



**TRANSCRIPT
OF PROCEEDINGS**

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PRODUCTIVITY COMMISSION

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

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

TRANSCRIPT OF PROCEEDINGS

AT MELBOURNE ON FRIDAY, 27 JUNE 2003, AT 9.06 AM

Continued from 26/6/03

PROF WOODS: We'll resume the hearings by the Productivity Commission into a National Workers Compensation and Occupational Health and Safety Frameworks inquiry. Our first presenters this morning are the National Farmers Federation. Can you please for the record state your name, position and organisation that you are representing.

MS HARRIS: Denita Harris, policy manager and industrial relations advocate for the National Farmers Federation.

MR FRASER: Duncan Fraser, industrial chairman, National Farmers Federation.

PROF WOODS: Thank you very much. You have provided us with a submission and you have assisted the inquiry already in its early look at some of the issues, and we're very grateful for the contributions that the federation has been making in the course of this inquiry. We've been through the submission and it does raise some issues that we'd like to address, but do you have an opening statement that you'd like to take us through?

MS HARRIS: Very, very briefly, chair. Obviously for the National Farmers Federation, a key priority is to reduce injury on farms, and both in terms of the social and economic wellbeing for regional Australia. There are I guess two key areas that we have focused on in our submission. We obviously recommend a very proactive preventative approach to achieve the aim of reducing injury, particularly given that research indicates that there are different approaches needed on occupational health and safety matters to potentially reduce injury on farms far more than the reductions we have been achieving over the last few years.

We also say that there should be additional measures to reduce costs associated with workers compensation premiums, and also more importantly the wealth of claims in the sector is quite high, and there are a number of areas that we have touched upon in our submission in respect to the reduction of cost of claims. As a supplementary I guess document, we'd like to present also I guess something that's indicative of what the industry is trying to pursue at the moment, and that is a proactive way of educating our members, and through Rural Skills Australia, of which National Farmers Federation is a trustee, we have prepared a farm recruitment and induction guide, and that includes OH and S matters in it, but it was indicative of the research we were finding that we needed farmers telling stories to other farmers, and we'd just like to present that to the commission for consideration as well.

PROF WOODS: Thank you. I notice you refer to it in here, so thank you for bringing copies along.

MS HARRIS: It's hot off the press.

PROF WOODS: Yes. It raised our interest.

MS HARRIS: There's a CD that is attached to it that hasn't been burnt as yet. So as soon as we do get the CDs that are with it, we'll also send that to the commission as well.

PROF WOODS: So I don't have to ring 1800-647-798.

PROF SLOAN: Does she have a broken wrist though?

DR JOHNS: Looks it. I thought that was part of the illustration.

PROF SLOAN: You can change a tyre with a broken wrist.

MS HARRIS: Exactly. It shows the alternative - - -

MR FRASER: Rehabilitation, return to work.

MS HARRIS: - - - rehabilitation processes.

MR FRASER: She's in fact a model, not a farmer.

PROF WOODS: Thank you for that because it did come to our attention as part of your submissions. We look forward to that. There's some reading on the plane on the way home. Any other points you want to make?

MS HARRIS: No, that concludes - we thought it was probably prudent to maximise the opportunity to answer questions this morning.

PROF WOODS: Yes. Well, it's certainly a fairly extensive and helpful submission. A number of points, what I notice is you raise fairly early this issue of cross-border, believing it imperative to resolve the, as you say, impasse on cross-border matters. To what extent of the more recent initiatives in Queensland, New South Wales, Victoria addressed some of that or hasn't it gone far enough or do you want it moved to the other legislation?

MR FRASER: No, probably it wouldn't have gone far enough. There's still a lot of confusion across borders. I come from New South Wales where we have the highest premiums, and you go to Queensland where, say in the instance of the shearing industry, the premiums are roughly a third of New South Wales. I think in Victoria they're about half the New South Wales premiums.

PROF WOODS: So your point is more about the comparison between jurisdictions than the treatment of workers who are domiciled in one location, but temporarily are

employed in another.

MS HARRIS: It's both.

PROF WOODS: Yes. If you could tease that out for me, that would help.

MR FRASER: The New South Wales scheme introduced reforms a couple of years ago, putting the emphasis back on to rehabilitation, return to work, which had a fair degree of opposition from certain sectors, but that's helped in some way to return the emphasis away from or back to getting employees back into the workforce if possible, away from just, you know, the compensation issue. So that's helped and I think gone some way - - -

PROF WOODS: And that's something you support as a federation; the rehabilitation, return to work side?

MR FRASER: Certainly, yes, because obviously the rural workforce is, you know, scattered. It tends to - - -

PROF WOODS: It can also be fairly itinerate; harvesting, picking et cetera, shearing.

MR FRASER: Yes, and because of the cost - the rural premiums tend to be higher - a claim on an employer tends to magnify the future premiums to the extent where we get quite a few going out of business just on that basis.

PROF WOODS: So the price mechanism works in that respect, that there's a direct feedback between impact or premiums, and therefore focus on safety?

MR FRASER: To a certain extent, the main problem in New South Wales is that the scheme is essentially administered by the government, and there was an attempt to - - -

PROF WOODS: As it is in Queensland.

MR FRASER: There was an attempt to go to private underwriting several years ago. That failed, one of the reasons being the large deficit that exists and the insurance companies weren't willing to take any responsibility of that. So essentially - and I've sat on a working group with the insurance companies and WorkCover and the unions in New South Wales, and the insurance companies really feel that there's not a lot of incentive for them to collect accurate statistics about injury rates and categorising them because essentially they're collectors of premiums.

PROF SLOAN: Is there a more mundane issue though for families? I would

imagine that there are some farmers that have - you know, they have blocks of land in a number of states.

MS HARRIS: Yes.

PROF SLOAN: And they might move their workers around those blocks of land, and therefore there develops an ambiguity about, you know, are they covered? We've heard examples of Queensland workers being sent to the Northern Territory to do something and having an accident, and then Queensland saying, "Well, it's not our responsibility."

MS HARRIS: Certainly the indicators are at the moment that even though there has been some move to assist in the cross-border issues, there is no evidence of it improving at this stage. We have I guess three areas in which cross-border is an issue. One is farms that are actually on borders, and in fact the NFF president, his property is on the border of New South Wales and Queensland, and he has had particular problems over the last few years on those particular issues.

We then have obviously teams of workers going from one state to another, shearers in particular travel quite substantially, and certainly the comments from the Shearing Contractors Association have been the inconsistencies between the jurisdictions, and the impasse in terms of resolving these inconsistencies really are creating a lot of confusion particularly for small business operators such as the contractors. The third area that is a problem for our members is obviously the bigger agricultural companies that own properties in more than one state, and obviously there are issues there in terms of dealing with multiple jurisdictions with multiple costs involved, and dealing with I guess the duplication of dealing with multiple jurisdictions. So there are three areas there.

PROF SLOAN: You don't even really necessarily have to be that big. I mean, you might just - - -

MS HARRIS: No.

PROF SLOAN: - - - own a block of land in South Australia, and then over the border in Victoria.

MS HARRIS: That's right.

PROF SLOAN: You know, you don't have to be Kerry Packer to be - - -

MS HARRIS: You certainly don't, and certainly there are a great deal of farming families that are becoming increasingly corporatised that own, instead of just one property, four or five properties that may well cover a number of jurisdictions. So it

certainly is the - I mean, if we look at farms in Australia, the number of farms haven't changed per se, but the ownership of them has and it's about halved, and there's a risk that is a result of purchasing by existing farm owners of additional farms.

So the increasing issues of workers compensation costs is going to increase as that becomes more prevalent in our industry, whereby many small business owners who normally didn't have any workers compensation issues at all now do so as they increase their land holding. They're needing to employ additional persons.

PROF SLOAN: I remember you saying though that you need to drill down with the farming statistics a bit, don't you, that they look to be very bad, but that's mainly because of shearing?

MS HARRIS: It's interesting, the statistics. If you look at it purely on workers compensation statistics, we're about the second highest in terms of injury per thousand people, and we have the highest cost of claims on workers compensation, but when you add that to the fact that less than 20 per cent of our injuries on farm are workers compensatable, and most of them are actually occurring to farmers themselves, that gives us great concern about the level of injury in farming.

PROF WOODS: So sort of fivefold what the statistics show.

MS HARRIS: That's correct, in terms of actual injury at the workplace. So we are somewhat concerned about that, and what we need to do about it.

PROF SLOAN: So it's not just shearing. I mean, shearing is clearly bad.

MS HARRIS: Shearing is bad.

PROF SLOAN: Are you a sheep farmer?

MR FRASER: Yes.

PROF SLOAN: You can tell us all about it.

MS HARRIS: Shearing is bad and the cost of the claim is highest in shearing as to any other sector of our industry, but Duncan may want to comment on that.

MR FRASER: The main issue with shearing is it tends to be an accumulation over a period of years with bad backs because there wasn't the emphasis years ago on looking after yourself and warm-up exercises, and basically use of overhead slings to take the pressure of your back. It's seen as a man's job and you didn't go into all that, and just turn up to the shed and go straight into it, whether it was five degrees or 35.

That's the main problem - if I use New South Wales again - because the payout per claim in New South Wales is in excess of \$35,000 a claim. That's average for shearers' claims, and that reflects a shearer after 20 or 30 years in the job, finally his back is too much. So the only option for them to take is where they last worked is - - -

PROF WOODS: It's a bit of a lottery in that respect, isn't it, because you're taking on site somebody who is carrying injury, but if they happen to then manifest it at your shearing shed rather than the one two weeks later down the road, then you cop the claim?

MR FRASER: That's right, and I suppose the employer is told to ensure that everyone is fit and ready for work, and that's very hard when someone comes in and says they're right, and then they - as you say, they just haven't worked in that place, and because of the size - it's often the end of their career as a shearer. It's a fairly substantial compensation case there.

PROF SLOAN: Are young people going into shearing? Is that an issue?

MR FRASER: They are. The problem which we're trying to address is the whole issue of shearer shedhand training. It's very disjointed between the states, and we're trying to work on that on a national basis also. The other issue is the work when they come out of training courses, and that's another big factor we're trying to address, that if they - more on-the-job, in-the-shed-type training, and when they do finish, they're pretty much guaranteed a job in the industry rather than being trained in the system and then just basically go out.

They really need the helping hand of a contractor or a group of farmers to help them, and that's where we're working because people are being trained and they go out and they end up fruit picking or driving tractors. It's not what they were trained for, but that's where they find the work. The other issue - talking about cross-border issues, and with regard to shearing - is Victoria and New South Wales set up working parties to come up with the guidelines booklets, and I suppose this shows the differences in approach. I mean, there's the two books. I was on the New South Wales working group. They're both called Health and Safety At Work In Shearing. The only difference - - -

PROF SLOAN: It looks like a bit of reinventing the wheel.

MR FRASER: Well, it is, and the Victorian one was first, and New South Wales - we said, "Well, why don't we just take the Victorian one and just put in the New South Wales legislation where it's appropriate?" - but, no, they decided to go ahead and do their own. The difference is the Victorian one is very readable and has lots of photos, there's something you can put in the workplace and be used by all the staff.

The New South Wales one is very prescriptive; it's just tables and charts and I think it would be just a nightmare in terms of trying to get its uptake.

PROF WOODS: So you're on the committee that produced the New South Wales - - -

MR FRASER: I was on the working party.

PROF SLOAN: Well done.

MR FRASER: I'd have to say I heard about the launch of the book by a press release. I wasn't notified.

PROF SLOAN: I remember you talking about this as an example, and it's really about the accessibility of, you know, occupational health and safety guidelines and how - yes, the Victorian one was kind of user-friendly.

MS HARRIS: That's right. Certainly the other interesting issue about this particular one is Victorian WorkCover have been giving out multiple copies of the Victorian one, and we know from speaking to the union representatives, they've got boxes of them in the car and hand them out as they are going, where the New South Wales ones, you have to purchase it.

MR FRASER: To get more than one copy.

PROF SLOAN: And why would you.

MS HARRIS: If you want more than one copy, you have to purchase. So - - -

DR JOHNS: Is it a best seller?

MS HARRIS: No, not quite.

MR FRASER: It's a non-seller; no-one knows about it unfortunately.

MS HARRIS: And it's interesting again in looking at innovative ways of trying to get people to be more occupational health and safety friendly. Duncan was telling me earlier about a booklet that someone produced last year about exercises for shearers prior to commencing each morning, and they were saying, "Use a carton of stubbies," and do this and do that. Again it caused some interest, it had some cartoon figures with it, and it caused some interest enough that they did pick it up and utilise it in the sheds, where a book such as what has been produced by New South Wales with a lot of words and it's very thick - - -

PROF WOODS: It's a tad dry.

MS HARRIS: - - - it's going to be ignored, but coming back to the training issue, we are having difficulties in getting quality training. It's certainly one of the things that we're working with, with the union also. The Australian Wool Innovation is looking at ways in which people can get traineeships through shearing, but they can also be multiskilled. So if they do have an injury throughout their career, then there are opportunities to working in other areas of the sector, but it doesn't preclude them later in life. So they are certainly some of the initiatives we're trying to achieve with the R and D Corporation as well as the union.

DR JOHNS: Are there any rules in the system that says, "Well, we'll sell the farmer his workers compensation insurance, but when a worker comes on site and a mob of shearers come in," or whatever, "he or she has to take them through, get a minimum number of training sessions or just spending half an hour with them," or whatever? I mean, are those conditions attached to - - -

MS HARRIS: Not that I'm aware of.

DR JOHNS: Would they be useful? At the end of the day, you can send this stuff around till you're blue in the face, but it's the point of first contact.

MS HARRIS: Certainly the approach that we're trying to take in anything we do with farmers at the moment is getting them to understand the cost impacts of injury occurring at the workplace, and that comes down to the issues of productivity, it comes down to their workers compensation premiums, their own personal insurance premiums, and as a result why you need to be more proactive at the point of commencement of employment or the point of starting a job.

That is part of the process we've done with the recruitment and induction booklet, to try and say there's a few stories in there that say, "Well, I did this wrong in the first instance, I got burnt, and it cost me a certain amount of money. So therefore this is the process that I've now put in to ensure that we do minimise injury." Certainly the bigger companies - Australian Agricultural Company for example have an exceptionally good human resources department and are putting out some excellent material. We, particularly Rural Skills Australia, are working with them to see whether or not we could utilise that in an accessible form to then put it through to the smaller operators.

Australian Agricultural Company have actually set up and are now a registered trainer, and they do their own training of all their employees prior to going on site and continuing ongoing training as they're working on the properties, and that has obviously an OH and S component to it.

DR JOHNS: But you don't know of instances where it's like a condition of buying insurance that you have to do an injunction.

MS HARRIS: Not that we're aware of, but there is - - -

DR JOHNS: Not that that's going to solve all the problems, but - - -

MS HARRIS: No. There is preventative, I guess, measures. Western Australia for example with a couple of insurers, if you undertake the farm safety course and you implement it - there's then a process of implementation on the farm, if you implement that, evidence of implementation and then evidence of no injury for 12 months, you get a 15 per cent reduction in premium. Now, we understand that has worked exceptionally well and there has been a far greater uptake of the course in that state. So that is a way in which there is an incentive by a private insurer to encourage people to undertake those preventative measures. So we've seen that as a way which works, and we'd like to see that further implemented across the states.

MR FRASER: And that was a model we wanted adopted in New South Wales and we took to the government and WorkCover. The insurance companies weren't interested because essentially they're just collectors of the premiums. So we put pressure on the government, they did introduce an industry-wide premium discount scheme which allowed for employers to join together and implement programs and processes, and if it was satisfactory and met the standards required, then in the first year they could achieve up to a 15 per cent reduction in the premiums, second year sliding down to a maximum of 10 per cent, and the third year 5 per cent maximum and then it would finish. So we felt it actually had the opposite effect in that it should be encouraging us to stay in and keep - - -

DR JOHNS: Yes.

MR FRASER: - - - doing it and offering it, but whereas it was sliding down, and the other problem was it was too difficult almost for small employers to implement because of the remoteness of many farmers as small employers - and the majority of our members are small employers - the remoteness and having to employ a consultant to do it. So there wasn't the uptake on that.

DR JOHNS: And the other incentive which his not available of course is that no amount of training can make you safe from prosecution. You can say you trained a worker, but if there was an accident, you're still found to be at fault.

MS HARRIS: You're still liable, and the other issue for farmers is obviously remoteness issues in terms of just general accessibility of training. You sort of say to them all, "Why don't you get trainers in?" They say, "Well, a trainer comes through this way once a year and gets his money - - -"

PROF SLOAN: That's also an issue for rehab, too, isn't it?

MS HARRIS: It's exactly the same.

DR JOHNS: So I presume return-to-work rates in this industry are generally lower than others.

MS HARRIS: That's correct.

DR JOHNS: The alternative is to pay people out which is probably why your payouts look or the costs look greater than they otherwise would be because there just isn't the alternative of foreshortening the process by getting them back to work.

MS HARRIS: That's right, though I guess it's also exacerbated by the fact that there's a lack of alternatives there, but also there's certainly some evidence that is coming through to say that in some areas there is not I guess the support in terms of return to work - I guess looking outside the square at return-to-work alternatives at the workplace.

PROF WOODS: I mean, return to work is something you raised here and we might as well follow down that path for a moment because you've got your casual employees, you've got some who are very seasonal for a very short period of time, and in fact the time they spend with any one employer is quite limited in that harvesting, picking-type areas, and the lack of rehab providers and other expertise in more of your rural areas. So what is the pathway through? Do you look at the collective responsibility so that if the duties - you know, if somebody can only do light duties, then clearly the options are limited for the particular place where they worked. If they were the single hand and they had to be rouseabout, then light duties doesn't fit.

PROF SLOAN: There aren't too many light duties in agriculture really.

PROF WOODS: No. So how do you sort of take this collective responsibility? What's the way through?

MS HARRIS: I mean, very hard. In some respects in I guess regional areas, there has been a recognition, and this has come I guess to the fore through the drought process, that there is needs to diversify for farms on the type of work that they undertake and whether that's a - you know, looking into tourism in the area or whatever the case may be, but there's no doubt that there is that need to consider payouts as opposed to just constantly pursuing a return-to-work alternative because that in itself is a costly exercise, and would it be better to just say straight on early on, "There's no options here. Let's just pay this claim out?"

So there are certainly examples whereby I guess attempts have been made that really realistically shouldn't have been made, but nevertheless - - -

PROF WOODS: What does the employee want out of it generally? I mean, it's hard to generalise, but is there amongst those who chose a life of employment on properties - is there a sort of general expectation by them? Do they just want to get paid out and go back to a larger regional centre and try and pick up their life or do they want to stay in the farming life despite their disability or injury?

MR FRASER: I think most do want to stay. They're generally in an area they were born and brought up in, and I suppose the last thing regionally we want is this encourages migration to a larger centre. Again I suppose I'll show you a personal example for me, one of my shearers who has shorn for me for over 20 years several years ago got a cancerous tumour on his spinal cord. He fortunately was diagnosed early. He had an operation.

Obviously he was covered under workers comp. He checked it out and - I think he started on it, and then he was offered this rehabilitation return to work, but it involved going 200 kilometres away and doing totally different light duties. All he really wanted to do was to return to shearing, you know, whether it was as a rouseabout, gradual return. He was told he could never shear again, but he wanted to do something.

PROF WOODS: Do the picking and - yes.

MR FRASER: So he picked up odd jobs, but he basically refused their offer because he said it was just totally unrealistic. It took him away from his family. So he didn't take it up. I think he dropped out of the scheme and he took up light duties, and he's now back shearing full-time actually. I'm encouraging him to go into the tourism industry. We've set up a Shear Outback museum in Hay where I come from. He would be a very good demonstration shearer. I'm still working on him, but he's back in the workforce now and doing that, but he basically did it himself without any assistance. That I'd say is a fairly typical example.

PROF WOODS: That's right. Last time we met, there was a small matter of a dust storm that rather impeded your attending. In fact we were copping the benefits of your dust storm by way of - - -

MS HARRIS: Top soil.

MR FRASER: We say we got it from South Australia.

PROF SLOAN: We're wrong though to focus entirely on shearing. I mean, there

clearly are - there can be an accident-prone activity farming more generally, and what you're saying is that a lot of it is not compensable because it's actually the farmers themselves.

PROF WOODS: Tractor rolls.

MS HARRIS: That's right.

PROF SLOAN: It's machinery.

MS HARRIS: It's machinery.

PROF SLOAN: It's working by yourself often, isn't it?

MS HARRIS: That's right.

PROF SLOAN: Which is sort of hazardous.

MR FRASER: And another statistic which is probably reflective of the whole industry is that a lot of the fatal injuries are happening with people over the age of 60, and that's a reflection that farmers are staying on, working longer on their properties doing manual jobs they normally would have passed on to sons or had a workforce. Many now don't employ full-time labour. We read of instances of fatal accidents of farmers in their late 80s being crushed by a cow in stockyards. You think, "What in the hell are they doing in there?" - but I mean, they're still trying to work cattle at that age or they're on a tractor and that - I've chaired an advisory committee in New South Wales for rebates for rollover bars, and we just about got to 8000 rebates paid out since the year 2000.

PROF WOODS: Good.

MR FRASER: And there's demonstrated research that shows that it has a marked effect on reduction of rollover fatalities on tractors.

PROF SLOAN: Which has traditionally been a bad - - -

MR FRASER: We've done that through offering a rebate to get them fitted rather than going out there and saying, "You're going to get fined a thousand dollars if you don't fit it," something like that.

PROF WOODS: And are all your tractors sold with roll bars?

MR FRASER: They have been for 20 years.

MS HARRIS: Yes.

PROF WOODS: Have they?

MS HARRIS: Yes, but unfortunately there's an awful lot of - - -

PROF WOODS: A lot of museum pieces.

MR FRASER: Dare I say it, a lot of small farmers or hobby farmers who have them fitted, and a lot of the accidents happen with inexperienced people who are on their places on weekends.

PROF WOODS: Doing weekends, and don't understand the - - -

MR FRASER: Suddenly believe they're in a Ferrari.

