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 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 OPERATION OF QUEENSLAND WORKERS COMPENSATION SCHEME

TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, 31 OCTOBER 2012

Brisbane

WEDNESDAY, 31 OCTOBER 2012

Committee met at 8.16 am

BIAGINI, Mr Peter, State Secretary, Transport Workers Union

CAMERON, Mr Dean, Senior Adviser, Workplace Relations, Master Builders Association

CRITTALL, Mr John, Director of Construction Policy, Master Builders Association

JONES, Ms Carla, Industrial and Women's Officer, Rail, Tram and Bus Union

MAWHINNEY, Ms Sarah, Communications Officer, Transport Workers Union

O'DWYER, Mr Jason, Workplace Relations Manager, Electrical Contractors Association

POLLARD, Mr Craig, Representative, Building Service Contractors Queensland

PRENTICE, Mr Glen, President, Queensland Jockeys Association

RICHARDS, Ms Amanda, Assistant General Secretary, Queensland Council of Unions

ROGERS, Ms Pat, Industrial Officer, Electrical Trades Union of Employees

SIMPSON, Mr Peter, State Secretary, Electrical Trades Union of Employees

TEMBY, Mr Warwick, Executive Director, Housing Industrial Association Ltd

CHAIR: Good morning, ladies and gentlemen. 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, the deputy chair and member for Mulgrave; Reg Gulley MP, member for Murrumba; Ian Kaye MP, the member for Greenslopes; Freya Ostapovitch MP, the member for Stretton; and Mark Stewart MP, the member for Sunnybank. The members of the committee who are unavailable to attend the hearing today are Mr Tim Mulherin MP, the member for Mackay; and Mr Ted Sorensen MP, the member for Hervey Bay.

The purpose of this hearing is to receive information from stakeholders about the motion that 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 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 on your microphone 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 the 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 the 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 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 submissions and/or testimony or responses to issues that have been raised at the hearings.

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 yourselves of that opportunity. I would remind you that it is an opening statement and from there you will have ample opportunity through the hearing to put your

thoughts and ideas and, of course, afterwards to give us any further information that you feel may assist us in our deliberations. So, first of all, Housing Industry Association Ltd, would you like to make an opening statement?

Mr Temby: Thank you. The terms of reference for the committee's inquiry suggests that the workers compensation scheme should not pose too heavy a burden on employers. The HIA's submission suggests that the current system fails this test—not through poor administration but through poor design. Who should be covered by a business's workers compensation policy is the key cause for concern in the home building industry. The contract nature of the industry does not lend itself to the typical employer/employee relationship and paradigm around which the workers compensation scheme has been developed. The result is a red-tape tangle that has cost some HIA members their businesses.

The current approach to who is a worker and who needs to be covered cannot be determined in advance in contracting arrangements; has evolved and continues to evolve with every court decision; cannot be easily conveyed in information to the industry; is even more complex when it applies to contractual relationships with partnerships, which is a very common business structure in our industry; and is not consistent with other government definitions of who is a worker and who is a contractor, adding substantially to the average home builder's administrative load. The HIA's approach suggested in our submission to use the GST system as a transparent means of determining who is a worker is not revolutionary. There was a very similar system applied here in Queensland back in the 1990s whereby the prescribed payment system of the Australian Taxation Office was used as the basis for determining who was a worker.

CHAIR: Thank you, Housing Industry Association representative, your time has elapsed.

Mr O'Dwyer: In terms of recapping our submissions et cetera, our main areas of concern include pre-existing injuries and work being a major contributing factor, the need for expert medical opinions, increased employer accountability, employer incentives for those organisations that actually go over and beyond to reduce their WorkCover premiums, reducing the incidence of common law claims by the implementation of a level of permanent impairment. Again, we share the concerns of the HIA in relation to the definition of 'worker'. Many of our organisations are in sole trader or in partnership situations. Also, from the point of view of jurisdictional uniformity, our view is that, given the relative strength of the Queensland workers compensation scheme we would be opposed to any Australia-wide harmonisation of the workers compensation scheme.

I would like to take the opportunity to raise two issues with you at the moment that may not be addressed now. In terms of issues that were raised by the AMWU in previous hearings, they wish to remove reasonable management action. We have a serious concern about that.

CHAIR: Sorry, I do have to be very tight on this. You will have an opportunity, I am sure, through the hearing. Building Service Contractors Association of Queensland?

Mr Pollard: Thank you, Chairman. The Building Service Contractors Association of Australia, Queensland Division, believes that the current methodology of WorkCover, the provision of workplace compensation, is very successful in Queensland. We certainly oppose any move to harmonise the current model throughout Australia. The Queensland model is very successful, as is the current method of operation.

What we seek, however, is a little bit more information. Statistically we get very little breakdown on our particular industry. We have had significant increases in our premiums over the past several years, but we have very little information as to what the justification is behind those increases. Although there are statistics provided, they are provided on a much greater or higher level than what we need to be able to ascertain the particular workplace risks in our industry and for our employees.

We certainly believe that the employees in Queensland in our industry are well looked after by the current arrangements. We have nothing but praise for the officials and those responsible for managing the WorkCover process in Queensland. However, we just seek more information and a little bit more statistical data to enable us to better manage the workplace safety scheme in our industry. Thank you.

CHAIR: Thank you very much. Is the Civil Contractors Federation here? No. We will go on to the Master Builders Association.

Mr Crittall: Thank you. First of all, Master Builders is strongly supportive of the WorkCover scheme in Queensland. We think that it is an excellent scheme. There is some minor tinkering. Mainly, our submissions are based on some improvements rather than any wholesale changes. We would support the submission of Warwick Temby from the HIA in relation to the definition of 'worker'. Fundamentally, our industry is separate. We struggle with the way in which workers can change their status through the life of a year—from contractor to self-employed, to partner, to labourer, to labour hire worker, to hourly rate worker. So we need a definition that is clear so that the parties know exactly where they stand so that the WorkCover scheme can either apply or not apply and that people can then make decisions around that.

We have strong arguments in relation to changing the way in which WorkCover operates in relation to common law indemnity for principal contractors. It is covered in our submission. We would like to have some chance to revisit that sometime today. Fundamentally, a principal contractor or a builder has his own WorkCover policy. An injured worker to a subcontractor gets hurt and the common law claim is handled by WorkCover, with a subsequent claim made back against the builder. That needs to be tidied up and rectified. It is a difficult issue for the industry.

Finally, we have arguments in relation to the common law threshold. We want the committee to be very careful of introducing a common law threshold. Our industry is not broadly supportive of a big threshold, but we think that there is an argument for a threshold. Thank you.

CHAIR: Thank you. The Electrical Trades Union of Employees?

Ms Rogers: Good morning. Thank you for the opportunity to speak to you this morning. I think sometimes when we are involved in doing a review of legislation we forget about the impact that these changes might have on real people in the real world. I would like to take this opportunity to talk briefly about a real member and the impact that some of the changes that have been proposed would have on a case like his.

In 2009, our member, who was 25 years old, went to work. He injured his back lifting a heavy transformer—a transformer that weighed more than 50 kilograms. During the investigations by WorkCover the employer conceded that they were negligent in failing to provide a safe system of work. His injury became stable and stationary very quickly. In fact, in terms of statutory benefits, WorkCover paid out $10,000. However, when he had his medical assessment, his work related impairment was considered to be zero per cent. I just want to repeat that: his work related impairment was zero per cent.

The reality is that this man could not go back to his former employment. He was unable to do the work that he had done prior to the injury. So his income has significantly been reduced. He is 28 years old. Instead of working in electrical trades he now works in a car wrecking yard. He has moved back home with his parents, where he lives rent free because he cannot afford to live by himself. Recently, his common law case settled. He received a payment of $385,000. The majority of that was based on future lost earnings.

If the proposal to introduce some arbitrary limit before an injured worker can make a claim on common law, a claim like this would receive nothing, because his work related impairment was zero per cent.

CHAIR: Thank you. On to the Rail, Tram and Bus Union.

Ms Jones: The Rail, Tram and Bus Union's submission is simply this: the current system works very well and we are very supportive of it. We would caution against any changes to access to common law. Under the current workers compensation regime, when the time comes for an injured worker to finalise their claim under certain circumstances they have two options. If the employer has been negligent in relation to their duty of care, the worker may opt to sue the employer under common law. This option is currently taken up by a number of employees every year. If this review determines that access to common law be removed, those employees will have no choice but finalise their claims under the statutory regime. The Rail, Tram and Bus Union has a problem with this and the current government should have a problem with this, too, because currently the financial onus of negligence claims lies with the negligent employer. They are the only ones who have to pay out to finalise the claim. If the statutory claims are all that we are left with, all employers must share the burden of finalising a worker's claim, because premiums will increase for all employers. If this happens, employees will not have the same incentive to provide a safe working environment for their employees, because they will not be the only ones experiencing the financial repercussions of the negligence; all employers will. The current regime is self-funding and the costs of the current scheme per employee have consistently been the lowest in Australia until the last financial year.

CHAIR: Thank you. Transport Workers Union?

Mr Biagini: Good morning, Mr Chairman. I just want to give a real human face to this scheme. This morning before I came to this hearing I spoke to Sandra Travina again. Sandra is an extremely strong, resilient woman but she has to be. Nine months ago while travelling to work her husband, Greg, hit a block of wood on the road and came off his motorbike. He skidded along the road on his face and slammed into a guardrail before coming to a stop. Gary died twice in the first hour. He lost one-third of his tongue. His jaw was shattered. He sustained multiple compression fractures to his back. After initially avoiding spinal surgery, Gary now has rods holding his spine together from vertebra L3 to T6. After an operation Gary contracted an infection and after a further operation he also got an infection to his spinal wounds. Gary has been diagnosed with post-traumatic stress. He is in and out of depression and Sandra has concerns over Gary's residual brain damage. Gary has constant pain of varying degrees and is on medication. After six or seven operations so far Gary has at least five more to go including facial reconstruction. Sandra told me that without WorkCover they would be completely stuffed.

CHAIR: I want to make the point, ladies and gentlemen, that anything that you have not been able to tell us in your opening statements you will have an opportunity to throughout the proceedings and if you do not have an opportunity to fully explore the things you want to explore please give it to us in writing. We do read it. We do take it into consideration. You must understand that. Now we have the Queensland Jockeys Association.

Mr Prentice: I am here to speak today regarding the QJA's proposal regarding work cover for Queensland jockeys and to seek an amendment to the Workers' Compensation and Rehabilitation Act or an adjustment to the current contract of insurance. Queensland is the only state in Australia that deems jockeys as professional sportsmen and not as employees of the race club that they ride at. The jockeys in Queensland are the most poorly covered, receiving upwards of $1,052 a week less than the other states if they are out of action.

Being deemed as professional sportsmen means that any concurrent income or other jobs that they have are not covered under the WorkCover act. We previously had 440 jockeys in 2006. That has reduced by 49 per cent to 225 due to the fact that WorkCover does not cover them adequately enough in the event

that they have an injury in a race fall. It is a fact that 40 per cent of those 225, which is 90, will have an injury that will take them off work for at least a minimum of a week a year, and 72 of those 90 are not then covered for their other income and therefore the numbers are dropping. The current government is trying to project a vibrant country racing industry again and this is where it is failing greatly.

CHAIR: Thank you. Finally, Queensland Council of Unions?

