FINANCE AND ADMINISTRATION COMMITTEE

Members present:

Mr MJ Crandon MP (Chair)
Mr R Gulley MP
Mr IS Kaye MP
Mrs FK Ostapovitch MP
Mr CW Pitt MP
Mr EJ Sorensen MP
Mr MA Stewart MP

Staff present:

Ms D Jeffrey (Research Director)
Dr M Lilith (Principal Research Officer)
Ms M Freeman (Executive Assistant)

PUBLIC HEARING—INQUIRY INTO THE OPERATION OF QUEENSLAND WORKERS' COMPENSATION SCHEME

TRANSCRIPT OF PROCEEDINGS

Wednesday, 14 November 2012

Brisbane

WEDNESDAY, 14 NOVEMBER 2012

Committee met at 8.22 am

BARHAM, Ms Victoria, Chair, Association of Self Insured Employers Queensland

BASSETT, Ms Trish, Manager, Self Insurance, RSL Care, Aged Care Employers Self Insurance

CROWLEY, Mr Justin, Deputy Chair, Association of Self Insured Employers Queensland

DAME, Ms Lesley, Claims Team Manager, Wesfarmers

GOMULKA, Mr David, Queensland Workers' Compensation Manager, JBS Australia Pty Limited

HASTIE, Mr John, Licence Manager, Aged Care Employers Self Insurance

RANDOLPH, Mr John, Manager, Risk Management and Self Insurance, Tricare, representing Aged Care Employers Self Insurance

CHAIR: I declare the public hearing of the Finance and Administration Committee's inquiry into the operation of the Queensland Workers' Compensation Scheme open. I am Michael Crandon, the chair of the committee and the member for Coomera. The other members of the committee here today are: Mr Curtis Pitt MP, deputy chair and member for Mulgrave; Mr Reg Gulley MP, member for Murrumba; Mr Ian Kaye MP, member for Greenslopes; Mrs Freya Ostapovitch MP, member for Stretton; and Mr Mark Stewart MP, member for Sunnybank. Members of the committee who are unavailable to attend the hearing today are Mr Tim Mulherin MP, member for Mackay. I believe Mr Sorensen will be joining us shortly.

The purpose of this hearing is to receive information from stakeholders about the motion which was referred to the committee on 7 June 2012. The committee is familiar with the issues that you have raised in your submissions and we thank you for those very detailed submissions. The purpose of today's hearing is to further explore aspects of the issues you have raised in submissions. Thank you for your attendance here today.

This hearing is a formal proceeding of the parliament and is subject to the Legislative Assembly's standing rules and orders. The committee will not require evidence to be given under oath, but I remind you that intentionally misleading the committee is a serious offence. You have been provided with a copy of the instructions for witnesses so we will take those as read. Hansard will record the proceedings and you will be provided with the transcript. Especially as we have such a large number of representatives here today, to further assist Hansard as we proceed could I also ask that you state your name each time before you speak. I also remind witnesses to push the button to turn your microphone on and turn it off when you have finished speaking.

I remind all those in attendance at the hearing today that these proceedings are similar to parliament to the extent that the public cannot participate in the proceedings. In this regard I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee. I also request that mobile phones be turned off or switched to silent mode and remind you that no calls are to be taken inside the hearing room. We are running this hearing as a round table forum to facilitate discussion. However, only members of the committee can put questions to witnesses. If you wish to raise issues for discussion I ask you to direct your comments through me.

The committee has agreed to accept supplementary material subsequent to the hearing if you feel that this would assist in the committee's deliberations. This material may include additional comments that you wish to add to your submissions and/or testimony or responses to issues that have been raised at the hearing. As previously advised, the committee has allowed a maximum of one and a half minutes for each of you to make an opening statement if you wish to avail yourself of that opportunity. To commence, Aged Care Employers Self Insurance, would you like to make an opening statement?

Mr Hastie: Thank you, Chair, we would like to make an opening statement. We have lodged our submission which you have seen. We have covered most of the key issues that we see, but we would just like to mention briefly this morning what we see as the really important issues that we would like the committee to consider. Firstly common law, we note that a number of inquiry submissions attempt to create a belief that existing common law legislative provisions minimise unmeritorious and financially unviable claims through what is termed tough liability provisions and tough fraud provisions. In our view, such an assertion is invalid and not borne out in practice.

As indicated in the ACES submission, it was once the case that common law claims were lodged only in circumstances of more serious injuries where the employer was clearly negligent. The only impediment to many more common law claims being lodged under the current control regime is that many injured workers who could lodge common law claims are choosing not to do so. Under the current liability test that has been progressively developed in precedents over a number of years, all insurers are now forced to pay 'go away money' on unmeritorious claims due to it not being commercially viable to defend them. It is also asserted in a number of legal submissions that the full effect of the 2010 changes is not yet evident.

CHAIR: Thank you. You can give us the rest of your statement for us to put into the record, but we do have to stick that strict one and a half minutes. Thank you. Okay, Wesfarmers group?

Ms Dame: I would just like to reiterate what the previous speaker said about common law. I guess that is our key issue as well: allowing access to the scheme inevitably opens up access to a common law claim immediately. Once a claim is accepted. even if a statutory claim is not established. then you can still have access through a common law only claim. We see that the distribution of funds may go to a few who are willing to go to solicitors rather than evenly distributed between all the people who are injured at work.

Our other submissions revolve around journey claims and recess claims. We see, like in other states, access to those as being restricted. The employer has no control over what the worker does on the way to and from work. Psychological claims, we would like a stronger definition around the injury there rather than a significant factor, just as it is at the moment the significant contributing factor. These claims involve a lot of cost and a lot of them revolve around HR issues rather than actually personal injury as such.

In terms of self insurance, we believe that the parliament should look at lowering the number of employees and the employers that can be self insured to 500 or under and look more at the health and safety systems that are in place and the financial viability obviously of the employer to fund that. The last submission from us was the number of years to have a licence. We believe that that could be pushed out to six years and used as an incentive for employers.

CHAIR: Association of Self Insured Employers Queensland?

Ms Barham: ASIEQ is the incorporated association representing all self insured employers in Queensland. Our members recognise that linking safety, health, wellness and injury management achieves better outcomes. We work with the Department of Workplace Health and Safety, Q-Comp and WorkCover Queensland with the goal of promoting injury prevention, the health benefits of work, the advantages of employer based injury management and a focus towards better life outcomes for injured workers. Because we represent 25 of Queensland's largest employers and as such a wide variety of industries, I am sure you will appreciate that there is also a number of disparate views amongst our members, thus some of our members are here with me today. However, we are all in agreement that there are some aspects of the Queensland scheme that can be improved.

Our focus, and what we would like this inquiry to achieve, is the development of a scheme where all stakeholders contribute to a coordinated response to reducing the social and financial cost of workplace injury and the development of a plan for improving injury management within Queensland with greater flexibility in insurance and injury management options. Thank you.

CHAIR: Finally, we will hear from JBS Australia Pty Ltd.

Mr Gomulka: Self-insurers are fully exposed to the cost of injuries. This means on the one hand we have the ultimate motivation to effectively manage our claims experience and to prevent injuries. On the other hand, we are fully exposed to the anomalies and weaknesses that exist in the scheme, including injuries which we cannot prevent or manage. The Queensland workers compensation scheme is the strongest in Australia. The Queensland government should maintain the unique strengths in the scheme that set it apart from other jurisdictions. However, the scheme has come under enormous pressure in recent history, the first time being in the 1990s which eventually led to the commissioning of the Kennedy inquiry. Then in the last five years it has been plagued by more problems, including many similar issues that faced the Kennedy inquiry. Our submission provides solutions to correct the weaknesses in the scheme and to protect it from further deterioration. Thank you for the opportunity and I look forward to assisting the committee further.

CHAIR: Thank you very much. We will go straight to questions.

Mr PITT: Thank you all for appearing before the committee today. We do appreciate your time. The committee, as you have heard, is charged with considering whether the current self-insurance arrangements in Queensland are appropriate for the contemporary working environment that we have here in our state. Some of you have already touched on what you think the strengths and weaknesses are but may have run out of time, so this is an open-ended question to all who are appearing before the committee today to let us know what you think those strengths and weaknesses are in greater detail. I was particularly interested in the self-insurers threshold and whether they are appropriate and what views you may have in that particular area. So I will open it up to anyone who wishes to make some suggestions.

Ms Barham: I will start with regard to what we would like would be greater flexibility with insurance arrangements. With regard to the threshold, in other states where there is no threshold it appears that financial viability is more of an indication as to whether self-insurance works or not. In fact, there have not been any ramifications in relation to that in other states. Therefore I think there is no reason why there should be a threshold as such for opening up self-insurance.

CHAIR: Before we go on to another speaker, I just want to pose a question for you to give consideration to. Each of your comments has highlighted the fact that the Queensland experience is the most successful in Australia and then we come to Victoria talking about other jurisdictions not having caps on self-insurers. Do you think that the fact that are not caps on self-insurers is part of the reason why we are more successful than other states? Just think about that one while we are getting some other responses.

Ms Barham: That might be a matter for you.

CHAIR: Think about it, Victoria, and we will go on to some other comments.

Mr Hastie: I would like to comment on that. The success that people talk about in Queensland I think is more related to the fact that it is a short-tail scheme in Queensland. It has some reasonable rigour around the management of statutory claims which allows for a position where claims do not drag on for extraordinary lengths of time. It also has a capacity through medical assessment tribunals and other means to be able to critically look at medical issues surrounding claims and make decisions around that. So that is the first part. Queensland introduced self-insurance from 1996 or thereabouts. It was clearly something which was thought through very closely by the Kennedy inquiry. I was involved in a lot of discussions with Jim Kennedy about that and there was a lot of analysis done about the viability issues surrounding that. Reducing the full-time equivalent numbers to zero or 500 in my view would not interfere with the ongoing viability of the structure of the scheme and it would allow a lot more, I guess, competition in the scheme but healthy competition. It also allows for those employers who can self-insure the capacity to be able to integrate their injury risk management much more closely within their working environments.

CHAIR: Thanks, John. I just want to make a further comment. We have seen what has been called in the past healthy competition bring down insurers because it turned out to be not quite as healthy as it first appeared. It may have been a benefit to the insured in their premiums being reduced and what have you because of that so-called healthy competition, but at the end of the day they were chasing market share and there was cause for concern and indeed the collapse of insurance companies, as you would be well aware. In terms of financial viability, what should be the parameters? That is part of that question that we are asking as well. Would anyone else like to make some comment? Victoria, I believe you brought that up.

Ms Barham: With regard to financial viability, what I was trying to get at is that currently what it is for self-insurers is that they have to provide a bank guarantee of 150 per cent of their estimated claims liability and then have reinsurance for some catastrophic event. So if you make allowances for business that they have the finances and the resources necessary to be able to manage the costs and any future costs associated with workers comp claims, that sort of would be the definition of what I mean by financial viability. Is that what you wanted?

CHAIR: Thank you. Are there any other comments?

Mr Hastie: There is also the important need for Q-Comp or some regulator to monitor balance sheets, profit and loss statements, the financial accounts. As Victoria points out, in my view you have a two-tiered level of confidence that the financial viability of self-insurers remains. Firstly their financial accounts must be healthy, and we certainly would not argue that anything be reduced. I note there is some comment in one of the submissions that the 150 per cent bank guarantee on estimated claims liabilities should be reduced. I certainly would not support that because it is part of what makes the self-insurance process viable.

CHAIR: Are there any other comments?

Mr Gomulka: The strengths of our scheme lie in the claim process and the short-tail feature of our scheme, and that is what I was referring to earlier. The self-insurance concept enables employers to take greater advantage of that and the weakness of the scheme is that not enough employers can take advantage of that. In the Q-Comp submission they included some data from Finity which showed there would not be any impact on the viability of the scheme. Ultimately, self-insuring is a commercial decision for each employer and they would not be able to enter into self-insurance unless it is feasible to do so, and that comes upon their own rigorous analysis but also the analysis of Q-Comp.

CHAIR: Would anyone else like to make comment?

Mr Randolph: I just want to reinforce what David was saying. It is not self-insurance that is a risk to the scheme in Queensland; it is the controls within the legislation. That is what has made the strength of the Queensland system. It is the controls within it—the controlled statutory claims so that you do not get long-term claims—and the weakness is the common law because it is open ended. As we said, there is no control on anybody taking common law action. So it is not self-insurance that is the risk to the scheme.

Mr STEWART: One of the things that has also been suggested is that the change in the definition of an injury from 'the significant contributing factor' to 'a significant contributing factor' has inappropriately expanded the opportunity to attribute unrelated injuries to the workplace. Would anyone like to comment on that from the self-insurers?

Mr Gomulka: Our submission was that the definition should be changed back to 'major significant contributing factor'. The Kennedy inquiry recommended that to address the problems that were existing in the scheme then, and those same problems still exist today. That definition only existed for two years in the history of this scheme. We submit that it should go back to that. There are too many injuries which are being allowed into the compensation scheme which have a very tenuous relationship to employment. Some of those relate to the circumstances of how the injury occurred such as the recent Industrial Court decision in Qantas and John Kennerley where a worker was on their day off and renewing their passport and that was considered a situation where employment was a significant contributing factor. There is also the situations around the medical aspects where people have pre-existing conditions and merely suffer some exacerbation or their condition becomes symptomatic at work and the employers are considered liable for that through the current definition. If we changed to 'major significant contributing factor' we will eliminate a lot of those anomalies and employers can then focus on what they really can control.

CHAIR: Anyone else?

Ms Bassett: I agree with David and the fact is that at the moment 'a significant' can mean one per cent. So you are getting claims in where people may just be at work walking along, their knee goes, they fracture a foot and they are not doing any type of work but because there is one per cent significant in that they are at work you are wearing very expensive claims. So I agree it should go back to 'the major'.

CHAIR: Anyone else?

Ms Barham: In our submission we did not comment on the overall definition of injury. We did comment on psychological injuries. With the nature of psychological injuries, it is an extremely long and involved process for both the claims team and in particular the employer, not to mention the worker who is actually suffering the psychological condition. It can be an extremely traumatic process for all. At the end of that, because I think approximately 50 per cent of psych claims are rejected in this state under workers compensation, the outcomes for both the employer and the worker when the claims team steps back and the HR process becomes involved never—to my knowledge and in my experience does it never but very rarely—come with a good outcome for both the worker and the employer. So thus in our submission we were commenting that with psych claims in particular employment should be 'the major significant factor' and not 'a significant factor' just due to the process of it and the outcomes currently.

CHAIR: Anyone else with any other comments? If not, we have a follow-up question.

Mr STEWART: Lesley, I think in your submission you also noted psychological injuries. I was just wondering if you would like to elaborate on that at all from your submission.

Ms Dame: Yes, we support the submission made by ASEIQ—Victoria—in terms of the site claims, definitely. They are difficult to manage, very time consuming, costly, they are very upsetting for the worker. Fifty per cent to 60 per cent, I believe, actually end up rejected and most of those are upheld by Q-Comp—that review—we found recently. So the worker is then left hanging. We can never make the decision within 20 business days, because we have to go to an independent psychiatrist—most people are not under a treating specialist at that stage. That in itself is probably a bit traumatic for people and then we have investigators take statements. We even interview witnesses. So that is the reason they take some time. It is very costly and in the end the claim can just end up being rejected. Also, I would like to state that with a lot of the claims there is a pre-existing psychological condition involved and often a very significant one—much more significant than what has actually occurred at work.

CHAIR: Okay. Any other comments or observations? No, thank you. The member for Greenslopes?

Mr KAYE: Thank you and my apologies for being late. Thank you all for coming. For employers becoming self-insurers also presents other problems, such as protecting the confidential medical records of employees so they are not used to determine employment suitability. Can you explain to the committee how a worker's confidential medical history can be maintained separately from the hiring section?

Ms Barham: With regard to any claims, we are regulated by Q-Comp and, as such, there are certain criteria we need to meet. Confidentiality is the highest, basically, and we have to maintain that. It is extremely important. We have a separate area, files locked up, all of those sorts of practical, physical things. As well we are able to access HR records and everything from the business or from wherever is needed to assess that injury.

With regard to the sharing of information, our obligations under the act are only in regard to rehabilitation and return to work. We also have an obligation that if we get something that comes in where we have medical information where they cannot return to that position, we need to advise is the employer able to provide permanent restrictions and, if not, we go down the vocational redirection route. The other thing to point out is that under the Workplace Health and Safety Act you need to provide a safe workplace for that worker. So the aim is always to get them back to work. That overrides everything else. However, we do—and I think I speak on behalf of all insurers—maintain strong confidentiality and try to maintain that under all aspects. The aim for rehabilitation and return to work gets shared with the employer. There was something, but I cannot think of what else I was going to say. Thank you.

CHAIR: Any follow-up? No? I have a follow-up from me, then. Coming back to the original discussion we were having in relation to the quantum of employees for a self-insurer, would there not be some difficulty for smaller employers to have that separation between the claims-handling process and the employee-employer relationship on the other hand with confidentiality of their medical records and so forth? Yes, David?

Mr Gomulka: There are various mechanisms for controlling that. One of the options that has been in the legislation is that claims management can be outsourced. So that is an availability to those small employers if there is a concern about having the necessary resources and facilities to manage the claims and to manage the security of those claims. So I do not see that as an issue.

CHAIR: Okay. Just as a follow-up to that then, in the event that we as committee were to make recommendations to the government that they make changes to allow other employers come into the self-insurance regime, are you suggesting that we would then also need to make it compulsory for claims to be outsourced? If that were the case, at what level would you start drawing the line?

Mr Randolph: Can I just make a comment? Aged Care Employers' Self Insurance is a group insurer. We are made up of three separate companies: RSL Care, TriCare and Sundale. TriCare has about only 1,000 employees. Sundale has fewer than 500. RSL Care has over 2,000. We do not have any problems at all keeping these things separate. The big thing is that it would put your licence at risk. That is the biggest risk. That is the one thing that we do not want to lose—our licence. As I have spoken before, it is one of the big criteria from Q-Comp. Our files—and the same with Sundale's—are kept in separate rooms. The rooms are locked. The cabinets are locked. We are very, very strict on that and we do not share information with our HR. It would put our licence at risk, so we would not do it.

CHAIR: Yes, Victoria. You have a comment?

Ms Barham: Sorry, I was just going to reinforce what John said, thank you. It was basically that we are regulated by Q-Comp. There are criteria that we need to meet. Therefore, like David said, I do not believe that that would be an issue for a smaller employer, because they would have to meet certain criteria. To become self-insured there are also criteria. They have to be deemed fit and proper by Q-Comp anyway.

