



**TRANSCRIPT
OF PROCEEDINGS**

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PRODUCTIVITY COMMISSION

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

**PROF M. WOODS, Presiding Commissioner
PROF J. SLOAN, Commissioner**

TRANSCRIPT OF PROCEEDINGS

AT MELBOURNE ON MONDAY, 1 DECEMBER 2003, AT 9.03 AM

Continued from 27/6/03 in Melbourne

PROF WOODS: Welcome to the Melbourne public hearings for the Productivity Commission inquiry into national workers compensation and occupational health and safety frameworks. I'm Mike Woods. I'm the presiding commissioner for this inquiry. I am assisted in this inquiry by Prof Judith Sloan, who is with me today, and Dr Gary Johns.

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

We have received nearly 200 submissions so far in this inquiry from interested parties. I'd like to express our thanks and those of the staff for the courtesy extended to us in our travels and deliberations so far, and for the thoughtful contributions that so many have already made during the course of this inquiry. These hearings represent the next stage of the inquiry with an opportunity then to submit any final submissions by Friday, 30 January. We will be signing off on the final report by 13 March.

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

I would like to welcome to the hearings our first participant, Mr Clark. Could you please for the record state your name and any organisation you may be representing.

MR CLARK: My name is Philip, better known as Phil Clark, and I do not represent an organisation.

PROF WOODS: Thank you very much. You have already presented to this inquiry a quite detailed submission for which we were grateful, and you will notice in fact that we have drawn on it in several parts of our interim report, and we'd be happy to discuss those aspects as well. But you have an opening statement you wish to make.

MR CLARK: Thank you for the opportunity of presenting at this public hearing, commissioner. I guess my subject really is that there has been 18 years of

occupational health and safety and workers comp legislation in what might be termed the new Robens style format, and the only scorecard I can give it is a fail, in terms of any socially relevant outcomes.

The reasons for that I have noted, I think, in part in my submission. Partly it has to do with trying to be comprehensive and being all things to all men and assuming that all risks are equal and therefore we must do everything all at once, instead of attempting to focus on making some tangible and measurable achievements on the impact of workplace injury and disease. That is to me the primary concern, that there has been no measurable outcome.

There are reported outcomes each year. They are an artefact caused by cutting off the annual report date before all of the claims are in. In point of fact, using Victoria as an example, the cost of workers comp claims as a proxy for the impact on the community is going up by 12 per cent per year, compound interest. That is not consistent with what has been reported, and that to me is a very disturbing misrepresentation of the reality. Therefore I would seek through your auspices to attempt to change the view of how we go about providing safe workplaces and achieving safe workplaces and achieving safety outcomes in Australia.

PROF WOODS: It would help in making your opening comments if you could also incorporate in them some clarification for the inquiry as to the background and experience and qualifications you are drawing on to make and support your - - -

MR CLARK: I started full-time work in 1950. I have qualifications in science and in economics and in ergonomics, which is related to the prevention of over-exertion injuries in part. That's my particular area of interest. My last 10 years at work, which I retired from in 1996 - I was involved as risk manager for a major Australian multinational. I moved in there in 85 when all this first started. In that role I saw as my primary concern the prevention of strain-related injuries to our workers. That injury focus for me remains as an underlying message.

As part of my strategy to address those more effectively, I studied for the ergonomics degree in my dotage. So during my industry experience it was mainly as plant manager, as an economist and accountant, and as a technical manager and a risk manager in finance. So it's a reasonably broad exposure to some of the disciplines that are appropriate.

PROF WOODS: Thank you. Please continue.

MR CLARK: I am concerned that there are too many mythologies in the occupational health and safety field. If I can crave your indulgence and quote from a review by Emeritus Prof David Ferguson, arguably one of the most senior

occupational medical practitioners we've had in Australia, and he is quoting on a book called Work and Health, Origins and Regulations, Occupational Health by Prof Michael Quinlan. He says:

If they read the book they will find for example what they have always known from bitter experience, that the industrial relations club and the rest of the social players have discovered, that billions of dollars and power that reside in work injury at the cost of prevention and rehabilitation.

To my mind, that's a fairly significant comment. One concern I had when I read the interim report was the quote from the DEWR of a \$30 billion per year alleged cost of injury and disease to the Australian community. That figure is nothing more than a fiction. It is based on fiction.

PROF WOODS: What estimate would you give, and how has that been developed?

MR CLARK: The estimate I would give would arise from the 1995 Industry Commission occupational health and safety report, which was at the time \$20 billion in round figures. Of the \$20 billion, I think it was 4.6 million of - that's for 92. Bear in mind we're now talking current circumstances.

PROF WOODS: That's right.

MR CLARK: That was \$4.6 billion of employer contributions by way of premiums and levies. The on-costs to that for minor injuries - in other words, up to the first five days or up to the first 10 days - five at that stage - is probably fairly minor in terms of the overall impact, and the on-costs that the Industry Commission estimated for employers was 35 per cent on-costs which is another, let's say, one, one and a half million.

That figure has been in effect hijacked by vested interests in their own political interests, to produce figures that are not supportable by any reputable professional research, and I include some of the Australian universities and Australian occupational health and safety authorities who have also dreamed up hypothetical figures in support of particular political objectives that are unrelated to reality.

PROF WOODS: I'm still not clear though what current figure you would attribute.

MR CLARK: If we accept the figure of \$30 billion per year as a reality, and deduct from that some escalation in costs over the last 10 years, then the logical outcome is that all of the panoply of legislation, of enforcement, and all the massive investments

in prevention have been counterproductive; it's actually costing us more now than it was 10 years ago, despite what we've been doing.

PROF WOODS: Sorry, no. I'm trying to not work backwards from the 30 billion; I'm trying to work forwards from what you think should be the replacement figure for 30 billion.

MR CLARK: The replacement for the?

PROF WOODS: For the 30 billion that you're criticising.

MR CLARK: I have no figure on that, commissioner.

PROF WOODS: Okay.

MR CLARK: It is not my role to work out the figure. I accept the calculations that the Industry Commission did 10 years ago and the rationale underlying it, and they are consistent with published research.

PROF WOODS: Okay. We have, for the record, been engaged in somewhat lengthy discussions with the National Occupational Health and Safety Commission to try and refine a figure, but as yet that hasn't produced an outcome.

MR CLARK: Putting it bluntly, they are part of the problem. They have a vested interest.

PROF SLOAN: Well, I mean, it's quite an interesting, in a sense, philosophical point about whether it really matters, and is 30 billion big or small. I guess we accept the proposition that compensation paid is clearly only part of the costs of occupational health and safety mishaps. I mean, presumably you would accept that?

MR CLARK: I think there are several points in what you say, commissioner.

PROF SLOAN: Yes. I am just wondering what is the point of that exercise. You come to a figure, and what do we make of it?

MR CLARK: My concern is that there needs to be a measure of the level of failure - the cost of failure - in terms of the impact on the Australian community.

PROF SLOAN: That's your point, isn't it?

MR CLARK: Right.

PROF SLOAN: That you would attract the relationship between all the policies and - - -

MR CLARK: It is material to know what that cost is and whether we are making some impact on it. The second one is that there is a hypothesis based on some ABS work that a lot of the claims do not get reported. That is little more than a hypothesis in terms of its tangible dollar outcome.

PROF WOODS: But in terms of underlying assessment of what is being reported to the ABS - I mean, they're not forming a view on it. They're just reporting outcomes of surveys that say a number of employees, for various reasons - whether it's because of the paperwork involved or some subtle pressure from employers or for all sorts of other reasons aren't making claims through the system and therefore those claims are not being - - -

MR CLARK: I am not criticising the ABS. What I am saying is, "Did you get injured at work last year?" Sorry. "Did you suffer some sort of problem at work last year?" "Yes. I caught a cold from my fellow worker." "Yes. I got a scratch." We're not talking the concealment of fatalities or of serious long-term impairment here. I think the interpretation of the figures has gone overboard because people have other objectives that they seek to achieve through using figures.

PROF WOODS: Although in our interim report do you feel that we reasonably qualify that point and attribute that there are a number of reasons why the claim may not be - - -

MR CLARK: I'm not criticising the interim report. I am concerned that there is a tendency on a number of submissions, including ones from Family Services, for example, to overestimate the impact.

PROF SLOAN: But what you are saying is, I think, an important point, isn't it; that is, we have had 20 years of considerable sort of legislative and other process activity designed to improve occupational health and safety outcomes, but our ability to track the impact of those is probably weak because those outcome measures are not very good and, to the extent that those outcome measures are reliable, then you have to say all that activity and legislation and processes have not been very successful.

MR CLARK: If I can hijack your point a little: the objectives of the legislation tend to overlook the socially relevant outcome and talks about, "We want to achieve compliance. We want to achieve comprehensive compliance." The way they do it, takes last place.

PROF SLOAN: Okay. It's an important point.

PROF WOODS: You draw in your submission on road trauma performance improvement as one of your key examples of how to actually make some headway in this area. Why, in your view, isn't the same focus being directed in OH and S? I mean, there is in the commission's view very strong common interest by all parties in reducing - to the extent entirely possible, avoiding - any workplace injury. Why are you drawing on road trauma as somewhere where something is working in occupational health and safety?

MR CLARK: I query your assumption that all parties are equally interested in safety outcomes.

PROF WOODS: I didn't say "equally" as I - we could check the record, but I don't think "equally" was the word I used.

MR CLARK: Exactly. The problem of occupational health and safety and workers comp is the super position of industrial relations agendas that go beyond those spheres whereas in road safety I think there is much more focus on a specific outcome. It's a nice measurable outcome: fatalities. We don't worry about how many cars got bingled or what it cost. We don't worry about how many people are still in hospital recovering. We measure fatalities; one number.

When it comes to occupational health and safety - and in particular workers comp - at least 50 per cent, and probably up to 70 per cent of the cost is associated with over-exertion, strain-type injuries, and there's no nice little round number that we can hang our hat on when it comes to saying we're making improvements or we should do this or we should do that. The other problem is the comprehensive agenda. We've got to be dealing with noise, hearing loss. We've got to be dealing with asbestos. We've got to be dealing with over-exertion injuries. We've got to be dealing with hazardous chemicals. With road trauma there is a focus. In Victoria the focus is on speed and, to a lesser extent, alcohol. Unfortunately, it's the focus which I am attempting to draw into the argument there rather than the necessary approach of road safety.

PROF WOODS: If I could draw you out on a couple of points: one is that in occupational health and safety of course fatality from disease is a very large issue, but is very difficult to track and we try and make that point in here. I mean, we have quoted the figures on traumatic fatalities because, again - somebody falls off a roof unfortunately and dies as a result - they are countable, but deaths from disease - and there may be a long period of exposure and how you attribute and when the final fatality arises. Where was the cause back then? So it's more complex, you would agree, in that sense?

MR CLARK: With the exception of asbestos - the high profile numbers that are bandied about arise from what is known as "the Kerr report". I have no confidence in the Kerr report at all because it is not consistent with available information. It is based on one assumption and a steering committee requirement that they had to use a particular methodology to arrive at their numbers and, because of that assumption - that single assumption - and the single methodology, the numbers were virtually preordained.

PROF WOODS: But can I go back to the original point: that with road trauma, somebody dies from a road accident. You can form a reasonably good data association between the two events, whereas in disease that association is not as strong and is therefore more difficult to capture. Are you happy with that - - -

MR CLARK: Yes, I am quite happy.

PROF WOODS: That's fine, and so that adds one level of complexity. The other issue of course is that workers compensation premiums, as you say, relate to strains and sprains and trips, slips and falls.

MR CLARK: To a large extent.

PROF WOODS: Of course a lot of expenditure on roads relates to traffic management, not all of which is only directed at reducing fatalities but is aimed at reducing any form of damage or congestion arising from accident or the like, so a lot of the roundabouts, the lights, the police work, the traffic cameras, et cetera, although in one sense have a focus on fatalities, obviously, at the sharp end of the process, a lot of that expenditure relates to broader traffic management and reduction in the equivalent of the sprains, strains, the trips, slips and falls.

MR CLARK: With respect, you are perhaps drawing a longer bow than I intended. I really only intended to say that in addressing the road trauma situation there is a degree of focus, which is absent in the occupational health and safety field and is totally absent in the workers comp field, where the assumption is - and it is no more than an assumption - that there will be financial or economic incentives for employers through the workers comp system. There are no incentives through the occupational health and safety package. The incentives through the workers comp system are illusory. They are negligible. I have over a number of years attempted to justify plant modifications based on reducing numbers of claims and the incentives that are available are (a) minimal, if anything at all and, (b) lagged to the extent that they mean nothing. A small employer, for example, the predominant number of employers, can have a million dollar claim and it costs \$30 premium a year - end of story.

PROF WOODS: But, I mean, risk pooling is the absolute essence for small employers, isn't it?

MR CLARK: So are you advocating, commissioner, that the good employers are going to subsidise the poor employers to stay in business and continue injuring people? That's the logical downside.

PROF WOODS: Is there an alternative to risk pooling for small employers?

MR CLARK: Yes. The alternative is to make employers, to the extent that it can be arranged, and I appreciate that there are shortcomings - - -

PROF WOODS: That's the caveat.

MR CLARK: To the extent that it could be arranged, make them more directly accountable for claims, particularly small claims.

PROF WOODS: And that brings up the point about excesses and being able to buy out of those.

MR CLARK: Exactly.

PROF WOODS: In fact we quote you on - - -

MR CLARK: We have covered that.

PROF WOODS: So in that sense we have an agreement there and we draw on your views on that in our interim report.

MR CLARK: There are others who have advocated the same point I think.

PROF WOODS: Yes, and we include you in that. That's all right.

PROF SLOAN: Was that your experience, though, in working for a larger firm that - - -

MR CLARK: Sorry?

PROF SLOAN: When you were working for your large firm as a risk manager, I mean, were not the experience rating aspects of the workers compensation premiums a kind of incentive for good occupational health and safety management?

MR CLARK: I have to say that within that large firm we had a lot of little firms.

The average size was something like 50 employees.

PROF SLOAN: Right.

MR CLARK: They were run as separate entities. The firm is in Victoria, and now self-insured for good and sufficient reasons.

PROF SLOAN: Right.

MR CLARK: Before we were self-insured and across Australia, I used to take the total premium payment per month and then reallocate it on the basis of incentive. In other words if you've had a claim this month and others haven't, then you pay the bill.

PROF SLOAN: Okay. So you were actually driving some internal incentives.

MR CLARK: Exactly. In other words I attempted to address the shortcomings in the premium incentive system.

PROF SLOAN: Did you find that worked? I mean, because in some ways the occupational health and safety regulations are not - I mean, it's a kind of end point where penalties and financial costs are imposed on parties. You know, by and large it's a kind of compliance system and you have to sort of tick off on the processes. I mean, what you are implying to me is that there is nothing like an adjustment to the manager's internal budget in being able to focus their attention.

MR CLARK: Two points: one is there are not positive drivers in the occ health and safety legislation. There are only negative penalties if you fall behind. In fact the other side of that same coin is that the occ health and safety legislation is a compliance package. It is a performance of process. There is no necessary relationship to socially appropriate outcomes. The other thing is I used to get a phone call from the manager of a particular operation or operations each month, "What have you done to me, Clarkie?" and I say, "Why are you ringing me up?" "Look what you've done to my bottom line."

PROF SLOAN: So you are shooting home those incentives to the managers who can actually make a difference.

MR CLARK: He sits up and takes notice and takes an interest.

PROF SLOAN: I think there is definitely something in that message.

PROF WOODS: You do spend an amount of time in your submission on

small-medium businesses.

MR CLARK: On small?

PROF WOODS: On small and medium size enterprises and how to attract their attention and how best to help them. You talk about focus practical shop floor level studies.

MR CLARK: Sorry, I'm not hearing you.

PROF WOODS: You talk in part about the importance of focused practical shop floor level studies.

MR CLARK: Yes.

PROF WOODS: And that seems perfectly sensible and reasonable. The question is why isn't it happening now and then what can be done to encourage it to happen to a greater extent?

MR CLARK: First of all I think it goes back to the objects of the present occupational health and safety regimes in that they are compliance-based, they are process-based, and some of the implementation is not particularly helpful. To my mind there is a need for some of the money that flows into the workers comp system, which then flows back out to the occupational health and safety administration, to be diverted, if you like, better managed, in terms of more effective communication in the areas of greatest focus need, and I again refer to over-exertion injuries, and I refer to fall injuries, and there are others but we need to make some tangible impacts in the short term.

PROF WOODS: I'm just looking for a pathway, a set of incentives, a program that people could say, "Ah, that's what we've been doing wrong. This is where we need to put our effort. This is how we can dramatically improve this area."

MR CLARK: The key to me is to provide a more effective incentive regime through the workers comp system, which we have touched on. That really has little impact for the majority of smaller employers. What they need is practical help supplied through the auspices of the funding from workers comp but through the occupational health and safety organisation. The problem we have is that - it takes me back into history - the preamble to every visit by an inspector is, "This is what the legislation requires. This is what you are supposed to do. You are supposed to comply with the legislation, with the process," and at that stage the employer is lost. There is no communication. There is a need for a more practical approach. I don't know whether it's in the ambit of your review, commissioner, but that's my

philosophy.

PROF WOODS: We are focused on national frameworks and I do want to stick to that, but just to wander down that path a little, during the course of this inquiry we have spoken to inspectorial bodies who talk about the two roles, one of compliance and the other of assistance, but we have also spoken to employer bodies who go out and do workshops and hold seminars and the like, and also to union bodies who themselves invest considerable resources in trying to work to improve performance at the shop floor, and yet I detect you are saying that's misdirected or not working or not enough, or not practical or - I'm just trying to find - - -

MR CLARK: All of those, commissioner; all of those.

PROF WOODS: Why are they spending the resources they are - and I detect very good intent on their part in what they are doing - why is this?