Ms Richards: Thank you, Chair. My name is Amanda Richards. The QCU's submission is based on fact. The system is well funded at 117 per cent. Sixty-four per cent of claims are finalised within four weeks. Eighty-three per cent of disputes are resolved within three months and we have the lowest dispute rate in Australia. Queensland has a return-to-work rate of 98.5 per cent. Less than five per cent of claims actually go to common law. It is a fact that the 2010 amendments have reduced claims costs by 2.1 per cent and common law has reduced by 9.6 per cent. Only 11.2 per cent of employers, or roughly 19,000 employers, actually make a claim on their policy.

Queensland has one of the lowest workers comp premiums in Australia. It is a fact that only five per cent of the cost of injury is borne by the employer. We therefore contend that there is no justifiable reason for change to the Queensland workers compensation system. However, we would like to discuss at a later stage the extension of the IPaM program, which is an intervention at the workshop level around health and safety and managing workers compensation claims. Thank you.

CHAIR: I just want to confirm that the Civil Contractors Federation is not here? Thank you. Ladies and gentlemen, thank you for those opening statements. We will now move into the period of questioning.

Mr PITT: I have a question which probably relates to whoever wishes to jump in first because it will relate to all of you. I would like to explore a little bit further each of your views around journey claims because that is another area which we know has been fairly contentious in terms of inclusion or exclusion.

Mr Simpson: Journey cover to us is sacrosanct. Those in rural Queensland tend to live further out of town. In your area, Curtis, in Far North Queensland you will find a lot of our guys who work in Cairns do not live in Cairns; they live out in the outlying areas. They might travel half an hour or an hour to work. I personally drive an hour and a half to work every day. I know there are a lot of people who do that commute from the Gold Coast to Brisbane and vice versa. Take journey cover away and that is a major impost. I have seen what has happened in other states where people have had to privately insure for that. We deal with these sorts of people every day of the week—not every day of the week; that is probably an overstatement. People who come into our office who have had injuries on the way to work thankfully are covered by it.

We are happy to have reviews. We should review things to make sure they are going okay. But when things are not broken they should not need fixing. Start taking away fundamental rights like the right to journey cover and you open a Pandora's box of people who will not be able to survive into the future because they will not have the means to survive into the future. Getting to work and back each day is hard enough for some working people. If you take journey cover off them and they have an accident on the way to work, how do they survive if they cannot afford private insurance? I did not come prepared with stats and whatever else. I am quite happy to dig those up and put them in a further submission, but if that is an area that is seriously being looked at in this state, I think the state is in for one hell of a ride.

CHAIR: The state is not looking at anything. This committee is looking at a review of this workers compensation scheme. It is a requirement to review the workers compensation scheme every five years. That is why this committee is looking at this. This question was raised simply because it has received some airing, not only out in the media but certainly in previous submissions to us. We do not require any threats whilst we are here in committee. Anyone else?

Mr Simpson: That wasn't a threat.

Mr PITT: That was an open-ended question. If anyone else has covered off your area, given we are limited in time, obviously just jump in when you need to.

Mr Crittall: We canvassed this heavily in our submissions in the sense of the membership because we do a lot of travelling. Building workers cannot live beside the job. At the end of the day, whilst we understand that it is a cost impost on the scheme, we strongly support keeping journey claims as part of the scheme, even though I suspect other employer brothers and sisters of mine may disagree. The building industry strongly supports keeping the cover.

Mr O'Dwyer: I would support what Mr Simpson and Mr Crittall have said. The industry is largely mobile so in those terms there are protections there about the direct route home. My understanding of other states is that there is always an argument about whether it starts at the front door or the front gate and things like that. My experience is that WorkCover, particularly with a recent case with one of our workers who got hit off his bike on the way home from work, works very, very well. We would be saying that it should remain as is at the present time.

Ms Richards: Six per cent of claims are journey claims here in Queensland. Because of the demographics of Queensland, the size of Queensland, the rural and remote nature of Queensland, we have, I believe, a different interest to other states. We have the issues that have already been raised, we have fatigue associated with the shiftwork, we have new things like fly-in fly-out workers. I experienced travel to Mackay the other day. There were people stressing because the plane was a few hours late so they were catching alternative transport to Rockhampton and then driving from Rockhampton through to

Mackay so that they could get to work on time. All of this adds to fatigue. I come from a nursing background. We have shifts that start at five or six o'clock in the morning. Nurses are driving through from their properties, particularly in the rural areas. They can experience smoke from burn-offs and all that sort of thing. So it is something that I think is of particular interest to Queensland and something that the fund has sought to keep and should keep.

Mr Temby: Our submission differs substantially from that view. Our view is that employers should not be paying for something over which they have no control. They have no control over people's journey to work, whether they come on a scooter, a bus or a bike. I do not deny that people get injured on their way to work. They can cover themselves privately for those sorts of injuries. I do not believe that it is something that employers should be responsible for as they ultimately have no control over it.

Mr Biagini: In the example that I gave this morning of Sandra and Gary Travina and his accident on the way to work, Sandra makes it very clear that if it was not for WorkCover they would be homeless and they would not be able to feed themselves and their two children, let alone cover the medical expenses of going to hospitals, parking and all those sorts of things. That would have been a big burden if he had never had WorkCover. It is a great example.

CHAIR: Any other comments on that particular question?

Mr O'Dwyer: One further one. If the committee was inclined to recommend it, I would probably encourage them to think about where those claims go. It would be my understanding that the vast majority of them would be a compulsory third-party claim. There might be some others that would not be. Eventually it will be covered in an insurance situation somewhere else. The time lag that may impact on those people can also be an issue.

CHAIR: I hear what you are saying: a time delay on a third-party public liability claim. No decisions have been made. Once again I reiterate what I said earlier. We are here gathering evidence from you. We have a number of other witness meetings over the next six weeks. We will continue to gather evidence. We will continue then to consider all of that evidence, however we receive it. It is a completely open and transparent process that we are going through to make sure that we come to the right conclusions and recommendations for the parliament to consider. Is there a follow-up, Curtis?

Mr PITT: This is not related to that particular area, but I have a question regarding the HIA submission. I am sure I already know the answer to this. It talks about recommendations that apprentices' wages be exempt from calculation of employers' workers comp premiums. I am sure you are just referring to the premiums. You are still suggesting, of course, that all apprentices will be covered by workers compensation; you are just talking about the effect that it has on premiums?

Mr Temby: The apprentices issue was at the 110-second mark in my opening remarks. It is the one area of the workers compensation scheme where I think some harmonisation with the eastern states is justifiable. New South Wales and Victoria do not charge a workers compensation premium for apprentices. It is a cost that is borne by the scheme as a whole. We would argue, particularly in the current environment where apprenticeship numbers are falling and falling dramatically, for any support that the government can provide to apprentices. While acknowledging that the amount of workers compensation premiums that are charged for apprentices are not enormous, they are yet another disincentive to taking on apprentices and I think it is one area where some harmonisation with the eastern states is desirable.

Mr PITT: I am interested to find out if you have any data, either from other jurisdictions or what you think the projections could be in Queensland, in terms of what that could mean for increasing numbers of apprentices or what the impact would actually be on premiums? You may not have that information with you, but I am interested to know.

Mr Temby: I can actually answer that question. The impact on the number of apprentices taken on is impossible to estimate, but I believe that the government previously, in looking at this issue, estimated the cost of the scheme at about $18 million a year.

Mrs OSTAPOVITCH: I have a question for anybody who would like to contribute. It goes to the definition of 'worker'. The Attorney-General has asked the committee to consider the definition of 'worker' as part of this inquiry. Submissions have revealed diverse opinion regarding who should be considered to be a worker. Could you please explain what you consider should be the definition of a worker and why?

Mr Crittall: The building industry has made strong submissions over many years because of the nature of the industry and the fact that the status of a worker can change throughout a year, depending on what contract they have, depending on what work they do, depending on how they form to do particular work. The onus has been always on the employer or the principal contractor when they are engaging the contractors. We find that that becomes onerous when the status of these people changes during the life of the working year. So we were looking for a third-party endorsement where the worker themselves can declare what they want to be. In the submissions of Master Builders and the HIA, we have said that if somebody wants to declare themselves to be an own-account worker or an in-business worker or a self-employed in-business worker where they are not going to receive workers comp because they are not deemed to be a worker, then they need to take a step to actually register themselves for GST and claim the GST.

This does two things. It means that they are declaring to the tax office that they are independent workers responsible for their own taxation and subsequently claiming GST rebate. It also means that normally your income would be over $75,000 before you would bother and the typical ABN worker who is

just on an hourly rate who does not register for GST would still be deemed to be a worker. What we are trying to do is have a third-party endorsement where the worker takes responsibility for declaring their status as an independent worker or an in-business worker, they register for GST, it is independently assessed and they then declare themselves to be on that basis and then, therefore, they are outside the scheme for WorkCover. They would have to take out their own accident insurance policies. It takes the onus off the engaging party who thinks they are engaging a contractor and that they do not have to cover them for WorkCover, only to find when there is a claim or an injury that the status has changed and the person declares themselves to be a worker for the purposes of getting workers comp.

CHAIR: Any other comments?

Mr Simpson: I just want to clarify: my previous statement was not a threat; it was an observation that it will cause World War III if there are changes in that regard. I have some sympathy for the argument being put through by the Master Builders as far as independent contractors go. Sham contracting, as we call it, is a massive issue in the building industry, although not so much in our trade any more. It was under the old PPS scheme, where an employer would turn up to work one week and the next week they would turn up and there would be an independent contractor—there would be an independent labour-only contractor. So the only service they would provide the prime contractor would be their services as a worker, their skills as a worker. That definition has always been cloudy in the building industry. The previous government sought to fix that through the current definition of what a worker is. That is still not perfect in itself. The GST registration might be some way of clearing that up—I do not know; I would have to explore that—but it is certainly a big issue.

What we come across as unions when we go onto building sites is that, when someone has had an injury and they were a labour-only contractor, they are supposed to take out their own insurance. In my experience, nine times out of 10 they do not. So you end up with a worker who is out of work, who is severely injured, with no cover for anything. We try to find who we can blame for doing that, because nine times out of 10 it is a sham. The person is a worker. They should be on an hourly rate. They should not be an independent contractor. But they have been forced down that road, in many cases, by the employer and some by their own choice, I must admit.

Before you start fooling with the definition of ‘worker’ as it is currently, go up to Darwin and pick up the paper any day of the week and you will see house cleaners, bricklayers, any trade, any occupation you could possibly think of and it will say, ‘Cleaner wanted for a house; must have own ABN.’ That is how blatant it is in the Northern Territory. Thankfully, we have not got that here to that extent, but certainly if we start mucking around with the definition and make it too loose, that is exactly what we will have. That impacts. It might make it cheaper for the workers comp scheme, but it is certainly going to make it a nightmare for our hospitals, our lawyers and our courts in deeming who is responsible for someone’s injury. I just make that point.

CHAIR: If I can just do a follow-up on that, my background is in the financial planning industry. A lot of my clients were small business. Many of them were contractors who were only receiving income for the hours that they put in and so forth, yet they were allegedly running their own business. Many of them, may I say, found it difficult to get private insurance, because of the nature of the work and the sheer cost of the insurance because of the nature of the work, or some previous injury—a shoulder injury perhaps, that type of thing—which would give them an exclusion. So I take your point very clearly and I trust that the rest of the committee does as well, that there is that master-servant relationship situation certainly in the building industry that tends to go against the small operator who is just trying to make a quid. The last thing we want to do is leave them hanging out on a limb.