CHAIR: So you are suggesting making a recommendation to the minister that outsourcing should or should not be a requirement?

Ms Barham: I have no opinion on that. I would leave that in the capable hands of Q-Comp or whatever you decide.

CHAIR: Thanks.

Mr Hastie: Chair, I thought that that is an option now—that you can outsource your claims management.

CHAIR: Yes, I am not talking about an option, but making it legislation. That is the question I was asking. If we were going to make a recommendation that we should open up self-insuring to more employers—that is an if; there is no suggestion that we are going down that road—if we were to go down that road, however, would we then also need to make a recommendation to the minister that there be a requirement for outsourcing built into the legislation? You have an option now, but make it that it must be outsourced for smaller employers. That was the crux of the question that I was asking. Justin had some views.

Mr Crowley: If the risk for the outsourcing for small employers is around confidentiality, the safeguards within the legislation are already that the worker must provide us with a signed authority to release or to collect information about them. Also, the legislation in Queensland has the benefit of an accredited return to work coordinator who deals with the rehabilitation of the injured worker and who also holds an authority from the injured employee to deal with doctors and us and not to disclose their personal information to anyone else. So they are the safeguards that are already built into the legislation and that is audited and checked by Q-Comp as part of our licence conditions.

The most common contradiction for confidentiality for employers, though, is the conflict between confidentiality and ensuring the employee's safety. So what you often get at the end of a claim is whether someone can go back to their job safely. We are often in receipt of information that says that the employee cannot. So we have that overriding obligation, we say, to ensure their safety over their confidentiality. What is not provided is medical reports used for rehabilitation, but the information contained within those medical reports we say we are duty bound to give to our employers to ensure that they act on it, and to ensure that the person remains safe at work.

CHAIR: Thank you. David, did you have something that you wanted to add?

Mr Gomulka: Thank you. Regarding your question, Mr Chair, the scheme does not need more prescription in terms of self-insurance. The regulations are already there as we have already heard. What needs to occur is that, when an employer decides to go down the self-insurance path, it is up to them to convince Q-Comp how they are going to meet those requirements. If it means outsourcing, that is one option. If they can come up with another way of meeting those requirements, then that will work, too. But

their responsibility is to satisfy Q-Comp and none of us here, I do not think, are suggesting any relaxation by Q-Comp. The regulation that is there should continue, but it is up to them to convince Q-Comp how they are going to meet those requirements.

CHAIR: Thank you. Member for Murrumba?

Mr Randolph: Sorry, can I just make one further comment on that?

CHAIR: We are running out of time. I think we have explored that enough, thanks John.

Mr Randolph: Yes, I understand.

Mr GULLEY: I want to pick up a comment made by Victoria Barham earlier about the length of time for licensing of self-insurers. Can you elaborate on that?

Ms Barham: I think that was Lesley.

Mr GULLEY: Okay.

Ms Dame: Off you go.

Ms Barham: We have done the same thing, though, I must admit, but it was Lesley's comment. With regard to lengthening time for six years, if a self-insurer proves to be worthwhile and can meet certain criteria and satisfies Q-Comp's fit and proper criteria, maybe that is an option. It is a lot of administration and a lot of process and a lot of gathering together to relicence each two years, four years, or whatever you have. If those processes are good, is there a reason it cannot be extended to six years?

Mr GULLEY: The next question for the panel is that we have heard previously that the conditions on self-insurance can be quite onerous. I am looking for a further explanation of what those onerous conditions are and what motivates an employer to go down self-insurance.

Mr Hastie: I think you have already heard that no-one on this side would believe that the conditions are onerous, apart from the 2,000 FTE requirement. If that was relaxed, I think it would cause a lot of the issues to go away. But there is another area that I know does not affect anybody in this room, but I think it is an issue that Q-Comp struggles with and that is that the licence conditions are built around two legislative requirements. You are either a related bodies corporate self-insurer or you are a classification group self-insurer. That implies that you are a corporation in some form—that you can sue and be sued. There are some organisations who I think find difficulty meeting that requirement, for instance, some church and charitable organisations who would like to self-insure. Maybe they are talking about those restrictions that need to be looked and I certainly agree with that.

CHAIR: David?

Mr Gomulka: The onerous requirements for self-insurance that may have been referred to would be the commitment that has to be made by an organisation through bank guarantees, reinsurance, resources and systems and a provision on their balance sheet. We must be financially viable. It is not an easy decision for an employer to make and we do not want cowboys coming into the scheme and self-insuring. So we support the rigorous requirements that are already there and we do not want employers coming into self-insurance who should not be self-insured. But there are a lot of others who could meet those requirements, but simply because they do not have 2,000 employees are being excluded.

CHAIR: Thank you. Any further comment on that?

Mr Crowley: I have one quick comment. For national employers—not all the self-insurers in Queensland are just Queensland state based; there are a number who are national employers who also have self-insurance licences in other jurisdictions—one of the difficulties without a national scheme outside of Comcare is consistency around licensing within the different states. There has been some work in the past towards some harmonisation across the jurisdictions, but national employers would support more of those things in relation to licence applications and sharing between the different jurisdictions.

CHAIR: Thank you very much. The member for Stretton?

Mrs OSTAPOVITCH: Thank you. This is about journey claims. There are concerns that journey claims are not consistent between jurisdictions and, as such, members of national businesses are subject to different regulations for journey. There are calls for journey claims to be removed. What are the arguments for and against the removal of journey claims? Are there any suggestions about limitations or restrictions on journey claims? That is a question for anyone who would like to answer it. Thank you.

Mr Gomulka: Journey claims, as we have said in our submission, are an area where the employer has no control. One of the objects of the scheme is to encourage better safety management, but we cannot control the risks associated with journeys to and from work, and indeed while workers are away from work during their recess. The Kennedy inquiry recommended journey claims be excluded, but the government of the day did not follow that recommendation. This inquiry has heard a number of sad cases of workers who have been injured and that has been used as an argument for such employees to have cover under the scheme. With due respect, that is not the issue. The issue is who should insure those risks while they are travelling to and from work. We travel to and from many places in everyday life and we do not have cover for that, so why should employers cover them while we do not control that risk?

Ms Bassett: I would support David in the fact that journey claims can be extremely expensive if you do not have the right of recovery. I have heard of a case where an insurer had to pay out a million dollars to somebody who was injured in a car accident on the way to work and they were at fault. The insurer has no right of recovery, but we have no way of stopping that type of thing happening, like we have control in our workplaces. It is something that we have no control over and it really does not belong in the WorkCover scheme.

Ms Barham: Self-insurers bear the full cost of these claims, whereas with WorkCover policy holders, it is part of the central fund where it does not have any personal impact on their premium. The courts are sort of broadening the definition and the scope of cover provided, so I think it needs to be investigated further and you might need to strengthen the provisions and investigate how journey claims should be managed. I think in other jurisdictions they have the traffic accident authorities and those various things.

CHAIR: Thank you. I call the member for Hervey Bay to ask a final question.

Mr SORENSEN: You talk about lawyers and some of the jurisdictions and the lawyers fees and what they should be. I was just reading something in here about when they do not have all of the information in on the claims so they should not be charging for those non-compliant issues. Can you give us a bit of information on what you mean by that?

Mr Gomulka: Thank you for the question. The common law process requires a notice of claim for damages. The intent of the introduction of that pre-proceedings process was for parties to lay all of the cards on the table and bring about an early settlement. What we are experiencing, and I believe other insurers are experiencing, is lawyers lodging claims which are partially completed in the hope that the insurer will just waive the requirements and move to an early settlement. We believe that in the common law system there should be accountability on the claimant. If those lawyers are not doing their job properly, then they should not be charging for it. We have some prescriptive requirements in the legislation as to what goes in a notice of claim. If those things do not come and we have to point that out to the lawyers, who are sometimes charging $300 to $500 an hour, then why should they be paid for it if they have not done their job properly. That is what I meant.

Ms Barham: Following on from David's comments, legal costs charged to workers are the only hidden costs within the scheme. We recommend that there may be legislated set costs for each part of the common law process going up to the conference, similar to the PL or CTP claims that are currently occurring in the state. The other thing is that legal activity on claims do not support the health benefits of work and sustainable return to work outcomes. So stakeholder education in the clarification of roles and responsibilities during the stat phase might also be beneficial, and also stronger mitigation provisions. I think Q-Comp and Return to work assist must be commended in beginning to put some enforcement together with regards to these processes.

CHAIR: Thank you very much. Ladies and gentlemen, the time allocated for this session has expired. If members require any further information, we will contact you. As I advised at the beginning of the hearing, the committee has agreed to accept supplementary material subsequent to the hearing should you feel that this would assist in the committee's deliberations. We ask that any additional information be provided by Friday, 23 November 2012. Thank you for your attendance today. The committee appreciates your assistance. The committee will be hearing from a further group of stakeholders commencing at 9.15 am. You are welcome to observe these proceedings from the public gallery.

Proceedings suspended from 9.05 am to 9.15 am

HODGSON, Mr Rod, Representative, Australian Lawyers Alliance

MORRISON, Mr Simon, Representative, Australian Lawyers Alliance

DOUGLAS SC, Mr Richard, Representative, Bar Association of Queensland

HOLYOAK, Mr Kevin, Representative, Bar Association of Queensland

CHEEK, Ms Catherine, Representative, Downs and South Western Law Association

O'DONNELL, Mr Tom, Principal, O'Donnell Legal

BROWN, Mr Ian, Vice-President, Queensland Law Society

DE GROOT, Dr John, President, Queensland Law Society

DUNN, Mr Matthew, Principal Policy Solicitor, Queensland Law Society

GARBETT, Mr Michael, Senior Partner, Sciaccas Lawyers and Consultants

GIRIBON, Mr Luke, Senior Associate, Sciaccas Lawyers and Consultants

KARTELO, Mr Vince, Partner, Sciaccas Lawyers and Consultants

SIMPSON, Ms Karen, Practice Group Leader, Slater & Gordon Lawyers

DAVIES, Ms Robyn, Principal Lawyer, Trilby Misso Lawyers

CHAIR: Good morning ladies and gentlemen. I declare this public hearing of the Finance and Administration Committee's inquiry into the operation of the Queensland workers compensation scheme open. I am Michael Crandon, the chair of the committee and the member for Coomera. The other members of the committee here today are: Mr Curtis Pitt MP, deputy chair and member for Mulgrave; Mr Reg Gulley MP, member for Murrumba; Mr Ian Kaye MP, member for Greenslopes; Mrs Freya Ostapovitch MP, member for Stretton; Mr Ted Sorensen MP, member for Hervey Bay; and Mr Mark Stewart MP, member for Sunnybank. The member of the committee who is unavailable to attend the hearing today is Mr Tim Mulherin MP, member for Mackay.

Before commencing, I would like to acknowledge and welcome a delegation from the parliament of Papua New Guinea who will be observing our proceedings this morning. The delegation includes the Speaker, Theo Zurenuoc, a number of members of parliament, the Acting Clerk of the parliament, the Sergeant-at-Arms and an adviser. They are supported by a representative from the Centre for Democratic Institutions.

The purpose of this hearing is to receive information from stakeholders about the motion which was referred to the committee on 7 June 2012. The committee is familiar with the issues you have raised in your submissions and we thank you for those very detailed submissions. The purpose of today's hearing is to further explore aspects of the issues you have raised in submissions. Thank you for your attendance here today.

This hearing is a formal proceeding of the parliament and is subject to the Legislative Assembly's standing rules and orders. The committee will not require evidence to be given under oath, but I remind you that intentionally misleading the committee is a serious offence. You have been provided with a copy of the instructions for witnesses so we will take those as read. Hansard will record the proceedings and you will be provided with the transcript. Especially as we have such a large number of representatives here today, to further assist Hansard as we proceed could I ask that you state your name each time you speak. I also remind witnesses to push the button to turn your microphone on and turn it off when you have finished speaking.

I remind all those in attendance at the hearing today that these proceedings are similar to parliament to the extent that the public cannot participate in the proceedings. In this regard, I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee. Could I also request that mobile phones be turned off or switched to silent mode and remind you that no calls are to be taken inside the hearing room.

We are running this hearing as a round table forum to facilitate discussion. However, only members of the committee can put questions to witnesses. If you wish to raise issues for discussion, I ask you to direct your comments through me.

The committee has agreed to accept supplementary material subsequent to the hearings should you feel that this would assist in the committee's deliberations. This material may include additional comments that you wish to add to your submission and/or testimony or responses to issues that have been raised at the hearing. As previously advised, the committee will allow a maximum of 1½ minutes from each of you to make an opening statement if you wish to avail yourself of that opportunity. I will call on the Bar Association of Queensland to make an opening statement.

Mr Douglas: Chair and committee members, thank you for the opportunity for attending today. We have made a very detailed submission—an explained, detailed, particularised submission, unlike some other submissions that have been made in this case. You will be able to pick between the two.

I want to make two points. The first point, and indeed an obvious point from the submissions that have been made, is this: for the purposes of what has been described as thresholds by some of those who have made submissions you cannot have thresholds and a short tail scheme. You would appreciate the difference between a long tail scheme and a short tail scheme. You cannot have both. That lies at the heart of many of the submissions that have been made. The second point is this: we should stand away from all this and try to recognise what the workers compensation scheme or such a scheme is.

It is a means by which working people, as opposed to superior paid contractors, can secure for themselves and their families income protection insurance or indeed adequate life insurance. The average working person cannot afford that. The workers compensation scheme provides that to the average working person at two levels. The first level is the no-fault lower return workers compensation level. The second level is the common law higher return basis which has as a prudential factor for return, the necessary proof of liability. That is the protection factor—

CHAIR: Thank you, Richard. I call the Australian Lawyers Alliance.

Mr Morrison: Thank you, Mr Chairman and committee, for the opportunity. The key issue we raise is this. In a country as small as Australia, with a reasonable mix of demography, how can we have such extremes in workers compensation schemes. At the worst end in this country we have a scheme that has a funding ratio of 59 per cent. Its assets are less than half its liabilities and has a premium rate of $2.75 for every hundred dollars. At the other end we have a scheme like that in Queensland with a funding ratio of nearly 120 per cent—so comfortably meeting its liabilities—and a premium level of $1.42 for every hundred dollars.

For us, this is a question about modelling. The model that the Queensland scheme has is the right model. Can it be enhanced? Absolutely. There are four simple things we think can happen in the scheme. We can get the Premier to a better level, we can do some more on fraud, we can improve employer relations in the management of the scheme and we can enhance return to work. We think if we do those four things you will get a great outcome.

CHAIR: Thank you very much. I call Trilby Misso Lawyers.

Ms Davies: WorkCover's charter is to maintain a balance between benefits for workers and premium costs for employers. The current scheme works and we need to work together, I believe, to maintain it. Employers should want to assist the genuinely injured as we do want to ensure that there is an increased emphasis on injury prevention, a crackdown on fraud and a reduction in premiums, and that this can be achieved fairly.

Clients regularly tell me, 'I just want to get back to work.' No-one wants to be injured; they just want their lives back on track. The short tail scheme promotes this. A reduced impairment threshold would stretch out the life of claims through the appeals process, blow out costs and cause major delays, and it does not recognise the work disability of our injured clients.

The effects of the 2010 amendments are still emerging. We are still settling claims under the previous regime. There has already been a reduction in payments and in the number of claims. Common law claims mostly settle in a conference and no-one is entirely happy with the result as both sides have to give a little. Compensation is relatively modest—just enough to give claimants a kick-start to get on with their lives, not to keep them in the lap of luxury. It is in no way, shape or form full compensation for what they have lost.

The financial and emotional effects of the injury are felt not only by injured workers but their families and the community at large, with an increased risk of kids growing up in a welfare family. To achieve the aims of the act, the current scheme should be maintained, we believe.

CHAIR: Thank you very much. I call on O'Donnell Legal.

Mr O'Donnell: I submit that the workers compensation system in Queensland is a success story. It works well for both employers and workers, and the government has not been required to tip any money into the system for years. If it ain't broke it does not need to be fixed. That being said, the workers compensation system can be improved.

In order to promote economic efficiency, I would look at standardising the definition of worker or employee across all legislation. This would include working with the Commonwealth government to include relevant federal legislation such as superannuation and taxation laws. Harmonisation of the definition of

worker would remove the anomalous situation where a person may be a worker under one regime but not under another legislative regime. Obviously, such a change would promote economic efficiency by making management easier, particularly in industries which use contractors such as mining and construction.

Other than that, my only submission would be that the committee examine the performance of WorkCover common law. In particular, one, its loss of experienced personnel over the last few years; two, why it has decentralised common law claims officers; and, three, why common law claims officers no longer attend mandatory dispute resolution conferences. In my view, this shows a contempt for the employers they represent and for the worker making a claim and it fails to promote the early settlement of claims.

CHAIR: I call on the Downs and South Western Law Association.

Ms Cheek: My submission this morning is really the essence of our written paper. On a analysis of whether or not there would be a benefit to the participants in the workers compensation scheme by making amendments to the act, we understand from information that we have seen from the research conducted by the Queensland Law Society—and it is in our written submission at page 2—that the amendments which came into effect in 2010 are currently working to reduce the number of claims and the cost of claims. In these circumstances, it would seem that amending the Workers Compensation and Rehabilitation Act would have a minimal benefit. However, there would be considerable disadvantage to many workers in rural Queensland.

I understand that there has been a number of contentious submissions in relation to journey claims. There are particular concerns for rural workers when it comes to journey claims, particularly where they are required to travel from one point where they reside to various different and often distant places in the Western Queensland area. The roads are, in some cases, problematic and, in other cases, there is more traffic than can be reasonably handled by the existing conditions. Therefore, there is an increased risk of accident.

The second point that I wish to make—

CHAIR: You could give us that second point in writing, Catherine. You are out of time. Unfortunately, we do have a very tight time schedule. I call on Slater and Gordon Lawyers.

Ms Simpson: Our clients are very vulnerable when they come to see us. We are not their first option; we are actually their last option. One of the things this committee has been asked to look into is the introduction of thresholds. What will that mean? That will restrict access to common law rights to people who only have that right because their employer has actually been negligent. Why have you been asked to look at this? It is part of the employers' submissions to look at ways to reduce their premiums.

There is absolutely no evidence to suggest that by introducing a threshold they will actually achieve a lower premium. What we actually do know is that if you have employers who have poor safety records and high time lost injuries they do find that they do have an increase in their premiums. It would seem to make sense that if you are looking at how to restrict injuries happening in the first place you are going to achieve the result that both the employer is looking for as well as everybody in this room. No-one wants to see people getting injured at work.

