REPORT OF PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE No. 1

INQUIRY INTO PERSONAL INJURY COMPENSATION LEGISLATION

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At Sydney on Friday 14 October 2005

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The Committee met at 9.00 a.m.

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PRESENT

Reverend the Hon. G. K. M. Moyes (Chair)

The Hon. R. H. Colless
The Hon. G. J. Donnelly
The Hon. K. F. Griffin
The Hon. R. M. Parker
Ms L. Rhiannon
The Hon. I. W. West

VICKI TELFER, General Manager, Strategy and Policy Division, WorkCover New South Wales,

LAURIE GLANFIELD, Director General, Attorney General's Department,

DAVID BOWEN, General Manager, Motor Accidents Authority, and

ANTHONY LEAN, Policy Manager, Legal Branch, The Cabinet Office, on former oath:

DEPUTY CHAIR: Reverend the Hon. Dr Gordon Moyes has been unavoidably delayed and will be here in a few minutes. We will begin with the formalities. Welcome to the sixth, and probably final, hearing of General Purpose Standing Committee No. 1 inquiry into personal injury compensation legislation. It is something of an encore performance for the officers representing the Attorney General's Department, Motor Accidents Authority, The Cabinet Office and WorkCover New South Wales. The Committee has resolved previously to authorise the media to broadcast sound and video excerpts of its public proceedings, and copies of the broadcasting guidelines are available from the table by the door.

In reporting Committee proceedings the media must take responsibility for what they publish, including any interpretation placed on evidence given before the Committee. In accordance with those guidelines, while a member of the Committee and witnesses may be filmed or reported, people in the public Gallery should not be the primary focus of footage or photographs. Under the standing orders of the Legislative Council, evidence and documents presented to the Committee that have not been tabled in Parliament may not, except with the permission of the Committee, be disclosed or published by a Committee member or any other person. I will hand over to the Chair of the Committee, Reverend the Hon. Dr Gordon Moyes.

CHAIR: I apologise for my lateness. A traffic accident north of Gosford this morning delayed motorists coming from that direction. Would one or more of you care to make a brief opening statement?

Mr GLANFIELD: You will be delighted to hear that we do not wish to make an opening statement.

The Hon. ROBYN PARKER: Thank you all for coming today. The Committee wanted to resolve a few issues. The key issue so far as I am concerned relates to comments made during the Committee's inquiry, from union representatives in particular, that they had been given assurances by the Government that no worker would be worse off under the changes to personal injury compensation. Is that the case? Were such assurances given by the Government?

Ms TELFER: If you are talking about the workers compensation reforms, we have checked very closely any correspondence that was sent, and have also gone through our collective memories. I think it would be fair to say that the Government acknowledged, in May 2001, union concerns that injured workers should not be disadvantaged under guidelines and thresholds for workers compensation. There were a number of concerns raised, as you know, particularly around common law, and in mid-2001 an independent inquiry was undertaken into common law provisions. That committee included a range of people from various unions and employer groups. There were also some people from our advisory council on that committee and they went through the common law provisions. I do not think the Government did say at any time that no workers would be disadvantaged; it did acknowledge concerns about some of the provisions and consulted about those provisions.

The Hon. ROBYN PARKER: Did that committee meet only for the purpose of looking at the common law provisions, or has it met subsequently?

Ms TELFER: That particular committee only met at the purpose of looking at the common law provisions. It obviously discussed a range of other issues to do with the package as well, but particularly around the common law provisions. WorkCover and the Government continue to meet in a consultative manner with employer groups and unions on a regular basis, and with other interested

stakeholders. For example, the chief executive officer held a forum last Monday with a range of unions in the morning, and a separate meeting with employer groups in the afternoon. We continue to meet and a range of issues about workers compensation is raised at those meetings.

Mr LEAN: The legislation also provides for the establishment of an ongoing Council, which provides advice to WorkCover or the Minister.

Ms TELFER: That is the Workers Compensation and Workplace Occupational Health and Safety Council. It provides advice to the Minister. That council meets formally every two months and on every other month meets in subcommittee. For example, they have been meeting about return to work and occupational health and safety [OHS] consultation.

The Hon. RICK COLLESS: Is that the expert reference group to which you refer in your written answer?

Ms TELFER: No, it is not. That was a particular inquiry that was set up—it is sometimes known as the "Sheahan inquiry"—that was looking at the provisions around common law.

The Hon. RICK COLLESS: What were the outcomes from that inquiry?

Ms TELFER: That inquiry produced a report and there were a number of recommendations to government about thresholds for common law and the manner in which common law should be managed and administered. The Government considered those recommendations. In fact, from memory the recommendation was that there be a 20 per cent threshold for access to common law. The Government considered that, but dropped it down to 15 per cent. It looked at those provisions and introduced legislation arising from them.

The Hon. ROBYN PARKER: The documentation relating to the advisory committee to the Minister, are they public documents?

Ms TELFER: I do not think we published the minutes, but they go out to members of the council and we could certainly make them available to you if we needed to.

The Hon. ROBYN PARKER: Would you agree that this inquiry would not be taking place if workers did not believe they are worse off since the 2001 reforms?

Ms TELFER: My understanding is that this inquiry was prompted by a range of different concerns and issues—

The Hon. ROBYN PARKER: That was one issue.

Ms TELFER: —and that is one of them. It is fair to say that, in any major change such as that which took place in 2001, there are lingering concerns from various people. WorkCover tries to manage those and work with our stakeholders as best we can to resolve those problems. I think it is fair to say that in any major change, such as took place in 2001—and it was quite a substantial change; not only about common law but about making sure we got our insurers to start administering workers compensation in a much better way, because we were very unhappy with what they were doing—that there will be concerns from time to time. It is open to people to raise those issues with members of Parliament.

The Hon. ROBYN PARKER: It took some effort to get this inquiry established. If this review were not taking place, what procedures were you prepared to take on board and what did the Government propose to do about the workers who feel they have been disadvantaged?

Ms TELFER: I think it would be fair to say that workers compensation and the particular provisions for workers compensation are constantly under scrutiny and under review, and we provide advice to government about various options.With such a change as took place in 2001, and it is not even four years since those reforms took place because they came into effect on 1 January—some of the common law changes came into effect at the end of November, but most of the reforms did not come into effect until January 2002.

The Hon. IAN WEST: Changes.

Ms TELFER: Changes. It is quite important that we do not chop and change people's entitlements and the way things happen because that creates a great deal of confusion and that can mean that people are much worse off. But we keep it under constant review and if there are things that we can improve then we would make those recommendations to government.

The Hon. ROBYN PARKER: One of the other key factors for the premise for the changes in 2001 was the insurance premium and projected reduction in premium costs. The fifth monitoring report, which was produced in July 2005, has a different result to the projected figures in January. It says that the reduction is something more like 7 per cent than 15 per cent. Could someone explain those changes?

Ms TELFER: Who did the report come from?

Mr LEAN: You are referring to the ACCC?

The Hon. ROBYN PARKER: Yes, the ACCC report.

Mr LEAN: From what I understand, the first report that was put out by the ACCC in respect of last year showed a 15 per cent reduction in the first six months. When they subsequently prepared the report for the whole year that figure was revised down to 4 per cent. I am not aware of the reasons for what appears to be a fairly significant difference. That is something that would need to be pursued with the ACCC. Two points probably should be made. The first is that the ACCC report is based on a voluntary survey where not all insurers operating in the market respond to the ACCC's request for information. Probably it is better to look at the APRA report, which is based on claims and policy data that is provided by all insurers. That came out a few months ago. The other advantage of looking at that is that it has a breakdown by State. For the most recent period that report shows that premiums in New South Wales have come down by about 10 per cent, which is still not the 15 per cent the initial ACCC report showed, but it shows that New South Wales probably is going a bit better than other jurisdictions. The other point, and I think I made this point a number of times when we first appeared before the inquiry, the Government has consistently expressed the view that insurers need to pass on the full benefits of reform to the community as soon as possible.