MS HARRIS: And certainly the big issue at the moment that seems to come to fruition quite often is the all-terrain vehicles, the four-wheelers, and we're certainly looking at ways on which we can look at the safety aspects of those particular pieces of machinery but, no, it is a broad section of injury, and that is obviously - our industry is probably unusual in comparison to most because we have got that geographic expanse coupled with the fact that workers are usually doing multiple duties, particularly by themselves.

It's also interesting I guess the increase in use of labour hire companies, particularly in horticulture, where you get busloads appearing, and the issues of ensuring that the contractor has actually undertaken the appropriate insurance and training and so forth of those workers, because there's certainly some questionable activities being taken by some contractors of labour hire in the horticulture sector.

PROF WOODS: That gets to the question of what is defined as an employee as well and who is responsible, and clearly you're saying there that the horticulturalist doesn't want to be part of the responsibility chain for the workers comp on the labour hire.

MS HARRIS: That's right, because they have undertaken a contract for someone to provide that labour, and that should obviously include the workers compensation, but nevertheless we need to encourage our members to ensure that anyone that they do utilise as a labour hire company are reputable and do have all their bases covered because otherwise, if there is not a proper contract arrangement and the proper insurance covered, then certainly our members could be held liable if an injury occurred on site. There may well be that option happens.

So there are some interesting stories of busloads of workers appearing at the

farm gate in the middle of the very busy season, and the guy hops out and says, "I've got 40 workers. Do you want them or not?" Obviously we recommend not to take that option because you don't know the credentials of that person, but nevertheless when there are skill shortages and labour shortages generally for horticultural work, sometimes the ability to want to say yes sometimes - - -

PROF WOODS: The imperative.

MS HARRIS: The imperative of getting produce off a tree or a plant - - -

PROF SLOAN: Yes, if the fruit is rotting on the ground.

MS HARRIS: - - - is important to them as well.

PROF WOODS: You don't proffer a recommended definition in your submission. Do you have one as to how to define an employee?

MS HARRIS: We don't, only because there's obviously some diversity between the state membership as to what is the appropriate undertaking to give in terms of that regard because of the differences upon which each of our members are dealing with at this stage.

PROF WOODS: So we understand the general thrust of your argument, but the exact words would be a matter that each state organisation would have particular views on.

MS HARRIS: That's correct, and obviously if there are opportunities further down the track to consider that, then certainly we would look at it further, but nevertheless the key area of consistency was that we don't believe that self-employed persons should be covered under any definition of who is a worker, and that the current existing methods of insurance of self-employed should be maintained.

PROF WOODS: Income, continuity and disability et cetera et cetera.

MS HARRIS: That's right.

PROF WOODS: All right, and we will be dealing with it in our draft report. So that will give you something to respond to. That covers my areas of questioning. Dr Johns, have you got anything further?

DR JOHNS: I'm just reading through. There's quite a nice discussion on this business of the connection test being your preferred model to solve cross-border issues. I don't know whether I want to ask anything about it, but you set out pretty clearly what you prefer. I thought there was - the lawyers were telling us there had

been a fair amount of progress on that issue between New South Wales-Queensland, New South Wales-Victoria.

MS HARRIS: We understand there is, but obviously there are broader jurisdictions beyond those states, and our understanding is that the jurisdictions collectively were trying to implement that connection test for all jurisdictions, and that has yet to be progressed to the extent that everyone has undertaken to pursue that in legislation. So we acknowledge I think in the submission that some progress has been made, but nevertheless it hasn't been fully implemented to the stage where it could be implemented on a multi-jurisdictional basis.

DR JOHNS: So it's a work in progress, but you're confident they will all pick it up?

MS HARRIS: It's questionable as to whether that occurs or not. It's been interesting to note there have been a number of reviews of workers compensation systems that have commenced in recent times or have been mooted to commence. I guess we've been slightly cynical in some regard that there's been a variety of recommendations over the last 20 years on how we need to pursue I guess consistency within the jurisdictions, and there hasn't been a huge amount of progress made, but - - -

PROF WOODS: 30 if you go back to Woodhouse.

MS HARRIS: Yes. There's obviously moves there, but nevertheless for us this issue is not just a workers compensation issue in terms of your consistency of jurisdiction. It's very much the occupational health and safety aspects as well.

PROF WOODS: Yes.

DR JOHNS: Yes.

MS HARRIS: Which obviously NOHSC is trying to undertake a national strategy, and whether or not that also comes to fruition as they try and roll that out is also something I guess is hand in hand with some of the issues that we're considering at the moment.

PROF WOODS: Terrific. Prof Sloan?

PROF SLOAN: I'm just absolutely riveted by the shearing handbook.

MR FRASER: Which one?

PROF SLOAN: The Victorian one.

MR FRASER: I'm almost embarrassed to have my name on the front of the other one.

PROF WOODS: Are there other matters that you want to raise with us - - -

PROF SLOAN: It didn't have your photo though.

PROF WOODS: - - - or draw our attention to?

MS HARRIS: I'm just trying to think.

PROF WOODS: I mean, your submission in itself is fairly comprehensive and the earlier discussion we had also picked up those points.

MS HARRIS: As I said, I mean, from the outset, there's a great deal of work already being done, particularly through the agricultural research and development corporations on many of these issues, and I think I've referred to a number of those publications in the submission, and I guess that's indicative of where we're trying to pursue a more proactive approach on many of these areas, and the ability to work within jurisdictions to be able to pursue those at a greater level.

At the moment we believe it's being done on a relatively ad hoc basis, and we're trying, through organisations such as ourselves and Farm Safe Australia, to pursue that on a more effective national level, and ensuring that we can maximise the opportunities available to us to effectively implement effective OH and S practices. There are too many examples of duplication and therefore a minimisation of effective use of resources available. So we see that as a key in terms of pursuing this further.

MR FRASER: I think just from a farmer's point of view, over the last 10 or 15 years, the whole issue of workers compensation coupled with the superannuation payments, you're now looking at - depending on states, but between 15 and 25 per cent now of the total wage or add-ons come from the compulsory super and the workers comp, and unfortunately the effect of that is that there's a trend away from permanent employment to the use of casual or contractors.

PROF WOODS: Which is why the 80-year-old is in the cattle yard.

MR FRASER: Yes, and trying to do it themselves, and that's not really a good way of trying to sell the message of improving occupational health and safety in the workplace. But it's certainly an area that we're tackling far harder and with a lot more knowledge now than we used to, but it's very hard to get the message over at times when all these forces seem to come together, and our concern is it will be driven underground and not out in the open where people can talk about it and make

those improvements.

PROF WOODS: No. There are some real pressures. Thank you very much.

MS HARRIS: Thank you.

PROF WOODS: I will adjourn our hearings until 10.45.

PROF WOODS: I resume the hearings and call forward our next participant, the Institute of Actuaries. Gentlemen, could you please for the record state your names, positions you hold, and organisations you are representing.

MR BUCHANAN: I'm Bob Buchanan. I'm a consulting actuary based in Melbourne. I've specialised in accident and compensation and general insurance for the last 21 years, and I'm representing the Institute of Actuaries in Australia.

PROF WOODS: Thank you.

MR SMITH: Daniel Smith, consulting actuary based in Melbourne. I've specialised in general insurance for 12 years in both general insurance and accident compensation, and am the convenor of the institute's accident compensation subcommittee.

PROF WOODS: Thank you.

MR AMERY: Clive Amery. I'm an actuary with the Institute of Actuaries, representing that body, and I'm also a counsellor of the institute.

PROF WOODS: Excellent, and Ms Vicky Molin is not joining us?

MR AMERY: She couldn't make it with us today.

PROF WOODS: Is it Vicky who was here observing yesterday?

MR AMERY: No.

PROF WOODS: We had an actuary who was here observing.

MR AMERY: Julie Evans.

PROF WOODS: Okay. You have provided us with a submission, and we thank you - very comprehensive, very informative. A couple of things we'd like to pursue with you on that. I mean, the art of today will be to get as much free costing advice from you as we can on the record so that we don't have to pay for it later, but we'll see how we go. Do you have an opening statement you wish to make?

MR BUCHANAN: The Institute of Actuaries in Australia is the sole professional body for actuaries in Australia. We're responsible for standard setting, education and accreditation. As a professional body, we have a responsibility to inform and contribute to public debate in those areas where our expertise is relevant. In doing so, we endeavour to provide objective and informative advice, and this submission is made in that spirit. Actuaries in Australia have been involved in valuing workers

compensation benefits since at least the 1960s and advising all major workers compensation insurers and supervisors since the 1970s.

Workers compensation provides benefits that can extend over many years. When I joined GIO in 1982, some claims were still active from when it was set up in 1926 for example. Actuarial techniques are essential for making financial sense of such long payment streams. There are also special actuarial techniques for making the best possible use of the highly variable and limited experience data on which premiums must be based. In the course of applying these techniques, actuaries have also developed a deep insight into the dynamics of workers compensation, particularly the relationships between benefit structures, benefit levels, benefit administration and costs. Much of our submission relates to these issues.

Because some of these relationships are non-intuitive, it's vital that actuaries be involved in the design of benefit changes and in monitoring emerging costs after any change. Changes in benefit levels usually have a bigger than expected impact on costs, and there is usually a honeymoon period after any major change, while practitioners get used to the new rules, during which the experience is typically good and appears even better. Now, some of the - - -

PROF WOODS: Until the players learn how to exploit the loopholes.

MR BUCHANAN: Yes, pretty much so.

PROF SLOAN: Does that mean therefore that there's no perfect model and you always have to keep moving on, do you think? It seems to me that the history of these things, you can get it right for a little while and then, you know, someone finds their way out of the maze.

MR BUCHANAN: Depends on how many loopholes you leave in. Equally I don't think it's necessarily a good thing to change the rules just for the sake of getting the benefit of the honeymoon period.

PROF SLOAN: Good for the actuaries though, changing the schemes all the time though, isn't it?

MR BUCHANAN: It gets a bit tiring at times.

PROF SLOAN: Yes.

PROF WOODS: Especially when you've been there and seen it all before.

MR AMERY: I think that's where we get the most value actually because we have been there. We have seen it before.

PROF WOODS: Yes, precisely.

MR AMERY: And we have a lot to contribute in that area.

PROF WOODS: A bit of cautionary wisdom.

MR AMERY: Yes.

PROF WOODS: I assume in that respect you would caution us against investing too much time trying to devise the one perfect, stable, long-term scheme?

MR AMERY: You need to be careful of your terms. Long-term care is an area where I think work can be done, but in workers compensation schemes, yes, we would caution you spending too much time in developing the perfect system.

PROF WOODS: Thank you.

MR BUCHANAN: The main aim of the workers compensation, occupational health and safety complex should be to try to minimise the severity and the impact and the frequency of workplace injuries and illnesses, and in that word "impact" I include particularly the impact on the injured workers themselves. So as far as possible we want to be getting them back to productive work and good health as quickly as possible, and compensating them properly to the extent that that's not possible.

PROF WOODS: Thank you. We interrupted the flow of your thoughts, which we may continue to do - but anyway.

MR BUCHANAN: There are a number of points we make in the submission, mostly in response to the issues identified in the terms of reference, but we did feel there were a couple of additional issues that deserved to be considered.

PROF WOODS: The data and the - - -

MR BUCHANAN: The data and the supervision of - - -

PROF WOODS: Yes, prudentials.

MR BUCHANAN: Prudential supervision of public sector schemes in particular, but also to some extent self-insurers.

PROF WOODS: I think we can get to those. Are we better off just sort of wandering through your submission? Is that probably the best way to - - -

MR BUCHANAN: It might be a good way to do it.

PROF WOODS: In that respect I underlined and asterisked an early comment of yours that, "Care is needed to avoid perverse incentives." I think that's a golden rule in this process, and I think that's very succinctly put.

MR BUCHANAN: It's all very well putting it very succinctly; actually achieving it is more difficult.

PROF WOODS: Absolutely. That was the lesson from it.

PROF SLOAN: Can I go back a bit earlier, Mike, because I thought - on page 4, you take a rather agnostic view about the kind of different model; sort of a fully private one, a fully public one and then some sort of mix, and I think really what you're saying in a sense, which I agree with, is that those three models can all be successful depending on the kind of parameters you establish, and just having, say, private underwriting, giving fault in regulatory arrangements to be disastrous as say in Western Australia it was for that period in the late 90s.

MR BUCHANAN: You're not actually speaking to three agnostics here.

PROF SLOAN: Sorry.

MR BUCHANAN: But the institute is agnostic on the subject.

PROF SLOAN: Okay.

PROF WOODS: Give us the benefit of your particular view.

PROF SLOAN: I was just going to make a point that quite a lot of people seemed quite keen on the Queensland model, but it seems to me that you sitting there as an actuary and working away with your models, the key favourable feature of that is that everyone gets cut off after five years. So basically you don't have a tail. Surely that would dominate your calculations.

MR AMERY: I was wondering who was putting forward that as a preferred model.

PROF SLOAN: We've had quite a few people, including companies.

MR AMERY: Yes?

MR BUCHANAN: It's got a lot of attractions for insurers because they don't like claims that hang on for ever and ever. It's got a lot of attractions for lawyers because

it gives them a good income stream.

PROF SLOAN: I get the impression, agnostic though the institute might be, that you're not actually a great fan of common law.

MR SMITH: I think it's probably fair to say there's three people here who aren't.

MR BUCHANAN: There are some others in the institute who are quite strongly in favour of common law.

PROF WOODS: There's a collective view on common law that there aren't many features - do we want to do common - shall we do - - -

DR JOHNS: Go back to the underwriting.

PROF WOODS: Let's go back to the underwriting first because you do say that a long history of reviews, analyses et cetera, none of these has clearly shown any particular model to be best, and I think that's consistent with where Prof Sloan was heading. As you look somewhat objectively at these various schemes, you can have different models and different permutations, but we're talking about variations, not about extremes, other than somewhere they do go down the gurglers and have to get rescued.

MR BUCHANAN: Yes. I think something that needs to be said about the Queensland scheme is that it is very much a creature of its environment, and I shudder to think how that scheme would work in the more litigious environment of New South Wales.

PROF SLOAN: Because it looks as though New South Wales by far has the highest average settlement in these negligence-type cases, and so if you kind of start imposing that - much higher than even in Victoria as I understand it.

MR AMERY: It's very difficult to compare income benefits with common law awards. So you're not really comparing like with like, so you shouldn't be fooled by simple comparisons like that.

PROF SLOAN: Let's go back to the kind of three models. I mean, private underwriting clearly has some benefits because after all, you've got some competition for the people who are seeking the coverage so they can kind of go round to the different underwriters and, you know, seek different premium quotes and the like. That strikes me as being a tick compared with a monopoly, particularly assuming that the premium-setting process is not too regulated. So you'd probably need that assumption.

MR BUCHANAN: You need a high degree of regulation in the premium-setting process because of the long delays involved in finding out what the experience truly is.

PROF SLOAN: But then you see if you take the New South Wales cases, I understand it at the moment that they've actually been able to sort of stabilise the liabilities to a degree because they've, you know, changed some of the conditions attached to the claimants, but the investment side of the game is absolutely appalling, and it's all eggs in one basket. So if you had a series of private underwriters, they'd have kind of different investment styles, and they've put their capital up and, you know, some might be doing okay and others might be doing badly, but there you've got a state monopoly. They got into equities at precisely the wrong time, and the returns are falling. So the asset side of the book is falling. So the net deficit position is either stabilised or still deteriorating.

MR AMERY: That issue was common to all insurers though. It wasn't just a public sector, it was the private sector as well. Part of the crisis in liability business was because of falling investment returns.

PROF SLOAN: Right.

PROF WOODS: They have to stump up the capital, don't they?

MR AMERY: They have to stump up the capital. If they don't, they fail. If there was a failure in the public system, they can ride it through. That's one of the benefits of the public system actually, that they can ride through years of poor experience.

PROF SLOAN: Yes, although then the ownership of the - - -

MR AMERY: Who owns - - -

PROF SLOAN: Who owns the deficit - who do you think owns the deficit in New South Wales?

MR BUCHANAN: Like it or lump it, the New South Wales employers own the deficit.

PROF SLOAN: Right, current and future.

MR BUCHANAN: That's true when you get a failure in the private sector as well. It's equally true.

PROF SLOAN: In these cases - and I mean actually a lot of the state schemes now seem in trouble. Is that because they don't take actuarial advice as seriously as they

should? I mean, you're involved in sort of the recommendations about the premiums.

MR AMERY: Daniel, would you comment on that?

MR SMITH: I would say there's an element of that certainly. I think in the schemes that I've been involved with where the governments are involved, it's a very political beast. Workers comp is far more difficult to handle than CTP for example because of the interested parties. You've got employers and unions and employees, and you've got lawyers and health professionals and the like, and also governments because there's lots of votes tend to ride on workers comp or at least are perceived to. So decisions and what premiums should be charged and how things should be dealt with are often watered down a bit because it's not politically acceptable. I know there are large cross-subsidies in premiums because, you know, it's seen desirable not to charge particular groups what the underlying cost is.

PROF WOODS: So caps and small business subsidies.

MR SMITH: That's right, all those sorts of things.

PROF SLOAN: I suppose all you can do is give your advice without fee or favour and - - -

MR SMITH: One of the things we've said and I think probably one or two aren't clear enough in the submission is that workers comp would really benefit from being de-politicised. It really needs to be taken away so that the premiums and everything are set without politicians' direct involvement.

PROF SLOAN: So that's a sort of governance issue that we should think about?

MR SMITH: I think so.

PROF SLOAN: Because there was a most egregious case in Queensland, wasn't there? Yes, I'm blaming you - you know, where like the actuaries had recommended that the premiums go up quite significantly, and it didn't suit the government at the time, so they put the premiums down.

MR AMERY: And hence getting into trouble.

DR JOHNS: It's the responsiveness of the schemes that's most important I guess; the ability to respond on all fronts. If some greater power determines that you can't play with the premiums because of electoral cycle or whatever, then you have to play with other features, and that's when you start getting into trouble I guess.

MR AMERY: The levers are the benefits and the premiums, and unfortunately

people play with the premiums a bit more often than they should, and that's why we're strongly recommended greater actuarial involvement in the premium-setting process, both the level and relativities, and also there's an independent review of that.

PROF WOODS: In transparency of involvement.

MR AMERY: In setting it out and transparency of involvement.

PROF WOODS: That's got to be particularly important so the politician gets judged by what the actuaries recommend.

MR AMERY: Yes.

MR BUCHANAN: There is another lever, and that's benefit administration.

MR AMERY: Yes.

MR BUCHANAN: That one is pretty much one sided. It's very difficult to cut costs much by better administration if you've got a reasonable system.

PROF SLOAN: So this is kind of claims management.

MR BUCHANAN: Yes, claims management. It's very easy to allow the costs to blow out almost to infinity.

PROF WOODS: Can we draw to a close with your views the issue of the relative merits of private underwriting and public monopolies; I mean, whether it's three views or a view or whatever, but what's the considered advice to finish off that particular topic?

MR BUCHANAN: The considered advice of the institute is that they can all work, and they've all got to be watched like a hawk. You need the right structures within which they are operating. They can all go disastrously wrong if you don't have the structures in place.

PROF WOODS: Is there any elaboration from personal experience that any of you present would like to add to that?

MR SMITH: My view is that for the sorts of benefits that I'd like to see injured workers get, then I'd like to see long-term weekly benefits, long-term care so that injured employees are actually looked after. On that basis, insurers do typically struggle to manage those long-term benefits in which case it leads you to a public scheme. Whether or not the claims administration is done by the public scheme or insurers or claims managers or the like, that really depends on how the organisation

manages those parties, but certainly my view is that a public scheme is better than a private.

PROF WOODS: In a sense that there's an incentive on the private underwriters to close the files.

MR SMITH: That's right.

MR BUCHANAN: Which is, generally speaking, against the interests of the severely injured worker, but on the other hand - - -

PROF SLOAN: I mean, I think that's a really interesting point because actually other people have said to us that maybe this isn't really insurance, you know, because if it is in a sense - I mean, and your view with tinkering with the benefits to try and get these schemes back into equilibrium, it's a bit unethical potentially, isn't it?

MR BUCHANAN: It depends - - -

PROF SLOAN: You know, it would be unfair, and you get an unfairness between lightly injured workers and very severely injured workers, and some of the schemes have very much failed the test for severely injured workers, haven't they?

PROF WOODS: Which may get us on to common law in a minute. If I can just explore any other personal sort of views based on experience that would help.

MR BUCHANAN: Pretty much in agreement.

MR AMERY: My views are the same - my personal views are the same, but I just reinforce the fact that from the institute's point of view, we do have a broader membership.

PROF WOODS: Yes, that's fine. We've got all that in front of us.

MR AMERY: So that's why our submission is the way it is.

PROF WOODS: Yes.

MR AMERY: In relation to fairness, no, I disagree with that. I think if you set the premiums at the right level - sorry, if the actuaries get involved and set the premiums at a fair level to support the benefit structure, then it's a different issue to say what can society afford, and if we've reached that level, then the only recourse is tighter claims administration or reducing the benefits, and that is a very real trade-off. It's not a bottomless pit. We can't provide everyone with everything. There is a limit, and if we get the premium right, we'll know what that limit is, and then benefits must

be adjusted accordingly.

MR BUCHANAN: The usual fallacy is that the insurer is paying the benefits or the scheme is paying the benefits, whereas in reality the benefits are being paid for by the consumers of the products and services.

PROF WOODS: Yes.

PROF SLOAN: Of course. You must have done economics once upon a time. That's very good.

PROF WOODS: We'll come to common law in a minute, but just to wander through, you talk about the importance of consistent definitions, and we're looking at national models frameworks, and part of that would be, is it possible to devise consistent national level definitions. You go through a number of principles which are all very fine and all very helpful, but I didn't actually read any suggested definitions which I thought was a little disappointing. I thought you would have had a stab at telling us what's the model definition of an employee within this sort of vexed question of labour hire and part-time.

MR BUCHANAN: Which is a little bit outside our area of expertise - - -

PROF WOODS: So were some of the others, but it didn't stop you.

MR BUCHANAN: - - - and you are also dealing with a group of volunteers who - - -

PROF WOODS: Right.

MR BUCHANAN: - - - aren't really able to devote the amount of time that we would like to this sort of thing.

PROF WOODS: The principles are good. I mean, in all seriousness they're very helpful.