If you can really focus on trying to prevent the injuries in the first place you are going to find a correct balance between what is the best thing for this state and not just workers but employers. I think this committee really needs to look at a lot of different methods and investigate thoroughly every avenue for reducing premiums and not just simply go for a blanket introduction of threshold—

CHAIR: I call on the Queensland Law Society.

Dr de Groot: Our society is the peak body for the solicitors of Queensland. Our members represent injured workers, employers and insurers in the workers compensation scheme. Our paramount concern is that the scheme achieves three objectives—it is sustainable, it is fair and it is encourages safer workplaces. Queensland's workers compensation scheme is the best in the nation. It is strong because of its short tail nature. It is tacking well with positive results. It is achieving the right balance between entitlement for injury and access to common law to bring finality.

All major stakeholders agree that the fundamental short-tail structure of the scheme is not to be changed. The global financial crisis affected everyone. The scheme has weathered that blip. Now, actuarial analyses of the scheme—all of them—are positive. Changes will create uncertainty and problems for the scheme. Some stakeholders, as we have heard, have called for thresholds to access common law. This will fundamentally alter the nature of the scheme and will have an adverse impact on public liability premiums and not have any net benefit for industry with open access to common law. Queensland has the second lowest workers compensation premiums of any scheme in the nation, second only to Victoria. If you look at Victoria, it is only marginally lower than ours.

CHAIR: We do not have time to look at Victoria, I am afraid. Thank you very much, John. Feel free to give us the other points you want to make in writing. You are quite at liberty to do that. Sciaccas Lawyers and Consultants?

Mr Garbett: Thank you, Chair and committee members. It is submitted that by any measure Queensland has the best workers compensation scheme in Australia. The primary reason why the scheme is so successful is that it essentially contains two branches: short-tail statutory schemes and access to

common law proceedings. To the extent that changes to the scheme were needed, such changes were made in the 2010 amendments. These have been successful in that common law numbers are trending down and the average cost of common law claims is trending down. Ultimately, this will lead to a reduction in premiums that are already at a very attractive level. The Queensland scheme compares favourably with schemes in other states in terms of the level of premiums paid by employers and the benefits that are available to injured workers.

The workers compensation scheme is in good financial health and has bounced back well from the GFC. Any restriction on common law access to workers, such as the introduction of thresholds, would be completely counter productive. Amongst other things, it would greatly increase disputation rates and associated costs in a jurisdiction that enjoys very low rates of disputation. Any change to a long-tail scheme would prove disastrous, as it has in other jurisdictions with long-tail schemes. Put simply, the Queensland scheme is in a healthy financial position, is extremely well run and should be allowed to continue on its current path and it will, therefore, reduce premiums. Thank you.

CHAIR: Thank you very much. It is much appreciated that you are able to give us a nice succinct opening statement. I will now go to the deputy chair for opening questions.

Mr PITT: Thank you, Mr Chair. Welcome to all of you. Thanks for your appearance here today. I should preface that I am wearing a moustache for Movember. This is not my usual garb. Hopefully, you can take my questioning seriously. It was pleasing to hear some of the opening remarks as they related to the strength of the system in Queensland. It has been touched on already that the reforms made in 2010 have obviously had an impact, as well. We have received a number of submissions that have indicated that the government has a proposal to prevent people with zero per cent impairment from bringing a common law claim. The committee is not aware of this, but we would be very interested to find out what you think the implications of this would be if it were to be agreed to, who and how should the level of impairment be assessed. It is an open question. I am happy for anyone to jump in.

CHAIR: Who is first cab off the rank. Rod, thank you.

Mr Hodgson: Any impairment thresholds imposed on the Queensland scheme risk turning our scheme into a pension based scheme, a long-tail scheme. Invariably, in schemes that have thresholds there are high disputation rates around who meets the threshold. That drives costs and administrative burdens up for the scheme and, in turn, for employers. Where common law rights have been interfered with elsewhere, it has not had a reducing effect upon premiums. Two excellent examples of that are the debacle in New South Wales and in South Australia, where they have abolished common law altogether, they have premiums well over double Queensland's rate and their scheme is effectively bankrupt. They do not work, is the short answer. They drive disputation rates up and Queensland's scheme is going very well without the imposition of thresholds.

CHAIR: Thank you. Are there any other comments? Ian?

Mr I Brown: The view of the Queensland Law Society is that the idea of a zero per cent impairment threshold or any threshold based on impairment is fundamentally unfair. Impairment is a concept associated with loss of bodily function, that is, some abhorrent way in which the body reacts. That is entirely different to the concept of disability. It is very important to understand that impairment is an artificial concept. You can have two workers both with the same level of impairment, which may be a loss of function of a particular body part, but in terms of how that will affect the injured worker in their day-to-day life, in their ability to work and in their ability to enjoy the activities of daily living—that is what we call disability—the disability differences between two workers can be fundamental. I am sure you have all heard of the comparison between the brickie's labourer and the concert pianist who both loose a finger in an accident. It is a trite example, but it is a very accurate example of just how disability is vastly different from worker to worker and impairment is an unfair and artificial way of determining a worker's loss of function.

CHAIR: Yes?

Ms Davies: I would like to point out some examples. We have many clients who are assessed as having a zero per cent impairment at the statutory level. The doctors who are used to assess this can vary widely; some are specialists, some are not. When we go on to a common law claim, these clients can be assessed as having a widely different percentage impairment by both WorkCover appointed specialists and ours. I can point to a lady with a shoulder injury with a zero per cent impairment, but she is fired from her job. She cannot do her job, she is fired. Where is the fairness in that? She is a zero per cent, supposedly. Conversely, you might have somebody with the same injury with a five per cent. I just do not think it can work under the current system to put any kind of threshold.

CHAIR: Are there any other comments in a relation to that?

Mr O'Donnell: On a practical level, if there was an introduction of a zero per cent impairment threshold, it would cause an absolute clog up at Q-Comp and the Medical Assessment Tribunal system. The reason is, of course, that if a client was given a zero per cent impairment we would be obliged to appeal that to the assessment tribunal in order to maintain their common law rights, which of course would increase the pressure on that. I think it would be a very costly reform, if 'reform' is the right word.

CHAIR: Thank you. Before I ask the member for Mulgrave if there are any follow-up questions, would anyone else like to make a comment? No, thank you.

Mr PITT: Thank you, Mr Chair. I have mentioned the 2010 review. One of the matters that came up was the issue of legal costs. That was certainly considered. During the review, there were concerns raised about the amounts of legal costs in claims as being excessive and absorbing too much of settlements or awards of damages. There has been a suggestion that a sliding scale of professional costs for common law claims could be introduced as there are disparities in legal costs being charged. What are the advantages and disadvantages of this type of system? Can we start with John de Groot or the Queensland Law Society?

Dr De Groot: I will ask Ian Brown, our vice president, to answer that question.

Mr I Brown: If I could start by observing that the premise of the question is on the basis that there is a problem with legal costs in personal injuries claims. I think that that is probably a false premise to start from. There is no evidence to suggest that there is any particular problem with legal costs. Over the period of the past six to seven years, the number of complaints to the Legal Services Commission in relation to legal costs has not changed. In fact, if one assumes a very conservative estimate in terms of the number of bills that would be rendered by Queensland solicitors every year, less than 0.1 per cent of those bills would result in a complaint to the Legal Services Commission. If you then assume that there is a proportion of those that relate to personal injuries claims, I think you could safely assume that you are talking about 0.01 per cent of complaints to the Legal Services Commission that would relate to costs in personal injuries claims. I think it is important, before we even embark upon a discussion in relation to legal costs, to identify if there is an issue with legal costs. The position of the Queensland Law Society is firmly that there is no issue in relation to legal costs.

CHAIR: Would anyone else like to comment on that particular question before I go back to the member for Mulgrave, who wanted to ask a further question?

Mr Hodgson: I would endorse the comments of the Queensland Law Society. At the statutory level of the WorkCover scheme, the legal costs paid are minimal and rare. At the common law level, except if a person has what is called a certificate injury, the legal costs are not payable at all by the defendant, except if the matter were to proceed to trial. Where there is a certificate injury, the costs are constrained by the act. In relation to solicitor client costs, that is, the amount paid by the client, there are stringent disclosure requirements contained within the legislation governing the operation of solicitors and, if there were any constraining of the ability to charge legal costs or regulation of legal costs beyond what is known as the 50 per cent rule, that would pose significant problems for access to justice for those people who have been injured in the workplace.

CHAIR: As a follow up, could I put it to you, because it has been put to us by others, that really people who come to a solicitor to do work for them on the basis that you just described, a maximum 50 per cent, have little choice and have no negotiating power with their legal counsel. The reality is that it is 'take it or leave it'. I would like some feedback on that comment. That is not from me, by the way; that is from others.

Mr I Brown: I have a couple of comments in relation to that. Firstly, the legal profession in Queensland is probably the most highly regulated in terms of costs. The obligations imposed by solicitors in relation to cost disclosure are very, very extensive. They apply not only at the outset of a matter before a client enters into an agreement with a solicitor, but also they apply for the duration of the matter. Solicitors are required, on an ongoing basis, to make full and frank disclosure to clients in relation to the quantum of legal costs.

The second point I would like to make is that clients have every entitlement and right and opportunity to negotiate legal costs agreements. Lawyers are required to make disclosure around the entitlement of clients to negotiate a costs agreement with their solicitor. Clients are also entitled and have to be told of their entitlements in terms of disputing legal costs. They are very important issues. There are significant implications for solicitors who do not undertake appropriate cost disclosure. They can be subject and will be subject to disciplinary action. They will be prevented from pursuing legal costs against clients.

If I could make the final point in relation to what Rod Hodgson has referred to as the 50 per cent rule, the cost reduction rule: that rule was introduced by the Queensland Law Society proactively as a consumer protection measure. It was challenged and the Law Society then lobbied government to have that rule enshrined in legislation, to ensure that it was a consumer protection measure put in place in these types of speculative personal injuries claims. I think you could safely say that the Queensland legal profession has actively pursued consumer protection issues in this area.

CHAIR: Would anyone else like to make a comment? Richard, first of all. He beat you to the gun.

Mr Douglas: Just a brief comment, Mr Chair. Barristers are subject to the same obligations vis-à-vis solicitors in relation to costs disclosure. It is not as extensive because the solicitors have far more dealings with the client, but I wanted to emphasise that we also are subject to that and if we do not comply with our statutory obligations to the letter—disclose this, disclose that, disclose this—then we have to otherwise prove our entitlement, if any, to costs. So there are penalties associated with non-disclosure, as Ian would tell you. You are really cast to the wolves in terms of recovering anything.

Ms Davies: I just thought you might like to hear how it is on the ground when I meet a client. There is full disclosure through the client agreement with an estimate of costs. Obviously if we were to find down the track that the claim was not going to be commercially viable we would tell them that, we would not be

charging them at all. Going on to common law, we have ongoing disclosure obligations to say if we believe that the cost is going to blow out, which can sometimes happen. But at conference level if our clients do not achieve what we think is fair we will reduce our costs even if the 50/50 rule does not kick in. We are happy to do that to make sure that our client is getting some justice. I believe that most plaintiff lawyers actually care about their clients and would be doing the same.

Dr de Groot: You said that people do not have a choice but to accept what is offered to them by way of fees. I think we just make the obvious point that we have a very competitive legal business environment here in Queensland. People are willing, are able and do shop around for the deals that they want. So I think that is important. I think also, whether the committee realises it or not, we are the only jurisdiction in Australia that has the 50/50 per cent limitation rule. We have actually sought to suggest it to others and it has not been taken up. We have no take-up whatever. I just say that we are the only jurisdiction that has done that. We are rather pleased, from the Law Society's perspective, that we have had the initiative on that one.

CHAIR: Member for Hervey Bay?

Mr SORENSEN: My question is to Catherine. Before you ran out of time you were talking about workers driving to mines, especially in the mining industry now where you do have a lot of miners driving long distances after work. Some of them have to go eight to 10 hours sometimes to get to work from coastal areas. Could you elaborate on that?

Ms Cheek: There are many hazards on the roads in rural Queensland, a number of which are outside the control of the people who are using the roads, such as kangaroos, which cause numerous accidents every year. The difficulty can be not with just driving to mine sites but to rural properties in particular. Often there is no culpability on either the driver or any other entity, it is an accident that happens. Now, when you have that situation there is no recourse for the injured person to be receiving income for the wages that they would otherwise earn or to be assisted with rehabilitation which is of primary importance.

Mr SORENSEN: Just on that, truck drivers have to stipulate certain hours of driving and work hours. Should the mining company stipulate what times they are allowed to drive after they have worked 12 hour shifts or anything like that? Do you think that should come into it?

Ms Cheek: I am probably not the best person to answer that question.

Mr Douglas: I think there is a lot of substance in what Ms Cheek has said, but we are here to present, of course, a balanced view in relation to these issues. I think there is some scope for the journey provisions to be qualified in terms of their operation. For example, I can well imagine that there could be an amendment to the effect that if a person had to travel more than a particular number of kilometres to their place of work, say it be 50 or 100 kilometres—I make that up—that that could be the qualification. But journey claims, with respect, arguably, as a matter of argument, probably are outmoded in what I call the standard city environment. The fact that someone might slip over at Central railway station going home and be injured or perhaps be driving home from work, say from here to Indooroopilly where I live, is not probably in modern mores a proper qualification to garner standard workers' compensation benefits. I say that to you as an argument. In other words, the generalised provision of journey claims probably is outmoded by modern circumstances.

Certainly the examples that Ms Cheek has identified should be preserved. I say that because on the figures journey claims do occupy a substantial outlay in terms of administration and workers' compensation. I think it is something in the order of about $70 million. I think that probably could be looked at, I put it no higher than that, subject to the qualification or the caveat in the circumstance identified by Ms Cheek. Remember also that if someone does slip over at Central railway station or if they are injured going home in their vehicle there are other schemes available. If they were not looking out for themselves perhaps it was negligence on the part of Queensland Rail or the like well they can sue Queensland Rail. If they are injured by another driver going home they can sue under the CTP scheme. There are other circumstances available to them. Again I say that to you to identify the balance in the argument on that particular issue.

CHAIR: Following on from that, what is to stop someone from making a claim against QR and workers' compensation?

Mr Douglas: It cannot be doubled up. Under the present legislation if someone does slip over at a Queensland railway station going home from work and they are paid statutory compensation and they subsequently sue Queensland Rail and succeed for damages, the legislation—I think it is in section 147 of the legislation—provides for a statutory charge in favour of WorkCover. So, presently, in the circumstance which I have identified, driving home, say there is a CTP claim, slipping over at a railway station there is a damages claim, they pay statutory compensation in the first instance but then once the claim is successful WorkCover enjoys, or the self-insurer enjoys, a statutory charge over those damages and recoups it. But unfortunately they have to pay it out in the first instance and there is the administration associated with processing the claim. I think I have answered your question. It is charged. You do not get to double dip.

CHAIR: You have answered the question, but I would imagine that there would be some opportunity for someone to argue that the claim under workers' compensation is for this aspect of the injury and there is a separate claim under a different set of guidelines or rules. You are the legal people, you tell me. Is it an impossibility? Are there any opportunities?

Mr Douglas: No, that is not right. That is incorrect. I could understand why you would think that. There is a statutory charge. It is fully recouped. The difference between the statutory claim system, workers' compensation, and the common law claim is that the statutory claim is a one-size-fits-all. As Mr Brown said, there is a percentage disability, one-size-fits-all. That paradigm does not service the common law circumstance whereby an individual's disability or impairment, call it what you will, is determined by what they can and cannot do. There is a big difference between us sitting here and participating in this forum and the lady who comes in at 4 o'clock this afternoon and has to continually bend over and vacuum the floor and polish the desks. I can sit here with pain, that lady cannot do her job. It is an entirely different scheme, coming back to your question. It is a statutory charge which protects the workers' compensation fund in its present form. That ought be retained in the event that journey claims are adjusted.

Mr I Brown: Could I make the observation that journey claims constitute about six per cent of all statutory claims and about 10 per cent of claims payments. But roughly half of that, a little less than half of that, is recouped in terms of the claims that Richard is talking about where recovery against a third-party is possible: an occupier of premises or a compulsory third-party motor vehicle insurer. So there is a significant amount of the outlay by WorkCover recouped from a third-party.

CHAIR: Would anyone else like to make a comment? We will hear from Simon and then Tom?

Mr Morrison: I would just like to make the point that when we look at other state government schemes that got themselves into horrendous trouble, and I use New South Wales as one end of the illustration that recently got rid of journey claims, we need to bring the argument back to the structure of the Queensland scheme. Relatively speaking, journey claims are not significant. What we do not want to do is put the structure of this scheme in such a position where we have no choice but to make cuts in areas like that. We are lucky in Queensland that we are probably the most financially sound scheme in the country and we have an opportunity to get the structure right. So I would respectfully submit let us focus on the structure of the scheme so that we do not have to start pulling things out that are not relatively large in the scheme.

Mr O'Donnell: There was a time in Queensland when if I wanted to open a mine I had to build a town around that mine to house those workers. Those days are gone. Mining companies build camps. If you go out to Central Queensland you will see acres and acres of dongas out there. Those workers need to get to and from work and to do that often they drive substantial distances. For that reason journey claims need to be preserved because they are important.

Mrs OSTAPOVITCH: There are suggestions that courts rarely reduce awards of damages where the worker has contributed to the injury. Section 129 states that compensation is not payable for an injury sustained by a worker if the injury is intentionally self-inflicted. Whilst the 2010 amendments to the act provide some clearer definitions of contributory negligence, there is still no compulsion for a court to apply these principles. Can you suggest how employers can show or provide evidence of contributory negligence?

Mr Douglas: I am probably in the best position to answer that. I have to argue these matters on a day-to-day basis. Member, it is very important to distinguish, when you refer to the act, between the statutory phase and the common law phase. Section 129 is concerned with the statutory phase. It is rare for any worker to intentionally inflict injury upon themselves. They probably need to have a psychiatric injury in most circumstances, and perhaps many do, to do that. Can I put that to one side. It is true that it is relatively rare, increasingly it has happened in recent times, for courts, when assessing liability and damages in common law claims to impose against a worker contributory negligence. That is not because courts feel sorry for workers. Judges are there to apply the black letter law. The reason is the paradigm that exists in a common law claim against an employer. It is rare for there to be a finding of contributory negligence or, if there is, it is rare for it to be more than 10 or 20 per cent. The reason for that is this: liability against an employer and contributory negligence in turn is assessed having regard to the fact that an employee works in a system of work which is laid down by the employer. Workers really do not have a choice. I suppose you can leave your employer and go to someone who has a safer work environment. Workers do not set up the system of work, it is set up by employers. The courts have said that if a worker is injured in a system of work which is set up by an employer, ordinarily it is not going to be their fault. Physical workers, workers engaged in physical activity—which is most workers in Queensland—go about their tasks during the course of their eight or 10 hour day and they work within the system that is laid down and it is necessarily repetitive in many circumstances. Even office work is repetitive. The courts say, understandably, inadvertence and repetition can attract negligence, call it mere negligence, on the part of employees.