MR CLARK: My belief - and bear in mind I haven't sat in on the individual sessions - is that in part the union and employer association people who are handling these courses are funded in part, if not totally, from the occupational health and safety authority who are funded in turn from the workers comp income, therefore they are beholden, if you will, to what I might term the party line. I wonder whether they are getting the practical information they need, against the compliance prerogatives - the necessities of complying with every little bit of legislation. For me there is a need to focus and that focus is on particular classes of injury where there are preventative means and they are not being effectively applied through industry, in part because people don't know they are available, don't know how they could get them, don't know how they could fund them.

PROF WOODS: Okay. We will be hearing from those various parties during these hearings, so we can get their perspective on that. Now, in terms of where we have drawn on your submission in the interim report, is there any comment you wish to make? Are they, in your view, reasonable inferences that we draw from your material?

MR CLARK: In terms of my material I'm quite happy with that, obviously.

PROF WOODS: Some people aren't always happy when we quote them.

MR CLARK: Sorry?

PROF WOODS: Some people aren't always happy when we quote them, but we'll get to that. Yes, thank you.

MR CLARK: No, I'm saying there are others that I am not particularly happy with, such as the \$30 billion.

PROF WOODS: Yes, and we've explored that.

MR CLARK: That's another issue.

PROF WOODS: Yes. Prof Sloan.

PROF SLOAN: Can I just ask you your considered opinion about, I suppose, one of the core recommendations of our report and that is to introduce a national framework for workers compensation in one sense initially and based on easier access to self-insurance as a first step. In your experience the self-insurance system does kind of cluster a lot of the incentives appropriately?

MR CLARK: Self-insurance has some interesting aspects, one of which, of course, is that you are - depending on how you run your internal scheme you are not required to fund it on the normal conventional insurance funding basis. You can in fact run it on a day-to-day cash flow basis so long as you've got sufficient reserves in the business. So to some extent if it is not adequately managed internally, there will be a risk of deferment and lag in impact. That's not acceptable to me.

PROF SLOAN: Right.

MR CLARK: The approach of putting an incurred cost on a particular claim, for better or worse - you don't know what it's going to be ultimately, but you put an estimate on it and then charging that to the individual location within a multi-unit self-insured operation is a necessary way of going. That hits them on the bottom line, right there. You have to have prompt feedback which the present system does not. The lags are useless.

PROF SLOAN: So it's a tick for the fact that the costs are clearly internal to the firm?

MR CLARK: Sorry?

PROF SLOAN: It's a tick in terms of the fact that the costs are internal to the firm, so they are going to have to kind of wake up to the fact that they want to manage these costs. But what you're saying is that the way those costs are accounted for, both in terms of making the appropriate longer run provisions and in terms of dividing them around the various activities of the firm, are also important features?

MR CLARK: Indeed. Well, come - - -

PROF SLOAN: Would you not expect that, though, of a self-insured firm to do those latter things well?

MR CLARK: Sorry? I haven't - - -

PROF SLOAN: Well, it seems to me that if a firm has gone to the lengths of getting a national self-insurance licence, they're likely to be relatively sophisticated players in terms of both estimating the true costs and allocating them across the firm.

MR CLARK: I would like to think so.

PROF SLOAN: Okay. Well, maybe I'm being naive.

MR CLARK: I could not guarantee it.

PROF SLOAN: No.

MR CLARK: To me the underlying question in any workplace, whether it be large or small, is management commitment. I do not perceive that you get management commitment by shelf-loads of legislation, particularly in small industry. You do get management commitment by waving a dollar under his nose.

PROF SLOAN: Yes, and by affecting their monthly reported results.

PROF WOODS: Anything else?

PROF SLOAN: No, I think it's very interesting.

PROF WOODS: Are there any other matters that you wish to raise this morning while you have the floor?

MR CLARK: I don't believe so.

PROF WOODS: Thank you again. Thank you for your submission and for coming along and elaborating on some of those points. It's much appreciated.

MR CLARK: Thank you, commissioner.

PROF WOODS: Our next participant in these hearings is Ms Evelyn Field. Welcome.

MS FIELD: Thank you.

PROF WOODS: If you could for the record, please, state your name and any organisation that you may be representing.

MS FIELD: Right. Well, perhaps if I could also introduce myself, because I'm really representing myself today.

PROF WOODS: All right. If you could start with your name.

MS FIELD: Okay. My name is Evelyn Field. I'm a psychologist and I'm the author of a book on school bullying and I'm just writing one on workplace bullying. I speak to schools about dealing with school bullying and I speak to workplaces about dealing with workplace bullying. I have a private practice, so I see all sorts of clients. I see a lot of children who are bullied and victims of workplace bullying and I run a group for victims of workplace bullying. I sent in - I think it was the first submission last year. I had a lymphoma last year and was under very heavy medication so I didn't have the ability to actually think clearly, so I just sent that off. If it's all right I would like to present a few thoughts that I scrambled up last night, because I've had a very busy week. I've got two court cases this week and a few other things happening. If that's all right.

PROF WOODS: Thank you. That would be appreciated.

MS FIELD: Yes.

PROF WOODS: And thank you for submission number 1. It's always interesting as to who is going to make submission number 1 and you scored it for this inquiry.

MS FIELD: Amazing. Let me say I am actually on the Division of Independent Private Practitioners of the Victorian section of the Australian Psychological Society and I am one of their many media spokespersons, so I do speak about school and workplace bullying for the APS, plus New Idea and lots of other things we won't need to mention. I was on the board of VOCAL for five years, Victims of Crime Assistance League, so I've had a lot of experience with victims as well as - victims of school and workplace bullying, I was actually very involved with the Mental Health Foundation for many years, 20 years on that foundation.

What I really wanted to do was to present my perspective about workplace bullying, because it is just becoming such a huge phenomenon and my experience is

many people really don't understand what it is. It's not that it's just suddenly arising; it has always been there. Like child sexual abuse, nobody talked about it 15 years ago or 16 years ago and now we just automatically look for it. Here, this is the same concept. It's just we're becoming more aware of it. According to Paul McCarthy who is a senior lecturer at Griffiths University School of Management - they've done the major research into workplace bullying - Paul and Michael Sheehan and others there. Paul says to me about one in four people will be bullied at one stage in any one 12-month period. He says about 12 per cent of the workplace will be bullied. I round it out to 15 per cent and that fits in line with some of the studies that they quote when they look at the damage, the financial costs of workplace bullying.

I don't want to focus on the financial costs of workplace bullying in terms of what it costs an organisation, because I'm really concerned about the individual today. As far as I understand, 50 per cent of stress claims are caused by bullying. Now, there is no evidence for that, but it seems to go along that line. One in 30 are serial bullies, so you can imagine the amount of bullying they do in the workplace over a period of time. There are 75 different bullying behaviours according to Dr Tim Field, not a psychologist but an expert in the UK. 76 per cent of victims experience a post-traumatic stress disorder. According to Innasen who has done the major research on the welfare of victims in Scandinavia, the symptoms of a post-traumatic stress disorder can last for, say, four to five years at least, if not longer.

Dr Rainer found that - this is a UK study - 85 per cent of bullies have done it before, 34 per cent of new supervisors caught bullying and 51 per cent of victims changed job, and in fact we know that about 20 per cent of witnesses will also leave, so you have this incredible escalating effect. By the way, the statistics are about the same as in the school. Ken Rigby says that one in six kids gets bullied every week in an Australian school and we look at 15 per cent in the workplace. The problems with the victims of workplace bullying as I see it - and I'll just come up with a number of points. First of all, victims of workplace bullying want an apology and a safe working environment. That's really all they need and they need it as quickly and as smartly as possible.

When they make a complaint it is not properly investigated, so if I can use a place that we could probably look over just down the road, an art centre: they called in their IT man to do the investigation. Now, this is a situation of a woman - and I have brought in a few sheets from her if you need any details, as an example. She and a number of other staff had complained about the bullying. The unions knew about the bullying. The union was investigating the bullying. At the end of the day they just said it's a communication problem. She still has not received her validation or her payout. So what you've got is people really not prepared to accept it. And that's when the costs and the - - -

PROF WOODS: Sorry, not prepared to accept that bullying exists, as distinct from not prepared to accept the bullying?

MS FIELD: Yes, not prepared to accept that it exists and what they should do about it. So that where you've got an organisation, for example - I don't think they would mind me quoting them - I think it's J.B. Were - they're a stock exchange company. You go up to the human resources lady, who I interviewed, and you say, "So-and-so is being nasty to me." It's followed through, and that is really the end of the story but, for example, here, for this particular client, she complained all the way out. The union was involved, there were many staff involved, and even the top managers knew about the tears in the booking office but nothing was ever done and in fact denied, and at the end of the day the IT man called it a communication problem.

The other thing that organisations do is they say they've got a previous personality disorder. They just can't fit into the team and there are all sorts of platitudes they use. In fact Prof Paddy Dewan was bullied out of the Children's recently and it was said, "He's got a personality problem. People can't work with him." I don't know if it's true or not true. I do know it wasn't investigated. The difficulty is that then, as there is no evidence - and may I say you are treating people with violence and abuse over a period of time - because it has got to be a long period of time.

If you did that in domestic violence, if you did that in child sexual abuse, the police get involved and there is some sort of validation - "Well, the police are looking into it. Something wrong has happened" - but there is no validation that something is wrong. In other words, "It's your fault. You're sensitive. You can't take the heat. Get out of the kitchen" - whatever it might be. The victim then becomes the bad person and the organisation closes in and protects the bully because it's one of them.

I have, for example, one client - I am actually being subpoenaed to court on Wednesday - and she hasn't been paid for a year. She's very lucky - she has got a husband - but, financially, they are in difficulties because people have commitments for two salaries, so she in fact was aware of the bullying. She made complaints. She has told me that 14 people were bullied before her and left. Five have been bullied since she has left. She's the only one who has made a claim for WorkCover because she kept records and she has got the guts to go through - and she has just found a very good lawyer, but it's a system which is really rife to misuse, so you get people becoming very, very disillusioned and so where you have your primary damage then you get the secondary damage - hair falling out and all the other things - but I can talk more about that later on.

So what you have got is, in this case, until this woman goes to court she gets no funding from WorkCover. It has been a year. Now, because I don't get paid - that's not unusual for me; I've had that with lots of victims of crime - that I haven't been paid and probably never will be paid - but that is something I choose to do, but here is a woman who, had she been - you know, a gun at her head, there would have been no problems, but because she was being abused - and Worksafe investigated - this is Victorian Worksafe; found there to be a case of bullying, but WorkCover are saying, "No, we can't accept the claim. You have to go to court." The moment is now on Wednesday, but she has been a year with no salary, nothing been paid for and, as I said, no validation.

My concerns are that too many psychiatrists, probably psychologists and general practitioners, don't understand what workplace bullying is. They don't recognise it. They don't diagnose it. It can't be treated appropriately and it cannot be given the right compensation and, for some people, they are damaged beyond repair. They will not go back to certainly a full-time job and probably not in that area where they were working previously. Not all, but certainly those who end up in my office fall into that category.

What the psychiatrists tend to do - the GPs possibly - and I haven't seen many psychologists' reports because, in Victoria, there is a buddy system going on and they prefer the psychiatrists, and I will go into that in a minute. The diagnosis becomes something like chronic stress, depression, personality or adjustment disorder. If we look at international research, and I quote (indistinct) from Norway, Peter Randall, UK; Tim Field, the Namies in America, many victims of workplace bullying suffer post-traumatic stress disorder, so you have got a big issue going on here.

You're getting people who are very, very debilitated not being diagnosed properly, and everything flows on from that. In fact it's being supported by a paper edited by Paul Brown. I have actually brought it along. It's published by the chairperson of the Royal Australian and New Zealand College of Psychiatrists special interest group in psychological trauma, and that's dated 2000. He says, and I quote:

Professional denial in the psychiatric domain has hampered management. Trauma and its symptoms have been under-recognised and its syndrome under-diagnosed. Three dimensions of experience of trauma may contribute to the diagnostic presentation: the primary experience of the trauma, the symptomatic re-experiencing of the trauma, and the secondary stress phenomena resulting particularly from social stigmatisation and medico-legal pressure. Systematic misdiagnosis of trauma can occur particularly when psychiatrists work for the military

and the financial and industrial institutions, eg, insurance companies. Then they risk acting in conflicting roles as clinicians and institutional agents.

I quote again:

In the industrial realm victims of work accidents and work stress have been vulnerable to the diagnosis of malingering and neurosis, particularly where issues of financial compensation were involved.

So basically patients are treated worse even though they have got PTSD. They're seen as malingering, have a personality disorder, et cetera. May I say that for many whistleblowers the same thing happens and there is in fact a very fine line, so this lady who is going to court on Wednesday to, hopefully, get WorkCover, was aware that she works for a welfare agency down in Geelong. She's getting state government funding and her manager is fudging the figures and telling her with post-it notes, you know, "These figures are not right. We need more to get more funding," and he knows that she knows - I don't know if he knows that she has got a copy at home, but he will find that out eventually - but she's too intelligent and she's not to be had around, so he has to get rid of her basically, and you will find many people who are complaining about work practices who are then bullied out. Prof Jean Lenane, who is a psychiatrist in Sydney, has also written quite a bit about it, but more in particular with whistleblowers, but I think the same thing applies. She says:

Whistleblowers are exposed to an unethical alliance between entrepreneurial psychiatrists looking for new income opportunities and corrupt management systems looking for new victims to blame.

Not a very nice set-up. She has done a lot of work published in one of the Beyond Bullying books about whistleblowers and the way in which they are treated in the court system and all over the place. I have got a book coming out - yes. Let me just go back to one thing. Prof Rachel Yahuda has done a lot of research in America - and it's certainly established here - about the differences, the biochemical differences between chronic stress and post-traumatic stress disorder. This is a very interesting thing because you get so many psychologists, psychiatrists, GPs just misdiagnosing all over the place, and everything is put down to chronic stress.

For example, in a PTSD, post-traumatic stress disorder, a victim will have low levels of cortisol but, in depression and stress, high levels of cortisol. They will have an increased glucocorticoid receptor number and sensitivity in PTSD, where it is decreased in depression, and so on and so forth. So the whole biological system is very, very different and I think this is very well accepted. It's certainly in this Royal

Australian New Zealand College of Psychiatry paper and all of those working in trauma have accepted it. The problem is that the communication between those working in trauma with victims of crime or natural disasters is very poor in terms of people who are working with people in the workplace. There just does not seem to be a marriage between the two of them.

The next thing I wanted to briefly mention is that I think that being a victim of workplace bullying involves going through a series of stages. None of this is validated. I have looked at the research around the world. I've looked at my patients. I've come up with seven stages. They are just arbitrary but it feels okay at the moment. I've tested it out with clients. I can't say it's scientific but it goes a bit like this.

The first stage is that people have this initial impact. They don't know what's really going on - the harassment, the bullying, the pressure, the exclusion; all those sorts of issues. The next step is they have an unsuccessful attempt to stop the bully. So they're knocked back. So the choice is either we suck up and play their game or we shut up and do nothing, sabotage, wait till the day we retire, start looking for another job. The third step is a search for validation and justice. If I can't get it within the work I have to go outside the workplace. That is via WorkCover, et cetera, and I think a lot of people use WorkCover as validation. Somebody is going to believe that I was bullied in the workplace.

The fourth step is identifying and dealing with their injuries. The fifth step is acceptance of the bullying experiences, then mourning, losses and becoming a survivor, and it makes a lot of psychological sense to me. The big issue is the search for validation and that can take a year and a half. So until someone is validated by WorkCover - because it takes so long - they can't move on. So they're stuck between a rock and a hard place. The next issue I just wanted to briefly mention is the retraining assistance provided by rehab agencies is minimal and designed to make them money, not to get the person back to work.

I started off my career many years ago as a social worker. When my children went back to school I went into school counselling. A great career for a mum, school hours, school holidays, but I did a graduate diploma in educational counselling and a B Ed in educational counselling, and I was teaching careers for probably about 20 years. So I understand vocational guidance, the theories behind it, and how you teach it. When I look at what some of these rehab agencies are doing it is absolutely pathetic. It really is. And they are getting young people out of university, glad for a job with very, very little training in understanding.

So, for example, I was seeing one guy who was bullied out of a council. He was working as a gym instructor, he had hurt his back, then they bullied him out

because they didn't want him around and I discovered that in a previous life he had been a building inspector. So it took about eight sessions for him to get - what do you call it - a new set of manual from the building inspector union or organisation, and to start getting him thinking about going into a new career, but he had a rehab agency - they were doing absolutely nothing about this. So it's really through general counselling that I got him back into working as a building inspector; definitely not through the rehab agencies.

I had a client who was knocked back by her insurance company. She had been working in a union, a building union, believe it or not, being bullied out, like many others who had been bullied out of the same building union office, and she could not go back to an office environment. I mean, it's just like returning to the scene of the crime. That's really what a trauma is. So she had done aromatherapy 10 years ago. She had discovered a course that is once a week and she had to go to court to get payment so that she could return to work but do something else where she will one day, I guess, become her own boss and work at her own pace, but the rehab agencies are not prepared to fund that.

I can think of another client where, you know, highly stressed, yoga or meditation or relaxation classes would have been excellent, but to get any of this you have really got to go to court. You have got to push, push, push, push. These people are so traumatised. I mean, look at me, I couldn't even think last year and, I mean, I was running a practice. I didn't write and I didn't speak as much, but I managed to get something done, but not as much. But these are people who are just so - their brain is not functioning at all. So to go to their solicitor - find a solicitor, go to court, is just so unfair, and it is not rocket science. If you are highly stressed, well, relaxation, Tai Chi, yoga - surely that's not too much to ask compared to what these rehab organisations are getting for their innumerable reports and issues like that.