MR BUCHANAN: It's more of a legal, human relations area to actually figure out what those definitions ought to be.

PROF WOODS: And you work from those to what then the cost implications are.

MR BUCHANAN: Yes.

PROF WOODS: Okay. That's all right. I thought I'd test. Could I just clarify a point on threshold. You say:

Care is needed in costing and to ensure that the threshold has a desired effect.

True. I understand all that:

These problems are eased, but not eliminated if a deductible can be used instead of a pure threshold.

So the deductible in the sense of, all right, somebody has to meet their own or the employer has to meet expenses up to a certain - after which the insurance cuts in, but I didn't know that one was tradeable off against the other. Can you clarify for me what you mean by that statement - "if a deductible can be used instead of a pure threshold"? It might be self-evident, but it wasn't to me.

MR BUCHANAN: The concept here is perhaps illustratable in terms of what happened in the New South Wales CTP scheme where they started off with a threshold that unless you get I think it was 10 per cent whole person impairment, you were not allowed to have any damages for pain and suffering. So of course everyone got either nothing or 10 per cent or more, and a lot of the people that objectively might have been thought to be around the 2 or 3 per cent were getting 10 per cent because that was what was needed in order to get anything at all, and the judges felt they needed something.

They then moved to a sliding scale where if you got 10 per cent, you got very little, and as you went up to I think it was about 25 per cent, you gradually went up on a sliding scale to that 25 per cent. That in principle brings fewer people over the 10 per cent than a straight threshold of 10 per cent, but what went wrong with that one is that they published a table - the court published a table showing the percentages of impairment for the amount of pain and suffering award, and the judges, instead of doing what they were supposed to do, which was to look up the percentage impairment and find out what the award would be, they looked up the award and worked out what percentage they needed to assess.

This is the sort of thing that can go wrong with these things. I'm not saying they're not a good idea, but you have to make very certain that the threshold is something which is not too open to interpretation.

PROF WOODS: Okay. So I don't read "deductible" in the sense, as I normally understand it, of things that you then meet your own cost before it cuts in. You were talking about a sliding scale.

MR BUCHANAN: A simple deductible simply says that you work out what the amount should be, and then you deduct \$500 from it, a thousand dollars, 10,000, whatever the number is that you're deducting. It's like the excess on your motor insurance.

PROF WOODS: Precisely.

MR AMERY: But they have to be managed very carefully. If you put in thresholds to reduce costs, you may not reduce costs, you may actually increase it.

PROF SLOAN: Yes, but what about the 30 per cent - - -

MR SMITH: It's a gateway.

PROF SLOAN: - - - impairment tests? That strikes me as pretty strict.

MR AMERY: Exactly. If you want to introduce a threshold to reduce costs, you need to introduce it in a high enough level that you chop out enough costs in the system which then gets redirected to managing the threshold.

MR SMITH: But having said that, in Victorian workers comp, a 30 per cent threshold was put in and there was a gateway for people whose impairment wasn't 30 per cent, but proved that they had a serious injury or, you know, had a reason to get to common law, and it got to the stage where something like 5 to 10 per cent of claims were getting through on the threshold and the rest were getting through on the verbal.

PROF SLOAN: Has that now gone though?

MR SMITH: Well, they've now changed it. There is still a verbal entry, but the wording has changed, and it's meant to be stricter, but it to date hasn't been tested. We're probably another three years away from really knowing whether or not that's worked.

PROF SLOAN: Because on the face of it, the 30 per cent impairment - - -

MR SMITH: 30 per cent is very severe.

PROF SLOAN: - - - is still - because there's a kind of degree of objectivity to it, and to be 30 per cent impaired.

MR AMERY: Objective.

PROF SLOAN: But then of course there's that issue if you don't exclude psychological, psychiatric things, maybe you could - I mean, I could probably get to the 30 per cent now.

MR AMERY: They thought of people like you.

PROF SLOAN: Did they? Trying to exclude me.

MR AMERY: They do have to be objective which is spot on with their - but they do have an element of discretion as well which isn't necessarily bad.

PROF SLOAN: Then of course the Western Australian was the classic. They had an impairment test, but they had the second gateway - - -

MR AMERY: The second gateway.

PROF SLOAN: - - - based on the income, and I mean all of a sudden people who were cleaners said they were going to be brain surgeons and go through the second gateway, you know.

MR AMERY: And no matter what you do, circumstances like that will continue to arise. People are always chipping away at the system trying to find alternate routes.

PROF SLOAN: Initially no-one was going through that second gateway until someone thought, "Hey, this doesn't look too bad."

MR AMERY: So that's why you'll always have trouble finding - - -

MR BUCHANAN: That's very much part of the honeymoon period.

PROF SLOAN: Yes, that's right. That honeymoon lasted a very short time over there. It came to a very bitter divorce quite quickly I felt.

MR AMERY: And the jury is out on the Victorian scheme which has been in, what, about two years?

MR SMITH: 99 it came in - October 99, and it's still not - - -

MR AMERY: Three years and it's being tested.

MR SMITH: - - - not known.

MR AMERY: It may be very harsh, it may be ineffective.

MR BUCHANAN: The other thing is - - -

PROF SLOAN: It goes back to the point - and you could just sit there and slag off at the judges, I wouldn't mind - you know, they do tend to kind of interpret things in a way which is often very favourable to the claimants, don't they, and so they kind of establish precedents?

MR BUCHANAN: They're operating in an environment, and that environment until recently has been - you know, the insurance companies got the money, so why shouldn't the claimants get it. Now, that has turned around to a fair degree recently, but it will take a long time before we see just what the new pattern is.

MR AMERY: And it also - - -

PROF SLOAN: Because you see this theme repeated in public liability cases, too,

don't you?

MR BUCHANAN: It's all the same thing.

MR AMERY: There is one advantage though, is that it assesses benefits and the reasonableness of the compensation to people. So that is one of the strong advantages of going through the courts. It does depend on the case at hand. It's not just buried up in a bit of statute somewhere that can't be appealed or can't be contested.

PROF SLOAN: Yes, so there's that case by case. But it does by the same token sit rather uneasily with the no-fault statutory scheme.

MR AMERY: It can work effectively. I think there's a couple of - although the transport accident scheme in Victoria is not workers compensation. That's a very effective combination of high-level common law access and no-fault benefits, and also the current workers compensation scheme. After it's revised, we don't know how effective it will be, but you have common law and no-fault benefits working side by side. So it is possible.

PROF SLOAN: That must make your job as actuaries incredibly difficult when a change comes in which ostensibly - well, I mean, it's seeking to alter the access to common law, but you don't precisely know what's going to happen. It must be more or less impossible to judge what the long-run financial impact is.

MR SMITH: It becomes something of an educated guess.

MR AMERY: It is difficult. I actually did the costings for the changes in 99 - I didn't think it was that long ago - and I'm still waiting to see whether we got it right, but we do rely on our experience in the past, we do have a feel as to how people will react to various bits of legislation, and we're actually - we had some advice on various types of legislation, and we were able to put scenarios around each of those as to how many people we'd expect to get through the threshold and what costs they would bear, and the trade-off with the no-fault benefits, because they do interact with each other of course. So it can be done, but it is uncertain.

MR BUCHANAN: And the caution which must be considered is that the early experience is almost certainly going to look a lot better partly because people haven't learnt how the system works and sort of take it at face value, and partly because people are waiting to see how the system works, and so you get a different pattern of delays for the early experience after a major change.

MR AMERY: It takes about five to seven years for legislation to be tested.

PROF WOODS: That's a useful time frame to commit to our report. These are the things that you can't then after a year or two say, "On first appearance it's heading this way. Let's make another small subsequent change."

MR BUCHANAN: This is the problem with political involvement.

PROF WOODS: Sure. If we could - - -

MR BUCHANAN: Politicians are looking at those short time frames.

PROF WOODS: Prof Sloan, can we move beyond that point?

PROF SLOAN: Keep going.

PROF WOODS: Common law. You have a general view - for instance you say that:

If common law remedies aren't available under workers comp, then other outlets will be sought.

That's in itself worth remembering. You identify some pros and cons, but generally the sense and the weight of your argument is that common law is inconsistent with what the workers comp schemes are trying to achieve. I think that would be a reasonable summary, is it not? It's also interesting that:

The Institute of Actuaries says it can substantially inhibit efforts at rehab and return to work. The lure of the lump sum encourages claimants to maintain their symptoms rather than seeking optimum rehab, and this can have a bad effect on longer term prognosis.

That's consistent with other evidence that we've had from occupational therapists, rehab providers, the Faculty of Occupational Medicine et cetera et cetera, and yet we've had another learned body of evidence that said that in their 40 years of practise in law et cetera, they've never found that this has been a case that they have experienced. Is there some sort of conflict between the various professions in their perspective on this?

MR AMERY: Yes.

MR BUCHANAN: Yes.

PROF WOODS: Thank you. That solves that one.

MR AMERY: We would just note who the advice is coming from.

PROF WOODS: Yes. That clarifies it for me greatly. You do talk about robust classification systems, and you talk about ANZIC et cetera. You say:

One problem is the treatment of labour hire operations where the industry mixes fluid, depending on client demands -

et cetera. We've had examples put to us; the meatwork companies for instance have

higher premiums than the labour hire company alternative. What peculiar quirk would cause that if you have, you know, dedicated employees in a meatwork establishment and the premium is 15 per cent or so, and yet if you sacked the workers and brought in a labour hire company who employed workers doing exactly the same job, the premiums are lower?

MR BUCHANAN: It's usually a fault in the classification system.

PROF WOODS: But I mean is this going to self-correct over a period of time? As labour hire becomes more differentiated and better understood, would you expect that, you know, actuarial advice would be able to separate out these various streams and attribute more appropriate premiums because otherwise you're going to get very perverse outcomes?

MR BUCHANAN: It's not really so much actuarial advice as to the actual structure of the actual classification process itself.

PROF WOODS: But you use that classification process.

MR BUCHANAN: Yes, but if we've got, as is the case in South Australia, labour hire companies classified into low risk, medium risk and high risk - I don't think those are quite the names that are given, but that's what they are.

PROF WOODS: Intent, yes.

MR BUCHANAN: And those workers are being employed in sort of three-quarters of the 500 or so different classifications which exist in that system. Inevitably those three labour hire classifications are going to be mixtures of various different risks, and all that will come out of actuarial analysis of that is the average in each of those mixtures. In order to correct it, what is needed is a finer subdivision of the labour hire classifications effectively working right back to the classifications - - -.

PROF WOODS: The industry they're working in.

MR BUCHANAN: - - - that they're working in.

PROF WOODS: Now, is that likely to happen over time though as labour hire - - -

MR AMERY: It is already happening. Bob has already pointed out you've got three classifications in South Australia. It also depends on the premium rating system for those more geared to experience rating. Naturally it will increase to the appropriate rate, and that's being experienced by labour hire firms right now. There's a lag though, that's the problem. They're being undercharged and you've obviously got an advantage to hire out in the higher risk occupations.

PROF WOODS: But it would be an unfortunate consequence if the structure of employment changed - which had been found for other reasons to be quite satisfactory, changed because it hinged on an inadequate assessment of the actual

appropriate workers comp premiums.

MR BUCHANAN: Yes.

MR AMERY: Yes, it is one of the perverse outcomes at the moment.

PROF WOODS: Just to put on the record to clarify for a previous participant, if you had somebody running a roof tiling company and they employed a whole lot of roof tilers, but also an office assistant, that the industry classification would recognise that not a hundred per cent of employees are roof tilers, it would be looking at the industry performance, and so therefore take into account that 10 per cent of staff or something might be in low risk and 90 per cent in high risk or some such thing.

MR BUCHANAN: This again depends on your classification system - - -

PROF WOODS: True.

MR BUCHANAN: - - - whether in fact the classification recognises the clerical workers as something separate, and that's a bit of a controversial point.

PROF SLOAN: What they'd done was actually set up the admin side as a separate company in order to enjoy the lower premiums for the admin staff.

MR BUCHANAN: Sure.

MR AMERY: And while companies are charged a premium, they'll always seek ways to lower that premium, and that's a mechanism for doing it. Labour hire is another mechanism for doing it, and the answer to it is there's continual revision of premium-setting basis and classification system.

MR SMITH: Victoria have - their new premium system comes in next financial year and they've moved so that each employer I think only has one classification because of exactly that problem. They had employers setting up work sites every worker so that they could get the lower rates for the three people they had in the office and things like that. So now you're just one employer, and that will mean the case that you talked about, everybody will effectively get the average. If 10 per cent of employees are clerical, it's in the mix of the people.

PROF SLOAN: Yes. That's what I presumed.

PROF WOODS: The tilers in a pure sense probably deserved an even higher rate.

PROF SLOAN: Yes, they deserve 18 per cent.

MR AMERY: It was 14, could have been 18.

PROF WOODS: It's watered down because there is a clerical component.

MR AMERY: That will always happen. It will be very hard to get rid of that, unless you're charging the individual worker - - -

PROF WOODS: But appropriately so. That was just to - that can go on the transcript and be available for one of our previous participants just to help them understand the process. Thank you for that. We're talking about group schemes in part, pooling - this is for small employers who inherently are going to be premium payers, but here you're talking group schemes. There are some examples of group schemes, like the pharmacy operators in New South Wales or groups of local councils or some other small groupings. I think Catholic Church does some pooling in some places.

You do make the point though that that can be subject to manipulation. So if you get a bad performer, you kick them out of the pool and everyone else stays down. Is pooling an option? I mean, we're looking at self-insurance as part of the total mix, and self-insurance obviously applies to the big end of town who have got the prudentials and things, but is pooling an alternate substitute for the small-medium enterprises?

MR BUCHANAN: What we had at the back of our minds there was not so much the pooling from the point of view of the insurance, but that a grouping such as this would have the resources to have a shared occupational health and safety professional for instance working for the group where it would be totally hopeless to have that resource within any one member of the group.

PROF WOODS: So more the rehab and other type characteristics.

MR BUCHANAN: We have a sharing of light-duty positions for - - -

PROF WOODS: Return to work.

MR BUCHANAN: - - - rehabilitation, this sort of thing.

PROF WOODS: All right.

DR JOHNS: What are the examples that best works I guess where both geography and type of industry operate together? What I mean is you could have 10 metal shops spread over 200 kilometres, it's not worth sharing and an OH and S specialist, but if they're bulked in around the western suburbs of Melbourne or whatever, it may be viable. So do we have many examples of these schemes? You talked about the Victorian?

MR SMITH: The Victorian public liability scheme is - - -

PROF SLOAN: Yes, local government.

MR SMITH: Local government authority, that's right. They've set up so that they

can be part of it. So there's things like that - - -

PROF SLOAN: And they have quite a lot in common.

MR SMITH: - - - where local government, or you might have the HIA or someone like that set up a scheme so that all their like builders get the benefits of something like that. So individual builders might get - - -

PROF SLOAN: Group trading. I think group trading - - -

DR JOHNS: And industry associations and so on, yes.

PROF SLOAN: We're really interested in self-insurance though.

PROF WOODS: Yes, and that's where we're - - -

MR AMERY: For the large end of town.

PROF SLOAN: Yes.

PROF WOODS: Yes.

PROF SLOAN: I want to ask two questions: one is first of all if there was a greater scope though for self-insurance - and you might answer that, well, there's not going to be actually because it's only for the large end of town, but if it was easier to self-insure and indeed there was a national self-insurance scheme, does that have implications for any of the state schemes? Point 1, and point 2, one of our participants raised an interesting issue - they were a large company who would love to nationally self-insure. They do self-insure in some of the states. They really felt that the requirements or, you know, the legislated requirements in respect of being able to self-insure should really basically be prudential and have nothing to do with occupational health and safety audits or standards.

They're not saying that they don't need to comply with those pieces of legislation and indeed to have, you know, very active occupational health and safety management, but they couldn't really see the logic of why there are these occupational health and safety requirements to achieve self-insurance licences. Could you comment on those two points?

MR AMERY: We see certainly workers comp and occupational health and safety entwined. You can't separate the two. You must have a safe workplace and protect workers from injury in the first place otherwise you - - -

PROF SLOAN: They would accept that, too. They're just asking the more technical question which is what is the logic of requiring companies who want to self-insure?

MR SMITH: I think it's a risk thing from the schemes that on the basis that if

they're going to let somebody out of their clutches and do their own thing, then they'd want to make sure that they've got the right operations to be able to handle it themselves. Self-insurance isn't easy. There are some self-insurers who pay more than they would pay if they were under the insurance scheme. So I think it's just purely a risk from the scheme's view that if you're going to let go of someone, let's make sure they're running better than even we would expect them to be under our scheme.

MR BUCHANAN: It's probably more of a political risk than anything else, that they're likely to get criticised if there's this self-insurer running around out there with a terrible performance.

PROF SLOAN: Yes. So if they allow Well Heeled Dodgy Bros Inc go out, it's not a good look.

MR AMERY: If organisations want to self-insure and don't realise that's the start and the main game, they shouldn't be allowed to self-insure.

PROF WOODS: So in itself it's almost imposing on them a self reality check; "Have we the competency to do this?"

MR AMERY: "Have you got the discipline to do it? Do you realise it's a key focus? From the top of the company right down to the bottom, is that the core focus?" If it's not, self-insurance isn't going to help them.

PROF SLOAN: I suppose perhaps a subsidiary issue though becomes how are those occupational health and safety requirements met and that may be done very badly. I think they kind of felt it was rather expensive and not very effective external audit requirements. So there's a kind of principal issue which you're saying in principal you think actually it's okay, but there might be some implementation issues.

MR AMERY: Absolutely, and my understanding - it might be wrong - is that they're different in each jurisdiction.

PROF SLOAN: Yes.

MR AMERY: So even if you wanted to go to a national, you have to adhere to six different OH and S standards which is a nonsense itself, but it needs to be unified, as does the workers compensation to gain efficiency.

PROF SLOAN: Sometimes it's like you get it for three years, others you get it for another period. So there's all that.

MR AMERY: That's right.

PROF SLOAN: What about that issue about if we let them all run off - - -

MR AMERY: Impact on the state?

PROF SLOAN: Yes.

MR AMERY: For the large organisations, they're probably likely to self-insure under the state scheme as well. So it's really an issue about - - -

PROF WOODS: Not if they can get out into a national scheme.

MR AMERY: It depends on where you set the bar. So that will be the next thing. In the first thing, the larger ones which we would be anticipating for a national scheme, they probably self-insure - - -

PROF SLOAN: They're already out.

MR AMERY: They're already big and out, but dealing with six different schemes.

PROF WOODS: Okay.

MR AMERY: So it just makes sense for them. So then the question is - - -

PROF SLOAN: So that's a tick and no effect on the states.

MR AMERY: A tick if you go to national, all except they don't have to monitor them any more. Someone else may have to monitor them perhaps. Maybe there is a role for the states still. So then it becomes an issue of where do you set the bar, and we'd be recommending that it certainly be relatively high so you have to be dealing in a couple of states, not just the one state to get access to that.

PROF WOODS: Or just be big.

MR AMERY: Or just be big, and again you're still not impacting the state schemes very much. When you go down the ladder though and allow people to self-insure, then it does impact on the state scheme's premium pool which they're very sensitive to of course because it inhibits their ability to spread the costs around all employers.

PROF WOODS: And people are self-selecting obviously. If they think they can beat the premium they'll go out. If they think they can't beat the premium, they'll stay in. So through that self-selection in fact the average premium would continue to rise.

MR AMERY: It would tend to, yes. The difficulty is that most people think that they're experience isn't as bad as a premium, and that's quite right.

PROF WOODS: But if you sum that, that can't be true.

MR AMERY: The premium is always more than they've paid out, always, except for the couple of people you never hear from where they've got a quadriplegic out there and it's costing them multimillion dollars, but he's only paid a premium of

\$50,000.

PROF SLOAN: But those self-insurers would take some sort of catastrophe insurance, wouldn't they?

MR AMERY: They would need to, but then they'd have to have the financial capacities to still do that, and the latest that I heard on self-insurance and workers comp, you'd be lucky to get a \$500,000 deductible. So that raises the bar. In fact I think it's three-quarters of a million. Have you got any other states?

PROF SLOAN: So that really makes it for the top end of town.

MR AMERY: In this hard market, the insurers are obviously running for cover and charging 10 times what they need to and having deductibles up there. So that makes it very hard in this market. Later on you'd imagine that the ability would get lowered and retention limits would be possible, but it's sort of a self-selecting - - -

PROF WOODS: Which does raise - and I won't want to dwell on it, but the point that pricing by private underwriters is not sort of perfect in all occasions, that it is also subject to the market cycle, and - - -

MR BUCHANAN: Very much so.

PROF WOODS: And it is sort of the groundswell on which the premiums float.

MR AMERY: Yes.

PROF WOODS: So we do need to understand that.

DR JOHNS: If it takes a considerable effort and time to gain a self-insurer's licence, there's a cost attached to that, then that should be sufficient to persuade an employer to look again, wouldn't they, at whether their premiums really haven't shifted as much as they might or they potentially might go up or down on that? They can make judgments that are a bit more material I guess if you don't let them run to the alternative too easily, I guess.

MR AMERY: I think there has to be a significant hurdle there, and one possible hurdle - just an idle thought - is that if you do have a national self-insurance scheme, you actually raise the benefits as well. So you make those that want to opt into such a scheme think long and hard about is the cost of providing even higher benefits, and potentially they can get in the states, a desirable outcome.

DR JOHNS: You certainly wouldn't want to induce them in by having a cheaper set of benefits or something.

MR AMERY: No, and then you will still get people still wanting to make that transition because if you can coordinate it across the country, you're paying one set of fees, and you can actually drive down your costs. So you still will be better off.

MR BUCHANAN: There is also the point that a self-insurer is in a much better position to assess the genuineness of claims, and therefore in a better position to manage benefits on a scale that might be very difficult for an insured or public sector scheme to control.

PROF WOODS: And the impact is directly on their bottom line and they don't have a third party intervening between them and the employee.

MR AMERY: Correct, having access - - -

PROF WOODS: They worry about return to work and all those - - -

MR AMERY: Having access and control is very important.

PROF WOODS: You mentioned Comcare - actually, no, just one small question. You say, "Not all states allow self-insurance." I don't know quite what you mean by that?