In those circumstances it is rare for contributory negligence to be awarded. You contrast with that someone who is driving a motor vehicle, a very important activity for anyone in our streets, or a person who is walking down the street, if they choose not to properly operate their motor vehicle and keep a proper lookout and use trafficators, or if they choose to not look where they are going, understandably the courts, in those sorts of cases, much more often will either not find liability at all against the occupier of or the vehicle operator or find very significant contributory negligence. It is the difference in paradigm between working in the work environment laid down by the employer, repetition, inadvertence on the one hand, and

undertaking other non-work activities, be it driving, walking around or going places, in respect of which persons are expected by the courts to be much more so on the lookout for their own safety. That is the approach in the courts. It is not a case of the courts ignoring what is in the statute.

Mr GULLEY: I have a question for the Law Society. You were making comments previously about the introduction of a 50 per cent cap. What is the normal lawyer fee during a claim?

Mr I Brown: I think it would be fair to say that there is no such thing as a normal fee. The president made the point earlier that there is the absolute entitlement on the part of a client to negotiate a costs agreement, that is, a client who has nothing imposed upon them other than what they agree to. So they can shop around and ascertain what other lawyers are charging. There are widely varying practices in terms of how solicitors render fees. The overarching principle, however, is that fees must be fair and reasonable.

The client has the right to negotiate a client agreement and clients have the right to dispute costs at the conclusion of the claim. In between the client is entitled to receive, and should receive, regular updates in relation to what the costs and outlays are. I think it would be true to say, in answer to your question, that there is no standard fee that is applicable. I would like to make this observation: the very strong view of the Law Society is that there is no entitlement upon Queensland lawyers to charge 50 per cent. It is not an entitlement; it a figure that may be applicable in certain circumstances. The fee that a lawyer is entitled to charge is according to the client agreement that is entered into and what is fair and reasonable in the circumstances.

Mr GULLEY: Would you say that 50 per cent is a common fee or more likely to be much lower than that?

Mr I Brown: Anecdotally, 50 per cent would not be common.

Mr Douglas: Again, speaking as a barrister, we are not bound by the fifty-fifty rule, although we end up being practically bound by it. I think properly speaking, the 50 per cent rule is for the small, unsuccessful claims. It is a cap in circumstances whereby a claim that might legitimately have been pleaded at $800,000 due to a variety of issues about liability or the like ends up being settled for $100,000. Please do not think for one moment that solicitors are charging 40 or 50 per cent. In most circumstances as a matter of percentage—not that one descends to this—in the modest to larger claims as a percentage it would be less than 10 per cent I would imagine in many circumstances. The fifty-fifty rule was introduced properly by the Law Society and then enshrined in statute by the parliament. For circumstances where claims end up being very small you cannot charge more than 50 per cent. That is to maximise dollars properly in the hands of the people for whom the scheme exists, namely the workers.

Mr I Brown: Can I make one further observation on that? The only circumstance in which a solicitor is entitled to deviate from the costs reduction rule is if the council of the Queensland Law Society favourably considers an application for a departure. In the years I have sat on the council of the Law Society, I think those applications have come before us on maybe two or three occasions in that entire period. I think on only one occasion that I can recall was an application successful.

Mr PITT: My next question is a very general question and we are moving away from some of the specifics we have been talking about. Obviously WorkCover's current future financial position and its impact on the Queensland economy is something that is of great interest to all of us. We need to look at this as part of our investigation. I am interested to hear people's comments in how that works into the future, particularly as it relates again to the state's competitiveness and to employment growth and any things that may be barriers in the current system to those things going forward or transversely.

Dr De Groot: This might be my opportunity to comment on the comparison with Victoria and Queensland.

Mr PITT: I am glad to give you that opportunity.

Dr De Groot: Thank you. It is much appreciated. I feel very comforted. Last financial year WorkCover Queensland made a profit after tax of $199 million. I wanted to contrast it with Victoria, which has marginally lower premiums but restrictions on common law. In the same period it had a loss of $676 million.

Mr Hodgson: The theme of many submissions to your inquiry has been 'the scheme is great, it ain't broke, don't try to make big changes'. Unquestionably, that proposition is correct. It is tracking well financially. Its profit and solvency ratio is excellent. The 2010 changes to the legislation are still washing through. The premiums are the second lowest in the country and it is looking good and that is because of its structure. The fundamental short-tail structure of the scheme is applauded by people not just in this state but also those who look at our scheme internationally and from other states. People are very envious of our scheme and it ought not to be chopped and changed.

Mr Morrison: I have a couple of things. Firstly, if you look at the financial health of other schemes around the country—and I bring it back to the premium issue and our level of competitiveness in our economy—we have other schemes that are heading backwards. New South Wales is a prime example. It had an unfunded liability of about $5 billion and needed corrective surgery quickly. South Australia is in some difficulty. Victoria is struggling. Queensland is trending well. We have commissioned actuarial modelling based on the 2010 amendments. I can inform the committee that the findings from that

modelling indicate that the planned outcomes from the 2010 amendments are doing their job precisely and the premium should continue to reduce provided the assumptions are intact, and we believe they should be. Back to the structure issue, if you had to have a race around the nation to see who is likely to have the best premium to attract business, unquestionably Queensland is in front in our view.

CHAIR: Just to follow on from that, the previous group of witnesses were self-insurers and they had some very strong views on where self-insurance should go. This is completely out of the park really. Are there any views on the self-insurer model and how you feel it may impact on the scheme, its profitability or its viability?

Mr Hodgson: We believe the balance is right, that the 2,000 employees criterion is a sound criterion. The relaxation of the criteria under which self-insurance licences are granted would be a retrograde step in our view. It would risk leakage from the current scheme and, therefore, potentially place at risk the solvency of the scheme. It would also risk an increasing number of cowboys entering the scheme thinking that they could do things better than a scheme that is performing very well. If there was upward pressure due to leakage from the scheme, that would place pressure on premiums. They may well head northwards with a risk to those people remaining within the scheme.

Mr Morrison: The only thing I would add to that is two issues in terms of performance. One, I endorse Rod's comments that the numbers are about right with self-insurance. There had been a number of submissions around privatisation as a concept as well. There was a competition review over a decade ago in this state. I can indicate that, from our perspective as stakeholders in the scheme, the reason why Queensland's scheme structurally and financially has been the premium scheme in the country is that by and large it has been a very well run scheme. Like all insurance schemes, it has had some ups and downs. But if you smooth out its performance against every other scheme in the country, you will see that it has done a tremendous job and I think WorkCover should be congratulated for that.

Mr Douglas: I can speak on the matters I am about to deal with by reference to the fact that I am on retainer to a number of self-insurers. So I regularly do work for them and against some of them as well. My observations are these. I agree with what has been said. I think the balance is right now. I have a real concern for reasons I am not about to tell you about expanding the breadth of self-insurance. The people who do self-insurance well are the larger organisations. They are larger. They have access to reinsurance, which is one of the qualifications. They have access to the resources in respect of the important component of rehabilitation of workers, which is really at the core of the scheme. They have the ability to properly investigate claims, deal with claims. Often they do not have the financial restraints in terms of settling claims. Pushing it out is likely to move it down in terms of people entering into self-insurance who perhaps really should not be doing so; they should be doing it through WorkCover.

The concomitant of what I have just been addressing is this: one has to be careful about watering down WorkCover as the insurer of other employers in the scheme. WorkCover is doing well. It is performing very well. It is managing its portfolio well. To diminish it as in effect an insurer of last resort I think has a real prospect of impacting adversely on the viability of the scheme. After all, most employers have to go to WorkCover as an insurer of last resort and, properly speaking, they are doing so against the background of what has already been addressed, which is one of the lowest, or effectively lowest, premium regimes in this country.

Mr I Brown: The Law Society is fundamentally opposed to any changes to the structure in terms of self-insurance in Queensland. The starting point from the society's perspective is that we are reaching the point now where the scheme is stabilising and actuarial analysis is able to be undertaken and predictions made with some degree of certainty going forward. The minute you introduce uncertainties into the scheme like opening up the issue of insurance so there are increased numbers of self-insurers introduces enormous uncertainties in relation to who those employers might be, the pool of workers who might leave, the pool of risk that might go with it and be left with the WorkCover rump. What you are talking about in those circumstances is introducing enormous uncertainty from an actuarial perspective. That applies, in fact, not just to issues in relation to self-insurance but any fundamental changes that are being contemplated in relation to the scheme.

Mr STEWART: There has been a number of submissions that has asked us to look at both the definition of 'injury' and the definition of 'worker'. I am wondering if there are any comments that anyone would like to make in relation to changing either of those definitions?

Mr Hodgson: The existing definition of 'injury' is fine. We have read the submissions indicating that 'major significant factor' ought to be introduced into the legislation. We have heard submissions to the effect that a one per cent contribution from work means that the injury is compensable. With respect, such a proposition is absolutely incorrect. 'Significant' means more than insignificant and that depends on the factual circumstances in each individual case. If there were to be a change away from the current definition, then that would drive disputation rates up and that would impose additional costs and administrative burdens on the scheme. There is no correct suggestion in WorkCover's data that people with only a minimal contribution from work are getting claims accepted. We simply do not accept that proposition. Also, if the definition was significantly tightened up such that 'major' became part of it, that would take workers who had genuine work related injuries out of the scheme, out of the ability to return to work through the rehabilitation mechanisms available under the WorkCover scheme, and that would be a very bad thing for productivity in a labour shortage environment that we have in Queensland.

Ms Simpson: I would like to make a comment in relation to changing the definition of 'worker'. I know that we had a submission from HIA suggesting that, if we change the definition to be determined on the basis that a worker is registered for GST, this might be suitable within the act. I think on a practical level what we really need to look at is the fact that we will see employers actually specifically telling their workers, 'Go away and get registered for GST or you can't work on the site.' There is no reason why they would not do this. They are actually going to save money; they are not going to be paying premiums. There is nothing about that that will benefit the scheme, and it is certainly not going to give them any incentive to make sure that their work sites are safe.

CHAIR: Are there any other comments?

Mr I Brown: The point we would make is that, for the period of time that the definition of injury involved 'major contributing factor', there was no significant change in claims numbers. In that period of time between 1997 and 1999 when that definition applied and thereafter when the definition changed back again, there was no indication of any particular change in claims numbers.

Mr Douglas: The member for Sunnybank also raised an issue about the definition of 'worker'. Can I address that please, because it has been addressed on the definition of injury. Only some of the submissions dealt with this. For the assistance of the committee, obviously workers under contracts of employment are the subject of workers compensation benefits, and that is expanded by schedule 2 to the act which is headed 'Who is a worker in particular circumstances'. That specifies persons who are workers and persons who are not. So if you fall within part 2, you are out of it.

Consistent with the submissions that have been made, can I inform the committee members that the subject matter of those exceptions that widen the definition of worker have been honed over a period of about 60 or 70 years by workers compensation decisions all the way to the High Court—the Humberstone case and cases like that. To disturb those exceptions will cause a real disruption.

Can I give an example. One of the speakers made the point earlier that employers will say, 'You can't work for us unless you go and get registered for GST.' What will happen is that we as lawyers will be running cases on behalf of these employees, as has happened in the past when there were attempted changes, saying, 'That was a sham. That arrangement whereby someone was registered for GST was a sham.' Can I tell you, fortunately, the judges will be falling over themselves to find that it was a sham, because anything that is a device obviously to avoid what is a person's rights under this legislation or any other legislation is going to be viewed very dimly by the courts. I think the legislature has got it right by reference to those exceptions—that is, the wider breadth that has been provided by schedule 2—and this parliament ought be very cautious in modifying those any further.

CHAIR: Thank you for that, Richard. Tom O'Donnell, submissions have suggested that the definition of 'worker'—and I think this is something that came from your opening statement—is inconsistent with other definitions, such as the Australian Taxation Office and/or federal or Queensland workplace health and safety legislation. There have been recommendations to harmonise the definition. What do you consider to be some of the advantages and disadvantages of aligning the definition of 'worker'? Would you like to expand on your opening statement?

Mr O'Donnell: A number of years ago, I was asked to provide advice to a client of the firm where I was then employed as to what constituted a worker under various pieces of legislation. The client concerned was quite a prominent builder who had workers who were paid employees, self-employed contractors and contractors who were Pty Ltd, so there were those various kinds of contractors and employees working for that building company. Under various pieces of legislation, they were obliged to pay PAYG tax perhaps or various other superannuation benefits and workers compensation, and that led to quite a difficult management process of managing all of those classes of people. So if there was one consistent definition across all of those pieces of legislation, it would make management easier and in my view promote economic efficiency.

CHAIR: Are there any other comments on that?

Mr Morrison: In utopia, I would agree entirely with that proposition. The difficulty we have is that in a federated system we have eight different schemes all at different levels of financial health, and when governments have to make decisions about what levers they pull to get the schemes back into shape they are at different ends of the spectrum. I say with respect that that is why governments have failed for decades to come up with harmonised solutions. So my only observation is that the government needs to be very careful about which levers to pull to ensure that this scheme stays in a good state of health.

Mr KAYE: I might say that, after being in the police as long I was, it is nice to be able to ask a question of a lawyer instead of answering them for a change. In relation to the no win, no fee, could you just explain the advantages and disadvantages of the no win, no fee access to common law claims?

Mr I Brown: In Queensland, for many years now we have not had any real access to Legal Aid funding for people who have been injured in accidents. Lawyers who conduct litigation on a speculative fee arrangement are effectively providing legal aid to people who would otherwise not have access to justice. I would pose this scenario though in terms of the role that lawyers play in this area. Imagine if you went to an orthopaedic surgeon with a gammy knee and you needed a knee replacement, and the orthopaedic surgeon said to you, 'I'm not going to charge you unless I'm able to fix your knee. Not only that, I'm going to pay for all of the scans, for the prosthetic, for the surgery, for the theatre, for your hospitalisation and for

your physiotherapy. In fact, you don't have to pay any of that back to me unless I do a good job and I'm able to get you up on your legs again.' If you went to an orthopaedic surgeon who offered that, you would think it was astonishing.

That is what lawyers who conduct speculative fee arrangements do for their clients every day, so you can be assured that lawyers who undertake that type of litigation do not do it lightly. There is a significant risk involved in the conduct of litigation. The practice of law is an expensive one, as you would well know, and lawyers act as a very effective filter in relation to claims at the front end in terms of claims that will proceed and claims that will not proceed. Lawyers simply do not undertake litigation claims that have no realistic prospect of success, as I dare say the orthopaedic surgeon would not undertake surgery on that basis that I just outlined.

CHAIR: Thank you. Are there any other comments?

Mr Morrison: I would add to that. The other issue that is particularly relevant to workers compensation claims is that we have another element in terms of the fraud provisions inside our legislation. So not only does the lawyer have to ensure that the merits of the case are sufficient that the case can succeed, but if they fall foul of the fraud provisions then there are disastrous consequences. I think Queensland is the state that has the harshest provisions in fraud—that is, if you are convicted of fraud as defined in the WorkCover legislation, all of your entitlements cease, past and future. So for the lawyer who is putting all of that fee on the line, it is all over for everybody. It is about as tight as it can get and I think it is a good thing for the scheme.

CHAIR: Do you have a follow-up question?

Mr KAYE: In relation to the no win, no fee, there has been a bit of a theme and a perception come through that advertising may be adding to the cost of the workers compensation scheme. Do you have any comments in relation to that?

Mr I Brown: There is no evidence of that. The Law Society has looked at this issue very closely over a lengthy period of time, and there is no correlation between advertising and claims rates. It is a common misconception. It is a view that is peddled by industry and insurers. In fact, it was what underpinned the Ipp review many years ago that the Howard government undertook. That review was told to simply accept that there was a problem with litigation, there was a claims explosion, and that fundamental underpinning was simply not borne out by the evidence.

There is no correlation between lawyers offering speculative fee arrangements for clients and claims rates. If there was, you would see trending upwards of claims. You do not see trending upwards of claims either in the workers compensation scheme or indeed in the motor vehicle accident scheme. I think that is a very clear indication of the fact that there is no correlation between claims and lawyer conduct.

CHAIR: Thank you.

Ms Davies: The no win, no fee principle is applied by all of us because we need to, as the previous speakers have said. When we first meet a client, it is a long meeting to gauge how good the claim is for them and how likely they are to win. Obviously, it is a commercial decision for everybody. We would be very upfront as to what their prospects were, as far as we knew them at that stage. They would know what our fees are and they would know about the cap. Basically, we are there to help them if we possibly can, and if we cannot then we do not get paid. It is as simple as that. In addition, because we have to charge fees, it is a means of keeping the number of common law claims down because we are not going to proceed if no-one is going to get paid. We would not put our client through that.

CHAIR: I will ask for one final comment.

Mr Dunn: I just wanted to add one extra point on the legal aid aspect of that. There is actually a small scheme for providing some assistance for impecunious plaintiffs in personal injuries matters called the Civil Law Legal Aid Scheme. That provides payments for outlays for doctors reports, disbursements and things like that. One of the requirements in order to be eligible for aid is actually that the lawyer agrees to take the matter on a speculative basis, on a no win, no fee basis. That is actually what you have to do in order to qualify to be able to get the small amount of legal aid that is available.

CHAIR: Thank you. The time allocated for this session has expired. If members require any further information, we will contact you. As I advised at the beginning of the hearing, the committee has agreed to accept supplementary material subsequent to the hearing should you feel that this would assist in the committee's deliberations. We ask that any additional information be provided by Friday, 23 November 2012. Thank you for your attendance today. The committee appreciates your assistance. The committee will be hearing from a further group of stakeholders commencing at 10.45. You are welcome to observe these proceedings from the public gallery.