The Hon. ROBYN PARKER: That same report says that the average public liability premium in New South Wales in 2001 was $1,020, and in 2004 it was $1,625, which is a 59 per cent increase. Yet the ACCC report says that the average level of excess of the claimant has increased by about 20 per cent. This points strongly to the insurance industry receiving most benefit from tort reform. Is that correct?

Mr LEAN: Prior to the reforms, and the 2001 figure you referred to, there has been a lot of recognition that a number of factors were affecting insurance premiums, which resulted in premiums rising so dramatically over, say, 2001, 2002 and 2003. It was not just claims costs, but that was a definite factor. There was a range of other factors, including underpricing by HIH, difficulties in the international reinsurers market and various other factors that often have been cited. It would be unrealistic to expect a return to the premium levels of pre 2001 when it was recognised that HIH was engaging in significant underpricing. The important point is that premiums have started to come down and we are starting to see that in reductions—as I mentioned, a 10 per cent reduction in New South Wales. I am not prepared to say that is all completely attributable to tort law reform, but, undoubtedly, the greater certainty and predictability that has been given by the Government's reforms has enabled the insurance market to operate in a more competitive market.

CHAIR: You just said 10 per cent. Previously we were told it was 15 per cent. A few moments ago I think you said 7 per cent.

Mr LEAN: No, I think Ms Parker said 7 per cent.

CHAIR: And you are saying 10 per cent.

Mr LEAN: Yes.

CHAIR: What are you saying? Is it coming down slower than what was anticipated or do other people have wrong figures?

Mr LEAN: I addressed that quite comprehensively in my previous answer. The first ACCC report said 15 per cent for the six months last year. The subsequent report revised that figure down for the full year to 4 per cent—these are ACCC figures. They are also nationally based and, as I pointed out, it is not a comprehensive review of all insurers operating in the market. They were the two figures that we relied on the last time, and I think they were the only figures that were available the first time. In fact, I am sure they were. Since that time we have now got the APRA claims and policy database information available, which is a more comprehensive survey, and that is showing a reduction in New South Wales of 10 per cent. These are not the Government figures, they are the ACCC and APRA figures. I am just referring you to the statistics.

CHAIR: I wanted to clarify the variations.

Mr GLANFIELD: However, I think it shows just how difficult it is in this area to predict with any certainty the impact of changes. One of the reasons we want to monitor this very closely and to sit down with both APRA and the ACCC is to try to understand the basis upon which their reports are founded. I do not need to say to the Committee that this long-tail business is always notoriously uncertain. There is a long time between when an incident happens and a claim occurs, and that is the result. From my experience in this area we are still seeing what is happening as a result of the changes that were made. There are still a lot of cases in the system being handled by insurers that date back prior to the reforms.

The Hon. IAN WEST: Changes.

Mr GLANFIELD: Changes. We have to monitor this very closely. As time is passing we are going to get more and more serious about trying to understand precisely what is happening with the premiums, and put pressure on insurers to deliver premium decreases if that is reflected in the changes.

The Hon. ROBYN PARKER: But, surely, that dividend is not being passed on to victims and those injured in the way we were led to believe by the Carr Government at the time when these tort changes were introduced. You talk about our monitoring it. Do you not think it is time the Government put this back on the drawing board and had another look at the outcomes? If it is not being passed on and if the premiums are not going down to the levels we thought should it not to be reviewed time by the Government?

Mr GLANFIELD: This Committee is looking at the issue and, as I said the last time we were here, we will look with great interest at the findings of this Committee. I am not sure whether there is much point in embarking at this point on another review to the work you are doing. You made some reference to the premium benefits not being passed on to victims. In this area it is not victims who are paying premiums, it will be community groups or organisations.

The Hon. ROBYN PARKER: Certainly.

Mr GLANFIELD: When we talk about premiums we are focusing on whether community organisations and those bodies that are taking out insurance to protect their liability receive the benefits of the reductions in premiums that were anticipated to flow from the reforms.

All I can say is that the discussion we just had about the various reports from very respected bodies reflects that at this stage it is very unclear as to what precisely is happening. I am not saying we are going to leave it for ever, but I think we really need to understand precisely what the impact is and, secondly, what does that mean for insurers, and what should be the reduction in premiums that they should be passing on.

Mr LEAN: May I add to that. I think focusing exclusively on premiums probably does not paint a complete picture. I think you also need to look at the issue of availability. During the insurance

crisis in 2001 a number of insurers withdrew from the market. It was not that people had to pay too much for insurance at that time; it was simply that they just could not get it at all. That is largely what led to the crisis. There was a lot of panic and concern because people just could not get insurance.

That seems to have dissipated significantly. I am not sure whether this inquiry has had detailed evidence on that, but my understanding—and certainly our experience would show this—is that government is not being flooded with requests to help people try to find insurance, that is, the small community groups, sporting organisations and those sorts of groups. I think that is a fairly significant measure which should not be forgotten.

The other point is that these reforms were driven not just by a desire to cut insurance premiums; they were also principled reforms designed to restore certainty and predictability, and the principle of personal responsibility into the law of negligence. There was widespread recognition at the time that perhaps judges had gone too far in awarding damages, and this was in fact acknowledged at the time in various speeches. What has been done is that we have made the law clear for all, so that the principles on which liability will be determined are now consistent with what the community expects. Parliament passed the legislation at that time on that basis.

Ms LEE RHIANNON: Mr Bowen, given that QBE insurance states in its submission that CTP claims frequency has dropped from 0.5 per cent in December 1999 to 0.24 per cent in 2004, and given that during that same period the average claim payment for CTP insurance in New South Wales has reduced from $19,600 in 1999 to $17,400 in 2004, does this not suggest that profitability for CTP insurance is greater than the profit margin of 8.7 per cent as reported in the MAA 2004 annual report?

Mr BOWEN: The short answer to that is yes. As you would be aware from my attendance at the law and justice committee hearings, the MAA has a charter to look at, and in effect approve, the level of profit included in CTP premiums. The range of the profit, as set prospectively at the time the premium is filed, is between about 8 and 10 per cent. It varies between insurers, but on average it is about 8.5 per cent.

The indications are that in the early years of the new scheme the amount of profit that the insurers will actually realise—have not yet realised but will eventually realise—will be much higher than that, and that is for two reasons. One is that when the scheme reforms were introduced for the first two years and into the third year of pricing, there was some allowance for uncertainty as to the effect of those changes, and the changes to the scheme have been successful in meeting the objectives.

Secondly—and this was not predictable, and it is not a New South Wales-alone phenomena—there has been a significant reduction in the claiming rate, which is mirrored in the reduction in road injuries. Although, that is primarily at the lower injury level. For catastrophic and serious injury, there has been some slight reduction, closely mirroring the reduction in the road toll, although not quite to that extent because at the very high end people are now surviving motor vehicle accidents whereas 10 years ago they would have died. But there has been a big reduction in small claims at the lower end, which has reduced the overall claims number.

Ms LEE RHIANNON: With regard to the profitability issue, a report to this inquiry from a consultant actuary suggests that the return on capital for CTP insurance in New South Wales, Queensland and the Australian Capital Territory has increased from 9 per cent in 2002 to 19 per cent in June 2004, and that the gap between the claims paid and provision for net premiums received has grown from $350 million in June 2000 to $750 million in June 2004. Do you agree that these figures suggest that insurer profitability may be greater than the MAA is led to believe?