MR AMERY: Yes. I thought they did.

PROF WOODS: Anyway.

MR AMERY: I think they do.

MR BUCHANAN: I don't think Northern Territory does, or do they now? They do? We're out of date on that?

PROF WOODS: No, that's all right. I was just wondering if there was something that you had in mind.

MR BUCHANAN: There is a big diversity in how much.

PROF WOODS: Indeed. South Australia versus Queensland. Comcare you mention, so we might as well talk about it. Can you give me a costing if we - - -

DR JOHNS: There's an envelope there, we can use the back of it.

PROF WOODS: Yes, just before you leave if you could do a quick sum for us, but certainly some participants have put to us that they would be prepared to go into Comcare despite its benefit structure, just because of the national benefits they would gain, and that's on record from Optus for example.

MR AMERY: Yes.

PROF WOODS: But they are also largely of an employee profile that's not inconsistent with what Comcare is currently focused on, whereas if you were looking at say major manufacturers or others, it's a question of whether Comcare would

produce some perverse outcomes that aren't yet understood, but also some participants have put to us that if you could cut the long tail, so you had a step-down at 26 weeks is one example put to us, compared to the current 12 months in effect or 45 weeks.

MR AMERY: I think we're of the belief that no-fault periodic payment benefits are the best way to compensate injured workers. The Comcare benefit structure is consistent with that. People or organisations wanting to opt into national self-insurance at the big end of town that we're talking about I would say need to be encouraged to believe that it's their responsibility to look after injured workers as long as they need to. So that current structure is not unreasonable. Maybe you might want some step-downs or some incentives to return people to work.

PROF WOODS: There are some actuaries who could do some figuring for us on what would be the - - -

MR AMERY: Absolutely.

PROF WOODS: - - - implication on premiums of doing some of these things.

MR AMERY: It's not necessarily premiums, it's really costings - we're talking self-insurers. So they don't have premiums as such.

PROF WOODS: In a sense, although you've got to turn it into a premium equivalent to understand it in relation to what they're doing at the moment and the like, but anyway we can pursue that.

MR AMERY: Certainly the cost is possibly, if you have the same injuries and durations, you'll probably be paying more under a Comcare style system. However, it's the potential to manage your claims, return people to work and have a consistent approach around the country. It is likely to offset the likely cost.

PROF WOODS: But that's for somebody who is currently a premium payer, but if you are already a self-insurer, you already have those benefits. It's just that you have all the complications of having sort of eight groups of actuaries, eight groups of lawyers, eight groups of other experts who are all doing - - -

MR AMERY: I'm sure we only charge seven times the - - -

PROF WOODS: I'm sure there's a scale economy there somewhere. I don't seem to be able to find it. We will pursue with your profession some of those issues and get some advice on that. Is dispute resolution an area that impacts significantly on cost? You have some useful views on that, but is it a big factor in what the cost of the scheme is?

MR AMERY: Are we moving away from self-insurance?

PROF WOODS: Yes, we have.

MR AMERY: May I have one last word on self-insurance sorry?

PROF WOODS: Please. I'm just a bit conscious of time, we've got others who are wanting to come forward.

MR AMERY: Okay.

PROF WOODS: We'll continue on with your leave. Thank you.

MR AMERY: It's to do with the regulation of self-insurance. At the moment I don't think any state is necessarily doing it properly or efficiently. That would certainly need to be reviewed, moving to national self-insurance. Comcare have just been through this. They've come up with some very sensible suggestions and implemented some reasonable regulation. I don't necessarily think it's gone far enough.

PROF WOODS: In what field in particular are you referring?

MR AMERY: It's particularly in relation to employee entitlements, protection of employee entitlements. Let's say for instance Telstra falls over tomorrow, you'll get a huge swag of claims come out, and there won't necessarily be enough money in the bank to pay the compensation entitlement, and that's done normally through a bank guarantee, and all I'm saying there is the bank guarantees probably aren't the right level at this stage anywhere, including the Comcare system.

PROF SLOAN: Do you think there's under-provisioning in the - - -

MR AMERY: I don't think it's under-provisioning. Provisioning to me isn't necessarily the issue because when a large corporation falls over, the money is gone. We don't care if you've got 10 times the provisions for workers comp, it's gone.

PROF SLOAN: It's written there in the books.

MR AMERY: It's gone. So they rely on the bank guarantee.

PROF SLOAN: There could be an issue of under-provisioning that they're not actually really bringing to book the true costs, which is why they think it's so wonderful getting out of the premium sense.

MR BUCHANAN: There is another factor here, and that is that the true cost depends very strongly on whether you're dealing with a going concern or a company that's just gone into liquidation. There are a lot of people who are continuing to work, but in fact have got genuine potential claims waiting to be lodged.

PROF SLOAN: Yes.

PROF WOODS: Actually that is a point you did raise here and I - - -

PROF SLOAN: That does happen.

PROF WOODS: - - - thought that was quite valuable. You have a workforce and there is a degree of impairment or injury or something, but as soon as a company looks like it's going to go belly up, the claims come on.

PROF SLOAN: That's well known. We've seen it happening.

MR AMERY: And so coming back to self-insurers, yes, actuaries I think everywhere are required to provide liability assessment, and so we'd like to think they're robust on a going concern basis. But it doesn't matter if you go to the 75th percentile like APRA does. That's irrelevant. When they fall over, all the money is gone. You need the other mechanism. Bank guarantee is a reasonable approach unless something else can be thought of to provide that protection, but that bank guarantee has to be at a much higher level than the provision because claims blow out.

PROF WOODS: Redemptions - just while we're talking Comcare, to finish that bit off, and that's a feature that a number of people have said that when they look at the Comcare scheme, they're unhappy, because there are times when it suits all parties for the employee to have this issue wound up and not have to have your annual medical and feel tied to the scheme for the long drip, which is distinct from the looking long term after those who are severely injured issue. Any comment on that?

MR AMERY: Under the Comcare legislation, I think it's important to have that sort of mechanism to have closure. There are some claims where it would - paying a little lump sum, put them off the benefits, off that mentality, maybe get them set up somewhere else, and it will stop that compensation scheme and let them get on with their life. So at certain levels it can work, but you have to be very careful how you set it up because otherwise you have that perverse sentiment of encouraging people to make sure they get access to it.

PROF WOODS: Yes, that they sick enough long enough.

PROF SLOAN: Yes. Judicious use of redemption. That seems to be quite a - - -

MR AMERY: Yes. So you've got that trade-off, and how you'd engineer that would be problematic.

PROF WOODS: Do you have any sort of material, publications or anything that you could draw to our attention that would guide is in that matter?

MR AMERY: Can we possibly - - -

PROF WOODS: Can you take it on notice?

MR AMERY: Can we take it on notice, yes.

PROF WOODS: Even if it's just a couple of pages of principles or drawing on other scheme examples or whatever.

MR AMERY: I think it's emerging in Comcare itself. I think - - -

PROF WOODS: That's what we're sensing.

MR AMERY: - - - the existing self-insurers are changing the way they operate and using that mechanism, and we could possibly get access to material along that line.

PROF WOODS: Please.

PROF SLOAN: I do see it in CTP though in some states, the redemption strategy, too.

MR AMERY: It's used in South Australia, the redemption.

PROF SLOAN: It is.

MR SMITH: But how many times do they get it?

PROF WOODS: Yes, that's true. It's fairly tight.

MR BUCHANAN: It's an awkward thing to operate.

PROF WOODS: Can I just then very briefly ask the question, how important in the cost factor are the different mechanisms of dispute resolution?

MR AMERY: Very important. As soon as you introduce a threshold - you'll get dispute at every element of the way. Access, do you get into benefits in the first instance. So how many you let in determines cost basically. So it's very important there. If you have thresholds for access to common law say, all the attack will be on what does 30 per cent mean and are there other mechanisms to get into it. So you have a fair and robust system and an objective - as objective as possible - it's very important to keeping the costs down. If it's not handled well, your costs will blow out and you'll be facing all sorts of troubles.

PROF WOODS: And does the institute have any view on any best practice models of dispute resolution around the state jurisdictions?

MR SMITH: No, I don't think we have a view as an institute, although - - -

PROF WOODS: If particular members who are sort of versed in some cross-jurisdictional issues can provide us with some supplementary information - it's just that - and I don't want to name them, but there are two schemes or particular parts of two schemes that have been drawn to our attention from time to time, and fairly commonly around the country, but it would just be useful to understand,

particularly as you say it is an important cost driver. So the point is significant.

MR AMERY: Yes, we should be able to get access to information on that, too.

PROF WOODS: One more briefly from me. You talk about leakage into other compensation systems. These include Medicare, other government welfare et cetera. Any useful costing on the extent of that leakage that we could tap into?

MR BUCHANAN: It's difficult because it's leakage.

PROF WOODS: Precisely. That's our point, but surveys. If there is any professional material that somebody has done a learned paper trying to do - you know, a survey of employees and how many of them claimed on Medicare but were eligible for workers comp or those sorts of things. I mean, we're finding one or two here or there, but if you knew of any, that would - - -

MR AMERY: There may be one or two of the commerce brethren who have done some work in the past.

PROF WOODS: Yes. We're into some of it, but it's just that if you happen to have a little bibliography of that sort of research as well, we could just cross-check. I'll just leave it for you.

MR BUCHANAN: Conversely we'd be very interested in that.

PROF WOODS: Precisely. It's a common interest and we have come across some material. I just thought I'd take the opportunity - if we could compare lists, it may show up something that we haven't yet found. You've got a couple of important areas on prudential regulation and data that extend our views, although we did see them as parts of matters that we would consider. Are there particular questions, Dr Johns, that you want to raise on those?

DR JOHNS: Just a brief thing I guess. I'm a bit pessimistic about ever having a decent national data set, not only because you have seven or eight or nine different systems and so on and we're comparing apples and pears, but for instance which player under which system is the best data gathered? Presumably is it better to knock on the door of a self-insurer to get the entire cycle of events - claims and occupational health and safety and so on - that bring to bear on, you now, the performance on workers comp, OH and S?

So in other words, data sets seem to be to be something that researchers might be interested in, but it might always be better to do research within several companies if you really want to find out how a system works, both with respect to benefits and return to work and OH and S practice and minimising risk, the whole system.

MR AMERY: I don't necessarily agree with that on self-insurers because it wouldn't be statistically significant. You don't have enough claims and experience

from any one - - -

DR JOHNS: Within one, but are they a good source if you took a survey across 25 self-insurers or something? Where do you go and mine the stuff that's best?

MR SMITH: I think you're right as far as the holistic view; that understanding right from the way the workplace operates and then how an injury occurs and then what happens from there is going to give you a far better picture. I suppose what we're about as far as collecting data is - well, doing that, as you say, it's more an experiment or a research-style project. What we can collect is data from people where it's coming through the schemes or the insurers or whatever, and we can collect quite detailed data at that level, knowing that there's some areas beneath that missing or some areas within it missing.

I think the key is that we've got to make sure we collect what we can, and then on the back of that do one of these research projects to then see, well, how does it change the overall data that we can collect. We should be able to collect it quite easily. It shouldn't be a difficult thing to do. I think you're right. There's a more holistic view, but as far as just getting data that's out and available, we should be getting it.

DR JOHNS: That's useful. Thank you.

MR SMITH: I suppose the other thing too is that a lot of self-insurers are very data poor. Getting data from them and even actually getting data from some of the insurers is quite difficult. So it's not something that people have kept in the past, often going - if you ask a self-insurer for something from two years ago, often that's hard to do because they've closed the books and moved on. So it can be quite a task in building up a history.

PROF WOODS: Any concluding comments, gentlemen, or any particular areas you want to focus on that we haven't yet dealt with?

MR SMITH: I think the only comment, I've had a few people query whether we recommend APRA as the regulator of self-insurers, and I think it's been a bit of a misinterpretation of the words in there. We've recommended APRA-like requirements as far as setting liabilities and as far as that sort of overall fully-funded style basis, but we're not recommending that APRA are the regulator of self-insurers. I don't know that there's a view across the institute as a whole. My view would be that APRA would be the wrong organisation to regulate self-insurers. Other people would differ on that, but more what we're saying is that holding - - -

PROF WOODS: It's that standard.

MR SMITH: - - - a fully-funded provision at either - well, not necessarily at a level of adequacy other than the central estimate, it's not necessary to hold a 75 per cent probability of adequacy, it's the bank guarantee as Clive talked about which addresses that area.

MR AMERY: Ditto for public sector schemes as well.

PROF WOODS: Yes. We noticed that point.

MR AMERY: Regulations required.

MR BUCHANAN: And you wanted to say something about long-term care.

MR AMERY: Long-term care. That's another issue that the institute is looking at at the moment. Part of the block to private sector insurers underwriting workers compensation effectively is the long-term nature of benefits; benefits going from aged 20 to 65 potentially. It is difficult for them to deal with. One potential way of helping that or aiding them underwrite is by removing the catastrophically injured from the equation. So dealing with them somewhere somehow.

PROF WOODS: Is this the sort of alternate route to common law, but if you're 15 per cent total body impairment permanently, then you go a route of some former - - -

MR AMERY: We're talking catastrophically lifetime.

MR BUCHANAN: But probably not common law.

MR AMERY: Not common law.

PROF WOODS: No, but those who would otherwise go into a common law you're saying go into this route and go out of the system, but be looked after by body X.

MR AMERY: Be managed somewhere else by some other body, the contribution would need to come through the workers compensation system to pay for them in the first instance, but they wouldn't need to be managed by the primary underwriter.

PROF WOODS: Yes, who in that sense aren't - - -

PROF SLOAN: But there's also trying to limit the future carer's head of damage. I mean, this is a big issue in my own state of South Australia where people are getting, you know, under CTP, \$10 million because they want to look after their 25-year-old quadriplegic son at home for the rest of his life.

MR BUCHANAN: Grossly inadequate.

PROF SLOAN: What was that?

MR BUCHANAN: Grossly inadequate.

MR SMITH: \$2 million is grossly inadequate.

PROF SLOAN: It might be grossly inadequate, but it rather blows the scheme out of the water if you have too many - - -

MR BUCHANAN: I mean, I'm currently looking at three of these who have been hanging around for about 12 years since the old New South Wales CTP scheme folded, and each one of those three, depending on what assumptions I make, somewhere in the range 20 to 60 million.

MR AMERY: And what the problem is, is lack of recognition in the premium-setting process, that those claims can eventuate and be costed in properly. So that's where we see the real issue being with these claimants, and if we are able to somehow isolate them, understand what the needs are, cost them more appropriately, and then we can charge the source of those claimants a fairer premium, and they can understand the cost.

PROF SLOAN: I've got a particular sensitivity to this because I'm married to an obstetrician.

MR AMERY: And it would sweep all those in, too. So it's taking away that negligence, it's taking away paying someone \$20 million and they die the next day. So what is going to happen with the rest of the money. It's inappropriate to pay people lump sums of money. What they need is care for the rest of their life.

PROF SLOAN: Yes, but when there are only 900 obstetricians and there are a few claims - in fact, there aren't 900 obstetricians, there are probably 600 obstetricians in Australia. You don't have to be an actuary to realise that, you know, too many claims for \$20 million blows the whole thing out of the water.

MR AMERY: And our survival rate is much better than it was at any time in the past. So the idea is it encapsulates workers comp, CTP, medical indemnity, basically anyone with a catastrophic injury regardless of cause or negligence.

MR BUCHANAN: And while it's probably appropriate for workers compensation for the entire cost to be funded out of workers compensation premiums, that may not be true in other areas. It may be that in other areas, there is a case for community funding.

MR SMITH: Some public good element.

PROF SLOAN: You can't actually force obstetricians to undertake obstetric practice after a while. There's a public policy consideration.

PROF WOODS: Any other matters that you want to raise?

MR AMERY: Just reinforce our willingness and ability to contribute to the commission.

PROF WOODS: Thank you. If you could just calculate the following for me on

the way out, that would be great.

MR BUCHANAN: For a small fee.

PROF WOODS: For a small fee. It is very helpful. You are absolutely crucial to our understandings of some aspects of these issues, and we're very grateful for the submission and your time today, and we do look forward to your ongoing contributions. Thank you very much. With the indulgence of the next participants, if we could have a very short adjournment, we may be able to focus.

PROF WOODS: We welcome our next participants, the AMWU. If you would like to please state your names, positions you hold and organisation that you are representing.

MS BUCHANAN: Yes, good afternoon. My name is Margaret Buchanan. I work as a National Research Officer at the Australian Manufacturing Workers Union and I'm with Deborah Vallance who is the National Occupational Health and Safety Officer of the union.

PROF WOODS: If she could state that so that the - we can - - -

MS VALLANCE: Yes, Deborah Vallance. I work for the Australian Manufacturing Workers Union. I'm the National Occ Health and Safety Coordinator.

PROF WOODS: Thank you very much. You've presented us with a formal submission. Would you like to lead us through.

MS BUCHANAN: Yes, thank you. Just as an overview, representing the members of our union, obviously our focus is very much on the social and economic objectives of workers compensation systems from the point of view of our members. We have had a long involvement in workers compensation systems and we are involved in virtually eight of the nine systems in and around the country.

When it came to commenting on the issues raised in the issues paper, beginning with national frameworks, we have a clear interest in what model may be adopted, but we found that the bald statement of various models was, while we could speculate, quite difficult to engage with that from the point of view of representing our members on that - - -

PROF WOODS: If I can just clarify. The purpose of that paper wasn't to present a draft report, given that it was prepared two weeks into the inquiry, it was there to just say, "Here's some direction of thinking and things to trigger, you know, discussion and debate." So that was its reasoning.

MS BUCHANAN: Yes. And clearly the form of legislative model that is adopted is shaped by what the sources of the legislative power will be and that is an area that if there is a further opportunity to comment we would be seeking to take that.

PROF WOODS: We'll be preparing a draft report which we'll get published towards the end of September, so at that point in time, if not beforehand, if you would like to - and we'll notify you because you're a participant anyway, of the release of that report and send you a copy, but if you could go through that for us and that will give you a greater exposition on those matters for you to be able to react to.

MS BUCHANAN: Yes, thank you. In any case, we would put forward that the objectives of the chosen model should continue to be the fundamental objectives of preventing the occurrence of work-related injury and death, the rehabilitation of end victims of work-related injury and fair levels of compensation. We have set out in

our submission some data as to the occurrence and impact of work-related injury and death and we have noted that - well, really, it's still not known in Australia the full extent - and the previous participants and yourselves were discussing this - the difficulty of determining leakage into other systems.

We would like to state on the record that we have a concern that the terms of reference of the inquiry do not appear to really embrace the prevention of work-related injury or death as the primary focus and we put forward that is a serious omission from the terms of reference of the inquiry.

PROF WOODS: We note your concerns in that respect and how you've drawn that conclusion, but if the inquiry can assure you that occupational health and safety is very central to our deliberations.

MS BUCHANAN: Yes. And to that extent though, also, I guess, we would also say that the legal regulatory framework interacts with a number of other techniques and disciplines and again that appears to be an area that - well, a range of those areas are outside the terms of reference, so the same way that we've had fairly limited resources to get together our submission, that when the terms of references are so narrow it becomes difficult to look at. Well, how does human resource management, for example, affect the prevention of work-related injury? How does the role of medicine affect prevention strategies, for example?

We do support the formation of a national body that would include all stakeholders, similar in composition to NOHSC, that would be working towards a greater cooperation between the state schemes and the development of core standards that compensation schemes could adopt. We are, at this point, sceptical that a nationally consistent workers compensation system can be achieved and balancing all the economic and social objectives. We suggest that through private insurance we think that there are political, constitutional, access and equity issues that need to be resolved before that level of change, which would be enormous, can be realistically considered.

Again, in terms of the terms of reference, where it is focused on the regulatory burden and the compliance costs, the emphasis there has been on the compliance costs to employers. We say, well, there are compliance costs also imposed on workers, whether it's through paperwork, through the way they must interact with the medical practitioners and so on. In terms of medical practitioners we also highlight - well, there is compliance costs occurring there as well, because of the relatively high level of paperwork involved for medical practitioners in relation to workers compensation's claims compared to a Medicare claim.

A very significant compliance cost, which is an intangible though, is how to ensure that all those who are eligible to apply are aware of their eligibility for compensation systems and again there is some artificiality at the moment in the way these schemes are working, because there's evidence that those intending to come within the so-called vicarious forms of employment are less likely to be accessing the compensation systems.

We are proposing really that if there is consideration of looking at compliance costs or reducing overall compliance costs of employers in terms of their premiums, looking at self-insurance and so on, that there really needs to be in that company development of laws that strengthen the prevention of workplace injury and in our submission we have set out the rather disappointing level of prosecutions that occur in this area; the difficulties that a worker or rather the worker's family where there has been workplace death have - in actually obtaining any justice in that situation, particularly where there has been gross negligence involved, and we've put forward here one of our policies which is a support of the introduction of industrial manslaughter laws.

One part of our submission that we would seek the indulgence of the commission for an additional week is to put forward material on the concept of employee as we would like to see adopted.

PROF WOODS: That would be very helpful, particularly with the sort of ever expanding diversity of definitions and practices. I understand your broad principle is wide coverage but nonetheless boundaries must exist somewhere and so, yes, we would appreciate your views on that.

MS BUCHANAN: Yes, and we would be taking as our starting point the paper that Prof Andrew Stewart has put out.

PROF SLOAN: Yes.

MS BUCHANAN: And elaborating that - - -

PROF SLOAN: That Stanley report.

MS BUCHANAN: Yes, elaborating that in terms of how it would operate within our membership.

PROF WOODS: Yes, sure, that would be very good. So we could use that as a case study in effect and say, "All right," looking at this particular sector, if you applied these definitions here where it would extend to - but if you could be equally clear on those to whom you think it wouldn't apply so that we can understand both sides of the fence.

MS BUCHANAN: Yes, okay, thank you. Our submission in terms of looking at access and coverage, really it just in fairly broad terms talks about the types of employment where there is either an absence of coverage or the workers aren't aware that it might be, and similarly in terms of injury that might be covered, that's a very significant area because classically it is a way - that the definition of injury is a way of limiting what might be claims that come within the scheme. We support where there is a work connection to the injury but that should be part of the compensation system. And in terms of access - - -

PROF WOODS: But even once you have that definition, the actual practice on the ground for your membership can vary from time to time, can't it, because, you know, even simple things where the employer and the employee sort of take the employee off to the local doctor and have it dealt with through the Medicare system - - -

MS BUCHANAN: Yes.

