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TRANSCRIPT OF PROCEEDINGS

PRODUCTIVITY COMMISSION

INQUIRY INTO NATIONAL WORKERS COMPENSATION AND OCCUPATIONAL HEALTH AND SAFETY FRAMEWORKS

PROF M.C. WOODS, Presiding Commissioner

TRANSCRIPT OF PROCEEDINGS

AT PERTH ON FRIDAY, 13 JUNE 2003, AT 8.46 AM

Continued from 12/6/03 in Adelaide

PROF WOODS: Welcome to the Perth 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.

As most of you will be aware, the commission released an issues paper in April, setting out the terms of reference and some initial issues. The inquiry explores the opportunities to develop national frameworks for workers compensation and occupational health and safety, and I would ask all participants to focus on the terms of reference before the inquiry. Our full terms of reference are available from our staff.

The commission has already travelled to all states and territories, talking to a wide cross-section of people and organisations interested in workers compensation and occupational health and safety national frameworks. We've talked to groups from a diversity of backgrounds and met directly with government organisations, unions, employers, insurers, service providers and others, listening to their experiences and their views on future directions. We have already received over 20 submissions from interested parties. I would like to express my 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 to the course of this inquiry. These hearings represent the next stage of the inquiry. A draft report will be issued by the end of September and there will be an opportunity to present further submissions and attend the second round of hearings. The final report is to be submitted by March 2004.

I would like these hearings to be conducted in a reasonably informal manner but remind participants that a full transcript will be taken and will be made available to all interested parties. I will provide an opportunity during the course of the day for any persons present - but not scheduled - to make an oral presentation to the inquiry, should they so wish. I would like to welcome to the hearings our first participant Mr Neil Winzer. Could you please state for the record your name and any representation.

MR WINZER: Good morning. I am Neil Robert Winzer. I thank Minister Tony Abbott for this opportunity. Excuse me having my head down and simply reading this out. I'm going to address the substance of the quite lengthy paper that I've already submitted to the Productivity Commission. As far as representation goes, I can say that technically I am employed with the WA Department of Planning and Infrastructure, but I've not been at work since January 99. I have received no income for the past three years. The reason for my circumstances involves the productivity issues associated with the choices for delivering public services that my department faced back in 1995. I won't go into the complexities of my story, as they are endless.

PROF WOODS: We do have a submission from you, so that will be available on the record.

MR WINZER: Yes.

PROF WOODS: Thank you.

MR WINZER: I gather it will be on the web next week.

PROF WOODS: Yes.

MR WINZER: Today I think it suffices me to say that these choices that the department faced with regard to productivity back in 1995 were between the best practice organisational change agenda that had been made effective through the legalities involving the public service commissioner, Treasury, the cabinet of our state government and both the federal and state Industrial Relations Commission. The other choice - a simplistic approach - was the then government's policies for privatisation and contracting out, so you appreciate they are very much productivity issues, the choice between these approaches to productivity for delivering public services.

My duties featured in my statement included and I quote, "Implement enterprise bargaining, best practice and benchmarking throughout the department." I emphasise it is obvious that any government has a right to change the agenda for work organisation and productivity of any department; that is quite clear and obvious. My concern within the Department of Transport - now Planning and Infrastructure - was about the process of switching from one agenda to the other. I actually had slides done. I'm not thinking about the format of today but I have actually got enough copies of those slides to hand around, if you don't mind.

I'm looking at slide 1, which you will have soon. My whistleblower experience began, like many others, with simple questions and then expressions of concern within the scope of my duty statement. I have since learned that my whistleblower experience became textbook. I'll read all this out - given we're being taped - ahead of my slide. Productivity issues: on a scale from minor matters related to work organisation - you know, such as where you keep your pens and paper - to a legal conduct causing shareholder or public detriment. Unfortunately there is no shortage of examples of both public and private sector organisations that have been or still are at the centre of highly publicised crises that ultimately impact on productivity. On my slide there I've given you the few examples of HIH and One.Tel, Pan, WA Main Roads, WA ombudsman. Those from WA will know of all of these - WA Department of Environmental Protection, and I've got in brackets there, "Wagerup,

Bellevue, Brookdale." Of course we have down the road the royal commission into the WA police service, and they have their productivity, of course, in terms of - looking at it simplistically - lowering the crime rate and how they do that, how they allocate resources to do that.

I also was going to refer you to my second slide headed Hansard, 6/9/2000. This is an extract from the report to parliament from the standing committee on public administration provided by the chair at the time, the Honourable Kim Chance, now a minister of this state. The first part of his report included - and I'm reading this out to basically give you a picture of my situation as it was appreciated by Minister Chance. The 1995 enterprise bargaining agreement was a legal document and it imposed legal obligations on each party.

> Mr Winzer took his duties as a public servant very seriously, and charged with a responsibility for ensuring that enterprise bargaining agreement and the obligations it opposed were very properly administered by his employer, the Department of Transport. He became concerned that the Department of Transport was failing to meet those obligations.

That's basically the outlining of my whistleblower situation. Going back to slide 1 and those examples I cited, I occasionally had a cup of tea with two of the people at the centre of main roads and ombudsman matters respectively. The one that was responsible for the commissioner of main roads being sacked is away this week, so I was unable to contact him for permission to name him. I am sure if you are from WA you will recall the considerable media attention to that matter.

Chris Reid was responsible for the WA ombudsman being sacked. I got Chris's permission last night to give his name, although given the media attention it was no secret. Unfortunately neither of these friends of mine are working any longer, due to their public interest disclosure experience. That fact alone is a productivity issue. In my view, what I put to you today - and I'm drawing your attention to my first slide again - all hinges upon those principles that I've listed there under the heading Reporting. That is, I'm suggesting that for people to report on productivity issues within their organisation, there's a necessity for the principles of honesty, trust and accountability to be upheld within the organisation. I should have included integrity on that list.

I believe everybody at least understands the meaning of these principles, whether you're a believer in Buddhism, Catholicism, capitalism, Marxism or simply yourself - or whatever your belief - you know the meaning of these principles. In my slide 1 I've suggested basic terms. There are two pathways that may face an organisation once a report is made by someone within the organisation or, for that matter, outside as to a productivity issue. Pathway 2 I've suggested in the box there

would be dealing with it by way of best practice. I should know about best practice. When I was working, that was my area of expertise, as I've mentioned earlier by my duty statement. Through employee participation an organisation would be enabled to identify ways of improving productivity.

The alternative pathway would be for an organisation to deal with the person who raised the issue of productivity. I would like to give you a snapshot of my circumstances that commenced in the Department of Transport effectively back in 1995 and is ongoing. There is transcript of acknowledgments of the key players about my first attempts to speak to the director-general about the need for him to demonstrate a commitment to the department's enterprise bargaining agreement.

I will take you to slide 3 headed Consequences for Me Inside the Department. I can't - despite the taping of this - take the time to read all this out; suffice to say, as I suggested earlier, it's pretty textbook circumstances for a person making a public interest disclosure. As you'll see by the list there it began pretty subtlety with labels forced upon me, "not supportive of the department's objectives". Then we go through the spectrum of, you know, threats of discipline, losing my job, contractors brought in to do my job, threats of defamation action. Looking back, it is quite alarming but, as I say, I have read considerable material now on these sort of processes for people making public interest disclosures, and mine is not unusual.

You'll see there one of my past director-generals, before WorkCover and on oath, actually acknowledging that I was sent for counselling because in his view, or in the views of his senior management, I was exhibiting signs that indicated that I was having difficulty in coping in the work situation. This was three to four years into my experience. He said they sent me for counselling because of my "preoccupation" with the matters I was raising about productivity in the department, and I was suggesting - and it was about that time that I used for the first time the words "serious improper conduct and/or corruption".

That very detailed slide about the consequences for me, I can't offset unfortunately, with another slide of a record of the department addressing my public interest claim or the evidence I offered in support of my public interest claim because they never did - it never happened. They never addressed my public interest claim or the evidence I offered in support. However, the minister's parliamentary secretary, Graham Giffard MLC, responded 7 May of last year to questions on notice from Greens MLC Jim Scott as follows:

> (1) The department has followed the lawful practice of keeping all records relating to the complaints by Mr Winzer; (2) all submissions made to the department by Mr Winzer have been examined and where necessary investigated by the senior officers of the department.

It never happened. There are no records. Once upon a time, when I was a naive happy chappie, I thought you could not mislead parliament in this way.

What I am calling slide 3 is headed up, as part of my case study, Outside the Department; outcome of my appeals for help. I will read this out very quickly. The first dot point:

> The Human Rights and Equal Opportunity Commission do not afford my submission the status of a complaint.

Second dot point, the Equal Opportunity Tribunal argued they do not have the jurisdiction to deal with the matters raised in my letter. Just quickly, because the Equal Opportunity Commission didn't give the status of complaint, legally I was put out of bounds; I was basically not let in the front door. It has to be called a complaint to be able to go to the tribunal to complain about the Equal Opportunity Commissioner. I cynically suggest to you that the Equal Opportunity Commissioner circulated in a club of CEOs and I suspect when she saw the names of the director-generals on my complaint that swayed her view of my submission.

My third dot point: Worksafe suggested that the Public Sector Standards Commission was the best avenue for pursuing my concerns. I had suffered an injury and it was as a result of the thrust of my approach to Worksafe; it was about the fact that I was a redeployee and the redeployment system was acknowledged. You will recall much press and endless debate in parliament about it being dysfunctional. But Worksafe sent me to Public Sector Standards Commission. The Public Sector Standards Commissioner stated, and I quote, "There is no justification for this office to pursue the matter further."

The Anti-Corruption Commission suggested that the matters I had raised would normally be of interest to the Public Sector Standards Commissioner. The joint standing committee on the anti-corruption commission advised that their standing orders prevented them from looking at a matter that had been referred by the Anti-Corruption Commission to the Public Sector Standards Commissioner. I excuse you if you want to have a chuckle here. This is really, "Yes, Minister" stuff surely.

My last dot point there, the auditor-general, after having his officers review the content of the files of the Public Sector Standards Commissioner advised that he regretted that he was quote, "unable to assist me further in this matter". Minister Chance and a good supporter of mine, Associate Professor Peachman, met face to face with the auditor-general to try to explain to him what the circumstances were and that we were dealing with corruption and the bill to the public, by my estimate, exceeds $10 million to this day, but nothing happened through the auditor-general.

I put to the premier, having had no joy with any of those external organisations, that justice could only be served if an investigation of my public interest claim preceded the hearing of my application for workers compensation because of my injury. I certainly felt like an enemy of the people. I heard something on TV the other night from - you may correct me - Constable McCartney, the police royal commission down the road - I think he said something very, very similar. He felt as though he was the crook.

The WorkCover experience, as I couldn't prevent myself ending up there, was simply horrific and I won't go into the detail of it. As you may easily see from my full submission to this inquiry, that experience has left me with a view that WorkCover wilfully collaborated with my employer to discredit me and thus dismiss my public interest claim. I encourage you to look at the evidence I have provided. A lot of it is about the format up there and the procedure and what I suggest is the value-set of their review officers, that allowed this stream of people - and there were approaching 30 people from the department because you will appreciate whistleblowers have few supporters. There was a stream of people for the department. Two past directors-general and the director-general at that time were allowed to make statements about significant events and documents and say, "Mr Winzer was given this document," and I was sitting there saying, "Where is it? Where is it?" In the decision the review officer said I was insolent. These documents don't exist.

I go back to my slide number 1, down the bottom. As I said, the WorkCover experience was horrific and a particularly ugly aspect of the experience was the use of psychiatrists. I can't see a clock but I hope I've got five minutes to deal with this. Recent statistics obtained through FOI procedures show that three particular psychiatrists - and I won't name them today, I won't attract the crabs - were most often used by WorkCover. One after attracting criticisms in the WA parliament - I have got those stats if you want. In fact you may be familiar - they are not actually from freedom of information; it's what was used very publicly by a high-profile lawyer in Perth and it has the names of all of the most commonly used medical practitioners on it.

There are three psychiatrists there - the ones that I want to draw your attention to - the first one, after attracting criticism in the WA parliament over some years and being at the centre of a number of inquiries conducted by the coroner, opted to remove himself from the workers compensation arena. I have the Hansard copy of the debate in parliament about this fellow here. You can verify that. Going back, this first started in 1994 and you will appreciate this fellow was doing what he did - - -

PROF WOODS: If that's already on the public record, Mr Winzer, we don't need to repeat it then.

MR WINZER: That's fine. Over years he drew attention and, as I understand it, in the end he opted to remove himself. The second WorkCover psychiatrist I draw your attention to - they used to fly him in from Sydney. The following is taken from media reports and to back the media reports up here I actually have the document from the New South Wales Medical Tribunal - to back this up. This is taken from a media report: "Psychiatrist" - name - "has been found guilty of unsatisfactory professional conduct by the Medical Tribunal of New South Wales and is to be deregistered. The patient declared that" - name - "visited her home about midnight with a bottle of scotch in hand. He performed massage, then urinated on her before sexual intercourse." I have a copy of the tribunal decision to deregister that fellow here if you wish to see it.

The third WorkCover psychiatrist that I draw your attention to is today across the other side of town in the Children's Court - because the Children's Court doesn't function Fridays - beginning his four-day public hearing before the Medical Board of WA, and obviously I would have been here. This is the fellow my department sent me to see. You know him, you people here who are familiar with the - - -

PROF WOODS: Can we - - -

MR WINZER: I understand the Medical Board received approximately 40 complaints against this fellow last year alone. I share the view with many members of the Injured Persons Action Support Association that WorkCover is corrupt. IPASA have made a separate submission to this inquiry.

I address the last item on my overhead number 1 in the corner there - costs. The costs associated with my case study that have been or will be ultimately paid for by the taxpayers must be significant. There are the unresolved questions as to whether there was in fact corruption involved, as I claim, in the process of switching to privatisation in contracting out and whether, if the things that were privatised that shouldn't have been because of the process of switching - such as the bus system - have taxpayers incurred a detriment or not? We will never know those costs; nobody is going to do the numbers.

I would ask you about the personal cost to those who no longer work as a result of the agenda-switching process. With respect to my case, I estimate the cost directly associated with the attempt to silence me now far exceeds a total of $1 million. When I was with my former union, their solicitors estimated the WorkCover legal costs to be in the order of 600,000. Some of the psychiatric reports that were done on me ran to 30 pages; some of their reading - just single instances of

reading they were given, they charged for 20 hours - just for one instance.

Going back to what I was calling slide 3 headed up Hansard 6/9/2000, again Minister Chance. As you mentioned, commissioner, this is a public record now so I won't read it all out but Minister Chance described, in reporting to parliament on behalf of that standing committee , the harassment I was subject to. Although he didn't say the twist of the truth - the expression he uses on the bottom line there - that was actually the responsibility of the Public Sector Standards Commission. I went to great lengths with a colleague to explain to them. Associate Prof Peachman wrote to them, Kim Chance wrote to them and said, "Get this right, get this right." But, no, they closed the file on me, despite the great efforts put to them that there was a twist of the truth about the history of my attempts to make a public interest claim. I go into excruciating detail of that twist of the truth and how it was constructed in my full submission which you'll be able to access on the web next week.

I should mention very quickly - and I've got some copies - my good friend sitting there, Steve Ewen, gave me some figures that he was provided yesterday about the cost of bullying, because it was an experience of mine related to the Anti-Corruption Commission. Despite my going to the deputy premier and saying, "Look, I don't want these people near me again," they still attempted, under the excuse that they were simply in the area, in my suburb - without any appointment they knocked on my door. Fortunately I wasn't at home. But so concerned was I as to what may have been the outcome of that uninvited and unscheduled visit, I attempted to get a restraining order against the Anti-Corruption Commission in the Joondalup Court.

There was I, as usual on my Pat Malone, and there was the Anti-Corruption Commission with their legal counsel in number and I wasn't even allowed by the justice to provide documents - that is, my correspondence with the deputy premier. He just said, "Misconceived, Mr Winzer. Next, please," and that was it. So I didn't get the restraining order up but I retain the view that they were a bullying organisation and I am able to substantiate that today. You would have seen the press - I think it's 20 staff within the Anti-Corruption Commission feeling bullied, and it was a bullying culture. I have a copy here of the Commissioner for Public Sector Standards, ironically enough, reporting to parliament on the bullying within the Anti-Corruption Commission. That is simply what I experienced. My friend Steve Ewen gave me these numbers.