Mr BOWEN: I can report on New South Wales, but not what is happening in Queensland and the Australian Capital Territory. The insurer profitability in year one, that is the year ended 30 September 2000, which was the first full year of the new scheme, would— Firstly I will put a caution on this. This is based partly on actual claim payments and an assessment of the outstanding liabilities. So if I can use that year one as an example. While close to 90 per cent of total claims have now been paid, that represents only about 55 per cent of actual payments because the 10 per cent that are still to be finalised are the really large claims. It is not unexpected that they take longer: they are often paediatric claims that may not settle, quite legitimately, for 10 or sometimes 15 years post the event.

The Hon. IAN WEST: Or will never settle?

Mr BOWEN: They will eventually settle, at some point. Usually the ones that take the longest are paediatric brain injury cases where some of the disabilities associated with the injury may not become apparent until adolescence. So, for good reason, the claimant's lawyer will not settle until after that transpires.

CHAIR: If I may say so, that it is a very small percentage of total claims.

Mr BOWEN: It is a small percentage of total claims but a very large percentage of the total incurred cost. When we are talking about what the profit will be, we basing that on an estimate of the value of those outstanding claims. I think that for year one it is probably a reasonable estimate. If that comes to fruition, it will show that the profit on year one of the new scheme was around about $315 million. Since then, that has been declining as the insurers have priced these scheme changes in. So, for our latest annual report for the year ending 2003, that has declined to around about $217 million. It is still slightly higher than allowed in the premium filing, but it is nowhere near the amount that Mr Constance suggested.

The Hon. IAN WEST: When you use the word "profit", are you saying that that is after you have taken into account the reserves needed to pay for the extensive tails, et cetera? When you use the word "profit", what do you mean?

Mr BOWEN: In very simple terms, I mean: Here is the amount of premium that has been collected, take out the acquisition costs because that is a business cost, take out the claim payments, or the incurred value of the claims, which is a combination of what has actually been paid and the estimate of what is still to be paid, and what is left is profit.

The Hon. IAN WEST: Which is, you say, an increase above and beyond the fact that it is the first couple of years of the scheme, where there is a need for extensively more reserves to be kept?

Mr BOWEN: Yes, I am saying that.

The Hon. IAN WEST: You say that on top of that there has also been an increase in profit from 9 per cent to—?

Mr BOWEN: On year one, it may be over 20 per cent. That is because the risk premium that was allowed in the insurance filing in the first year included an element for uncertainty as to the effect of the new scheme. But, more importantly, the first point was that the claimant rate and the injury rate have been declining significantly. I make the point that that is completely separate to the scheme changes because it is not a New South Wales phenomena; it is occurring right across Australia. In fact, a lot of it is occurring right across the Western world.

The Hon. IAN WEST: This is above and beyond the necessary reserves and actuarial estimates for fund ratio purposes?

Mr BOWEN: Yes.

Ms LEE RHIANNON: I want to pursue the issue of reporting of profitability. You obviously would follow the reports from the Standing Committee on Law and Justice. The fifth and sixth reports contained a recommendation that the MAA present to the committee annually a separate and specific report on insurer profits. When does the MAA intend to commence reporting specifically on the MAA's assessment of the profit margins of CTP insurers in New South Wales, the actuarial basis for its calculation in relation to each of the licensed insurers, and the data provided to it by the insurers pursuant to section 28(1) that forms the basis of the assessment?

Mr BOWEN: We do that every year in the annual report.

Ms LEE RHIANNON: I apologise that I am unaware of that. It would appear from our work in the Law and Justice Committee, of which I am also a member, that our understanding is that it is not happening. I wonder why that has not been corrected for the committee.

Mr BOWEN: We do not produce it as a separate report because for the first two years when we produced a separate report we were asked by the committee to include it in our annual report. It was then included in the annual report and I have taken the committee's recommendation as being addressed more to when it was provided, not whether it was provided. It is certainly provided every year in the annual report.

Ms LEE RHIANNON: I understood the recommendation two years in a row was that there be a separate and specific report. We can seek clarification. I need to go back to the records. I am sure I can check it later with Mr Bowen. Would the MAA be assisted in monitoring insurer profitability for CTP insurance in New South Wales if insurers were obliged to provide the MAA with additional data? If so, what data would the MAA need to properly monitor insurer profits in the CTP area?

Mr BOWEN: Last year and again in this year's annual report we requested from the insurers, in addition to all the material we gather to assess the profitability of the scheme as a whole, audited statements indicating the release of capital they hold against CTP, because prior to 2004 there had been no release of capital held against the new scheme post-1999 CTP reserves. Since then there has been some release and we will be reporting those individual statements to the committee in this year's annual report.

The Hon. IAN WEST: On another point of clarification, that 20 per cent—

Mr BOWEN: It is 20-plus per cent. It will be over 20 per cent.

The Hon. IAN WEST: Does that also take into account the changes to the international accounting standards that have just taken place and the new risk margins?

Mr BOWEN: It does, but it has not significantly affected it because the insurers were reserving at prudential margins in CTP fairly much in accordance with that—over 75 per cent certainty, which translates to roughly 15 per cent prudential margin. In our annual report on profit we report on the incurred cost and the discount—present value rate and present value with the prudential margin. That is important because that margin has to be held by insurers to meet Australian Prudential Regulation Authority requirements.

The Hon. IAN WEST: That sounds like an underlying very healthy scheme.

Mr BOWEN: Yes. I agree with that.

Ms LEE RHIANNON: Former Premier Carr is quoted as saying "The big insurers have had a bonanza with our help. If there exists a reform dividend, it has to be shared fairly between victims, insurers and motorists." Given all the evidence that is emerging that the reform dividend is not being fairly shared, do you agree that good public policy requires a government to revisit the injury compensation scheme in New South Wales?

Mr BOWEN: This goes to the earlier point about premium reduction. Because CTP is a regulated scheme there is high quality data on what has been happening with premiums. In 1999, before the reforms, the average class 1 premium, which we all understand is a sedan, was about $440. By 2001 that had dropped to $340, so there was a $100 reduction. That premium now is about $329. In percentage terms there was initially—over the first two years—close to a 25 per cent reduction in premium; in real dollar terms that is close now to a 33 per cent reduction in premiums, and it is being maintained. Motorists have had a very significant dividend from the scheme changes.

Mr LEAN: It is a matter of opinion whether the benefits of the reforms are being passed on at the moment. I was not aware that the committee had already reached a conclusion on that point. We have already pointed to some of the positive signs that exist, including what appears to be a 10 per cent reduction in insurance premiums in New South Wales. Benefits are being passed on. I referred previously to the improved availability of insurance. I point out that in 2001-02, people could not get insurance. People are not knocking on the Government's door anymore saying that they cannot get insurance. There is a significant improvement in availability. It is a matter of opinion and we look forward to seeing the committee's views on whether the benefits are being passed on.

Ms LEE RHIANNON: Do you agree that one of the consequences of the capping of legal costs for claims under $100,000 in the District Court has been the undermining of the arbitration system and pressure on the court to allocate more judge hearing time, and that both of these have impacted on the District Court's budget? Is that how it has played out?

Mr GLANFIELD: It was certainly drawn to our attention that the cap on legal costs might be having an impact on the number of cases being referred to arbitration. We had a 90 per cent decrease in the number of claims in the District Court being referred to arbitration. You will be aware that Parliament recently passed legislation to amend the cap so as to allow the legal costs incurred in arbitrations not to form part of that cap—effectively extending the cap—so that disincentive was removed. That commenced only this month, I think on 1 October. We will have to monitor the impact of that change. There is no doubt that capping appeared to have some impact on the arbitration scheme. However, there may be other factors at play, such as a reluctance by judges to refer matters to arbitration. Until we see the impact of the changes just made we will not really know what has been driving that dramatic reduction in referral matters to ADR.