Proceedings suspended from 10.28 am to 10.49 am

BEAMES, Ms Jennifer, Human Services Risk Manager, Presbyterian and Methodist Schools Association

BELL, Mr Rangi, Employee Rehabilitation Manager, Kilcoy Pastoral Co. Ltd

BROWN, Mr Bill, Manager, Workers Compensation, Queensland Rail

CARTER, Mr Adam, Acting CEO, Racing Queensland

CONNOLLY, Mr Tim, Newhaven Funerals

HAY, Mr Chris, General Manager, Northside Trusses and Frames

HUTCHINGS, Mr Angus, Group Safety Manager, Ardent Leisure Ltd

KEATING, Mr Daniel, Senior Consultant (Claims Management), Department of Transport and Main Roads

MURTAGH, Mr David, Risk Manager, Hyne Timber

PULLER, Mr Noel, OH&S Manager, Hyne Timber

RICHARDS, Mr Matthew, Senior Consultant (Injury Management), Department of Transport and Main Roads

ROSENLUND, Mr Neile, Managing Director, Rosenlund Contractors Pty Ltd

WILLIS, Mr Michael, Executive Director, Presbyterian and Methodist Schools Association

CHAIR: Good morning, ladies and gentlemen. I declare this public hearing of the Finance and Administration Committee's inquiry into the operation of the Queensland workers compensation scheme open. I am Michael Crandon, the chair of the committee and the member for Coomera. The other members of the committee here today are Mr Curtis Pitt MP, the deputy chair and member for Mulgrave; Mr Reg Gulley, who will join us shortly, the member for Murrumba; Mr Ian Kaye MP, the member for Greenslopes; Mrs Freya Ostapovitch MP, the member for Stretton; Mr Ted Sorensen MP, the member for Hervey Bay; and Mr Mark Stewart MP, the member for Sunnybank. A member of the committee who is unable to attend the hearing today is Mr Tim Mulherin MP, the member for Mackay.

The purpose of this hearing is to receive information from stakeholders about the motion which was referred to the committee on 7 June 2012. The committee is familiar with the issues you have raised in your submissions and we thank you for those very detailed submissions. The purpose of today's hearing is to further explore aspects of the issues you have raised in submissions. Thank you for your attendance here today. This hearing is a formal proceeding of the parliament and is subject to the Legislative Assembly's standing rules and orders. The committee will not require evidence to be given under oath, but I remind you that intentionally misleading the committee is a serious offence. You have been provided with a copy of the instructions for witnesses, so we will take those as read. Hansard will record the proceedings and you will be provided with a transcript.

I remind all those in attendance at the hearing today that these proceedings are similar to parliament to the extent that the public cannot participate in the proceedings. In this regard, I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee. I also request that mobile phones be turned off or switched to silent mode and remind you that no calls are to be taken inside the hearing room. We are running this hearing as a roundtable forum to facilitate discussion. However, only members of the committee can put questions to witnesses. If you wish to raise issues for discussion, I ask you to direct your comments through me.

The committee has agreed to accept supplementary material subsequent to the hearings should you feel that this would assist the committee's deliberations. This material may include additional comments that you wish to add to your submission and/or testimony or responses to issues that have been raised in the hearing. As previously advised, the committee will allow a maximum of 1½ minutes for each of you to make an opening statement if you wish to avail yourself of that opportunity. Tim Connolly, would you like to make an opening statement?

Mr Connolly: Thank you, Michael. It is a privilege to be here and we appreciate it greatly. We do have some concerns regarding WorkCover. Recently one of our staff was involved in a motor vehicle accident which was caused by another party. Our worker suffered an injury and could not come to work.

Our vehicle was written-off completely. Our worker claimed on WorkCover and they have paid all of his medical expenses and operations as well as covering his wages. It has been determined that his injury prevents him from returning to work. Our premiums from 2010 to 2012 have risen from $19,700 to $49,400 due to numerous factors. We had to employ an additional staff member, purchase another vehicle and are having trouble understanding why we are forced to pay an increased premium to a monopolised insurance provider because of an accident caused by another party. We wish to thank you for setting up this committee to consider WorkCover and can we respectfully request from you that your committee investigate and recommend an inquiry into, firstly, the ability for companies to have a choice of WorkCover insurance or worker insurance similar to motor vehicle third party which would offer fairness and competitive rates; secondly, transparency or something similar to criminal history checks regarding a prospective employee's WorkCover history; and, thirdly, develop an occupational workplace health and safety compliance scoring system which would then relate directly to employer-worker insurance premiums, in turn creating safer workplaces.

CHAIR: Thank you very much, Tim. I call on Northside Trusses and Frames.

Mr Hay: Thank you for the opportunity. I represent a small to medium sized business and so for us a WorkCover premium can be a significant cost. The good news for us is that we have managed to halve our WorkCover premium in the last five years, so we have worked hard at that. I still have concerns with a number of areas, and one is initially in the proof of injury and the impact that pre-existing injuries and also just the general wear and tear that we seem to be found guilty of by association as we employ the person at the time when they raise a concern. The definition of acceptance appears to us to be, 'Was the employer at work on the day of their injury? Could they have possibly injured themselves in the way described?', and if that is true then the claim is accepted. The fact that the employee has been shovelling gravel for the past 20 years with another employer does not seem to be taken into account.

My second concern is the inequity of premium costs. For those good businesses that spend a considerable amount of money reducing injury and invest in mechanisation to reduce manual handling, which is something we have done, we do not appear to be getting the advantage of lower premiums because a common law claim could be just around the corner and that could effectively double our premium overnight or in the next year. The final area is in the no win, no pay. If we are in a situation, we have to fund our own defence. We engage experts to defend against lawyers who are experts in the field. In that situation if there is no risk to the employee in that sense, why wouldn't they have a crack at us? I really think that there should be a better way to try to negotiate it at an earlier stage in the process.

CHAIR: Thank you, Chris. I call on Queensland Rail.

Mr B Brown: Thank you, Mr Chairman, for—

CHAIR: We used you as an example today.

Mr B Brown: I heard that and I was ducking for cover. Thanks for the opportunity to come here today and also to put in a submission. I do not want to go too much into our submission but just want to make a couple of points. I believe that the scheme is operating very well when you compare it to other states from a financial point of view et cetera. Queensland Rail is a self-insurer and has been since 1998. You heard from my colleagues this morning. I agree with them and think that the scheme is working as far as self-insurance is concerned. That is because it is well regulated, there are very tough conditions to become a self-insurer and it also gives an employer like Queensland Rail the control of its liabilities with regard to safety and rehab and returning our injured workers back to employment and back to work, hopefully within Queensland Rail. Just in terms of a couple of points in the submission, I just want to mention journey and recess claims. I just think they need to be looked at. As was indicated this morning, employers really do not have much control over those sorts of claims. It was a recommendation of the Kennedy inquiry in 1996 that they be removed, but they were not. So I ask you to look at that. Lastly on common law, I think the amendments to the workers compensation act and the Workplace Health and Safety Act were excellent and I think they have probably brought the numbers down from QR's perspective in particular, but it is probably a bit too early to comment on that.

CHAIR: I call on the Department of Main Roads.

Mr Richards: The main thrust of our submission was obviously the option of self-insurance if possible for government departments, because we presently cannot do so. Obviously we feel we have no option to insure elsewhere, so we have a belief through anecdotal evidence that we would be able to manage our risks better obviously. We also have some concerns about the definition of 'injury' and believe it needs to be tightened up. We find that the threshold is too easy at this stage. We also have some concerns that the amount of investigation going into claims is insufficient. It seems to be run at the behest of GPs at this stage where as long as they say an injury is consistent it seems that a claim is accepted. Thanks.

CHAIR: I call on Rosenlund Contractors Pty Ltd please.

Mr Rosenlund: Thank you for allowing me to make a submission. We view, as most employers do in our industry, that WorkCover and Q-Comp are too quick to support an employee's claim and pay compensation and the claims out with little questioning of the diagnosis or employer's comments. This results in a large wasting of money. We can submit proof that this has happened. We have just beaten Q-Comp. It cost us $20,000 odd to force Q-Comp to recall their claim without even going to court. So our

premium will not be affected but, as I said, we forked out $20,000 and the employee has got a $130,000 bonus for a totally ambitious claim. It was absolutely, in my view, fictitious and it has been proven to be fictitious. We knew we were not going to make any money out of it because of the lawyers' costs, but it was wrong.

Further, since the reforms in 2010 we have seen a growth in common law claims and costs to defend such claims. The construction industry has undergone fundamental changes in how it manages its workforce and more and more industries are utilising labour hire. Whilst WorkCover still covers the employees and their direct employer, it does not do anything about the host employer for the injuries that the worker may sustain under the direct supervision of us, a host employer. That has resulted in situations where a labour hire employee is injured on site and able to instigate common law proceedings against a host employer with many hundreds of thousands of dollars even after they have accepted a statutory payout from WorkCover for the injury. WorkCover's position of quickly negotiating out-of-court settlements with workers and their direct employers that leave the host employer in a precarious situation where a claim has been accepted—

CHAIR: Neile, I am sorry, we need to stop you there. If you want to give us a hard copy of the rest of that submission, we are happy to include it.

Mr Rosenlund: Thank you.

CHAIR: I call Hyne Timber.

Mr Murtagh: I will not keep you long. I have heard a lot and read a lot of the submissions that say it is supposed to be a balanced scheme in that it is not broken so do not fix it. We have reduced our statutory claims by 69 per cent in the last five years. We have reduced the cost of those statutory claims by 67 per cent in the last five years. Our wages have reduced by 14 per cent in the same period. Our premium costs have increased 72 per cent. So how is it a balanced scheme and how is it not broken? From an employer's perspective, we manage a safe workplace, we have common law claims that last for years and drive significant costs. They are out of our control in a lot of cases because many of them are vexatious claims and very low impairment rates, yet our premiums have gone up by 72 per cent on the back of 67 per cent improvement in safety performance.

CHAIR: Thank you very much. We might get some detail from you. We can use that as an example and seek some feedback. Their data might differ from your data, so it will be interesting.

Mr Murtagh: I will give you our data.

CHAIR: Thank you. If you can get us all of that, that will be great. Racing Queensland is the next cab off the rank in the list. We will give you 90 seconds to make an opening statement. Remember, everyone, that you will have an opportunity to weave what you do not get to say in your opening statement into an answer later on or you can give us a hard copy submission and that will be taken into consideration. I call Racing Queensland.

Mr Carter: On behalf of Racing Queensland, I would like to thank the Finance and Administration Committee for the opportunity to make a submission today. Racing Queensland is the control body for racing for thoroughbred, harness and greyhound racing in Queensland. We have the responsibility of thoroughbred racing. Our key reason for the submission today is on behalf of the jockeys. We have provided workers compensation coverage for jockeys and apprentice jockeys under a contract of insurance with the Queensland WorkCover since 2004.

The Queensland Jockeys Association made a submission to the Finance and Administration Committee on 25 June 2012. If the submission by the Queensland Jockeys Association is successful, Racing Queensland expects our annual premiums that we pay on behalf of the jockeys to increase from roughly $2.5 million a year to over $5 million a year. The potential increase will place a significant burden on racing in Queensland and we will not be able to sustain that going forward. Already this year in 2012 we made a significant deficit of over $30 million and we contribute over $15 million a year to the jockeys in Queensland.

CHAIR: Once again, you will have an opportunity to weave the rest of your statement into answers or indeed give us that in hard copy. I now call the Presbyterian and Methodist Schools Association.

Mr Willis: I believe we are the only not-for-profit organisation here and that concerns me a little that our sector is not as well represented as it could be. Workers compensation costs have a significant impact on our human services not-for-profit sector, which is a sector that does have a significant amount of human services.

The point we want to make is about the significant disconnect between our obligations under the Work Health and Safety Act 2011 and our requirements under the workers compensation scheme in Queensland. In our schools we have made a great effort to improve our duty of care to our staff so that when the Work Health and Safety Act came in we were well prepared for that. When we have claims, for example, from students, as happens on occasions, one of the defences we have is the fact that we have met our duty of care—we can provide evidence of that. But, under the statutory claims process, all the work we put in, all the training we provide, all the return-to-work and rehabilitation programs, all the

provision of resources, counts for nothing in relation to statutory claims. That is a real concern for us and it is having a significant impact on our premiums, and in our sector that comes at a cost to services—in our case education or in other parts of the not-for-profit sector to care and support for people.

The concern we have is that there seems to be only a casual nexus between the injury that is sustained and the claim. There is no regard to the obligations of the employer or the employee in relation to the incident or the claim. We would support changes to the scheme which introduce structure such that an individual's entitlement or benefit be determined by some application of—

CHAIR: Thank you, Michael. I call Ardent Leisure Ltd.

Mr Hutchings: I echo the concerns the other employers have raised this morning. Some of Dreamworld's main concerns include claims that go through the system that are non-genuine, and by non-genuine I am referring to claims where a medical condition or an injury has been pre-existing or it could be a genetic condition, yet that worker will attribute all of that on the workplace activities. We are also concerned with the amount of investigation activity on behalf of the insurer and whether or not investigation activity can identify the true origin of injury.

We are also concerned with access to common law. In the last five years our premium has increased from $450,000 to $1.2 million primarily due to common law. Our statutory claims have effectively lowered. We continue to receive awards for best practice safety standards, yet we have to be burdened with this huge WorkCover premium.

The other concern we have is in relation to self-insurance requirements. Back in 1997 Dreamworld was a self-insurer. It met the requirements back then. So from 1997 to 1999 we demonstrated that we could be an effective and competent self-insurer even though we had far fewer than 2,000 employees.

CHAIR: Thank you. I should declare that Dreamworld is in the electorate of Coomera, where heaven meets earth. They have some really scary rides. I was on one the other day with the Minister for Transport and Main Roads—neither of us screamed like a girl, for the record. I call the deputy chair.

Mr PITT: I heard the Minister for Transport screams like a girl, but anyway. Thank you for being in attendance here today. We appreciate your time and we realise that you have made detailed submissions. Today is our chance to follow up and chase that additional information. When I was looking through the submissions, we noticed that the Rosenlund submission was quite detailed, particularly as it related to the 2010 reforms. I was hoping you might be able to expand on what your experience has been since that time as an employer—what has changed and what has not—and whether you have any suggestions as to how things could be improved in the scheme. I would obviously invite others to comment at that stage based on what that reform process undertook.

CHAIR: So we are starting with Neile and then over to David.

Mr Rosenlund: Thank you very much, Curtis, for your question and good reading of our submission. Since 2010 we have had a litany of claims as a host employer through labour hire. In the most recent case a fellow was paid out less than $10,000 by WorkCover through his employer and he sued us for $500,000, which cost us $50,000 in excess. He walked away with $135,000 for what WorkCover thought was just over a $5,000 claim. We have had several of those. We have several more happening. With the growth in the no-win no-fee solicitors, that is going to continue to happen. Our insurance is going to increase and increase and increase. So we would like the definition of a worker to include a host employer. It is happening more and more certainly in the construction and building industry.

Secondly, I started to talk about employees having injuries and it goes to whether they get old and they have a genetic predisposition to an injury or they think they have an injury and they do not get analysed properly. They make a claim on your WorkCover and you do not have any option to knock that back except through Q-Comp, and that all costs you money because Q-Comp seems to be wanting to be there to support and support and support the worker. You are in a no-win situation. By the time you work out the cost you are going to save by appealing the matter through Q-Comp against the cost of engaging a lawyer to negotiate with the lawyers of Q-Comp, I suspect most people in the industry would say, 'Who cares? It's too hard. We'll just let WorkCover pay the money out and our premium goes up.'

Our premiums are tremendously high. We do a lot of demolition in Brisbane and a lot of construction in Brisbane. They keep going up and up and up on claims that we do not think are valid. Does that help you out, Curtis? We are going to make another detailed submission to support this.

Mr Murtagh: Just on the 2010 changes, I do not believe they have had any impact at all on common law—in fact the direct opposite. We averaged one or two common law claims a year for a period of years leading up to the 2010 changes. I think we have about eight or nine on the books for 2010 and a growing list of claims for this period that we are in now. The majority of those are assessed for zero impairment, yet they go to mediation settlement driven by WorkCover. WorkCover invariably decide that it is in their best interest to settle that claim before it goes to court. The majority of our claims, as I said, are virtually nil impairment, if not nil. Yet they end up with between $100,000 and $300,000 in common law claims. As I said earlier, in relation to our statutory claims cost, our OH&S performance day to day has improved by over 69 per cent in five years. So I do not believe the changes have had any impact at all—in fact the direct opposite.

CHAIR: Thank you. Would anyone else like to make a comment?

Mr B Brown: I would just like to follow up on that question and my opening address about the changes to both Workers Compensation and Rehabilitation Act and the Workplace Health and Safety Act. Our experience at Queensland Rail has seen that the claims probably have come down somewhat. It might be a little too early, but there have been changes with the costs as far as general damages go. I think that has been good. In terms of the Work Health and Safety Act, some of the common law claims were basically a strict liability claim, especially the smaller ones, where the employers were just getting—it was a no-fault. The claimant could not lose, basically. I think that has probably shifted, but, as I said earlier, it is probably a little early.

The other thing I would just like to add is about claimants' cost. We heard about that this morning from the self-insurers association and the other self-insurers and some of the lawyers that were here. My only comment on that would be that in my experience over many years attending settlement conferences—obviously costs are a matter between a client and their solicitors—especially with regard to the smaller claims you find that, say it is a $100,000 claim or a $70,000 claim—this is only my guess, I suppose—it can be an impediment, I think, to the claimant. He is trying to work out what he is going to finish up with. It depends what arrangements he has with his solicitors. That can be a bit of a sticking point, you might say, to trying to resolve the matter.

Mr KAYE: This question I think Hyne Timber can probably start off by answering because you have touched on it. Many submissions have highlighted that those employers who have implemented a safe working environment or initiatives ought to be rewarded. Could you please provide examples of these sorts of initiatives and the way in which they could be measured?

Mr Murtagh: Detail wise, how would you measure it? Obviously through the number of statutory claims that you are having—lost-time injuries, medical-expense-only claims. As I said, we have reduced our numbers significantly over a period of time and it has been sustainable. That is not to say we are running a perfectly safe workplace. We do still have some manual-handling issues and the guys do have sprains and strains, and we acknowledge those and we treat them accordingly and continue to challenge ourselves to reduce those. What is difficult is that on the back of those improvements, which are often expensive—we are talking significant capital investment in automated machinery, improvement to work methods, reduction of manual handling, safeguarding of plant and equipment and a vast range of activities through education, training and support—you then get whacked on the end of that with a 72 per cent increase in premiums, as I said. We have reduced our injury rate significantly but we are paying much more significant premiums than we were. That is the impediment to further capital investment in your business. We are talking about premiums that have gone from $700,000 up to $1.2 million, $1.3 million or $1.4 million. That money would be much better spent on further business improvements as opposed to, I believe, in the hands of plaintiff lawyers in a lot of cases. I make that statement.

We have many good employees who have left our employ who would still be employed if there was not a common law claim involved. Those people have left our employ not at our behest but at the behest of someone. They are going through a rehabilitation process, improving in the workplace, back at work eight hours a day. Suddenly a common law claim eventuates and they cannot work. We have many cases of that, where those employees would still be employed by Hyne today. We have average employment rates of 12, 15 or 18 years in our business, so we do not have people leave our business just for the sake of it.