PROF WOODS: Mr Winzer, can you explain how that relates back to the workers compensation issue?

MR WINZER: My slide 1 I hope would be - - -

PROF WOODS: Yes, your cost benefit down the bottom.

MR WINZER: Yes - would be clear that these costs have to offset good productivity. Without going into a full analysis of it, I hoped it would be clear that if people are being bullied in a workplace they don't work productively. If people make a report about a productivity issue and they are silenced and that productivity issue is not addressed, there has got to be a detriment.

PROF WOODS: Thank you, Mr Winzer.

MR WINZER: These numbers I was given this morning are alarming. These were presented to a standing conference on organisational symbolism in the College of Dublin in 2001 by an Australian firm, Sheahan McCarthy Barker and Henderson. They estimated the overall costs, if you're looking at only a 3.5 per cent prevalence of bullying within organisations across Australia, the costs would be in the order of 5 billion to 13 billion. I'm quite happy for you to take a copy of those numbers.

My last slide is with regard to my recommendations to the Productivity Commission. My first recommendation is development of potentially effective public interest disclosure legislation. My second recommendation is conduct of an education campaign to save whistleblowers from the enemy of the people experience and thus entry into a workers compensation system. My first recommendation - I said "potentially" because you can have all the legislation in the world in place and it isn't going to save you if there is no commitment. I go back to those principles of integrity, honesty, trust and accountability. I fear, given the lack of help I've had from the current Western Australian government, I have no confidence in the whistleblower legislation bill going through the parliament making any difference.

My third recommendation to the Productivity Commission is to prevent involvement of identified - I call them hired gun psychiatrists in workers compensation. I close today - and I know it is a jaundiced view of things - my recommendations there are really fanciful nonsense because I really don't think things are going to change. That last one - preventing the involvement of identified hired guns - unfortunately, these three I've mentioned have their heirs. Injured Workers Action Support Association - I've seen one of them that the department sent me to - they're just replaced, unfortunately because apparently the money is too attractive for them. I must close, and with that, thank Mr Abbott for this opportunity. Thank you very much.

PROF WOODS: Thank you, Mr Winzer.

PROF WOODS: Our next participant is Dr Robert Guthrie. If you could please make your way to the table. Dr Guthrie, could you please state your name for the record and any representation you are making.

DR GUTHRIE: My name is Robert Guthrie. I'm head of the School of Business Law at Curtin University. I suppose the reason why I'm here is that I've had 20 years' experience in workers compensation matters, more particularly in the last 10 years writing a number of reports for the Western Australian government and, most recently, one in 2001 which was - - -

PROF WOODS: And one before that in October 2000.

DR GUTHRIE: I think in 1999 there was a report reviewing the workers compensation system then, and previously in 1991.

PROF WOODS: Yes. We've had the benefit of going through several of your more recent reports and thank you for those. Do you have an opening statement you wish to make?

DR GUTHRIE: I indicated, when I first contacted the commission, that I wouldn't be making a written submission but I provided to you this morning some notes and copies of a number of articles which I have published which I thought might be useful to the commission. I've tried to work through the terms of reference in those notes addressing some of the headings which the terms of reference has asked to be addressed. Perhaps if I could take you through the written notes I have provided.

PROF WOODS: Yes, that would be helpful. Thank you.

DR GUTHRIE: Some of these I have put more emphasis on than others, but in relation to the first matter which I discussed under the heading of Self-Insurance, I have provided now a copy of a paper which I wrote last year for the Worksafe conference which touches on these matters to some degree. My first comment is that self-insurance is generally a commendable practice although there are some flaws within the system. But the benefit of self-insurance seems to establish now that there is a greater responsiveness by employers to accident prevention and safety. The statistics that I've seen indicate that the costs of their workers compensation claims tend to be lower.

The negative side that appears from time to time is the unresponsiveness to rehabilitation in injury management, although again, on the other hand, there are indications that they have been very proactive in relation to injury management, accident prevention and rehabilitation processes.

PROF WOODS: Is that in part because there's actually a diversity of firms that are self-insurers and you can't therefore just draw a general conclusion about specific actions?

DR GUTHRIE: That would be one of the reasons. Also in my mind there is the issue that quite often with a self-insurer they will set up their own practices and procedures in relation to injury management which are, in a sense, far too close to the objectives of the employer in terms of its productivity and they don't separate themselves. For example, they will engage medical practitioners in-house and may unwittingly give the impression to workers that they can't see their own doctors, for example. So some of the practices that have been set up lack perspective, and I know the difficulties that rehabilitation providers have sometimes with self-insurers is that self-insurers do not generally like to have external rehabilitation providers and injury management processes take place and that sometimes, I think, can retard them. But generally, I think the statistics indicate that their performance has been fairly strong.

PROF WOODS: Yes. I'm aware of a number of self-insurers in remote localities that have engaged doctors on staff and that's understandable, although the worker obviously always retains the right to have their own GP attend their needs. It may occur less so in metropolitan areas.

DR GUTHRIE: The experience in WA unlike, for example, say, South Australia - where I think there are high numbers of self-insurers - is that we have in the past had about 20 and I think it's moving to about 25. The stimulus for that has been basically a rise in premiums or at least an inability of insurers to actually get the premiums to trend down for some employers. If you look at the statistics in WA at the moment, the overall premium rating is actually quite low and the profitability of insurers is quite high. But the delivery of low premiums hasn't actually been uniform and some employers have taken the route that they will now go down to looking at self-insurance, and I think the number of applications in WA has actually risen recently.

PROF WOODS: There is a self-selection process, isn't there?

DR GUTHRIE: Yes.

PROF WOODS: If they think that they can form it in-house at less than the premium and they meet the prudentials and the occ health and safety requirements, then - - -

DR GUTHRIE: Yes. But we are seeing in the past some of the larger employers who have been content to go with private insurance have actually moved over to

self-insurance. Yes, it is self-selecting because they have to go through the bonding process and satisfy the government they've got sufficient resources. Also I think, we have to be mindful of the fact that they're capable of actually doing all the things which are required. But in general I would support the process with the caveats that there needs to be perhaps sometimes some auditing of the processes of things like injury management and the processes by which referral to in-house doctors take place. Those are the weaknesses in the structures.

PROF WOODS: Is there also a concern that, by their very nature, small and medium businesses are not able to self-insure; they don't have the prudentials, they don't have the resources, they don't have the overheads? Therefore, if large well-managed organisations self-select out, then the residual pool becomes inherently more expensive for the remainder.

DR GUTHRIE: Yes. I've heard that argument often from private insurers who have a fear that if there are too many self-insurers then of course the pool dwindles and it's not sufficiently profitable for them.

PROF WOODS: And your view?

DR GUTHRIE: I don't know that that should be a motivation for running a compensation system. I think the threshold - - -

PROF WOODS: No, it may be a consequence of that action.

DR GUTHRIE: It might be, yes.

PROF WOODS: It need not necessarily be a motivator for retaining that.

DR GUTHRIE: Yes. If one of the main objectives is - and this is the thing I would urge most this morning - when I look through the terms of references, a lot of detail in relation to things like self-insurance, insurance cost shifting, benefit structures, et cetera, but for me the main story which comes out again and again, is the emphasis on injury management and return to work. It's interesting - and you would be aware, sir, of the Back on the Job report which came out last week or the week before, the thing which interests me is that the terms of reference of that inquiry, the first two, related to fraud in workers compensation and the committee was in fact unable to establish significant fraud by workers.

I think most people could have told the committee that fairly early on, and in fact they did. It's interesting that the title of the report is Back On The Job - that is, they concluded that really the key issue is returning people to work. That resolves many of the problems which we hear about consistently. I mean, it's trite really. If

you return people to work quickly then you reduce the duration of claims, the cost of claims, the harm which is done to people who stay out of the workforce and all those issues. So I think that is they point here.

PROF WOODS: One of two key points: the other is injury prevention in the first instance.

DR GUTHRIE: Sure, yes.

PROF WOODS: In particular, I'm interested in the feedback loops, because certain system designs can encourage feedback loops and I suspect the self-insurers do have that inherently in-built, whereas if you have third parties involved in the claims management process, some of that feedback loop may become a bit less direct.

DR GUTHRIE: I would agree with you.

PROF WOODS: If you could explore some of that for me, that would be helpful.

DR GUTHRIE: The WorkSafe paper, I'll call it, actually tries to flesh that out a little bit.

PROF WOODS: Excellent.

DR GUTHRIE: I'm not an economist, I'm a lawyer. I'm at a disadvantage in terms of talking about, you know, premium setting and those kinds of things. But the paper tries to obviously draw a link between safety performance and incentives for premium setting, so that those employers who do well with safety should be rewarded by a diminishing or discounted premium and I think again that's quite trite.

The mechanism for that is quite difficult and where we have done badly in Western Australia is that, because of the private insurance structure, private insurers have actually been unable to deliver a structure which actually has that - again, using the phrase - structured process; there isn't a requirement that insurers do this as a matter of course in Western Australia. The system here is that the rates for premiums are set by the Premium Rates Committee, which actually sets the maxima for premiums below which the insurers can discount.

The problems which Western Australia had throughout the 90s - and towards the late 90s became acute - were that notwithstanding the poor accident performance of some employers and the increase in costs for insurers, they continued to discount premiums to large employers but continued to demand the maximum payment from small and medium employers, and in fact impose impost on some of those to surcharge those. So in Western Australia I think we have some disadvantages which

don't appear in other jurisdictions.

One of the terms of reference is the question: what role do private insurers have in the system? That's a very difficult and threshold question for the commission. It seems to me that notwithstanding some of the problems in other states the onus is really on the private insurers to show their place in a compulsory compensation system. My experience is that time and time again the benefits of having a sole insurer, or at least an insurer which is the main manager being government-based, consistently come out. For example, they are able to put in place structures for incentive-based premium setting which generally private insurers have not been able to do and have resisted that. Clearly that's my experience in the last couple of years.

When I made this proposal in my report to government in 2001 it was decisively negatived by the insurers who said, "We simply cannot do it." Their argument, of course, is that they can discount to large employers because that's a negotiable premium situation, but if they give discounts to small employers that may diminish the pool of reserves available in the event of a claim which may be made, and a claim made in relation to the small employer may have catastrophic effects.

That's a cosmetically attractive argument if you consider that the pool should be broken down into big and small. My view in the paper which I put to the Worksafe conference was that, in fact, you should consider the pool at large - that is, they should be mixed together. Private insurers have tended to resist that but I would say that a sole government insurer is in a much better position to do that because it, in fact, has control of the whole pool. This is, I think, really the key question: what role to private insurers have in the management of claims, rather than the actual disbursement of the - I'm not expressing myself well there. I think that the collection of premiums should be done by government and a sole insurer. Private insurers, if they have a role, maybe in the management of some of those claims, and a disbursement of the benefits, but not necessarily taking a profit related to the premium pool which is currently what is happening.

PROF WOODS: So that they'd be on a fee - - -

DR GUTHRIE: Agency basis.

PROF WOODS: Yes, agency basis - - -

DR GUTHRIE: I think that is really the role.

PROF WOODS: - - - providing the claims management function.

DR GUTHRIE: That's right.

PROF WOODS: They may not be the only organisations capable of providing such a function.

DR GUTHRIE: No, in fact there may be government agencies that could do the same as well, I suppose.

PROF WOODS: Or other private agencies. All we're looking for is competence in claims management.

DR GUTHRIE: Exactly, That, I think, is a very important sideline to the issue of injury management. The two are an important sort of adjunct; if you in fact handle claims badly it of course affects the way that injury management is done.

PROF WOODS: Thank you.

DR GUTHRIE: Generally speaking, under the issue of self-insurance I do mention in the paper the question of mutuals because you asked, "What about the situation for small and medium employers who don't have the capacity to self-insure?"

PROF WOODS: Yes.

DR GUTHRIE: I think there is some scope for investigation into the issue of mutual insurance processes in the workers compensation field. We have to tread very carefully here because the issue of remaining solvent would be foremost in people's minds and some caution about how these mutuals could be put together - but they have been successful in the UK and the USA has a long history of mutuals operating in relation to seamen's compensation claims.

PROF WOODS: Are you also conversant with the Pharmacy Guild mutual arrangement in New South Wales?

DR GUTHRIE: No, I'm not.

PROF WOODS: So there's another example. Local governments, again in that jurisdiction, have pooled together under an organisation that provides mutual - - -

DR GUTHRIE: Yes. I think it's something which needs to be thought about and guidelines put in place.

PROF WOODS: Again, I can think of a number of industry sectors that are sufficiently cohesive, that would allow the roll-out of such a model through them, but

then you're always left with the residual.

DR GUTHRIE: Yes, that's right. There need to be proper entry and exit processes for participants in a mutual.

PROF WOODS: Yes.

DR GUTHRIE: But it's something which hasn't had much press. I think it needs ideas developing in this area.

PROF WOODS: Have you explored that also in the paper?

DR GUTHRIE: The paper addresses that to some extent. There are people more in tune with this than I who could speak longer on it.

PROF WOODS: Yes, we are pursuing others. I'm just curious as to your contribution. Thank you.

DR GUTHRIE: Under the heading of Occupational Health and Safety I think I've probably addressed that. In the last report I did for the West Australian government - I've given you the pages there, 201-214 - I touched on the issue of occupational health and safety performance.

PROF WOODS: I have read the executive summary of that document.

DR GUTHRIE: I would say the executive summary is somewhat misleading - - -

PROF WOODS: It's written by?

DR GUTHRIE: Yes, that's right. What I found was that people who read only the executive summary were at a bit of a disadvantage. I did explain myself, I think, a little bit better in the body of the report - at least I hope I did.

PROF WOODS: I will pursue further into the body of the report, but I thought I would at least start with - actually the front of the executive summary seemed to be written for a different audience for the first few pages; an explanatory piece.

DR GUTHRIE: Yes, But in part the reason for that is that the report, if you do look at it, is unfortunately pretty bulky and I didn't expect that many people would actually get around to reading most of it.

PROF WOODS: We will.

DR GUTHRIE: Hopefully there will be some things there of interest to you.

PROF WOODS: Thank you.

DR GUTHRIE: There's an issue of access and coverage which is raised in the terms of reference. This was actually addressed recently in the House of Representatives report and, if I understand their interpretation, they were concerned that there may not be sufficient coverage of contractors and a number of people actually missing out from coverage in the workers compensation arena. This is largely a function of the trend to contract out, which I think in part was what the previous speaker was talking about.

My view is that the West Australian model is actually quite adequate. I'm aware that there's quite a lot of criticism of that by the Chamber of Commerce in this state and I notice that Mrs Bellamy is coming later and will probably talk on that point. If I can perhaps anticipate a little bit of disagreement here, the argument is that our definition actually covers a range of contractors and that this is inappropriate because it should cover basically pay as you earn, employee-type people.

The problem with that, of course, is that it's actually anathema to occupational health and safety because what this report found is that those people who are involved in contracting out tend to have a higher rate of fatalities and injuries so that if they are not actually picked up by the workers compensation system, the statistics don't show what is actually happening to those people and they may in fact avoid discovery. That's notwithstanding that most occupational health and safety does cover contractors to some extent.

My point is that the current legislation in WA is a reasonably good match and the kinds of people we cover for workers compensation are covered in the occupational health and safety legislation.. I'm aware that gives some grief to some employers, in that they see they are covering people who are, in a sense, having the advantage of being a contractor and possibly taking a taxation advantage for that and that the principal contractor is having to cover them. There is a serious issue of double coverage where, under our legislation in section 175, it puts the principal at risk where a worker is injured in the employment of the contractor.

But I would say that, really, the emphasis is on maximum coverage and that a definition like ours in WA is actually quite workable. Some people have argued that it's technical but it actually has a long lineage and we've had probably 30 years of decisions which make it quite clear really what we're looking at when we're talking about the contractors who are covered. We're talking about people whose remuneration is substantially for their labour and skills, so that's a reasonably clear definition.