Mr Temby: One of the biggest problems with the current definition of ‘worker’ from the point of view of an employer in the building industry is that you cannot tell in advance whether you are meant to be covering that person or not. It can only ever be done retrospectively. That is a very dangerous position for any business to be in. I will explain that. For 90 per cent of people who are employed in Queensland, the first test that is used in workers compensation, which is a common law test, is if people are genuine employees they get picked up. The next level of test which impacts on our industry is the test about whether somebody is providing substantially labour only. If they are providing substantially labour only, they are deemed to be a worker. The problem is that since the legislation was amended in 2003, the definition of ‘substantial’ has morphed with every court decision on an injured worker and even the definition of ‘labour’ has shifted over that time. So it is a very difficult concept to convey to somebody. WorkCover themselves are unable to provide substantive advice to employers in our industry about whether somebody is a worker or not.

As John says, the reality is that somebody’s status can change, not just during the course of a year but during the course of a day. If somebody is injured because they are doing something in a way that an employer directed them to do it rather than something that they decided to do themselves, it has been argued successfully that for that particular point in time they were a worker, even though for every other purpose they were not a worker. It is that kind of fluid, uncertain, unpredictable environment that makes the current definition very unworkable for employers in our industry.

CHAIR: Anyone else?

Mr Prentice: Just in regard to the definition of ‘worker’ on behalf of the jockeys, as I said in my opening statement, Queensland is the only state that does not deem the jockeys to be employees, as they do in every other jurisdiction around the country and throughout the world. Basically, Racing Queensland’s

view is that they are a professional sportsman/contractor yet the governing body, Racing Queensland, determines when the races are on, what time they turn up for work, how much they are paid. You have a situation on Saturday where the best jockey in the country, Glen Boss, should be able to walk in, if he is that good, and say, 'I'll have $500 a ride,' and a lesser known can say, 'I'll have $100.' But that is not the case. They are all paid the same. We basically state that we should be deemed as employees rather than professional sportsmen.

CHAIR: Are there any other comments?

Mr Cameron: I would like to add to Mr Temby's submission. He is quite correct in that companies can only identify post tense if they have employed a worker or not. Unfortunately, that means that many of our members have only identified that they have engaged workers through audit processes by WorkCover Queensland, which means leaving them with large WorkCover premium bills exceeding hundreds of thousands of dollars—that is, $20,000 yesterday from a phone call, $60,000 last week and $100,000 two months ago. Those are large burdens on small businesses that may turn over less than $1 million a year in an industry where the profit margin can be as low as two per cent. The inability to identify someone as a worker prior to starting is a major burden upon our industry and that is where an in-business determination such as GST registration would be vital to our industry.

CHAIR: Anyone else?

Mr O'Dwyer: In terms of practicalities, when employers are receiving information from WorkCover, at the sessions that I have been to for the industry, particularly the building industry, about this particular issue I tend to find that people who are participating in them come out more confused than when they went in. It is a situation where a simple test at the start—and I have not reviewed the GST issue—would certainly advantage a lot of employers, to give them that certainty.

Mr GULLEY: My question relates to the claims process. Certainly the submission process has identified many examples talking about a small fraction of fraudulent claimants and, on the other side, the reality is that we have a small fraction of employers who are not clear in their claim process as well. The question for the floor is this: are there any improvements that we can make to protect the entire system from that very small number of fraudulent or potentially fraudulent claims?

Ms Richards: In the past there was a unit within WorkCover that looked at fraudulent claims, whether they be worker or employer. That unit worked very well in terms of investigating. Anybody could ring up and make a submission in relation to fraudulent claims. I have been in this industry for over 25 years and in that time I probably would have come across three people where I thought there may be a bit of stretching of the truth but when you actually investigated it further there were other issues in fact impacting on what they were saying. As you say, it is not a particularly high issue. My colleagues in the construction industry report underreporting of numbers of workers for the purposes of paying policies and things like that, but I believe if there was a unit in place that would cover that. The reality is that currently the system is picking up people who are making fraudulent claims or not paying the appropriate premium.

Mr Prentice: What we have done in working with the governing body, Racing Queensland, is we have actually engaged at a cost to the association a full-time psychologist as well as one of the world's leading doctors, Dr Peter Myers. For any jockey who is deemed to be off through a WorkCover claim longer than a week, Dr Myers goes through their medical history, liaises with the doctor and makes a submission. Since we have had him engaged in the last 10 months, the WorkCover claims period has been greatly reduced. So it seems to be working for us and the claims are dropping every year yet the premium keeps going up and they are not covered properly.

Mr Crittall: We do not have an issue with fraudulent claims. Amanda is probably right: those who claim fraudulently either get caught or sorted out and there are a lot of people who do not claim. So in that space we do not have much to say. In relation to the second question about how we improve the claims process, Master Builders do believe that there has to be a tighter nexus between work and the injury, and we have put in our submission to change the definition so that work becomes the major significant contributing factor rather than this nebulous contributing factor. We say that for two reasons. One is that work should in fact be the major significant contributing factor to the injury. Whether that is more than 50 per cent or however defined, at least we could say to employers, 'You have caused this injury or it was done out of and in the course of employment.'

The second issue is the psychological claims, which are a concern for all in WorkCover in terms of the growth of numbers in that area. The process for a psychological claim will normally require all sorts of interventions. There will be investigations. There will be psychologist reports. The question will be asked, 'Was work the significant contributing factor for the stress or the distress or the clinical depression claim?' I have no issues with depression. I understand it totally in the sense that workplaces can easily cause depression. But when you look at the claims process, these claims are taking nine weeks on average to resolve and 50 per cent of the psychological claims are actually rejected by WorkCover on the grounds that it was reasonable management action. So the employer has gone through a lot of distress, no doubt the worker has gone through a lot of distress and a lot of it is because we believe the definition is not clear enough.

Ms Rogers: I wanted to respond to Mr Gulley's question. To the best of my knowledge, we do not have a large number of fraudulent claims. In fact, I am not aware of any. But I just wanted to support the comments made by Ms Richards from the QCU. We are aware of employers who do not pay their premium

or who underreport the number of employees that they have. We do think that has a significant impact on the scheme because it means that there is less money in the scheme which means that there is less money available to run the scheme. So I guess in that sense we would be saying that Ms Richards is correct in that there needs to be a unit within WorkCover that actually has a role for monitoring to make sure that employers are accurately reporting and are paying their premiums.

Mr Pollard: From BSCAA's perspective, one of the major issues that they have faced over the years—although they are generally very happy with the way claims processes are managed—is that a lot of them fall down when it gets to the actual rehabilitation. It seems to be a tick, accept claim, pay benefits. But the actual management of the injury from the rehabilitation side falls down, not because the people on the other end of the phone at WorkCover do not care; it is just that, quite frankly, there is just not enough of them managing these claims. So getting the rehabilitation services to the injured workers and working with the employers and the injured worker's doctors also does not happen as much as it should. It is not enough to just focus on if we are paying enough premiums or if we are paying enough compensation to an injured worker. It should be also about, 'Are we getting them back to work in a fit way as soon as possible?' At the moment, because of what I believe to be chronic underresourcing of the claims management section, we do not believe that that is being done well enough.

As far as fraudulent claims, in my experience I have certainly come across a few. Several of my clients have engaged private investigators in other states and used video recordings to prove that a claim is fraudulent. Provided we have the ability to do that in Queensland, present that to WorkCover and have action taken, then we are comfortable with the way things are. If we do not have that ability, I have to say that none of my clients who have done that are in Queensland—they are in New South Wales and Western Australia—and they have saved significant amounts of money by getting those claims knocked on the head because they were for long-term apparent injuries.

Mr GULLEY: The submission process included several submissions talking about individual responsibility—not only the responsibility of the employer but also the responsibility of the individual to be taken to account when instances of injury occur. I am interested in feedback from the panel as to individual responsibility and what weight should be applied to it.

Ms Richards: Rehabilitation starts at the time of injury, so the union movement contends that there is the obligation on the worker to notify the employer that they have been injured in a timely way. Sometimes that is not possible because of the nature of the injury that the worker has suffered. It may be that they may have lifted something and felt a twinge and thought, 'Geez, that hurt,' but two days later they cannot in fact get out of bed. So sometimes a correlation between the injury and the timing is a bit different, but we do support early reporting. The obligation further goes to participating in rehabilitation providing that it is meaningful, and that means that when they do a suitable duties program they are not just sitting in a corner filing or photocopying when they are used to being out on the job site. That may be a job that is appropriate for some people, but there needs to be a really good look at suitable duty programs for industry.

Last year we worked with the construction industry to look at suitable duties programs there and identify different types of duties that could be done by the different trades. We had issues around crossing over of trades that we had to deal with and a few things like that, but there was substantial work done in that area and I believe that that assisted the construction industry in being able to rehabilitate people in a more meaningful way and that way people felt that they had some ownership of what was going on.

The big issue with injured workers is that once they go into this system the feeling of lack of control is what inhibits them. They do not have control over what they do. They have to ring the employer. They have to ring their doctors. They have to ring their physios. They have to do all of that, but they do not actually have control over their treatment. So when they are actually part of the decision-making processes for their rehabilitation and things like that and they are actually listened to and they work through what they can and cannot do, then there is a far better outcome for those people. But they do have an obligation to participate.

Mr Cameron: It is a small, minute number of claims, so we are talking about a percentage probably closer to 0.02 per cent. There are two issues in relation to this. At the moment the act does allow for WorkCover to take an employee who is not participating in rehabilitation to the Queensland Industrial Relations Commission to stop payments for compensation if they do not participate in rehabilitation. We would like to see that become more of an administrative issue within WorkCover itself which then could be appealed to Q-Comp. Secondly, our submission does identify that claims in relation to misconduct addressed under section 130 of the act should also allow WorkCover Queensland to stop compensation payments for someone where it has been identified that their injury was caused whilst under misconduct—that is, where a worker has deliberately disobeyed a direct order by an employer and injured themselves. We have had two of these cases this year and unfortunately, even though the misconduct is proven beyond a reasonable doubt, WorkCover cannot stop the compensation payment under the current regime.

CHAIR: Are there any other comments?

Mr Simpson: I have seen both sides of the equation when it comes to rehabilitation. I have seen the ludicrous situation where Ergon Energy, a government owned corporation back in the early noughties, were taking paperwork to injured workers in the hospital to try to say that they were getting rehabilitated but

more than likely trying to reduce their lost-time accident frequency rate. That was their main driver. So a guy laying in a hospital bed two days after a traumatic accident was given a fistful of paperwork and told, 'You're now on rehabilitation and doing light duties.' So there are two sides to the equation.

We ask our guys to get involved in rehabilitation. We encourage that to happen, but a lot of times that is not respected and not looked after. I have had people where I personally have sat down with their employer and said, 'This guy wants to come back to work and wants to do meaningful work,' and they say, 'Sorry, we've got no light duties. We've got no meaningful work. We've got no way of getting them back into the workforce.' I think you will find that nine times of out 10 workers want to go back to work. If their injury does not permit them to go back to work 100 per cent in their old role, a bit of give and take on both sides of the fence can work out for everyone's benefit in the long run, I would suggest.

But it is not just a matter of employees. I have had situations where our own members have breached legislation and breached directives and done the wrong thing. Do not forget, the people sitting in this chamber a lot of times sit around the table and make the rules, especially on electrical safety and the likes. We in the electrical contractors association, we in the electricity industry—the Ergons, the Energexes, the Powerlinks—make the electrical rules, so we want them stuck by. But every now and then you will get someone who does not do it. When they do not do it, for whatever reason, if they have hurt themselves at work, they still need to be looked after. They still have families. They still have kids. There are ways of dealing with that and there is stuff in the current act that provides for that.

Mr O'Dwyer: I just want to pick up on a couple of things that Ms Richards referred to in terms of lodging an incident report and a claim. The current act says that a claim can be lodged any time up to six months after the injury. My own personal observation is that the linkage between people's perception about what a fraudulent claim is and what might be a real claim is dependent upon how long it takes for that person to actually lodge a claim.