PROF WOODS: - - - and give them a cab fare home and all of those sorts of things. So even if your definition is robust, actual practice might vary from that definition.

MS BUCHANAN: Considerably.

PROF WOODS: Presumably you come across examples of that.

MS VALLANCE: Heaps.

PROF WOODS: Heaps.

MS VALLANCE: Some of which are outlined in our appendix because we made a submission to the House of Reps and a lot of those sort of - you know, some deep case studies and sort of some of those things about those issues are actually in that, so we just haven't replicated it, sorry.

PROF WOODS: No, we have access to all of that and you've got that there. So, thank you, that is quite useful.

MS BUCHANAN: With the benefit structures our overall principle here is that we're very concerned that an outcome of the inquiry might be an adoption of minimum standards at the national level.

PROF WOODS: There's unanimity amongst all participants that it should be the best outcome. What differs is the definition of "best".

MS BUCHANAN: Well, our definition is a bit easier because we're representing our members - - -

PROF WOODS: Yes.

MS BUCHANAN: - - - and so we're looking at the best standards from the perspective of what we'd apply to injured workers.

PROF WOODS: We do understand that.

MS BUCHANAN: And we've set out a number of principles that we're saying, "Look, these are fairly basic principles," that we are not at the fringes but really are fundamental standards that in many respects reflect what have long been I guess objectives on workers compensation assistance. It's just been the degree and we've

put forward what we would say the degree in the 21st century ought to be. Finally, just in terms of the role of private insurance, it does seem to be a very problematic area to be run by private insurers. Again some of the issues on this were - - -

PROF WOODS: Do you mean self-insurance or the private underwriters, ie, the private insurers in the marketplace?

MS BUCHANAN: Well, I'm talking about both, really, yes. And we will talk further about our experience of working with self-insurers.

PROF WOODS: Thank you.

MS BUCHANAN: But in terms of the insurance where there isn't the public underwriting, it emerged from the royal commission into the HIH collapse that really the actuarial science is still a long way from being science, that events occur that are very difficult to predict, and to predict the true costs of what those might be.

PROF WOODS: I think we were given the example of, you need a five to seven-year experience period to fully understand the cost implications of a change to a scheme from the previous participants.

MS BUCHANAN: Yes, yes. And we also note that the House of Representatives report back on the job report has essentially criticised the practice of private insurance companies owning and operating rehabilitation companies because there's a conflict of interest there between processing claims and ensuring the best long-term outcome for the worker. So to the extent that there is private insurance underwriting of compensation systems, we would be putting forward very strong corporate governance requirements to avoid those kind of conflicts of interest as quite essential. That's just a fairly brief summary of our submission and the submission also has attached to it an earlier submission in May to the House of Representatives standing committee on employment and workplace relations. Deborah will just highlight some key components of our position.

PROF WOODS: Thanks very much.

MS VALLANCE: I suppose to - the commission has reassured us about the occupational health and safety as being very important and we note in our covering letter and stuff that - - -

PROF WOODS: I understand the reason for your comments.

MS VALLANCE: Both in terms of the - yes - the national occ health and safety strategy which has got many, many holes in it but is actually the first time in our nation's history that we've actually at any level - at peak level said, "Yes, we're actually going to have a nationally consistent" - and some targets which is very much appreciated, although we note that they're targeted at injury, they're not at disease. If you're talking about disease we have an appalling understanding of what happens in that area in terms of work-relatedness in this country, and really very poor in

comparison to many other OECD countries.

One of the focuses and concerns in terms of a national framework is that definition of "best" and from the perspective of employees, our bitter experience of self-insurers is that they are not open to necessarily fair scrutiny and fair processes when people are on return to work suitable duties provisions and we often find that they are particularly difficult companies to deal with. As a national union we are of course in the manufacturing sector and we have significant - well, let's say, a number of companies who are self-insurers in various state jurisdictions who we deal with and we find consistently that the complaint that I get from an organiser in Western Australia is very similar to the complaint that I'm getting from an organiser in Queensland for the same company which is self-insurer under the different schemes and part of the attraction for self-insurers sure is the direct relationship, and as you previously mentioned, the lack of intervention of a third party. Unfortunately, in workers compensation processes and taking into account that you're dealing with people who are sick, injured or whatever, that for a human being is one of our most vulnerable periods in our lives and therefore the intervention of a so-called outside third party is sometimes essential in protecting the interests of that person. Also in being able to facilitated due process and encouragement for return to works and suitable duties and often the self-insurers are particularly good at not doing that. This is our experience across the nation with multiple industries and multiple companies.

So we have great concerns about reliance on the self-insurers and we do note, and we think it would be reasonable, that people actually have bureaucratic regimes in arrangements such that you don't have to duplicate things. If you're a national company employing 50 people in WA and 200 people in Victoria, well, there's reason and reasonable - however, in that process it must be fair and equitable to the people who are actually working for you. In terms of an issue about common law - - -

PROF WOODS: Sorry, can I just explore - - -

MS VALLANCE: Yes, of course, sure. Absolutely.

PROF WOODS: - - - the self-insurance a little further. You talk about the vulnerability of the injured employee and we can understand that, but in some cases their life seems to get taken over by a third - well meaning, but taken over by a third party and a gulf does tend to emerge between them and their employer. Mind you, some employers seem to be able to cut through that and keep that relationship going anyway. But what changes would you make that don't interfere in that relationship, but may provide the employee with additional support to enhance the rehabilitation and continue the return to work focus. What's the suggestion to help it, but without blocking it?

MS VALLANCE: Okay. First comment is that employers who manage the process will be - it doesn't depend whether or not they're a self-insurer or not. For instance, within one major company in this country where it has different divisions

and they're all self-insurers, one part of the company actually behaves reasonably and the other two parts of the company behave appallingly to our members, so it's - - -

PROF WOODS: The local culture.

MS VALLANCE: Well, not just local culture, it's corporate culture within the divisions - - -

PROF WOODS: Yes, I'm sorry, I mean - - -

MS VALLANCE: - - - which is actually at a national level, so there's a difference. The problem, of course, because each of the state jurisdictions have varying difficulties with varying requirements with return to work and suitable duties. But look, our common experience is that for those people who are off work or have an injury which requires a change in their duties at the workplace, there is lack of incentives and commitments by employers to facilitate those processes. We think that (1) rehabilitation and return to work should start as early as possible, that's the basic medical information. When you have systems whereby the dispute process or the claims process means that it can take three months for a claim to be decided whether you're going to accept liability, in that three months no rehab has been provided so you're already three months behind the eight-ball with the person, because they've had no access to - so that builds up a whole range of things within the injured work about the employer's willingness to actually look after them - - -

PROF WOODS: Their connection with the workplace and - - -

MS VALLANCE: - - - so that process upsets things. When you actually have - - -

PROF WOODS: But isn't that a bit less so with a self-insurer - - -

MS VALLANCE: No.

PROF WOODS: - - - because they can in parallel run rehab and an internal process that decides whether it's a claim or not.

MS VALLANCE: They may well be able to, but your question before about what definitions and what happens on the ground, we have significant self-insurers where despite that we have consistent problems. Right. And that's across all jurisdictions. I mean, we've significant places where we have intervened on an industrial level, on a getting the regulator in to assist in those sorts of things, so it's not - - -

PROF WOODS: Okay.

MS VALLANCE: In terms of suitable duties and return to work, there's a corporate culture that seems to be just particularly prevalent in the last couple of years. It's always there but it seems to be worse and maybe it's because the manufacturing sector feels its contracting overall and feels under pressure, but people who have - even if they're full-time return to work on alternative duties, are actually

being sacked as soon as possible in the process - - -

PROF WOODS: Once they're out of their 12 months - - -

MS VALLANCE: Well, it depends on the jurisdiction and then the problem, even within that period, the legal provision that suitable duties actually have to be provided, is something that the regulators don't prosecute on, don't encourage and so you will have circumstances where you're asking for the regulator to intervene and they'll just - they won't and that's really a lack of political will of the regulator. We have seen a bit of a change recently in one state where they've decided that they will intervene, and it's good.

DR JOHNS: Just clarify the reasons for the sackings? What are the reasons that a person is "let go"? Like, they're not healthy enough to work; there is no real job and they've just been playing along for the purposes of the regulation, what's the - - -

MS VALLANCE: The reason is no real job because people aren't silly enough to say it's because you're sick, because then that opens you up to some industrial relations repercussions.

DR JOHNS: Sure.

MS VALLANCE: So it's basically, "We have done our obligations and we don't have a job for you."

DR JOHNS: Because there is no job.

MS VALLANCE: Well, often there is a job. In our submission, for instance, there's a copy of an email from a member of ours who is representing an injured fellow worker where the person is actually working full-time duties, but on different duties, but is over his 12 months and so the employer is saying, "Well, we don't have a job for you," even though that person is actually currently working.

DR JOHNS: All right. So what does that imply? That the employer is saying, "Given our experience with you we don't want to employ you any more." Is that the - I'm just trying to get - - -

MS VALLANCE: No. In terms of the individual they just say, "We don't have jobs."

DR JOHNS: Yes, I know, but why.

PROF WOODS: But underlying it - - -

DR JOHNS: Underlying that, what - - -

MS VALLANCE: They're not likely to actually say why - - -

DR JOHNS: But you've been around for a long time, why do you think?

MS VALLANCE: Because it's stuff about the - sometimes a false assumption that it will change their premiums, but it doesn't necessarily, but it may. Two, it is far easier to have the 100 per cent bionic human being at work than somebody who you may have some restrictions on. I mean, there's a real restriction - - -

DR JOHNS: It's a loss of confidence in the person, maybe.

MS VALLANCE: Despite their work record.

PROF WOODS: Whether justified or not.

MS VALLANCE: Yes. There's also - and I know this sounds quite cynical and there is a group of workplaces do that, where it's an industrial relations issue and it's about being able to control your workforce and give people a - because it's based on an assumption that is implied often in many of these things, that people actually are not genuinely injured. That will come across by a whole range of people, and if we had rehabilitation processes that actually were more effective, any of the negative things that the individual experiences and which may impede their return to work can be cut back and actually can be managed quite well. But for many of our membership, in fact half of our injuries are what are called strains and sprains. Our membership do really hard work and they will wear out. They have to. You cannot do the sort of work that many of our members do, with poor regard to occupational health and safety, and not expect that a human body will be able to withstand it.

So there's sort of a bit of an unbuilt obsolescence stuff about, "Well, you're fit for this sort of work for this period of your life but then that's it." In, for instance, the area of labour hire where many more of our members are now employed, those people, once they are injured and require suitable duties - many of those people will be unemployed for significant periods of time because their labour hire company can't place them because they have no arrangements about suitable duties, the place where they were injured will not have them back because they're not their employee, and if you are carrying an injury you're less hireable. If you're a fitter or a structural steel worker, and despite the fact that the industry well knows that there are certain hazards there that are actually quite controllable and still doesn't hasn't done anything about them, you go on the bottom of the list for the casuals. So the implications for those workers and the structural things that are placed in their way - it's incredibly difficult to return to work.

The labour hire issue which you talked a little about before with the people before us is a real concern. I note you obviously heard from a colleague from the Meat Workers Union yesterday, and their experience is much worse than ours, but ours has got a similar experience. Currently in Victoria there may well be change but you just, as a labour hire company, only have to pay either white collar or blue collar. It doesn't matter whether you're employed in the highly dangerous structural steel part of our industry compared to our vehicle manufacturing part of our industry, which have very different claims experiences, the labour hire company is just paying

that one rate so therefore there is an incentive to go that way, because you decrease your premiums. There need to be arrangements whereby that can be fixed and also arrangements whereby there are some arrangements, as again the previous participants were talking about - grouping and stuff in terms of suitable duties and all of those things, because the labour hire people just don't get them.

It is one of the real failings of this country that we don't do stuff in those grouping ways. In the western suburbs of Sydney a couple of years ago there was a research project that was funded by one of the universities where they actually went out and looked at a group of metal manufacturing - they were actually structural steel people. They worked cooperatively with the third party coming in to assist them for occupational health and safety advice. There are always difficulties when you change the way people do things, but people actually started to learn from each other even though they were competitors, because there was a structure set up about how to facilitate that.

Now, that was just a trial thing on occ health and safety. There's no reason why similar sorts of things can't be done on occ health and safety and return to work and rehab provisions, but we don't as a country - people seem nervous Nellies about experimenting with those sorts of arrangements whereby people can learn from each other.

DR JOHNS: Did the trial become a program?

MS VALLANCE: No, of course it ran out of funding.

DR JOHNS: Because someone else was paying for it?

MS VALLANCE: Yes, and it was only two years. Change like that take a long time.

DR JOHNS: We've all seen millions of trials in our time. Not too many of them go through when someone is asked to pay, in other words, to assess the benefit against the cost. Mostly we do these things and there's some benefit but we don't cost it.

PROF WOODS: So the companies involved in the trial could see some benefit coming from it but when they were asked to cough up some dollars to keep it going they came to a commercial decision that it was not worth it?

MS VALLANCE: I don't want to speak for them, but can I in defence of them - - -

PROF WOODS: But that's the frustration of some of this.

MS VALLANCE: Yes, but in defence of them, if they're trialing something that no-one else or very few other people have done and it's a new experience and the process had its ups and downs, two years isn't very long.

PROF WOODS: To change the culture, yes. But it is frustrating when you see

good schemes but watch them sort of wither on the vine and yet there are still the levels of injury and that which, even in your submission for your sector, are quite significant.

MS VALLANCE: It's a personal opinion but I think that because this area is tied up with workers compensation, employer and managerial prerogative and sick people, you've actually got some pretty potent combinations and people are nervous about experimenting. In our industry we are pretty conservative about what is done, although we'd be much better than others in terms of long-term perspective. There are many other industries which have much lower long-term perspectives, the manufacturing - we're good at that. So there's no commitment.

There has been an absolute lack in recent times of government activity and commitment. The National Occ Health and Safety Commission is just on 20 years old. It's had numerous changes in the way it has been constituted, the way it's been funded, its functions et cetera et cetera, and when we make mistakes, those mistakes politically are put up without any cognisance of actually some of the real benefits of what's happened. As a consequence, for instance, in this country we've had the National Occ Health and Safety Commission's funding slashed in 96-97 and we basically don't have any research happening in this country in the area of occ health and safety. It's an absolute crime. We base our stuff on what we presume happens in Australia based on European conditions, and they're in the other hemisphere. They don't even have the same climatic conditions that we deal with, which actually has important implications. It's not politically seen as something that's really important, and I think part of the reason for that is that we haven't as a community created the cultural awareness about how important this stuff is. That goes as a criticism of everybody involved. We don't say - we've only just recently started to say - how many people per week this means go to work and don't go home.

PROF WOODS: You've got the figures there in your submission.

MS VALLANCE: Sorry, common law was I think - - -

PROF WOODS: Yes, common law.

MS VALLANCE: Yes. I got sidetracked. My apologies.

PROF WOODS: We did it to you.

MS VALLANCE: We have campaigned for common law retention in some jurisdictions. In other jurisdictions we have supported its removal. We have had a very patchy history about how we as a union have addressed this.

PROF WOODS: Because they're all trade-offs at different times, aren't they?

MS VALLANCE: Because the real problem is that what happens is that if common law was to go and you could guarantee the long-term care and good benefit levels and you could have a regulatory and legal system that provides some of the teeth that

common law provides for the individual who is injured, that system would work properly. We don't, for instance, do much in terms of occ health and safety law and prosecutions. It talks about victim impact statements. People don't get their chance, like they do in other areas of law, of saying, "Look, I've been hurt really badly. My life has been changed. We want somebody actually to take responsibility for that." That's one of the functions that common law faces. It may well be delayed but it does provide that function.

It also provides funding when funding runs out and, sure, there are cases where the common law money will run out too, but if you haven't got a good base structure of good benefits that are long-term, that look after people and are adequate, you will always get players in the system who want for the retention of common law because the other parts of the system fail.

PROF WOODS: No, you've made the point on common law, although in your submission you haven't put the two points together, but we do understand the nexus between those points and I think your views are quite clear there.

DR JOHNS: Well, are you familiar - there are a couple of medleys, I suppose, in the public service - the Commonwealth public service. But are you familiar with the Comcare model of benefits?

MS VALLANCE: Yes.

DR JOHNS: Now, do they offer sufficient long-term benefit structure?

MS VALLANCE: It's much better than other jurisdictions. We still have difficulties with it but - - -

PROF WOODS: Do you have membership - - -

MS VALLANCE: Yes.

DR JOHNS: Yes, there are a few.

MS VALLANCE: Absolutely. We have federal public servants, predominantly in the Department of Defence.

DR JOHNS: Of course.

MS VALLANCE: And also we have members at one of the big self-insurers under that system.

DR JOHNS: We are everywhere - the Commonwealth public service.

PROF WOODS: I understand that. That's fine.

DR JOHNS: So, yes, you're familiar with it and - - -

MS VALLANCE: It is better than others.

PROF WOODS: That long-term care that it has is an important feature, you say. Yes, okay.

MS VALLANCE: It also is better because of the 45-week process.

DR JOHNS: Well, let's go to the business of step-downs though. I mean, each system will have a point at which they say benefits should be reduced and act as an incentive to return to work. I mean, is that a feature that - would have all negotiated some sort of version of it, I mean each state. So it's a feature that you think is important to the return-to-work process.

MS VALLANCE: Most of the return-to-work problems actually come earlier in the process than all of this stuff. I think it is really a bit of a misnomer that if you're taking people at - - -

PROF WOODS: Once you're talking six months out - - -

MS VALLANCE: - - - 12 months post injury or two years post injury and if you reduce their income such that they are on 60 per cent of a low wage without any of its penalties, that somehow poverty and personal difficulties is an incentive to return to work when an injury has been there for two years or 12 months. Rehab - the interventions have to be earlier. That incentive is not an incentive at that time.

DR JOHNS: That's why you go for a make-up pay to really nullify the effect of step-downs.

MS VALLANCE: Well, it's an interesting assumption that's made about make-up pay. We actually only have make-up pay to 39 weeks in Victoria and 26 weeks in New South Wales and various other states, so we've only got it at very - but even when we have negotiated with our employers - and I was involved in negotiations in 97-98 for the Victorian system - there was no evidence presented that the make-up pay prevented people coming back from work. Like, it's - - -

PROF SLOAN: There's very strong American evidence that does show that there are high rates of return to work with the step-downs.

MS VALLANCE: That's American evidence. The American employment system is different. The American workers compensation systems are very different. The American health insurance systems are different.

PROF SLOAN: They have 52 systems and some of them look very like ours.

MS VALLANCE: Yes. For instance, in the make-up pay stuff, no-one was able to say, "If we put make-up pay only to 26 weeks we'll get more of these people in this 14 per cent who are not coming back to work, back to work." There's been no - in

our industry no-one has done any work to say that.

PROF SLOAN: Well, the state schemes clearly believe that step-downs are important, otherwise they wouldn't have them.

MS VALLANCE: Well, I think sometimes there's reasons about why you have step-downs that are not necessarily about return to work and rehab. They're actually about scheme management.

DR JOHNS: That might be right but it's a significant modification to a benefit structure that occurs outside the discussion of the benefit structure. So it's one of those uncontrollable, uncontrolled features of the system.

MS VALLANCE: Sorry, what is the - - -

DR JOHNS: I'm sorry. Someone designs a system with a benefit structure that has step-downs for a purpose and then it's completely overridden by an industrial relations event, if you like, because you're saying it's no use starting workers back to work. So at the very least it becomes an ineffectual tool in the hands of the regulator or the insurer or the system.

MS VALLANCE: Hold on. I wish to clarify. Our make-up pays are no longer 52 weeks, okay? The step-downs still take effect in most states. For instance we only have make-up pay in the Graphic Arts Award to 26 weeks.

DR JOHNS: But they start day one.

MS VALLANCE: No, they start five days after or 10 days after because in fact our incentive and the reasons why we've negotiated those is that we actually want people back to work quickly and we don't want - the people we're trying to look out for are the people who are actually the chronically injured. People can survive for a couple of weeks with 95 per cent. That's no big deal if the people at the other end are concerned, and we don't have long make-up pay arrangements. The step-down in Victoria - well, it depends which system. The Victorian system changes every three years. But, you know, at one certain stage you've gone at 10 days, 13 weeks, 26 weeks, 52. Currently there's still some of that there but it's predominantly a 26-week step-down is the major step-down that occurs because of the way they've recalculated pre-injury average weekly earnings.

We only have make-up pay to 39 weeks in the Metal Industry Award, not in the other awards in that state. So it's not a huge - it has basically had to be negotiated through enterprise agreements which is the other thing, just in terms of other insurance systems. We have politically and industrially taken up what's called income protection insurance - - -

DR JOHNS: Yes, yes.

MS VALLANCE: - - - which has basically been forgoing a wage increase to put in

a certain percentage of your wage into an income protection scheme, predominantly for outside work-related injury and illness. Estimates from some of those insurers is about 7 to 8 per cent of the claims they get are actually workers comp claims. But the employer is not putting it through the workers comp system, it's putting it through the income protection system which of course means that the employee is paying for their own work compensation, even though it's incurred through a work-related thing.

DR JOHNS: Why would the claim succeed if it's not workers compensation?

MS VALLANCE: Well, those ones don't succeed because they go back and - but the insurer - it's the diligence of the - - -

PROF WOODS: The insurer is saying they don't capture - - -

MS VALLANCE: - - - income protection insurer that actually finds out. They have to go and challenge them - go back and challenge the individual claims with the employers and they investigate the claims. They reckon it's about 7 to 8 per cent which is not something we'd ever imagined, of course, when we've put it through.

PROF WOODS: Good. Have you got any other matters that you want to draw our attention to. I mean, we will now - having your formal submission, we will go through that in detail and we'd encourage you to look at our draft report and as I say we'll make sure that you have a copy because you're a direct participant in this process.

MS VALLANCE: No - and just we'd appreciate being able to give stuff from the employee. That's great.