PROF SLOAN: Can I just interrupt you here because we might run out of time. I'm interested in this. I think we all accept that the employers have a responsibility to ensure that workplace bullying does not occur, but it seems to me it's easy to say that. It's harder to put that into practice, particularly as I think you said that there is like 76 different examples of workplace bullying. Indeed in an organisation we know there has never actually been an accusation of workplace bullying, but most organisations have employee satisfaction surveys every year and now it's quite common to ask about workplace bullying.

So there have never been actually any formal complaints and yet in the confidential survey quite a high proportion of employees reported that they felt they had been victims of workplace bullying. What does the employer then do? So I think that is important for us because I think another point you are telling me, which I kind of accept, I think, is that if you get to the point where it's not dealt with the

workers compensation system basically fails victims of workplace bullying, particularly as all these systems have very much restricted any access to what they regard as stress-related claims. It seems to me that it goes without saying that the workers compensation system will by and large fail these people. Do employers know what to do to ensure - - -

MS FIELD: No, this is a very new area and what happened is that my book came out in 99, and that's a book for children on dealing with school bullying, and because of an experience with that and some other experiences, people started buying it for themselves and then I became more aware of the workplace bullying area. So my book should have come out last year. It didn't because I got lymphoma and a few other things and hopefully next year, but it means I've done a lot of research into the area. I think what you are finding - this is the publication from Victorian WorkCover. I don't know if you've got a copy or would like it.

PROF WOODS: We have access to it.

MS FIELD: You have access, but you can have it if you want it.

PROF WOODS: That's fine.

MS FIELD: Yes. This came out earlier this year. It is just a guidance note. It's not as strong as some people would have liked it and I figure a rose is still a rose, and you will see various suggestions going around Australia. I've been looking at some of the trainers who are starting to talk about workplace bullying. Most of them have a very superficial understanding of it and certainly misquote places like Griffiths University, who really are the experts. So I think there is a bit of training being done around Australia at various levels. So there will be a lot of opportunists coming in, doing it. Unions are starting a little bit, but it's very much in a very early stage.

What an organisation needs to do is to accept that bullying happens everywhere, just like cobwebs, and so if your CEO says, "It's not do I or don't I?" which is the issue that schools have been facing, and far less schools are facing that issue now, because schools are saying, "Oh, yes, it happens in most schools." Five years ago they didn't want to talk even about bullying. They talked about anti-harassment and stuff like that. Schools are now more prepared to accept it and those who are not are getting sued, and that's great I think, because they don't have an ethical responsibility so at least there will be a legal responsibility - in schools, I'm saying.

In the workplace I think employers need to be aware that they are responsible. Whether you have clean hands or not at Cadburys is a big issue, you have got to clean your hands. Everywhere you walk around in Cadburys it's says "Wash your

hands." The same thing is you are not allowed to smoke inside, and CEOs will set the tone. Then it needs to go all the way down the organisation.

Now, when I speak, I talk about what an organisation can do. I didn't bring it along today, because I wasn't thinking along that track. But really, I mean, they've got to have educational training programs, they've got to have sanctions. People need to know, "I can go to my line manager, I could go to my contact officer, human resources or equal opportunity, or the occupational health and safety people are there" and they need to have the power. At the moment a lot of human resources and occupational health and safety people have no power; many unions have no power.

So it's an acceptance that what the organisation needs to do is that they will lose - no, sorry, what Australians need to accept is that workplace bullying costs us as a community between 17 and I think \$34 billion a year, if we use American and English statistics, which is at a 15 per cent rate rather than the European ones that have been quoted at a 3.5 per cent prevalence rate, which is up to say then, I think, 14 billion if I can remember correctly.

So if we accept up to 34 billion, then I guess Australian employers have got to say, "Why are we in business? Do we want to stay in business? Do we want to make money or do we want to lose it?" and then they've got to look at it, I guess, from a financial point of view. I need to look at it from both, which means then saying this is not acceptable, and how do we do it through our organisation. But I think it's very easy. Once the management - - -

PROF SLOAN: But it clearly has to involve supervisors really, doesn't it?

MS FIELD: It has to come from the CEO. The fish rots from the head down and the CEO of any organisation has got to say - in every department, in every company, it's got to be consistent from the top to the bottom and across at every level, and it doesn't matter whether it's board management or the worker on the shop floor.

PROF SLOAN: I hear what you say, but I'm not sure just the CEO making a speech saying, "I regard workplace bullying as unacceptable" would be enough.

MS FIELD: No. He's got to believe it - - -

PROF SLOAN: Sure. He takes the time - - -

MS FIELD: Yes. He's got to believe it and then he's got to delegate that power to those people that are appropriate within his organisation - whether there's 10 people or 5000 - that it is not acceptable. And we know that it is more likely to occur in certain industries - you know, the health, welfare, education, medical - the figures are

very high - the Nurses Federation, the ACTU.

PROF SLOAN: Are males more likely to bully than females?

MS FIELD: The facts are, like girls and boys, men are just as good at bullying as women are.

PROF SLOAN: Different kinds of bullying.

MS FIELD: Yes. But because more bullying is done by managers and more managers happen to be males, more bullying is done by males; but that's the only reason. If you look at the bitchiness to women in nursing or in - and the horizontal violence - or in teaching, you can see - - -

PROF SLOAN: You look at little girls - God.

MS FIELD: Well, it's no different. From the sandpit to the boardroom, it's exactly the same.

PROF SLOAN: I think there is a positive message though in one thing you say, that it can clearly be nipped in the bud, can't it?

MS FIELD: Absolutely.

PROF SLOAN: That if it can be dealt with expeditiously, acknowledgment, apology and desisting, then - - -

MS FIELD: Absolutely.

PROF SLOAN: So it's not rocket science either.

MS FIELD: It's not, no. I mean, you know, I've got one client who's going to a medical panel today. She has seen about three or four psychiatrists in the last two months, she's seeing another two today, at incredible cost. One of the psychiatrists has just been amazing, with about one 15-page report and another six-page report. She tried to mention 22 times that at the time of this particular woman leaving the art centre she bought a flat, therefore her PTSD - no, well, she called it stress - was due to her buying the flat, rather than being bullied for many many months by a particular supervisor.

I mean, you know, it is just ridiculous - such a waste of time, in psychiatrist time, in my time, because every time they go, I have to pick up the pieces, WorkCover have to pay, the insurance rates go up - what a waste of money. It could

have all been nipped in the bud. Any more points? Yes. So in fact, that was my next point - organisations need to take greater responsibility. The fact is it happens; let's do something about it. People slip on banana peels and people get bullied. The research from people like Stanley Milgram and Philips and Bardo shows that we can all bully and we can all be victims. That is unfortunately human nature. So let's just do something about it at an early stage.

The other concern I have is that because I tend to see so many reports by psychiatrists, I don't know how psychiatrists compare to psychologists in the actual reporting system and how they are effective. That would require extra research, and I don't have access to that. But I am concerned that a lot of psychiatrists tend to be very persuaded by their insurance companies, and you can look at reports - Dr Lenane has shown interviews by people before they've gone to - sorry, before the psychiatrist has been got at by the insurance company, and after, or compared the same notes to who they actually see.

The other concern is, I think they lose sight of where it's all at, and so the psychiatrist asking my client financial questions, how much she earned in her job 14 years ago and how much her flat was worth, when she's meant to be getting an IB claim - you know, an impairment benefit payout - I can't see it's relevant. To me, the real issue is can this woman go back to work or can't she, not how much she paid for her flat and things like that. I have a feeling there's a love affair between the lawyers, the WorkCover in Victoria and the psychiatrists, and the validity of the work reliability and the harm done to patients is just horrific. I don't know if the same applies to psychologists; I haven't seen evidence of it yet.

PROF WOODS: Are there other key points you want to raise with us?

MS FIELD: No. That's basically it.

PROF WOODS: Have you had the opportunity to look at our interim report and are there any matters on that that you wish to comment?

MS FIELD: I looked at it very very briefly. No, not enough to make any suggestions.

PROF WOODS: Okay. Our particular focus is on national frameworks and the question then is how to take into consideration the material you've provided to us both in your submission and in today's hearings, to reflect upon those frameworks, but we'll undertake that task. Do you have any - - -

PROF SLOAN: No. I find this very interesting actually.

PROF WOODS: Yes. I think the particular lesson - deal with it early, deal with it firmly and have it come from the top - is very valuable.

MS FIELD: And the fact that workplace trauma is a real issue, can lead to violence - there's a lot of violence in the workplace. I haven't gone into the violence part, but yes, it's a big big issue out there and organisations need to step in as soon as they can. I think WorkCover needs to have more power. So in Victoria we have WorkCover not paying out and Worksafe saying bullying has happened. I mean, why this gap of months and months? It's just ridiculous.

PROF WOODS: Thank you very much.

MS FIELD: Thank you.

PROF WOODS: We appreciate the time you've made available to us.

PROF SLOAN: And you're looking very well.

MS FIELD: I'm getting there. Thank you.

PROF WOODS: We'll take a short break and resume at 10.30.

PROF WOODS: We resume the hearing. Our next presentation is collectively from the ACTU, Queensland Council of Unions, Unions Tasmania and Victorian Trade Hall Council and NUW. Could you each who are present at the table state your name and the organisation you are representing, please, for the record.

MR MARLES: Richard Marles, from the Australian Council of Trade Unions.

MS GRACE: Grace Grace from the Queensland Council of Unions.

MS FITZGERALD: Lyn Fitzgerald from Unions Tasmania.

MS McCARTHY: Nina McCarthy, National Union of Workers, Victorian branch.

PROF WOODS: Thank you very much. We have various submissions from you and we're very grateful for those, and we can go through some of that material. But do you have an opening statement you wish to make?

MR MARLES: Yes. First of all, thank you for giving us the opportunity to do this. I guess our intention this morning is that - I want to say something about the occupational health and safety side of the report, if you like, Grace will then say something about the workers compensation side of the report. I think we've given an hour, so if you want to ask questions of any of us, then you should feel free obviously.

I also wanted to say at the outset that the submission the ACTU put in and I think all the unions put in on 21 November and certainly our oral submissions today are not completely comprehensive. It is our intention to put in a more comprehensive written submission by the 30 January deadline next year.

I want to start off by making some general comments in relation to the occupational health and safety side of the report. It's a national objective that we should be improving workplace health and safety. That objective is mentioned in I think subparagraph (9)(i) of the terms of reference; it's mentioned again in paragraph 7 of the terms of reference. That that should be a national objective is very appropriate, particularly in the context of what we believe is the appalling record of occupational health and safety in this country.

At a recent conference held by the National Occupational Health and Safety Commission - which I'll inevitably end up referring to as NOHSC as we colloquially refer to it - - that we held in the middle of this year, the ILO gave a paper at that conference where they said that 7000 Australians die every year as a result of their work. Now, that is a figure which is controversial and no doubt many people will argue with it, but I think it's fairly certain to say that the figure the ACTU uses,

which is 3000 people die as a result of their work every year, is a conservative one. It is a figure which means that something like twice the national road toll of people are dying in the workplace every year.

It's estimated that as many as 60,000 Australians will ultimately die as a result of workplace-related exposure to asbestos alone. That is the same number of people who died as a result of Australia's engagement in the First World War. By any measure, this is a national tragedy. By any measure, this is an untold story of enormous significance in terms of this country's history and in terms of this country's future. By any measure, this is an unrecognised toll which by international standards is absolutely appalling. So in our view it is appropriate that the Productivity Commission be looking at this, because we need to be more productive in the way in which we go about saving people's lives at work.

Given that national objective, we were very concerned about this report because it seems to us that there is scant regard given to ways in which we can be more productive about saving people's lives at work, in this interim report. There is much in this interim report about getting greater efficiencies, removing duplications in the system, all of which is completely fair enough. But the silence on how we can do things better to improve workplace health and safety is, in our view, absolutely deafening, and to us that deafening silence seems to be indicative of a view by the commission - at least as it's embodied in this report - that those number of people who are dying is the cost of doing business in a modern economy. Now, that is a view that we do not share. That is a view actually that at the end of the day we feel is obscene and we need to do something about it.

In our view, if this report and the work in it is not augmented in terms of the final report produced by the Productivity Commission in terms of discussing ways in which we can be more productive about saving lives at work every year, then you are not doing your job, because in our view, as it stands at the moment, what we've got here is a disgrace and it will lack any form of credibility at all if we don't have things in here, in terms of the final report, which deal with ways in which this country can do better the job of saving people's lives at work.

Going on to specific things within it, I want first of all to deal with the issue of enforcement, which is raised at page 46 of the - well, at a number of pages, but there is a quote on page 46 of the report that I want to take you to. You say there, and I'm quoting:

The commission notes that the balance between enforcement and education has gone through long cycles in the various jurisdictions. There have been and should continue to be differing emphases between the two approaches in response to the particular circumstances facing a

jurisdiction, the differing behaviours and levels of risks between industries and the differing capacities of firms, particularly small business, to effectively identify and manage those risks.

We note with significant concern that comment. It seems to imply that small business, who find it difficult to identify and manage their risks, ought to in some way be removed from the target of enforcement of the obligations that they have. In our view, occupational health and safety is not an optional extra in doing business. It needs to be at the core of every single enterprise that is ever undertaken by any business, no matter how small, in this country at any time.

If you employ one person, then you take with that an obligation to provide for that person's health and safety, and the notion that there should be any relaxing of those obligations in relation to small business we regard as a very concerning development indeed. Small business must be held to account, particularly given that while each business is indeed small, small business is in fact very large. A very large part of our population are employed by small business, and those workers employed by a small business must be covered by the same kind of obligations that are covered in a large business.

Now, we agree that small business may need help to comply with the obligations that they are under through various occupational health and safety acts, but removing them from those obligations is not to give them any help at all. In fact, it may ultimately be completely the opposite.

PROF WOODS: Richard, perhaps it might be worth me intervening, but I'll only do it once. You've sort of taken a tack through your submission, and which you're now also following through in your oral presentation, of what I would describe as taking out of context the position we adopt.

Now, I won't rebut each one as you raise it, but I think we're going to end up having a robust discussion on why you're taking the particular interpretation of our views as you have throughout. So I'll hold fire. But that's not the position we adopt in this one, and as I suspect you're going to pursue others along a similar line, we'll have that discussion. So I won't interfere at this point. You go through it, but then we can enter into that debate.

MR MARLES: All right. At page 52 you deal with the issue of occupational health and safety and its relationship with industrial relations. It seems to me that there is a thesis developed in at least those very few paragraphs that somehow OH and S is used as a tactic in industrial relations disputes. There is a suggestion that's made - and again I'm quoting from the top of page 53:

One factor that encourages the misuse of OH and S is that workers continue to be paid for stoppages over OH and S matters while stoppages in relation to an industrial dispute are unpaid.

Again, maybe I'm taking it out of context, but it seems to be a statement which begs the proposition that maybe people should not be paid for going off work in relation to occupational health and safety issues. To us that would be an absolutely amazing result, that an employer fails to meet their legal obligations, an employee exercises the right that they have not to work in an unsafe workplace, and they are then asked in addition to that to pay the price for the failure of their employer to meet their obligation. I mean, that is an absolutely bizarre result.

The relationship between industrial relations and occupational health and safety is one which needs a great deal of consideration. It is a very important relationship and it needs a lot of thought. I think it's probably fair to say that in recent decades at least both the employer community and the employee community have tended to separate the two issues; that you have OH and S issues on the one hand and industrial issues on the other, and indeed that separation in more recent times has been reflected in the Workplace Relations Act which prevents the making of a term of an industrial award about occupational health and safety issues.

But to suggest that the heart of that debate, as it appears to us has been suggested in the interim report here, is the fact that OH and S issues are misused in industrial disputes, in our view again is something which - well, is actually offensive, and that is very much taking a small number of events very much out of context and focusing on them, rather than the larger issue, which is that thousands of Australians are dying every year at work - thousands of them - - -

PROF SLOAN: Hundreds.

MR MARLES: That's simply not right. There is not a credible authority in this country which says anything - that is simply not right. If you take occupational disease by definition, which is caused at work, which is a bit quieter - you know, people are quietly dying of cancer in a hospital rather than traumatically in the workplace, but nevertheless people are still dying; families are still without parents or husbands and wives. The number is unequivocally thousands. Even the most conservative estimate here, made by the employer community, is that thousands of people are dying every year.

PROF SLOAN: But don't you think conceptually you have to draw an important distinction between those two things, Richard? It seems to me what happened 30 years ago for these long latency diseases does not actually have - I mean, it has policy relevance in the sense that we wouldn't want another asbestosis mesothelioma

epidemic to arise from another factor. It seems to me that you have to conceptually think about that in a different way from fatalities caused by traumatic injury.

MR MARLES: I think in terms of - - -

PROF SLOAN: Or in policy terms. I mean you are involved in the policy to date.

MR MARLES: I think in terms of dealing with those issues practically on the ground and stopping them from recurring again - obviously the things you need to do to stop occupational cancer are different to the things you need to do to stop traumatic injuries.

PROF SLOAN: Yes.

MR MARLES: I'm not sure that that - if that leads to a policy difference, so be it, but it shouldn't lead to a policy vacuum which it seems to me is here, that we should just ignore those people who are dying from cancer and we should only focus on the traumatic injuries which leads you to make the comment that only hundreds of people are dying as a result of their work, which is patently wrong.

PROF SLOAN: In a traumatic sense that seems to be true.

MR MARLES: It is true in terms of a traumatic sense, but people are dying as a result - and they are forgotten about - but people are dying as a result of occupational cancer.

PROF SLOAN: Yes.

MR MARLES: Your point seems to be that we should just forget about the occupational cancer.

PROF SLOAN: No, of course not. I just think the kind of policy implications that arise from those two things are different.

MR MARLES: No, but it is embodied in the national objective. If all we do is to make workplaces more safe and more healthy in the context of traumatic injuries and we do nothing about occupational cancer then we have done a fraction of the job.

PROF SLOAN: Yes, of course.