Ms LEE RHIANNON: Do you think it was brought in too quickly and before there was sufficient consultation within the judiciary and related sectors?

Mr GLANFIELD: In all areas where a different regime is introduced there will be potential impacts that you are not aware of and cannot foreshadow. We have been monitoring this; we have been meeting regularly with both the profession and the Chief Judge of the District Court. The legislative changes that the Attorney General brought forward were a result of that monitoring. We were seeing a possible adverse impact of the cap and we moved to correct it.

CHAIR: I went to a conference of lawyers concerned about the New South Wales Government's no-fault catastrophic scheme, which is proposed to come into being in a year or so. It was designed to capture a predicted 60 catastrophically injured motorists. Now it is considering extending this to all motorists, as Victoria does. Have you looked at what is involved in removing fault? We have been speaking about the problems in the courts and the problem of proving fault in some of these cases.

Mr BOWEN: You might not find yourself invited back again to the conference if you suggest that to the legal profession. The catastrophic care proposal captures about 125 injured motorists. I think the 60 number is the difference between those who are currently compensated, at least in part, and those who receive nothing at all. The basis upon which full no-fault schemes operate is to replace common law benefits, effectively, with statutory defined benefits, very similar to workers compensation schemes. That was briefly looked at, not in depth, as an option in the development of proposals for the 1999 reforms, but it was also recognised that the history of motor vehicle insurance personal injury schemes in New South Wales had seen governments dabble with an attempt to do that in the late eighties and that was then repealed.

CHAIR: In New Zealand I think.

Mr BOWEN: In New South Wales.

CHAIR: But also in New Zealand.

Mr BOWEN: All of these proposals date back to the late sixties, early seventies. The Woodhouse Report was the basis of the New Zealand scheme and it was looked at in Australia as a potential national accident compensation scheme. I think there was even legislation from the Federal Government in 1973.

CHAIR: If Victoria has moved into a no-fault compensation scheme what additional cost would it be for New South Wales to go that way?

Mr LEAN: The catastrophic injury proposal is a no-fault proposal for the care costs for catastrophic injury?

CHAIR: Yes.

Mr BOWEN: Reverend Moyes is asking about extending it to a full no-fault scheme.

CHAIR: Yes.

Mr BOWEN: Full no-fault schemes are invariably and virtually, by necessity, government underwritten so it first involves taking in that role in mentioning the costs and looking at the Government's books. It would be a reasonably major piece of work to work that out. Obviously there would be significant costs.

CHAIR: But obviously you have crossed that off the agenda because it is too expensive.

Mr BOWEN: I do not put it on or off the agenda. That is very much a policy type of issue. That would have to be addressed to the Government. I am sure if you approach the Minister he might be happy for us to at least just send back some envelope calculations. I do not think I could sit here and try and make any sort of realistic assessment of what the cost impact of that would be both ways.

The Hon. ROBYN PARKER: One of the people commenting on the reforms in the media particularly and at a number of conferences has been the Chief Justice of New South Wales. I am not sure who might answer this question, Mr Lean or Mr Glanfield, but do you agree with the view that he has when talking about people seriously injured through carelessness of others, that they have been left with little or no right to compensation? He said, "Some people who are quite seriously injured are not able to sue at all. More than any other factor, I envisage this restriction will be seen as much too restrictive". Do you agree with him?

Mr GLANFIELD: He has made a number of comments and I think you are quoting from his more recent paper delivered in the United Kingdom. I think you need to look at his comments in balance as well. The vast bulk of that paper effectively identified the concerns that he had raised previously and supported the need for reform and the fact that the reforms had addressed many of the issues that he had raised. In fact, one of the areas that he raised as a concern about perhaps the reforms having gone too far in relation to public authorities, is where he is at odds with the Justice Ipp report where he actually suggested in that area that the Government should do more than it ultimately did.

There are varying opinions in this area. I think he did make two conclusions in that paper. They were opinions and I guess from our point of view we need to look at are there cases where people are seriously injured and they are not receiving compensation? As I indicated when we last appeared before the Committee, we did ask the Law Society and the Bar to bring to our attention specific cases where that is the case. Obviously we will look at that very carefully. There is some confusion in this area though that people who are insured, it is suggested, are being denied compensation in circumstances where they simply do not have a right to claim pain and suffering as general damages. But they certainly do have an entitlement to have all of their medical costs, past and future earnings, reimbursed.

There may be an issue for the Committee—and I think I mentioned this last time—to just look at whether in that case where the lawyers are saying, "We won't take these cases on unless there is an opportunity to claim general damages", for insurers to be asked to put in place better mechanisms for ensuring that claims in those circumstances are met. It is important that there is a streamlined administrative process and if the lawyers are not taking on these claims that people have and as a result they may be missing out on compensation for their medical and other expenses, then I think there is an opportunity there for us to just revisit how can we have a streamlined approach for dealing with those claims. I would like to think the insurers are handling the cases with a minimum of administrative delay, but that is something that we need to look at very carefully, and maybe the Committee has already formed a view in relation to that in its discussions with the insurers.

The Hon. ROBYN PARKER: So, on the basis of your comments, you agree with him?

Mr GLANFIELD: I do not agree or disagree. I think he is expressing an opinion. He has expressed his opinion; I note it. I think what I am saying is that we want to look at all of the objective facts. It is nice to have opinions—that is great. He also thought that the reforms were not principled.

He did not explain in his paper why he thought that was the case. What I am saying is I think the Government has to act on more than just opinions, we need to look more closely at what is happening in practice. To some extent we are dependent on lawyers and others bringing to our attention the kinds of cases that they allege are missing out. It is not the Government's intention that people will be not recovering entitlements under the legislation, and if there is a suggestion of that we need to be looking at the insurers as to what they are doing in meeting those kinds of claims.

The Hon. IAN WEST: I just hope that we can find out prior to people being tied rather than after the event. Those people unfortunately have missed the boat. All of us no doubt would prefer that those people did not miss the boat. I appreciate what you are saying; it is a difficult issue.

Mr GLANFIELD: I do not disagree with what you are saying though. We certainly do not want people missing out.

The Hon. ROBYN PARKER: We have had a number of cases come before this inquiry. For example, in Wagga Wagga we had a young boy who had been in a bus accident. There have been a number of cases presented in this inquiry and I am sure there are many, many more out there. Are you saying that you are unaware of specific cases.

Mr GLANFIELD: I think what I am saying is that the suggestion is there are seriously injured people who are not receiving any compensation. What I am saying is if that is the case then that is not the current legislative regime. Any person who has been injured should be receiving medical and other expenses where they are covered or at least able to prove fault.

Mr LEAN: And lost wages as well.

The Hon. ROBYN PARKER: This is a young boy, he is not going to have loss of wages, but he was assessed, I think, at about 9 per cent.

Mr GLANFIELD: He will have loss of future earning capacity though.

Mr BOWEN: I can mention that it is a CTP claim. Putting aside the impairment issue, the insurer in that claim has rejected it on the basis that the driver of the vehicle suffered an epileptic fit and therefore there is no negligence to base the claim. That is a function of the operation of the common law, not of any design of the scheme or of any of the other schemes. In response to that and similar sorts of matters the Minister earlier this year announced that he would be amending the Motor Accidents Act to abolish the defence of what is called the inevitable accident or blameless accident to allow victims in those circumstances to have recourse to the benefits. I understand he is intending to bring that before Parliament reasonably soon.