Certainly what Ms Richards said in relation to a back twinge—they feel a tweak and then two days later they are laid up in bed—is perfectly understandable. It is when you get the back twinge six months later and the claim goes in the day before the six months is up that people then have the perception that there is something dodgy in that it was never reported et cetera. In terms of that, there might be some changes that are able to be made. If there is a workplace injury, the claim should be lodged within a month rather than the current six months. Obviously latent onset injuries such as mesothelioma, hearing loss and things like that would have to be taken account of if there was any situation in those being reported, and I understand from the acts at the moment that they do take that into account.

Mr PITT: This committee has been privy to a briefing by WorkCover about the way that premiums are calculated. It is a fairly complex process and I ask any of you to tell us if you really fully understand it. I guess my question is twofold. Firstly, how do people who are appearing before the committee today feel about the information provision around improving understanding of the way premiums are calculated? The second part of the question relates to that. As representatives of industry, whether it is as a peak or whether it is as an industrial union, how do you see that you can contribute to improving things in your particular industries in terms of trying to lower premiums on that industry rate?

Mr Temby: The biggest issue that our membership talks to us about with regard to premium setting is why home building is lumped in with general construction. There is a perception—and that is all it is, because we do not have the evidence—and the perception is that home building is safer than general construction yet the premium is calculated on the basis of the whole of that industry. Whether that perception is true or not nobody has tested and nobody seems to be able to test.

I think that for our industry one of the things that would be extraordinarily helpful would be if WorkCover was able—and I know it is difficult—to separate their claims and their claims experience for the home building industry from the general construction industry. That would go a long way, I think, to either proving or dispelling the myth that is out there about home building being safer and also provide some more substance to our members around why their premiums are being calculated the way they are. But for the average HIA member, which is typically a very small microbusiness, they do not care how it is calculated. They get their bill once a year and they pay it. They really do not want a briefing from WorkCover about how the premium is calculated for their industry and for their individual firm and their claims experience. They have concerns about that when they have claims experience and then it needs some explaining, but the biggest issue that our members keep talking to me about is that split between home building and the rest of the industry and how fine the industry classifications can or should be for WorkCover purposes.

CHAIR: Are there any other comments?

Mr O'Dwyer: Looking at WorkCover premium notices, I think one of the toughest things I have had to do in a past life is explain to a rather large employer of 3,000 employees about their $450,000 increase in premium. We actually then had to analyse the data about how much of that was related to an increase in wages—because obviously wages have increased over a period of time—how much was experience data and how much was change about what we do not control, which is the WIC codes. I think some employers or even industries may benefit from actually having that data freely available or available on the premium notice to say, 'We have estimated the increase is $450,000.' Then there would be the three columns so you can then have clarity about what is controllable from the employer's point of view, what is not controllable in terms of the WIC code and then what else is going on in the actual premium rate.

CHAIR: It is an interesting comment that you make there. Very early in the piece we actually raised the complexity of the premium notice with WorkCover. We pointed out a few that we thought would have been quite obvious to everyone and they were quite surprised that there was some confusion. In fact, I used my own WorkCover premium as one of the examples for them. So yes, I understand what you are saying. There is some complexity there, particularly when you get to bigger employers. Further, we have already had some witness meetings up north. I recall clearly that, when one of the employers was asked about how the premium was being calculated and so forth, they completely missed the point that part of the increase in their premium was to do with their underquote of their wages in the previous year. They completely missed the point that a significant part of their new premium, which they were counting as a very large increase, was in fact because in the previous year they had given a wages estimate that was significantly less than the actual wages that they paid in that previous year. I take your point. Are there any other comments anyone would like to make?

Mr Prentice: I have one with regard to how we understand our premium is calculated. As jockeys participate in the most dangerous land based sport in the nation, on average we have possibly one death every two years and an average of two to three disablements a year—and that is out of only 220 people, as I said before. Whenever we do have a death or a permanent disablement, which we have had in the last 12 months with Corey Gilby and Kristy Banks being confined to a wheelchair, obviously our premiums spike again. Based on what it works out to be for each jockey each year, it is bordering on $10,000 per rider to keep the industry going.

In Queensland the reason we are struggling to up this—to deem them as employees—is the fact that, unlike the other states, the big problem is that we want to keep the vibrant country racing scene. So for every race that is run that you may see on Sky Channel, it costs about $400,000. In Queensland we only derive income from 60 per cent of our races that we hold whereas because the other states are smaller and Sky Channel can get out to them and people can bet on them, they derive income from 90 per cent of their races. So our premiums cover 40 per cent of the industry that is giving nothing back—not that we do not want country racing to go on, but the premiums are spiking due to the fact that they also are not getting enough money from racing. Considering the money that is delivered to government from gambling every week and from tourism when the carnivals are on, something is going to have to be put back, otherwise the industry will continue to fall and it will be broke within the next five to 10 years.

Mr Pollard: As I said in our opening, one of our large problems as an association in communicating with our members is trying to understand exactly why our premiums are what they are. They do not seem to be linked to anything as far as we can see. We do not have any information made available to us about why, for example, the cleaning industry premiums have increased from 3.233 per cent to 4.041 per cent over the last 12 months. We do not know why. From our internal research there has been no spike in injuries, there has been no discovery of any long-term illness caused by chemicals or anything that could require a long tail in the insurance system. All we know is that we have been hit with these large increases.

We are looking for more information from WorkCover. Possibly that could mean a redefining of the industry so that the contract cleaning industry is counted and statistics are collected on this discrete area. We are a large employer. We certainly have a very large number of organisations performing these services throughout Queensland. This is a significant problem for our members.

CHAIR: To follow up on that, have you asked them to give you a reason and a breakdown?

Mr Pollard: My instructions are yes, we have, but one of the problems is that statistics just are not kept. They are my instructions.

CHAIR: We might take that up with WorkCover.

Mr STEWART: I would just like everyone to consider the changes that were made in 2010 to WorkCover and advise if they have had any major impacts on the costs associated with the various industries.

Mr Crittall: We do not believe they have impacted on our industry in a major way. Certainly the WorkCover figures have shown a drop in some common law claims. In terms of the litigant behaviour, we believe that has slowed down a little bit, but we have no major submissions on that area.

Ms Richards: There were a number of parts to it and I would just like to comment on the rehabilitation side of things because it actually made it compulsory for the insurer, whether they be WorkCover or a self-insurer, to refer any worker that was not at work when the claim was completed to the 'return to work assist' program in Q-Comp. I believe that that program has been very successful and has aided a lot of injured workers return to work who would otherwise have found it very difficult to return to work. I think that scheme could use a bit more funding to assist people getting things like their tickets for construction work and things like that. That 'return to work assist' scheme helps them link in with providers and does a lot of coordination work, but there are times when there is a little bit more money required to actually pay for the tickets because these people have been off work for some time and they do not have the finances to do that. It is a matter of whether they work or not. For the cost of $1,000 or $2,000 versus a $300,000 common law claim, it would be worth it.

Mr Crittall: I should have said that in relation to the lifting of the cap, which was one of the changes, I meant that employers who had hit their cap could then be brought into a Workplace Health and Safety Program, which Ms Richards announced in her opening submissions, called IPaM. That is a program where those changes have targeted companies that have hit the cap of their WorkCover with the threat of

having the cap lifted and them having to pay full fare if they did not participate properly in a full safety audit and management system approach. We believe that has revealed some tremendous results. That is as a direct result of having the cap lifted in those July changes.

Mr STEWART: I have a follow-up question in relation to that. The committee had noted that there were indications in a number of submissions that the government had proposed to prevent people with zero per cent impairment from bringing a common law claim. As Michael stated earlier, the committee is not aware of this. What I would like to do is explore that a little bit further and ask what they believe the implications of this would be.

Ms Rogers: Our biggest issue about the introduction of any sort of threshold to a common law claim is the disconnect between a work related impairment and the actual disability suffered by the worker and the impact that that disability has on the person's capacity to earn wages. As provided in the earlier example—and I think we provided a number of examples in our submission—you might end up with a person with a very low work related impairment but the impact on their capacity to go back to their pre-injury job is that they either cannot go back or they are limited in their capacity to go back. We believe that to introduce the threshold with a link to the work related impairment would be an incorrect step and it would disadvantage the injured worker and their family and it would have knock-on effects in the community.

Mr STEWART: Could I add to that as well and ask how the level of impairment should be assessed and by whom, in your view?

Mr Temby: It is not a key part of our submission but the thrust of our submission on this issue of common law thresholds goes to whether we have the measurement right, whether we are using the right tool in terms of work related injuries, or should the definition be broader to pick up the sorts of issues that other witnesses have mentioned here this morning around impacts on not only people's working lives but also their private lives? Common law seems to be a second-best solution to a better definition of impairment in our view. I do not have the answer to what that better definition could be or should be. It certainly raises some very serious questions in my mind about whether we have that definition right.

CHAIR: Pat, did you have something that you want to add?

Ms Rogers: I just want to make a brief comment. I do not know that I am saying the problem is the definition of impairment. It is the disconnect between the two issues; it is the disconnect between the disability and the impact on a person's work. I am an industrial officer. If I break my leg I can go to work. My state secretary used to be a linesperson. If he breaks his leg, he cannot go to work. If he ends up with serious long-term damage, he can never work as a linesperson again and he has to end up as a state secretary of a union! All jokes aside, I think we need to look at the reality of the fact that it is not just about the injury, it is not just about the disability; it is about the impact on your capacity to go back and perform your pre-injury work and the impact that then has on your capacity to earn an income, provide for your family and engage in what we would consider to be all the normal activities that go around family and community.

Mr Crittall: Master Builders would really caution the committee to be very careful in this space. Hasten slowly would be my first recommendation. No. 2 is that we are a short-tail scheme. So the minute someone wants to compare us with another state that has a high threshold and say that we should follow them, it is absolutely comparing apples with chalk. It has nothing at all to do with the comparison.

Where Master Builders took issue was where a worker hurts his back and is on statutory benefit for 10 weeks, 20 weeks or 30 weeks, makes a recovery, goes back to his initial job performing the exact same task and then gets an $80,000 common law payout because he might now be unable to work to 65 and may only be able to work until 60 or 62. We find that the part that is most offensive in terms of the common law claim. We have argued in our submissions for the committee to recommend considering a threshold. We think that workers who return to work fully rehabilitated in their original role should not have access to common law.

Mr O'Dwyer: I just want to respond to what Pat said in that I have had personal experience with a friend of mine many, many years ago through the workers compensation scheme who was working for a government department on the roads and suffered a serious back injury. In terms of his process and what he has been retrained to do through that—and this is many years before this legislation was in place—he was completely retrained and his capacity for earnings actually increased compared to his previous career path. So I think we need to be careful about the ultimate effect of saying can someone never earn an income again because of the injuries they sustained. Some workers are in that boat absolutely, and we need to take care of them. However, other people, such as Pat's example, can retrain and their earnings may increase over that period of time.

CHAIR: The member for Greenslopes has been very patient. I call the member for Greenslopes who has some questions.

Mr KAYE: My question is to Glen Prentice but feel free, anybody, to comment after Glen has finished answering in general. Glen, you have mentioned today obviously that jockeys are professional sportsmen and not included in the definition of a worker. If that definition was to be changed to include them as a worker, there is obviously a possibility that the premiums may go up because of the high-risk nature of the industry that you have outlined. You have obviously spoken about the effect it is having on the industry at the moment. If the premiums were to go up, what effect would that have on the industry?