MR MARLES: And most of the people who die as a result of their work now will continue to die as a result of their work in the future, and it is also wrong to suggest that the whole issue of asbestos is over. I mean, in terms of the trauma that is upon

our community, it hasn't peaked yet. I grant you that the exposures that people will die of in the future have already occurred, but you can take aniline dye in relation to the dye-making process or you can take a range of other things which give rise to occupational cancer - it is incredibly important that from a policy point of view we don't narrow the lesson to just asbestos and think, "Well, at least we've got asbestos out of the system now."

PROF SLOAN: No, I agree.

MR MARLES: We still import asbestos and will do until the end of this month, which is an unbelievable state of affairs. There are workers in Ballarat who are preparing brake pads for older cars in a completely unnecessary way. I mean, you can have brake pads without asbestos. It's still going on this day. It is a policy thing that we need to deal with and it comes back to my opening statements about this. It was absolutely within your ambit to look at all of this, that the silence about those kind of issues in here is absolutely deafening, and it is far more important, we would argue, than any of the efficiencies or the duplications that you are focused on in this report.

MS GRACE: Can I just add a couple of comments in relation to that too. Recently Queensland has set up Q-COMP, which is now the regulatory function side of workers compensation insurance, and the board was receiving the death statistics - a number of broad statistics in relation to accidents and deaths and whatever, and we got the figures for the last few years and they were around, or averaged in Queensland, deaths in the workplace, fatalities, about 70, 80, 90 onwards, depending on the year - I can't remember the figures directly, but I've been on the board, which I have been appointed to, the Q-COMP board, and I asked the question about related diseases and they were never reported in Queensland.

I don't know how the other states go as far as their fatalities go, because of the lack or because they happened in some cases 20, 25, 30 years ago or whatever, they weren't included in the stats of work-related fatalities. So we said maybe we could put a notation to say these are deaths that have occurred in this financial year or whenever the reported year is, but that of course they were from some time ago, and remember these are only the claims that have been accepted. There are many, many disease-related claims that are rejected because of the failure to establish they're work-related because the test can often be very high. 25, 30 years ago, or whatever, how do you gather the evidence to show that work caused this incredible disease?

The stats increased by 50 per cent when we added the disease-related fatalities. So we note it now and they will come in the new stats that come out, that on average they were up by 50 per cent to 60 per cent on the figures that we were showing as fatalities in the workplace once we added the disease-related and other kinds of

injuries, but they were never reported in Queensland before. Last year's stats didn't have them.

PROF SLOAN: But that gets you nowhere near the 3000. Nowhere near it, even accepting that it's 50 per cent.

MR MARLES: It is much more than 50 per cent.

PROF SLOAN: Because we've got now only about 200 and in our report all that qualification is noted.

MS GRACE: But I qualify that by merely saying these are only workers compensation statistics and we know that these are not the true reflective work-related deaths. There are many deaths where people have either not claimed or were unable to gather the evidence. We can't just go on workers compensation statistics. A lot of people don't claim for these things, so the thousands comes from - if you really search to the heart of fatalities in the workplace. It's not just those recorded by workers comp stats. I guess that's the salient point we want to make. They are not truly reflective of the number of deaths in our society based on work-related injuries. Sorry, I just wanted to clarify that.

PROF WOODS: Despite my best endeavours to go in one direction we have just gone in another, but we will conclude this little bit so we get it out of the road. I was disturbed by your inference that we didn't recognise disease and that we sort of hung on workers comp figures and didn't recognise that there would be more than that, whereas when I look at our report and whether it's page 3 or page 40 or the like, we would like to get as best figures as possible. We've talked to NOHSC, we have searched the data, we've been to the ABS.

We acknowledge that the workers comp figures are only a partial statement. We acknowledge that disease is a big issue and that it's increasing in terms of our understanding of it, let alone what the past history may have been in relation to it. So we are endeavouring to pursue the best figures we can. If you can help us in that pursuit then we will gladly take on more informative material, provided from all the sources that we go through, that it passes acceptable tests.

MR MARLES: One of the problems is the debate about how many people die as a result of their work every year is a heated one. I actually believe it's a very important one. I believe it's an important one because I think there is going on out there an untold story of enormous proportions and I think the thing which is going to bring it home to most people is that figure.

PROF WOODS: We're happy to shed light on it provided we've got reasonable

statistics to base it on, and if you can help us then we are entirely open and receptive to that.

MR MARLES: It's obviously an issue for - if anyone is going to be working on this it is the National Occupational Health and Safety Commission.

PROF WOODS: Yes.

MR MARLES: The figure they use is 2200 and they quite openly say at the moment that that figure probably understates it. The figure that was used by the representative from the ILO at the NOHSC conference in the middle of the year was certainly of enormous concern to them because it did suggest that they were under-reporting. They've had Access Economics go through the methodology that they used in coming up with the figure of 2200. Access Economics say it's more like 4800. So that we remain a credible organisation, that is the ACTU, we use a figure of 3000, but it is almost - I think it is accepted by everyone around the NOHSC table that it is probably much higher than the one that we use, but it's a very important thing. I mean, what is clear is that you are never going to know exactly.

PROF WOODS: No.

PROF SLOAN: No.

MR MARLES: You can say in relation to asbestosis that if no one smoked in the community less people would be dying of asbestosis - the two things work on each other in terms of a medical condition. So how do you apportion that various methodologies are used to come up with a figure?

PROF WOODS: But it's the whole work-relatedness issue - to what extent is the ultimate death work related and is 5 per cent sufficient to make it work related or does it need to be 20? We will have a debate later about major versus significant. It brings in all of those factors.

MR MARLES: But all of those factors are important, and each of those factors is being debated in terms of coming up with a common methodology, but even if you come up with a conservative methodology it is going to be - you know, we think that 3000 is a conservative figure. As I say, Access Economics came up with 4800. That's probably the most independent figure that's out there at the moment. You know, NOHSC want to test that more, but they, I think, will readily agree that their figure of 2200 understates it.

Now, can I just say an important thing in all of this is it raises a data debate, but the real point I want to make in terms of this report is that the data debate - there's

lots of things that could be suggested which do go to us being more productive about saving lives, about data. We have an incredible reliance in terms of the way in which we deal with occupational health and safety in this country upon compensation data. Compensation data is by its nature a description of injuries, for the purposes of compensating. That's what it's about. And yet any modern, evolved economy when it's trying to work out how it should best prevent occupational health and safety hazards or injuries will have a completely different - not a completely different, but a different mind-set in terms of preventing things than they will in terms of compensating the injuries that arise from them.

To give you an example, in the national strategy we identify that one of the priority hazards in this country is hitting or being hit by an object. Now, think about that in terms of a preventative hazard, if you like, trying to prevent that hazard. That descriptor - how would you go about in a unified way preventing being hit or hit by an object? I mean, short of dressing everyone up in three foot of rubber there is no way you would go about doing that in a unified way. It's not a helpful description in terms of prevention. The reason why people get hit by an object are multifaceted. Where does the description come from, because it is a good description in terms of compensating - it describes an injury which is similar in terms of compensation. That's an example where we are highly reliant on compensation data in terms of our occupational health and safety and we are making a mistake in that.

PROF WOODS: But then you can translate it back to the individual industries and you can look at the construction industry versus abattoirs versus something else and then it starts to break down, so I mean - - -

MR MARLES: Sure. And we can also deal with the fact that, you know, in Europe there is all sorts of research about stress and bullying which indicate that these are conditions which affect very high proportions of people, but less than 10 per cent of people ever report it through a compensating authority. And yet they may well be causes of being hit or hit by an object. It may be that you're fatigued or you are stressed or whatever at the moment that, you know, you trip over something. I mean that's an obvious cause, but we don't - - -

PROF SLOAN: But does it matter as much as you think? I mean, as long as there's a kind of relatively consistent relationship between compensable - data from the compensation authorities and the broader total it doesn't matter.

MR MARLES: It completely matters and that logic that you've just said is exactly why there is this reliance on those figures.

PROF SLOAN: But why does it matter if there is that steady relationship?

MR MARLES: Well, because fatigue, stress and bullying, which in our view are three of the major causes of occupational health and safety hazards in this country, are causes of traumatic accidents. You know, because somebody is stressed or they are fatigued when they're operating a machine, that makes sense. Bullying - you know, the estimates are that most people are bullied at work at some point or another. That is a major cause of stress. Stress leads to those kind of things. These are almost not - well, they are reported at probably less than 10 per cent of their actual incidence, so that when we rely on compensation data we don't even see that out there. What we are - I mean, compensation data actually - all it is ever going to do is focus on the outcomes, if you like, the symptoms of causes.

At the moment is we're like a doctor who is trying to treat shortness of breath without identifying the underlying lung cancer which is causing it. And that's what we're doing when we rely on compensation data, because all we will ever see are the symptoms. What we will never see are the causes. But the reason people do rely on it - and I understand it - is at one level it is the most comprehensive set of figures out there in terms of consistency and reported over a long period of time and so people say, "Well, okay, even if it does under-report it, at least we can track these figures better than we can track any other set of figures so we can see trends."

But even that's not right, because, you know, the number of people who are reporting their illnesses is going down, so you might in fact see injuries and death tracking downwards, which is in fact about reporting, rather than about whether or not death and injury actually is going downwards, which is why we need to have a much better collection of data and we need to have a much wider focus on the existing data which is out there. Now, my original point is you haven't addressed any of that stuff. It's just not in here. In terms of being more productive about - - -

PROF SLOAN: Well, I think that's unfair.

PROF WOODS: This isn't an inquiry about best practice of health and safety, this is an inquiry about national frameworks.

MR MARLES: Fine.

PROF WOODS: If you want an inquiry about what is the best practice occ health and safety, then ask for one of those. If you want an inquiry about how can we get some national frameworks around occ health and safety, then - you know, within the time and the space that we've got available, we have to do what's best there and do what other supplementary that we can in the time and resources we've got available. But if we directed all our resources to what is best practice occ health and safety - and that is an important topic and we did that previously a decade ago - then we wouldn't have been able to have dealt with the national framework issues. You have

to recognise a balance in achieving what we had to do across our terms of reference.

MR MARLES: Well, how data, the collection of it and the use of it, is not a national framework issue has got me beaten.

PROF WOODS: No.

PROF SLOAN: Surely that should have been dealt with by not - I mean, aren't you saying that NOHSC has completely failed on this? What have they been doing for the past 15 years if they haven't even settled this?

MR MARLES: Well, I am critical of NOHSC's work in relation to that and I think to say that because of that it has completely failed is an enormous jump. But do I think NOHSC can do better on that? Yes. Do I think the existence of NOHSC - and I want to come to that in a moment - with the current players that it's got, to try and work down that path better, is critically important if we're going to - you know, if we are going to use our stats better.

PROF SLOAN: It seems to have been step one for them to do.

MR MARLES: Sure.

PROF SLOAN: And for all these years later, for that not to even be a settled issue is amazing, isn't it?

MR MARLES: But you're not recommending that NOHSC do that. You're actually recommending that NOHSC be completely turned on its head and recommending a whole lot of other things. It's a national framework issue and the national objective to improve health and safety in this country is referred to in your terms of reference which is why I started on that very point. It's absolutely what you should be doing.

PROF WOODS: And we will return to that. Why don't we have a go at letting you continue on.

MR MARLES: I guess where we sort of went off on that path, which was an important path, was when I was talking about the relationship between industrial relations and occupational health and safety. I guess the point that I would want to make there is that to us almost an artificial barrier has been created. There are some differences. It is one thing to go to work and to earn less money than you think you deserve and to continue to work. It is another thing entirely to have to work in an environment which is unsafe. So there are differences in terms of - and that really goes to the issue of whether or not people should be paid when they're stopping in

relation to occupational health and safety.

PROF SLOAN: But we weren't implying that. It was done in a very - that was written on page 53 in a very mild way.

MR MARLES: Well, I quoted it. I think it's there for people to read.

PROF SLOAN: And for you to deny that from time to time possibly once upon a time in the building industry that there hasn't been a misuse of occupational health and safety - - -

MR MARLES: Yes, but you focus on it in terms of the relationship between - - -

PROF SLOAN: No, we don't focus. We say one factor - - -

MR MARLES: You've got OH and S and industrial relations. You've got about five paragraphs. It is only about that issue. You've not discussed at all about whether or not it is a healthy thing in this country that we do have that separation. You do refer to the Lang report in WA about whether or not OH and S should be able to be the subject of an award. I guess the final conclusion that I want to make is that it should be. There is an artificial barrier out there, at least in - I mean, if you take the issue of hours of work, obviously it is (1) an issue of industrial justice, whether people are, you know, working longer than what they should be paid for, or vice versa. So there are justice issues associated with it, but there are health and safety issues associated with it as well. In our view - and I guess in terms of how we think the world should be, the Workplace Relations Act should be amended so that once again the Industrial Relations Commission can have awards about OH and S.

Can I go to an issue where we have some common ground. On pages 54 and 55 you talk about the variable take-up of standards that have been divulged by NOHSC - by the various jurisdictions. That's a concern that we share, but it seems - it seems, at least - that it is being argued here that somehow inherent in that is a problem with NOHSC and how it has developed those standards. For us at least we see the problem - we think it is a problem that there is a variable take-up of standards. We think the cause of that problem in fact lies with the jurisdictions themselves and the states because, after all, NOHSC has actually done the work of developing and ultimately declaring those standards, but where that brings me to - which I do want to talk about because it is important - is the actual recommendation made in relation to NOHSC.

Can I start off by dealing with those parts of that recommendation which we agree with. You talk about a need for greater national uniformity. We agree with that. It seems to me that in the third dot point your proposal for that is

complementary legislation in each jurisdiction, which is again something that we would - it's not entirely clear but it seems to me that's what you are saying, which we would agree with for this reason: that if you had one federal act we're concerned with the constitutional problems associated with that might mean that there would be gaps in coverage, particularly for sole traders within a state, if you were relying, for example, on the corporation's power, so I think in terms of going down a path of national uniformity - we don't think that means you abolish the jurisdictions. We think what it means is that you encourage the jurisdictions to have closer legislation and that appears to be in your recommendations.

PROF WOODS: Can I abuse my own rule, but on that one we're saying occ health and safety should be uniform, singular, across all jurisdictions. We're talking about template legislation, so we're saying each jurisdiction should introduce and pass that legislation, but it should be in exactly the same form, state by state. The consistency is no good in occ health and safety.

MR MARLES: We agree.

PROF WOODS: Absolute uniformity is the only end point.

MR MARLES: I think we are in heated agreement about that. I think it's going to be a hard goal to achieve, but in terms of putting the light on the hill that's fair enough. Specifying timetables for the ministers council to review proposals from NOHSC again - that's a good idea. NOHSC having a research function - we completely agree with that.

PROF WOODS: That's because we thought data was important.

MR MARLES: Yes, and we totally agree with that, but what we're concerned with in that final dot point is that inherent in that seems to be that the Commonwealth should no longer have primary responsibility for the funding of NOHSC, but rather that NOHSC should be jointly funded by all jurisdictions.

PROF WOODS: We say "shared".

MR MARLES: Which is why I say that it seems that the primary responsibility for funding for NOHSC is no longer going to be the Commonwealth because it is going to be shared - that's the way I am reading it. At any rate, if that's what you're saying we have a real concern about that. We think the Commonwealth should be the body which is primarily responsible for funding NOHSC. I mean, if what we're after is national uniformity then the Commonwealth is going to have to lead the debate in doing that. If it is going to provide leadership, in a sense it needs to put its money where its mouth is and the amount of money that goes into NOHSC is very small

compared to the size of the problem of occupational health and safety in this country. In our view, the Commonwealth funding for NOHSC at the moment reflects a responsibility for the national problem of occupational health and safety in this country, which goes beyond the Commonwealth's own role as a jurisdiction, and so we think it is appropriate that they retain the primary responsibility for the funding of NOHSC.

PROF WOODS: But I would hope that you wouldn't then go on to argue that the states should somehow - I mean, if you are arguing that the Commonwealth should have primacy there but then, in terms of the structure of NOHSC, would it be inconsistent to argue however that the states should be involved there? I mean, let's work a common theme in the argument. I will wait and see where you argue on those points and then we'll pick up the debate.

MR MARLES: What I think is that there needs to be national leadership through this body.

PROF WOODS: Yes.

MR MARLES: And it needs to be set up and funded by NOHSC. The analogy, in my world at least, is that from an ACTU point of view - and I am sure that Grace and Lyn will understand this from a peak council point of view - a large part of what we do is provide leadership and bring our affiliates together. The notion that you then wouldn't actually bring your affiliates together and that they wouldn't have a role in your decision-making is absurd, and that's where we then seem to go with your recommendations.

First of all it seems that in terms of achieving goals of national uniformity and national cooperation - national simplicity in a sense - you have actually suggested a structure which is quite complicated. You have got a NOHSC board, but then in addition to that you've got three independent committees - all four of which then are going to report to the Workplace Relations Ministerial Council. Our view is that we need more air time at the ministers council rather than less. We need to have a more coordinated response to the ministerial council rather than a less coordinated one.

If you set up a system where they are going to have four separate streams of information about occupational health and safety you could not better devise a scheme which is going to be more calculated to dilute the occupational health and safety message to them. I mean, they are just not going to pick it up. They barely pick it up as it is. If you are going to have four separate streams of information going to them you can guarantee London to a brick that they are just not going to listen to occupational health and safety issues at all, whereas at the moment what we have is NOHSC which has within it all those groups represented, contributing to the position

that it puts, and you do have a more coordinated response, which goes to the ministers council, and in fact I think in the last year or two is starting to be better heard, particularly in the last 12 months.

PROF SLOAN: But do you honestly believe that an 18-member board is best practice?

MR MARLES: I will come to that because I had a sense that that was probably your concern.

PROF SLOAN: One of them.