The Hon. ROBYN PARKER: One of the difficulties I have personally with it, with this inquiry and these reforms has been the lack of consistency. If we are talking about principled reform—I think it was Mr Lean who referred to principled reform—I am trying to grapple with the fact that across the three Acts there is a lack of consistency with payments for non-economic loss in damages. I have some figures on the Civil Liability Act, for example, and there have been some adjustments in 2005. Before that it was $400,000 and now it is $412,000. For the Motor Accidents Compensation Act, the cap was $350,000 and now it is $359,000. For the Workers Compensation Act—this could be why workers are feeling disadvantaged—there is an opportunity for a $200,000 lump sum payment. However, their payment of $50,000 has not changed. We are looking at a huge difference and a huge inconsistency. Would you like to make some comment about that?

Mr LEAN: The first point that needs to be made is that, in comparing workers compensation to either motor accidents or civil liability, workers compensation is a fundamentally different scheme. The main purpose of that scheme is to provide a no-fault system, which would compensate everyone who is injured at work to get them to return to work quickly.

Ms TELFER: It is immediate.

Mr LEAN: Yes, it is immediate and has very different objectives. The common law is an add-on to that scheme which is available in limited circumstances where a person can prove fault and

exceed the impairment threshold. It is necessarily limited, and this was demonstrated in the Sheahan inquiry, so that the viability of the no-fault scheme can be maintained. It is a fundamentally different scheme. The focus of that scheme is no-fault and a quick return to work. In relation to civil liability and motor accidents, there are differences within those schemes. I think it comes down to three differences: the first one is around the impairment threshold versus the verbal threshold in civil liability; there are different maximum amounts of civil liability, and obviously the Government could bring those into line and it would be a matter for the Government to decide whether the civil liability limit should come down to motor accidents, or vice versa; and the third one relates to the maximum amount of economic loss, and obviously it would be a matter for the Government whether it wanted to bring the high one down to the low one or it wanted to bring the low one back up to the high one.

The Hon. ROBYN PARKER: But surely you would agree that if you are talking about principles, then there should be consistency, no matter how people are injured in terms of their compensation.

Mr LEAN: Certainly in relation to those two examples that I mentioned, it is likely that the differences there just reflect the different times that the Acts were introduced. In relation to the thresholds for access to non-economic loss, the Government took quite specific decisions in relation to each scheme because of the various needs which were pressing at that time. If you have a look at the motor accidents threshold, which is the impairment-based threshold and I think it is fair to say that that is generally considered to be harsher, what the Government was trying to do there was also to ensure that green slip premiums remained affordable. It was balancing the overall cost to the community of green slip premiums versus the need to ensure that the most seriously injured people continued to get compensated.

Mr BOWEN: At the time that the 1999 reforms for motor accidents were introduced, there was already a cap and that just continued from 1988. It was adjusted and indexed annually to maintain indexation. I would have no trouble at all supporting a recommendation from this Committee to bring that cap in civil liability into line, and the same would apply to the threshold of future economic loss. It is set very high under motor accidents. It really is a need to screen out the most extreme cases of very high income earners who would normally have some sort of recourse to income protection levels that are set out in this, which is over $3,000 and some hundred dollars net, so it is quite a high amount per week. The threshold is a different issue.

The threshold that exists under civil liability is very similar to what existed in motor accidents prior to the 1999 reforms. The intent right from 1988 was to achieve some affordability by limiting access to non-economic loss to the most seriously injured, and that verbal threshold was introduced in 1988. It had—and I use this word carefully—deteriorated to such an extent that by 1999 over 40 per cent of claimants were found to be more than 15 per cent of the worst case. That was simply not real and not affordable and there needed to be a new test put in place to achieve what was the original aim of the legislation in 1988—to keep that to only the most seriously injured.

The medically determined impairment threshold was a way of achieving that. They use some objective guidelines that were in use in compensation schemes elsewhere. It has pretty much achieved that aim—around about 10 per cent of claimants will now access non-economic loss. That was the assumption that the reforms were based on. They are delivering at that level.

The Hon. RICK COLLESS: But 15 per cent accounting for 40 per cent of the costs, is that not the sort of thing one would expect, though—that the top end of the claims would account for the greater majority of the costs?

Mr BOWEN: It was not 40 per cent of the cost, it was 40 per cent of the claimants who were being found eligible for non-economic loss, which meant they had to be found to be 15 per cent of the most serious case. If you take the most serious case, it would be a person who has brain injury or is in a vegetative state or is a ventilated quadriplegic. What we had was people with soft tissue injuries or whiplash injuries being found to be 15 per cent of the most serious case, and that was not sustainable. What we were finding was that the uneconomic profile of the claims in the scheme, for someone who had suffered whiplash, for example—and 40 per cent of motor vehicle accidents are whiplash or soft tissue injuries—they had had maybe three or four weeks off work and suffered about $10,000 total economic loss. They were getting $20,000 to $30,000 for non-economic loss and they were paying

another $20,000 to $30,000 in legal costs. So in a real loss of about $10, 000, the claim was getting up towards $50, 000, and it was just inflating green slips out of the affordability of most motorists.

The Hon. KAYEE GRIFFIN: Mr Lean mentioned reinsurance. A couple of years ago there were some issues from that. I assume that what he was referring to is what happened after HIH and long tails of cases. I suppose my experience was more in workers compensation with State Cover Mutual and those sorts of issues. Have all those problems settled down in relation to reinsurance issues?

Mr LEAN: I am not an expert in the insurance market. I was just referring to that point that has often been made in various commentaries on what happened in 2001. In the various consultations or discussions that we have had with insurers and reinsurers, I think it is generally acknowledged that there has been a return of capital to the reinsurance markets and there has been an improvement there.

The Hon. KAYEE GRIFFIN: That issue would still be the same in terms of workers compensation?

Ms TELFER: Workers compensation is not actually an insurance scheme, per se. That issue about the managed fund does not really arise. It sometimes arises, or does arise, with the specialised insurers like State Cover. That issue has settled down to some extent. There are still some issues about terrorism reinsurance, as you would be aware, but it has settled down to some extent and some pressures have gone off. But it is still something that does raise its head every now and then.

The Hon. IAN WEST: I have a couple of questions I would like to ask by way of clarification but I do not want to take up too much time.

Ms LEE RHIANNON: Ms Telfer, the 2001 Workers Compensation Act reforms have now been in place for just under four years.

Ms TELFER: Yes.

Ms LEE RHIANNON: Since November 2004, how many workers have received lump sums for permanent impairment for post-November 2001 injuries?

Ms TELFER: I would need to take that question on notice to give you the precise figure.

Ms LEE RHIANNON: If you could get those figures, I would appreciate it. How many workers who have received such lump sums for permanent disability were assessed and compensated as being over 15 per cent whole person impairment?

Ms TELFER: Again, I would have to take that on notice.

Ms LEE RHIANNON: Is it correct that a worker with serious injuries, but with assessment of less than 15 per cent whole person impairment, has no right to negotiate an exit out of the workers compensation scheme?

Ms TELFER: I think you are talking here about commutations. What happened in 2001 is that there were limits put on commutations to make sure that only the more seriously injured of workers would have access to commutations. What was happening until that time was that injured workers and insurers, at the behest of employers, were using commutations as—what is the polite term—a way as getting rid of injured workers out of their work force that they no longer wished to have around. That, of course, was blowing out the scheme quite considerably, so in 2001 there were restrictions put on commutations to make sure that it was only seriously injured workers. If you are asking about commutations, which I think you are, that is the case.

Ms LEE RHIANNON: Do you acknowledge that the way in which the present system is working is very restrictive and do you think there is any utility for the worker or the public in making seriously injured workers in their fifties or sixties with poor English skills go through expensive retraining programs again and again, often after such programs have failed to place people in a job? Do you regard this as an indignity and making it hard for these people to move on with their lives?