Mr STEWART: The committee has heard evidence regarding the breadth of the WorkCover industry classifications. Would anyone care to comment on this, as well as offer possible solutions—WorkCover classifications within industries.

Mr Hay: It is certainly an area of concern to us. In our business we employ about 90 people. Around 30 per cent of those people are actually in the office, but we still get compared with another business where most of the employees are actually involved in manual tasks. That is a concern for us, that we get lumped in with that same group. I think we have recently had a change which has put us into another category.

In answer to the previous point, we have certainly spent a significant amount of money trying to mechanise what we do—stacking systems rather than people picking up completed product. We are doing those things, yet there are other businesses that are not doing the same thing and are involved in an extensive amount of manual handling, and that, I do not think, is a fair system in that sense.

Mr STEWART: We notice that in your submissions you actually referred to solar claims. Could you expand on your comments and advise the committee what solutions you might offer in relation to that?

Mr Hay: I just think it is a real issue. We provide hats, we provide long-sleeve shirts for employees, we provide sunscreen and we can do that all week but we do not know what they are doing of a weekend. I think it is just extremely difficult if someone does suffer an impact from sun, which I certainly have. I have been involved in outdoor work all my life until recently. So it is a difficult situation, but I do not see why the employer should be in that situation. I guess the same thing applies with hearing, if you are providing appropriate hearing protection. We had one guy who you could hear coming from quite a few hundred metres away from work because of the thumping in his vehicle from his boom box. They are the things that are difficult to control, and you cannot prove that. Was the injury at work or was it in his van with the boom box going? Was the solar damage caused by exposure at work or what he is doing at the weekend?

Mr B Brown: Solar claims were mentioned in our submission, too. I would agree with those comments and just add that, of course, a lot of those include significant non-work time when they are exposed. The other difficulty with them is that until they are stable and stationary, the claim is ongoing. If you employ people—track workers and those sorts of people—claims with go on for years and years. I can see that as a problem. Maybe we could line them up with industrial deafness claims and some of the provisions there that you can only claim for the first 12 months after you retire and maybe five years working in Queensland or something along those lines maybe could be considered.

Mr GULLEY: My question is in regard to claims. I noted during the opening submission by Neile Rosenlund that he was talking about a claim that he was able, through the solicitor process, to halt. We have received several suggestions previously from employers that they were unable to defend a common law process. Can you explain to me what process you went through to defend that potentially fraudulent claim?

Mr Rosenlund: This was a claim made by an ex-employee some 12 months after he was no longer our employee. It was originally rejected by WorkCover. It was claimed over the internet and rejected by WorkCover. They appealed. It went to Q-Comp. Q-Comp rejected it. We appealed to Q-Comp. Then the solicitors got involved for us. We went to several negotiating meetings. We were there; there was a judge—conciliation meetings I think they are called. Q-Comp kept rejecting our submissions saying, 'we need more evidence. We need more evidence.' We then went and spent a pile of money on getting expert medical evidence and then our lawyers kept writing to Q-Comp. They kept rejecting it and then we got more evidence.

Eventually, before it was going to go to court, where we would have spent a lot more money—this has only happened since we made this submission to you—Q-Comp accepted our medical evidence and have conceded the appeal. So there is no winner here except the ex-worker who made the money. So you can appeal it and you will get justice; it is just a matter of how much money you are prepared to spend. If you do a cost-benefit scenario, certainly in our case it is of no financial benefit for us to have done that. We would have been better off just letting it go and paying the extra in the WorkCover premiums, but it was fraudulent and I could not deal with it morally.

Mr GULLEY: There is a common theme from many employers that they feel subject to fraudulent claims. Have you got any suggestions to the committee of steps or things we could introduce to limit fraudulent claims or that ambient claim process?

Mr Connolly: Our suggestion or recommendation, as presented earlier, is similar to a criminal history check. If some history of the prospective employee was available to us, it may come into a discrimination case—and there are laws with regard to that, too. However, it would be beneficial for our business in particular, because we are lifting heavy weights, to know whether the person has the capacity to attend to the tasks that are required. So there could be something like a history check.

Mr Murtagh: The biggest issue for me is the common law cost. The statutory claims costs are not significant within our profile. A person has a sprain or a strain or a discomfort—not a significant injury—you bring them back on rehabilitation, you keep them in the workplace and you move forward together. The common law claims have huge costs associated. They massively impact the employer, and most employees now know there is a payout at the end of it. I could give you a handful of examples, if you wished, of injuries where we would have thought they would not even have been off-site injuries, like a bump on the finger or a sprain to a shoulder.

We do our own internal light-duties program. If a person says to us, 'We have a bit of a sore shoulder from moving that,' we say, 'Let's give you some light duties or some alternative duties for a week or so and see if it settles down.' We work with the employee. In most cases that works, but we have a number of claims where people have come to us with pre-existing back injuries and shoulder injuries that had not been declared in a pre-employment medical so we were unaware that there is an issue with the employee. We put them into a job where there is some manual handling. Our business does have a mix of manual handling and automated activities. A week or two after they start, or it might be a month, they are starting to report a shoulder injury. We then deal with that through the normal method that we do: 'Do you want to go to a doctor or do you want to just do some alternative duties for a period of time?' If they choose to go to a doctor, we do so. We think it will progress and suddenly they are off work longer and longer and then there is a common law claim involved and we go from there. And then we discover in that process that there is a pre-existing injury that we place at risk that we did not even know about.

Mr Willis: I think the point we want to make in our submission is that we do need to have some element of a negligence test in the statutory claims. We have more statutory claims in our industry because of the nature of what we do. It seems very easy for an employee to make a claim, very easily supported by a doctor. Work related stress is a very easy thing to diagnose without any understanding of the factual circumstances. What we would see is that there should be some opportunity for an employer to demonstrate that they have done what a reasonably prudent person ought to have done in those circumstances—to bring the common law process into the statutory claims in some way.

Mr B Brown: It is probably hard for some of the smaller employers, but you really have to try to identify these types of claims, the fraudulent ones and so on. That is the hard thing, but when you do you make an example of them. I think if you do that it can have a big impact on the scheme. But obviously for small employers it is very difficult from a cost point of view.

Mr Rosenlund: Could I answer your question as well, which was how I would deal with assisting the claims? Part of the issue with our ex-employee was that he went to several doctors—since, we found out—and he found one until they diagnosed him with what he wanted to be diagnosed with. So it was initially the doctor's problems and WorkCover believed him. The employer needs to have some form of input into what our view is and maybe the right to send him to an independent doctor. Thank you.

CHAIR: Thanks, Neile. Anyone else? Yes, Angus.

Mr Hutchings: We echo those concerns, particularly in relation to where workers will, what we call, doctor shop—where they can go around to a number of doctors and they will continue going to doctors until a doctor finally provides them with the diagnosis they want. What we have asserted in our submission is that there needs to be meaningful investigation if an employer has concerns about the legitimacy of a claim. We feel as though there is far too much emphasis put on that initial diagnosis of the GP. The GP is not necessarily aware of the work practices, or the work environment, or all the initiatives that are in place to manage risk. Yet what we are told time and time again by the insurer is that because the doctor said it was work related then the claim must go ahead and be accepted. We have no other options apart from fight it in Q-COMP.

The only other mechanism that we have found that works partially is to engage an independent medical expert. This is a time-consuming and a very costly process to go through. We are talking upwards of $1,000 a hour for these medical experts to come in and assess the true origin of the injury. We find that if we can provide that medical report within the 20 days that the insurer is obligated to make a decision then that can at times help them make the correct decision of liability.

CHAIR: Thank you. Are there any other comments? No, the member for Stretton.

Mrs OSTAPOVITCH: Thank you. That question is in regard to return-to-work programs. Could anyone on the panel explain what their experience is of participants with respect to return-to-work programs and how successful they are? Also, do you feel that smaller employers are in a position to offer effective return-to-work programs?

CHAIR: Who would like to respond?

Mr Murtagh: I will just quickly comment. We are a medium-sized employer. We fluctuate between 600 to 1,000 employees. I believe the rehabilitation programs are generally effective. Most of our rehabilitation programs work well. We have dedicated resources on each of our sites to support return to work. As I said earlier, in most cases they progress well until such time as there is a common law claim associated with it and then they tend to go south a little. Thank you.

CHAIR: Okay. Anyone else? Yes, Angus.

Mr Hutchings: We employ upwards of 1,200 people and for an organisation of our size we are able to accommodate, in most circumstances, workers to be rehabilitated in other parts of their business or on light or suitable duties. But I fear that that may not be the case with smaller businesses. Even in our own business there are times when we simply cannot accommodate rehabilitation programs. There may not be the roles there or in a lot of cases, because of their restrictions, they may not be able to safely perform any kind of work.

CHAIR: Any other comments?

Mr B Brown: The only comment I would make is that, once again from a self-insurance point of view—I have my hat on again—rehabilitation is a big part of the reason you self-insure, so that you have control of your workers. If you have a big workforce, you have a huge capacity to get them back to work—if they cannot go back to their substantive role, to some other role within the organisation. So return to work and rehabilitation as far as self-insurance is concerned is fantastic. Thank you.

CHAIR: Yes, Neile?

Mr Rosenlund: We are a small employer. We employ about 60 people. It is very hard to have an effective rehabilitation program given our size. We try very hard to move people around and give them light duties, but working on construction sites you cannot bring those sorts of people into an office and ask them to do some contract administration. It is virtually impossible.

CHAIR: Yes.

Mr Hay: We certainly find reasonable success with rehabilitation programs. We can find alternative work. For a forklift driver with back concerns, we can certainly find alternative duties in that situation. My only concern certainly—reinforcing what David said—is that we had one case where a guy ended up winning a common law claim and yet he flatly refused to go through a rehabilitation scheme. We had it all organised with his doctor—all ready to go—but he still would refuse to come back to work and get involved.

CHAIR: Okay. The member for Hervey Bay.

Mr SORENSEN: The committee understands that the level of WorkCover premiums is an issue for some employers. Do you have any suggestions on how it could improve? We have heard a lot through this whole inquiry, but how could you improve some of those premiums?

Mr Connolly: As suggested and recommended earlier, a choice of insurer. Give us some choice. Let us have five insurance companies, like our third-party motor vehicle and then you will have competition. It will be competitive, like everything else we have an option for—superannuation, the same thing. Thank you.

CHAIR: Michael?

Mr Willis: Mr Sorensen, in our submission we make the point that the claims management by WorkCover appears to be defaulting for ease towards acceptance of the initial claim. We have had a number of situations—and we highlight one there where it was $120,000 before we took it to appeal on Q-COMP and was rejected. The reality of that is that it did not come against our particular premium but it went against the premium of every employer in Queensland. So if we can get some improved claims management, we believe that will contribute significantly at least, if nothing else changes, to WorkCover's premiums.

CHAIR: Any other comments before I go to the member for Murrumba? No.

Mr GULLEY: Continuing on the return-to-work program response that we recently heard, at present employees are technically required to participate in the rehabilitation programs to ensure that they continue to receive entitlements. But we have just heard an example of where a participant refused to participate in that. What measures would you be suggesting that we recommend to put into place to ensure that injured workers actually participate?

CHAIR: Jennifer?

Ms Beames: One of the frustrating things for employers is if the large component of a head of claim for a damages claim is future economic loss of earnings for a person. It is therefore sometimes not in their best interest to be rehabilitated, because obviously if they are able to be rehabilitated they can demonstrate a capacity for work and that then affects their future economic loss, which then affects the quantum of the claim. So the frustrating thing is that you try to get somebody to participate in rehabilitation and they have already made up their mind that they are not going to. I think the current legislation has in place provisions that if somebody does not participate in their rehabilitation that their claim and their benefits can be suspended or stopped completely, but I think their entitlement to then claim any future damages should also be brought into question if they then do not participate in the rehabilitation program. Thank you.

CHAIR: Thanks, Jennifer?

Mr PITT: My question is to Adam Carter as it relates to submissions we have heard previously from the jockeys themselves and their representatives. As you would be aware, at present professional jockeys are not deemed to be workers. If the definition was altered to include them as workers, there is obviously a likelihood that the premiums for the industry would have to reflect the high-risk nature of the industry. Firstly, how will this affect your industry? Would you suggest that that may impact on other like industries? I am not aware that there are other sports, so to speak, where people are considered to be professional sportspeople instead of workers, yet you still could be drawing a wage. So not only on behalf of your industry, I wondered if you had other examples that may strengthen a case or otherwise for change.

Mr Carter: In Queensland they are deemed professional sportspersons. Under the current contract of insurance it has worked reasonably well over the past five to six years. We have a very good working relationship with WorkCover. If the premium had to change from its current premium of $2.5 million, we envisage that it would probably increase to over $5 million based on claims and experience. We have tested the market previously and if that had to go out and they were deemed workers, that would have a massive impact on the industry. Currently, we pay the contract for insurance on behalf of the jockeys as well as a one per cent of prize money fee for all their personal accidents and public liability for all jockeys in Queensland. We also do that. As highlighted before, we contribute over $15 million to jockeys. We have engaged professional physiotherapists to work closely with the jockeys. We have very good doctors on site as soon as a major injury occurs. At the end of the day, most jockeys, being professional sportspeople, would rather be back racing a horse than lying at home. One thing that we do need to take into consideration is possibly their second form of work, which is currently not in the contract of insurance. So we are going to work through that for next year's premium.

CHAIR: Thank you. Is there a follow-up there?

Mr PITT: Just to make sure that I am clear, too, I think there was some evidence provided by Mr Prentice when he was here and it related to the inability for Queensland jockeys to set their fees. That goes to the heart of the definition of whether they are a professional sportsperson or they are an employee, or a worker. Do you have any comments to add to that comment made by Mr Prentice?

Mr Carter: In terms of the jockey riding fee and in terms of setting their fee, as you highlighted, in each state that is a negotiation between the Queensland Jockeys' Association or the Australian Jockeys' Association and their respective principal racing authority. We have taken that into consideration when setting the workers compensation in previous years. That is a riding fee that each jockey participates in each race. So even though they are deemed to be a professional sportsperson, yes, we do set their fee but we do not deem them Racing Queensland workers as such.

Mr PITT: Should that be changed?

Mr Carter: My personal opinion, I do not agree with that and that was part of my submission—to remain as professional sportspersons and we are looking at improving the current contract of insurance.

CHAIR: Member for Sunnybank?

Mr STEWART: Thank you. Just in relation to the employee currently insured through WorkCover, I am just wondering whether WorkCover provides suitable assistance to help manage WorkCover claims within the various industries and whether there are any specific areas that could be improved.

CHAIR: Adam?

Mr Carter: In terms of the jockeys, WorkCover has now a couple of people who are more specialised and they have centralised their claims management and they have a very good understanding of racing related activities—both from jockeys and trainers as well. So they have worked very closely with the racing industry.

CHAIR: Anyone else? Yes, Tim and then David and then Angus.

Mr Connolly: Previously, probably four years ago, we went through a common law case. We worked with WorkCover to defend against the claim. It appeared from my experience that the WorkCover lawyers rolled over too easily. They did not fight. They knew that they had to pay and they just let it go through too easily. In addition to that, we have a WorkCover representative who deals with our company and the industry. The support we get from the WorkCover people is good, but someone has to pay and it is not really the employers who pay; it is our customers. And that increases the cost of all products—timber, funerals, palls—everything. The consumer pays, ultimately. Education.

CHAIR: I think David was next?

Mr Murtagh: I think centralisation of WorkCover services has been a negative from our perspective. We used to have local claims managers who we developed a relationship with. They understood our business. They understood our work sites and we were able to develop a relationship with them. Actually, as an injured worker having to front up to a WorkCover office, I remember being injured years ago myself. I had to go through an interview and fill out a form. Fronting up to a person and having to do that was quite challenging, to be honest, I suppose, as opposed to just filling out a form at the doctor and disappearing. It is very impersonal if you want to make a claim. There is no behest on you as the injured party to front up.

The second and final point is that, as has been said before, WorkCover accepts claims very quickly with very little investigation from our perspective as an employer. If the doctor says the person is injured, they are injured, end of story, it seems.

CHAIR: Angus?

Mr Hutchings: What we found when claims were centralised from Brisbane is that it did not work. You had people who were assessing claims who had no familiarity with the business whatsoever. In more recent times, we have had an arrangement with WorkCover where they provide dedicated claims assessors who come out on site periodically and who work very closely with our rehab team. We find that mechanism works very well. They are familiar with our business and they are very in tune with what our issues and concerns are. Where we do have concerns, as others have said this morning, is the lack of investigation activity following a questionable claim. We feel as though a lot of the burden of investigation is put on the employer and we feel the majority of that burden of investigation should fall back onto the insurer.

CHAIR: Yes, Neile, thank you.

Mr Rosenlund: As I understand it, the question was about what information the employee gets to assist the employee in relation to their claim. I would like to say that, as soon as an employee goes and sees a solicitor, he will get a solicitor's view on how much money he can get. It all then becomes one sided. He becomes focused on a monetary claim. Some information needs to be given to the workers—I don't know how—on the risk they get from independent information they get by pursuing a litigious claim—the wins and the losses. When they see a solicitor, they are only going to see one side of it and a solicitor has his coal train to run, his agenda to run, and certainly it is generally not in line with the worker's agenda.

CHAIR: Any other comments? Over to the member for Greenslopes.

Mr KAYE: I just wanted to clarify: we are speaking earlier about doctor shopping and possible fraudulent claims. I wanted to clarify across everybody here whether that is widespread or whether you consider it to be a very minor number of claims in that regard? Just a general feeling. I am trying to work out that it is something that you feel is turning into an epidemic?

Mr Hutchings: We feel that the majority of the claims in our business are legitimate and the minority of claims are questionable, non-genuine, fraudulent—call it whatever you want. Of that minority, with the majority of them the worker is focused on getting the best possible outcome for themselves. We have had dozens and dozens of claims over the years where we have had multiple doctor's certificates coming in and often they conflict with each other. Amongst the claims that are questionable, I think it would be fair to say from our perspective it is relatively common.

Mr Murtagh: I believe most are legitimate, but I think it is the old 80:20 rule. I reckon most of our costs are associated with those that are not. As I said, the majority of claims are legitimate. They are statutory claims. The guy goes, gets a couple of stitches or has a couple of weeks on suitable duties. If it is a muscle strain, he returns to work and is happily employed. Those that cost us the most money are those that we have the most trouble with and generally have lots of suspicion around them.

CHAIR: Any other comments? Yes, Neile, and then Michael.