MR MARLES: In terms of what NOHSC does the NOHSC board is really critical. The standards developed by NOHSC, the leadership that's provided by NOHSC, the research which should be done by NOHSC, are all absolutely critical to the OH and S arena. They affect the jurisdictions. They affect employers. They affect unions. They're meant to affect all of those people. We have just said that there is not enough take-up of the standards developed by NOHSC through the jurisdictions, and so the solution to the problem - to then come up with a board which actually gets rid of every single one of those players on it, seems to us to be bizarre.

There are problems with NOHSC - we would absolutely agree that that occurs - but its greatest strength in fact is that all those players are there. All the jurisdictions, unions and employers are all there. The greatest strength of NOHSC at the moment is that all those people are around the table. In many respects that defines the cooperative approach. Tripartitism is intrinsic to the work of NOHSC. It was very much the reason for it being established. The very logo of NOHSC embodies that as being a triangle.

The proposal you have come up with is absolutely about burying it. I fail to see in any of the evidence you refer to why you would go down that path. In our view it is a very ideological thing - about trying to get rid of tripartitism - and a child of the accord. If size is your issue - and that seems to be the issue - you know, is 18 people an unwieldy body to do all the work of NOHSC? If it did all the work of NOHSC it would be an unwieldy body, but it doesn't. I mean, NOHSC has an executive, which does most of the work - the number of people on that executive is about the same size as the board that you are suggesting - and that executive maintains a tripartite structure. There are representatives of unions, employers and jurisdictions on that executive - I think there are six people on the executive - but it reports to the full NOHSC. A better question is, not whether or not an 18-member board is unwieldy to do the work of NOHSC, to say, is it of value to get those 18 people around a table three times a year - which is currently what happens with NOHSC - and the answer to that question is unequivocally, "Yes." There is

enormous value in getting them - - -

PROF SLOAN: If you look at table 3.2, that's a very sad story, and also you have painted us such a sad story about the appalling occupational health and safety outcomes in Australia and how it seems to be getting worse and not better, so I mean for just 18, probably mates in the end, to get together three times a year doesn't actually seem to be achieving anything.

MR MARLES: The history of the decline of occupational health and safety in this country goes over a long period of time. I think it is fair to say that over some years - I mean, our biggest issue is that there hasn't been either a political or a financial commitment to NOHSC, particularly since 1996.

PROF SLOAN: But it was failing before then surely.

MR MARLES: I don't think it was. I'm not sure it was failing. I'm certainly not signing up to that, but I think to then say that you don't actually analyse the merits of getting those people around the table on its own terms - that's just not correct logic. I mean, it seems to us that if what we want to do is achieve better uniformity, better cooperation, it is important to have all those people there. I actually do think that in the last 12 months particularly, NOHSC has become far more active and I think it has a very important role to play and I think one of the critical strengths of it, as much as there are problems, is that all those people are around a table.

If you say that because there are some problems there, let's just put a line through the whole thing - that's not a particularly intelligent response. That's not actually unpacking what's good and what's bad about it, and one of the good things about it is that all those people are there.

PROF WOODS: We do want to unpack the bits and that's why we've come up with this as a structure for debate in our interim report, but let's look at the various components. You said that there is an executive, be it NOHSC, which is half a dozen people who do a lot of the driving - well, we agree that what we are looking for is a driving body. You say in your submission to us that cutting the states out of the process seems contrary to wanting them to sign up. In fact because the body has to report to the Workplace Relations Ministerial Council which comprises the states and the Commonwealth - I mean, they are in fact the final determinants of whether these things are approved or not approved. So the states, from our perspective, are absolutely involved.

MR MARLES: They are not involved in the development of the standards and if all they are is saying yes or no to them.

PROF WOODS: No, but they are involved in the determination - it's a little bit more complex than that.

MR MARLES: It's not a lot more complex than that.

PROF WOODS: I've actually attended ministerial council meetings in my life on many occasions and I only argue that they - - -

MR MARLES: Ministerial council meetings are not debating the content of standards in terms of whether they should change this line or put in another - - -

PROF WOODS: But individual attendees make sure they are satisfied with and have background on these matters before they get together and this is various debate.

MR MARLES: And essentially the question they are asked is do they support it or do they not, but they are not involved in the development of it, or they wouldn't be under your proposal, whereas the way NOHSC operates at the moment they are absolutely intrinsically involved from day one through until the end in terms of the development of it. We think that there does need to be more work in terms of making sure that states take up these things.

PROF WOODS: Yes.

MR MARLES: I think the time line that you have suggested is a good idea, but to cut them out of the process just makes no sense. And you will be cutting them out. You will be cutting them out of the process of making the standard.

PROF WOODS: No, because this NOHSC board wouldn't be doing its work if it didn't draw on the experience and expertise state by state as part of its process.

MR MARLES: That's why you can't do better in terms of drawing on that expertise than actually making the states the board, and unions and employers together.

PROF WOODS: You did mention unions and employers. We do talk there about the importance of employers and unions because occ health and safety, as we say in this interim report, is what actually happens on the shop floor, on the factory floor. I mean, that's where it is; that's where it has to happen in practice, and so we do keep their involvement in that process. We talk about a standing policy committee. That's going to happen anyway. Always ministerial councils have their various heads of their departments meet beforehand, you know, the officers' meetings and things, so that's there and will always be there because no ministerial council would operate without one.

The other questions: the technical committee of experts - there can be some debate as to whether it reports directly to the ministerial council or whether in fact it could report back through NOHSC rather than to the ministerial council and we are happy to have advice and commentary on that. The advisory committee of employers and union - I mean, I understand the arguments you have put and will continue to put on that but it's a question of where it is best placed. If you have a body of 18 actually trying to make the decisions as distinct from contributing to its formulation, I think that's where you have your problems.

MR MARLES: What problems are they?

PROF WOODS: Your executive committee, your six or so who are there to drive the system, is the embodiment of what we are trying to capture.

MR MARLES: It exists already.

PROF WOODS: Yes, but as you keep pointing out - - -

MR MARLES: And what are the problems associated with unions and employers being there? I mean, there is not a problem in making standards and declaring them because we have identified that that is not the problem. The problem is in the take-up. That's why I say there is no evidence that you've heard which would give rise to you cutting employers and unions out of the process - you've just done it, which is why we think it's completely ideological.

PROF WOODS: In fact when we talk about the expert body you would be drawing on people who have expertise in a number of areas and one would be in terms of what's happening on the shop floor.

MR MARLES: So you might de facto mean that that expert body ends up being a tripartite body anyway, which is why then I can't - - -

PROF WOODS: Part of the problem is that they are not there in terms of their expertise at the moment, but there in terms of their jurisdiction. I mean, you have to have a board that is committed to the purpose of the board, not committed to the jurisdiction from which it comes.

MR MARLES: I have not had the longest history in relation to NOHSC; I've been a member of the board for the last 12 months and I think there has been a change of chair and I think the current chair is very, very good and so maybe it's arguable that NOHSC has changed in the last 12 months, but I would at least say in that period of time what you have described it exactly what happens - people are committed to the work of the board, and it's very important where they come from, and indeed the

work of the board couldn't be done nearly as well if you didn't have people around the board who are actually the ones making the decisions in the field.

I think the reality of what you're suggesting is that the current executive would end up being the committee of experts that would be appointed, and that's why I say the better question: is there advantage in having all the jurisdictions, in the form of the NOHSC board at the moment, meet three times a year, because that's what happens. And the answer is absolutely yes, because it is incredibly important that we, on the executive, which I'm on, work to that group and have them review the decisions that we make. It's in fact them that you are going to be cutting out of it.

It does not make sense and there is no evidence that you have collected for you to make the recommendation that you have made. We would just very much urge that you rethink that part of it, because I really think it is ideology, I don't think it is based on facts at all, and I think it has the potential to very much undermine the good work which has at least been done over the last 12 years, but undermine the concept, which is a very good concept in terms of leadership about OH and S in this country, and which I think is the best hope in terms of achieving the other things, on which we all agree, which is national uniformity and better consistency across the jurisdictions. I'm mindful of time and the fact that we haven't really done workers comp at all, so maybe I'll finish.

PROF WOODS: Yes, all right, although you've left us with certain of your other assertions somewhat unanswered. If I can just pick up one, because it was one of your very first ones, that you say our interim report doesn't recognise that education about health and safety is not an alternative to enforcement. I don't think there's actually anywhere in our report where we say you should do either one or the other. What we say is there's a spectrum, and in fact if you look at any jurisdiction they go through cycles. But we've never said, "Look, you only do one and don't do the other."

MR MARLES: You talk about them as being different emphases.

PROF WOODS: Yes, exactly right.

MR MARLES: Well, that implies that at times you would not have an emphasis on enforcement, and it seems to us that - - -

PROF WOODS: No, not have an emphasis - - -

MR MARLES: - - - the times at which you do that is - - -

PROF WOODS: - - - a less emphasis than we might otherwise have.

MR MARLES: A less emphasis on enforcement than you might otherwise have, for companies which don't have the capacity to identify and manage those risks, and you identify small business as being that. That's our concern. Like, you analyse what you've said and you are saying - if there are going to be different emphases, where is the place where you have a lesser emphasis - that's our concern - and you identify small business. Now, our view is that this is - OH and S should be a strict liability.

PROF WOODS: Yes, absolutely.

MR MARLES: You know, you employ one person, you are responsible for that person's health and safety. There cannot be varying emphasis about that. There should be a greater emphasis about educating that person, I agree.

PROF WOODS: Again, I think the heat is disguising a measure of agreement, that in fact you do have both roles, you do have a finite amount of resources; you must always comply with the law and that should always be adhered to as a minimum bottom line. But then the relative emphasis that is given to education in fact does go through cycles over and above that minimum line of compliance with the law.

MR MARLES: What you've just articulated then is not here. If that's what you're saying, and is going to be in the final report, that sounds much better to me.

PROF WOODS: That's a wording issue, not an issue of disagreement about fundamentals. We won't chase all the other rabbits down their holes, but perhaps, Grace, if you'd like to move on to workers comp at this point.

MS GRACE: In the 60 seconds that I have - - -

PROF WOODS: No. Quite seriously, you have made the effort to come here, we have read through your submissions and we will give the time that it warrants.

MS GRACE: Good.

PROF WOODS: And there are others who I'm sure will therefore be patient as we pursue these, and will come on later.

MS GRACE: Great. Thank you. Look, I guess with workers comp there's just a couple of - or a few just opening remarks I want to make. I guess the thing with workers compensation is - and I guess with occ health and safety as well, and maybe it explains the take-up rate of some of the national standards - is that in everything that I've been involved in over the last 20-odd years in relation to these two issues,

we always seem to come out with a compromise position. It never is the position that either party wants as optimum - and I'm sure that everyone around this table is in the same position - it is a situation where we would often love to adopt in its entirety some national system or some consistency or something, but there's always one group that comes out - whether it's the unions or the employers - that takes umbrage at that particular side of the thing, and then eventually you come out with some compromise situation, and that is what we face.

PROF WOODS: And that's in individual jurisdictions, let alone trying to do it - - -

MS GRACE: Let alone trying to do it on a national level.

PROF WOODS: Yes.

MS GRACE: Where there is, I guess, a feeling that national consistency would be great, the fear and I guess the absolute total rejection of national consistency then coming into a national scheme - we don't see the two meaning the same thing - is that it's often about a race to the lowest common denominator. You will have a number of - as you can see, all of these jurisdictions are a patchwork on the various compromises that have occurred, and our main concern is that we would be seeing a dive to the lowest common denominator rather than a real genuine look at this particular issue and to really come up with some national consistency that then we can talk about.

Unlike occ health and safety, workers comp has survived very much on a jurisdictional level. There's been a sort of heads of workers compensation meeting. They come, it's an informal, from my understanding, type of gathering, but never a real policy drive towards any form of let's look at this issue in a real way, maybe as occ health and safety has been.

PROF WOODS: Except for the 97 report.

MS GRACE: Yes, but that was more or less - I didn't take that as being - what I'm saying is, there's been no structures in place other than a report, and there's many reports that come out on these issues in relation to that.

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The second one: I guess a concern for us is that a lot of what we find in here is anecdotal or evidence that all this jurisdiction is costing money and it's more an economic driver for those larger employers that claim, "Jeez, we've set up all these systems and all these different things that cost us money" and our response to that is self-insurance, or if you want to enter that particular area it's not about you saving costs, it is about delivery a better quality workers compensation system, and I am concerned that it's mainly driven on more economic grounds of employers saying

how much it's costing them than a real look at - stepping back and saying, "Is this the best way to deliver a no-fault system in this country?"

The third point I want to make is that you make some statements about in the last decade, and I quote:

Overall the number of workers compensation claims has declined and despite the fall -

et cetera. I think you need to look behind the figures. In the last decade the reason why, and the only reason why, claims have ceased is because of changes to legislation - be it definition of "worker", be it definition of "injury", the two major drivers, or be it other definition or barriers that come into workers comp to enable people to enter. That is the only reason why claims are declining.

There is no evidence in those numbers to suggest that it is because of better occupational health and safety performance. If you take a decade ago in Queensland, we changed the definition of "injury" and the claims haven't gone down, so you might be able to actually draw from that that the harder barrier and that the claims have remained fairly constant in our state, is actually suggesting there's much more injury out there that isn't being compensated than a decade ago. So I would just ask that the commission relook at that kind of a statement, because I think you are not looking at what is really driving the number of claims in workers compensation.

Having said that, I guess there are a couple of really important points I want to make. We don't believe national consistency necessarily means a national workers compensation scheme. There are so many varieties and so many pressures and so many - you do something in one area, it affects another within a system, that we don't believe it means that. I am concerned that we are talking about a national scheme, and we make the point in our submission that there are a number of employers across states that can actually join the Comcare system today.

Now, whether the government hasn't allowed them or whatever, what we find is - and I find it very interesting - the reason why they don't go into a national scheme, and assuming that all their costs are as they say they are, and they could save so much by going into one framework - is because they don't like the scheme. They don't particularly like the fact that Comcare offers a percentage of your salary while the injury is there; they don't particularly like the way it's set up, and so for us that is alarm bells ringing which is merely saying, "We like a national scheme, but only if you drive it down to the lowest common denominator" and that is where we have great concern.

PROF SLOAN: I suppose the qualification to that proposition is that they haven't

been allowed to, so we don't really know that.

MS GRACE: I haven't seen too many trying to knock down the door and get in - - -

PROF SLOAN: There are applications there.

PROF WOODS: There are a couple.

MS GRACE: There may be a couple, it would be interesting to see - - -

PROF SLOAN: But why apply if it's not going to - - -

MS GRACE: It would be interesting to see in the broader - out there. We don't appear to be getting the huge cry that I think may be some of the points that are made there.

PROF SLOAN: Then you wouldn't have any problems then with our recommendation, because you won't see - I mean, our step one which recommends that national employers take out self-insurance under Comcare as it is, you wouldn't see many taking that up anyway.

MS GRACE: Well, I do have a problem in relation to it, because what you then do is you leave the state schemes enormously vulnerable and I doubt that there has been any - well, a lot of work done about what happens to the state scheme when you allow a lot of the larger employers or medium-sized employers exiting those systems and leaving what - as we know insurance is all about "his risk is lower than mine" or "my risk is lower than his, we insure" and "we're all in there together" and it meets the claims. I mean, if we all claimed then there would be a problem. So there is a concern about what impact that is going to have.

PROF SLOAN: We have addressed that.

MS GRACE: Yes, but I don't know whether, in our view, enough analysis has really been done in relation to it.

PROF WOODS: We continue to.

MS GRACE: Continue to, yes.

PROF SLOAN: So can I take from that then that there's very substantial cross-subsidisation in Queensland between large and small employers, if you're worried about that?

MS GRACE: I think they would actually be quite naive to suggest that there isn't some cross-subsidisation in any insurance scheme.

PROF SLOAN: I'm not talking about risk pooling, that's a different issue. I'm talking - okay, risk pooling is quite different. I'm talking about larger employers paying more than is their actuarially appropriate premium rate in order to cross-subsidise smaller firms. Do you think that exists in Queensland?

MS GRACE: We have an experience-based rating system in Queensland, and I think a lot of that has been reducing that cross-subsidisation, and I think that that has been addressed now for quite some time. Am I able to sit here and say there is absolutely no cross-subsidisation? Probably not. Are you able to sit there and say there's huge cross-subsidisation? Probably not. But I guess it's about striking the right balance between experience-based rating, your industry rating, and the premium that is being paid.

PROF SLOAN: But my point is that to the extent that the large employers are experience rated, then them leaving really makes absolutely no impact. They take their tail - will have absolutely no impact at all on the viability of the scheme.

MS GRACE: I think that is a misconception because, to a certain degree, what you will find is that we may be left with a situation where you have a lot of the high risk left in the pool and the pool risk then shifts because there is a pooling of the risk.

PROF SLOAN: But they're not part of the risk. I mean, you take my state, South Australia. We have 40 per cent self-insured. We are only a small state and the viability of that scheme - it's actually down the drain for another reason, but - - -

MS GRACE: I was just about to make that point. I do not see you're terribly - - -

PROF SLOAN: But no-one is suggesting it is down the drain because of the high rate of self-insurance.

MS GRACE: I would suggest that it is and I would suggest that is the reason why a lot of the schemes around the country are in financial difficulty and I would suggest that that is why a lot of them are actually experiencing the problems they are experiencing.

PROF SLOAN: Do you think if you were to put that in your submission you could verify that point because that is a very, very big statement?

MS GRACE: Yes, I would like to. I think that we would certainly expand on that by January. We oppose self-insurance per se.

PROF SLOAN: Although the ACTU doesn't.

MS GRACE: The ACTU does. In principle they do.

MR MARLES: Yes, in principle.

MS GRACE: In principle they are like us.

PROF SLOAN: Your submission is kind of - - -

MS GRACE: No. Words are, "Unions oppose in principle the concept of self-insurance because we believe the system should be one in which everyone is contributing to and part of the same scheme."