I would also argue, in terms of general coverage for the issue of disability, that Western Australia - and I think South Australian has a similar definition - the definitions for disability here are, again, quite workable. We've had a good lineage of decisions on what we mean by "injury by accident" and what we mean by "disease". The High Court has given us a lot of guidance on those things and it's probably foolhardy to start fiddling around with some of these things because we've got such a long history of decisions being made on them.

In Western Australia my view is - and having worked in the jurisdiction for quite a long time - that the definitions in terms of "disability" and "worker" are fairly sound. Other states vary and I'm aware of some pretty complicated definitions in, I think, Victoria and New South Wales and it might be that those states would benefit by having a look at what we've got here.

PROF WOODS: Putting aside the definition of "disability" - and coincidentally that happens to be, in part, subject of a parallel inquiry being by the Productivity Commission - going back to the definition of "worker," my task is to look at possible models for a national framework. There can be several approaches to this: one is that within each jurisdiction you would develop a definition that - for efficiency and coverage - applies across workers comp, occ health and safety, payroll tax, industrial relations. From the employer's perspective, they know who is in, who is out and what their obligations are. So that's one approach.

The other, putting on my national hat, is to have some coalescence of definition within, say, workers comp that applies across all states and territories and one definition for occ health and safety that applies, but that they may not necessarily therefore coalesce together. Do you have a view - not from a WA perspective, but as an academic of national standing - as to how to approach that issue?

DR GUTHRIE: I guess my first comment is "good luck". If you were looking at a definition which was transferable across jurisdictions, industrial, occupational health, workers comp, then the easy direction you could take is you simply confine that to employees and the generally understood contract of service kind of definition and that would give you a simple answer. You would, as a consequence then I think find considerable numbers of people who then were not covered for workers compensation when really they are dependent contractors, rather than independent contractors; that they don't really have control over the occupational health and safety in the place that they are working.

It might be to reduce a definition to that very convenient and workable approach would do a disservice to industry generally because by excluding those people from coverage and enforcement you would, in fact, probably create or lead to

the potential for lack of accident prevention and safety. The alternative and probably, at the end of the scale, is what currently exists in WA and mostly nationally - perhaps with the exclusion I think of the Northern Territory and Queensland where they have tended to go to the - if I understand recently Queensland - the "pay as you earn" definition in workers comp.

PROF WOODS: Northern Territory uses, "Do you have an ABN or not?" - which is an interesting approach.

DR GUTHRIE: Which it is; it's very pragmatic. But I think in principle it's wrong. The reason for that is, as I say, there are people who are apparently contractors for taxation purposes - and it may be they get certain advantages for that- but really don't have much control over their working environment and really should have legislation which protects them in that respect.

PROF WOODS: They may not necessarily be fully informed of the consequence of being told to go and get an ABN before they can start work.

DR GUTHRIE: Exactly. I think many people did in fact register and get ABNs at the time because there was a sense of compulsion to do so through the Taxation Department in that they may have feared that had they not got it, there may have been a penalty and they've ended up with ABN when really that wasn't really what was intended. I'm not helping you a great deal in terms of where to start, except that my general view is that it may in fact - and I mean no offence by this - but it may be misconceived to attempt to have that in place. Traditionally, of course - - -

PROF WOODS: Can we separate out occ health and safety from workers comp in this discussion? Maybe it's more likely to succeed in occupational health and safety in terms of developing a common national definition, but then in so doing you might lose the harmonisation with workers comp through each of the jurisdictions. Do you perceive there being different likelihoods across each, or do you treat the two as one?

DR GUTHRIE: One of the problems which occurs frequently, particularly in Western Australia, is the lack of communication between departments as to the data that they collect. Worksafe in WA, for example, is dependent upon the data collected by WorkCover, so the restriction in any data by WorkCover will affect the way that Worksafe interprets it and the way that it puts into place policy. If we were to take out coverage for contractors under WorkCover, then that would, it seems to me, affect the way that Worksafe does its business.

Our biggest problem at the moment is it hasn't been transmitted as a matter of course - the poor behaviour of employers in terms of insurance records. By that I mean private insurers in WA know who are the bad performers in terms of

occupational health because they have their accident records and they impose premium hikes on those people under the current system. That information is actually not given as a matter of course to Worksafe. It is a problem in this state that that data doesn't go through.

What I'm saying is that if you actually reduced the definition to the worker or contract of service basis, then you would again diminish the effectiveness of some of the occupational health departments. That's, I guess, the thesis of what I'm putting here: that in order to be effective, you do actually need to take account of employees and contractors. If you start diminishing definitions simply for convenience so the employer knows who is covered and who is not, you actually may be aborting the whole process.

PROF WOODS: That's a reasonable requirement though, as a first instance, to know who is covered in terms of what they're paying premium for, for whom they are responsible.

DR GUTHRIE: But, if you go back to the purpose of this legislation, the purpose is beneficial - in the case of workers compensation, it's beneficial to the worker, so the primary aim has got to be compensation for the worker and injury management. The purpose of occupational health and safety is for the safety of workers in the workplace.

PROF WOODS: To provide safe workplaces.

DR GUTHRIE: So if that is the threshold criteria, most of the legislation spells that out. Then of course you've got to take into account the issues that relate to an employer and the payment of premiums et cetera, et cetera and do the best you can in that respect. But that's not the primary aim of the legislation.

PROF WOODS: No, but it's a practical requirement.

DR GUTHRIE: Yes, and of course it's got to be something to be considered otherwise it becomes unworkable. I guess I am saying, and I'm probably anticipating disagreeing with Mrs Bellamy again, that the big issue is not so much employers working out who to cover; it's the fact that they have consistently - and this report substantiates it - understated the number of workers that they have. I don't say this of all employers of course; but when you're talking about detectable fraud, what we have been able to detect, or an insurer has been able to detect, is the understatement of employers of the number of workers that they've got and not actually accrediting those workers which they do have with the appropriate occupation in order to, of course, reduce their premium.

Some employers would say, "Well, that's a function of the fact of our premiums being too much," and my answer to that is, "That's exactly why you need a system which tailors in accident performance or safety with premium setting," and in Western Australia in particular, we haven't been able to do that.

PROF WOODS: Doesn't that also reinforce the appropriateness of having clear and unambiguous responsibility for coverage, so the behaviour of some employers - - -

DR GUTHRIE: I think it's a bit of a furphy, though, because the argument is put by CCI that the definition is rubbery and difficult to understand. It simply isn't. Quite clearly it says that you cover people under a contract of service, employees, and those under a contract for services where their remuneration is substantially manual labour and skills. The courts have told us time and time again what that means. It basically means a contractor who's in the situation where what they're supplying is substantially labour and skills - not equipment, tools and other labour. That's not a difficult thing for an employer to work out.

What I think the tendency is that employers seem to have thought that because of a government policy to contract out, this will save them money all round. It may save them money in terms of wages and conditions but time and time again they've had to bear in mind it doesn't save them in terms of occupational health and safety and it probably hasn't saved them in terms of workers compensation. I think the problem is, to a large extent, that a lot of employers were misled when the rush to contracting-out took place and that is the problem, not the issue of who to cover.

PROF WOODS: I'm sure CCI will be able to speak adequately on their own behalf.

DR GUTHRIE: I'm sure they'll disagree.

PROF WOODS: Could you, in some subsequent correspondence to us, give further thought to how we could progress a national framework on some of these key definitional issues?

DR GUTHRIE: I might be able to give you some assistance by suggesting that Andrew Stewart in South Australia - a well-known author in employment law - and I hope he will forgive me, I think it's Flinders University. Andrew wrote a paper for the Cole inquiry on the issue of definitions. That may in fact appear in the papers of the Cole inquiry. It may be of some assistance.

PROF WOODS: If so, we'll chase it through there. Otherwise we'll go direct to him.

DR GUTHRIE: That may be something that will give you a start.

PROF WOODS: Thank you very much.

DR GUTHRIE: There are some other matters.

PROF WOODS: Please proceed.

DR GUTHRIE: .Under the heading of Benefits Structures, I think this raises the issue of common law access. This is a matter of considerable concern in WA. I was asked to write in my report something which was consistent with the Labor Party directions statement on workers compensation.

PROF WOODS: But as an independent academic you wrote what you actually considered - - -

DR GUTHRIE: I attempted to put in place a system which would give broader access to common law. The government actually - - -

PROF WOODS: I noted that.

DR GUTHRIE: Yes. That was, in fact, government policy. I attempted to do that with some difficulty because the other requirement was that I also try not to increase costs.

PROF WOODS: Revenue neutral.

DR GUTHRIE: That's right. The corollary of opening common law, of course, is the tendency to increase costs. I think the best way to put it is that I still think there is a place for common law access. I know there's a tendency in a lot of political statements about abolishing it. I think the reason why there's been a lot of resistance for this generally, certainly amongst workers and their representatives, is that there's a distrust of government in taking away common law access and not actually granting back adequate compensation and the tendency to diminish both I think is the concern for most people. In Western Australia at least some effort has been made where common law - I'm saying by the current government at least, because I don't think it was true of the last government - is that some effort is being made that if common law is to remain that the statutory system is to be increased - and benefits available to that are actually being expanded at the moment if legislation goes through to that effect.

So my point about common law is that there is certainly a place for it. I've said

in my brief statement to you I don't think it should be abolished unless there is a satisfactory scheme which deals with long-term severely disabled workers and I think that's the key. It may be that a structured statutory compensation system can do that. I'm somewhat sceptical of that, given that most political statements in relation to compensation tend to be with an eye to the budget and reduction of costs and I'm not at all hopeful that if common law was abolished we would have a sufficiently generous scheme which would adequately pick up people who have long-term disabilities.

So I guess it's slightly non-academic in the sense that it's more a political statement, that there is still a role for common law. I don't agree with those people who say that it's a deterrent factor. I don't think the evidence actually supports that common law is a deterrent to employers. I actually think that employers are more deterred by the fact that their premiums increase by reason of the fluctuations in the statutory scheme. So I don't go with that argument, but I do say that it's a reasonable system of compensating severely injured workers.

PROF WOODS: You do talk there about, "unless there is an alternate statutory based scheme for the long-term disabled".

DR GUTHRIE: Yes.

PROF WOODS: I didn't identify any suggestion of such a scheme arrangement in the documents of yours that I've read to date.

DR GUTHRIE: No.

PROF WOODS: Have you written any further on that?

DR GUTHRIE: I wasn't asked to give thought to that.

PROF WOODS: I'm asking you now.

DR GUTHRIE: I don't mean any disrespect, but one of the issues which the terms of reference to this inquiry limit the debate, it seems to me, is that you've been asked to report on a national framework and I think you're at a disadvantage because the terms of reference, it seems to me, don't actually require you to consider a national system, which I think is different. That's something which Woodhouse J actually addressed in 1974-75.

PROF WOODS: Have you read previous Productivity Commission reports?

DR GUTHRIE: I read the 1994 report and as I understand that report, really what

it was saying is to continue the placement of the state systems but to actually create an additional body.

PROF WOODS: An alternate national - - -

DR GUTHRIE: An alternate national system. I think that was a valiant attempt because it was certainly looking at the inconsistencies and the problems of inconsistencies amongst the state systems. No-one is going to deny that those exist. The questions that you're asking in the discussion paper are, "Are these things a problem?" and, "Do they cost more?" and the answer to those probably is, "Yes, they must do." Just to briefly touch on that, any employer who is nationally based would probably have to employ a compensation officer in each state, simply to be able to comprehend the problems of the legislation and probably an occupational safety person in each state. Simply, if you say that that's an increased cost, it must be, on that basis; but there, there would be a whole lot of other reasons why there would be increased costs.

PROF WOODS: If I can just also comment that although our terms of reference deal with national frameworks, a student of Productivity Commission reports would note that that doesn't prevent us from looking over the fence to understand the context in which we report on our terms of reference.

DR GUTHRIE: I'm very pleased that you take that view because it seems to me that needs to be part of the debate. There are certainly constitutional advantages in a federal government having a national system. It's probably more readily available constitutionally to implement a national system and in effect abolish the state systems and put in place one consistent system. That comes back to your question which was: am I aware of any common law system which has been overtaken by a national structure? That's really what Woodhouse J was looking at .

The issue for Commonwealth compensation statutory systems, is how long do payments go on for and what are the mechanisms to actually accommodate long-term injured people? These are the real cost-sensitive areas. In most compensation systems, I'm sure that the WorkCover CEOs around the country will tell you that they adequately deal with 90 per cent of the people and they get them back to work fairly quickly and it's the 10 per cent toe which causes the distress. That, I think, is really the issue. If you abolish common law then you must have reasonable continuing access to weekly payments over an extended period for those people with severe disablement and accept the fact that some people will never come off the compensation system if in fact you do abolish common law. There will be those who in a sense require a lifetime pension payment.

But if you do consider that, then it seems to me you've also got to consider the

potential for lump sum payments to be made within that structure. Occasionally people will attempt to redeem or seek to redeem the payment and they may be better off with a lump sum, provided it's properly managed.

PROF WOODS: Redemption does have a potential role to play. There's also the question of longer-term cost shift between the state workers compensation schemes and the federal government's general social security net.

DR GUTHRIE: Yes. I've put that under my next heading. I realise that's been a concern over, say, the last decade.

PROF WOODS: Before we get to that one, though, can I just raise a slightly broader point that you might want to reflect on. I'm conscious that a single national system may have a number of efficiencies but there is also the question of whether it loses some of the potential for dynamic efficiency, whereas under some form of creative federalism, where states learn from each other and progressively pursue best practice, you may not have one system but you may have over time a collection of systems that are more efficient, more effective, more equitable than a single system that doesn't have that element of dynamic efficiency to it. What we need to then understand is: what is the cost of that? So if the cost of having a range of aligned state and territory systems is not significantly greater than a single national system, then maybe dynamic efficiency comes into the equation. Do you have any view on that?

DR GUTHRIE: I've heard the comment before that you've just made.

PROF WOODS: You mean it wasn't original?

DR GUTHRIE: I'm sorry to say it, but I did hear it in Sydney earlier this year by, I think, one of your colleagues.

PROF WOODS: Surprise, surprise.

DR GUTHRIE: In a sense what's being said is that because we've got a number of state systems, that allows us to make errors that we can learn from. In fact, I think that history has shown us that if you look at workers comp across Australia, it's probably the last 20 years when it's been the most dynamic. Certainly, at the beginning of the 80s - change of governments in a lot of states in the mid-80s meant that there were some fairly significant changes. In Victoria, I can think of the Cooney report and there are other things; there were very big changes. I'm not sure that we've learnt a great deal from them.

It seems to me that we certainly - again, the WorkCover CEOs will tell you that

they look at each other's systems all the time and they cut and paste, to some degree, from each other. There is a level of consistency in relation to some provisions. For example, the stress claims provisions are generally onerous across Australia consistently. What tends to happen is the cost-cutting provisions tend to be picked up and worked with across the states, so that where there's been shown to be a benefit in cost cutting - and I think a lot of the other systems are looking at WA at the moment, because in a sense we are the most frugal system in Australia and they're looking closely at why that's so.

The short answer to that is that common law is working incredibly effectively against workers at the moment. There's simply virtually no access to it, because of the structures in place. It's hard to say whether that's intentional or not, but I'm trying to come back to your question by saying I'm not actually convinced by the argument that we should allow the states to have the potential to legislate, because in a sense it's trying to herd cats and that's what you're trying to do at the moment. If, in fact, you retain a national framework structure where you allow the states - it may be that you put in place consistency for a period of time, but how long does that last if the states have the ability to legislate differently for the future?

What I would say is that if you consider a national system, it might be that one of the things - which I don't think Woodhouse J considered - was the place of private insurers in a national system - that is, as claims managers. It may be that allowing them to be claims managers within a national structure, maintained in a sense with the government as being accountable for the premium collection, you would allow the insurers working as claims management people to bring those efficiencies to the fore. I suppose, where Woodhouse J was very strong on saying, "This is not a situation where private insurers should be included, it's a government thing, it's a compulsory structure," it might be that time shows that there is a place for private insurers, but in an agency role and that might fit into the national system. I would feel personally more comfortable with that rather than the national framework idea, but that's a personal view.