Mr Rosenlund: I totally concur with those comments. That is exactly what I was about to say.

Mr Willis: It is difficult for us to judge each individual case, but certainly the sense that we have is that when someone has issues, particularly in areas of stress or psychological illness, a default position seems to be to claim that it is work related when it may not necessarily be so. There may be other factors affecting a person's psychological health, but the default position is to say to a doctor that it is work related. We see significant numbers of comments from doctors along those lines. We understand the difficulties that doctors have in making that assessment and it seems to us to be a little too easy to default to that position. It does concern us.

Mr B Brown: The only comment I would make is that in my experience I think most workers are reasonably genuine. They tend to exaggerate their symptoms sometimes and that can be mixed up with someone who is trying to pull the wool over your eyes. Obviously, there are people who do, but certainly with Queensland Rail workers, I would have thought most of them are genuine in what they are about.

CHAIR: I do not suppose it would be in their best interests to under emphasise their injuries, would it?

Mr B Brown: Exactly. Good point.

CHAIR: If you think about it, where do you draw the line? Where is the line? Just on that subject, you mentioned psychological injuries and what have you. Workplace bullying has been in the media quite a bit in recent times. Is workplace bullying one of the areas that you find an issue? Jennifer?

Ms Beames: Certainly, they are the allegations that are made: workplace bullying, intimidation, harassment, all of those sorts of things. I guess the current scheme and the current act in terms of workers compensation is very good in the provision that the scheme can actually remove claims under the act that have occurred as a result of reasonable management action taken in a reasonable way in relation to a person's employment. Certainly there are a lot of allegations being made about bullying and harassment that are resulting in psychological injury claims.

The difficult thing, as Mike said, is that normally somebody has got a multitude of complicating factors when they lodge a claim for a psychological injury. It is probably one per cent work related and probably 99 per cent something else, but the employer is the very easy target, because it is much easier to put a workers compensation claim in against your employer than it is to actually have to deal with your financial or marriage problems or those sorts of things. It becomes very difficult. Certainly, workplace bullying is something that is an issue for everybody, I think.

CHAIR: Anyone else? Yes, Noel?

Mr Puller: Secondary psych claims are a bane to us. If we have a claim, usually it is backs. They usually cannot come back to work or they will not come back to work or we cannot get the doctor to get them back to work, even though we have suitable duties available. They will go off second psych. As soon as you mention a psych claim to WorkCover, they get very quivery and start reaching for their wallet. That is our main issue. We do not have—touch wood—any issues with stress related or bullying claims. Definitely, secondary psych seems to be the problem. After the person is off and they do not want to come back to work, they go secondary psych. Thank you.

CHAIR: Anyone else? Bill?

Mr B Brown: I totally agree with those comments: the secondary psychs are a problem. If they turn into a common or damages claim, that part of the claim is normally minute, but they do cost a lot of money to investigate, et cetera, et cetera. I think that is an area that should be looked at.

CHAIR: Thank you.

Mr Willis: If I could just add one comment to the comment of Jennifer Beames. We are seeing an increasing tendency, at the beginning point of an employer's action in relation to performance management of an employee, before we even get to the first performance management formal interview, that an employee is going off on sick leave and obtaining a doctor's certificate that makes it work-related stress. That puts the whole performance management issue into a very difficult position, because it has occurred before the performance management formally takes place. But I am not sure whether that is being encouraged by work colleagues or by other sources, but we are seeing an increasing prevalence of that.

CHAIR: We are running out of time, but the member for Stretton wants to ask another question.

Mrs OSTAPOVITCH: This is in regard to journey claims. I acknowledge that Mr Connolly has mentioned about accidents in the car that were not the employer's fault. I would like to hear the opinion of anyone here if the clause for journey claims were to be removed. Does anyone have an argument for or against the removal of journey claims?

CHAIR: I will just clarify that we are talking about journey claims to and from work, not during work. It is not truck drivers, et cetera. Yes, Angus?

Mr Hutchings: Over the years we have had a number of journey claims, particularly in relation to the point where a worker goes from their front door to their car and an injury is sustained at that point in time. What is also common is that is also the point where the worker is then diagnosed with a pre-existing condition. Usually it is degenerative or ordinary wear and tear. From an employer's perspective, why should we be liable for incurring those costs?

CHAIR: Neile and then Noel.

Mr Rosenlund: Thanks, Freya, for your question. My view is that journey claims to and from work are too open to abuse. There are generally no witnesses. Claims can be made, basically, for anything. Some of the claims are for accidents that do occur. But as was raised before, by another vehicle hitting your vehicle and you not being in the wrong, you have to wear the cost of the workers compensation claim or look at taking action against the party who caused the accident. Overall, it is too open to abuse.

CHAIR: Noel?

Mr Puller: We do not have an issue with travelling claims. My personal belief is that I prefer if somebody has a travelling accident to go to a doctor and get sorted out, rather than have an accident, not be covered by WorkCover, come to work the next day and say they hurt their shoulder, neck or back at work. I would rather it get dealt with where it happened, rather than be dishonestly claimed later on.

CHAIR: Michael, this will be the last response, I think, because we are running out of time.

Mr Willis: Thank you, Chair. One suggestion I would make would be that the journey claim eligibility criteria could be tightened by requiring some sort of a record of police or emergency service attendance at an incident or event. From a previous employment environment, that was one where we managed to curtail journey claims fairly quickly.

CHAIR: Thank you very much. The time allocated for this session has expired. If members require any further information, we will contact you. As I advised at the beginning of the hearing, the committee has agreed to accept supplementary material subsequent to the hearing, should you feel that this would assist the committee's deliberations. We ask that any additional information be provided by Friday 23 November 2012. Thank you for your attendance today. The committee appreciates your assistance. The committee will be hearing from a further group of stakeholders, commencing at 12.15. You are welcome to observe those proceedings from the public gallery. Thank you.

Proceedings suspended from 12 pm to 12.14 pm.

ALLISON, Mr Jason, Chief Workers Compensation Underwriting and Portfolio, Suncorp

BOOTH, Mr Dallas, Chief Executive Officer, National Insurance Brokers Association

COYNE, Mr Mark, Chief Executive Officer, Employers Mutual

GODFREY, Mr Simon, Head of Business Development, Aon Hewitt

MCCULLAGH, Mr Cameron, Managing Director, Employers Mutual

MCHUGH, Mr Chris, Executive General Manager, Statutory Portfolio and Underwriting Management, Suncorp

ROBERTS, Mr Peter, Board Director, National Insurance Brokers Association

SMEATON, Mr Paul, Executive General Manager, Claims, Suncorp

CHAIR: Good afternoon ladies and gentlemen. I declare this public hearing of the Finance and Administration Committee's inquiry into the operation of the Queensland workers compensation scheme open. I am Michael Crandon, the chair of the committee and the member for Coomera. The other members of the committee here today are: Mr Curtis Pitt MP, deputy chair and member for Mulgrave; Mr Reg Gulley MP, member for Murrumba; Mr Ian Kaye MP, member for Greenslopes; Mrs Freya Ostapovitch MP, member for Stretton; Mr Ted Sorensen MP, member for Hervey Bay; and Mr Mark Stewart MP, member for Sunnybank. The member of the committee who is unavailable to attend the hearing today is Mr Tim Mulherin MP, member for Mackay.

The purpose of this hearing is to receive information from stakeholders about the motion which was referred to the committee on 7 June 2012. The committee is familiar with the issues you have raised in your submissions and we thank you for those very detailed submissions. The purpose of today's hearing is to further explore aspects of the issues you have raised in submissions. Thank you for your attendance here today.

This hearing is a formal proceeding of the parliament and is subject to the Legislative Assembly's standing rules and orders. The committee will not require evidence to be given under oath, but I remind you that intentionally misleading the committee is a serious offence. You have been provided with a copy of the instructions for witnesses so we will take those as read. Hansard will record the proceedings and you will be provided with the transcript. Especially as we have such a large number of representatives here today, to further assist Hansard as we proceed could I ask that you state your name each time you speak. I also remind witnesses to push the button to turn your microphone on and turn it off when you have finished speaking.

I remind all those in attendance at the hearing today that these proceedings are similar to parliament to the extent that the public cannot participate in the proceedings. In this regard, I remind members of the public that under the standing orders the public may be admitted to or excluded from the hearing at the discretion of the committee. Could I also request that mobile phones be turned off or switched to silent mode and remind you that no calls are to be taken inside the hearing room.

We are running this hearing as a round table forum to facilitate discussion. However, only members of the committee can put questions to witnesses. If you wish to raise issues for discussion, I ask you to direct your comments through me.

The committee has agreed to accept supplementary material subsequent to the hearings should you feel that this would assist in the committee's deliberations. This material may include additional comments that you wish to add to your submission and/or testimony or responses to issues that have been raised at the hearing. As previously advised, the committee will allow a maximum of 1½ minutes from each of you to make an opening statement if you wish to avail yourself of that opportunity. I will ask Employers Mutual to commence their opening statement.

Mr Coyne: Myself and Cameron McCullagh are here today representing Employers Mutual, a specialised workers compensation insurer operating out of New South Wales and South Australia. In brief, we have been operating for over 100 years and manage over $1 billion in annual workers compensation premiums across Australia.

I will highlight some key points regarding our submission. In terms of contestability, schemes cannot be compared well from state to state as the legislation is so different. We believe that it is critical that there is competition in the marketplace to continue to encourage best practice thinking and innovation. It is through contestability that the best is brought out in performance and here in Queensland you only have the one organisation to measure against.

In terms of success of specialisation, we have experience with two specialised insurer schemes—Coal Mines Insurance, a joint venture between the CFMEU and the New South Wales Minerals Council, and Hospitality Employers Mutual, a joint venture between Employers Mutual, ClubsNSW and the New

South Wales branch of the Australian Hotels Association. Both schemes have shown the benefit of an industry owned scheme by reducing premiums, improving the frequency rate of injuries and providing faster return to outcomes for injured workers.

The third point is innovation. Rather than only having WorkCover Queensland, having either a specialised insurance scheme or allowing an agent or insurer to manage a portion of WorkCover claims as a pilot you would get competition, benchmarking and innovation. That would be good in terms of return to work and the premiums for employers.

CHAIR: I now call on Suncorp.

Mr McHugh: Suncorp would like to thank the committee for the opportunity to address today's hearing. Suncorp is Australia's largest personal injury insurer and supports the efforts of the Queensland parliament—in fact all governments—to ensure workers compensation schemes remain fair, sustainable and competitive. We consider ourselves a major part of the Queensland economy, due to the number of customers we service, claims we manage and people we employ. Our investment in the Queensland community and quality of life is also significant. We see our participation in this hearing as another mechanism to support sustainable and affordable injury prevention, rehabilitation and care.

Whilst we recognise in our submission the positive features of the Queensland workers compensation scheme, we do believe the scheme can be improved in three key areas. Firstly, the introduction of defined benefits to replace unrestricted and uncapped common law entitlements. This will create fair and reasonable access for all and reduce the volatility risk that drives up scheme costs. Secondly, harmonisation of data, assessment tools and benefits between Queensland workers compensation and CTP schemes and other workers compensation schemes will enable benchmarking and improvement and reduce costs and complexity for stakeholders in multiple jurisdictions. Finally, the introduction of competition is highly recommended to increase performance, service levels and innovation which will result in improved health outcomes and more competitive premiums.

We support the objectives of this inquiry and are happy to lend our expertise and insights throughout this entire process.

CHAIR: I call on Aon Hewitt.

Mr Godfrey: Aon Hewitt is Australia's largest risk management consultant. We are actively involved in the workers compensation industry around the country. Just to add to our submission, we believe that the improvement in the competitive landscape in Queensland will ultimately benefit employers, my colleagues in the industry over here and the government. Our aim in this is to look at risk mitigants and how early intervention by improving competition and market participation will improve things both from a premium and claims perspective.

CHAIR: I call on the National Insurance Brokers Association.

Mr Booth: We thank the committee for the opportunity to make some comments and to answer questions this afternoon. NIBA represents insurance brokers right across Australia. Insurance brokers act on behalf of their clients—in this case, the employers of Queensland—to assist and manage their risks and to access the insurance markets both nationally and internationally.

I have two very quick points to commence the hearing this afternoon. In terms of the performance of the scheme under section 5 of the act, section 5(4) of the act requires 'flexible insurance arrangements'. Unfortunately, the act then goes on to mandate a monopoly situation other than for the very small number of employers who have the capacity to self-insure.

By definition there are no flexible insurance arrangements for Queensland employers. It is certainly our submission that serious consideration should be given to the possibility of Queensland employers having far greater choice in terms of the provision of cover for their risks for workplace injury and disease.

The second key point is the comparison between Queensland's workers compensation scheme and other scheme arrangements across Australia. We specifically reference, as we did in our submission, the arrangements in Western Australia where insurance brokers and insurers provide a range of services and a range of innovative solutions for employers in that state in managing risks, managing the risk of workplace injury, managing claims and injury management and successfully assisting the operation of that scheme.

CHAIR: I call the deputy chair for questions.

Mr PITT: Thank you for attending today. Your time is appreciated. Obviously we are all very interested in ensuring that workplace injuries are prevented in the first place. I know that that seems to be the recurring theme from everyone. We want to put a lot more effort into that area. Mr Godfrey may have some points to raise a bit later on in terms of the risk management side of that.

My question is firstly to the National Insurers Brokers Association but it is open to all to comment. There are suggestions that more insurers should be allowed into the scheme. What do you consider to be the benefits of having the scheme open to more insurers? What role do you consider WorkCover to have if there were other insurers in the scheme?

Mr Booth: Australia has eight states and territories. Four of those operate in the public sector, and Queensland is one of the four. Four operate in the private sector. In private sector essentially the product is the same. It is prescribed by statute. The access to the product, the services provided and the pricing of the product can vary between insurers. So the insurance brokers have a very real role to assist in risk

mitigation, risk management and prevention but also to assist employers on accessing the insurance markets to get the best available price for the nature of their businesses and also to get the best available service in terms of risk management, handling of claims, injury management, return to work and so on. Insurance brokers much prefer to have access to marketplace arrangements where there is commercial pressure and commercial competition between providers to provide the best possible service for the products they are offering.

CHAIR: Comments from anyone else?

Mr Allison: Just to support that in terms of the involvement of intermediaries and risk management as well from an insurer perspective. We do heavily involve the relationship that brokers have with clients at the front end because they actually have that personal relationship with employers and have a good influence over helping them understand things like the premium formulas, the impact claims have on their premium and then work practices that support that. We also support risk management programs either direct with our clients or through intermediaries to help influence the performance of employers. We find that does help improve some of the key drivers, such as frequency of claims, which we believe needs to be addressed at the front end in all instances and also with regard to the average claim size which is supported by the early duration, the early report, the return to work that is supported from the employer side but also from the insurer side.

Mr McCullagh: One part of your question was about why insurers should be allowed into the scheme. I think the really tangible benefit that you get is that at the moment there is only one provider. While you have a really good act and there is a good culture in Queensland, there is no benchmarking. So you have no capacity to know whether the claims management is done well or poorly. What you really get is competition in benchmarking.

Mr Smeaton: I think one part of your question was about the role of WorkCover if we introduced other insurers. They obviously can actively participate. Like any insurer, they would be benchmarked against others. By benchmarking performance then the employer can have choice around which insurer they want to use. So they would be treated just like any other participant in the scheme.

Mr Booth: Could I also suggest that if WorkCover did have other competitors it would have to be administered on a competitively neutral business basis. By that I mean it would have to be subject to the full gamut of APRA, Australian Prudential Regulatory Authority, requirements as are the private insurers so that there was no competitive advantage simply by the fact that it was government owned and government guaranteed. It would have capital. It would have to have prudential margins and the full suite of risk management controls that are required of the private insurers.

Mr PITT: My follow-up question relates to some concerns that have been raised that employers are discouraging injured workers from lodging their claim with WorkCover to prevent an increase to the employers' premiums. Instead, the suggestion is that they are advised to claim with private insurers under public liability or income protection for benefits. As insurers what steps are undertaken to determine whether some claims are inappropriately lodged as public liability instead of with WorkCover? Obviously, this is being raised in submissions. It is a theme we have seen so we are just interested to find out from this particular group what is being done and what could be done differently.

Mr Allison: In terms of claims being made against other types of insurance, ultimately if there is a workplace injury and that insurance line has done appropriate investigation to determine where or how that injury took place then they would seek the recovery back against the workers compensation insurer and the workers compensation insurer would be accountable ultimately for that. There has been pressure in the marketplace around what is called waivers of subrogation around those sorts of things in the public liability space. In that instance, we try to make sure that full investigation has taken place to make sure that the claim does land on the appropriate insurance line.

Mr STEWART: The current minimum number of employees for self-insurance eligibility is 2000. If this criteria was lowered it may potentially mean that smaller organisations could self-insure. However, self-insuring may have additional administrative costs which are born by the employer. In your opinion, should this criteria be the only determining factor for eligibility for self-insurance? Could you outline other considerations that could be taken into account for self-insurance?

Mr McHugh: Obviously the financial viability of the employer is a critical determinant for self-insurance. We think it needs to be taken on balance. There is the direct employer considerations around their ability to obviously administer and manage their capacity to proactively rehabilitate and integrate injured workers back into the workforce. They are all significant requirements which predominantly the larger employers have the resources and the capacity to do. The other component I think that needs to be considered is its relationship to the central fund. By lowering the threshold for employers that may even have the capacity or capability and the financial viability to do it, what is the impact on the central fund by allowing those employers into a self-insurance environment. I think you need to consider the impact on the central fund and obviously the financial viability, but also the capacity and capability to actually rehabilitate and manage the requirements of self-insurance is paramount.

Mr Booth: The core area of self-insurance does revolve around the capacity of the employer to meet financial obligations for as long as they exist. South Australia has the appearance of a monopoly public sector WorkCover scheme but in that state something like 40 per cent of all employees are not

covered by WorkCover. There are quite interesting arrangements around the country. The 2,000 employee threshold in Queensland is an artificial number which quite clearly restricts the number of potential employers having access to the marketplace. At the end of the day the strong issue is the financial viability of the employer to be able to meet its obligations but at the end of the day also we would argue for the removal of artificial barriers and the introduction of more realistic requirements in terms of prudential management of balance sheet and capacity to meet liabilities over periods of time. In the private insurance sector the existence of the APRA regime does just that.

CHAIR: Dallas, you quoted some statistics: 40 per cent of employees in South Australia. Can you cite the source of that information and, if you cannot now, can you get that information to the committee, please?