PROF WOODS: Okay, but then when you get down to the nitty-gritty and say that, given that it exists, yourselves - and more particularly some of the other unions say within the body of self-insurers in fact we do have some very good employers who have a good relationship with their employees and they work together for rehab and return to work and things, and others aren't good, and, hey, we agree with that spectrum. We've had evidence that shows there is a spectrum in that but, given that there is self-insurance, the aim in that process then is to work out how to convert your less-well-performing employers to become more like the best-performing employers.

MS GRACE: I guess it's the regulatory framework under which they are going to operate, and we're experiencing some grave concerns in that area. There is a lot of stuff coming through Q-COMP. It's only fairly new, but already there is a number of evidence that there is a very, very real and genuine need for some regulation in this area. Some of the practices out there leave very little to be desired.

MS FITZGERALD: Could I just make a comment on that as well?

PROF SLOAN: Yes.

MS FITZGERALD: What you suggest in the report is that there should not be a higher bar for self-insurers; that in fact they should not be performing better, but simply meet the minimum standards and certainly - - -

PROF WOODS: Or meet the agreed standards.

MS FITZGERALD: The minimum standards, the agreed standards. In our jurisdiction that isn't the case in Tasmania; that to have a permit to self-insure in fact

you do have to perform better and you do have to demonstrate that and a permit will not be issued - and that's a position that is supported by employers and unions - and a tripartite board makes that decision - on what criteria will the permit be issued, and it is certainly in terms of meeting that higher standard.

MS GRACE: And I guess the point we made in relation to this is that often what is ignored by the legislator is the employment relationship in these areas; that it's not an arm's length insurer like WorkCover or whatever that's away from the workplace that you are actually insuring. You are actually dealing with your employer in a very close way in relation to workplace injury and that has an inherent conflict at times, and they have. I have got evidence in Queensland recently about that inherent conflict; about returning to work; about whether or not you should be putting in a claim or whether or not you should be taking sick leave or whether or not the claim should even be registered in the first place because, at the end of the day, you have sick leave, take sick leave, and we don't register it as a claim.

PROF WOODS: That's not peculiar to self-insurers.

MS GRACE: It may not be peculiar to self-insurers, but what I am saying is that it is often ignored by legislators that, all of a sudden, everything is hunky-dory because somebody self-insures, and the reason why we have the minimum numbers in Queensland as high as it is, is because we believe that really it's only at a certain level. You say there is no value in specifying a minimum number of works and we see in Queensland there is a big value in it - because in order to achieve that arm's length, that inherent conflict that's there in a smaller to medium - the drivers are much more robust in those areas than they may be in a larger employer framework.

PROF WOODS: But you can be a larger employer nationally but with only 800 employees in Queensland - and you don't get the self-insurer in Queensland, but you may have that robustness. You may have the capacity. You may have the good practice in terms of claims management, but you are prohibited from rolling that out across your whole enterprise because in Queensland you don't meet the 1000 people. I would think you would judge people and organisations according to their capacities, not according to this which seems in some cases to arbitrarily cut across the ability of the firm to roll out the one system across its whole operations.

MS GRACE: I guess our view is that you have to have a number somewhere and I guess our view is that often that relationship is ignored. We have seen some very large employers in our state that do self-insure; that have used their self-insurance licence in industrial relations areas, which I would actually raise grave concerns about. I am not saying that they all do that, but I am saying it is something of which we have to be conscious in the back of our mind. It isn't the answer to all of our prayers, as much as we would like it to be.

Another point we would like to make is that I guess we have experienced a culture of rejection of claims in some of the self-insurers area. I don't know how much work - or we've looked at that particular thing. We haven't seen in Queensland the stuff coming through at the moment that they are performing any better than WorkCover; in fact the stats are shown they're actually performing less than what WorkCover are. The stats that are coming through at the moment - I am happy to share them. We only just received them.

I think there is a lot of discussion that needs to be done in relation to that. I think we do need to look at whether an exodus is going to put pressure and whether or not the state schemes then are going to be seen as the insurer of last resort. In defining access in coverage, we believe that any definition - I think we agreed with the Productivity Commission here in that the definition should be as wide as possible; that sham arrangements should be exposed; that we should be not excluding workers who unfortunately find themselves in some quite incredible sham arrangements, and I think we should be looking as much as we can - and I know we have in Queensland recently - to try to get as much compliance as possible with the biggest net to take in the workers. We must insure that obviously it's flexible enough to include coverage broadened to include those workers who may not be covered. Work-relatedness - and this is the significant versus the major.

PROF WOODS: Yes, yes. You did have experience of both.

MS GRACE: We have. We have had experience of both and we found the major - if you want to wipe out a huge percentage of claims where work is a significant factor in the injury, then major does nothing to improve occ health and safety, but does a hell of a lot to reject legitimate claims which we believe should be covered under workers compensation. We believe that where work is a significant factor then claims should be covered. The major contributing factor people have a field day with, and all it is about is rejecting those claims.

PROF WOODS: We do take a pragmatic approach in our report - - -

MS GRACE: I think you do and I would like to shift you more to that pragmatic approach - to the one where significant contributing factor, I think - and remember why did "significant" come in in the first place a decade ago. It was because they were seeing that it was the non-visible injuries were gaining momentum in workers comp. Let's face it. They came in because of psychological-psychiatric injuries, and they were trying to say, "How can we reduce the number of claims coming through?" so the number of claims can be reduced - I was there. I did it. I know exactly what it was.

PROF SLOAN: Yes, okay.

MS GRACE: I know why we did it in Queensland.

PROF WOODS: Yes.

MS GRACE: Why we did it is because they were coming through too many. What can we do? So we lifted the barrier about what will get through the door.

PROF WOODS: But if I can abstract back to a principle just briefly, that there are also - I mean, all of these things are a balance and the other side of that balance is ensuring that employers are not making the premiums onto their bottom line for injuries and - particularly the slow attritions, the back strains and things, the industrial deafnesses that they may not have been solely responsible for. In many cases there is a cost shift to employers from the general community for matters that, in large part, arose from non-work-relatedness. It is a big debate.

MS GRACE: That's a big call.

PROF WOODS: It is a major issue and the question is to try and get the right balance. We have taken the pragmatic approach in here to recognise that "significant" is where it is all going to end up, but we also recognise that there is a debate in this process.

MS GRACE: I guess the thing that confuses me all the time is often when someone claims workers compensation, they've been at work, they've been fine until the injury occurred and then all of a sudden when they can't go back, it's some cause of degenerative condition or something like that. They were operating at full capacity before the injury happened, they can't go back to work but all of a sudden it's because they had something beforehand. I have difficulty reconciling those two positions - great difficulty. So hence the definition and how it came about.

We totally oppose any removal of travelling and journey claims. I think the evidence shows that really they are not a huge expense. I think it's sort of a bit mean spirited to say, "Look, you're only going to be covered where the employer controls you" - I mean, what about walking from one building to the other, we're going to be doing this after this meeting. There's no control there, but to say I'm not covered or whatever in that circumstance - if it's only the control test is a reason to do it, I think that it really is - you spend more money arguing about whether you were working or whether weren't or whether you were on a break or whether you were on a recess or whether you were rostered or whether you were under control, and the expense comes in arguing that.

Just cover them, make workers feel secure in that. But for work, they would not be in that situation and our view is that it should be as broad as possible, and not to bring it back. The arguments - trust me, to argue whether you were, weren't, on, off, rostered, not - - -

PROF WOODS: We've seen some of the legal bills.

MS GRACE: The legal bills will go on, and we found that it is a much easier proposition to have the coverage than not to. So full coverage really should be afforded. Injury management, yes, we all support rehabilitation. Yes, we definitely support back - - -

PROF WOODS: And return to work.

MS GRACE: - - - and to return to work, and yes, back to their same position. Let's be frank though, there's a lot of stuff that happens under rehab that causes us great concern, and we have to in a way make sure that we have that regulated properly. I mean, I've had some experience - a lot of experience with rehab, and some of the things have made me go greyer than I would normally have otherwise.

I think the other thing in regard to rehab is, there's always an emphasis on the worker being part of it and complying or else benefits will cease and all of this, but there's never enough enforcement on employers properly getting involved in rehabilitation, and possible ramifications of their non-involvement or lack of willingness to actually play the part, and I think we haven't concentrated on that.

We have often accepted that workers, yes, if you don't and you have unreasonable reasons for it, yes, there are penalties - never seems to be any for employers, and our experience finds that it's normally the, "We don't have any light duties, we can't have you in the workplace, we're not having you until you are 100 per cent back, so if you have lost 5 per cent" or "you're only 95 per cent, sorry, no job, we need you to be 100 per cent" - there's stuff like that that goes on that I don't think we've given enough attention to with rehabilitation. I'm from Queensland, so common law access is a big one for us.

PROF WOODS: Yes.

MS GRACE: Can I put it in a nutshell: we believe that - self-insurance too. One of the points I wanted to make that I forgot - I'm sorry - is that it is a privilege and not a right.

PROF WOODS: Yes. That's stated in here quite clearly.

MS GRACE: Yes, that's stated in here - that it is a privilege and not a right. With common law, I guess I've looked around the country for many years and I've seen where common law has been taken away and I've seen the legislator manipulate the fund depending on where it is financially - South Australia is an ideal example. When the deal was first done, compromise position, where common law went they had a system set up. During that time it has been slowly eroded.

PROF SLOAN: Still very generous.

MS GRACE: Pardon?

PROF SLOAN: Still a very generous scheme.

MS GRACE: Yes, but it was much more generous when they gave up common law, and it has slowly been eroded. It's facing financial difficulty now. I'm not putting any words in anybody's mouth - who's going to miss out? I'll guarantee you that it's the injured workers when it comes to their benefits.

PROF SLOAN: Not a good time to reintroduce common law.

MS GRACE: It may or may not be, I don't know. What I'm saying is, we have it, we're not going to give it up. We believe that it is an important part. We believe that it is everyone's right and we believe - and I think you've canvassed the proponents for it.

PROF SLOAN: But you've got a nice scungy scheme up in Queensland, haven't you?

MS GRACE: Nice scungy scheme?

PROF SLOAN: No, but isn't that - I mean, it's precisely your point, which is in your submissions, that you have to see these schemes as trade-offs. So you've got a scungy scheme where everyone goes off onto social security benefits after five years - beautiful scheme to run, that.

MS GRACE: Yes, but that's - - -

PROF SLOAN: That's not true in the other states. The other states would kill for that, but they would never get that through now. And then you've got reasonable judges.

MS GRACE: That's a bit of a big statement.

PROF SLOAN: Well, why doesn't the Queensland government introduce open-ended benefits in Queensland?

MS GRACE: I guess because we have a common law system that is supposed to be taking care - - -

PROF SLOAN: My point precisely.

MS GRACE: - - - of a lot of that, and it would be nice to see what the national scheme is. I guess our point is, common law, when it is there as a right, balances up those type of squeezes that come on of a fund when it is in financial difficulties, what as an example South Australia has gone through. We don't see that there's any link - at least we've got no evidence in Queensland - that rehab somehow suffers because you have common law. I think that was a bit of a broad statement. It certainly hasn't been the case in Queensland, and our view is that we believe that it has its place and that we believe it should be the way that it is in our state, and there will be a lot of cry out from Queensland in particular, I think, in relation to removing that.

PROF SLOAN: From the lawyers?

MS GRACE: I don't know. I think it'll come from us as well - the lawyers, from us.

PROF WOODS: But we're not actually anywhere in here saying the state scheme should disappear. That's the whole point. We say that every state and territory scheme is a compromise between - of long history. I mean, every time we stepped foot in a state somebody would go back 10, 20 years and explain why what happened happened, and could remember the battle quite clearly. These things are very much a creature of the individual state systems, and we recognise that, and we're not trying - I mean, we've given up all pretence of ever having a single national scheme that's achieved through compromise by all the parties, and I think we all agree to that, that that would be a total waste of time.

PROF SLOAN: A miracle.

PROF WOODS: So what we're saying is, "But hang on, there is an issue that we can do something about and that is for those who - both workers and employers -who travel across various jurisdictions, let's create a vehicle that they can come into." So we're not trying to do away with Queensland having its common law.

MS GRACE: But I guess what the drivers are going to be here are, are that invariably if you have some sort of an ability for people to go into national, depend on how that is set up - I mean, let's be practical, the drivers are going to come to

reflect whatever that comes out looking like. In the real life you're not going to end up with - you know, the pressures are going to come so heavily down to do something - and you're nodding. I mean, let's be practical here. Let's not joke about it.

MS FITZGERALD: Your recommendations don't end at workers compensation either. You actually go the next step and say not only can you choose to self-insure under the Commonwealth, but then subsequently you can also choose which OH and S jurisdiction will apply, and we actually saw some of the employers' comments when the ACT introduced industrial manslaughter at the end of last week. So I mean, we legitimately I think have real reservations about the flight to the jurisdiction of the lowest standard.

MS GRACE: Lowest common denominator. That's the concern.

MR MARLES: But you are recommending a national standard.

PROF WOODS: We're recommending a parallel.

MR MARLES: "So in the long term establish a broad-based national insurance scheme for all employers which would be competitively underwritten - - -"

PROF WOODS: But not to the exclusion of the states and territories.

PROF SLOAN: They would operate alongside the states and territories.

PROF WOODS: Yes, in parallel.

MS GRACE: But one is not going to survive against the others.

MR MARLES: But it would be for all employers.

PROF WOODS: Yes, they choose.

MS FITZGERALD: Who chooses?

PROF WOODS: But we're not saying that you therefore abolish the state and territory schemes. I mean, we talk about "in parallel".

MS GRACE: What happens when one gets into trouble? You choose to leave and go over there, so what happens to the one that's in trouble?

PROF SLOAN: That would be a matter of getting the exit arrangements.

PROF WOODS: They have to take their tail. Yes, the exit arrangements are important. In - and I apologise for not being able to put my finger on it, but - - -

PROF SLOAN: You can move from one insurance company to another, believe me - - -

MS GRACE: Not in Queensland you can't.

PROF WOODS: No, you don't allow that.

PROF SLOAN: When you insure your house or your car you can, and you do. I'm surprised you're so dismissive though of the additional costs that multi-state employers face, because multi-state employers are a big picture of the Australian labour market; they're 25 per cent of the workforce. It seems to me that if all that money is going out the door in order for them to comply with this myriad of occupational health and safety regimes, to be self-insured in some state, premium payers in others, that's money that otherwise could be invested in, say, better occupational health and safety. I can't understand why the unions - and I could be mean and say, well, I'm not sure you're very representative these days, because after all only 20 per cent of the private sector belongs to - - -

MS GRACE: I was wondering how long that would take to come out. I think the employers - some of them are probably less than 10 per cent, 5 per cent, but we seem to be reciting them quite a bit in this booklet.

PROF SLOAN: But these are - they are big employers, and I'm surprised - in many other contexts the unions are worried about cost imposts to employers.

MS FITZGERALD: I would think also there are quite a number of employers that will say to us that those costs, in terms of different jurisdictions, are not significant.

MS GRACE: They aren't.

MS FITZGERALD: But if they're actually managing OHS well, then they're doing that well, regardless of the jurisdiction.

PROF SLOAN: Are you saying to me that if you actually see - - -

MS: (indistinct) problem for them and nothing was done.

MS GRACE: If you're doing it properly, what the hell has a different jurisdiction got to do - unless you're trying to dive to the lowest common denominator in every

state. If you're up here, and that risk is above what every state has, you have no additional costs, with all due respect.

PROF WOODS: But it's different between workers comp and occ health and safety. I mean, a lot of them say, "Let's choose whatever is the highest minimum occ health and safety and do that throughout, irrespective" and so there's not a lot of cost in that process. But in workers comp there is, because they're having to pay for different premiums, go through different processes - - -

MS GRACE: Not necessarily, no. It doesn't take very long.

PROF WOODS: - - - have different orders, have different reporting.

MS GRACE: But it's not about cost-saving stuff. They can leave it to WorkCover to pay the premiums and claims management. They don't have to self-insure. They can leave it there.

PROF SLOAN: But then you are not talking to your book, are you, because if that's so, opening up the scheme will have absolutely no impact because they are quite happy with the current arrangements - it's not costly - and so you can go home with a smile on your face, can't you?

MS GRACE: Yes, but it depends on what you set up. If you set up something where there is an absolute ability to dive down to a lower common denominator - already you are talking about - - -

PROF SLOAN: But we're not recommending that. You told us that Comcare is too generous.

MS GRACE: No, no. Already you are talking - but your recommendations say, "Get rid of journeys. Get rid of recess. Get rid of this. Get rid of common law." You have just set the scene. I mean, let's be realistic. You have already set the scene for people to exodus. You're not talking about a level playing field here. You're talking about offering something which is going to be an incentive, a cherry or whatever, for people to exodus out of a fund. You put it right up there and let's see how many take it up. I would like to see the challenge. Put it right up there above every single state scheme.

PROF SLOAN: Because in the first instance all we're offering is them to transfer over into the Comcare - - -

MS GRACE: But it depends on what it is that you are - and how you are offering it, and I would like to see that, yes. I reckon you would probably be scratching to get

more than a handful but, anyway, that's my view. It would be interesting to see the detail afterward. You go down to the lowest common denominator and, sure, everyone will be wanting to see it. I say it one more time. This is not about going down to a lowest common denominator, and you will find that the expenses come where they are all looking for that out and looking for how the different systems they can fluctuate in order to save the cost. That's what costs the money - not coming up here - and our experience is that that's exactly what goes on. You might be finding something different. Our experience says that it isn't.

Dispute resolution. I guess the only last thing I want to say about that is that we are having problems with the medical assessment tribunals - I know you recommended - in that we believe they should be only used with questions of medical opinions, and I know you have said the same and you have reinforced that. I guess the only emphasis I want to put is that often there is a grain between that and causation and that is where we have the problem - that, with all due respect to any doctors in the room, they do tend to work in a sheltered workshop.