PROF WOODS: Yes, and if you could follow up a couple of those other matters that would be helpful and they can come directly through our staff to the inquiry. We'll look at that as soon as we get it. We do appreciate your involvement, the work that's gone into the submission and the time you've given us today and we look forward to your ongoing participation in the inquiry.

MS VALLANCE: Yes, and thank you for the opportunity.

MS BUCHANAN: Thanks very much.

PROF WOODS: Thank you. We will adjourn for about 20 minutes so that we can have some lunch.

(Luncheon adjournment)

PROF WOODS: We will resume the hearings. Our next participants are Transformation Management Services. Could you please for the record state your names, positions and organisation you are representing.

MS WALLACE: Nerida Wallace, Transformation Management Services, principal.

MR HALL: Michael Hall, Transformation Management Services, principal.

PROF WOODS: Thank you very much. You have a presentation of which we have copies. Do you wish to take us through that?

MS WALLACE: Yes. Just be way of introduction, Transformation Management Services had been working in the area of dispute resolution in workers compensation schemes for possibly the last 12 years. The company started in 1992 with some work for the Victorian government on the then WorkCare appeals board. Since that time, we've probably reviewed or done work in most of the workers compensation schemes in Australia and New Zealand. Our major work in this field was done in 1995 for the heads of workers compensation agencies for their promoting excellence report. That involved a year-long research study as well as visiting and reviewing all of the schemes in Australia, and out of that we produced a framework of best practice, and since that time, we've worked with quite a few schemes who have been seeking to adopt some of those principles, if not all, in their own schemes.

Today we formally lodge with you the published reports in that body of work, and if you refer to the handout we've given you, there's actually a list of all of the publications that we've produced in that time. Possibly relevant to you, we're currently working with the Department of Employment and Workplace Relations on specifications for the comparative performance monitoring industry resolution, and last year for the fourth report we actually did the work to prepare each of the schemes on a set of some five indicators, and this year we're hopeful to get some seven indicators. NOHSC has taken over the role in collecting information, and they're working from the specifications document that we prepared for DEWR earlier this year. We're currently going through a verification process with them.

PROF WOODS: Just out of curiosity, you said that you were both principals of Transformation Management Services. How many staff do you have?

MS WALLACE: We've got three. We're not a large organisation.

PROF WOODS: Including you two?

MS WALLACE: No, that's another three.

PROF WOODS: Three in addition.

MS WALLACE: Yes.

PROF WOODS: So there's five of you, okay.

MS WALLACE: To clarify, we work with other organisations, economists, actuaries - - -

PROF SLOAN: You latch together strategic alliances when you need to.

MS WALLACE: Yes.

PROF WOODS: Okay, no, thank you.

MS WALLACE: Social researchers, people like that, and some of the big accounting firms on occasion. Our observations to date - we're looking at three areas. Firstly, drivers of disputes and dispute resolution and what the best practice model might be, and we also want to make some observations on change in dispute systems, because we think that's quite a serious problem in Australia. We want to talk to you about possible national frameworks for dispute resolution, some more on monitoring workers compensation schemes and on what possible pathways to national frameworks you might follow. Some observations - - -

PROF WOODS: Are you happy if we ask questions as you go through.

MS WALLACE: Absolutely.

PROF WOODS: Okay.

MS WALLACE: I suppose we can make some observations about how consistent the schemes are in Australia and New Zealand at the moment, and it would probably not be in our best interest to say they're widely divergent, because we've put a lot of work into getting them as consistent as possible. But it is true to say that a lot of the schemes have mostly succeeded in reducing legal costs and legal involvement, and that's one of the major drivers of cost and delay in these schemes, and they've also been fairly successful in cutting delays in first level appeals. That's not something you can say of most court systems. They're least successful, however, in reducing frequency of disputes in their schemes, and that's still a big problem, and probably most prevalent in what we would call the WorkCover schemes in Australia. They are New South Wales, South Australia, Victoria, Tasmania, schemes that have effectively outsourced claims management to insurers.

Just on legal involvement and costs, I must draw your attention to New South Wales, who probably have the worst legal involvement and legal costs record in Australia, and now have established the workers compensation commission, and are seeing those costs dramatically reduced. As they represent half of employer remuneration in Australia, that's quite a significant change.

PROF WOODS: So you give a tick to the - - -

MS WALLACE: I give a tick to New South Wales.

PROF WOODS: - - - to New South Wales.

MS WALLACE: There are some issues about their design, but they're fully aware of what those issues are and they tell me they're going to work on them.

PROF SLOAN: We spent an hour with - - -

PROF WOODS: The Honourable Justice?

MS WALLACE: Yes. He's an interesting man.

PROF SLOAN: We got on well.

PROF WOODS: We did.

PROF SLOAN: I'd give up too if I had to spend, you know, too much under the system.

MS WALLACE: Yes. Yes, well - - -

PROF SLOAN: No, they do seem to have been very effective, but there seems to have been sort of discipline to the process.

MS WALLACE: Yes, indeed, and I should say that those recommendations were made back in 1995, so it has taken them some time and several attorney-generals and some political will and a lot of government inquiries to get to where they needed to go.

PROF WOODS: But they are there.

MS WALLACE: They are there.

PROF WOODS: Just while we're on that, even though I was going to bring it up later, in terms of ticks of systems, just so we can get to the point on that, any other parts of any other systems that get a tick?

MS WALLACE: Okay. Well, I'll have to say Victoria. They're doing very well on the conciliation process itself. They've got very well trained people, constant quality processes happening. We could have said that about Western Australia, but I think they're about to regress back to a court system. We'll talk about that later.

PROF WOODS: But the system they've had to date, you'd have given a tick to.

MS WALLACE: The system they've had is quite good, yes.

PROF WOODS: On the conciliation, mediation side.

MS WALLACE: Yes. The other would be South Australia, although there are some issues in South Australia. The model is fundamentally right. Tasmania is not doing so badly. Queensland - Queensland is quite an interesting case. They've had the system in place since the 1960s and it's part of the culture of Queensland now, and that works quite well. But they are having some successful experiments with medication and conciliation processes at the claims management level.

PROF WOODS: If you were to distinguish between Victoria and WA as is, not how it's changing, is one system designed better than the other, the one working better because of the quality of the people or the training or the - - -

MS WALLACE: Yes, I think - there's certainly been more effort and money spent in Victoria on quality and training and selection than in Western Australia.

PROF WOODS: Okay.

MS WALLACE: I'll come to it later.

PROF WOODS: But the system design isn't inherently better?

MS WALLACE: In Victoria? I think if I go through the presentation first - - -

PROF WOODS: All right, yes, sorry, I was just trying to come to the point on a couple of things - - -

MS WALLACE: I know, but I need to - - -

PROF WOODS: - - - but, yes, no, take us through.

MS WALLACE: - - - take you through some logic first before I answer these questions - - -

PROF WOODS: Yes, I did have these questions all lined up at the back.

MS WALLACE: - - - before we answer these questions.

PROF WOODS: Okay, we'll get there.

MS WALLACE: I suppose the key point we need to make about why we've got more disputes than we should in a lot of these schemes is to do with how they manage information. Our view is that there are four elements in dispute and you must have those four elements together if you are going to have resolution. So you've got to have all of the crucial information. It has to be exchanged. Both parties have to understand it. You have to have an understanding that there are underlying conflicts and people need time to sort those out. You've also got to understand that people have, usually, different agendas and quite often it's, "I just want to get off the workers compensation scheme and never visit another insurance doctor if I can get away with it." That's quite often one of the hidden agendas.

You need to create opportunities to resolve all of the issues, so when we look at a scheme we say, "Is that happening? Is it happening in one place?" Invariably the schemes that fail are the ones who haven't got those elements in place and particularly haven't got information management under control. In fact the gathering of the information, key information, and exchange of that information leaks through the system right to the court door and it is exchanged there at great expense by barristers and the matter is settled. So a badly operating scheme, you're looking to see where the key information has been exchanged. One of the reasons that Victoria and Western Australia's conciliations work so well is they have information officers at the front door. Indeed, in the New South Wales system, you would have heard about their very strong gatekeeper who's managing that information flow and that information exchange.

I think that the strongest, the better schemes, will push that identification of information and exchange back prior to the claim's decision. So if we see the Northern Territory which in the past has had a low incidence of disputes, they have a four-week notification process. So they say to workers, "We'll pay your benefits for four weeks and then we'll make a decision and in the meantime we'd like you to come in, bring all your doctors' reports with you. You don't need to talk to a lawyer because we haven't made a decision yet." Those matters get resolved very well. We're seeing the same in New South Wales at the moment with the provisional liability process of 12 weeks. Same process again; the insurers collecting the information at their cost and exchanging it and resolving a large number of disputes. In fact we would say probably about 80 per cent, I'd say, of potential disputes they would be resolving at that level.

The other thing they will be doing is focusing on rehabilitation and return to work first; resolving any workplace conflict rather than seeking to establish rights or entitlements. When so many schemes go wrong they jump straight into an adversarial mode rather than focusing on rehabilitation and return to work. I just want to draw your attention to Comcare which is our great success story. Well, I must say of recent years they've regressed as well but our research for them in 1996 found that the major cause of disputes was a referral by a claims officer straight off to a specialist medico-legal report, without contacting the worker in any way, shape or form. So immediately the stage was set for an adversarial contest.

We essentially changed their behaviour and you can see that disputes - these are the numbers of appeals - started dropping away. In about 2000 or 99 they got themselves a call centre and I think things started deteriorating from there. I haven't looked at that scheme for a couple of years so I'm not sure what the recent increases are attributable to. The other thing Comcare did at that time was they used lawyers at the front end of the process. Earlier research for Victoria had shown that lawyers are very good at identifying the correct information and then collecting it and if those skills were harnessed early on the numbers of disputes would reduce.

DR JOHNS: So are you treating that as a positive or a negative to get the lawyers in?

MS WALLACE: I was treating it as a positive.

DR JOHNS: To get the lawyers in early?

MS WALLACE: Yes, absolutely. In fact in the Northern Territory because good claims managers are so thin on the ground they referred all of their claims to the local legal firm and they were probably responsible for keeping the disputes rate down as well. The research we did for Comcare showed that a third of the disputed cases were through legal error and that was the other reason we made that recommendation and they brought legal advisers in.

MR HALL: One of the other unpublished studies we did looked at the Victorian scheme in relation to lawyers in particular and we analysed over 200 cases down to the minutiae of when interventions occurred in relation to lawyers, medical practitioners and other treatment specialists and looked at the timelines and came to the conclusion that lawyers' interventions were not indeed all bad. Early intervention without other activity tended to exacerbate the legal disputation but lawyers introduced into a case that had become intractable for other reasons tended to resolve them earlier than otherwise.

PROF WOODS: Okay.

MS WALLACE: I think you've got to look to say - which led us to this idea of what are the functions that you need in a dispute system and you need certain expertise at certain times to get the results and lawyers are good at identifying and collecting relevant information.

DR JOHNS: In fact as I recall you're a lawyer, aren't you?

MS WALLACE: Yes, I know I have to say - defend the term occasionally but - - -

DR JOHNS: Is it the skills they bring or the costs they bring with them that force - - -

MS WALLACE: It's the skills and in fact I'll go on to talk about that because in some of the best-practice schemes you'll find paralegals or advocates who have similar skills but are paid a lot less. In fact if you go down to - I think visiting New South Wales, you know, you'd have the first year legal clerk or even the senior person from the legal office who would be doing that role and being paid a lot less than perhaps was being charged to the workers compensation scheme. So it can replace - as long as you have that function - can replace it with less expensive sources.

The other thing Comcare did was they used psychologists in all stress disputes and I think they've ceased doing that now and stress claims are a big problem for them. I'll just make that observation. We have actually had some very powerful findings that show that if you had a psychologist do the initial contact that the time

the claim decision was made and, further, at the time when the reconsideration was made, the likelihood of it going to the AAT was again vastly reduced - so a lesson that needs to be borrowed in many of our other schemes.

DR JOHNS: Sorry to interrupt but what caused the rise in disputation in the 93-94 period in Comcare?

MS WALLACE: I remember Peter Shergold putting this graph on the table when I visited him and saying, "It's going up. Make it go down."

DR JOHNS: I'm a bit concerned because I was around then I think.

MS WALLACE: Yes, you were.

DR JOHNS: It wasn't anything I did, was it?

MS WALLACE: I think what - - -

DR JOHNS: Say no.

PROF WOODS: For the record.

DR JOHNS: For the book.

MS WALLACE: Well, they had a very active legal industry in Canberra and in Melbourne and they were jumping straight into an adversarial mode and the second thing the worker did after receiving the claims decision, after telling his local Public Service Union person, was to go off to see one of the local legal firms that specialised and the letters started flowing.

PROF WOODS: What you could argue is not so much the new scheme has been able to bring it down but that the period 93-4 to 95-6 was an aberration from a long-term trend.

MS WALLACE: You could say, yes. At the time also they were going through lots of redundancies and there was a lot of disruption in public service, a lot of movement. Yes, that is another suggestion and I probably agree with you.

PROF WOODS: Although the redundancies really weren't hitting until 96.

DR JOHNS: Yes, they were somewhat later.

PROF WOODS: They were sort of already on the - - -

DR JOHNS: Anyway, we won't - - -

MS WALLACE: Yes, catching them before they get any worse.

PROF WOODS: Okay.

MS WALLACE: The sub-name of all our reports is "A stitch in time saves nine" - anyway. I've actually given you a copy of the best practice model. This is slide 10 we're looking at, but I've given you a hand-out.

PROF WOODS: Yes.

MS WALLACE: We just had some difficulty getting that onto a slide and what - do you want to talk to this?

MR HALL: Yes. The basis of this model is the results of our work and our finding that disputes are best considered as behavioural issues, rather than static events, that there's a dispute over something and it's going to be resolved; far from it. Disputes could be considered to be potential disputes very early on in the process and that the provision of navigation information, what we call "navigation information" which is information about what real rights are, what expectations are and education information about the process can go a long way towards avoiding disputes or turning these potential disputes into resolved matters. Now, that can occur as early on in the process as you like. Some of the interventions there have been free videos provided, that take workers through the process and explain a bit about their rights and they can be provided to every potential dispute or whenever a WorkCover claim is lodged. Brochures and things like that or officers of the worker advocate, those sort of places can have a real role in minimising early disputes. I think you'd be better off taking them through that.

MS WALLACE: One of the view we have about Queensland and why we think it's so successful in keeping its disputes down, apart from the common view that they pay all their claims, is that they have had longstanding entitlements and there is a strong cultural understanding of what their rights are and how the system works. Everybody knows what to do.

PROF WOODS: It's stable.

MS WALLACE: It's stable. Whereas in a lot of the other schemes we get a six-monthly change of some sort and it can create a lot of problems. The other examples of good front-end educational material is where you have a help line. New South Wales has got a very successful one; Victoria also has quite a successful one. They employ senior claims officers who can get on the phone and sort things out quite swiftly and effectively.

MR HALL: There are various way to use the information early on to the detriment of a settlement of a dispute and there are various techniques that are used by the legal culture, holding back information for as long as possible until - I don't suppose we could really say until costs run up, but until their forum for best outcome for them is reached. The information exchange can be used to drive towards resolution if certain other steps are taken and they can be regulatory steps, or legislative steps, to enforce exchange of information to require - to put on evidence caps, for example, so that no

more information can be introduced after a certain time.

PROF WOODS: Yes. No drip-feeding of information.

MS VALLANCE: Yes, that's right, and reverse cost scales. If you go to slide 11, where we've got a best practice profile and - this is our upside down J curve - this is to show that if you get a lot of these things right then this shows where disputes should be resolved. And you can see education is obviously right up there. Informed original decision: that is, a claims officer who actually knows what they're doing and has correct seniority and all of the right information to make a proper decision. Some sort of internal review process which is basically a quality review process and then we go into - immediately into an ADR process and if you look across to our model we say about 80 per cent of cases at that point should be resolved in some sort of ADR process.

In some of the better schemes they will have screening and streaming at the front door and they'll shoot cases off to a medical panel or straight through to the court system, but not too many schemes have achieved that. In fact, I think only New Zealand has got anywhere close. Then very few matters should actually be determined, that is where a magistrate, an arbitrator, or even a conciliator, makes a decision and then, again, very few cases should be reviewed on the law and if you have a look at page 7, we've given you the profile for a scheme that will remain nameless, for obvious reasons.

PROF WOODS: Page 7, slide - - -

MR HALL: The first slide, 13.

MS VALLANCE: An Australian profile.

PROF WOODS: No, we contrasted the two.

MS VALLANCE: Yes, indeed, and the black areas are actually where the formal action, the reconsideration, happened or the conciliation happened, or the arbitration happened or the judicial determination happened. The shaded area is where either lawyers or - well, actually, mostly lawyers - - -

MR HALL: The forum was actually used, but the decision was made at the door, by agreement, rather than - - -

DR JOHNS: Did you count that as being in that form?

MR HALL: Yes, because all of the resources were used and the cost was the same.

MS VALLANCE: So you've got an increase in cost, obviously, the higher you go and you can see why money leaks out of these systems and that's a classic problem where the information has been dribbled along.

MR HALL: The cost structure pretty well is the reverse in terms of scale of that curve. At the top end you might be looking at, you know, \$5 to \$20 per case. Down at the bottom you're looking at \$300,000.

PROF WOODS: Okay. Understand all that.

MS VALLANCE: The previous slide actually just has the best practice essentials, so - - -

MR HALL: Slide 12.

MS VALLANCE: - - - and we've also, on the elements of best practice, described what they are. So any new scheme needs to have these in some form, or any existing scheme you can look at and say, "Well, this is missing, therefore they're going to have a problem."

I want to make some observations on the change in dispute systems. We identified this as a major problem for the heads, back in 1996. I think the average turnaround time at that time was about five years, so they were changing their schemes on average every five years and I don't think much has changed since then. Our observation has been that these schemes are easily manipulated if not properly protected over time. I'll come to what that means in a minute. We see mistakes in system design repeated and repeated and repeated. We see very little careful change based on a thorough understanding of the real drivers of good design, a continuing low disputation, lower costs and higher satisfaction. In fact, it's a bit of a concern that we see schemes launch into change without actually going into their own libraries and seeing what information is available.

PROF WOODS: Is some of it lack of information or failure to observe information or is some of it the process of negotiation between various vested parties that produces a sub-optimal result?

MS VALLANCE: Certainly the latter is always in play, but of recent times we are getting more frustrated on the former.

MR HALL: And the biggest problem I think of the owner of the scheme end is that they don't understand the secondary effects of the changes to the drivers that they're tweaking. We look at the systems as economic model's intention and if you turn the settings on one driver your effect may occur somewhere else. If you clamp down on the Northern Territory, for example, considering clamping down on legal aid because there's a lot of cases being funded on legal aid, the effect of that - they didn't eventually go ahead. We looked at the effect of that and what had happened elsewhere, and to cut out legal aid for those cases drives the legal industry not to die but to seek to use new avenues to attract business.

They then advertise no win, no fee, first consultation free, and they actually get more contact with the clients that way. They build up their own advertising capacity and in that fact-find the secondary effect there's an initial drop and the second effect

is a rise in litigation rather than a lowering of litigation.

MS WALLACE: But we'll make those observations. On slide 15 we actually mapped this for the heads - and it's nothing new. It's a move between informal and formal dispute systems and we see that all the time - most recently in Western Australia where there's been a move back to a court based model, and all the problems that that is going to bring. The key to it is how you break the sort of - - -

PROF WOODS: You've given this to us ahead so we've read through it.

MS WALLACE: We try and adopt agreed measures that are continuously monitored and published, and CPM is an example of that. When I say we've asked people to protect administrative independence, it's pretty important that these - any new scheme is seen to be independent. That means they need their own financial control and their own hiring and firing powers. Our preference is that they should sit under some sort of court-auspiced umbrella; that they shouldn't be sitting completely in the court umbrella because then you lose control with cost scales and processes and things like that.

There must be consistency and quality and there must be academic defenders and public relations advisers as defenders for their schemes. There's a lot more I could say on that but we see it not just in workers compensation but in other tribunal schemes. The pressures build and the scheme is closed down or is replaced with something else.

MR HALL: Especially where early parts of the process are very rightly without legal representation, there are stronger and stronger calls for the introduction of that and that has to be defended publicly otherwise the schemes will get turned up.

PROF WOODS: Yes.

MS WALLACE: National dispute resolution schemes: I suppose we don't endorse setting up yet another one but we would say what not to do and what to do.

PROF WOODS: Sorry, in that context I guess a consideration for us is if private sector organisations want to come in under the federal system - call it Comcare - then whether things like the AAT, an irrelevant component of that scheme, and therefore in that sense this is relevant.

MS WALLACE: Yes. In fact New Zealand's interest is a case in point because they actually do have a dispute resolution service which is a Pty Ltd company and it sells conciliation at \$1500 a time, I think. So anything is possible.

PROF WOODS: It's a market niche for somebody in this field.

MS WALLACE: Indeed, absolutely. I do recall suggesting to companies some time ago that they make use of the Victorian Conciliation Service but I didn't really get very far with that suggestion. So there is obviously opportunity for some

cross-fertilisation. We've talked about early intensive activity. You must make sure that legal markets are not allowed to develop, and at the same time you must replace legal markets that are used for cost-harvesting with some sort of alternative navigation services. We have seen some of the heads over the years say, "Do I really need to do this? Why do I need to establish an advocate's office?"

We put the arguments but where they've failed to do it, the lawyers have come back in or the burden has fallen quite unfairly on the union advocates and there are some issues with funding them.

MR HALL: When they're working well they can appear to be a bit soft in terms of the work they do because it's mainly talk and influence, and if they're working, all the disputes drop. But if you then say, "Well, we don't need them," you take them away and then you get hard disputes with a hard core of legal backing behind them. It's very hard to shift that.

PROF WOODS: But we've got to compare your point there with your earlier point about the importance of having at least the skills of the legal fraternity in ensuring that there's correct decision at law.

MS WALLACE: Absolutely.

MR HALL: You do.

PROF WOODS: There's a balance in there somewhere.

MS WALLACE: It's a balance, there is a balance.

MR HALL: In fact there are very real roles for establishing legal precedent, not just at the top end where the cases are resolved in courts, but in feeding into the policy frameworks of the original decision-makers so that they have their understanding of the primary decision based on a correct interpretation of the rights of the - - -

MS WALLACE: Yes, so in fact - - -

MR HALL: In-house counselling.