Mr Prentice: Yes, we have been dealing with this even with the previous government when Mr Mulherin was racing minister. It was referred to Cameron Dick, who never returned a call. He obviously thought they were gone so they did not bother. We have spoken with Racing Queensland and WorkCover at great length about what impact it would have. Victoria and New South Wales run the same number of races, within 100, and the same amount of starters every year. Their premium to cover this is somewhere between $3.7 million and $3.9 million for each state. Queensland currently pay $2.5 million but also they have fewer jockeys, so obviously the premium would spike.

We have spoken at great length about the new Racing Queensland chairman. Obviously they cannot afford it. They have stated quite categorically they cannot afford it. If this submission is successful, obviously it will impact on their finances when everyone is crying out for increased prize money. The fact of the matter is that New South Wales and Victoria get $200 million a year to distribute. Queensland gets I think $101 million and $89 million of that goes to prize money. In Victoria and New South Wales, of their $200 million approximately $160 million goes to prize money. Again, they have more in their coffers so they can afford those premiums, and they do a lot in the way of welfare for riders down south.

Unfortunately the job is the same everywhere. Queensland is disadvantaged by the size of it and how many race clubs we obviously have and based on the fact that in Victoria and New South Wales people can bet on 90 per cent of all races—I think it is 87 per cent and 89 per cent in Victoria and New South Wales respectively—which gives them a turnover. In Queensland it is 61 per cent; 39 per cent of races we do not bet on. Therefore, we get no income from it. So a large portion of our money goes to keeping the vibrant country racing scene going.

CHAIR: I think you have already covered that previously, so we might move on in the interests of time. Do you have a supplementary question? No. I call the member for Murrumba.

Mr GULLEY: I would like to continue on the inquiry of what is the definition of 'injury', picking up prior comments of level of impairment. But I would also like to explore what is the difference between 'a major contributing factor' and 'the major contributing factor'. I would also like to explore pre-existing versus current injuries. I open it up for comments.

Ms Richards: This is a really complex area and it is one that has been debated over the years continuously, irrespective of government and various philosophy. Some years ago we had a change of definition to 'the major significant contributing factor' and that created a lot of disputation in the area because what does that actually mean? So there had to be a number of legal cases to define it which happens whenever you change these definitions. It becomes very subjective.

I can understand people raising it, but is there that much of a problem with the scheme that it actually requires the change in the first place? There is change for change's sake and there is change to have a good outcome. The scheme is in a good position. Do we want to change? With the current definition, there are a lot of claims already rejected. So if there is any disputation, the employer has the opportunity to lodge a review and then go to appeal and the same with the worker. So there are mechanisms in place to try to restrict that. Sometimes a court goes off on a tangent and creates issues unintentionally but then they are later clarified through further court cases. So once again, I think in Mr Crittall's words, it is a case of err on the side of caution.

Mr Crittall: I just want to reinforce what I said before. The term 'major' would just make it that employment would have to be more than 50 per cent of the reason for the injury. We think that is totally responsible. We think that is reasonable. In relation to psychological claims, bullying claims, harassment claims, for a worker they are probably pretty easy to prove. All we are saying is that the difference in the definitions means that the employer and work has to be more than 50 per cent responsible for the injury.

CHAIR: Does anyone else have a comment?

Mr Simpson: If it is not broke, do not fix it. That is pretty much our view on that.

CHAIR: Thank you. Are there any supplementary questions? No. I call the member for Stretton.

Mrs OSTAPOVITCH: I have quite a lot of questions on self-insurance and I do not think we have time for all of them. So I will ask my most important question—and this is for anyone to contribute. We now have the minimum number of employees for self-insurance eligibility at 2,000. If this criteria were lowered, it may potentially mean that smaller organisations could self-insure. However, self-insuring may have additional administrative costs et cetera. In your opinion, should this criteria be the only determining factor for eligibility for self-insurance? If you could outline any other contributions that should be taken into account for self-insurance, I would appreciate it.

Mr O'Dwyer: In terms of self-insurance, again I think we need to be careful and use a cautionary tone when it comes to the effect that they may have on the remnants of the compensation scheme itself. In my view and what I have seen with self-insurance over the last 10 to 15 years with the larger employers going who were contributing a very large amount of premium and perhaps were more capable of making sure they have the lowest injury rates, it puts more pressure on a scheme if you take those sorts of employers out. So, in terms of the long-term stability, I would be very cautious about how you change the ability for employers to go to self-insurance.

Mr Crittall: I agree totally with the comments made by Jason. Be careful what you wish for. We see no need for any change in the diminution of the requirements. On the contrary, there is cross-subsidisation in the fund now where industries that have higher claims experience are cross-subsidised to a degree to encourage those industries to continue, and we would hate to see that pressure on the fund and then it being picked up by every other employer.

CHAIR: Pat, I saw you nodding. Would you like to say something?

Ms Rogers: Firstly, I would like to take this rather unique opportunity to agree with both the Master Builders and the ECA.

CHAIR: That is why I wanted you to say something, Pat.

Ms Rogers: We actually made some very brief submissions on this in our written submissions. Our concern is that if you look at the example of South Australia, which actually has the highest proportion of self-insurers, they have the highest premium rates. So what we say is, as Jason and John have both said, if you increase the number of self-insurers it can potentially have a huge impact on the people who remain within the workers compensation scheme. I have read some submissions where they seek to increase the number of self-insurers. I have not actually seen an argument why they want to do that other than that they want to. I think our punchline was that you would need to do a very detailed and thorough investigation using actuarial information before you made that sort of change, because potentially it could have a strongly negative impact on a system that is working very well. Thank you for the opportunity to agree, Chair.

Ms Jones: The Rail, Tram and Bus Union is vehemently opposed to self-insurance. We see it at the moment as a necessary evil. We work with two large employers who both self-insure and we see from an employee perspective a large number of breaches of confidentiality going between the self-insurance group to the human relations-employee relations group. We do not like it at all and any extension of it would certainly not sit well with us at all.

CHAIR: If there are no further comments, are there any further questions? There are no further questions. We are approaching the end of the time that we had allowed for this session. Are there any final comments from any of you?

Ms Richards: I did flag in my original opening that I would like to talk about the IPaM, the Injury Prevention and Management program. What I have discovered in getting some information from Q-Comp—and I have copies for the committee—is that there are roughly about 19,000 employers who make a claim on their policy. If you take out the employers who only have one claim in a year, it brings it back to about 8,000 employers. There is demonstrable evidence that the IPaM project has been very successful in working with the employers not only to improve health and safety performance but also to help them manage their claims in the workplace from a workers compensation point of view. So 8,000 employers is manageable over a project of a couple of years, say, two or three years.

Workplace Health and Safety Queensland has just audited 8,000 small to medium sized enterprises. That took about 18 months. If you are actually going to do some significant intervention with these people such as the IPaM project, I would say it would take maybe three, even five years, if you are going to do it properly. That would have a demonstrable impact on not only health and safety but workers compensation as well. I would actually commend the extension of that program be considered as part of the committee's report because it is proven. The Workplace Health and Safety Board has gone through this program with a fine tooth comb. It has rigour. It has evidence. It has really good outcomes. It was commenced as a program with WorkCover, showing scorecards that industry could actually understand their premium a bit more and where they stood in terms of things. So I would commend that. I will leave it at that.

CHAIR: Thanks, Amanda. Would anyone else like to take a moment?

Mr O'Dwyer: I have just one comment. I will not take too much time. I want to draw the committee's attention to solar related injuries. I think it is a high-risk area for employers moving into the future and particularly for the workers compensation scheme.

CHAIR: What are they?

Mr O'Dwyer: Solar related diseases—skin cancers, melanomas and things like that.

CHAIR: I thought you were talking about someone being on the roof of a house with solar panels. 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. 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 am and you are welcome to observe these proceedings from the public gallery. Thank you.

Proceedings suspended from 9.45 am to 10.01 am

BADKE, Ms Kylie, Senior Industrial Officer, United Voice Queensland

FOOTE, Mr David, Australian Meat Industry Council

GILBERT, Mr James, Health and Safety Officer, Queensland Nurses Union

GLEESON, Mr Pat, Australian Meat Industry Council

GOODE, Mr Dean, Australian Meat Industry Council

HENDERSON, Mr Neil, Industrial Coordinator, The Services Union

LE, Mr Daniel, Industrial Officer, United Voice

MATTHEWS, Mr David, Group HR and OH&S Officer, Australian Country Choice

MAXWELL, Senior Sergeant Shayne, Vice-President, Queensland Police Union of Employees

McKELL, Mr Ken, Australian Meat Industry Council

MOHLE, Ms Beth, State Secretary, Queensland Nurses Union

TUTT, Mr Simon, Queensland Police Union of Employees

WILSON, Ms Danielle, Industrial Officer, Independent Education Union of Employees, Queensland and Northern Territory

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, the deputy chair and member for Mulgrave; Mr Reg Gulley MP, the member for Murrumba; Mr Ian Kaye MP, the member for Greenslopes; Mrs Freya Ostapovitch MP, the member for Stretton; and Mr Mark Stewart MP, the member for Sunnybank. The members of the committee who are unavailable to attend the hearing today are Mr Ted Sorensen MP, the member for Hervey Bay and Mr Tim Mulherin MP, the member for Mackay.

The purpose of this hearing is to receive information from stakeholders about the motion that 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 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 to turn it off when you have finished speaking.

I remind all of those in attendance of 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 hearing should you feel that this would assist the committee's deliberation. 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 hearings.

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 yourselves of that opportunity. I will make one final comment. Please check your phones now and make sure that they are on silent. I would appreciate that. I will ask the Australian Meat Industry Council if they would like to make an opening statement.

Mr McKell: I wish firstly to thank the committee for allowing AMIC to appear here today and to put our views in addition to what has already been put in our submission. With me today there are three gentlemen representing three Queensland meat-processing establishments, on average employing around about 750 people.

I would like to state first off that most definitely our organisation understands the fact that any workers compensation system should be fair to both workers and employers. But I also wish to state that, with respect to the Queensland workers compensation system, two prominent issues that we feel need to be acknowledged and addressed are the fact of reducing the time period of the processing of claims and, equally importantly, the fact of the process regarding the rehabilitation of injured workers back to the workplace most definitely where that is possible.

Very quickly with the time restriction, I would like to add that the deficiencies that we tend to consider that most definitely need to be addressed, and which may have been raised in previous hearings, is with respect to aspects regarding premium calculation, common law aspects—which, of course, subject to questions we can go into more detail about—and also the aspects, as I have briefly mentioned, about claims procedure, that being from the initial phase of when a claim is reported and how that should be reported directly to the employer as soon as possible and then subsequently right through the process, through to the treating doctors, the insurer and, of course, the rehabilitation.

CHAIR: Thank you.

Ms Mohle: Thank you for a minute and a half of your time to make an opening statement on the vital issues of income, medical and other support for nurses and midwives injured at work or as a result of their employment. We are both available to answer any questions at the end that you may have. However, I believe the 90-second time frame provided to make opening statements is really quite absurd. It is not sufficient time—

CHAIR: You have used 30 seconds of it just complaining about it. Do you want to move on?

Ms Mohle:—to make the very important points that we need to make. My opening presentation today is timed and I will hand up the presentation to be read into *Hansard* if we run out of that.

Compensation for workplace related injury is an issue vital to the job and financial security of every wage and salary earner in the state. Frankly, the Queensland parliament should have found more time to deal with this important issue with stakeholders, including our organisation. However, I will start my opening statement and see how I go. I will then hand up the remainder of the statement, as I said, and I will read very quickly.