Ms TELFER: If someone is seriously injured they do have access to commutation and they can exit the workers compensation system.

Ms LEE RHIANNON: So you are saying that they can exit?

Ms TELFER: If they are greater than 15 per cent.

Ms LEE RHIANNON: I think you are aware that for the under 15 per cent we are picking up a large number of people who are doing it tough?

Ms TELFER: Those cases have not been brought to the attention of WorkCover. If there are specific cases, we would be interested to hear those. The workers compensation system is designed to get people back to work and we have had a couple of examples drawn to our attention. For example, someone who was said to have poor English and relatively low education skills, when we examined that case we found that person's English was higher than had been portrayed and their academic qualifications obtained outside of Australia were directly translatable into a higher paid job than the manual work they had been doing previously. It is prudent for any particular cases to be brought to WorkCover's attention. If there are issues, obviously the Government would take them under advisement and would examine any changes that might need to be taken into account.

Ms LEE RHIANNON: So how many commutations have there been since 2001?

Ms TELFER: Again, I would need to get you the specific numbers.

The Hon. IAN WEST: On the question of commutations, I know that Ms Telfer has some history within the area and I have followed the question of commutations since 1979 and I know that when the changes were made in 1987-88 the commutation issue was being looked at effectively from the opposite position to that currently in vogue—things come in and out of vogue—of trying to have a safety valve against the long tail being incurred because of pensions.

Ms TELFER: Yes, that is right.

The Hon. IAN WEST: Although currently it is in vogue to have commutations not in place and being regulated by WorkCover, did I hear you to say that WorkCover is, at this point in time, looking at claims that have got more than 15 per cent? Is there not a two-year limit as well?

Ms TELFER: There are a number of rules around commutations. First of all, there is a threshold, there is a two-year limit and people need to have exhausted all their return-to-work opportunities. With a genuine case of someone who is seriously injured, the injury has settled, we know what that level is, all return-to-work opportunities have been exhausted, then that injured worker can access commutations. I have to say that for a short period of time in WorkCover I managed our WorkCover assistance service, which encompasses our claims assistance service, and whilst there might be fewer numbers of people taking commutations—

The Hon. IAN WEST: Could I be so bold as to say nil?

Ms TELFER: I would not think it is that low.

Ms LEE RHIANNON: Can you give us a ballpark figure?

Ms TELFER: I think it would be somewhere around 40 or 50 a year but, to be honest, I would need to double-check those figures.

The Hon. IAN WEST: It would not be as high as 100?

Ms TELFER: Again, I would need to really check those numbers. Complaints would come through to the claims assistance service about people who had actually taken commutations and then, because they had gone out of the system entirely, they did not have access to some forms of compensation that they might otherwise need to take advantage of. So whilst commutations seem

attractive at face value, there were two problems with them previously: one, is that they were not going to the seriously injured workers, a bit like what was happening with CTP and motor accidents; they were not going to the most seriously injured. They were being abused by employers, who did not wish to make genuine attempts at return to work. They also can disadvantage an injured worker with regards to access to some other forms of assistance along the way, so I think people need to be very careful about thinking that commutations are the answer to a problem in that they can often cause a greater problem.

The Hon. IAN WEST: It is very benevolent of WorkCover to be thinking that way and I appreciate its concerns for injured workers. The insurance industry seems to have a view that commutation is cost effective, but there appears to be an opposite view coming from case managers. Case managers within the system seem to have a view that commutation definitely has a role to play in the concept of a relief valve to ensure that the long tail of the drip system of pensions does not cause a blow-out in the funding ratio deficit. Is that true?

Ms TELFER: And that is why commutations have been retained in the scheme.

The Hon. IAN WEST: Retained under very strict relations by WorkCover.

Ms TELFER: To stop abuse.

Mr LEAN: It is also worth pointing out that it is a difficult debate about what should be the appropriate balance between managing the tail and delivering the best outcome for workers. Earlier Ms Rhiannon mentioned some of the downsides of not having available commutations. Against that there is a vast body of research, from what I understand, which shows that the health outcomes for people who take a lump some benefit and operate within a litigated system, are often worse than those who do not. It is potentially also in the interests of the health outcomes of the injured person.

The Hon. IAN WEST: I hope it remains in the interests of the injured worker, because of the compensation they receive, and does not end up in a debate about the economics of premiums down that track when we start to reverse our view and say that commutations are a great idea, because they help us to deal with the tail.

Ms LEE RHIANNON: Ms Telfer, in response to a question from Mr West you used the words "if it is a genuine case", and "exhausted" and "return to work possibilities". To what degree are those objectives judgments? The language sounds very subjective.

Ms TELFER: It would be up to the injured worker and any insurer. If there is a problem in any of this, injured workers are encouraged to access the Workers Compensation Commission, if they have a dispute, and we would encourage that. In fact we do encourage that. If someone is over the threshold, if they are seriously injured and it has been two years, and it is in their view, the view of their medical practitioner and their rehabilitation co-ordinator that they have exhausted all the return-to-work opportunities, and they wish to avail themselves of commutation despite the fact that there is academic evidence that would show that it is often not in their best interests, and there is a problem with the insurers, they should lodge a dispute with the Workers Compensation Commission.

The Hon. IAN WEST: Would anyone, after two years, have any chance of returning to work?

Ms TELFER: That is a very interesting question. We are doing some work on that at the moment. The results are quite promising.

The Hon. IAN WEST: Return to their previous employer?

Ms TELFER: Not necessarily to their previous employer, but they can return to work.

The Hon. IAN WEST: Pre-injury employment or work?

Ms TELFER: To work, not necessarily to their pre-injury employment.

The Hon. IAN WEST: A storeman and packer in a wheelchair now becomes a receptionist?

Ms TELFER: As we know, it is about meaningful work, work that they can return to that is within their capacity. Not everyone who has a major injury can return to their pre-injury employment.

The Hon. IAN WEST: Is it true that return to work objectives occur in the first 16 weeks of the injury?

Ms TELFER: Within the first six months is the ideal time for return to work to be achieved. Sometimes people have much more serious injuries or they have other things that they need to do in order to be able to return to work. Sometimes we need to encourage the insurers to provide many more retraining opportunities. As you might be aware, the WorkCover scheme has a whole range of benefits to encourage different employers to take on people through JobCover, including some workers compensation benefits, or premium reductions, for those employers. Whilst the best return to work is obviously within the first six months, it does not mean to say that an injured worker should be put on the scrapheap and not given some opportunities. If their health recovers and it is safe for them to do so they should try to get some retraining and get back to work in some form.

Ms LEE RHIANNON: Recently a case has been reported in the media, and you may be aware of it, concerning a young building worker. He lost the sight in one eye when some steel pierced the eye. He was assessed at less than 15 per cent whole person impairment. Are you saying that that sort of injury is not serious enough, or not a genuine case, for a worker to negotiate an exit or commutation?

Ms TELFER: I would need to look at the specifics of the case. I could not comment based on the information you have given.

Ms LEE RHIANNON: He is a young man and he has lost an eye.

Ms TELFER: But he might have had some surgery to restore vision and may be able to function at a high level.

Ms LEE RHIANNON: Forget about that case. Say, a young man, steel pieces his eye, he has lost his eyesight, it cannot be restored?

Ms TELFER: If it cannot be restored I would expect that that person would be entitled to compensation, to a lump sum. But a person who has the terrible tragic incident of losing eyesight through an employment injury does not necessarily mean that that person is totally incapacitated or totally impaired. The person may be able to return to meaningful work. It is incumbent upon society to make sure—and this is how the Workers Compensation scheme has been established—to afford that person opportunities for retraining. The person may not be able to go back to his pre-injury employment, trade, or profession, but there may be opportunities for the person to be retrained into meaningful work that is satisfying and pays them a decent wage.