MS WALLACE: - - - the New South Wales people might have talked to you about that because that's a concern that they have that they're closing down one part of the legal industry and losing a lot of expertise. But they may need to look at that in the next couple of years. We say court auspicing we think is essential protection but within that there's got to be recognition that the dispute resolution body plays an ombudsman type role and in the better schemes the head of that organisation will be reporting to the board of the WorkCover Authority.

PROF WOODS: So it's the internal review mechanism.

MS WALLACE: Yes.

PROF WOODS: Yes.

MS WALLACE: In fact, particularly we have a WorkCover model where insurers are seeking market share by attracting employers to their portfolio. They will see lawyers as their clients and quite often will not want to pass the bad news of the claims decision to their clients, so will wait for the matter to be taken to the dispute resolution body and they can allow the dispute resolution body to play that role. There's some argument that that's a legitimate third party neutral role, and the other argument is that it's an artificial escalation of disputation and cost through the design of the workers compensation scheme.

PROF WOODS: Just on your last point there, the information - is it not only gatherers and collators but disseminators - - -

MS WALLACE: Yes.

PROF WOODS: - - - to make sure that the information not only gets collected but goes out to the relevant parties?

MS WALLACE: Yes, and in fact the Workers Compensation Commission in New South Wales, that's what they do. They're the post office. The better schemes do have that role at the front door. You can do it efficiently. They do it very well in South Australia at one level of the operation. I've already talked to you about senior customer service people. I'm not sure if you put medical panels in your issues paper - - -

PROF WOODS: No - - -

MS WALLACE: - - - but I threw something in about - - -

PROF WOODS: It's relevant. We've been across the issue.

MS WALLACE: Probably the best way to liken this is to say that it's like a funnel and you've got to make sure that your leading specialists are on your medical panels and that the cases that get to them are just precedent setting type cases. So a lot of these evidential problems that you get concerns about doctors making decisions about evidence when they're not trained to filter evidence, you get rid of those by sorting that out at the front of the process. I won't go into legal arbiters but that's another issue.

I suppose our penultimate observations are about monitoring schemes and this comes out of our experience with the CPM and our experience about going into different schemes to see what's going on. Given the proliferation of data and different data collections we actually think the best way to do this is to go in and take a selection of files and do what we call file reviews. Our own process is to find up to 70 different data points in any one file. We then get hold of the agency's data. We

then go out and do stakeholder interviews and we start cross-correlating what's actually going on in the scheme or we do surveys of the people who have actually experienced these schemes and we find amazing correlations. We just make that observation. If you really need to understand what's happening in these schemes it's got to be done properly.

We think that also this work needs to be done independently, particularly if court cooperation is required and you may be hearing from some of the WorkCovers, the difficulties they're having with getting some information from courts or tribunals. It's pretty relevant because they've actually got to try and manage their scheme.

MR HALL: An interesting point of comparison on the data is also to look at private sector information that's often not available as comparative data to government or it doesn't seek it promptly. We act on behalf of a number of other private associations and they are in the process of collecting data so they can see their real costs and compare information. There's opportunity to look at the real cost structures, unit costs, that are provided in a market between privately insured companies and their specialist and treatment programs, and comparing that directly to government-run organisations.

MS WALLACE: We think that there should be a new approach to monitoring. We think it should be done by a national audit team with full capacity to go into a scheme, take data, analyse files and ensure consistency of definitions with other schemes. We think that needs to be done externally and independently and an example is the Workers Compensation Research Institute of Massachusetts which does what are called administrative inventories and there are some issues with how they operate but their model is good. We think that should be established in Australia and that should be matched with high level independent peer or academic review on all data collection and also ongoing central research.

PROF WOODS: Did you ever read our Productivity Commission report on the job network?

MS WALLACE: I have looked at aspects of it for something else. Have you said something similar?

PROF WOODS: We make the same sorts of things very strongly there, don't we, professor?

PROF SLOAN: That was in many ways a report about bureaucratic design.

MS WALLACE: Yes, it was and we keep having to re-educate a new set of bureaucrats and they make - - -

PROF SLOAN: Yes, that's a good point.

MS WALLACE: - - - uninformed decisions that have very costly implications on the schemes.

PROF SLOAN: That of course I think is actually part of the explanation for why they keep on changing. They get a new crop of wet behind the ear bureaucrats who kind of basically refuse to put the hard yards in to learning what's happened.

MS WALLACE: Yes, and it gets worse because they'll even hire an international consultant to come in and help them out who also gets it wrong. That's the latest approach.

PROF WOODS: Yes, the suit that walked through the door to get the consultancy is not the same junior staff member who then does the work.

MS WALLACE: Yes. It is a more recent phenomenon and it goes to protecting schemes and there needs to be an ongoing research capacity so we can start learning and some of my colleagues say that we're very far behind in Australia because we haven't got that ongoing process.

PROF WOODS: Well, have another look at our job network report and see if you - - -

MS WALLACE: I will. Does it also talk about tertiary qualifications for bureaucrats and specialist boards?

PROF WOODS: No.

PROF SLOAN: No, but it was interesting because in some ways we kind of thought, "God, should we be doing this in the inquiry?" Then we came to the conclusion that they were still sort of investing in it, you know: that sort of detailed bureaucratic design. There are no groups that clearly have those skills.

MS WALLACE: Yes, that's right. Anyway, we could talk about that for the next 10 minutes.

PROF WOODS: Indeed. Let's go on to the pathways instead.

MS WALLACE: We think that - and I must say, we are probably still debating this, but we would suggest starting with some sort of mutual recognition and uniform legislation pathway. We would suggest seriously enhancing external auditing of data as we have suggested. We just make the observation that local competition is reasonably effective and we saw that in New Zealand where the ACCC was suddenly confronted with competition from a whole range of imported Australian insurers and we were there for that very crucial six months and saw the ACCC dramatically improve its game in claims management. So I will just make that observation. I think there's scope to reharvest the competitiveness of the insurance industry and our observations on that are from the work we've done with the self-insurers.

We find that there's almost two groups of people operating: those who do work with WorkCover and those who do work with private industry. The private

industry ones are way, way ahead in introducing best practice to claims management processes. WorkCovers appear to focus heavily on input control rather than on outcomes and you see insurers frustrated because they can't do what they know works and I think we also look at the results for self-insurers, they're always better, because there isn't this folder of red tape binding it up. So I would just make those observations and again, that's probably tied to our last point and has been happening in the last few years.

PROF WOODS: If over the next couple of weeks you sort of couldn't sleep at night and wanted to expand that page, even if it's sort of in an annotated form, that would be very helpful to us, presuming you can - - -

MR HALL: We're happy to do that.

MS WALLACE: Yes, we can do that.

PROF WOODS: - - - agree on what it should look like.

DR JOHNS: Particularly on how to reharne the competitiveness of the industry, what that means, for us.

PROF WOODS: Yes, that's the important one and the steps in the first one; start with mutual recognition, uniform legislation, but where to from there and how such a national framework would evolve? So some further elaboration on that.

MS WALLACE: Can certainly do that.

PROF WOODS: It doesn't have to be glossy, just the benefit of your thinking. I've actually asked my questions as we've gone through even though I did pre-empt some of them.

MS WALLACE: You were asking me why Western Australia - what was the difference. Western Australia; what they did was set up a magistrate, a review on the law level, but they were still distanced from the court system. They had really no proper protection any time they were operating, so it was very easy to turn them over. Victoria, the link with the Magistrates and County Court isn't as strong as it should be and you can see calls for that scheme to be made more independent but what that is going to mean is it will become more of a target for its decision-making. There will be requests for administrative review. There will be a string of them and eventually the cycle might turn again and a giving of that function back under the court umbrella.

PROF WOODS: Could you build again a little bit of that for us?

MS WALLACE: Okay.

PROF WOODS: Just a page of thoughts. Excellent. Anything - have you asked - - -

DR JOHNS: Very good, thank you.

PROF WOODS: Prof Sloan?

PROF SLOAN: No, no. I will have a chat to Nerida about a few other things because you're also a bit of an expert on self-insurance aren't you?

MS WALLACE: Yes, and rehabilitation and occupational therapy and physiotherapy.

PROF WOODS: Why did you limit yourself to just this?

MS WALLACE: I'm getting all my clients to talk to you.

PROF WOODS: We have noticed them coming forward. Yes, that's fine, thank you very much. I appreciate that.

MS WALLACE: And I am a lawyer so - - -

PROF WOODS: That's on the record.

MS WALLACE: We are very interested in this dispute resolution.

PROF WOODS: Yes, it is.

PROF WOODS: We welcome our next participants, the Recruitment and Consulting Services Association Ltd. Could you please for the record state your names, positions that you hold and the organisation you are representing.

MR CAMERON: Andrew Charles Cameron. My position - I'm an the issues management consultant for the RCSA but also a member of the RCSA and a member of the national occupational health and safety workers compensation committee.

PROF WOODS: Very good, thank you.

MR JOHNSTON: Peter Brian Johnston, and I am a member of the national occupational health and safety committee for the RCSA.

PROF WOODS: Excellent. You have provided us with a submission which we have been through, and there are a couple of issues arising from it, but do you have an opening presentation you wish to make?

MR CAMERON: Yes. Very briefly we'd just like to obviously not so much go over the existing written submission but maybe make some additional comment around that.

PROF WOODS: Thank you.

MR CAMERON: Initially what we'd like to do is outline that the RCSA is very much committed towards providing some clarity in terms of an understanding of the greater industry, especially when it comes to the provision of what we now term on-hired employee or on-hired contractor services. Typically those services have been I guess titled labour hire or contracting or temping and a range of different titles, and I guess one of our focuses, particularly for discussions like these, is to get some clarity as to exactly what we are talking about when we talk about these particular services.

The RCSA itself has developed I guess a list of categories for those services provided by members, and the three relevant ones to this discussion today - I'll provide you a copy of the diagram - are what we call on-hired employee services, on-hired contractor services and then there's what we call managed project and contract services. Typically the reason we want to raise this is of course the issues pertaining to on-hired employee services will be different indeed to those of on-hired contractor services, "contractor" being the true contractor. Indeed, the third category, managed project and contract services - there is no on-hiring of any employee to a third party. Indeed, they are simply revision of services under I guess the more direct management and control of that provider.

That having been said, of course, the focus of our submission has been pertaining to on-hired employee services because we feel that they are most impacted by the frameworks of legislation regarding occupational health and safety, workers compensation.

To that end, briefly I would like to outline that one of the concerns that we or one of the issues that our industry has is that our industry is every industry. I think this is something that, when we look at the opportunities this industry provides, as well as some of the hurdles, we need to understand that the complexities associated with compliance and administration when it comes to occupational health and safety, workers compensation legislation are clearly compounded by that, to the extent that we can on-hire employees and/or contractors to the entertain, manufacturing, call centre, hospitality, government industries - a whole range of them. To that extent the level of knowledge that is required by any one provider or any one employer, as you would clearly understand, is very, very broad and expansive. To that end issues of compliance are of great relevance to our industry and we take the issues very, very seriously. The RCSA code of conduct, which is currently in the final stages of ratification before the ACCC will attest to that.

PROF WOODS: Is there a trade-off between breadth and depth though?

MR CAMERON: I would suggest it would obviously change across the board. In many regards there are clearly those providers who do tend to provide what we might call boutique services or focus services to any one particular industry. To that end I would suggest there are a large number of larger providers that indeed have a lot of depth and breadth at the same time. I guess we can look at the issue and the definition of what we call the depth of the industry, but the numbers of employees and the range of let's say placements in each of those industries again gets quite expansive, and to that end I guess I can't really say - - -

PROF WOODS: No, it was just in terms of for an employer in your, as you describe, on-hire employee services where they're wanting to ensure that their employees are skilled and fully conversant with occ health and safety requirements and their rights and entitlements under workers comp. Given that there are a multitude of particular activities that those employees operate in, I'm just wondering to what extent is the employer able to feel confident that they themselves are across all of the particular requirements.

MR CAMERON: It's a very relevant question because one of the issues we currently face is that it is particularly difficult to ensure that with ever particular what we might call a placement, that placement is done in a manner where it's completely compliant with every potential piece of legislation, regulation, code of practice, guideline and whatever else that may be.

PROF WOODS: Absolutely.

MR CAMERON: To that end, of course, we do a lot of work in the RCSA to try and provide education services to our members. For instance, an example of that is we recently prepared an interactive CD-ROM which was prepared for inducting at a generic level on hired employees prior to their placement. But of course, not wanting to get into the issue of I guess the legacy of models that are currently used, we would suggest that maybe there are appropriate ways to ensure that on-hired employees are safe and without risk to health. That would probably be looking at

issues pertaining to who is in a position of greatest control - or greater ability to control risk, I should say - who is in the position to have the greatest level of localised knowledge and ultimately who has the greatest ability to monitor the effectiveness of those risk control measures that are put in place.

To that end we don't resile from our obligations under current legislative models to actually ensure that those employees have at least the minimum level of I guess compliance or certainly the obligations are fulfilled, but on that note it's probably worth looking at some proposed legislative changes in Queensland, whereas I understand that there may well be a greater focus placed on what we call host organisations, given that they probably in a far better capacity and position to actually control those particular risks. To that end, of course, we do find issues within our industry and to that end it's fundamentally why we are very passionate about this particular area of inquiry, given the fact that many of our members have cross-border operations and I guess the duplication of resources required to comply with inconsistent legislative models, let's say, simply result in - and I've tried to point that out in our submission - - -

PROF WOODS: Yes. It came through quite clearly.

MR CAMERON: - - - clearly result in the misallocation of resources. We would clearly say in the circumstances where there are, like in any industry, finite resources, it's quite inappropriate let's say to diverting those resources to administration and other factors as a result of inconsistencies rather than this controlled return to work strategy for rehabilitation.

PROF WOODS: Actually, where you make that point I've annotated there, because I was actually hoping that you would have some members who could produce real data for us. You may, if you go through some of the submissions from other major companies, note that they've given us actual figures of what are the costs incurred in operating under the various administrations and therefore some potential savings that could arise. So if one or two of your larger members could replicate that exercise for us, that would be very helpful.

MR CAMERON: It so happens, if you're interested, Mr Johnston, who's with us today, whilst representing the committee, is also a provider of risk management services - I understand, Peter - to one of the large organisations. He has come prepared to maybe give you an outline of the some of the issues when it comes to, as is currently timely, I think, renegotiation of policies and the associated cost burdens regarding workers compensation. If you would prefer to do that in a written format, I'm sure - - -

PROF WOODS: Give us the flavour of it at the moment, but then if you could supplement it with some documentation that would be most helpful.

MR JOHNSTON: If I can just pick up on the actual placement of individuals prior to work or taking up the activity for the task. As an organisation - and I think this speaks for most of our membership - it's a matter of establishing or doing what's

basically a client safety survey of that party to establish whether they do have management systems in place and what their systems are, job descriptions and then from there, do they have job safety analysis of those particular tasks which our people are being assigned to? There are decisions then made on our behalf as well as to whether or not we're going to go further. Perhaps we have to do a job safety analysis ourselves to satisfy ourselves of what we see as exposures, or if we've identified issues we have to make a decision, and I ask all of our people to make that decision - is it a safe place to work - and they have to sign off on that for the placement. Then from there - we operate as an organisation on a safety for life approach and what that's about is the engagement of the relationship between the employer and the worker and significant other parties and it's about communication, it's coordinating that communication, gaining the commitment of the parties to whatever the issues are, and making sure that there is a controlled process in place.

Because of the diversity around the country we've chosen to work down the line of Australian standard 4801 because we figure that we get a reasonable hit. You know we're not going to get everything exactly right but we can tweak it in the various states. So that's the approach we've been taking, the consultative model and a risk management model to look at getting reasonably best practice across the board, and I'm happy to provide a process for you - - -

PROF WOODS: Yes, if you could actually give us some indication of the costs incurred in having to deal with all of the various jurisdictions.

MR JOHNSTON: Yes.

PROF WOODS: But just while you're talking to us there, I understand what you're saying about going and doing the safety audits and the like and yet we've still had employees come to us with evidence that they, when they're actually on a site, have a dilemma between their sense of wanting to retain their job, the host employer who might themselves only be a subcontractor to another party, not having a complete set of safety equipment, not necessarily in good order or being asked to do something and there being a dilemma for them. If they say, "No, this isn't strictly according to standard," and yet they're on-hired - I'll get used to this phrase - on-hired employee - - -

MR JOHNSTON: So it's a play-off between - - -

PROF WOODS: Yes, the labour hire company they work for, the host organisation that they're - like, you can take a rigger who is part of a labour hire company but then there's a crane operator to whom they've been, in effect, on-hired who themselves are on a building site that another employer is responsible for. But where they find that the safety procedures and equipment isn't fully up to scratch they feel some pressure to continue with that job anyway. Now, is that unusual in your experience?

MR JOHNSTON: I've heard of that situation. I would be saying that the system that we as an organisation have put in place for that is that we use a small business card type approach where we focus in the induction on communication. I think a lot

of us do that. Communication is a very key part of the ongoing relationship between ourselves and our person in what is sometimes a foreign workplace. What we are seeking to do there is say, "Look, first of all take up the issue with the supervisor but should there be an issue call this person which is nominated on the back of that card," and that is our person's responsibility to work as the supervisor of that on-hire person to ensure that their welfare is appropriately managed.

MR CAMERON: It's probably worth adding to that particular point that we as an organisation, the RCSA, advocate the greatest or most effective tool in terms of the most effective risk control measure is not to supply an on-hired employee and clearly that is a message that we're effectively communicating to the membership. It would be fair to say that there are - and we would hope to think that they are parties who are not members of our organisation, but there are clearly those out there who will go out there and make a dollar. To that extent we don't condone that behaviour but ultimately there are a large number of my clients - as I provide consulting services to a number of RCSA members - who clearly state, "We will not actually on-hire employees to any particular industry or to a particular industry."

For instance, those more dynamic industries, one you've picked up I think very clearly there which is the construction industry, those industries where the ability to control risk on an ongoing basis is immensely difficult, even for the direct employer.

PROF WOODS: You've got quite a pyramid of control - - -

MR JOHNSTON: And the subcontractors.

MR CAMERON: Exactly. So to that extent, in the event that you had a sub-subcontractor or a subcontractor who did not have an appropriate system in place, we would argue that we're probably in a better position to assess whether they do or do not have an appropriate system, in a better position than any other party because we typically do that on an ongoing basis. One thing we as members of the RCSA have become particularly good at, is identify whether there is an appropriate system in place because we have to, it is one of our major risk control measures. In the absence of an appropriate system we have to either not supply or isolate those on-hired employees from those particular practices or plant or hazardous substance, whatever it might be, that actually pose a particular risk. So to that end I would think that whilst you may find select examples of that occurring, we would like to think they are more being weeded out.

PROF WOODS: Yes, I was just looking for some sort of sense of balance and proportion in it which is why I've raised it.

MR JOHNSTON: Our organisation's executive would be extremely disappointed if our company behaved in that manner and would take appropriate action.

PROF WOODS: Yes, that's fine. I just wanted to ensure that you had the opportunity to respond.

MR JOHNSTON: Yes.

MR CAMERON: I might just raise them in this summary.

PROF WOODS: Yes, please.

MR CAMERON: I mean, just some of the figures that are probably worth noting is that with some of our larger organisations especially, it would not be uncommon for such members to probably, let's say, employ or hire up to 30,000 times in any one particular year. So we're talking about a circumstance where - and we would argue, I guess, it's up to us to make out in submission - the compliance costs associated with employing an individual, even on a short-term basis or a temporary basis or as a permanent basis, I wouldn't suggest it's diluted clearly by the fact that they're going to be a permanent employee. If anything, there may even be a greater sense of obligation given the fact that you need to change their mind-set. To that end, given the fact that there is a high level of volume of employment of individuals, there is an extremely high level of costs associated with compliance. I've just finished delivering some training courses around Australia to members in terms of assisting and developing their actual systems.

The reality is of course in every state that I went to I had to fundamentally vary and adapt that particular training program to every member. So where a question and an answer to a particular member in one state was going to be quite different potentially than another. That's only in terms of the principal legislation, that being the act, let alone when we get down to regulations, codes, guidelines and whatever else.

PROF WOODS: All the guidelines and - yes.

MR CAMERON: To that extent, of course, there are particular issues associated with that inconsistency which I'm sure you've probably got in our submission.

PROF SLOAN: I think why your industry is interesting too is that you can't worry - well, probably people don't actually worry, but it's obvious that the big end of town is put out by having all these jurisdictions and all these different regulations and stuff and most of them, mind you, are self-insured for jurisdictions and they want this cleared up. But it's not actually just the big end of town that's affected by all these jurisdictions. I mean, we had the farmers in this morning. You might have somebody who has a block of land in South Australia and another block of land in Victoria, so he's all of a sudden covered by two jurisdictions and he might have the one farmhand that goes between Victoria and South Australia, you know. I mean, not all your firms are big.

MR JOHNSTON: No.

MR CAMERON: There's a large number of small to medium companies.

PROF SLOAN: But they've got this kind of interjurisdictional activity often. But

you're not wanting to sustain the corporate overheads of BHP, you know.

MR CAMERON: Of course not, and we would argue - and we actually had this discussion some days ago in terms of providing appropriate information - that whilst some of our larger members of course may well have a very high level, a percentage of no costs or resources associated with compliance. When you get to those small to medium enterprises, the proportion or the percentage should in fact probably be greater, given the fact they don't enjoy the economies of scale and the centralisation options that our members would. An example would be, I delivered the training in Western Australia and a particular small member provided the employees to the agricultural industry and they didn't just provide them in Western Australia, it was to Northern Territory, it was to Queensland and of course - - -

PROF SLOAN: That must be a bit of a nightmare.

MR CAMERON: As I said to them, "You need to look at the viability of your operation." I said, "Clearly, it's not a question of whether it can be but you need to have a look at whether it is possible." Now, my concern there is I actually believe that the providers of these services are in a better position to actually ensure OH and S compliance at an initial level because they specialise in the employment processes, than the actual end-up host in these examples. For instance, a lot of agricultural - - -

PROF SLOAN: Yes, sure.