Nurses and midwives experience exposure to a wide variety of physical, chemical, biological, psychological and other hazards. As the majority of QNU members also do shiftwork, fatigue adds another layer of complexity to the issues that have to be taken into account when considering the design of an adequate workers compensation scheme for nurses and midwives. Not only are nurses and midwives as workers reliant on a robust workers compensation scheme they often also nurse those injured at work. Therefore, they have a unique perspective worthy of proper consideration.

CHAIR: Thank you.

Ms Wilson: We are a union that proudly represents over 16,000 workers across Queensland. The three points that we would wish to highlight from our submission are as follows. Firstly, prevention is much better than cure. Continued government investment in workplace health and safety initiatives designed to reduce the risk of injury will create significant savings in the long run by educating workers on how to protect themselves, by promoting a positive workplace safety culture, by reducing the burden on state health and community services and, of course, by reducing the burden on workers compensation.

Secondly, the scheme as it currently stands is viable and effective. Any financial changes to the scheme must be considered only where it can be demonstrated that no injured worker will be in a worse position as a result. Thirdly, access to common law damages is the key to the success of our scheme. Restricting an injured worker from making a common law claim would be inequitable at law. As with general personal injury claims, common law claims can succeed only where negligence exists. Injured workers and their families endure incredible costs as a result of the negligence of employers and the damages awarded never cover the total costs associated with the injury.

In closing, we say that if you offer adequate support to injured workers, this reduces the burden on the rest of the community and offers significant savings in the long run. Our scheme already supports this. So the question we want the committee to pose when considering any change to the current arrangements is this: will this change pose a greater risk to the welfare of Queensland workers and our community? Thank you.

CHAIR: Thank you. United Voice Queensland?

Mr Le: Chair, thank you for the opportunity. We represent more than 27,000 workers Queensland-wide, including early childhood educators, allied health workers, teacher aides, cleaners and manufacturing workers. In relation to our submission, we would like to highlight the following points. Firstly, we submit that WorkCover and Q-Comp financial data as seen, through their respective reports, speak for themselves. The scheme is fully funded and boasts a healthy return-to-work rate.

Secondly, we draw your attention to part 3A of our submissions, titled 'United Voice Membership'. Over a 15-month period, approximately 60 per cent of workers compensation cases received by United Voice were assessed with permanent injury of less than or equal to five per cent. We submit that any introduction of a threshold limiting access to common law would rob injured workers of vital compensation that would go to supporting their recovery and rehabilitation.

Lastly, the majority of workers who we cover are employed in valuable positions in the community. They are educating the next generation of young Australian children, providing proper care and dignity for senior citizens, aid in the recovery of injured or ill Queenslanders, clean out children's schools and so on. Yet many of these workers are also among the lowest paid in our community. Our members not only deserve the protection of the current Queensland workers compensation scheme; they need this committee to help preserve and maintain their current rights, such as unfettered common law access and their ability to make journey claims in the event that they are injured. The existing short-tail system ensures that most workers will receive adequate funding to support rehabilitation required and start working when fit to do so. Thank you.

CHAIR: Thank you. The Queensland Police Union of Employees?

Snr Sgt Maxwell: I would just like to start off by acknowledging that you are wearing a Damian Leeding tie. Thank you very much. I want to highlight a few concerns that the police have and I would like to thank you for the opportunity for being here today. The use of common law claims provides an opportunity and balance for police who incur significant injures. The benefit of preserving assess to common law claims is that it brings finality to the claim in a timely fashion. The Queensland Police Union understands that the worst performing schemes in the nation are those schemes that have had their access to common law claims severely restricted by thresholds or abolished.

The Police Union is also opposed to the introduction of whole personal impairment thresholds, given the nature of the work undertaken by the members. Policing is an extremely dangerous calling. Our members are required to attend to life-threatening and traumatic incidents on a regular basis. As a result, members are often subject to injuries of both a physical and psychological nature. The vast majority of police officers are employed in general duties, which requires them to be the first response officers. They are supposed to get into physical altercations every day. Last year 2,639 police in Queensland were assaulted on the job alone.

Police are often recalled to duty and required to attend major incidents, travelling directly from their place of residence. This occurs in all manner of situations—from on-call police and special emergency response teams attending a siege through to detectives being recalled following the commission of a serious crime. In addition, police are encouraged by the Police Service and the government to travel to and from work on public transport. Incentives such as free and discount rail and bus travel are offered in various localities in an effort by transport providers to increase a visible police presence and enhance public safety.

CHAIR: Thank you. The Services Union?

Mr Henderson: Thank you, Chair. Our union represents around 15,000 employees in predominantly supervisory, technical, administrative, professional and support roles. Happily, very few of our members suffer physical injury at work. The vast majority of claims that the Services Union is involved in concerns psychological injury arising out of alleged unreasonable management action or reasonable management action allegedly taken unreasonably. Those claims are invariably significant exercises for the employees involved and suck up a lot of the time of both the union and employers, often without any satisfactory outcome even where the claim is accepted.

The issue that we raise in our submissions is primarily that the way the fund operates should not be changed, but we focus on the issue of prevention and we see that there are significant opportunities for prevention to be looked at in relation to psychological injury. We simply note that, in those instances where our members are physically injured, usually they are employed by large undertakings which undertake sophisticated inquiries into the cause of those injuries and usually implement some change to the practice that may have led to the injury.

In the case of psychological injury, where it is either found to be a workers compensation matter or not to be a workers compensation matter, more often than not the employer response is that they do not accept that the injury was caused in the way alleged and nothing is actually changed as a consequence. So we would like to see any changes to the system be focused on improving the prevention aspects and the way in which employers have to respond to claims.

CHAIR: Thank you. Just before we proceed to gathering witness statements and so forth, I want to reiterate what this committee is about. Every five years, the workers compensation scheme needs to be reviewed. We are in the process of reviewing the scheme. At this stage we have not drawn any conclusions as to what may be the outcome of our recommendations. We are in the process of gathering information. One hundred and eighty-four organisations have decided to provide us with a written submission. We are taking all of those written submissions into consideration. We are summarising all of the information and we are cross referencing it. It is an absolute nightmare for the staff to pull it together, but we are determined to get this right.

Today, we have one and a half hours with you. We have a number of other witness meetings. We have already had witness meetings in the past. We had another one earlier this morning and two in North Queensland. We reiterate that you will have adequate time to answer our questions and to put your thoughts and views on the questions that are asked and, in fact, expand on those. Please do not, though, repeat things that we have already had from you in your written statements unless it is relevant—a statistic or something like that. That is fine. That will help us to fully understand. But going on beyond that, if you feel, after this meeting today, that there is more information that you would like to provide us with on any of the questions that we ask you or any other matter that you think might assist us, please get that information to us. It will be taken into consideration. Thank you very much for your time, once again. I will call the member for Mulgrave to open the questioning.

Mr PITT: Thank you, Mr Chair, and thank you to all the witnesses appearing before the committee today. Your time is appreciated. My question relates to the fact that this committee has been asked fairly specifically to look at the definition of ‘worker’. There are varied views on what that definition should be. This is an open ended question to all witnesses today. I would like to hear your thoughts on the definition of ‘worker’. You can drill down into as much detail as you like in that regard. It will differ from various organisations that you are representing, I am sure, so we are certainly keen to hear your views. This is a bit of a bidding process, so whoever wishes to jump in first you are more than welcome.

Mr McKell: The importance of what a ‘worker’ is, obviously, in the definition is a matter of a person we would consider being employed in an employer/employee relationship scenario. As far as the situation with respect to workers compensation goes, again it ties in with a number of aspects, but where there is that employment relationship and an illness or injury that may occur. Again, I think it is a matter of what currently exists and should that be changed, and that it needs to be approached very cautiously. There can be a matter whereby if you open that up or you expand it beyond what really is the basis for an employer/employee relationship, it can create further problems with respect to that. It might be, I suppose, more of a matter of saying that, if there were suggestions of certain other wording to be contained, again that would have to be fairly well scrutinised.

CHAIR: Is there any other feedback from anyone?

Ms Badke: I think the current definition within the Workers Compensation Act is broad enough to cover a wide range of circumstances. You have, I suppose, taxation rulings, industrial relations, where there is different definitions of ‘worker’. We do have a number of instances where we have come across sham contracting relationships, where the employer is actually trying to manipulate the employment relationship so they do not have to pay certain entitlements to someone who really, in the true definition of the word, is an employee. The way that ‘worker’ is defined, it actually captures a lot of those scenarios. I suppose I offer a level of caution that, if you change that definition, you are actually going to advantage those employers who are trying to corrupt certain entitlements to individuals.

CHAIR: I think most of the argument is more the other way, Kylie, that it is not tight enough to actually protect workers. That is the sort of feedback that we have been getting to date, anyway. Are there any other comments on that question? Okay, we will go to the member for Stretton.

Mrs OSTAPOVITCH: This is open to anyone who would like to contribute. It is about the strengths and weaknesses of the existing system. I am sure that you will want to contribute to that. In particular, do you have any industry-specific concerns that you would like to have addressed by this committee on the weaknesses and strengths of the system?

Mr Foote: In an hour and a half we are only going to touch on some of the main points, but I would suggest from a business perspective, first up, that I do not think the intent of the act has been delivered in terms of the employer/employee side, particularly 4C and 4D—we are not here to read that out—or, in fact, we are undermining the opportunity for Queensland to remain a competitive and attractive employment state. The basic faults that we find for our business are the actual medical process and the claimant’s process and the involvement from the employer from the start, not actually being a key person from day one but finding out basically with reluctance.

The fact is that no longer can we go back to using preassessments that had the historical evidence of the claims record. We used to be able to rely on that prior to the review before the prior review. That is a key piece, as an employer. It is not about disadvantaging; it is about people actually faithfully and with completeness filling in their application forms. We find we have a higher degree of potential falsehood when people apply for jobs, not stating their previous information or dispositions. It is the medical claim and the preassessment and the journey claim. Actually, even under the tax act, I cannot claim to drive to work so I am not quite sure why we have to protect drive to work. It is part of our process as a normal active role. We really feel strongly about the journey claim not being part of the process.

CHAIR: Are there any other comments?

Snr Sgt Maxwell: I just want to touch on two things. The first is the impediment threshold. Any threshold is a danger to police, even if it is a small threshold, because of the nature of police work. Police are very well educated in the job, but any small threshold will put them in unemployment, because they have no other skills unless they become a labourer or a factory worker. Secondly, I wish to point out that I understand that there is a committee being formed in relation to the threshold. I would like to ask that I be represented on that committee. I understand that may have come out last night.

CHAIR: Not that we are aware of.

Snr Sgt Maxwell: If so, I would like to recommend that a member from the union, namely myself, be able to represent on that. Also, in relation to journey claims, police are police officers 24/7. When they leave home, if they come across a traffic accident outside there is an expectation that they will stop and assist members of the public, which we do. If there is a wild party down the street, it is up to us to go down there and attend to it, even though we are off duty. So the journey claim is very important to us. We work 24/7 and there is an expectation from the government and from the Commissioner of Police that we are police officers and that we should work 24/7. We are in the public eye.

CHAIR: James, it looks like you are ready to go.

Mr Gilbert: Just in relation to journey claims, we provided extensive submissions around journey claims. I am sure the committee has read all of those. That is certainly a fundamental issue to our union. There is plenty of international and Australian evidence around fatigue in health work. There is strong evidence to suggest that fatigue related accidents as a result of driving to and from work is an issue. We disagree with the Australian Meat Industry Council, when it asks, 'What's it got to do with work?' It has lots to do with work. I urge the committee to continue to keep journey claims within Queensland's legislation.

CHAIR: Are there any other comments in relation to those matters? Yes, Dean?

