classic in New South Wales whereby the threshold for common law under workers is different to the threshold for common law under CTP, so there is no immediate - there may be circumstances where there are no full rights of recovery by any means, so then the claims inevitably give rise to a debate between

the two insurers as to - - -

DR JOHNS: That's what I mean. It only provides the possibility of recovery.

PROF WOODS: That's right, and then you have the administrative challenges.

MR BOOTH: So that's a preference from an insurance perspective. We do acknowledge that there are benefit issues surrounding that.

PROF WOODS: That's helpful.

MR BOOTH: Injury management is vital for workers compensation. We strongly support the principles that the commission has identified in the interim recommendations. I would add to them some extra suggestions for consideration. Firstly, we believe in terms of broad principles, there should always be strong emphasis on proactive duties of cooperation by employers, injured workers and claims managers or insurers because all of the medical evidence is overwhelmingly in favour of early intervention and effective participation in proper rehabilitation and other processes.

The difficulty with the compensation systems is that there is always an inherent conflict between the attraction of compensation dollars on the one hand and return to health and return to work. We believe that it's quite important that there should be very strong statements in any legislative framework that the first priority must always be return to health and return to work, with monetary compensation as the residual or the secondary emphasis.

In that regard, we also believe that there should be a very strong focus on evidence based injury assessment and evidence based treatment protocols. The compensation systems over the years have seen many examples of questionable diagnoses in terms of injury and questionable treatment programs for no apparent health gain, and the medical profession is acknowledging that at the moment.

We believe it's quite important that there is strong emphasis nowadays on evidence based injury assessment and on evidence based treatment and that a vital part of the dispute resolution processes which are mentioned later in the recommendations - but I just wanted to touch on them here - is that part of the dispute resolution process has to include the capacity for early and effective resolution of medical disputes, disputes both as to the assessment of the injury and the prescription of treatment.

Those sorts of matters have to be dealt with very quickly and very early on. If they arise before the finalisation of the claim, they must be able to be dealt with. The

New South Wales CTP system is now operating very effectively through the medical assessment process, medical assessment resolution scheme, which is now operating under that scheme. That's an example of an early and effective medical dispute resolution process.

PROF WOODS: That's New South Wales CTP, is it?

MR BOOTH: Yes. The commission has made a number of comments in relation to access to common law compensation. The insurance industry does acknowledge the need for fair compensation to be provided for injured workers. Normally that is a combination of periodic and lump sum statutory benefits, and in many jurisdictions access to lump sum common law damages as well. The experience has shown that the total definition of benefits needs to be defined in a way which hopefully will operate in a way which is stable and predictable over time, and not in a way which will give leakage or blow-outs in one form of benefit or another.

I have a personal view that common law damages are thought to be desirable by society in the cases of very clear negligence, whether it's by an employer or by another member of society, resulting in serious injury and serious economic and other losses to an individual. I still think that society demands that damages be available of the nature that the common law provides.

I acknowledge that in the case of minor injuries the common law process is a very inefficient and very expensive process to administer, and that's the core reason why most workers compensation schemes these days have moved to the introduction of thresholds to compensate relatively minor injuries under the statutory scheme and to retain common law access only for the more serious injuries. Personally, I don't accept all of the assertions that are set out in the paper in terms of common law.

PROF WOODS: If the ICA has any particular objection to any of them, we'd be happy to have them incorporated into your final submission.

MR BOOTH: I would argue for example that - I mean, the second dot point - I would argue that the statutory schemes provide limited compensation only, and never go anywhere near providing full compensation in cases of serious loss of either future economic loss or future impairments.

PROF WOODS: No, but that point just says that the common law doesn't compensate those who are seriously injured to any greater extent than statutory schemes. That's not saying that statutory scheme compensation is in itself necessarily totally adequate or appropriate; it's just making a relative comment. Are you happy with the relative comment?

MR BOOTH: No, I actually don't agree with that. I think it provides far more. It actually does provide relatively more compensation in the case of serious injury, both in terms of economic losses and for - economic losses under statutory schemes are invariably capped. At common law they are not; they are subjected to a discounted rate assessment, but invariably they're not capped. Non-economic losses under statutory schemes are invariably limited, in some cases limited to quite small amounts under common law; almost inevitably more generous.