CHAIR: Do you have a follow-up question, Ms Rhiannon?

Ms LEE RHIANNON: What is the purpose of having workers who are caught in such a situation, and we hear of many hardship cases, filling in detailed job-search logs every week, if the worker has gone through the rehabilitation process and already made a genuine effort to find alternative work, for a number of years?

Ms TELFER: Workers compensation is designed to ensure that someone who is impaired or injured needs to be fairly compensated for the time that they are not able to return to work. However, if someone is fit for work, the workers compensation scheme should try to assist that person and encourage that person and give training opportunities to return to work.

Ms LEE RHIANNON: Are WorkCover insurers assessed or paid by WorkCover on their ability to process that sort of paperwork?

Ms TELFER: There is a range of different remuneration measures. The most important one is to ensure that injured workers are paid in a timely manner and that they get access to rehabilitation, medical treatment, as soon as possible.

Ms LEE RHIANNON: I am asking about WorkCover choices?

Ms TELFER: I would need to check that specific question on what remuneration is paid to insurers.

Ms LEE RHIANNON: Would you take that question on notice?

Ms TELFER: Yes.

The Hon. ROBYN PARKER: Referring to the differences in maximum payouts, non-economic loss and consistency across the scheme, and WorkCover aiming to get people back to work, if a person is not able to get back to work, why are they not at least compensated to the same level as if they came under the Civil Liability Act or the Motor Accidents Act?

Ms TELFER: As my colleague Mr Lean remarked, the workers compensation scheme has quite a different basis for its establishment. It is about not having to prove fault, so it is a no-fault scheme and it is about immediacy of payment, immediacy of treatment, and immediacy of rehabilitation. That is its basis. On the non-economic loss, an injured worker has access to two types of payment, depending on the threshold; up to $200,000 if they had any kind of permanent impairment, that is 1 per cent or more. They can get access to a level of lump sum, and it is stepped depending on the percentage amount, up to $200,000. If the threshold is over 10 per cent they also have access up to $50,000 for pain and suffering.

In thinking about the non-economic loss lump sum, other parts of the Workers Compensation Scheme also gives them access to medical and rehabilitation treatment, weekly payments from day one without having to prove fault and getting access to rehabilitation. I can understand that at first glance it might be attractive to think about this consistency of payments. The fact that in workers compensation you do not have to prove fault in order to get access to a lump-sum payment at all means that it is a very different setup and a very different type of scheme.

The Hon. ROBYN PARKER: It might well be but not to the actual outcome in terms of monetary benefit to the injured person. If you are talking about a comparison between a maximum of $250,000 and you are saying that there is access to medical and all those other things, surely that exists under the Civil Liability Act and the Motor Accidents Act.

Mr LEAN: If you kept a no-fault scheme for workers compensation and you added on the civil liability scheme for determining common law liability, there is one of two ways that you can pay for that. You can either increase workers compensation premiums for employers or you can cut the benefits in the no-fault scheme for injured workers. So the 98 per cent or 99 per cent of people who get their benefits from the no-fault scheme, and only from the no-fault scheme, will have their benefits reduced.

The Hon. IAN WEST: Compensation.

Mr LEAN: Sorry, compensation. It is a balancing exercise and you need to weigh up the cost impacts on either side.

The Hon. ROBYN PARKER: Let us move on in terms of WorkCover. We have heard from lots of witnesses verbally and through submissions in terms of their view about inappropriate levels of compensation and inefficiencies in the system. I am wondering what the WorkCover Authority is looking at in terms of trying to make the process more efficient and fair. What sort of processes do you put in place or have you got in place?

Ms TELFER: You may be aware that at the moment we are deciding on the tenders for the WorkCover managed scheme. We expect the successful tenderers to be announced by the end of October or early November. As part of that, the insurers will no longer be licensed; they will be

contracted, and they will be on a fixed-term contract. Along with the contract—and I need to refer to my notes—a number of key performance indicators will be put into the contract for scheme agents. That is about service delivery to injured workers and employers, reinforcing the legislative requirements and obligations. Some of the things we are putting into the key performance indicators are a triage of notification in two days, that is, identifying claims that require early intervention; conducting initial assessment of notification within five business days and the majority within 10 business days.

Of course, that goes along with the reform that was introduced at the beginning of 2002 called provisional liability, which means that an injured worker does not need to lodge a claim form in order to be paid. As long as they meet a certain minimum set of criteria they can be paid, dependent on the injury, up to 12 weeks from the date that they have notified. That is called provisional liability. In the meantime we expect insurers to do any kind of investigation, but that has cut out the paperwork tremendously and it has meant that we have been able to improve the time frame in which people get paid. They will need to undertake reviews within 10 business days for injury management, making sure that the injury management plans are set up early so that an injured worker can get access to the injury management they need at the time that they need it, not having it reviewed some time later when the opportunities that we talked about earlier are being diminished.

Making sure that payments are made in a timely manner and making sure that payments to third-party providers are paid in accordance with fee schedules. One issue we have had is that up until a couple of years ago—and some of the work we have done in the past couple of years—is to make sure, for example, that medical and other health professionals who lodge invoices are paid in a timely manner. We had some problems previously where they were not paid, they would then lodge another invoice and both invoices would get paid. It also meant that some medical and health professional people had to wait for a long time to be paid at all. That was unacceptable. So along with making sure that injured workers get paid in a timely manner—and it is quite a strict criteria that we are putting on insurers—we are also making sure that that happens to third-party providers and that it is in accordance with the schedules.

Making sure that we can get the data we need because one thing we do from WorkCover as the regulator is have a look at what injuries are occurring in which industries, in which occupations, and the severity of those so we can target our safety initiatives properly. That has been very hard; it has not been as easy as we would have liked up until the last couple of years. We have improved data quality but there is a great deal to come yet. The other part of that is making sure that employers have their premium determined correctly, that they are in the correct industry classification, that the correct wages are taken into account and they are not being either overcharged premiums or undercharged premiums.

So there is this huge amount of work that is going on at the moment. It is very satisfying to see that performance by the insurers has improved, just as simply having this tender in place, the tender out. As I said, we are looking for the managed fund agents to be announced by the end of October, early November. We are looking at putting them in place on 1 January. That will give us an opportunity with the contract, if there are any problems, we will be able to manage them much more efficiently and effectively.

The Hon. IAN WEST: One issue you talked about was the payment to the injured worker. For a number of years I know there has been a number of representations from many people about the cutting off of payments to injured workers, cutting off of compensation payments, without any notification so that on the day you are expecting to get your cheque it does not happen. Is there anything in place? There has been talk for nearly a decade to get something done to make it an offence for that to happen. They have to keep paying.

Ms TELFER: As far as I am aware it has not yet been made an offence but one thing we are putting in the contract is about proper information to injured workers in a form that is understandable, cutting out the gobbledygook, and making sure that it is in a form that people can understand. Having for a short period of time managed the clients assistance service as part of my responsibilities, I share your concerns because that is an area of great anxiety for an injured worker when all of a sudden the payment they are expecting into their account does not occur at the time that they are expecting that or in the amount they were expecting, and it is unacceptable.

The Hon. ROBYN PARKER: I note that the Compensation Court was closed to put the Workers Compensation Commission in place. I am aware of concern by stakeholders about the cost inefficiencies of the commission in comparison to the Compensation Court when we are talking about dispute resolution. Can you tell me the costs of administering the commission and how they compare with the costs of administering the previous dispute resolution process?

Ms TELFER: Again I will need to take that on notice and get you a full answer.