PROF WOODS: Thank you. Your views are noted.

DR GUTHRIE: I was moving onto cost sharing and cost shifting. I made some observations in my own report that one of the interesting things that has developed in WA is there's been quite a bit of cost shifting from, in fact, the insurers to the employers. This is generally because our state system requires that compensation be reduced after four weeks and thereafter, it's basically paid at about 85 per cent. What happens in a lot of large private employers, particularly the mining industry, is they simply ignore that statutory provision and they continue to pay at the full rate. In government departments, people do not take compensation and they go on sick leave, because they may have accrued sufficient sick leave to get them through a

medium-term disability.

The effect of that, of course, is that the employer continues to pay at the full rate and is subsidising the insurer by 15 per cent. I'm not sure that there's a lot that can be done about that. That is, I think, a view which a lot of employers have taken as a pragmatic one - that they may, in fact, achieve more by paying the full compensation rate. It doesn't generate the resentment that might take place for some people who have had their pay reduced. It might be, counter-intuitively, an incentive for people to return to work, because it maintains a good working relationship.

PROF WOODS: Do you have a view on step-downs as an incentive mechanism?

DR GUTHRIE: I think in the report we did for the government in 1999, the step-downs first crept into the West Australian system, in a sense. Historically, Western Australia has always had a step-down, because compensation was paid at the award rates, so people would immediately lose pay. I have mixed feelings about step-downs, because I'm not convinced the arguments that you should reduce a person's pay as an incentive to get them back to work are very sound. If a person has cost of living expenses, it seems to me an unnecessary hardship for step-downs. I'm just not sure the arguments are there.

PROF WOODS: As a matter of logic or empirically or - - -

DR GUTHRIE: I must say I've felt some sympathy for them as, in a sense, it's a mechanism sometimes to try to shift people from a particular state of mind, in the sense that I'm sure some people have thought, "Well, I'm not going to stay off after four weeks, because my compensation will drop me down to 85 per cent." That's a terribly cynical view to take, and I'd be concerned that that would actually spread throughout a system, because I think that's what the step-downs are, in a sense, based on. There's a level of cynicism that if you start to reduce people's pay, then they will think hard about going back to work. I guess my feeling about them is that I'm not sure that they work and I would much rather put a more positive emphasis on injury management. That's how you get people back to work - actually working hard on getting them back rather than forcing them back.

The other issue which is constantly raised about cost shifting is actually from state to federal. I think that's probably at a minimum because of the preclusion period arrangements with social security. Most people who are paid lump sums in Western Australia are precluded from social security payments, so the cost shifting, in fact, I think is these days minimal.

PROF WOODS: You're talking about WA specifically?

DR GUTHRIE: I know some states have different arrangements. I think it's Victoria that actually originally almost encouraged people to go into the federal system. From Perth in Western Australia, I don't think it's a major issue any more. It had been in the past, but the preclusion period has really cleaned that up.

Under the heading Early Intervention - there are people in this room who would be able to speak more on this than myself. I attempted to address it in my report because I thought the other issue for me was - apart from the fact of putting an emphasis on returning people back to work - that what was really paramount was to have an integrated system of compensation. There's got to be an understanding, whenever you interfere with a person's payments, that affects whether or not they return to work. How you manage a dispute in a compensation system affects the duration of a claim and all these things are tied in together.

Unfortunately, when compensation claims and systems are reviewed, there's a tendency to look at one aspect. We've done this in Western Australia. We looked at rehabilitation, we looked at dispute resolution and my report two years ago actually tried to look at as many aspects and tie them together as I could. My call there is that early intervention is part of an integrated system. It shouldn't stand aside from it. I've written a paper on the dismissal of workers under return-to-work provisions, because I think that's an important part of it. I just draw your attention to that. I realise I'm taking up your time.

PROF WOODS: No, that's all right. I'm interested. I wouldn't keep you here if I wasn't getting value.

DR GUTHRIE: The dismissal paper was actually published to draw people's attention to the fact that we've got provisions in Western Australia which say that a worker's position should be held open for 12 months and the employer who doesn't keep the position open, in fact, is subject to a penalty. There's not been one prosecution in Western Australia. Those provisions are generally lame. There's been much better performance in South Australia, where they've actually got officers within WorkCover who enforce those provisions. New South Wales has got industrial relations provisions which actually allow a worker to go to the commission and seek reinstatement if they've been dismissed. I think Queensland also have got provisions which much better tie these things together.

My recommendation to the West Australian government is we look much more seriously at the return-to-work provisions. If a worker is dismissed within 12 months, they should have clear access to a right to reinstatement and there should be a civil right to seek a return-to-work order, in effect, or reinstatement. Currently, we've got a problem in that people have to go to the Industrial Commission and the Industrial Commission have difficulty in making orders for reinstatement in these

circumstances. The paper tries to address that in detail.

PROF WOODS: Thank you. I'll pursue that. When you were referring to early intervention, you mentioned two things in particular in your initial comments: one was dispute resolution, but the other was rehabilitation. I notice that you're about to go onto dispute resolution, but before you do if you could clarify for me your views on rehabilitation. I refer to your paper to the Minister for Labour Relations of 30 June 2000, which talks about the tendency of review officers to refer matters to rehab as a matter of course, leading to delay in finalisation of the matter.

DR GUTHRIE: Sorry, which paper is that?

PROF WOODS: It's by Mr Desmond Pearson, McCarthy and Guthrie.

DR GUTHRIE: And myself, yes. Okay, that's the review report - - -

PROF WOODS: Indeed.

DR GUTHRIE: - - - of 1999, I think.

PROF WOODS: Yes, it has got a published date of - that's when we accessed it. The other one is the more recent review you did for the current government, where you talk about, "Better practice in injury management is a key to the reduction in the use of rehabilitation as a claims management tool," and greater focus on maintenance. A bit later on, though, within the same document you refer - on page 20 - "Regulations for injury management should assert the pre-eminence of rehab providers as the injury management professionals."

DR GUTHRIE: I got into trouble for that.

PROF WOODS: I can't quite follow where you stand.

DR GUTHRIE: Okay. There are, in fact, two or three distinct processes which those recommendations and comments are applying to. In relation to the 1999 report - and I think the first paragraph you quoted - my reference there to rehabilitation as a claims management tool was basically a reference to the behaviour of employers and insurers in using rehabilitation as a mechanism by which they could get a worker assessed, not with the intention necessarily of returning them to work, but actually to get their pay diminished or reduced, and quite often we've seen - - -

PROF WOODS: Why wouldn't an employer who has invested in the training and development of a worker actually want them fit and well and returning to work, particularly given that that then has collateral positives for other workers in the

environment who see that the employer is a good employer who treats their workers well, et cetera?

DR GUTHRIE: I don't think there's any answer to that, except I can't imagine that an employer wouldn't want that to take place.

PROF WOODS: Good.

DR GUTHRIE: I would hope that they would, but I think that if you look at the realities of workers compensation, once a claim is made the matter and the control of it is basically transferred to the insurer in most cases.

PROF WOODS: That's when we bring in the third party - - -

DR GUTHRIE: That's right.

PROF WOODS: - - - intervening in the process. That's important.

DR GUTHRIE: Exactly, and I'm aware I've been making a number of adverse comments about insurers this morning, but one of the difficulties which comes through being, if you like, a third party is that the relationship between the employer and the worker is quite often diminished or broken down by the time it gets to the insurer.

PROF WOODS: And the employer can say, "I've paid my premiums."

DR GUTHRIE: And lets it go.

PROF WOODS: "This is somebody else's problem."

DR GUTHRIE: That's right. This, again, gets back to my point about responsibility in self-insurance and mutual, where you've got that tagged down, I suppose. Frequently it's been the case - at least in the past, but I think the practices have improved recently and I know a number of insurers have tried to diminish this process, but very early on and certainly, I think, up until a few years ago, insurers with a long-term compensation claim, in a sense, through a level of frustration would refer people to a rehabilitation person - specialist professional - with the intention not necessarily of actually making sure that the work trial was successful or returning the person to work, given that in many instances the employment relationship has actually ceased. With a long-term claim, quite often the employer has dismissed the worker because it's outside 12 months, for example, or the employee has simply resigned or they were a casual employee and, in fact, they didn't have a job to go back to.

In those circumstances, the insurer takes over and the use of rehabilitation is often as a tool of claims management to get a report which says, "This person is capable of returning to work," much in the way that some medical reports are used. That was a concern in 1999. One of the reasons for saying that in 1999 was that, at the time we were writing, redemptions were not then available. This meant a huge problem with long-duration claims and there was a tendency not only for insurers to use rehabilitation as a tool for claims management - once a worker is on a full-time rehabilitation program, their payments continue at the full rate. That's a benefit to the worker.

That mechanism was often used by the review officers and worker's solicitor to actually keep the worker on full payments. Where a claim might come to a review officer in its preliminary stages, it might be that, if there was some difficulty in resolving it, a report would be sought for rehabilitation purposes. A week could go past and then it would come back to the review officer and this would, of course, increase the duration of claims. That was really the concern that we had when I was working with Des Pearson and Brendon McCarthy. It was the potential for rehabilitation to increase the duration of claims in that circumstance.

Redemptions have since been reintroduced in Western Australia and that, I think, has had a good effect in terms of diminishing some long-duration claims. My comments in the current report, if you like - 2001 - I used the word "pre-eminent" there and, as I say, I got into trouble for that. Many people, I think, interpreted that to mean that the controlling person in relation to injury management should be the rehabilitation provider.

PROF WOODS: It was read by me in that way.

DR GUTHRIE: Yes and, in a sense, I have to rationalise the use of that word now, because what I intended was that it should be one of the foremost roles of a workers compensation system to return a person to work and that it shouldn't be a sideline. One of the recommendations you'll notice that I've made is that, in fact, the name of the act in Western Australia be changed to reflect a change in emphasis. That was really the consideration there. I'm repeating that now and saying I think that's a really important issue for any compensation scheme - is to have, as a pre-eminent concept, if you like, the idea of return to work.

Unfortunately, the way it was expressed suggested to some people that injury management professionals would have control of the process to the exclusion of others and that was not the intention.

PROF WOODS: Thank you for clarifying that.

DR GUTHRIE: Finally, if I - - -

PROF WOODS: Dispute resolution?

DR GUTHRIE: Dispute resolution is something which I've actually had the opportunity to talk about on a number of occasions. My first report to government in 1991 in Western Australia was about dispute resolution in compensation claims. I wrote at length about it in the Pearson report in 1999. That was my major contribution to the report. Again, in 2001, the main theme in Western Australia and in Victoria and some other states is that basically workers and employers and insurers were unable to have legal representation at the early stages of compensation claims, conciliation and, in most cases, review.

There was a cosmetically attractive reason for doing that in that it was thought that if you take out lawyers from the compensation system you will thereby reduce costs, and that has actually been shown to be basically a fallacy, because what we've learnt is that, firstly, many people are unable to represent themselves adequately in a very complex system. That means that the claims actually take longer and the conciliation review people actually take longer to deal with those claims because they have to explain to people what's happening. Often they have to come back to many preliminary hearings to actually deal with the complex issues. People do not stop seeking legal advice. They still go to legal practitioners because they need the help.

What happened in WA was that the insurers who couldn't be legally represented would get briefing papers from their solicitors. They would come down with written statements that they could read at conciliation and review and they were quite often at a significant advantage to those workers in the system who didn't have, at first instance, that legal advice. It was simply unfair and it didn't meet any of the criteria that the government basically set it when it abolished legal representation in 1993. It wasn't cheaper, it wasn't quicker and it wasn't fair or effective, and that has been shown over the last decade. The reports I've done I think fairly conclusively prove it.

The issue about legal representation is fraught with problems because of course there are image issues for legal practitioners as to whether or not they're going to profit from a system; whether in fact they are, I suppose, synonymous with delay. The way I have addressed that in the last report is to say workers and employers and insurers are entitled to legal representation, but that there should be very strict guidelines on the time limits placed to actually achieve certain tasks in the compensation system. If those tasks are not completed within time there should be financial penalties which can be sheeted home to their legal practitioners and that any

costs which are available to legal practitioners in the system should be subject to a very rigid scale and that legal practitioners shouldn't be able to exploit and contract out of a system. In other words, the government would set the amount of payments which were due. It wouldn't be a system where a solicitor could go to the worker and say, "I've got you this much. I want a portion of that," or "I want a bit more than the insurers have paid me." It would be what was court ordered and no more.

So my way of dealing with delay and cost was to tie those down with very strict structures and I think that's really the key to this. I guess what I'm urging upon this commission is that it's cosmetically attractive to say, "Compensation systems are simple. It's all about making an application and if you have got the right review officers, everything will work out fine," and we know that's simply not the case.

PROF WOODS: I don't think we will be quite drawing that conclusion, Dr Guthrie. Thank you.

DR GUTHRIE: No. I perhaps do you a disservice, but in fact it has been consistently stated. I think it's one of those myths that needed to be debunked and the paper I've given you I hope satisfactorily does that.

PROF WOODS: Thank you. As a student in this area, have you been following the progress of the New South Wales Workers Compensation Commission and its dispute resolution model?

DR GUTHRIE: To some degree.

PROF WOODS: Do you have any views on that?

DR GUTHRIE: I've spoken briefly to Sheehan J. I think there are some really interesting features of that system. Of course they have a system of almost automatic payments where really the onus is on the employer-insurer to show that payments shouldn't be made, as I understand it correctly. I think that's quite an interesting concept. I would really like to reserve judgment. I think they have only been going for a very short period and I would like to know more, but I think there are some features of the way in which the applications are filed and the requirements to proceed and those processes are actually quite interesting.

PROF WOODS: Even if it's from a point of view of design as distinct from experience, any views that you had on that we would welcome at some later date.

DR GUTHRIE: Yes, thank you for that. The issues of design are very, very important in dispute resolution systems. If we get it wrong with dispute resolution, we often get it wrong with injury management and duration of claims and Western

Australia I think sadly has learnt that lesson. Where dispute resolution doesn't occur quickly, we get the kind of instance - and I don't do Mr Winzer any injustice; he is clearly - and I don't know the background to his claim very well - but he clearly was caught up in a stress-related claim which must have taken a very long time. I did make some recommendations in my report of 2001 on that, not with his claim in mind because I wasn't aware of it. One of the difficulties with stress claims of course is the number of witnesses that are brought into the claim and the number of doctors. My report recommends a limitation on the number of medical reports and a means of dealing with excessive numbers of witnesses, too. Sometimes fine detail is really important in dispute resolution.

PROF WOODS: Thank you. Do you have any concluding comments or matters that we haven't covered that you wish to draw to the attention of the inquiry? I remind you that you can, of course, put in supplementary submissions. I look forward to your further deliberations on those.

DR GUTHRIE: Thanks very much for the opportunity. No, I think I've probably said more than enough. I know there are other people here and thank you for the opportunity.

PROF WOODS: It was particularly helpful and, as I say, we had read certain parts of your documents, although you've now put caveats on those, so we will investigate further into the detail.

DR GUTHRIE: If you can, from WorkCover, get hold of the full document, there are four discussion papers in it which try to flesh out some of the issues that might be of some value.

PROF WOODS: Thank you, Dr Guthrie.

PROF WOODS: Can I call the next participant, Mr Patrick Gilroy. Mr Gilroy, our apologies for holding you up. We're never quite sure as to how things will pan out, and we did start a little late due to some mechanical failures, so apologies for that. Could you please for the record state your name and the position that you hold.

MR GILROY: Patrick Bernard Gilroy. I'm the chief executive officer of the Mining and Resource Contractors Safety and Training Association known as MARCSTA.

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

MR GILROY: No, I don't think, other than to say that my comments will be on more the broader scale and what I would see for me as relatively easier issues but with more emphasis perhaps on the balance between the two systems.

PROF WOODS: Could I clarify, are you talking on behalf of the association nationally or on behalf of the Western Australian - - -

MR GILROY: The association is only a Western Australian body.

PROF WOODS: Okay, so you're drawing on Western Australian experience. But could I take it from the comments that you will make that it could apply more broadly across these industries across Australia?