MR CAMERON: I used to work with the Victorian Farmers Federation so I can speak exactly on that point - do not have the resources. I would think they are a complementary service.

PROF WOODS: They don't have the safety record either.

MR CAMERON: I would hope that the actual - - -

PROF SLOAN: Yes, I think the intervention of labour hire, you could well argue that this will improve occupational health and safety outcomes because if they're only required from time to time by the host companies they're unlikely to want to be making the investments which are associated with ongoing employees.

MR CAMERON: Put it this way: if a small to medium host organisation was to engage a casual employee. I would be very confident that our members would be doing a better job of ensuring their induction and the matching of the skills for the task and ensuring ongoing monitoring than if they actually engaged that individual directly themselves. Now, of course there are going to be exceptions to that, but there are significant opportunities to utilise this industry to educate the end-user of the resource, and I think those opportunities haven't been fully recognised.

DR JOHNS: I understand you can bring together a focus on preparing employees to go on and work in some other place, but who then becomes legally responsible for

the safety of the employee and pay the cost of workers compensation? I mean, that's the issue as well.

MR CAMERON: That's why we're concerned about the inconsistency. I mean, clearly it is us who takes - and we maintain we will take principal responsibility until there was some type of legislative change. Mind you, in Queensland, as I understand it, as I mentioned, there are moves afoot in considerations of varying legislation to actually place that obligation more into the party who has the greater ability to control the risks within the work environment.

PROF SLOAN: Yes, there's a lot of - - -

MR CAMERON: That is something we're very excited about.

PROF SLOAN: There's lots of ambiguity - - -

DR JOHNS: Do you have some forms of words and so on? Do you have preferred legal definitions that you might - - -

MR CAMERON: We're currently developing that. We're doing appropriate examination of the - the fact is, of course, it's very relevant to this conversation, in each and every state we require a different examination of the wording.

PROF SLOAN: Yes.

MR CAMERON: Particularly in South Australia, the host organisation probably wouldn't be prosecuted whatsoever. In New South Wales the host organisation may be prosecuted on an equal footing. In Victoria we're still trying to determine that. In each and every state it will vary, and of course the burden of proof in New South Wales is different to the burden of proof in Victoria.

DR JOHNS: But don't we need - - -

PROF SLOAN: But all those classifications too must drive you mad.

DR JOHNS: Don't we need a good discussion of this though - - -

PROF SLOAN: Whether deemed employees, and, you know - - -

DR JOHNS: We need a good discussion of this if we're to focus on this relatively new phenomenon of on-hire. I mean, I think we can do the back end of town or the self-insurers, that sort of - that's pretty easy. But this thing, I don't know whether we can provide much, add much value to the game by saying, "Oh, well, a national scheme would do the following."

PROF WOODS: Unless we know.

PROF SLOAN: Well, there are different models too, within - well, what we used

to call labour hire, didn't we, but, you know.

MR CAMERON: I would see that there is an opportunity in as much as we all manage the workers compensation side of things. We also have to abide and work with the Occupational Health and Safety Acts, and as I was saying before, it's our intention to ensure safe place, safe systems, but we are providing, in partnership with the client or the host, we are providing an opportunity for employment which delivers a service into this host area, and for that host it's a flexible workforce for the ups and downs of their business. So I believe that we have got a fairly significant role in this industry to providing flexible workforces, whether we've employed them as some of our members do and then lease them out, or we actually purely just employ and on-hire through contact situations, then we still have that duty of care.

DR JOHNS: But what we're looking for is the, you know, now the outcome of your prospective bit of work.

MR CAMERON: Well, I think we can - - -

DR JOHNS: So if you could, sort of, on the plane this afternoon, sort of, tidy it up, finish it and send it tomorrow, that would be excellent.

MR CAMERON: Well, look, at this point in time I'd be happy to have a discussion that is probably a little bit in terms of the appropriateness of legislation. We're looking to do something at a very professional level. I would prefer it probably if you can bear with us for probably a couple of months, we're probably in a better position to give you something a little bit - - -

PROF WOODS: We've got to put out a draft by the end of September. Now, it's not the definitive end point process, but clearly if we can have the benefit of some of your thinking - - -

MR CAMERON: I can provide that for you.

PROF WOODS: In time to reflect on it and incorporate it in the draft and then if subsequently there's a more polished document, then we'll pick that up.

MR CAMERON: I certainly have something I can provide you with at this point.

MR JOHNSTON: I think you need to pick up on the workers compensation issues as well within that.

PROF WOODS: That would be good, and also return to work issues, because, I mean, you talked about the two different models. In some cases your firms will permanently employ somebody, I guess, where particularly you think that their skills are going to be in such demand that you can cover the down times and whatever. I mean, you're making business judgments. But in other cases, you get a requirement to fill the position, you go out, you find a person, and it's, you know, for two months, three-week, whatever, and so you're on the way through.

MR JOHNSTON: As a temporary worker.

PROF WOODS: Yes, as a temporary worker.

PROF SLOAN: But, I mean, there are different models - - -

PROF WOODS: So there's return to work issues there that if somebody is injured who looks after them for the long-term if it's a serious injury? I mean, you pay your premium so in that sense they're looked after, but in terms of rehabilitation, return to work, ongoing commitment - - -

MR JOHNSTON: I think that my view is that we've probably have got the best opportunity of any business or any industry to return people to work within their capacity or capability. It's a matter of how we approach it and some members see that opportunity and will look to find appropriate work by using their network, and then of course work through with the people to work them off the system. The problems we get are things like when people move interstate, or they reside in one state and they've come from a - into another, and they move back into another jurisdiction and then they're managed by the medicos, et cetera, under that other jurisdiction, and we are trying to finalise the situation. We're faced with a government-based system within the Queensland model, and I actually think that works fairly well, from our personal experience.

But then of course we've got various situations with how you watch claims, whether it be New South Wales and lodgment of claims is so much different to that within, say, South Australia, Victoria and Western Australia. The relationships between insurers and agencies - they vary, the conditions of relationships. So for trying to get people back to work, in some jurisdictions we can work very closely with the insurer, whoever it be, agency or underwriter, we can work closely with them and the worker to work through the process of injury management and the return to work. But others see the employer as being not a significant party in the process. So that is an issue for us in terms of variation.

MR CAMERON: The opportunities to promote a cooperative arrangement between the host organisation and the provider of the on-hire employee, but there are clear opportunities here again. I talk continually about opportunities within this industry - there's another one. Indeed, there may be clear opportunities whereby the provision of a simple alternative placement or assignment may well provide a greater wealth of return to work opportunities. However, in the absence of an appropriate culture, that is, let's say, underpinned by a legislative model that promotes it, then it can be quite difficult of course, because you're trying to convince the host organisations who haven't traditionally utilised this employee to suggest that, you know, they're an appropriate option for assisting with the greater operations. I'm being a little bit vague, but I think it's fair to say we as the organisation and the committee have constantly raised this issue time and time again, and that is a need to focus upon the opportunities to cooperate with host organisations in return to work opportunities.

PROF WOODS: I understand the philosophy underlying that, but you do have a spectrum of operators in your industry sector.

MR CAMERON: That's right.

PROF WOODS: Not all of whom would be quite so committed to that process.

MR CAMERON: Yes, quite right.

PROF WOODS: So I understand the picture you're painting and everyone supports that, but we're also cognisant that there is this spectrum.

MR JOHNSTON: Yes. I think some of the other factors to influence our ability to work are both benefit structures and the dispute procedures, common law issues as well, in each of the states. So the variances there create different behaviours for us in the way we manage. But bottom line from our organisation's point of view is in your place love them to death, and that is a proactive model of working with people to establish what their needs are and it's better to do it up-front in a company.

PROF WOODS: Premium setting for your industry. I mean, it seems to me that various state schemes are grappling with where to set the premium, what's your risk, et cetera, and at the moment they've sort of taken a middle ground and there's a little bit of fine-tuning starting to happen. But where do you see that heading? Will it get to a stage where they sort of disaggregate your entities according more to the industry risks of the profile of your - - -

MR JOHNSTON: I like the Brisbane model, or the Queensland model, and as much as we're looking at the host's employer and their risk exposure, so we - - -

PROF WOODS: So if you put in five employees there, then that's the host employer risk rating that picks up - - -

MR JOHNSTON: We use the premium - yes. So that's probably the most direct - - -

PROF WOODS: Is Queensland the only one that does that?

MR JOHNSTON: In that way in New South Wales the classification of the occupation is used, so if we're putting a tradesperson in we're using that tradesperson's classification or the industry closest or associated to that classification. Here in Victoria it's a white and blue type set-up there, and - - -

PROF WOODS: Yes, because we had the incidents at the meatworks where the premium for a labour hire profile in Victoria might be less than the premium for employees directly employed by the meatworks, which might give a perverse incentive - I mean, not that you would object to it - but it might create a perverse incentive - - -

MR JOHNSTON: Not keen on meatworks?

PROF WOODS: No, but if your employee is going in instead of a permanent workforce, but through a particular way in which premiums are resolved, and that just seems - I mean, if there are other good reasons, so be it, but that in itself seems perverse.

MR JOHNSTON: We went through the experience with South Australia changing their premium structure December of two years ago, and we promoted as a group the value of the Brisbane or the Queensland system. It, for whatever reason, became too complex for them to administer within their database, so we ended up with that three model. I would like to see us, I think from the progression of the industry and the pick-up and your point with the meatworks, I would like to see us actually reflect the risk of the industry, and particularly the location. So if within that company - it might be a National Foods or somebody like that who operate on one location and they've got a very good track record; let's all enjoy that and work towards maintaining that. If it's a variation at another location, well, then it should be reflected.

PROF WOODS: No, that's very helpful.

MR JOHNSTON: One of the other issues is, and this is part of a document - we have had a problem - in the three years that I've been with the organisation, we've had a problem every year around this time for our premium renewals or for the certificates of currency, etcetera. I've actually written a whole document on the process, but I'm happy to provide these to you which is all of the processes that we go through for each state to renew a policy, and the requirements of the various parties. Sorry, that's one for each state at the moment.

PROF WOODS: Right.

MR JOHNSTON: So what I'm giving you is actually the variance between each state and the actual activities that one has to go through to administer our premium in each of the states, and so, for example - - -

PROF WOODS: Can we put this on the public record?

MR JOHNSTON: It's a common process. Yes, I can't see a problem.

PROF WOODS: Yes. No, it's just that it neatly encapsulates, that's all.

MR JOHNSTON: Might make money out of that one.

PROF WOODS: So is that a yes or a no?

MR JOHNSTON: But essentially what we've tried to do - sorry?

PROF WOODS: That's a yes; I'll take that as a yes.

MR JOHNSTON: Yes, that's fine. Essentially what we've tried to do is get an understanding, and I think it illustrates the diversity of the problem that, from the financial point of view, besides the fact that we've got variation in claims administration and injury management, there's some significant factors that we are constantly assessing.

PROF WOODS: No, I mean, that's good. Where people have actually gone to the effort of putting all that into a consolidated form is actually very valuable to us.

MR CAMERON: Look, I mean, to follow up your earlier point, we'd be quite happy I think to go to the next committee meeting and invite parties to see if they can put a little bit of substance to the claims associated with the added resources required. I guess the exacerbation of the resource allocation is a result of the inconsistencies of legislation so, if that is to be of assistance to you.

PROF WOODS: That would, because some other companies have very generously sort of exposed their actual underlying costs and that gives us material to work with.

MR CAMERON: Yes, sure.

PROF WOODS: Prof Sloan, anything else that you want to add?

MR CAMERON: Why would you start the business, I guess, comes to mind?

PROF SLOAN: I can think of plenty of industries where you might ask that question.

MR CAMERON: Look, it's probably one of the real issues is, even those who currently work within the confines of any one state, if they're a small to medium enterprise, have very, very big issues about expanding their operation into other states because of the compliance costs, and it just shouldn't be the case one would think.

PROF WOODS: All right, are there any concluding comments you wish to make, other than the - - -

MR JOHNSTON: I'd like to just talk very quickly about the issue of self-insurance.

PROF WOODS: Yes, that's fine.

MR JOHNSTON: I think, from a national perspective, if we could have a common structure in terms of the workers compensation scheme, and I've referred to the New Zealand model which I had some involvement with. We had a system there where it was a national - in that case, a national scheme on two islands. But essentially then a self-insured - or an ability for people to take an accredited

employer scheme type approach which allowed them to take marginal or first year type liability or second-year liability or up to two years liability out of the scheme, or hopefully in the end they may take the full gamut. I would see that from a national perspective, if we could do a Comcare model but also have an ability to become self-insurers, for those that can put the resources up and show their ability in both occupational health and their workers comp, that would be an opportunity to help a lot of us.

PROF WOODS: All right, okay. We've got one rushing out the door, what are we doing - - -

MR JOHNSTON: Excuse me please.

PROF WOODS: - - - little time - thank you. Are there other matters though that you do wish to bring to our attention?

MR BLANCHE: I would like to raise a couple of points.

PROF WOODS: Please. Could you for the record give your name, position and organisation you're representing?

MR BLANCHE: My name is Robert Graham Blanche. I'm vice-president of the RCSA. I chair the OHS committee for the industry.

PROF WOODS: Thank you.

MR BLANCHE: I also sit on the ISF committee, as does Charles, which is the industry stakeholders forum for Victoria's WorkCover entity. I would like to - may I talk?

PROF SLOAN: Yes.

PROF WOODS: Yes, indeed, please.

MR BLANCHE: There was a couple of points that I felt we could share with you. You mentioned earlier in the piece workers' concerns relating to safety issues and their concern regarding being possibly terminated on a site. The RCSA has developed contracts that we supply to our members now, or we provide them - whether they use them or not is another question - and those contracts specifically talk about what a worker should do when an issue arises, and we request that they don't do any work at all, that they come back to the member themselves, report their concerns, and we ask the member to go out and deal with that particular issue. So we've gone probably one step further than the traditional employment model where we give them another avenue to deal with unsafe work practices, and I hope that that might explain. The client is also given a contract that requires us to - or allows us to view his or her work practices, identify whether they have systems of work in place and committees to actually review those systems. In our contract, they are required to provide them if we request. So we've gone a long, long way to making sure this

worker has got a real avenue of safety without getting terminated.

PROF WOODS: Sure. But nonetheless, when they turn up on the day and something has to happen and they're a bit concerned, there can be pressures and they can still feel some sort of tension as to being employed and doing the job.

MR BLANCHE: There's no doubt about that. But that applies in all - - -

PROF WOODS: Yes, I totally agree. But - - -

MR CAMERON: That's right. Look, I think it's very important to clarify as well that there's an increasing trend towards the on-hire of permanent employees as well and I think it's very important that we understand that the industry, and again, some misinformation, not necessarily within this particular, let's say, forum, but more generally of all those who appear to be stakeholders that there's an increasing prevalence of on-hired permanent employees where obviously those types of factors would become somewhat redundant, I guess. To that end, of course, we are looking, as I think Robert has clearly pointed out, for as many opportunities as we can to ensure that these particular concerns are ironed out.

PROF WOODS: Yes.

MR CAMERON: But it's only with the cooperation of all stakeholders that that's going to be successful. It's only through that cooperation, I think, that we're ultimately going to have the end result, which is why we're here today, which is to ensure that each employee can return home from work in a manner which is safe and without risk to health. As long as we have misinformation and misallocation of resources and all those compounding factors, then I think we're really missing the true issue here which is fundamentally the employee. I think we all clearly see opportunities. We have a huge responsibility upon us as an organisation to do as much as we can to facilitate the membership to provide the best solution. But fundamentally, I think, it's probably fair to say that we are battling against some of the duplication, the inconsistencies and the misunderstanding and let's hope that this particular forum is one way of which we can get some sensible outcomes.

PROF WOODS: Yes, and as Prof Sloan points out, permanent employees in various positions also are confronted by practices that they feel are unsafe.

MR CAMERON: Probably more - say, casual employees, I would think.

PROF WOODS: But it's just that you have the compounding problem of multiple layers of control and things, so - - -

MR CAMERON: Yes, and it's worth saying that I would advise many organisations in the event that they - where an employee actually did raise an issue and let's say even in the circumstances the host organisation didn't want to use that employee again because they had raised a health and safety issue, and I think all good practice would say, "You do whatever you can damn well do to find that

employee a suitable alternative assignment as quickly as possible," and in some cases I know there may be circumstances where they continue to pay them whilst they're not actually working for a host organisation. So to that end that's, I think, a demonstration of a commitment towards the - yes, I guess, resolving some of those risks.

MR BLANCHE: There is another concern to us and we feel that it's something that this committee would have a great opportunity to deal with and that's to do with Group Training Schemes. Do you know what I mean by - - -

PROF WOODS: Yes, yes.

PROF SLOAN: We've had the Group Training Associations come.

PROF WOODS: We've had the bodies through and we've also talked to Chambers of Commerce and Industry who run Group Training Schemes, et cetera, so yes, we are familiar with the issue.

MR BLANCHE: May I share with you my concern or - - -

PROF WOODS: Please. Indeed.

MR BLANCHE: We identified a problem primarily because they are attached to the same WIT code as the recruitment industry is in Victoria. I don't know how it works in the other states, but in Victoria it's attached to the same WIT code. The history of claims and remuneration paid out to these workers is very, very, very high and we have that information from our insurers that that's the case and we see it as almost promoting an opportunity for that worker to - under the basis of which it operates, is to maybe even take advantage of being on workers compensation. There is no incentive in place whatsoever for the employer to actually get the worker back to work, so rehabilitation need not even exist. And the reasons why that is the case is that there is no premium paid on these workers by the employer, so therefore there is no need to worry about rehabilitation. If the worker stays on workers compensation for six months - - -

PROF SLOAN: I think that's only true in Victoria though, I think they do - - -

MR BLANCHE: Well, in Victoria it is but - - -

PROF SLOAN: - - - pay premiums in respect of both apprentices and - and now because in New South Wales - yes, but go on, I mean it's an interesting issue.

MR BLANCHE: I'm not sure if that's the case in New South Wales, because I employ up there as well and we - - -

PROF SLOAN: Trainees have been exempt, but with the budget handed down this week they've changed - - -

MR BLANCHE: There's a change in the budget - - -

PROF WOODS: Yes, they've changed - they've lost the concession on workers comp.

MR BLANCHE: Right, okay. Well, in Victoria we have the problem that - once again, back to the consistency. We think it's costing this industry considerable amounts of money by not having the employer being held accountable and I think they need to be held accountable in some form or another, which could mean an increase in - well, because they don't a premium how can you increase the premium. And as far as we're concerned it is affecting the industry's WIT code in Victoria so it makes us seem as we are a poorer employer than what we really are.

PROF SLOAN: That's a good point.

MR BLANCHE: Our KPIs are suggesting it's worth around 2 per cent and that's what we're getting from our insurers.

PROF SLOAN: It's what economists would call "unintended consequence", I think, someone thought it was a good idea to exempt apprentices and trainees from premiums and now - - -

MR CAMERON: It's not to say we don't condone the facilitation of apprenticeships and all other forms of training - - -

PROF SLOAN: No.

MR CAMERON: - - - at the same time, it's simply the issue in relation to - - -

PROF SLOAN: Whether this was the right way to do it.

MR CAMERON: Yes, the impact - the negative impact it has on this particular - - -

PROF SLOAN: And there is, I think, a problem - there are, I would have thought, special occupational health and safety considerations for inexperienced workers. I mean, you might expect them to have a slightly worse accident rate.

MR BLANCHE: Well, they're younger people and they're inexperienced and their learning the job, so you would expect that.

PROF SLOAN: Yes. But you're making another point that, you know - - -

PROF WOODS: Relative to your industry.

PROF SLOAN: - - - once they're injured - - -

MR BLANCHE: There is no - - -

PROF SLOAN: - - - there is not much incentive for the employer to put them back - - -

MR BLANCHE: Correct. That's exactly right.

PROF WOODS: Is your industry highly involved in apprenticeships, traineeships?

MR BLANCHE: It would be fair to say we're not highly involved. There are certain members who are very significantly involved and obviously we encourage that. It's again one of the issues that we would like to grapple as an industry with limited resources as RCSA - most parties here are all, I guess, principally voluntary, those who sit on the committees. Again, I guess we have some fundamental issues we'd like to address in terms of ensuring compliance. Once we've got on top of that I think we'd love to start refocussing on the issues in terms of again the opportunities the industry provides for facilitation of training and apprenticeship models. To that extent I guess we can only take one step at a time, but it's certainly something that's on the agenda. We'd probably - once we've addressed maybe some of the issues that are more relevant to this forum at the moment.

MR CAMERON: I personally believe the industry as whole is doing that without it even knowing it's doing it and I can say that because I come from a - in my business we recruit to the engineering world and the best part of 10 years ago the introduction of CAD drafting came on the scene and it was very hard to obtain a job in a full-time environment where you could actually learn how to operate a CAD machine and be paid. Well, in the on-hiring side they were willing to actually take people on for short periods of time - and these people have limited experience - and as they went from job to job to job they gained more and more experience and these people are now fully-trained operators on the CAD machines.

PROF WOODS: On the job training.

MR CAMERON: Yes.

PROF WOODS: Other matters that you want to bring to our attention?

MR BLANCHE: No. We'd just like to thank you for raising what for our industry is a very, very important issue.

PROF WOODS: All right. We've had interactions with your industry in other inquiries. I did Job Network - we did Job Network and - - -

PROF SLOAN: We did.

PROF WOODS: We did, indeed, Prof Sloan, and had interactions there.

MR BLANCHE: And saw the opportunities within the industry.

PROF WOODS: Okay. Well, that concludes your evidence and thank you very much for coming forward. Are there any other persons present who wish to make an unscheduled presentation. There being no such other persons that will conclude this round of hearings.

AT 3.13 PM THE INQUIRY WAS ADJOURNED ACCORDINGLY

INDEX

	<u>Page</u>
NATIONAL FARMERS FEDERATION: DENITA HARRIS DUNCAN FRASER	866-882
INSTITUTE OF ACTUARIES: BOB BUCHANAN CLIVE AMERY DANIEL SMITH	883-914
AUSTRALIAN MANUFACTURING WORKERS UNION: MARGARET BUCHANAN DEBORAH VALANCE	915-929
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