The Hon. ROBYN PARKER: I am aware that some of the changes to the WorkCover scheme were because of concerns about increases in the fund deficit and the effect of that deficit on the State's credit rating.

Ms TELFER: More importantly, on employees in New South Wales.

The Hon. ROBYN PARKER: The reforms occurred supposedly in response to concerns about keeping premiums at a competitive level. To what extent do you think those reforms have resulted in reductions to the deficit and the Workers Compensation Fund?

Ms TELFER: The deficit has been slowly reducing. At the time the reforms were introduced I think the deficit was just over $2 billion, and climbing every day. Without the reforms the actuaries estimated that, by next year, the deficit would have gone to $6 billion, and it was increasing, I think, at about $1 million a day. So the deficit was increasing hugely and it was expected to reach $6 billion by next year. The Minister released last week the most recent valuation for the scheme. It has come down. In December 2004 it was $1.65 billion. The underlying deficit came down, in the most recent valuation, to $1.39 billion. Unfortunately we were made to add on some new accounting procedures—claim handling expenses and a risk margin to the deficit, which took it back up to $1.9 billion.

CHAIR: Was there a change in international accounting standards?

Ms TELFER: Yes. We were made to do that. We would have preferred not to have done it.

CHAIR: Will you give the Committee the name of that report so we can cite it?

Ms TELFER: Yes. It is the PricewaterhouseCoopers report entitled, "WorkCover Authority of New South Wales—Actuarial Valuation of Outstanding Claims Liability for the Managed Fund, as at 30 June 2005."

The Hon. IAN WEST: Can you tell us the operating surplus for the year?

Ms TELFER: If I can find the operating surplus before the end of the hearing I will give it to you.

The Hon. IAN WEST: I do not want to tie you down to exact amounts. However, it is a very healthy scheme.

Ms TELFER: It has improved.

The Hon. IAN WEST: And it has a funding surplus of many millions of dollars?

Ms TELFER: No, there is not a funding surplus of many millions of dollars; there is a deficit. The scheme improved and the 2001 reforms have really ensured that the pressure on employers about premiums has gone off. Coming back to the original part of the earlier question, without these reforms in 2001 there would have been two choices. One is to increase premiums for employers and the other is to drastically reduce benefits in the no fault part of the scheme for injured workers, or we might have had to do both. We have not needed to cut compensation and we have been able to maintain premiums at the target rate of 2.57 per cent over the past few years. I read the newspaper last week, like most people, and I understand that at some point in the future the Minister is considering what we can do on those fronts.

The Hon. IAN WEST: But this amounts to another strong underwriting surplus for the year?

Ms TELFER: Yes.

The Hon. ROBYN PARKER: What savings have been made from a reduction in the amount of fees paid to lawyers as a result of these reforms?

Ms TELFER: We were asked that question on notice at the last hearing and we provided a response to it. I could go over it, but I draw the attention of the Committee to our last question on notice. They are quite substantial.

The Hon. IAN WEST: I thank the WorkCover Authority for its response to the question, which underlined the fact that we were talking about actuarial estimates, retrospective actuarial estimates and comparisons, but that we were not talking about actual amounts of money for that year.

Ms TELFER: But actual amounts of money have also decreased.

Ms LEE RHIANNON: I have been given information about workers compensation insurers sending letters to workers and stating that their claim is closed when the worker is still receiving ongoing medical treatment for injuries, albeit having returned to same form of worker. Are workers compensation insurers assessed or paid by WorkCover on the basis of their performance in closing files?

Ms TELFER: No. They are paid for ensuring that people are paid on time and receive accurate information. In relation to closing files, again I doubt that that is the case, but I will double check and get back to the Committee.

Ms LEE RHIANNON: That impression is building up because those letters are arriving. One wonders what the motivation is in doing that. It would be good if you could take that question on notice because it is causing stress and uncertainty. In answer to a question on notice you said that their job is to ensure that injured workers are paid on time. I and other Committee members have received many comments. Much of the evidence before us has come from workers who have experienced real difficulty in getting their payments on time. Why can WorkCover insurers not pay weekly compensation directly into injured workers' bank accounts?

Ms TELFER: Again, I think we canvassed that issue at the last hearing. Part of what we are doing in the new contract arrangements is having as a requirement that a fund transfer can occur. It seems totally crazy to WorkCover that it does not occur at the moment. That is just not a given, and it is part of the contract arrangements. That is one of the requirements.

Ms LEE RHIANNON: When you said it is one of the requirements, is it already in place?

Ms TELFER: We know that some insurers already have it, but not all insurers have it. We cannot understand why, for something so simple. Ongoing agents will be required to make that available for injured workers, if that is what they desire.

Ms LEE RHIANNON: Which insurers already have it in place?

Ms TELFER: I need to check my notes.

Ms LEE RHIANNON: Which insurers do not? In this day and age it is extraordinary. One would have thought it should have happened within moments, and certainly within a week.

Ms TELFER: I would need to check my notes and I will let the Committee know.

Ms LEE RHIANNON: Would you take that question on notice and provide information relating to which insurers do that and which ones do not?

Ms TELFER: Yes.

Ms LEE RHIANNON: What is the timeline on that happening?

Ms TELFER: As I said in answer to a previous question, we are hoping to announce the tenderers at the end of this month or in early November and have the new arrangements in place from 1 January.

Ms LEE RHIANNON: Does that answer mean that by 1 January that system will be locked in?

Ms TELFER: That is what we would be expecting. Once we have announced the tenderers the contract signing could take some time.

Ms LEE RHIANNON: Stakeholders have expressed considerable concern about the cost and efficiency of the Workers Compensation Commission when compared to the previous dispute resolution process through the Compensation Court. What are the costs of administering the commission?

Ms TELFER: As I answered in response to an earlier question, I would need to check those costs.

Ms LEE RHIANNON: Could you also take on question on notice my next question: How do these costs compare with the comparable costs of administering the previous dispute resolution process so we can make a comparison?

Ms TELFER: As I mentioned earlier, I will take that question on notice.

The Hon. RICK COLLESS: I wish to follow up a question asked earlier by the Hon. Ian West relating to the operating surplus. Is it fair to say that an operating surplus is required to reduce the scheme's overall deficit?

Ms TELFER: Yes, that is correct.

The Hon. RICK COLLESS: What are the projections given the operating surplus you have now compared to the deficit?

Ms TELFER: We would hope that WorkCover can be brought into surplus in the next three to four years, but that depends on the number of claims we get and any other kinds of changes that might need to be made.

The Hon. RICK COLLESS: That three to four year period, that is at the current deficit of $1.9 billion?

Ms TELFER: Yes. That is what we would hope, but sometimes if changes are made along the way or something unexpected, that can change that.

The Hon. IAN WEST: Can I just clarify that the workers compensation scheme has had an operating surplus for the past 30 years, except for about two years. The deficit is the funding ratio and actuarial estimates by the actuary on funding ratios. The operating surplus is a yearly surplus on the income and expenditure. It has been a healthy scheme and it has had surpluses for many years, except for about two years in the last little while.

CHAIR: Ms Telfer disagrees with that.

Ms TELFER: There was quite a period of time when premiums were not covering the cost of the scheme.

The Hon. IAN WEST: No, that is the funding ratio.

Ms TELFER: No.

The Hon. IAN WEST: The operating income and expenditure has been in surplus for many years.

Ms TELFER: We will provide to the Committee that information.

CHAIR: I think we have asked you to take on notice about seven or eight questions. Could I ask you to get back within 14 days with those?

Ms TELFER: I am looking at my colleague who has to prepare them, and he is nodding.

(The witnesses withdrew)

(The Committee adjourned at 10.52 a.m.)