MR GILROY: Yes.

PROF WOODS: Thank you very much. Please proceed.

MR GILROY: Maybe my approach will touch on a couple of things that aren't quite in sequence with perhaps as the issues paper reads. So I've taken the OHS model, looking at the OHS model to start with and the proposals for the national model. Having been involved in this area for 20 years it's easy for me to look back and see what has been attempted in national models and how they have and haven't worked over that particular time and get a better appreciation of perhaps what is possible and not possible. I should point out, I'm a member of the state Worksafe Commission and have been for 16 years.

PROF WOODS: Thank you very much. That's a useful experience we can draw upon.

MR GILROY: It is, particularly looking at the WA versus national systems also.

PROF WOODS: Yes.

MR GILROY: History has really shown that the national system, as attempted back in the 80s, hasn't really functioned and from my point of view as a member - - -

PROF WOODS: Are you talking about the National Occupational Health and Safety Commission?

MR GILROY: Yes, the National Occupational Commission, because really there has never been a commitment by the states individually to give away much in the way of powers anyway.

PROF WOODS: Does the national strategy recently published by all state, territory and Commonwealth ministers reflect some change in that or not really?

MR GILROY: Not really. I think if you look back and saw what was attempted to be done 15 or 20 years ago, not much has changed in the weather. The strategy document, which now goes out to 2012, as you know, and has been signed off by the ministers, one can conclude that that's likely to be the way it will go to 2012 - perhaps. But the strategy in that are generally broad and I know, from a commission point of view here, we don't really have a problem with them, though when you - - -

PROF WOODS: Is that because they are so broad that every state can find that they are complying with them broadly?

MR GILROY: Not just that. It's just that what they might sign over to work together to achieve at that level doesn't necessarily transmit into activity at the state level - to wit the national plant standard which was established some time ago still hasn't been adopted through the states. I think it's a guideline in Queensland and maybe a code in New South Wales, but one of the tasks they have got are codes of practice guidance notes. Getting those up doesn't necessarily mean they're going to transmit at the state level.

The state commission does not automatically take on an agreement to take on national status. It may not agree with them, and they may be agreed at a different level and by different people so I don't think much will change. I think that the national strategy will be there - how well or how unwell it works will really still depend upon the negotiators at the federal level, the people that represent the states at the federal level. I still see the states operating independently within their own occupational safety and health regimes and I really don't see there is much likelihood of a change from the direction it has been.

PROF WOODS: Is that the conclusion you would draw in relation to workers

compensation as well or even more so?

MR GILROY: Absolutely not. No, I would prefer to treat them as separate models if I could.

PROF WOODS: Thank you.

MR GILROY: If you look at any of these national based models - and I don't think the traffic and the other one given in the paper are necessarily excellent examples of how national standards work or assistance work - I think the ANTA model for training is a more useful one to look at. Of course the advantage there is that the federal government has the money, so you toe the line, but that ANTA model in terms of consistency and uniformity throughout the states - there's no question I don't think that that's going to work from a training point of view and that's an excellent example of what you need to do, I suppose, to be able to get it to work across the country. I believe it will work. It will take a little time but it will work. It's an excellent model for cooperation.

PROF WOODS: Thank you for drawing that to our attention and from a past life I'm familiar with the model, so we will look at it more closely.

MR GILROY: It's worth a look. It has surprised me. I may be a little doubtful about its capacity to achieve its objectives but I think it has got a shot. I really do. The regulatory burden question, I see comes through the discussion paper quite a lot. There's an accent on major employers in different states and extra costs and I don't really see it as that bad. I don't think it warrants that height of consideration in terms of decision-making. I don't see any evidence of those sorts of costs being put up to warrant that being given the priority it was. The regulatory burden: I take a different view of the regulatory burden from an occupational health and safety point of view.

PROF WOODS: You're going off record by coming around but - thank you. If you could then resume and continue your comments. I've received a document, WA Mining Industry Average Industry Premium Rate 1984 to 2002.

MR GILROY: That's an indication of what the consequence of occupational health and safety legislation was from the time of about 83 and an industry that picked up the requirements of occupational health and safety moved from an average premium in 84 of about 11 per cent to an average premium rate today of about two point something. The benefits, not the costs imposed - the actual benefits of adopting the correct practices and models are huge; in the range, I would estimate, of at least $200 million a year for the industry here in WA.

PROF WOODS: Can we tease out the various factors contributing to such a decline. Presumably it was always obvious to mining companies that if you could pay 2 per cent premium rather than 12 per cent premium your profit would look better. That's not a new revelation.

MR GILROY: I'm not sure about that.

PROF WOODS: It strikes me as blindingly obvious, but - - -

MR GILROY: I can tell you that just a few years before it, the rate was about 20 per cent - before occupational health and safety came along - and there was no concerted effort to reduce that on those grounds.

PROF WOODS: But to what extent is it a feature of legislative change, of cultural change by employers, of more sophisticated rehabilitation techniques, of improved work practices? What can you tease out and, from your experience, draw to my attention?

MR GILROY: The critical factor is continual improvement in your safety performance. We wouldn't really be arguing about workers comp or national models if we had employers operating at the correct level in terms of OH and S. So in that industry, which I was involved with - I was for 20 years the deputy chief executive and had industry responsibility for occupational health and safety - we worked our butts off to change the culture and the very way the industry operated, and that was achieved in a continual downturn. I just leave it for you as an example of what good occupational health and safety practice can achieve in its own right. One of those industries - the nickel industry - operates at 1 per cent. It's 12 per cent for bricklayers and 11 per cent if you process chicken.

PROF WOODS: But is that in part because of the ongoing capital-intensive nature of the industry and so you have (a) less workers, but (b) that what they do is in a safer environment? I mean, when you're plucking chickens, you're plucking chickens.

MR GILROY: One could argue that if you had seen a decline in the workforce as a consequence of increased technology. No, the workforce has stayed constant. Certainly the mechanisation would be a factor in terms of underground environment in particular, but even before today's technology came along, that decline in performance was coming. I don't want to prolong it. All I'm saying to you is that good occupational health and safety is intrinsically tied to workers compensation and you can't have one without the other, and tragically that's what we have in a lot of places today.

PROF WOODS: This is worth pursuing a little bit further, because if you were able to replicate that in some other industries, we would see dramatic improvement. So I am quite interested in understanding what are the incentives, what are the system characteristics that have produced these results in these industries with a view to how they could be replicated elsewhere.

MR GILROY: This is not the only reason - there are a lot of reasons - but one major reason is the introduction of health and safety representatives. The mining industry is the only industry to have fully put that system into place; that's the Roben system of using health and safety reps and consultation. It is the only industry to do it. If you look at the number of health and safety reps trained in Western Australia today, you will find that two-thirds of them work in the mining industry, which only employs 40,000 people. We're still training at the same level as we were 15 years ago, so the commitment to have more people skilled to look after safety in the workplace and involved in the process - the mining industry is the only industry of the major sectors which has done that. That's one factor.

It has also probably employed more professionals, it's had more commitment at the senior level, and the key factor is it's had an industry-driven approach. If there's a shortfall today in safety and improving safety, it's that there are very few industries, as industries, to take up that approach. They don't and haven't done it. Maybe they will. But you'd not find another one. For instance, you wouldn't find the agricultural industry had a concerted approach to improving its performance, which is not very good. So there are a number of factors, but commitment to the principles of the legislation and putting it into practice in the workplace are critical.

PROF WOODS: Thank you.

MR GILROY: I'd just like to make the point: at an industry level, it is really critical. My view is that every industry in Western Australia could be performing at or better than that level if they approached the problem as an industry and worked towards it. It's lacking. Benefit structures, if I can - is that okay?

PROF WOODS: Thank you.

MR GILROY: I'll come back to the workers comp model a bit later as a model, but I've tried to take the issues in some logical sequence with the paper.

PROF WOODS: Yes, I'm happy with that.

MR GILROY: Benefit structures, as always, are largely dependent upon the political colour of the government. The influence of the legal profession is very important; whether you've got travel included or excluded; and the common law

factors are all key. The need for a constant benefit structure across Australia in all the systems is critical to any real improvement. If we can't get consistency in benefit structures, we're just flying a kite. Once again, it's one of those issues where you need an enormous amount of commitment at the state level to reach that. The attitude I find is that it's just too hard. The answer is, "It's too hard to do. It'll take too long. We'll never get agreement." That, to me, doesn't mean a thing. If it's worth doing, it's possible to do it, and we need a consistent benefit structure across Australia that applies all the way across.

PROF WOODS: What are your views on the likelihood of the states and territories working cooperatively to achieve that in the short term?

MR GILROY: I honestly think it's no more than a commitment by the right people for the right reason. Often the right people aren't involved and there's not a commitment to do it. You can toss it around and not treat it as a priority, but it's one of the features of workers compensation where there's no justification for us having different benefit structures - none at all. It's unfair, it's unequitable, it's stupid, and we're constantly changing the levels of it and messing with it for economic reasons. Not good enough.

Cost sharing and cost shifting: the changing nature of the workforce, I note - but I didn't want to get too much into that debate, but once again I have been involved, looking at most of the systems over the years, and the Queensland one, where in my time they write a cheque out for the medical expenses to the health side of the system, and there's been a lot of debate about transferring costs to the social service system, moving people out and into one and moving it across. Once again it's glaringly obvious that unless there's some consistency about this, we're just going to get nowhere. If the states don't agree benefits, where it ends, and it's not consistent across the country, it will still be much the same as it was if there's no commitment to do it.

I keep pushing these issues because my real commitment is to occupational health, and I see the linkage between the two as absolutely critical. If you don't link and see the link between the two of them, then you miss the boat, and that particularly comes about - I'll talk a little later on about where funding comes for occupational health and safety. If you look at our state budget, there's very little money available for occupational health and safety. It gets cut, there's no money to spend, you can't do anything, there's no money to do initiatives; you can do what you can with what you've got. So I'll come back to that.

PROF WOODS: If you were prioritising where you would spend money in this area, would it be on fundamental research or would it be on education of businesses in improvements in - - -

MR GILROY: It would probably be on a whole range of things, but including both of those, certainly.

PROF WOODS: Thank you.

MR GILROY: Premium setting has always been a pet problem with me. I've recently had reason, through the Worksafe system, to draw some comparisons or look at how difficult it is to make headway with premium setting when premium setting is done the way it is. In WA it's done by a committee. The actuary gets in all the costs of premiums plus costs of administration, income from investments, et cetera, and comes up with recommended figures at the end which are usually adopted - and I note the South Australian actuary got fired last week.

My concern with that structure - and I've made it quite evident - is that a lot of the premium structure setting is based on insurance estimates; that's outstanding claim estimates, which do not get audited to any extent. In other words, whether they're correct or not, or around about, or over or under, is questionable. So what you notice is that there's an enormous amount of money in estimates of claims even from three years ago; unpaid yet; only 50 per cent paid out three years ago - that sort of figure.

I'm not going to get into what I don't know, but the industry that I've been looking at is the cleaning industry in WA, endeavouring to find out why the premium rating for the cleaning industry is the size it is. In other words, it was a target for us to look at because it was so high. So we went in and had a look and went around to different cleaning firms, talked about how they work and what their performance is, and structures, and it left a fairly big hole. I'll give you just one example.

From 97-98 to currently, they have reduced the number of actual claims lodged by 515 to 219. The premium rate has gone up from $4.62 to $8.60. There are reasons for some of that - catch-up and that sort of thing - but the centrepiece of my case is that unless we can link improved occupational health and safety performance to the cost of paying for workers compensation, unless employers - like in Victoria they're looking at new schemes now to give employers a better go; bulk things up; put them in groups; do whatever they like. We have nothing.

I'll give you one example. One of the people I spoke to is a national RTO and employs about 150 people. From 1987 until now his total workers comp claims total about $12,000. In total, his premium is 100,000. If you have that sort of disparity and you're not doing something about it, you've got a problem. If you can't convince people that improving OHS performance is going to have a beneficial effect for them that way, what do you do?

PROF WOODS: Not a lot of feedback happening through that system. You obviously have material there that could be of relevance to the commission. If subsequent to this hearing you were able to consolidate some of that material in a form and transmit it to us, we'd be most grateful. I don't want to lose the experience and evidence that you have, just through only presenting it in an oral form.

MR GILROY: Yes. I'd only like to say it's a very different world out there, when you get out there, than the one that happens in a room. When you experience it to see what's going on and when you have worked for the period I have in the industry and seen that sort of improvement happen, it just hits you that it is possible, it is not difficult to do.

PROF WOODS: If there is some material that you could subsequently submit to us as a submission, we'd be grateful for it.

MR GILROY: The concept you asked me about before, which was a national workers compensation: I would see as a first priority the definitional standards, the benefit situation, the premium structuring systems being priorities for getting together in the first place.

PROF WOODS: So rather than try and create a national scheme from day one, you'd see an implementation path that said, "Let's first focus on your definitions, let's focus on your benefit structures, and then progressively build commonality across the rest of the systems"?

MR GILROY: Absolutely. I think honestly that it is and should be possible to get agreement on the fundamentals between the states, particularly with them all Labor at the moment, about what is needed for people out there; what's needed for business; what the best economics are; how we can best get money as we do in some states where you've got sole insurers and you have access to funding for occupational health and safety - research work, project work - you can focus on different industries.

You've got money to play with. If you could get 5 per cent of the workers compensation premium in WA available for occupational health and safety activities, it would be an enormous boost. You would be able to look at things at an industry level and do things. There's just no money to do it. It's not difficult to achieve. The amount of take-off in those big things is relatively small for an enormous result. It's just consistently working, highlighting the industries that have got problems, giving them a hand, putting the brass in and I'd say within 10 years you'd be looking at a very, very much changed system.

But governments are not going to write money off for occupational health and safety and it's got to be found. It'll be found from employers. If we had a better premium system, if we had a lower rates, if we had a whole lot of those sorts of things in place, we'd have the funding to do it - and it's got to be found. We're just sitting in the doldrums at the moment with Victoria perhaps leading the way in doing a whole range of new things and South Australia also. It can be done. But commitment? Commitment to stop this state separation in terms of systems and balances and equations, has got to be done.

I've got through a bit quickly, I know. The workers comp system, I've been involved in that since the early 80s and listened to all the talk about sole-insurer models and where they've come in and gone out and sat and watched all those particular processes. I don't have any doubt that if we really could get the things that are possible to get levelled out, we'd have a shot.

The private insurance industry - I heard Mr Guthrie talking about using the insurance industry as if the insurance industry could see money in making claims then probably they'd do it. I would see claims companies doing it but not necessarily insurance industries.

PROF WOODS: I think that's the point we arrived at. What we were looking for was competency in claims management, which may or may not draw on insurance companies. Clearly they have experience in that sector, so they're an obvious one to target, but they may not be the only source of that competency.

MR GILROY: I think there's a wide void between even workers compensation insurance thinking and occupational health and safety thinking. I don't think they're the same sort of people.

PROF WOODS: We are very keen in this inquiry to look at feedback from one to the other. In that respect there have been representations to us that self-insurance provides more immediate, more direct feedback in a number of cases, provided the firm operates in that way, than where you introduce a third party into the claims management process. Do you have a view on that?

MR GILROY: I don't have enough direct experience to do it. I can only speak about my experience in the industry with what I'd call the better employers, the ones that have a commitment, where they are involved from a time of a relatively serious injury from the first day until the end. They never devolve that responsibility to the insurance industry. They follow that person right back to the workplace situation and that's what's got to be done.

PROF WOODS: Is that sometimes difficult if, for instance, there is a delay by the

claims management organisation in deciding whether to accept the claim and therefore to approve rehabilitation or other forms of injury management?

MR GILROY: It's just a measure of the commitment of the employer to the employee to ensure that the correct process is followed. If those unnecessary delays occur or the claims are allowed to drift on, my view is that a responsible employer would not allow that to happen. Many of them don't allow that to happen and see the person right back to the workplace, and it's their responsibility. You can't discharge the occupational health and safety responsibility. It's a duty of care.

PROF WOODS: No, it's just that sometimes other processes seem to either take over or be allowed to take over.

MR GILROY: Commitment.