Mr Booth: The Heads of Workers' Compensation Authorities publishes an annual comparative performance monitoring sheet showing data from right across the Australian jurisdictions. That is quite a comprehensive document which is readily available and that provides a range of information, including the numbers of employees covered by self-insurance in the different jurisdictions across Australia.

CHAIR: That is where you got the figure of 40 per cent?

Mr Booth: That is right. I think the actual number is 38 in South Australia, but it is certainly a very large number. In most jurisdictions it is around about eight to 10 per cent of employees are covered by self-insurance. It is interesting; in South Australia it is quite an anomaly.

CHAIR: Any other comments in that regard? No? Who would like to be next? Member for Sunnybank?

Mr Stewart: Just to follow up if I can, what do you consider would be an appropriate length of time for licensing for self-insurers and why?

CHAIR: No views? Move on? Member for Greenslopes?

Mr KAYE: There was a question previously in relation to allowing more insurers into the scheme, but this question relates more to the actual current self-insurance arrangements in legislation. The committee is obviously charged with considering whether the current self-insurance arrangements legislated in Queensland continue to be appropriate for the contemporary working environment. Can you please outline the strengths and weaknesses of the system as it currently stands?

CHAIR: Who would like to take that one on? This is in direct contrast to a group of solicitors and other legal professionals that we had where everybody had an opinion on everything. Dallas?

Mr Booth: The strength of the current system, if you focus on self-insurance, is you have a very small number of self-insurers and therefore the balance sheets of a very small number of liabilities has to be overseen by Q-COMP. The number is artificial and by having an artificial restriction on the number of employees accessing self-insurance you are not meeting the statutory requirement for flexible insurance arrangements.

The critical thing so far as I would suggest is that to have a lower number of employees the critical thing always is the administration of the liabilities to injured workers and there has to be comprehensive prudential oversight of those liabilities whilst ever they exist. Whilst ever an employer has liabilities or potential liabilities it must be subject to stringent oversight. In jurisdictions where there is no artificial capping of access to self-insurance, they tend to form their own equilibrium because at some point employers decide it is much easier to buy an insurance policy and to transfer the risks of Workers' Comp to the insurer and let the insurer worry about prudential management of liabilities, which is what they do every day. That would form its own equilibrium and it is far better from our point of view to have the capacity to have the choice in the insurance market and to be able to let employers manage their risks in that way in the great majority of cases.

CHAIR: Other comments?

Mr McHugh: I concur with those views. I think the principles that we spoke about earlier with respect to whilst the number is artificial it does limit self-insurance to employers that do actually represent the characteristics of employers that can manage it well, also it does limit the capacity for the central fund to be compromised in some way by a large number of employers entering into self-insurance. Does it mean that it cannot be extended and capacity for national employees and the like to self-insure in Queensland, I think there is capacity for those issues to be addressed, but I think those are the features that are the strengths in Queensland.

CHAIR: Cameron?

Mr McCullagh: I think one of the great strengths of the Queensland scheme is that parliament has set up the balance very well between the entitlements for workers when they are injured and the benefits of helping people off the scheme so that they are not trapped in an entitlement environment and so it allows them to get along with their life. I think it is fantastic the way you have balanced those competing interests. I think the real weakness comes back to the fact, in a claims management sense, because we deal with large employees who are national, the feedback that we get about Queensland is that there is a lack of a service culture so that the employers are not included in the claims management. A good example of that

is the settlement of common law claims. In a lot of instances the common law claim is settled as a matter of course without any involvement of the employer where it is really a question of whether there was negligence which relates to the employer and it influences them in their workplace culture.

CHAIR: Any other comments? Deputy Chair?

Mr PITT: Thank you, Mr Chair. My question is to Mr McHugh. I think I saw you last here at Parliament House about a year ago. We may well have been discussing the National Disability Insurance Scheme and CTP. With reference to the white paper, I am interested to hear about how you think that the CTP will be affected or can be changed as a result of the white paper. You can speak to that obviously in a bit of detail if you like. It is a bit of a long bow, but I am interested to see how that will be looking at the National Injury Insurance Scheme and any crossover you see with that and journey claims and the way those two schemes may interact in the future. The floor is yours.

Mr McHugh: Thank you. If I can just clarify, because I have had a number of white papers, there are white papers with respect to NDIS and NIIS or impact of yield curve?

Mr PITT: The one you have prepared. I would be interested to hear your thoughts on the other interrelationships as well.

Mr McHugh: Okay. NDIS and NIIS I think obviously is the national imperative. I think it has progressed even further over the last couple of months. It is something that Suncorp as a group is an advocate of. We support the intent. It really comes down to how we actively manage our personal injury schemes to separate and fund the requirements of those catastrophic injuries, either acquired diseases or through workplace or motor accident. They only represent one per cent of claims but approximately 30 per cent of costs are impacted there.

Our view is that to get the necessary care and support and service the NDIS and NIIS should be funded by government and the reason for that is the cost of that over time is significant. The capital requirements, if we talk about it from prudential standards for private underwriting, is dramatic. There has to be a profit margin attached to that. So all of the funds do not necessarily go to the people who need it most. Also there is a small number of claims so they are best centralised and managed in one location. That is our position on NDIS and NIS. The impact is how do we actually fund that. What are the scheme adjustments and changes that need to occur within Workers' Comp and CTP to help fund and support that and what are the potential implications of that cost of care? Are there cost implications attached to this? I think there are some risks associated for Workers' Comp and CTP in the future. We need to be cognisant of those risks and that is why we advocate the structures that we do moving forward. We need to be cognisant of the impact that this scheme will have on both Workers' Comp and CTP.

We advocate journey claims should be excluded from the Workers' Comp scheme unless that journey is absolutely related to their employment because there is a scheme predominantly, there may be some gaps which might need to be filled, in CTP that can cover that and NDIS and NIIS in particular for catastrophic claims will cover that as well. My view is that we need to take into account any structures, future consideration of costs and funding, in context with the implications of the NDIS into this review.

Mr PITT: I have no follow up.

Mr GULLEY: Continuing on the line of conversation about criteria for self-insurance, and currently we run that 2,000 arbitrary number, I am looking for opinions of what should be the criteria or other suggested criteria for eligibility for self-insurance. I take your note, Dallas, about the market would find its equilibrium. Other than just a raw number, what should be a suggestion for the criteria to be self-insured?

Mr Allison: In terms of that, when you look at what the criteria is, and we have spoken about the central fund and the central premium pool, if you want to call it that, of WorkCover, so running a test on whether it is by number of employees or other measures on employers, you would need to understand how many of those and the attached number of employees to that and the associated premium that would actually start to leave the scheme. I would suggest some modelling around that to identify at what level would be appropriate where you are actually not going to diminish the wider scheme itself. It is quite difficult to actually say it is 500 employees, it is 1,000 employees or there are other capital requirements. I would suggest some sort of actuarial testing as to where a sweet point would be around that.

Mr GULLEY: You are still suggesting a numerical criteria. Are there other criteria along complexity of business, risk of business, those sorts of criteria, that should be considered?

Mr Allison: Absolutely. Numerical obviously is a key one to get strong insights around the size of the employer and the employees as well and the premium, and the performance of that employer at the same time. Chris spoke about some of the other measures around what are the strengths internally of an employer in terms of the infrastructure that they have got around injury management, risk management and return to work for employees. They are key ones. A lot of that comes down to culture so it becomes a difficult one to measure exactly.

CHAIR: Other views? Yes, Dallas?

Mr Booth: In the early 2000s I was a member of the WorkCover board of Tasmania, a private sector workers comp scheme with self-insurers. It travelled the board regularly that there was a small number of companies that had previously been large employers in Tasmania that had been self-insurers. There are one or two of those companies that no longer exist for various reasons. There are a couple of issues there.

There is the ongoing operations of the business and whether they are viable in the long term, because these are often long-term liabilities that are important. Current security is bank guarantees, but the question is whether they are sufficient, and that brings me to my second point. Insurance companies are required to go through very sophisticated processes to measure and assess their liabilities and to provide for those liabilities. Often in terms of assessing the liabilities of self-insurers, that sophistication is not present and often it is a very simplistic measurement of liabilities. If there is going to be an allowance for self-insurance—and arguably there are some employers who do that job very, very well because they understand from a prudential point of view, from a society point of view you do have to measure those liabilities very, very carefully as insurance companies are required to do to meet their obligations to APRA.

Mr McCullagh: The criteria of the number of employees is not a fantastic one. It does not really go to the complexity of the business or the importance of workers compensation to them. I have only done rough numbers on the back here, so if I have made an error I apologise. If you had 500 employees and $50,000 of wages on average and a quarter of a per cent as a workers comp rate, then you are paying $62,500 and if you have a five per cent rate you are paying $1.25 million. It is a fundamentally different business and it goes to the complexity that someone can put into their workers comp management. As a general concept, self-insurance is good for large employers, and in this context I think a large employer is someone who has a lot of workers comp claims, not a lot of employees. If you get down to smaller employers in terms of their risk exposure, then I think it is fundamentally flawed.

We would go back to what Mark mentioned in his opening comments that when they are not large employers they need an insurance company. Whether it is insurance or a statutory authority or a specialised insurer, I think they get fundamentally better outcomes because of the level of expertise that can be applied.

Mrs OSTAPOVITCH: This committee is required to consider what impact the current workers compensation scheme will have on the Queensland economy, the state's competitiveness and employment growth. It has been brought to our attention that Queensland has the lowest premiums. Many submissions have also stated that if we allow more self-insurers into the market that it will undermine Q-Comp and the cost of the scheme will rise. Do you have any comments on this?

Mr McHugh: My comment is broadly around state competitiveness. The Queensland premium rate is at a point in time. So the funding ratio for Queensland has been dropping over time. We talk about the impacts of NDIS and NIS. We also look at significant reform in other jurisdictions which will lower premiums significantly. My point is that Queensland cannot remain static on the fact that they have had a robust and effective scheme, and they need to be looking forward and understanding what pressures are coming in the future. I think there will be some cost implications attached to the NDIS and NIS which you need to take into account and you will have state relativities which will shift over time because of the form in other jurisdictions. I think the committee needs to consider what does the future hold for Queensland and can you maintain your current trajectory and maintain the status which you enjoy today. I think remaining static—you probably cannot. What does that mean? Minor reform, or does that mean there are opportunities around privatisation, using capital in a different way? They are things that the committee could consider.

Mr Allison: Further to that, I am trying to hone in on the question so we get to the point. This is around the size of the employers that could go to self-insurance and what gets left in the central fund. Then that can see that good employers would be attracted to go to self-insurance and so then the Q-Comp, the workers comp pool, essentially is left with the smaller SME size employers. Then the smaller pool has less opportunity for community based rating and so forth. It can lead to premiums for SME increasing without the ability to have cross-subsidy in a bigger premium pool. That can impact the economy in terms of higher premiums and ability to employ fewer people and so on.

Mr Coyne: In terms of your statement that Queensland has a better premium rate than the other schemes, I think it is very hard to make that call given that every scheme has a different benefit structure. Whilst Queensland does look attractive in terms of premium rate, it is very hard to compare. One of the things that we put forward is the need to have that competition, which has been talked about a bit here, so you can get a real understanding about how the scheme is performing, how WorkCover is performing. If you have a range of competitive pressures you get a really good understanding around how the scheme can improve.

Mr Booth: I have figures in front of me from Safe Work Australia published in their most recent comparison of compensation schemes across the country. The data in this report is indicating for the 2009-10 financial year that Queensland comes in at the lowest at that point of 1.12. The number for the 2011-12 financial year was 1.42 and I understand WorkCover is now going up. So it used to be the lowest but it may not be now.

The highest number before me is South Australia, which is another public sector WorkCover state, at 2.75. The mere fact that it is in the public sector is not necessarily an indicator that things will be low. The second lowest number in front of me for the 2009-10 year is Western Australia, which is a private sector underwritten scheme. The comparison there is Queensland, 1.12 and Western Australia, 1.22. So there is a marginal difference between the two schemes. I would suggest that there would be domestic factors relating to scheme benefits, industry structures, scheme operators, managements and so on. The mere fact that you switch from public to private is not necessarily an indicator of the fact that you will run a

cheaper scheme. There is a huge number of factors that influence the operation and the cost and effectiveness of a workers compensation scheme. I think the point has been made by a number of people here today about the fact that when you do not have choice you do not have benchmarking and you, therefore, lose the real prospect of innovation which otherwise might be available from a more competitive and contestable marketplace.

CHAIR: You made comment before about the viability of businesses going forward—large employers in Tasmania I think you referred to that are no longer there. There are some large insurers that are no longer there as well as a result of market pressures and competition between the various firms and constantly fighting for that premium dollar. How would you as insurers and people in the insurance industry respond to that, because you would all be out there trying to get the buck?

Mr Booth: There is no doubt. HIH failed in 2001. Since then the regulation of liabilities, the regulation of pricing is far more sophisticated, far more comprehensive. Australian insurance companies came through the global financial crisis with no blips whatsoever. The Australian insurance industry met its obligations under insurance policies for the storms and losses, floods and fires through 2010, 2011 and 2012 without any concerns whatsoever in terms of financial capacity. The world-wide reinsurance market contributed to that. So the capacity for the insurance company and insurance industry to play its role is far better than it was in 2000-01.

The more interesting question for Queensland is: why does the Queensland government take on its own books billions of dollars worth of liabilities for workers compensation and the risks associated with that? Why is the Queensland government not focusing its financial strength on the areas of direct interest to government: schools, hospitals, roads, et cetera? The Queensland government is currently carrying this liability directly on its books because the state of Queensland directly guarantees the payment of these claims. Is that the proper use of the Queensland state balance sheet, or are there better ways? There are other ways of managing that liability and that risk. Especially reading the reviews, reading the financial report of WorkCover does raise some questions. It is quite clear in the notes for the accounts, for example, that WorkCover is not providing for asbestos claims. I would have thought that that is rather extraordinary. I also note in the WorkCover annual report that their provision for claims arising out of the 2011-12 financial year actually exceeds the amount of premium collected in that year. So there are some issues within the financials of WorkCover Queensland which I think require very careful consideration. Ultimately the question is: what are the arguments for the state of Queensland for retaining these liabilities and all the risks associated with these liabilities on its own balance sheet?

CHAIR: Just out of interest, are any of the insurers here in a position to be able to add to that comment about projected claims exceeding premium income for WorkCover in your own businesses? Is there a situation where in certain aspects of your business projected claims for the year exceed premium income for the year?

Mr McCullagh: We run a specialised insurer in New South Wales, Hospitality Employers Mutual. We collect more premium than the claims. Just going to Dallas's comment, which was really well made, since HIH, APRA has been an extremely strong regulator. It is really seen as the benchmark around the world. An insurer would be unlikely to be able to run a book the way a statutory authority does. You have to have the capital behind it. You may be able to run one small line of business in that way for some small period of time but not on any sustainable basis. You have to have such large capital behind it and on a very conservative basis that APRA sets it.

I will go back to one of the other questions, the question about what would happen in Queensland if we made changes if you have a good scheme. I think there are two parts to a scheme. There is the legislation and the productivity, and the way that the legislation is applied. I would also go back to Hospitality Employers Mutual, our specialised insurer. That is working under New South Wales legislation. It is exactly the same legislation but in the 26-week return to work we are getting 18 per cent better outcomes. So people are returning to work that much quicker and then at 104 weeks, there are 39 per cent better outcomes. You can get vast productivity differences within the same legislation. It is like anything in life; it is complex. There are lots of different factors. One of them is the legislation but another is the way it is applied.

Mark is probably too modest to say this. He ran Coal Services, another specialised insurer. That is a different one in New South Wales. It is set up by an act of parliament and it has the CFMEU and the Minerals Council involved. Arguably it would be far right and far left. During the period that we ran that scheme from 2003 to 2011 with the same legislation we were able to reduce the workers comp premium from 11.4 per cent to 3.4 per cent. Mark is a proud Queenslander and was a bit peeved that there were coalmines opened in New South Wales that would otherwise have been opened in Queensland. In fact, he reduced the rates to what was less than the Queensland workers comp rate.

CHAIR: Did someone else come in and take the business in 2011, or you just do not have figures beyond there?

Mr McCullagh: No, they internalised it. So they had outsourced it to us for that period.

Mr SORENSEN: Many submissions have called for the common law claims process to remain unchanged, especially some of the comments from Suncorp Commercial. What do you think of that?

Mr Allison: Just in terms of common law—and I am glad you asked that question after watching the session this morning—we agree that there have been improvements with common law with the 2010 reforms around the Civil Liability Act and the injury scale value that is used for pain and suffering, the participation in the return to work programs and the WorkCover assist and the impact that can have on future economic loss assessments that are done, meaningful participation in proceedings for workers to avoid adverse costs in that process, and the more vigorous defence on common law claims by WorkCover. They have all had a material impact on the scheme. There were two other ones that we believe are not as effective and could be improved. That is the onus of proof by the employee—that was considered to be a test to improve the scheme—and exposure to costs on the employee if they fail at proving negligence. We believe that they have not been as effective as possible.

We base that on the fact that it is not difficult for lawyers to draw out the frailties of an employer's OH&S and safety management program to demonstrate negligence and, hence, the no win, no pay scenario that we get. We heard then talk this morning that the employer owns the system of work and that that system of work can be broken with a negligence by mere inadvertence and repetition. It is actually quite paper thin in terms of the defence around negligence. It means that no win, no pay becomes very viable for them to say, 'Yes, we will take it on. We will fix your knee. We will pay for the theatre. We will do all of those things.' Of course, they do, because it is easy to demonstrate any frailties, especially in an SME environment. That is not a perfect world that we live in.

We believe that the appropriate thresholds should be put in place around common law based on impairment. That will avert many claims entering the adversarial process and where injury management and return to work should be the focus and where statutory assessments actually already are available for those lower threshold claims. There is some evidence available around work related injury and they reveal that 50 per cent of common law claims have none or less than five per cent work related injury assessments associated with them and a mere 20 per cent are actually 10 per cent. Our view is that for the future viability of the scheme and for the cheaper premiums for employers that a threshold in the order of 10 per cent or higher needs to be seriously considered by government.

CHAIR: The time allocated for this public hearing has expired. If members require any further information we will contact you. As I advised at the beginning of the hearing, the committee has agreed to accept supplementary material subsequent to the hearing should you feel that this would assist in the committee's deliberations. We ask that any additional information be provided by Friday, 23 November 2012. Thank you for your attendance today. The committee appreciates your assistance and I declare this hearing closed. Is it the wish of the hearing that the evidence given here before it be authorised for publication pursuant to section 52A of the Parliament of Queensland Act 2001? It is so authorised. Thank you once again for your attendance.

Committee adjourned at 1.03 pm