PROF WOODS: Yes, and you're talking about the net benefit to the injured worker - net of costs of process?

MR BOOTH: Yes, definitely.

PROF WOODS: Is that based on your experience in the industry, or is there some data analysis that we could draw on to revisit that point?

MR BOOTH: I think it would be quite easy to set up three or four scenarios of reasonably serious injury and look at typical workers compensation benefits, and I think the CPM reports actually do that.

PROF WOODS: We can go through those. All right. We'll revisit that, but we do have the benefit of those reports.

MR BOOTH: I think one was released very recently.

PROF WOODS: Yes, with a yellow cover. We have it.

MR BOOTH: I agree with the third dot point, that common law does tend to overcompensate the less seriously injured.

PROF WOODS: All right. Let's keep moving on.

MR BOOTH: Sorry. I really didn't want to have any further discussion in relation to benefit structures.

PROF WOODS: Okay. Yes.

MR BOOTH: Premium setting: we would strongly support the comments that have been made in the interim recommendations in terms of no cross-subsidies, experience based rating. We fully accept obligations on private insurers to comply with the prudential standards under the Insurance Act in terms of full funding and related matters. We would also support the recommendation for premiums to be set by public insurers on a full funding basis, with appropriate transparency.

PROF WOODS: Just a question - and again it may be one that's better picked up in any subsequent written material - but the behaviour of private insurers in relation to small and mediums versus large companies in the privately underwritten jurisdictions: whether they themselves, for market share reasons or whatever else, engage in any cross-subsidisation across those boundaries, or is each individual business, no matter how large or how small, rated by, obviously, industry-level risk and then by individual experience; whether you can comment on that now.

MR BOOTH: For small or small to medium, invariably the insurer will rate on an industry basis only, with very little regard to actual claims experience, because that tends to be quite - - -

PROF WOODS: It's too information intensive.

MR BOOTH: - - - random and ad hoc.

PROF WOODS: Yes.

MR BOOTH: It really is just a factor of size. The larger the account the more relevance is given, on a statistical credibility basis, to the claims experience, and the more that that will come to influence the size of the premiums.

PROF WOODS: But is there any cross-subsidisation by an individual insurer between their large clients and their small clients?

MR BOOTH: I actually have not asked that question. I would suspect no. At the end of the day though the insurer now, particularly under the current prudential standards, has to justify to APRA that the premiums being charged are sufficient to fund the liabilities. There is now a premium - or effectively a capital charge. If APRA has any suspicion at all that a premium has been insufficient to cover the true liabilities being taken under the policy, there will be a very immediate obligation on the insurer to provide additional capital to make up for the difference. So premium liabilities and premium liability valuations are now an important function of the new APRA standards.

PROF WOODS: But in one sense that's easier for the large companies, because you might be over-collecting, in which case you could easily meet APRA's investigation, whereas if you've got a plethora of smaller companies, any undercharging wouldn't be necessarily so obvious.

MR BOOTH: The larger the companies, the more likely it is that premiums will be done on a deposit basis, with top-ups to be provided as experience develops; either

on a deposit basis or on an adjustment basis.

PROF WOODS: So in fact the experience rating means that your premium setting for the large companies is more transparent to the companies.

MR BOOTH: Absolutely.

PROF WOODS: And they would therefore be able to identify any overcharging you were trying to do to create some cross-subsidy back to the small.

MR BOOTH: Correct.

PROF WOODS: If you could spell out that process of premium setting, to explore those issues, that would be helpful.

MR BOOTH: I'd be happy to do that.

PROF WOODS: Okay. That gets us to the role of the private insurers.

MR BOOTH: The role of private insurers. I'd like to revert to the report, to box 10.1 on page 247, where reference is made to problems on both sides, and in particular the experience in the Western Australian scheme post 1993 and central fund management in New South Wales. I wanted to specifically present the case that the experience in Western Australia was not an issue relating to private underwriting of insurance as such, and my argument is that ultimately private underwriting was of benefit in that scheme.