PROF WOODS: I understand that. Are there other matters maybe? We have a few moments.

MR GILROY: No. I got through quickly. I only really have a hope that when looking at ultimately what you may or may not recommend, that the linkage between the occupational health and safety practice law and involvement and responsibility as employers is seen as tied in a way to the workers compensation arrangement, without having to be in bed with it. One prevents - one treats the results of non-prevention, but I just don't see that unless there is a close working connection, you're not going to have the results you want. Again, Mr Guthrie gave earlier the example of departments not always agreeing, say a Worksafe or WorkCover. It's not quite that simple and it's not quite the case, actually.

PROF WOODS: Do you want to elaborate on that for me?

MR GILROY: It swings on the so-called confidentiality of the employer in terms of information that's released for occupational health and safety performance. If you've got a performer who's paying 100 per cent loading and can afford it and doing nothing about it, there's no necessary means of an occupational health and safety approach being taken to improve that person's performance or to see what the hell is going wrong, because there's an exclusion to the confidentiality of an employer. It's not the same everywhere. I don't think it's the same in Queensland in particular, but that's a sole insurer.

There needs to be, and there has been in the last couple of years, a freer exchange of information at least at the industry level, about what's going on and what's not going on. If you depend only, as perhaps we've had to do, on looking at what high level premiums are, and they obviously must be the bad-performing

industries, it ain't necessarily so. When you're up at that particular level and the margins are little - between each year there's no reason to change it because it's in balance, but it doesn't represent - it's in no way representative entirely of the performance.

PROF WOODS: Of the actual performance.

MR GILROY: The only way you can achieve that is by your earlier question - "What were the things that enabled the industry to move a premium down from closer to 20 and down to two?" That is because the industry insisted upon getting the necessary information about its health and safety performance and used that as a way to improve things and to look for problems. It had the information and it used it.

PROF WOODS: And a lot more sharing of the information across firms - open book?

MR GILROY: It was totally open to the industry to look at the performance of each of the companies as they were going and endeavour to work towards the things that we needed to do. So you need to have the data to maybe make the improvement, but having that data just makes it so much easier. Employers will turn round and agree to introduce initiatives that they would never have done three years ago because they can see number (1) it's good to do for the industry and number (2) it doesn't cost as much in workers comp.

PROF WOODS: Thank you very much. Can I encourage you to provide further information to us in written form if you are so able, but also to examine our draft report when it comes out at the end of September and give us the benefit of your further thoughts on these matters?

MR GILROY: I most certainly will.

PROF WOODS: Thank you very much.

PROF WOODS: At this point in time, if there are persons who are not currently scheduled to appear but who wish to do so - I'm not sure we will have time at the conclusion of our final participant, but I'm happy to accept short statements at this point in time. Perhaps, sir, if you could come forward first? Thank you. For the record, could you please state your name and any organisation that you're representing.

MR MASSEY: My name is David Massey and I'm part of IPASA, the Injured Persons Workers Association.

PROF WOODS: Thank you. Do you have a statement you wish to make?

MR MASSEY: Yes. I would just like to say that it's time the whole system was fixed because it's totally corrupt.

PROF WOODS: Can you elaborate on that for the benefit of the inquiry?

MR MASSEY: Injured workers can't get any justice anywhere. Employers here are paying massive premiums and yet the only person it isn't helping is the injured worker. When I got injured seven years ago in my first accident - I got injured again a year later - then I was made redundant five years ago. You've got your WorkCover which is well know it doesn't work and it doesn't cover you. You can't get any justice. Even when you go down and you take all the proof you were made redundant, you get review officers who are not even trained for the job find against you. The information the company states against you they can't provide and they still find for them.

When I first got injured in let's say a common law system - then both governments overnight got into bed with each other and brought up this percentage system. The percentage system is another farce because - - -

PROF WOODS: So you get below the threshold cut-off?

MR MASSEY: The percentage they give you is a joke. To give you an example, I'm going in here in a week on Monday and you've got to have 30 per cent to pursue a common law claim. My specialist will give me 35 all-up. An insurance specialist will only give me 10 per cent. How is there such a massive difference with professional people in the same field of excellence? It's a disgrace. The worker has not got a hope in hell of getting any justice. You get cheated out of your workers comp payments and then you're cheated out of your common law claim and you are just thrown on the dole. What are people supposed to do?

PROF WOODS: What particular changes would you be identifying as a priority?

MR MASSEY: They've got to bring in something where people can get justice, because there's none whatsoever. They've got to bring in changes. They've got to do away with WorkCover and Worksafe because they don't work. They're doing nothing for ordinary people. People should really go to the District Court and get justice. That has been denied them, because unless you can get 30 per cent you've got no hope in hell of getting it. You'll get an amount of people like IPASA - there were thousands of people on IPASA's board and none of them got any justice. None of them. Out of 44,000 cases I think about 12 went to common law claim - out of 44,000 cases last year.

PROF WOODS: Presumably most of them were dealt with adequately under the statutory benefit scheme.

MR MASSEY: No, they're not getting dealt adequately because people have been cheated out of other things. They've been cheated out of wages, they've been cheated out of the medical bills, they've been cheated out of everything. You're just getting thrown on the scrapheap. Insurance companies are putting the onus on to the government, that you get thrown on the dole and therefore escaping all their responsibilities to injured workers. There's no justice.

PROF WOODS: So out of those 44,000 cases that you refer to, how many of those do you think have been inadequately dealt with?

MR MASSEY: Nearly them all - I'd say the whole lot nearly, apart form the ones that did go to common law.

PROF WOODS: So is common law the only avenue for receiving appropriate compensation?

MR MASSEY: Common law is an international law and it's been denied to people here in Western Australia for some reason; I don't know why. But it is an international law. What you're doing is shifting the onus. There was a lawyer we went to meet a couple of months ago and he spoke perfectly about it. He said, "You take somebody, right, who does something to you - you should be able to take action against them and get it redressed. But now they've taken that away from you - to do that." Because if you hold people responsible for what they've done to you - they won't do it to you - you know, they'll fix it. But if you take that onus away from them then it all falls apart, and that's what's happening.

PROF WOODS: Isn't paying a premium in part taking responsibility?

MR MASSEY: What's your premium doing? It's not doing anything for injured

workers, is it? Insurance companies made $400 million last year alone and about $300 million the year before and people can't get any justice. They can't get any workers compensation payment; they can't get their medical bills paid for; they can't get anything. The workers comp system was set up to help the injured worker, and that's the only person it isn't helping. Why?

Nobody gets any justice at WorkCover. If WorkCover doesn't get you, the WorkCover panel will get you. They will say you're much lower. They will go against you to keep you below that 30 per cent. You can't get any justice. So where is the justice? You're robbed out of your common law claim. Then you're robbed out of your percentage. So what are people supposed to do to get justice?

PROF WOODS: So your argument is that common law is the avenue by which you'd be able to - - -

MR MASSEY: It should be. Common law should be available to every person. It's an international law, isn't it? That's rule number 7 of the international charter, isn't it?

PROF WOODS: But statutory benefits provide an alternative scheme. Is your view that is not a sufficient scheme?

MR MASSEY: No, it's not working. Who is getting statutory benefits? I don't know anybody that's getting statutory benefits. I wasn't getting them either. So who's getting them? Most people have been cheated out of them.

PROF WOODS: Are you of the view that nobody is getting statutory benefits?

MR MASSEY: Quite a lot of people aren't. I know people that have been made - they've been ordered to pay wages and then as soon as the person was supposed to get their wages, they've been stopped. They're not getting them and nothing is happening about it. They're getting away with murder. People aren't being looked after at all.

PROF WOODS: Thank you very much. Have you got anything further you wish to bring to our attention?

MR MASSEY: All that I'd like to know is, where is a worker supposed to get justice, because we're not getting any. What's happening to all these people who have been cheated out of all their rights? What are they supposed to do? Just say for example that you get cheated out of your 30 per cent again - and I've been cheated out of my workers compensation payments, and I go again in a week and a half's time. If I get cheated out of that, what am I supposed to do, and people like me?

Where are we supposed to go? Nobody wants to know. That's you on the scrapheap for the rest of your life - on the dole, possibly. What are you supposed to do? You've been injured through no fault of your own. Your employers are paying premiums for you to be looked after, and that's not happening. So what are people supposed to do?

PROF WOODS: Thank you very much for bringing your case to our attention.

MR MASSEY: Thank you.

PROF WOODS: Could you please state for the record your name and any organisation that you're representing?

MR REID: Les Reid, my name is. Yes, I know a few people who were injured. Somehow you get to know, through your search - you're actually begging for assistance from other groups, if you can find any, and I found quite by accident a group that actually helped me get through the maze of corrupt doctors and corrupt professional people and the whole system. By the way, Mr Commissioner, thank you very much for the opportunity to speak to you. Excuse me; I'm on medication, and please bring me into line if I tend to wander off, because that is a trait, I realise. Even my family' tell me this. I just can't keep my concentration. I can't even remember some of the things that the last speaker spoke about, if you understand what I mean.

PROF WOODS: If you could keep your comments to the point and give us the essence of your issues, that would be helpful.

MR REID: Sure. I agree with the last speaker who spoke about corruption. The only thing is, every second word of mine is "corruption" there because it's so endemic in the whole system. I'm talking about from political - members of parliament, past members of parliament - to professional people, like I said, like doctors and professional people like specialists and so forth, and of course we all know what people think about lawyers. And it's not only lawyers who have that label now in this state. I'm talking about the doctors that I've been to. The corruption is so endemic.

Our own premier slipped up in parliament on 17 September last year, just a few months ago, when he said in parliament that insurance companies are blackmailing members of parliament for concessions to legislation. I have it here. It was noted in the Western Australian newspaper. It's here if you wanted to look at it. There was an archbishop who was the chief of the south-west, Gerard Houlihan - he actually said this on 21 April this year: "The WA parliamentary system is corrupt."

I've got a list of doctors here that have been investigated by the Australian Medical Association, WA branch, and there are two doctors in there I know that are corrupt. I met not this doctor, but I met - he's become a friend of mine now, that's been to one of these doctors who's corrupt, and he's being looked into now by the AMA. It goes on and on. Like, there's a doctor here in this state who is actually on our side, believe it or not - I probably wouldn't mention his name, but it's in the paper here if you'd like to see it, sir - who more or less talks about the WorkCover system, with review officers so corrupt they give in favour of the insurance company because it's the insurance companies that are funding - listen to this: they are funding WorkCover. The employers pay their premiums to the insurance company and in turn the insurance companies fund WorkCover. People think it's an arm of the

government. It's not. It's an arm of the insurance industry. So if you want to have a look at that you can, too. I'll leave that for a minute.

There's one particular review officer - his name is mentioned in this one; I won't mention it. It's here if you'd like to see it. He is so biased. There was an ad in last Saturday's paper for people to phone this number, et cetera. People are so sick and tired. People are suicidal. I know one particular case where this gentleman's son, who was 21 years of age, hanged himself. He actually gave evidence to the video link-up on 12 February.

I just note an article that was in the paper a few days ago, "Nation's pain bill: $15 billion study". The same doctor I was referring to who's in favour of the workers now says, basically, if you've got to prove yourself to be sick, how on earth are you supposed to get better?

I really appreciate this, Mr Commissioner - allowing me to speak on this - because it's actually helping me express the anger, the frustration, the corruption that goes on in this state - as I said, to repeat myself - from politicians to professional people. I come from a blue-collar family. I was brought up to basically respect these people, like you do with teachers, politicians, policemen, and so forth and so on, and doctors.

The main part of the whole problem is the greed by professional people, and I'm talking about doctors in this instance. A lot of them are so corrupt. There was a survey done by an injured persons' group. I haven't seen the figures, but I've been told over the phone there are about 50 doctors here in Perth, and the same names keep coming up. There's one particular doctor who is a psychiatrist, who is in court as we speak, right now as we speak, being looked into. I'm surprised they got him because they don't get caught very often.

Another aspect - I don't know if there's anyone here from the CCI yet who will hear me speak. The CCI - the main problem here, sir, is the Premium Rates Committee that establishes the premium rates that employers pay towards insurance companies. The main problem is the fact that insurance companies make massive profits, and if I can stand to correct the last speaker, the insurance industry made $273 million surplus last year. The year before they made $300 million. In the past 21 years they have made $1800 million surplus - in 21 years. In this state alone WorkCover - the insurance industry is in association with WorkCover. WorkCover also invests money in the short-term money market. I don't even know if you're aware of that, sir, are you? They invest money in the short-term money market. I am so angry with the amount of stuff that's hidden from the people of this state

And now something slightly different to the workers compensation issue is that - it's not just a silly person who gets injured through no fault of their own and gets

involved in a totally corrupt system from the top right the way through to the bottom. It is now all the public. I refer to public liability. I come back to what the premier said in September last year, the corruption, that insurance companies are blackmailing members of parliament. It was reported in the paper, because he said that on 18 September, and previously on the 17th he was in parliament when he said that. It's in the paper. I can prove it to you. Now the insurance industry have corrupted members of parliament, which they've done for years anyway. Now, with public liability, like I said - I feel like I'm dancing around in circles here - here in this state as from now if you have a public liability claim and you're successful with that application, there's a ceiling of $12,000, a threshold of $12,000, that goes back to the insurance industry. So if I fall down a manhole or something and I put in a claim for public liability and I get awarded $12,001, guess how much I'll get? I'll get $1, because that money goes back to the insurance industry.

In regard to personal injury insurance, third party personal injury on your car registration - I don't know where you come from, sir, whether it's here or over east, but here in this state - probably Australia-wide it's the same - in regard to personal injury insurance on your rego, again there's a ceiling of 12 and a half thousand dollars. So if I get awarded $12,501, I'll get the $1. The first 12 and a half goes back to the government in this case.

PROF WOODS: If I could ask you to continue to focus on workers compensation and occ health and safety, that would be helpful.

MR REID: Sure. The point I'm making, sir, is that basically the corruption is endemic in the whole insurance industry. It started in workers compensation and now they're involving all the public. It's all about profit for the insurance companies. They don't care. They couldn't give a damn about injured people. I'm talking about WorkCover, from the executive right down to the review officers, the conciliation officers. If the review officers think you've got a good case to win, what they will do is they will put you - one or two might have a sort of successful case to make it look good, but most people don't win in WorkCover. "Win" sounds terrible, doesn't it? A good word is "successful". If they're successful through WorkCover, it's very few and far between. What the review officer says is - he refers you to a medical panel. Now, the medical panel is so corrupt. It is renowned. That's the people you want to be talking to; the people who go to these panels. I was supposed to go to a medical panel. I refused out of fear. I live in fear I'll go on a medical panel. I'm paranoid of going there, because I'll be shot down in flames, and I've got several injuries.

PROF WOODS: Was there a point in that final document you have there that you also wish to draw to our attention?

MR REID: I suppose it was referring to the Insurance Commission of WA, which this story relates to. It's probably nothing much to do with workers comp. Well, it is

a little bit because this is regarding insurance, sir, and this is the crux of the whole situation: the corruption of insurance companies. They manipulate politicians and public officers.

The Insurance Commission of WA collects the money through your third party personal injury insurance, like I said, and your driver's licence fees, et cetera. That money goes to the Insurance Commission of WA. In turn - and recently - the Insurance Commission of WA invested $51 million in two shopping centres here in WA, one north of the river, $21 million, in Ellenbrook, and $30 million in the (indistinct) marketplace south of the river. You're obviously not from here, so I don't know if you're aware of those areas.

PROF WOODS: I was born in Western Australia.

MR REID: Aren't you lucky? I love this place, apart from the corruption that goes on. I used to be a sheep at one stage. I was brought up to vote a political way, but now of course the political system we have here is so corrupt, and I'm talking about federally as well as statewise. I used to be a sheep. I was guided into that pen because that's the way I was brought up, but now they're so corrupt in this state, and it's all over. And I tell you what: it's got to stop. I thank you for listening to me, sir.

PROF WOODS: Thank you very much for your evidence.

PROF WOODS: Is there any other unscheduled participant who wishes to speak? Would you please come forward.

MS DEVAL: Yes, sir, Linda Deval.

PROF WOODS: Could you please give your name and any organisation you're representing?