Mr Goode: I am from the Kilcoy Pastoral Co., appearing on behalf of AMIC. In relation to the common law threshold, from our experience zero impairment is delivering large claims to employees and is having a major impact on our overall premium. Although only about four per cent of claims are common law, they are 41 per cent of the cost of the fund. It is having a huge impact, where we are seeing medical assessments with zero impairment coming through. I could quote a list of examples, which I will not, whereby people are receiving large payouts and about half of that payout is based on future economic loss. The employee has been off and fully compensated for their time off and is awarded a large amount of money in the event that they could possibly maybe in the future have a loss of income.

Our experience is certainly that that is not the case. We are rehabilitating our people back to full-time duties and they are, in most instances, earning more money than they did prior to the injury. All we are doing is actually gifting them a large amount of money. What happens then is we find that within our workplace there is communication between employees: 'I have a new car', 'I have a new this'. It is actually becoming endemic in the system, that you do not actually have to have an impairment to get access to a common law claim. It is our belief that there should be an impairment threshold and that that threshold should be set at 15 per cent.

CHAIR: Thank you. Any other comments? James, a follow-up?

Mr Gilbert: In relation to common law thresholds, again we have provided extensive submissions in our document around people who have had zero per cent impairment. Quite often, nurses are of an age where they have a pre-existing condition. Their injuries relate to aggravations. With the way that the AMA guides are set up, it is very difficult for them to get a permanent impairment of greater than zero per cent. Nonetheless, they are unable to return to work because of that aggravation. The only way that they have available to them to ensure their financial future is through common law. I just remind the committee that, clearly, to pursue a common law claim there has to be negligence shown. It is not as if it is endemic in the industry, particularly in our industry. There has to be some negligence for you to pursue that. That should remain.

Mr GULLEY: My question to the panel today revolves around the claims process. The Queensland system at present is a no-fault system. My question to the panel is this: do we think this is the best system? And where is the element of self-responsibility, both from employees and employers, in taking account of claims?

Mr McKell: Just one aspect of the claims process that I would like to highlight goes back to the legislation. It is with respect to the issue regarding notification initially, when the injury or illness occurred. There is current provisions regarding the fact that a claim can be put in up to, I think, six months after the injury. There are circumstances, many circumstances—and these gentlemen could elaborate—within our industry at least, let alone other industries, where the individual injured worker or even the treating doctor can make the application directly to the insurer, being the regulator, of course. In that situation, there can be circumstances and examples where there are days, weeks or even months that the employer does not found out about the alleged claim. We could be talking about either current workers or ex-employees. In those circumstances, the horse has bolted in a sense, as far as trying to deal with these genuine claims as such as soon as possible. I just raise that as a deficiency with respect to the initial aspects regarding the claims process.

CHAIR: Thank you. Who else would like to say something on that aspect? There must be some more interest around that.

Mr Henderson: I realise that the question was directed more at the issue of fault, but just to pick up on the point that was just made, frequently with our members with psychological claims, the claim is preceded by a fairly lengthy period of paid sick leave during which the employee is ruminating over whether they should make a claim and taking advice on it. Often that is the reason, in psychological injuries, there is such a lengthy gap within the statutory period between the time of the alleged injury and the time at which the claim is made.

I think when you look at the overall picture it would be not a good move to interfere with that opportunity for the employee to reflect on what has actually happened and take advice rather than forcing them into a position, for example with unfair dismissal, where they must make a decision quickly and it may turn out to be the wrong decision.

Mr Foote: Just coming back to the process, if you line it up with other commercial interests in the no-fault area, the workers comp system provides that if WorkCover does not accept the claim it is generally thought there is therefore some flaw within the process. The employee then has the entitlement to go on to a higher court, which is effectively the common law process, which ultimately we think is possibly more flawed in its current format than the workers comp system. So there is actually no hurdle or threshold. If you fail at one and the current body that oversees worker injury does not agree that there is a complaint, it then moves on and you generally get a complaint out of it. I actually think part of that system is flawed in the first place as to why WorkCover itself deemed it not to be an accident or an incident but then the employee has another go thereafter.

Mr Gilbert: Just getting back to your question about no fault, here is a scenario I would put to you if you mucked around with that system. Nurses quite often are required to assist residents, patients, whatever you call them, with mobilising. When they are mobilising somebody, quite often injuries are incurred when the patient collapses or falls. I am aware of some employers who have policies that say that the employee must release the person and allow them to fall to the ground. If you are a nurse, you just do not do that; you will attempt to stop their fall and you will be injured. So, if you were to muck around with the no-fault scheme there is the potential that they have not complied with the requirement of their employer and they would not get a claim. So I think the way it is should be left. In relation to Mr Foote talking about people having a second go, you cannot pursue common law unless you have an accepted workers compensation claim.

CHAIR: Good point on both of those. Good example, too, thank you. Anyone else?

Mr Gleeson: I would like to talk about that process with Q-Comp making the decisions. Recently at our abattoir Q-Comp overturned a decision. The reason given was almost incomprehensible. However, insofar as it could be understood, the decision completely discarded the only specialist medical opinion and the review officer failed to take into account the fact that the worker had provided three wildly and irreconcilably different accounts of how the injury occurred. The decision making was conducted on the most superficial desktop review of some of the written materials and apparently ignoring the existence of other materials that were determinative of the matter. As the employer had no right of audience in relation to the process, it is impossible to ensure that the decision maker was even aware of all the evidence, much less that material is being taken into account. To go one step further, we had another case in which, when we got Q-Comp's review, they had cut and paste their decision making from not even the employee involved; it was from another employer. They cut and paste the whole paragraph. It is completely flawed.

Ms Wilson: Just on the question of assessment of injury and where the insurer goes and why they reject claims, there is a range of things that need to have been met before an injury can be accepted. One is that you need to be able to demonstrate that you are a worker according to the definition in the act. The next is that you need to be able to demonstrate that you have suffered a personal injury and that your employment was a significant contributing factor to that injury. So there actually are some boundaries, if you like, that need to be gotten over before your claim is accepted. When an insurer is saying that a claim is being rejected it is on the basis that it has not met one of those things. I guess I just wanted to clarify that because they are the points that do go to review to be questioned, I guess, and to be reviewed to determine whether or not the claim should have been accepted in the first place.

On the question that was raised about Q-Comp's processes, both the employer and the employee have a fair go at the Q-Comp process and can provide further submissions. They have a very strict natural justice exchange process which can be very arduous at times, but the bottom line about that is that everybody does get a fair say to put forward whatever information they have got. I actually believe that the Q-Comp review process is probably much closer to getting a real decision on a claim rather than the administrative processes that are used by the insurers.

CHAIR: Any other comments or observations. Do you have a follow-up?

Mr GULLEY: The question comes back to individual responsibility and whether that should be included in any claim?

Mr Foote: I believe that, yes, it is incumbent upon each individual, whether you are an employee or an employer, to take some responsibility for your own actions and your own safety. You cannot leave your liability to some other when you walk through the gate.

Mr Gilbert: Just in relation to that, there are sections in the workers compensation act that talk about where you have deliberately disobeyed an absolute directive there is the opportunity for WorkCover not accept your claim. So, there are protections in there. I gave that stark example in relation to somebody falling to the ground. You could probably come up with others. I will leave that for the committee. I think there are protections there.

Mr McKell: I just want to elaborate on that point. The aspect regarding they are the words not used where there is misconduct or deceit or whatever it might be as far as the issue regarding a claim or potential claim, I would just like to add the point that as an example the Fair Work Act obviously has its

definitions of examples of serious and wilful misconduct. That is not to say that they are exhaustive, but they could be looked at as a starting point with respect to what may be construed once an investigation is conducted where there was some sort of fraudulent activity with respect to the initial aspects of a claim or even further down the track as to a claim continuing unnecessarily or expanded unnecessarily. So I just wanted to add that point.

Mr Henderson: I just want to make a comment about the issue of fault because it is a very broad issue when one considers the whole range of types and matters which could come up, from someone deliberately injuring themselves to someone not following a procedure. It is the not following the procedure issue that I want to raise with you because that would be probably the area where most of these types of matters were argued. When one looks at the large public undertakings that employ our members, like the electricity undertakings and so forth, the actual procedure to be followed is not necessarily always that clear. For example, the Professional Engineers Act has exceptions to a prosecution if someone has been following a procedure, and I have seen arguments where it became clear very quickly that the employer was not sure what the procedure was that was to be followed. Invariably what will happen is that there will be a lengthy argument about something which ultimately does not really matter in terms of whether the employee has been injured because they have not done anything on purpose to be injured. So if you wanted to go down that track, the difficulty you will always find is where to draw the line in relation to when an inquiry should be had about fault. The point that the QNU makes is that the legislation really already provides for that in the extreme sort of circumstances where someone has deliberately done something which has resulted in their injury.

CHAIR: Any other comments on any of those aspects? Before we go to the member for Mulgrave, I will explain to these poor young people up in the gallery why it is not exciting down here. This is a meeting. We are a committee on this side and there are witnesses who are giving us information in relation to the workers compensation scheme in Queensland. It is all very sedate at the moment. Normally you would be here around about this time and it would be on for young and old and you would be really excited about it all and you would be shaking your head as you walked out. But we are all adults here so that is why it is really boring. Member for Mulgrave?

Mr PITT: Thank you, Mr Chair, for that great explanation. I have some questions for Senior Sergeant Maxwell. Just following on from a comment you made before regarding a committee that you thought there may be opportunity to be on, could you expand on that or what your understanding is of that committee or where you heard about this committee? It was related to thresholds, I understand.

Snr Sgt Maxwell: Yes, that is correct. I had a briefing from a lawyer this morning in relation to it. He was informed last night through the lawyer's counsel that a committee was being formed to have a look at the threshold.

Mr PITT: Did he advise how the counsel was told about this committee? It is just interesting that our committee knows nothing about it but it relates directly to what our inquiries are. I am very keen to find out why such a committee would be being established.

CHAIR: As am I.

Snr Sgt Maxwell: We did not expand any further on that. It was just a one-minute conversation. He said, 'We had advice last night in relation to a committee being formed on the threshold. You might want to mention it this morning and try to get yourself on it.'

CHAIR: Shayne, if you could find out more information on that we would love to hear from you on it. Get it back to us by email to the secretariat. We will also make our own inquiries, of course.

Snr Sgt Maxwell: I will undertake that, Mr Chair.

Mr PITT: That was just the first part. Senior Sergeant, I am interested to explore something that you mentioned in your submission. It was related to the incentivisation aspects for employers who adopt claim-reduction strategies and behaviour modification. You talk about initiatives that could be rewarded financially through reduced premiums, but I would like you to expand on that. Part of this process is looking at what is working and what is not working and also looking at new ideas and innovations. We are very keen to hear how you think that could be improved or what your suggestions may be.

Snr Sgt Maxwell: If there are fewer negligent claims the premiums will lower. Our understanding is Queensland has the second lowest premiums in Australia. The system is working well as it is. There were some economic problems with investments from workers compensation, but as you know our economy is improving so their investments are improving. We believe it is a fair and just system the way it is running right now.

Mr PITT: My other question was related to the IPaM and the whole approach of ensuring that there is an ability to get people back to work not only quickly but also properly. I am interested in maybe starting with the QNU as to your thoughts in that particular area and, of course, from any other witnesses who may wish to expand on the success or otherwise of it.