The issue in Western Australia in 1993 was a benefit design issue and in particular related to the drafting of a threshold for access to common law. It was known locally as "the second gateway". There was a common law threshold introduced as a primary gateway for access to common law, which was an impairment threshold, and the second gateway was intended to allow a very small number of claims where the impairment threshold was not met but common law damages were still thought to be appropriate.

The second gateway was intended to allow approximately 100 claims a year. When the second gateway was closed in 1999 it was allowing 2500 claims a year. So there was clearly a problem developed in Western Australia with the design of the second gateway for access to common law, the benefit threshold. My argument as to why private sector insurance actually was desirable in the overall context is, the true issue became apparent in 1997-1998 and particularly 1998. Insurers, once they realised the full - it takes some years for these sorts of - - -

PROF WOODS: We do make that point in the report.

MR BOOTH: Yes. They increased prices by 30 to 40 per cent. The government was given advice that if nothing was done, insurers would increase prices the following year by 40 to 50 per cent. That was advice both from us and from their own scheme actuaries. My point is that where there is a design defect or a benefit blow-out or a major problem within the scheme, the private insurance process actually forces governments to examine the issue and hopefully to remedy the issue, because on the basis that if they don't the insurers have no alternative other than to charge a price which covers the cost of claims and the liabilities which they're incurring.

The same thing occurred in New South Wales CTP in 1994 and 1995, where there was a major blow-out in a certain cost of claims, and the government enacted legislation in 95 to fix that, on the knowledge that if they hadn't acted in that way premiums would have continued to go up. Tasmania to a degree did that - did the 2000 reforms in the very clear knowledge that the common law trends in Tasmania workers comp were quite serious, and that significant price increases would be starting to occur in that scheme if nothing happened.

So the fact that there were difficulties in that scheme I actually do not see as a problem coming out of private underwriting. I see it as a benefit in terms of the inherent integrity of the scheme, that actually forces the addressing of problems that are occurring within the scheme, and that forces the introduction of remedies.

I draw attention to something which is happening at the moment in Queensland, whereby the Queensland WorkCover Authority in their most recent annual report is reporting significant increases in the number of common law claims. They were 1634 in 2001; 2396 in 2002; 2640 in 2003. So they've gone from 1600 to 2600 in the space of two years. There is clearly an issue in workers compensation common law in Queensland.

PROF WOODS: We have raised that with various Queensland entities.

MR BOOTH: The net effect of that has been a significant impact on the liabilities within that scheme, and ultimately a likely very significant impact in future years. Now, the scheme has determined - or the government has determined to maintain the overall premium level at 1.55 per cent, and to make up the 03 losses from reserves. The reserves are now dropping quite markedly. There has to be a limit where that sort of exercise can occur.

DR JOHNS: Do you know what their second gateway is?

MR BOOTH: They don't have a second gateway problem.

DR JOHNS: Why is it occurring, the - - -

MR BOOTH: Queensland generally has a - and it has hit the private insurers in CTP and has also hit the private insurers in public liability. There has been a general increase in access to common law damages across the board in Queensland in all forms of compensation. Now, CTP insurers are struggling to cover their losses - or to cover their liabilities in that area. Liability insurers have also struggled to cover their liabilities.

DR JOHNS: But we're asking the lawyers about this, and they're a bit nonplussed of course.

MR BOOTH: Of course. A "gosh" sort of answer.

DR JOHNS: But is it the recent spate of advertising by lawyers for business? They weren't sure.

MR BOOTH: Until about three or four years ago Queensland was a very conservative state from the point of view of the operation of the judicial process and the awarding of damages. Three or four years ago what I call adversarial law developed in Queensland, and so the plaintiff lawyer fraternity became far more active as a plaintiff lawyer fraternity and started pushing for damages wherever they might be available, for whoever clients they might be able to provide them for, and the conservative nature of damages being awarded by the courts tended to reduce, so the net effect is the more the money was awarded the more people think that it's desirable to pursue a claim and the more money gets handed out.

PROF WOODS: Like self-reinforcing.

MR BOOTH: You have a self-reinforcing inflation in claims costs.

PROF WOODS: Okay. I'm conscious of the time, but if we can keep moving through.