They don't tend to be out in the workplace very often, and have very - I remember doing a data processing worker once, who was injured on it, and I actually asked in there, "Have any of you seen a data processing machine? Do you know what we're talking about?" Not one had actually seen one. That's sort of just a side point. It is difficult when they are looking up members or questions of causation. For conflicting medical evidence - not a problem. Our concern comes when they start to look at causation, and that's where often it is difficult. We need to be clear on that.

PROF WOODS: I understand that.

MS GRACE: But look, our submission goes into a lot. The ACTU submission, which we support, goes into quite a bit. Concerns; lowest common denominator; national consistency doesn't mean a national fund. Let's be realistic. If you set something up in competition that is giving people the best of all worlds - and by that I mean they can see genuine savings by what they're going to have to pay out; that is, of course, needless to say, you're going to be seeing some states in quite some financial difficulty. If that's the aim, let's go down that track. I don't think it is and I guess we express extreme caution in relation to it.

PROF WOODS: Thank you. It has been helpful to have this exchange because it has clarified some of the positions that you have taken in your submissions, and thank you for them. I guess we are particularly looking forward then to your complete analysis - please, by 30 January, so that we can meet our deadlines.

MS GRACE: Yes. I think we took these as just our draft, interim one - - -

PROF SLOAN: Yes.

PROF WOODS: The one from ACTU we have made a formal submission. We would actually be quite happy if you could make that a submission in its own right as a first position and then supplement that with more detail.

MS GRACE: That's fine.

PROF WOODS: That would help the record because that way this conversation makes sense.

MS GRACE: Yes, okay. Do I need to say on record that we are happy for that to occur?

PROF WOODS: You just have. Thank you.

MS GRACE: I just have.

PROF WOODS: That just helps the transparency of the process. Thank you very much for your time, for the debate, and we look forward to further contributions.

MS GRACE: Thank you.

MR MARLES: Thank you.

PROF WOODS: Our next participants in the hearing are from Skilled Engineering Ltd. Thank you very much, and we apologise for running over time. I thought it was important though that we completed the previous debate. We have before us Skilled Engineering. Could each of you, please, give your name and the position you have in the organisation?

MR BIEG: My name is Ken Bieg and I am the company secretary of Skilled Engineering and I have the responsibility for government and public affairs.

MR BASSETT: My name is Kevin Bassett. I am the group occupational health and safety manager for Skilled. I have responsibility for occ health and safety and oversight of the workers compensation function.

MS FROST: I am Susan Frost and I work in corporate affairs. I work quite closely with Ken on government relations and issues management for the company.

PROF WOODS: Thank you. Do you have an opening comment you wish to make?

MR BIEG: Yes, we do. What we should say from the outset is that we did participate in providing initial data to the Productivity Commission through the submissions of the RCSA and the AI group. We chose to attend today because we felt that it was appropriate for an employer organisation to, I guess, submit itself to some scrutiny by the commission as to how the current state-territory regime compares with what we will call "the national framework" and what the implications are for us. We have a fairly simple presentation, you will be pleased to hear, after the last exchange.

PROF WOODS: We have all sorts of presentations.

MR BIEG: If it would be helpful we have just a couple of dot point presentations.

PROF WOODS: We will have those incorporated into the record.

MR BIEG: Our intention is to follow up with a more detailed presentation.

PROF WOODS: You are happy for this to be incorporated into the public record?

MR BIEG: Certainly. By way of background, Skilled is a diversified services company. We specialise in the provision of labour and related services, both to the public and private sector. We are about to celebrate 40 years in business, which is a bit unusual in business these days. We are a public company. We have 70 offices nationally, employing over 10,000 people. We have approximately 6000 clients,

which runs the full gamut of industry in Australia, and we have a very diverse workforce, encompassing production, trades and white collar personnel.

Because we have that number of employees and because the nature of our business is our staff - probably more so than any other business because that is also our product - occupational health and safety and workers compensation represent very significant costs and very significant issues. We have an absolute commitment to occupational health and safety. Our philosophy is that each of our workers has a right to return home at the end of each day safely. Our objective - we haven't achieved this, but certainly it is our objective - is to have zero injuries.

We have a culture which is led by our board of directors and permeates the entire organisation. OH and S is a matter that gets discussed at every board meeting, every executive meeting, every management meeting throughout the company. We are accredited under ASNZS4801. We are, as I understand it, the only labour hire company in Australia to have achieved that and we have won numerous awards for OH and S. I say that because I think it's important to understand that, whilst employers may, from time to time, be represented as not being serious about OH and S, I can absolutely assure you that our organisation is.

In terms of the way we manage that process, we have a professional team which is dedicated just to OH and S and workers compensation. Because we are a national company we operate through the eight states and territories and each - as I am sure you have been made aware - has its own different regulations. The estimated cost to us of OH and S and workers compensation - that's including insurance premiums and infrastructure costs - these are only the direct costs - is in excess of 17 million per annum.

Our view is that if we could have a system where we have one framework - one single framework cutting across the whole of Australia in terms of states and territories - we would have cost savings in the order of 2 and a half million dollars. That is about 15 per cent of the total direct bill and we understand that whilst we have come up with that number, that's fairly consistent with the way that other people have gotten to be in the game. To put that into perspective, that saving of about two and a half million represents 10 per cent of our earnings before interest and tax, so to say that the savings are not a significant issue doesn't work in our case. It is a very, very significant issue.

PROF SLOAN: And this is nothing about driving it down to the lowest common denominator. This is simply about removing the compliance costs that you face by having to deal with all the different regimes and paying premiums and different - - -

MR BIEG: Correct. We have not looked in any of that saying - - -

PROF SLOAN: Wouldn't it be nice if the benefits were lower."

MR BIEG: "If you have a national scheme and you don't have to pay journey insurance or whatever" - we haven't factored any of that in.

PROF SLOAN: No.

MR BIEG: It is our submission that any scheme for a national employer should minimise the risk of workplace incidents in the very first place; that it should provide effective injury management and rehabilitation to get the person back to work as soon as possible; that it should provide appropriate compensation for the injured worker and that it should provide for the scheme to be managed in an effective and harmonious manner with the minimum need for litigation in the process.

It is our view that the current framework of eight different state and territory regulations - and there are a number of other regulations that sit below that - simply fail to meet these objectives for a national employer and that a national scheme, as such, would be (indistinct)

Why do we say that? Effectively the area of workers compensation and OH and S legislation - working through the eight states and territories - is becoming increasingly complex as regulation simply increases, and we had more legislation introduced last week in ACT, another subject matter - putting aside the substance of it, but another subject matter that national companies have to get their head around; have to factor into their understanding and make sure their people are trained. Our view is that the duplication or the lack of uniformity is actually consuming resources. We now have to have staff specialised in each of those states and territories who know uniquely what happens in those states and territories.

The ability to get cross-fertilisation just doesn't exist. Our preference would be to be able to divert that duplicated effort back into injury prevention. I mean, that is obviously where the big gains are to be made. We're not able to establish national best practice because best practice has to be a state-by-state or territory-by-territory proposition, so internal systems become inefficient and ineffective because you can't have one system. You can't have one method of collecting data or analysing data.

PROF WOODS: Is it possible to differentiate between occ health and safety and workers compensation in this respect though: that presumably you could introduce an occ health and safety code in your organisation that met sort of the highest minimum across the jurisdictions and therefore in effect you could almost roll out one occ health and safety regime, whereas in workers comp clearly that doesn't apply?

MR BASSETT: Because we're certified to Australian Standard 4801, so we've got one safety management system, which manifests itself differently in the application of workers comp and other ancillary activities.

PROF WOODS: So you do in fact have one occ health and safety code throughout your organisation - - -

MR BASSETT: Management system, yes.

PROF WOODS: - - - but then you have to make sure that it is integrated back into the individual jurisdictions.

MR BASSETT: Into the states, which means we need a state specialist - and I don't profess to be good in eight states and territories. We need a state specialist in each one, which just creates a resource need. It also increases the capacity - forces things to slip through the gap when you're trying to manage eight different systems.

PROF WOODS: That's different from workers comp, where each regime is a totally different entity.

MR BIEG: Yes. I might just confirm that the dollars I talked about earlier were the dollars that fall out of a workers compensation standardisation, not out of OH and S standardisation.

PROF WOODS: Yes. That's helpful.

MR BIEG: Yes.

PROF WOODS: In fact you wouldn't expect many dollar gains out of standardisation of OH and S because of the approach you take of the single - - -

MR BIEG: There would be some because of the fact that you wouldn't have to have each of the eight experts. As Kevin said, you work to a national framework - you cannot ignore the fact that there is that individual legislation - and somewhere along the line you will slip up because you didn't remember that in a certain state you have to do this on this particular day.

PROF WOODS: Yes.

MR BIEG: So it's just that lack of - - -

PROF SLOAN: I wonder - I don't like to disagree with my fellow commissioner -

whether it is quite as simple as that. Whether you can just go for a standard across the nation - which seemingly is high - but, at the same time, not unwittingly fail to comply with bits and pieces of some states, because it's not just high or low. There is a bit of a mountain range there.

MR BIEG: I think I agree that you then need to ensure that you have a - - -

PROF SLOAN: If you don't have a national scheme, you'll still have to have the state offices.

MR BASSETT: Yes. If I could allude to injury reporting as far as workers comp.

PROF SLOAN: Yes, exactly.

MR BASSETT: There are certain requirements in each state for the type of injury to be reported within a certain time frame, and unless you actually know that, well, you're obviously in breach and you can get into all sorts of things. But the essence of looking after the person is not different, but some of the requirements are in each state.

MR BIEG: So I guess the outcome of that is that despite the application of a national standard, you do have the increased risk of noncompliance somewhere. Underpinning all of that of course is, as I said before, the additional costs. So our view is that we would aggressively support the adoption of a national framework.

So I guess you say at that point, "Well, we hear all that, you're talking about some big numbers and some important numbers from your point of view. What have you done about it?" I have heard in the commission reference to the Comcare situation. We are in the position where a number of our competitors already avail themselves of Comcare and that under the rules that were set up we are - at least we have a case for submitting that we are an eligible - - -

PROF WOODS: But you compete with an entity who themselves is or was a Commonwealth entity.

MR BIEG: Correct. So we satisfy that. We pursued - well, we certainly looked at it from the point of view of providing improved administration and consistency across Australia. We submitted an application back in October 2000, which was frightening when we did the research and said to you it's over three years ago, and we understand that in that same time frame there were a number of other large organisations that also made application. None of those applications, to the best of our knowledge, have been approved, and effectively we have been told that we need to await the outcome of this commission before that will go any further.

What I should also say is that - and each stage is different, particularly now in terms of workers compensation. In South Australia we have recently become self-insured, given that we weren't prepared to continue to wait for this, so we have been through that process, and we will look at the other states on a case-by-case basis. But we would submit - - -

PROF WOODS: Do you make 1000 for Queensland, out of your 10,000?

MR BIEG: I think we just get there. The last time it was 2000, I think.

PROF WOODS: 2000.

MR BIEG: It was 2000 at one stage.

PROF SLOAN: It is 2000.

MR BIEG: Yes. We don't make the 2000.

PROF SLOAN: Hardly anyone does.

MR BIEG: Having said that, we're not in the insurance business. Our preference is not to self-insure, but if the way in which you gain the sort of savings and benefits that we've explored - if that is the way to achieve that and the only way to achieve that, then obviously we'll go down that path.

So from our point of view the adoption of a national scheme - and regardless of how that's structured, we don't get into the detail of how one should achieve it - but merely that if there were such a scheme, then we would say that we would achieve considerable administrative efficiency through streamlined management of claims and costs, and certainly that would give us greater certainty as a company for investing and expanding nationally. We would obviously get the reduced workers compensation costs.

We have the crazy situation where we're a national company dealing with national clients and we have to turn around and say, "If you want to deal with us in South Australia, the cost is going to be this, but if it's in Queensland it's going to be that," and the only difference in the whole thing is the cost of workers compensation-OH and S, which seems to us to be a silly situation and one that our clients also don't like, and obviously we would get the benefit of the reduced entry and admin costs.

So in brief that is our submission. We're more than happy to entertain

questions, but we are conscious that some people are taking the view that companies are only doing this for cost. Let me assure you, cost is a very very important issue and, yes, that is why we're pursuing it. But we believe that we can pursue a reduction of costs without compromising any of the other standards. We certainly don't go down this path with a view to reducing benefits to employees. We don't currently engage in the debate about what benefits should or should not exist, other than to say that there seem to be very significant differences, depending upon which state you get hurt in, and that doesn't seem to be particularly judicious to us either.

PROF SLOAN: It's been put to us though - and indeed by a previous participant - that Comcare is not a particularly attractive scheme for employers because it provides for relatively generous benefits and indeed ongoing benefits. But presumably you've taken that into account when you've worked out your calculation.

MR BIEG: Yes. Certainly we are conscious that it probably provides the most generous of all the outcomes. We would say that if you're getting the benefit of the national framework and if you are serious about OH and S which is about risk prevention right up-front, that they are not the big issues - the more generous outcomes.

PROF SLOAN: Are there also specific - I mean, this is I think a very useful case study for us, so thank you very much, because in a sense we need examples like yours to bolster this point about the compliance costs of running these different systems. But we did have, I think, a presentation by the Association of Labour Hire Companies which I thought was quite alarming in the sense that I think there were some additional issues for labour hire companies on top of just what might be the sort of normal issues associated with running these different systems, in that the state schemes seem to play around quite a bit with the classification of workers with labour hire companies. It seemed to me that there were instances where white-collar workers were being pooled with construction workers and labour hire companies were being charged a high premium rate, which wasn't actually related to the average risk of the workers.

PROF WOODS: Or the reverse situation, where the abattoirs were giving up their workers because the labour hire rate premium was less than the abattoir industry rate.

PROF SLOAN: I suppose my point is, are there specific labour hire issues we should be aware of?

MR BASSETT: That is the RCA's submission, which said that oftentimes how the particular task or job is rated varies all over Australia. You could be thrown into an abattoir rate or because you're driving a forklift you might be on a production rate, and all this does is throw the charge-out rate all over the place, and the client is

confused. We have multiple systems to administer, which causes us costs. So again, it's just an example of complexity by different schemes.

PROF WOODS: So if you were in the one scheme, the benefit would be that all your forklift operators nationally would be - you'd have resolved with the entity what they're classified as, and that's it.

MR BIEG: Yes.

PROF SLOAN: Once. Yes. Because there are different models of labour hire companies, and you're the model where the workers are your employees.

MR BIEG: They are our employees.

PROF SLOAN: Yes. I mean, there's no sense in which you're trying to sort of wriggle out of your obligations, are you?

MR BIEG: No. Obviously we want to remove anomalies.

PROF SLOAN: Yes. Of course.

MR BIEG: We want to know what the ground rules are in as simple a way as possible, so that we can administer them. But certainly it is not about trying to change - - -

PROF SLOAN: It did seem to me that that was kind of an additional compliance cost for labour hire companies, that the way the different - if you read some of the reports, the way the different states handle the issue of labour hire companies seems to be quite variable.

MR BIEG: I wouldn't have said it's the biggest issue for us, though.

PROF SLOAN: I suppose you'd just have to accept it.

MR BASSETT: As I say, we deferred to the ICSA to share that with you, and today was about some of our insular presentations.

PROF WOODS: So how do you deal with sites that you aren't satisfied are fully safe or have completely up-to-date practice that your employees are going onto, and particularly if they're only there for - you know, if it's a construction job, they might be only there for a week. How do you turn around the company that is in effect the site host company to meet your rigorous standards?

MR BIEG: Can I just say by way of clarification, because our name implies that we are heavily involved in the construction industry; in fact it is the least of - - -

PROF WOODS: No. It's just that that one has transient populations.

MR BIEG: We have almost minimal exposure to the construction industry.

PROF WOODS: Yes.

MR BIEG: But let me come back to, I guess, the core of your question, which is, what happens if we are not satisfied about the safety environment within which we are putting people? We don't put them out there.

PROF WOODS: Particularly if it is only for a five-day placement or something.

MR BASSETT: Our management system insists that we assess the client's workplace before we put anybody in there. There are basically three outcomes. There is (1), "Yes, that's great; (2), "We'll need a hand to get there" - and we offer our services to do that - and the third one is that we just don't put people there. There are only three outcomes to that assessment and those assessments are ongoing but, ultimately, they are our employees and we have the final choice - - -

PROF SLOAN: Yes, and the risk vests with you.

PROF WOODS: So what is the hit rate on getting a three classification amongst employers out there? Do you find that there are many in that group that you have to refuse your labour to?

MR BIEG: You have to say that in the third group you have someone to whom you are saying, "Your current standards are deficient" and they have to say, "I don't care." I mean, really that is the sort of environment that you are talking about.

PROF WOODS: And distinct from group 2, which is, "I do care and I am going to do something about it."

MR BIEG: Yes. "Can we work together to achieve something?" Then obviously there is a mutual way of moving forward, but this third group, which is really saying up-front that you are dealing with a client - or potential client - who is just going to cause you a whole lot of grief because they are not going to change - don't deal with them - but you have to say it's a very small minority. I don't know what the percentage is but I would estimate that it is less than 5 per cent, but that's gratuitous.

MR BASSETT: Because most people will come with us.

PROF SLOAN: They probably wouldn't want to deal with a reputable company like Skilled Engineering.

MR BASSETT: That's right, because we're definitely not the cheapest, but we are the best value. A lot of people where we go out and do a site assessment will be the first time they have had any formal risk assessment done in their workplace and they see it as valuable and they want to do some more, so we often open the doors for safety to a lot of our clients who may not have had any vigorous system or systematic approach to their safety in the past. We do a lot of work on growing them to get to the standards that we need to make it acceptable for our employees to achieve their goal of zero injuries, which we keep referring to.