MS DEVAL: Linda Deval; executive officer of Group Training Australia WA.

PROF WOODS: Thank you.

MS DEVAL: Our national body is putting in a submission and will be speaking in one of the other states. One of our biggest problems is the difference across the states with assistance for the workers comp insurance for apprentices and trainees. Some states assist, particularly in the first year of apprenticeship - Victoria and Queensland particularly. We get no assistance in that and over the last two to three years there's been a huge rise in the workers comp premiums of group training companies. They're non-profit organisations.

In Western Australia, we have probably over 4000 young people in apprenticeships and traineeships. Two years ago one of our companies was forced to actually go into liquidation because of the workers comp premiums. They had 320 apprentices. Their premiums rose from 185,000 to 365,000. No non-profit organisation can have that sort of money sitting in the bank. There was nothing else they could do. Some of the kids lost their jobs and some went to other places. It makes it very difficult for - - -

PROF WOODS: Was that an experience-rated premium?

MS DEVAL: No. They had their own injury management system. We actually worked with the Department of Education and Training trying to lower the premiums. We went through a whole range of things. We looked at investigation of group insurance. We looked at self-insurance. We looked at going overseas. We did an ongoing study of best practice to reduce injury incident rates. We produced minimum standards documents for all companies. We spoke to the insurance council. We looked at introducing safety management systems to the group training companies, and a lot of them are doing that. We had a consultant come in to review all of our procedures. Although some of them were reducing their rates, their premiums are still going up. We're looking at some of the injuries with young people, particularly in those ages of 17 to 20, particularly in the young males. The rate of injury is huge, but conversely the number of days off they have is very small, so that the companies are being charged for very minor ones. They're not huge

claims, but obviously it's the number of claims they get where there's the increase in premiums.

The other problem is that we don't have control of the workforce within group training. They're placed out into other work. We can go and check. Our field officers check. They look at it - it's fine - but something can happen when we're not there. Group training has to cover that problem, and so what we're asking is for some sort of national way of it being covered right across the whole of Australia. We've now got companies who are operating in three or four different states, and obviously they're now having to employ more and more people to cover the different things that are happening in each state. That's probably the biggest thing we're trying to push at the moment.

PROF WOODS: Do you have any way of arriving at a cost to those companies of having representation in different jurisdictions that have different benefit structures, dispute resolution procedures, definitional issues and the like? If there was some way that you could have them bring some evidence to us or through the national submission that you were referring to earlier, that would help us come to grips with the magnitude of this issue.

MS DEVAL: Yes.

PROF WOODS: I understand the issue. It's a matter of trying to put some reasonable boundaries around just what size that issue is.

MS DEVAL: Yes. I'll certainly take that back to our national body and ensure that the information comes to you.

PROF WOODS: I understand the difficulty in trying to assess it, but whatever can be done in that regard would be helpful to the inquiry. That would be good.

MS DEVAL: Yes.

PROF WOODS: Are there any other matters that you wish to draw - - -

MS DEVAL: No, I think that that's our major problem at the moment. Thank you.

PROF WOODS: Thank you. That's been very helpful. I appreciate that. Are there any others who wish to make an unscheduled presentation? Our next participant is scheduled for 11.30, so I will temporarily adjourn this hearing and resume at or about 11.30. Thank you.

PROF WOODS: Thank you. I will resume the hearing. I had an opportunity for unscheduled presentations. This is our final scheduled presentation for the Perth hearings and I invite Ms Anne Bellamy to come forward. For the record could you please state your name and the organisation you are representing.

MS BELLAMY: Annette Ellen Bellamy, the Chamber of Commerce and Industry of Western Australia.

PROF WOODS: Thank you very much. You have provided us with an outline of some comments you wish to make; could you take us through those, please.

MS BELLAMY: Thank you, chair. Prior to doing that, could I just, for the record, mention the involvement of the Chamber of Commerce in Western Australia within the workers compensation and also the occupational safety and health area.

PROF WOODS: That would be most helpful.

MS BELLAMY: Thank you, chair. We are involved at two levels: one is with policy and, as part of that, I have membership of the National Occupational Health and Safety Commission and also the state Occupational Health and Safety Commission. We are members of the Workers Compensation Commission in Western Australia and also the Premium Rates Committee that has responsibility for premium rates. In terms of our organisation we employ in excess of 700 and, of course, we therefore have a practical involvement in both claims management and injury management.

PROF WOODS: So you're drawing on both your policy perspective and your own direct experience in these areas.

MS BELLAMY: Yes.

PROF WOODS: Thank you.

MS BELLAMY: In regard to the inquiry we will be providing a written submission in due course. The issues that I've tabled today are the issues that will be of most interest to us within that particular submission. The first of those is consistent definitions.

We recognise that in any area of workers compensation any consistency should enhance innovation and efficient performance and the administration. In recognising that we realise that it can also obstruct it, so we're suggesting that the commission be careful in terms of consistency. We do believe however that there are a number of

definitions that we've termed as critical definitions and it's these definitions that I think are appropriate for national consistency because they're the ones that actually underpin the benefit structure. They should be limited in fact to the benefit structure, so we see just a small number of critical definitions.

PROF WOODS: Including definition of "worker," so coverage as well as benefit structure?

MS BELLAMY: Yes. Within the benefit structure, of course, the employer and the employee are the major parties and of course that would be critical.

PROF WOODS: All of those.

MS BELLAMY: Wages is another.

PROF WOODS: In a previous industry visit we had, which included discussions with your organisation, you drew particular attention to this word "consistency" - which I notice you use again. There is debate about having one single, national system versus consistency of schemes within a national framework and the various merits of the two approaches. It would be helpful to this inquiry if you could elaborate a little on your views, focusing on this word "consistency".

MS BELLAMY: I think it's useful to explore the difference between "consistency" and "uniformity". We have always seen uniformity as prescription, whereas consistency is in outcomes. We have always rejected - particularly in this area - national uniformity. We see that it is an area where systems can be innovative, they can be creative and the way in which to drive that is to have minimal standards in, say, one section - such as benefits - and then allow that to drive the other systems.

One of the problems we think will occur within a national system is that it will become very bureaucratic. It may well be managed outside of the state and it will start to obstruct this innovation that I continually talk about.

PROF WOODS: The innovation from what one could describe as "competitive federalism - - -

MS BELLAMY: Yes.

PROF WOODS: Whereby the states and territories each benefit from the experience of the others and you have a sort of dynamic efficiency effect - is that what you are referring to?

MS BELLAMY: Free enterprise, yes.

PROF WOODS: You could tie the two together.

MS BELLAMY: Yes.

PROF WOODS: Yes, thank you. Please proceed.

MS BELLAMY: Consistent benefits, I've mentioned. I think this is the foundation of any federal intervention if, indeed, it can be termed that way, in that if we have a minimal benefit structure that is consistent within all jurisdictions then I think it will drive the remainder of the system. It will give a central focus to the jurisdictions in terms of performance.

PROF WOODS: Do you have any particular jurisdictional model that you would draw to the attention of the commission?

MS BELLAMY: On a benefit structure?

PROF WOODS: Yes.

MS BELLAMY: No, I don't. I don't think any are ideal, but I am more than happy to talk about the individual - - -

PROF WOODS: Components that build it up.

MS BELLAMY: - - - components of it, particularly statutory benefits and common law, as we move through. But, no, there's not one jurisdiction that I would put up as an excellent example.

PROF WOODS: You don't have in your list here - you do talk common law. Do you have some views on the role of step-downs?

MS BELLAMY: Yes, I do. The structure should recognise that if the benefit level is set high enough there will be no incentive to return to work. I recognise particularly in the first period - and that period may well be a month; in previous submissions we have suggested four weeks - most of the claims are settled within that period. I think it is appropriate within that period that the benefits are higher. Following on from four weeks I think there should be some incentive for a return to work - and this is a financial incentive - so my suggestion is that at four weeks those step-downs should occur and then I think there should be further step-downs at varying periods.

PROF WOODS: Thank you. Do you want to move from that point then through to

common law?

MS BELLAMY: Common law is an interesting one in that we have never advocated for the abolition of common law. We believe common law should exist and that there will be times when it is appropriate for injured workers to seek a common law remedy. In saying that we have always believed that there should be conditional access to common law and in that conditional access there are a number of thresholds. The first of those, of course, is the proof of negligence and the second is an impairment threshold.

PROF WOODS: Presumably it would be in reverse order - that you would have to have an impairment threshold before you could access common law to demonstrate negligence.

MS BELLAMY: Yes, but if negligence is not there - - -

PROF WOODS: Then the case doesn't exist.

MS BELLAMY: - - - then the case doesn't exist.

PROF WOODS: Yes.

MS BELLAMY: So it's a matter of which comes first.

PROF WOODS: Sure.

MS BELLAMY: In that respect I don't think there is a priority order; the two would be considered in tandem. In terms of an impairment threshold, there are a number of reasons why we suggest an impairment threshold. There is a level at which an injured worker is better to stay within the statutory system; that the net benefit of that system will be better under a statutory regime than a common law regime. Certainly in Western Australia that level at the moment is set on 16 per cent disability. What that does is certainly maintain the smaller claims in the system and it also I think gives a very - - -

PROF WOODS: In fact you have two thresholds, don't you - 16 and 30?

MS BELLAMY: Yes, we do. In terms of the 30, if the disability is above 30 per cent then that disability is severe and, of course, certain things don't apply. But I think it is important to take the smaller claims out. That can be done through a deductible or it can be done through an impairment in Western Australia. We've chosen impairment and that seems to be effective. I think it becomes quite an important threshold. The debate on that, of course, is whether we use disability or

whether we use impairment, at what level you set it and just where is the reasonable balance between maintaining people in the statutory system and putting a focus on return to work or moving into the adversarial system, where of course the communication breaks down and they become long-term claims and the net benefit is frequently less than the statutory system.

PROF WOODS: And with an election process at some point when the injury has stabilised, or - - -

MS BELLAMY: At the moment in terms of common law entry, I would certainly promote the Western Australian system. I think it is a good system. There are a couple of inefficiencies within that system and they need to be addressed, but in terms of stabilisation - at the moment that's six months and there is some argument as to whether that should be - - -

PROF WOODS: 12 months.

MS BELLAMY: - - - a longer period. Those arguments will continue to go on, but in terms of the system itself - the election process - it takes us back to two things: the first is the history of workers compensation and, along the way I think we've lost our memories on that history. Initially you could only ever take action through common law. Statutory or the no-fault system was introduced so that injured parties could be supported when they became injured, and immediately they became injured rather than the long and tortuous common law route. We feel that that's reasonable, but I think now is the time where we start to refocus on the real reason for workers comp - why it's there - and the principles underlying it. In Western Australia there is that fairness in terms of saying, "Well, there comes a time in which you should choose."

If the disability is below a certain level then I think it is only appropriate that you can choose within the system to either stay within the statutory system or pursue common law. But frequently what is not asked and we should be asking is: if you choose to go into that common law system, what is the net benefit of that common law system? Is it better than the statutory system or not; not only financially but psychologically and all of the other things that impact on the trauma of pursuing a common law claim?

In some respects having the election process has caused both employers and injured workers, I think, to refocus on the system itself and where they should be going once they are injured and what's the best outcome for them. For some that may well be to pursue a common law claim; for others that may well be to stay in the statutory system and concentrate on a return to work. But at least it sharpens the focus on the outcome rather than remaining in the system and going along with the flow of the system.

PROF WOODS: I will go back through the transcripts later, but do I take it from your comments that, in fact, you would allow an election into common law at any level of impairment?

MS BELLAMY: No.

PROF WOODS: No. I just wasn't quite sure where - - -

MS BELLAMY: Certainly not. It's interesting because, having had some involvement - again it's as a third party to these changes - one of the questions I asked was: why was the level set at 16 per cent? Is it an arbitrary figure of the facts? Certainly in the data that I saw, which was reasonably limited data, is that there is a percentage at which it is better to stay in the statutory system because the net financial benefit coming out of that statutory system is better than pursuing the common law claim.

There may well be some who argue that that comes in somewhere around 16 per cent because it is an arbitrary figure. I am saying, "Well, we're best to maintain that percentage." Okay, it may not give the psychological advantage of taking somebody through the court system - so not the day in court - but at the end of the day, what's the best outcome?

PROF WOODS: The day in court factor - some attach great importance to that - is it possible within a statutory scheme to still have that resolution of the issue dealt with?

MS BELLAMY: I think it is but there would still need to be a change in mind-set. It may well be through the existing Conciliation and Review Directorate, but it's difficult because the day in court, the outcome from a day in court within the workers compensation system is purely a payment of damages. It's financial. It is not a prosecution because a workplace is unsafe. It's sometimes difficult, I guess, to come to terms with why go the very torturous route of having that day in court when the disability is not great? Is it better to stay in the - - -

PROF WOODS: Purely in the psychological resolution of the issue for the individual?

MS BELLAMY: That's right. I really haven't thought it through to any great extent, but there may well be an opportunity within the Conciliation and Review Directorate for those matters to be closed out.

PROF WOODS: Thank you.

MS BELLAMY: Just on common law, the other issue that we will pursue in our submission relates to individual choice. It has been an issue that raises its head from time to time within the workers compensation system, because we have a compulsory system. We have third party involvement in the premium-rating process. We also have third party involvement in the claims process and the injury management process. It seems to me at the end of the day that there are only two parties to workers compensation - that is, the injured worker and the employer. But it's those two parties that lose control of the whole process. The process once somebody is injured - frequently it becomes a third party process and a very lucrative third party process at times.

One of the ways in which I think greater control can be given to the two major parties, the employer and the employee, is through a more flexible system. That system could be fairly similar to private insurance - that is, within the workplace, whilst insurance is compulsory we may be able to open that up so there is choice in there for a worker as to whether that insurance is through the workers compensation system per se or whether it's through some other type of system such as the private health system. In saying that, if the choice then is to move towards private insurance, I think we then start to see that it may well be a different benefits structure and certainly there needs to be consideration as to the actual framework for that system, but it does provide choice, choice not only in which system you work but choice of the package that you actually end up with.

PROF WOODS: Is self-insurance another option within that? Does self-insurance reduce the third party intervention component?

MS BELLAMY: No. Self-insurance is different. In most of the matters that surround workers compensation self-insurance, there is still that high level of compliance. The only difference between self-insurance and traditional insurance is that with self-insurance the responsibility remains with the employer.

PROF WOODS: Sorry, that's the area I was focusing in on. You were drawing attention to third party involvement. So self-insurance has the benefit of not having that third party involvement and keeping the relationship very clearly directly between the employer and the employee.

MS BELLAMY: Okay. Third party involvement is not only directed at the insurers, and I don't think you're indicating that. It's directed also at service providers.

PROF WOODS: Yes, indeed.

MS BELLAMY: Those service providers will still operate within a self-insurance framework, but I tend to agree with you that within self-insurance the responsibility is internalised and there is greater opportunity for the employer to manage to have a more direct involvement in the management of their claims and certainly receive the benefit of that direct involvement.

PROF WOODS: Thank you.

MS BELLAMY: I was referring more to workers compensation being more closely linked to other parts of a workplace package, you know, in terms of becoming - - -

PROF WOODS: Yes, such as private medical insurance.

MS BELLAMY: Yes, with the safety net there becoming more negotiable, because certainly there will be those who may choose not to have access to common law or increased statutory benefits or whatever. So it becomes a package that becomes negotiable, depending on the circumstance of the workplace or a person's other personal factors.

PROF WOODS: Provided there's a minimum safety net required.

MS BELLAMY: Yes. Injury management - certainly CCI supports the primary focus of workers compensation being injury management, with the appropriate financial support. We frequently talk about injury management but in a system that's predominantly geared towards workers compensation, I think injury management takes a second place, where I'm suggesting that injury management should in fact be the major driver. In saying that, I'm certainly differentiating between injury management and vocational rehabilitation.

Injury management is, in my view, employer driven, so it's the employer internalising that responsibility for getting their people back to work. The major emphasis of the system should be on a return to work, whether that be with the original employer in pre-injury duties or alternately in alternate duties or with another employer. I don't think the system should support the non-return to work of employees. The focus must be on that return to work. But what we find is that because of the adversarial nature of the system, of course, that a non-return to work is frequently the outcome and an unfortunate outcome. I don't think any money can compensate for a person not actually being able to or going back to work.