MR BOOTH: I have discussed self-insurance and the very strong concerns that we have about prudential regulation of self-insurers and I think those concerns are very very adequately and fully described by the government actuary's report, and the issues he has identified, I believe, are very real.

PROF WOODS: So in that you are emphasising the issues he raised in terms of risk and the like.

MR BOOTH: Very real.

PROF WOODS: Is there anything else on the role of private insurers though? I mean, have we got that roughly right? You seem to be a credible witness for answering that question.

MR BOOTH: I believe, yes. We welcome the recommendation for a national policyholder scheme, as recommended by the royal commission. We strongly believe in choice and in competition. The insurance industry strongly believes in choice and competition as being an appropriate provider of insurance services, subject to the prudential oversighting control of APRA.

PROF WOODS: All right, and you noticed that in the body of the report we came out in favour for step 3 of it being privately underwritten on grounds of competition, risk capital being not the taxpayer but private investors, transparency of premium setting and the like. You have felt comfortable with that argumentation?

MR BOOTH: Strongly support all of those arguments.

PROF WOODS: Were there any we missed or has that captured it?

MR BOOTH: The one which is really interesting is the recent results in South Australia with a loss of $540 million in the WorkCover authority in South Australia.

PROF WOODS: I think it underlines. I'm not sure that it adds a new argument.

MR BOOTH: No.

PROF WOODS: It just demonstrates the point.

MR BOOTH: Exactly. Commissioner, I really have no more comments to make, other than - - -

PROF WOODS: Dispute resolution?

MR BOOTH: The principles are there.

PROF WOODS: Yes, and you have drawn our attention to the New South Wales CTP on the medical panel, which we will chase up and look at.

MR BOOTH: It has been suggested to me that there are issues surrounding the overall effectiveness of the AAT in terms of its resolution of workers compensation

disputes under the Comcare scheme. I am told there are issues there. I have to acknowledge that we haven't studied that in any great detail at all. Our members don't have any direct involvement in the AAT and so from that point of view it is actually quite difficult to form a view, but the core principles need to be there.

I think it is important from the point of view of the recommendations that the core principles be applied in whatever dispute mechanism is ultimately adopted and if it is to be an AAT process operating for a national scheme, those core principles would have to apply to the AAT. There was one other matter that I think has been one response to the publication of the interim report, and that is an assertion that a national scheme may result in the application of lowest common denominator benefit structures or results for injured workers.

PROF WOODS: Yes.

MR BOOTH: The Comcare scheme, from all of the information available to us, is by no means the least generous compensation framework in Australia - by no means - and, in any event, at the end of the day, if a national scheme is to be introduced there is absolutely nothing to prevent - the scheme design in all compensation schemes is ultimately a valid issue for government when it balances the level of benefits versus the cost of premiums which are required to fund those benefits, and so part of implementation of a national scheme would be an examination of benefits, consideration by government, as to whether they are thought to be fair and appropriate in all the circumstances, likely to satisfy the sorts of tests that we look for in terms of stability, predictability, over time, and affordability for those who have to pay the premiums. So we actually seriously challenge any suggestion that the mere adoption of a national scheme, be it Comcare or some modified version, will automatically result in some sort of lowest common denominator.

PROF WOODS: It wouldn't necessarily. I think their argument is that they could foresee pressures in that direction but, nonetheless, every jurisdiction has long experience in coming to grips with the various pressures of the various parties and, from time to time, for better or for worse, makes decisions, and it will be ever thus. Any matters that we haven't covered? I have actually found the way you have gone through those recommendations quite helpful to us, so that we get a comprehensive view of your approach. There are some areas we have foreshadowed and, much as it is the season that it is, if you could ask somebody to draft up some responses in those areas, we would find that very helpful.

MR BOOTH: We will certainly do that. Happy to assist.

PROF WOODS: Thank you again for the ongoing contribution you have made to the inquiry and from which we have benefited.

MR BOOTH: Thank you.

PROF WOODS: Are there any other persons present who wish to make an unscheduled presentation? That not being the case, I hereby adjourn until Canberra on Monday.

AT 4.35 PM THE INQUIRY WAS ADJOURNED UNTIL
MONDAY, 8 DECEMBER 2003

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