PROF WOODS: But there is ultimately a trade-off because you only get so much overhead out of a short placement that you can be prepared to invest.

MR BIEG: Yes, but if you have something go wrong that very short placement can be the most expensive short placement that you had. I think it is also true to say that whilst you are talking about, I guess, the labour hire company imposing their standard on a client, increasingly in certain sectors a client is imposing a set of standards that a labour hire provider or any other contractor wanting to go on the site has to get to and I think that when that sort of thing starts to happen you start to get the best outcome for everyone.

PROF SLOAN: I guess in the past - and perhaps to a degree this problem has been solved - there might have been an issue about coverage for workers that you might have sent interstate. I mean, there seems to have been an anomaly in the system where you might have a Queensland-based worker, who you sent over to Tweed Heads to do something, and they wouldn't have actually been covered. I mean, that was clearly a huge weakness of the system. Now, there seems to have been some kind of arrangements put in place - not all cross-border arrangements - - -

MR BASSETT: No, not yet, but it is working its way around.

PROF SLOAN: That would be a bit of an issue for you, wouldn't it? Would you move workers across states?

MR BASSETT: We have an office in Mount Gambier, which services Victoria and Wodonga - services Albury - so that we do do a bit of cusping stuff on the borders, but most times we've had discussions with various bodies and made sure that we have got appropriate cover, but it is another example of having a scheme.

PROF SLOAN: Yes. Well, the fact that you have to have that conversation, I

suppose.

MR BASSETT: Which takes time and - - -

PROF WOODS: That will be resolved by the cross-border recognitions that - I mean, they are now already in place in Queensland, New South Wales, Victoria, and they are working around the - - -

MR BIEG: But having said that, there are situations, particularly in the mining industry with mining shutdowns - and that is a very specialised area. The crew goes in for a very concentrated period of time to achieve an outcome and today they are working in WA and in six weeks' time they might be working in Queensland, and yes, there is a fair bit of - - -

PROF SLOAN: Yes, that's what I mean. That's where the problem - - -

MR BIEG: If they are the same people you do have to make sure they are covered and how do we sort of protect that and what have you, so again it is part of the overhead of being a national company and dealing in that way.

PROF WOODS: Anything else that you would like to raise with us? It has certainly been exceedingly helpful having a detailed case study that is on the public record and we are grateful for that, but are there matters that - I mean, you heard the debate with the previous participants. Anything arising out of that that you want to reflect on?

MR BIEG: Hopefully, we have addressed a few that did come out of it.

PROF SLOAN: You did. You have.

MR BIEG: Yes, we are. The money is serious. No, not all employers are trying to wiggle out of their responsibilities or reduce the benefits to workers, but when it comes into, I guess, much of the more detailed areas of structure, we think that we are better leaving that to the other experts.

PROF WOODS: Thank you very much. We appreciate your time and thank you for coming.

MR BIEG: Thank you.

PROF WOODS: I call forth our next participants, the Australian Faculty of Occupational Medicine. Could you for the record give your name and the position that you hold in the organisation you are representing, please.

DR WYATT: Thank you. My name is Dr Mary Wyatt. I was asked to come along by Dr David Fish, who is the faculty representative. David had presented at the earlier hearing and was asked to come back and talk about early intervention. Unfortunately, David is not well and so he has rung this morning and asked if I would just be here by myself and discuss the early intervention aspects of the issue.

PROF WOODS: We are very grateful to you for coming. Thank you. And, yes, he did assist us earlier and we have the very detailed submission that we received in June from the faculty, which in fact we drew on in various areas. I don't know if you have had the chance to catch up with our interim report - - -

DR WYATT: Yes.

PROF WOODS: - - - but you will notice that we in fact quote you directly and draw otherwise on your advice in that. So thank you for assisting the inquiry to date. Do you have some comments that you want to make directly to us, then?

DR WYATT: Yes. I'm a member of the faculty but I'm not here in an official capacity from the faculty. David asked me to come along this time because I think at the last hearing there was the question of "Does early intervention actually work?" raised. David is aware of the work that we have done, and in fact I put this in a submission to the Productivity Commission in your draft report, but we didn't come and present. David said, "Look, would you come along?" because they're aware of the work we have done. So I've brought that submission, and perhaps to talk to that might be the most sensible - - -

PROF WOODS: Thank you. That would be helpful.

DR WYATT: To look at the issue of building intervention.

PROF WOODS: Can we include that then on the public record as part of this hearing?

DR WYATT: Yes. A version of this document - a different version, but the submission we put in - is on your web site.

PROF WOODS: Okay, that's fine. Thank you. Would you like to speak to it?

DR WYATT: Yes.

PROF WOODS: Do you have a further copy?

DR WYATT: I have a number of black-and-white copies.

PROF WOODS: It helps our transcription service if they can follow where we're at. Please proceed.

DR WYATT: Thank you. We're a company that works with a range of employers to manage work injuries and we do it in a different model. We're not rehabilitation providers under the system; we do it in a different model. We work with the likes of Visy and Nylex and the district nurses and we have been in operation a couple of years. There is no rocket science to our system. It is basically very simple. It is a day one intervention, so people call in through a 1300 number and then we have the cases picked up by a case manager. Clearly, we work with the company and a lot of what we do is educate the company, and particularly educate the company about the costs. We then have a system where it's "Don't fight with people. Look after them. Love them." The more you love them, the more they will come back to work.

PROF SLOAN: I'm sorry for interrupting. Is it mainly self-insured employers that you work with?

DR WYATT: At present we don't work with any of the self-insurers. We've been in operation for two years and so we're fairly young, and it's just spread through word of mouth. We don't, but it's a model that would work just as well for self-insurers as the insured. It's basically from day one. It's talk to the person, talk to the doctor, talk to the supervisor - talk to the person, talk to the doctor - and really streamlining looking after people. In the vast majority of situations, if people feel like they're being cared for and you've got that good relationship, then you will impact return to work.

We've got a medical background, so we have the advantage of being able to deal with the medical fraternity, which can be a bit of a challenge, as no doubt you've been told. So really that's our model. We work with the insurers, so if the person doesn't come back to work despite everything being done to look after them - and our companies will do everything because they understand the cost implications - then we would ask the insurer to manage that claim in an appropriate fashion. We have been very successful in this model. There's clearly a lot of money to be saved in workers compensation, as you've heard.

It doesn't seem to matter whether the injury is a back pain or a stress claim. The same principles apply: get in and deal with the issues. With your problem claims or problem people, there are often industrial relations issues, so you need to

manage those. You've got to get in and deal with the people.

PROF SLOAN: Are you contracted by employers?

DR WYATT: Right.

PROF SLOAN: So in the event of one of their employees being injured, they would be given your name or your number to act on behalf of the employer?

DR WYATT: Yes.

PROF SLOAN: And the benefit to the employer is that you can secure early return to work and effective management of the claim, thereby in the longer run saving them premiums.

DR WYATT: Yes. There are many millions of dollars to be shaved off premiums, and that's what's happened. The supervisor calls in through the 1300 number automatically. We'll talk to the worker, talk to the doctor, et cetera. We pick them up very early.

PROF WOODS: Why haven't the insurance companies understood this 10, 20 years ago and been doing that themselves anyway?

DR WYATT: When we talk about this, people say, "Why hasn't it been done before?" You know as much about the system as we do. It's a model that was developed by my business partner in PacBrands. He's a very switched-on guy. He went in there as a doctor and clearly saw that medicine wasn't going to make much of a difference, so he then developed this system. It's been in operation there for a good four, five, six years - very successful - so we have then operationalised it.

Why can't the insurers do it? We've very outcome focused, and the whole of workers comp, as I'm sure you understand, is process driven. So we're very outcome focused and I think that makes a big difference. I think it has made a difference to be able to be an interface between the medical community and the costs, so we talk costs to employers. That's a language they understand. When you can reduce your claims costs significantly, your premium ends up going the same way, and people don't get left - I mean, I'm a medico and I have worked in the system for a number of years wearing various hats.

I've been an independent medical assessor for many years and I've been on advisory committees, and was a conciliator, and a range of things, and so I have lived my life seeing these people at five years, at three years, at 10 years, and the depression and the costs, and their loss. It's really about preventing those cases.

PROF SLOAN: We had an interesting presentation earlier today about workplace bullying. Is part of the trouble with the system that there's a tendency in the system to sort of medicalise these incidences or these scenarios when in fact the medical aspect is possibly only a small part of the story, and then the non-medical parts are not actually dealt with effectively, like saying sorry or changing the situation?

DR WYATT: And we would absolutely concur with that. I guess you don't have to be medical to do what we do, but it's been, I'd say, an advantage.

PROF SLOAN: Yes. There obviously are medical aspects to certain injuries.

DR WYATT: We know enough about medicine to be able to say when it's not medicine, but it's a huge problem. Doctors sit in their four walls and don't understand what goes on in the big wide world. You know that that person's ankle sprain really should have got better by now, but you're not really clear enough about what's happening to say, "Yes, you can go back to work." We're very driven by the patient, which is good in many ways.

PROF SLOAN: We also had, I think, an interesting presentation down in Tasmania from a person who maintained that even in the event of an initial compensation claim not being particularly medical, if it's allowed to go on for any length of time you will effectively medicalise that case because you essentially make people into invalids - and I'm saying that with sympathy - by virtue of them not being at work and losing their sense of purpose and the like.

DR WYATT: Absolutely, and there's enough evidence from various studies - not yet well put together, but there's enough evidence in the medical arena that too much treatment is bad for you. I think the Canadians had some reasonable evidence to say that there was a direct correlation between the number of physio visits and the time off work. When they allowed the physio visits to increase, the time off work crept up as well. I think the TAC says the average number of treatments for a whiplash is 82 physio, and the average number in private practice would be something like four. It's just a bit mad.

PROF SLOAN: That's a very big gap.

DR WYATT: If I could just quickly run you through this.

PROF WOODS: Yes, please.

DR WYATT: I've got a background in research and have done some research with the VWA in the past. It was a great piece of research, fortunately, and they were

very happy with it, so when we went back and said to them, "Could we actually look at the data?" they kindly agreed for that to occur. So we did this little study with them earlier this year, with the hope of doing a longer-term study. If I could perhaps give you these, it may help explain what we did.

We gave the VWA a list of all of our companies and all of the individual workplaces and the date that we started with that company. If we had worked with that company for 13 months up until the time this little study was done earlier this year, they measured all claims and claims costs within that period and then compared it to the equivalent number of months before that, and again all claims and claims costs within that period, and of course the claims costs stopped at the date we started so that it could be an apples with apples comparison.

We had been with some companies for six months and some for 15 months, so in terms of a long-term claim it was a fairly short development time. Just running through the results, on the first page you can see that there was a similar number of claims, which was a really great thing, because when you go and roll out at a company - and we train them how to use us - you know, some companies where there is not a lot of harmony you would say - if somebody says they've hurt their knee, just accept they've hurt their knee at work, if that's what they say. Don't get into an argument about it. The comment is that you'll get an avalanche of claims; you'll open the floodgates. So it was really nice that we've got actual hard data to say when you actually say that you don't get a measurable significant increase in the number of claims. The claims costs across the board were halved and we're talking about a fairly big company, so we were pleased with that result.

Then the next page really looks at two different WorkCover variables for measuring lost time. One is the amount paid and the second is the days lost, as measured by the VWA database, and that's down to a third which we're very pleased with. There was also some reduction in medical, hospital, paramedical costs, health providers. We looked at that and we were a bit surprised, because we certainly haven't focused on trying to reduce medical costs. You know, we're about give people whatever they need, give people whatever they want, but we think that it really is a secondary phenomenon to people coming back to work. When you bring them back to work they are integrated into the system, they don't get lost and are travelling around.

PROF SLOAN: They don't take on the profession of going to the doctor as their main activity I guess.

DR WYATT: Yes, and we also like to streamline them to good doctors. It's obviously with their consent and their permission, but we use a range of good specialists who - you know, they walk away feeling like they've got good advice. So

that might streamline things as well. We don't use rehab providers, because that's what we're doing, so clearly those costs are down. It's the last page that I really think tells the story. The bottom graph is really an expansion of the top graph. So the top graph looks at the number of people who have had that many days off work. What it says is that the pre is before we started and the post is since we started. So if you look at the top graph it says basically 100 people had no days off work when we were involved with the company. These are all standard claims. No days off on the system. But in the group before we started, about 75 had no days off. Clearly these become standard claims because of the medical expenses; they will get over the standard claim.

So you can see there's a bit of a difference there, but when you look down at the bottom graph this is now looking at the number of people who have had more than 50 days off work as defined by the scheme. The real difference here is a significant number - in fact no people - have had more than 100 days off were involved. I think that's really the key to what we do. It's really preventing the long-term claims.

PROF SLOAN: That's where the cost is - - -

PROF WOODS: Is there some data bias there in the sense that it all cuts off at - whenever it does - February 2003 or - - -

DR WYATT: The VWA tried to do what they could to make this an apples-with-apples comparison, so it's all claims costs within that period and then any invoice that has come in in the following two months before we started. Then it's all claims costs here and then a two-month leeway. So it should be an exact snapshot. It should be exactly the same. There should be no bias. We had hoped that there would be a control study, because it's much more powerful if you've got a control group, people we don't work with, but unfortunately that didn't occur and we're hopeful that might occur at some stage. But they have done all they can in their rigour to make it an apples-with-apples comparison.

PROF SLOAN: But I think workers compensation authorities will tell you that the cost is in the tail.

PROF WOODS: Yes, if you can get the tail out - - -

PROF SLOAN: If you can reduce the tail you're doing extremely well, because the chance of getting people back to work at the tail is very low.

DR WYATT: Some actuaries have had a look at this data and said, "Look, on the back of an envelope you do some forward projections. This will be 65 to 75 per cent

reduction in claims costs." When you look at - because it's like a 20-month maximum and if you look at them after two or three years - look, this fits in with the results, you know, with premiums and the like. It's the 60 to 100 thousand dollar claims that really cost the employer, and if you can reduce those you'll not only stop that isolation depression, you know, long term, as well as the costs.

PROF WOODS: Your short term - I mean, it's interesting, because at the short term in fact you've got more days lost, but you're cutting out the tail on the other side. What's causing that?

DR WYATT: I haven't done a very good job with this graph. What I want to do is ask an actuary to do one of those return-to-work curves, you know, the survival curve.

PROF WOODS: Yes.

DR WYATT: But in fact what this says, and it's not clear - it's not easy to read, but what it says here is there are actually more people who have less days off when we're involved.

PROF WOODS: Okay.

DR WYATT: So there's a hundred with no days off.

PROF WOODS: Got it.

DR WYATT: And then 75 before we started where they have no days off. It's not very clear. So it's reducing them all the way along, but the biggest impact is the longer than three or six months.

PROF WOODS: To some extent, although the rehab costs you say went down, that's because you're now the costs instead. So the interest for the employer would be the net cost, or the net savings out of the process after taking into account your more active intervention with the workers, but I guess while you remain in business you're finding employers who have come to that conclusion.

DR WYATT: It's clearly only going to be successful if they're saving more money. If I could give you one example, which is probably the nicest example we've got: we've got one employer who has got a payroll of about 50 million and they are a lovely group to work with. It's so easy. They've got great HR, great relations with their staff, so it's not hard to do what we've done. Their premium, with the same remuneration now as - like, with the remuneration they've got now their premium would have been, based on their previous figures, about 2.4. It's now coming in for

next year at about 900,000. That's cost them, in our retainer, about \$72,000 a year. So you can see there are huge savings. That's an easy one for us to work with, because they've got great HR. With companies that are a bit more of a challenge, you know, you've got to work harder, the returns are probably - you know, for every dollar they invest they're getting three back.

PROF SLOAN: It seems to me that one of the problems with the system at the moment is essentially the perverse incentives that exist for the various providers. I'm talking about the physiotherapists and indeed the doctors. You know, they don't really have any incentive in getting the worker back to work. In fact, arguably they have incentive to maximise the number of consultations. So in a sense you're acting as a broker to try and manage those incentives, aren't you?

DR WYATT: Yes.

PROF SLOAN: I think the insurance agents - they try to, they try and establish medical plans and the like, but that figure you quoted from TAC about the difference between the private use of physiotherapy for the same injury as opposed to one that is funded by a public agency is pretty alarming, isn't it?

DR WYATT: It's huge. We don't actually focus on trying to stop treatments generally.

PROF SLOAN: No.

DR WYATT: It's about getting people back to work, because they're the big costs, and it just seems to happen as a secondary phenomenon. But I agree with you. I mean, we charge on a monthly fee, no matter the number of cases or the work we do. It's about the outcomes, and I think that it's sensible because it is about the outcomes as opposed to billable time.

PROF SLOAN: That's very interesting.

DR WYATT: And it's comparable with the data from overseas. If you look at the good interventions that have been done overseas the results are comparable. It is there.

PROF SLOAN: I think, as you say, in a sense, it's not rocket science. My guess is, notwithstanding qualifications to self-insurance, in some ways early intervention is a feature of them, too, and it is making sure the person is case-managed, as it were, and treated as an individual, and that can make a big difference as opposed to a claimant with a number.

DR WYATT: Yes, absolutely.

PROF SLOAN: That's fine.

PROF WOODS: Is there anything else that you would like to - - -

DR WYATT: No.

PROF WOODS: That has been very helpful and we appreciate that and also if you could pass our thanks back to the faculty for its contributions during this inquiry.

DR WYATT: Shall do. Thank you.

PROF WOODS: Thank you. Are there any others present who wish to step forward to make any statements? That being the case we will adjourn at this point and we will resume hearings in Sydney on Thursday. Thank you very much.

AT 12.48 PM THE INQUIRY WAS ADJOURNED UNTIL
THURSDAY, 4 DECEMBER 2003

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