PROF WOODS: I understand that. Are you going to clarify for me your views on compulsory vocational rehab? There seems to be in WA in particular, I'm not quite sure why, a debate on the role of rehabilitation providers.

MS BELLAMY: There's been a view expressed in this state I think predominantly by the rehabilitation providers; and I think in a recent review under this government of the workers compensation system - - -

PROF WOODS: We had Dr Guthrie with us earlier.

MS BELLAMY: Yes - that there should be compulsory rehabilitation and the period seems to be about one month. It was interesting. We had a review of rehabilitation back in 1997 and coming out of that review - I chaired that review - one of the questions I continually asked myself on that review was, what do rehabilitation providers actually do? I looked at the data that was available to me from WorkCover and I saw that most of the costs related to claims administration, to reports, to travel, to all of these ancillary things which I thought did not in fact lend much benefit to the hands-on services that are required to get somebody back to work. In fact, those services were very limited and when we spoke to both injured employees and employers and the rehab providers themselves, it was an area that I had great difficulty in drilling down on.

Coming out of that review we suggested the injury management approach. We suggested greater employer involvement and four years later, five years later, it's interesting looking at the data. What we're seeing is a reduction in cost for vocational rehabilitation, but we're not seeing a reduction in return to work. In fact, I think what we're seeing is that the stats are showing an increasing incidence of return to work. I'm now asking the same question: had vocational rehabilitation been essential, and particularly early intervention by vocational rehabilitation providers been essential, the data would be showing quite a different story at this stage.

What I'm suggesting is that the employer needs to drive the process, not an external third party, be it a vocational rehabilitation provider, or be it somebody else. Where we're seeing great outcomes - and certainly in our own experience with our own staff - we've internalised all of these processes and our outcomes have been far better than if we externalise the process. I'm always concerned about the requirement for the involvement of an external third party at any particular period.

PROF WOODS: Okay, so you are differentiating between rehabilitation as such and third party rehabilitation providers who have a mandatory role in the process.

MS BELLAMY: Yes, I am. I think injury management is about managing that injury from the time of injury through to the closure.

PROF WOODS: Return to work or whatever.

MS BELLAMY: That should always remain the responsibility of the employer.

The employer may choose, through that - and that may be done in consultation with the insurer or the insurer acting on their behalf - to have third party intervention, which is vocational rehabilitation. What we're saying is that that shouldn't be compulsory; that it should be part of the management of a claim, rather than it being a mandated involvement at a particular time. There will certainly be some cases that require it reasonably early; there will be other cases where the injured worker will return to work anyway, but it takes a period of time for that particular injury to resolve.

PROF WOODS: Thank you.

MS BELLAMY: Dispute resolution has been an interesting one, particularly in our own state. I have also looked at a couple of the other jurisdictions. In this state we've gone from a very legalistic system from the board through to a more informal system within our current Conciliation and Review Directorate, and in examining both of them I think the preference certainly rests with the current system. But having said that, I think there are a number of inefficiencies within that current system. Within Western Australia at least they need to be addressed. Some of those are in terms of decisions, the ability to make orders, the ability to take evidence, et cetera - some very general practice rules that are nonexistent within our own system.

In examining the two areas, the view that I would have is that the preference would be for the more informal dispute resolution system. It is important - and I will certainly make the point in our submission - that there needs to be a number of other dispute resolution processes in place before they get to the more formal WorkCover CRD. They relate to the employer. It is important that they build into their human resource management some procedures which may or may not exist, but certainly with employers where they do exist, they have been quite successful.

It's also important that the insurers establish these dispute resolution procedures. I know that some of them have internal dispute resolution procedures for their own staff on claims but I'd like to see them establish external ones in terms of maybe independent mediation and then move into the more formal system such as the existing conciliation and review.

PROF WOODS: Do you follow developments in some of the other jurisdictions? Are there any lessons to be learned from some innovations there in dispute resolution?

MS BELLAMY: The one that I followed most closely was the New South Wales system.

PROF WOODS: The Workers Compensation Commission, yes.

MS BELLAMY: There are lessons to be learned; not in innovation. My concern with that, of course, is that it has now become a very legalistic structure and a very slow structure and a very expensive structure.

PROF WOODS: Under the new arrangements, that would be your conclusion.

MS BELLAMY: Unfortunately I don't have the data that I would like to have from New South Wales. The structure may well be said to be an improvement on the previous structure, but I think in terms of its ability to deal with claims quickly and efficiently - at this stage it's still relatively new and I think it's unfair to examine it without appropriate data. There is nothing to suggest at this stage that it is substantially more efficient or more effective than the previous structure.

PROF WOODS: Thank you for that. You talk about restricted legal representation; others would argue the importance of representation throughout the process and particularly draw on arguments that, even if the lawyer can't be in the room, no doubt they've already pre-briefed their party beforehand and therefore those who are more articulate in expressing the advice they've received from their solicitors are at an advantage over those who are less so.

MS BELLAMY: It's a difficult argument and certainly, out of this state, the situation is correct, as you say. There will be some who will say, "Well, the insurer may well be present and the insurer can put the employer's case," and of course the worker is disadvantaged because the insurer representative may well be very experienced at putting that case. Where I'm suggesting restricted legal representation - and it's on minor matters so it's within the mediation and conciliation role - what I'm suggesting is that that role or within that structure it really should be between the worker and the employer, rather than again bringing in the third party intervention. Once it goes to the more formal structure then certainly legal representation should be allowed.

It may well be those parties seek advice, either from their insurer or from legal representatives, before going into the mediation process, but within that process I would like to see a scenario where it involves the direct employer and the employee. The reason for that, on some of these minor matters and not so much the technical matters, is that at that stage there is still an opportunity for recovery. With any claim, in the initial stages it's certainly very consultative and supportive; it then moves to the adversarial approach and the first dispute, be it minor, starts that movement. So particularly with those minor matters and those first disputes, if there can be greater mediation it will at least slow that movement or the crossing of the line.

PROF WOODS: Yes. Thank you.

MS BELLAMY: Premium setting: we've always held the view that workers compensation insurance should be deregulated. That of course would mean that third party premium setting would be abandoned and the operation of insurers would be left to the market. In saying that we would expect there be appropriate prudential and administrative controls federally under APRA.

PROF WOODS: Has your experience of market forces always supported that that would produce the most desirable outcome?

MS BELLAMY: Do we have a competitive market in Western Australia? It depends on whether or not the insurers wish to be in the market.

PROF WOODS: Yes.

MS BELLAMY: In 1999, and for a couple of years after that, one could say it wasn't as competitive as it could have been or should have been. As the system has improved - that is, at least it's going to survive - we are seeing the market become more competitive. Again, within the free enterprise system, we are far better off with a competitive market. Western Australia is certainly far better off than some of the other jurisdictions and, if we compare that with New South Wales, it's relatively easy to see.

PROF WOODS: You chose your comparison carefully.

MS BELLAMY: It's difficult to support a monopoly situation such as Queensland but, you're right, the systems around the country are really quite different. If I could just raise one other issue there: there are two important factors. The first is that premiums should be risk-graded as far as possible; the second issue that continually comes up is discounting or rebates. I have problems, I think from day one, reconciling in my mind why these two things continually come up. If you have a free market then it allows employers to negotiate their premiums against the risk. In terms of discounting - if we look at some of the other jurisdictions - to receive a discount then employers need to establish certain systems; in establishing those systems there is a huge cost factor and the outcome from those systems is not necessarily positive.

The other factor that's been raised with me by some employers is that the cost of establishing and maintaining those externally imposed systems is higher than the discount that they receive.

PROF WOODS: Insurance markets do go through cycles.

MS BELLAMY: Yes.

PROF WOODS: You have hard markets and soft markets. You have firms who discount premiums heavily to buy market share and the like. Should workers compensation be subject to those vagaries? You mentioned to some extent having prudential thresholds and regulation of that form. Is that the way by which you would ensure that at least the system remains viable?

MS BELLAMY: Yes, I tend to agree with you. There are several factors in there in terms of the market and the way in which the market behaves, but at the end of the day all markets will have certain characteristics. I don't think it's up to the government to try to control those characteristics. Where the government does have a responsibility is in ensuring that it remains a viable market. So long as the prudential and administrative arrangements are in place, as you suggest, then I think we just have to ride out the characteristics of a market.

PROF WOODS: It would be helpful in your submission to us to identify what you see as the minimum necessary level of intervention by the government in the insurance market. I want to make sure we're fully informed on not overregulating where that's unnecessary, so your views on that would be most helpful.

MS BELLAMY: Yes.

PROF WOODS: Self-insurance?

MS BELLAMY: National self-insurance arrangements - - -

PROF WOODS: You talk of conditional support.

MS BELLAMY: It depends on the framework whether, in fact, it becomes totally a national system, so they're responsible to a national system and not to the local jurisdiction, or whether in fact we can set a number of criteria in place through re-insurance arrangements or other arrangements, where it can be done nationally rather than at a state level.

PROF WOODS: Yes, state by state.

MS BELLAMY: But I think it's important within workers compensation - it's I think a little different from occupational safety and health in that workers compensation should be managed in the jurisdiction to which it applies. We find that where that management is done in another jurisdiction the day-to-day management may not be as good as that management at a very local level. Also, one of the

concerns, of course, regards the premium pool and the general support of the jurisdictional arrangements. Within self-insurance we're seeing the large companies becoming self-insured and they're actually going out of the schemes, so we're losing that support within the jurisdictional arrangements. There will be some concern, particularly from the jurisdictional bodies, in terms of losing their major employers.

On the other hand, national employers that have become self-insured become very frustrated by the different benefit levels and the different requirements in all of the states. One thing can't be seen in isolation. If we can set up, say, the consistent benefit levels and have maybe some consistent philosophies within injury management, it will become much easier for self-insureds and other national companies to actually manage across all of the jurisdictions.

But in terms of a national body to which all self-insurers should apply to gain an exemption from jurisdictional requirements, it's inappropriate to either establish that body or to use an established body; I think it's appropriate that they continue - - -

PROF WOODS: Does **o**ne come to mind?

MS BELLAMY: Of course, Comcare. I think it's appropriate that they actually apply to their jurisdictional WorkCover or bodies. There may well be some consistency in the requirements of self-insurers.

PROF WOODS: It's an area we could debate at some length this morning, but it might be helpful in the first instance if, in your submission, you could spell out your thinking on that a little further. We may follow that up because we're certainly aware that there are various models that we could draw on, one being self-insurance under a pre-existing or newly created national scheme. You mentioned Comcare in that regard. The alternative is that where the prudentials are nationally sound the head office location approve the self-insurance status, provided each jurisdiction has signed off that their performance in occupational health and safety was of an appropriate standard, or else they apply individually in jurisdictions, in which case you would probably want to reduce the diversity of conditions such as the 200-employee threshold in South Australia, or the 2000-employee threshold in some other jurisdictions.

MS BELLAMY: It's interesting that you mention their performance in occupational safety and health. I don't think it has much to do with whether or not they're self-insured; self-insurance is about their performance in the management of claims and their performance in injury management.

PROF WOODS: You don't see the two related?

MS BELLAMY: No, I don't. It concerns me and I think it's going back to the comments that I made on discounting - in terms of these externally imposed systems that can be relatively easily met although fairly expensive to do so. But at the end of the day they don't drive their workers compensation performance, so I would much rather the focus being on their performance in claims management, their performance on injury management and their financial viability. To concentrate on other areas dilutes the focus on those three.

PROF WOODS: Is there, though, some confusion in the debate between prescriptive occupational health and safety and outcome-oriented occupational health and safety? Is that part of the confusion in this area of debate? I am wondering if you are reacting particularly to the prescriptive form of occupational health and safety.

MS BELLAMY: No, I'm not. I'm reacting to systems and I don't think systems are that related to whether it is prescriptive or whether it's general duty of care. What appears to happen is there is the implementation of a management system - occupational safety and health management system - which I support, but there is also a requirement for audits. Those audits are done in compliance with a number of documents that exist around the country and the Australian standard being the most popular one.

What happens then is that the systems start to be driven by the audit tool - not by what is most appropriate for a particular company but what will get us past the audit. In the first year, when you implement the system, it's fine, it's innovative, it drives itself and you may well start to see improvement, but if the audit tool doesn't change over a period of four or five years or the audit tool is not the most appropriate audit tool for that organisation then that is what you are managing to.

PROF WOODS: Okay. If you could elaborate on that it would be most useful. You have got three other items there. Perhaps we can work our way through those.

MS BELLAMY: Licensed insurers: in Western Australia of course we have a privately underwritten system. Given my previous comment on the deregulation of the workers compensation market then we see that the system throughout Australia should be privately underwritten. I doubt that will ever happen.

PROF WOODS: So it's a flag that you are waving.

MS BELLAMY: Yes. We're happy with out privately underwritten system. It's performing well and has traditionally performed well. It is like anything - it has peaks and troughs, but those peaks and troughs are not as high as some of the other jurisdictions. Just in terms of the question that the Productivity Commission is

asking, yes.

PROF WOODS: Yes. I am happy with that.

MS BELLAMY: A fairly easy answer. The interrelationship between workers compensation and OHS legislative frameworks: it seems to me that workers compensation is seen as a mechanism by which to achieve accident prevention. I don't think that is necessarily the case. I think they're two different systems.

PROF WOODS: Is there no role for feedback loops?

MS BELLAMY: Certainly there is a role for feedback loops. Feedback loops are useful in terms of adjusting occupational safety and health programs. The data is particularly useful, but the data is really about claims management, injury management - the severity of a claim is not necessarily how severely somebody is injured; it really relates to how long it takes them to get back to work. How long it takes them to get back to work is then dependent upon the injury management program. You can have a minor claim that may take six months to get back to work and a major claim where the person is back to work within a month - so great care.

There are probably three things I would consider in this area: the first is the different cultures and the drivers of most of the systems; the second is quite an important one in the combination of the two and it is the loss of focus on one area. Given that workers compensation is driven by finance then that will be the area of focus and I think we'll start to lose it on occupational health and safety. The third one is an interesting one in that I see different competencies to manage both systems. Whilst we may see, within organisations, individuals who are trying to balance both, my experience in this market and certainly in the employment of people is that it's very rare to find somebody who will give even focus, or has competencies in both areas.

PROF WOODS: I understand those issues, but I would have thought that there would still be an advantage in examining system frameworks for each to ensure that you do maximise the benefit of data collection and feedback in that design process.

MS BELLAMY: Yes. Some of that work is already being done by the national commission and I am - - -

PROF WOODS: Yes, of which you are a member and we're across.

MS BELLAMY: Probably I, being a member of these things, am not paying as much attention to it in my submission as I could.

PROF WOODS: Okay.

MS BELLAMY: But certainly if recommendations coming out of the Productivity Commission can enhance that work then I personally would be very pleased to see it.

PROF WOODS: Very good.

MS BELLAMY: Cost-sharing is a difficult one: there always seems to be a view that the net effect of cost-sharing would favour employers whilst disadvantaging taxpayers. I don't think that that is particularly so, although unfortunately I don't have the data to present on that. It should be balanced with employers paying for injuries that may not be workers compensation injuries, or alternately may not be fully contributed to workplace injury. It's a two-way thing, but the perception may not be the reality.

PROF WOODS: We'll certainly be exploring that and doing some financial modelling on not only cost sharing, but cost shifting and we will explore that in much greater detail. I appreciate these were discussion notes and you have elaborated on those for us during today's hearing. We are very keen to get your full submission. We have identified a couple of areas where this inquiry would benefit from more detailed views on certain of those, but have you got any concluding comments you wish to make at this point in the inquiry process?

MS BELLAMY: No.

PROF WOODS: We are grateful for the ongoing cooperation of the chamber to the inquiry and look forward to your further submission. Thank you very much.

MS BELLAMY: Thank you.

PROF WOODS: I will adjourn the hearing at this point. Thank you.

AT 12.24 PM THE INQUIRY WAS ADJOURNED UNTIL
MONDAY, 16 JUNE 2003

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