Mr Gilbert: We are strongly encourage by IPaM and how it has been working. It is a good initiative. The other thing that I want to say in terms of incentives is that currently in our industry people manual handling is a major hazard—it is considered a hazard of manual task—but for 10 years we have been using old technologies in terms of how to move people. There is so much evidence from elsewhere in the world that ceiling hoist technology represents a mechanism to reduce injury rates therefore impacting on

an employer's premium. So much so that one major healthcare service, Blue Care, has made a determination that any new buildings that they create or make will have ceiling hoist technology. We see that as a good thing. It is my view that there should be incentives for those sorts of employers to do that. They should be recognised for it. That would be our view in terms of new initiatives because that is where most of our injuries come from.

Mr Foote: That is a great question. Return to work is very critical in our industry. We actually run a chain system. If a person does not attend work for whatever reason—be it sickness, health or holidays—we actually have to find a replacement to make the chain work. My understanding is that those companies that are able to self-insure have greater control over their return-to-work programs in terms of managing their people back into the workforce quicker and easier and with less stress on both parties. So the return to work under the current system is not as arduous to manage for both parties. I think it is a tenet of maintaining a safe workplace.

Mr STEWART: I have a question in relation to the changes since 2010. I just want to find out from each of the industries whether they have noted a decrease in the common law claims initially going through and whether or not those changes have been effective?

Mr Goode: One of the things that we found with common law that is an issue is that it is our understanding that a KPI within WorkCover is to settle a claim within 45 weeks. Last year that was stretched to 54 weeks. What we are finding with that KPI—and KPIs are good when it comes to statutory claims and rehabilitating people and getting them back to work—is that the rushing through common law claims where the injuries are not stationary and stable and it is very hard to have a final outcome, the claims are inflated and settled early in an attempt to meet that KPI.

CHAIR: My background is financial planning. I just want to get some views from you. In that industry there has been a tendency to reduce total and permanent disability waiting periods to shorter waiting periods. Early in my career the waiting period before you could even make a claim was 12 months. Those waiting periods have now been reduced to six months and even in some cases three months. I am not sure whether that conflicts with what you are saying, Dean. Would anyone like to make a comment on that?

Mr Gilbert: On occasions I think there has been a conscious decision to try to finalise claims at a certain point in time. I do not know whether it is true, but it would appear that WorkCover quite often sends people to the Medical Assessment Tribunal or to an independent medical examiner at the six-month time frame. No-one tends to get to two years on benefits, even though that is one of the cut-off points. Then it is five years on the pension rate. No-one tends to get to that. It is generally six months.

It is disappointing for some people in that they could potentially get further medical advice, but if you have a decision saying your injury is stationary and stable then you move through to that process. I do not know whether there is a KPI. The beauty of the Queensland scheme is that it does finalise claims and allows people to move on, with that added component of common law, to think about the rest of their life. That is probably all I can really say.

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

Mr McKell: Over the last couple of months AMIC has been conducting information sessions with Q-Comp, WorkCover, Workplace Health and Safety Queensland, meat industry specific, on subject matters regarding return to work, workers compensation generally and WH&S. The important point that came out of one of the presentations by a WorkCover representative was highlighting the fact that as time goes on—and the starting point he had was about four weeks—the likelihood of that person being able to get back to work decreases as you go on. The focus there, as far as any system is concerned—whether it is Queensland or otherwise—is to get to the heart of the particular issue as soon as possible for the purpose of rehabilitation.

I raised the point before regarding a claim being put in and for a number reasons the employer not finding out about it until later from a third party, usually from the insurer. The point I am trying to raise with respect to that is that there needs to be a tightening up with respect to communicating the degree of illness or injury that a person has, getting that person back into their workplace as soon as possible and focusing on their pre-injury position other than an alternative position.

How do you address that? Firstly, of course with legislation but in practice dealing with each of the parties regarding the return-to-work process, whether that be with the treating doctor, specialist, rehab coordinator at the workplace or the insurer. That is where I see, not just in Queensland, the process falling down. Once you get past a certain time then it becomes a much more difficult aspect and becomes much more expensive. That is a disadvantage under any workers compensation system.

Ms Mohle: Just to go back to the original question from the member with regard to the 2010 changes, we have not noted any significant differences really but we are monitoring the situation very closely. We have not noticed any particular trends at this stage.

Mr Foote: Could I maybe suggest that we are not sure that the 2010 legislation picked up on all the input from the 2009 inquiry. There still seems to be a lot of things sitting out there in the ether. Many of these submissions almost parallel what was put to the committee in 2009. In terms of changes going forward, they probably have not washed through because they actually were not implemented last time around. It would be really nice to benchmark the 2009 submissions against the 2012 submissions to see what makes it to play.

Mr KAYE: I would like to thank everybody for coming today and in particular my former colleagues from the Police Union. It is good to see you. I wore many hats in the Police Service and one of them was a return-to-work coordinator so that is an area that I have particular interest in. Obviously I have my own experiences in that area. I am particularly keen to hear from people about your experiences with the return-to-work programs and, in particular, the strengths and weaknesses of those programs.

Ms Wilson: Referring to the comments previously about return to work and the research around the fact that the longer you are off the harder it is, that certainly is the common position. The emphasis needs to be on as early a return to work as possible to make it possible for those workers to get back to work and continue with their lives.

In terms of our experience with insurers generally, there is a very strong focus on return to work. I was actually reading an email this morning which was forwarded to me from one of our members. It was from her claims assessor. It is actually written into the signature block down the bottom what they try to do. It is about getting back to work, trying to get you to stay at work if possible or at least back to work as soon as possible. There is a very strong emphasis from the insurers to do that. Obviously backing that up are some very constructive programs to help people get back to work that are guided medically. We are certainly seeing that insurer behaviour around that idea—that is, that they are working with the injured worker to get them back to work as quickly as possible.

Mr Goode: We are finding one of the frustrations we have with rehabilitation is that we are struggling to get engagement with some medical practitioners. A case in point this week is that we had an employee who had carpal tunnel surgery instantly given 13 weeks total incapacity with no review in the interim period. We are experiencing frustration with a lack of engagement with medical practitioners. We do not have the ability to talk to them. We have 750 employees and we probably have 250 different jobs and we have alternative duties. Our absolute priority is to have people back to work because statutory claims are the biggest part of our business.

We find that getting people back to work enables us to rehabilitate them both physically and mentally as quickly as possible. But that lack of engagement and lack of review is an issue. Even if you were able to get Q-Comp to agree to getting a second opinion, it is highly unlikely that a doctor giving an opinion on a doctor will give a different opinion. We find that very difficult. If something could be done in the future to allow for better engagement with doctors, it would allow us to rehabilitate our people.

It may be that before the surgery is even conducted a rehabilitation plan for that employee could be put in place with a review process. It could say that at four weeks this is where this person should be. We could then work with the medical practitioner prior to the surgery to determine how we are going to get the person back to work, if it happens to be surgery.

Mr Gilbert: It has been my experience that members sign authorities for their employer's rehabilitation person to speak with their treating doctors and to engage and develop those return-to-work programs. There are mechanisms available for employers to take an active part in the rehabilitation process, and clearly they have to. It has been my experience that quite often there are barriers that do not relate to the rehabilitation coordinators. They are working really hard to get those people back into some sort of work.

In terms of returning somebody to work, we have had examples where we have had a registered nurse and the rehabilitation coordinator has put up a plan to say that they can go and work in the trust office or something like that. That is not utilising their skills. The rehabilitation plan should be around trying to get that person back to their original job. It should be work that is appropriate and not just whacking them back into something that is mind-numbingly boring, especially if they are a registered nurse with 20 years experience and normally working in an intensive-care unit.

We have certainly seen some improvements. It is my understanding—and I do not want to speak on behalf of WorkCover—that WorkCover is working very hard with employers now to promote that, and particularly in Queensland Health. I understand that all the CEOs of HHSs met around how to reduce their premium rates. One of the focuses was on rehabilitation. So we are encouraged.

Mr Foote: I do not want to comment on the Nurses Union. They played a much more important part in my life in more recent times than they should have, but I really just wanted to add strength to Dean's comments about the return-to-work program. There is an assumption from the medico that an injured worker does not have a place back at work, and we have just heard that they cannot come back and do less meaningful work than what they left. Part of that is getting your mind back to returning to work—getting back up in the morning and going through the processes. But you have to have a doctor understanding the return-to-work program and wishing to engage that way. It is very easy for a doctor to ask, 'Is there anything you can do at work?' and they say, 'No.' That is what the doctor will therefore take as gospel instead of engaging back through to us, as Dean said, and asking, 'Is there a program or rehabilitation available?' And this is where the employer-doctor relationship is really important. It is actually of no advantage to the doctor to not have the injured employee not back at work either.

Ms Wilson: I just wanted to make some comments around the doctor-employer relationship. Not to take away from comments that have already been made, but my understanding is that, as James indicated, there certainly is a clearance that is given when someone applies to workers comp. The insurer has a very significant role in coordinating those return-to-work activities and in coordinating, I guess, the

communication with the treating medical practitioners. I am not sure if the self-insurers do it but I am pretty sure that WorkCover has a medical peer review panel. WorkCover has certainly identified that there are times when the medical evidence is either inconsistent or they have their own concerns about it, so they do seek second opinions.

The idea around getting appropriate medical advice and getting people back to work doing duties which are relevant and real are realistic while still having a focus on trying to get that person back to their original job. Those are the things that certainly WorkCover as an insurer is constantly pushing. Sometimes our members say that they feel that they are being bullied by WorkCover because of those things and we have to counsel them about what is important to them in the long run, and that is certainly one thing that is important. In terms of how to improve the communication between an employer and the medical professionals, if an employer is not getting that communication they should certainly be making use of the insurer to get hold of that information, because it is in the insurer's interests at the end of the day to get that worker back to work.

Snr Sgt Maxwell: Firstly, I want to acknowledge the member for Greenslopes as a former member of the Queensland Police Service and a valued officer. The service is in a unique situation where we have an excellent sick leave bank where all members contribute two days a year, and this is closely monitored by the Queensland Police Service and us. We meet once a month and go through all applications and examine each one closely, so it is an excellent system that all our members and all police enjoy being in. Secondly, we have the highest return to work in the industry—that is, getting our members back in the job and getting them there because of the excellent system that we are using today.

CHAIR: Are there any further comments in relation to those matters?

Mr Gleeson: I just want to support Dean's comments. There needs to be a closer alignment with medical practitioners. We have had numerous examples at our plant where a significant number of employees have driven through three different towns 90 kilometres away to go to a specific doctor where they knew they were going to go under full incapacitation.

Mr PITT: My question relates to the fact that there are industry groupings that happen as part of a calculation of premiums. What I would be interested to hear from people is what more the government can do to assist industries or sectors or even specific occupational groupings to reduce premiums, because this is a two-way street. This is obviously about employers actually helping to feed back into the process as well. I am keen to hear how the government can assist in that regard, whether it be information provision, just support in terms of the types of gatherings of groups in terms of peak bodies or anything along those lines. This is not just about legislative changes; it is also going to have some policy implications and I think we have a role to try to inform that as well.

Mr Gilbert: I am a member of the health and community sector industry standing committee under the Workplace Health and Safety Queensland board. That committee coordinates the activities of Workplace Health and Safety Queensland as they relate to our industry, and there has been good work done in relation to some of those sorts of things.

Occupational violence is an increasing problem in our industry and has led to significant injuries for our membership. As a result of recognising the trend in figures around injury rates for that, Workplace Health and Safety Queensland has run a few industry seminars for people to utilise to get examples from other employers or other health services in terms of what they have done to help the other people to reduce those rates. So there are things that can be done.

My understanding is that WorkCover have liaison people who deal with particular industries. They speak with us quite often. I am pushing that barrow around ceiling hoists to anybody who will listen to me and it is starting to get a foothold. We have a committee with Workplace Health and Safety Queensland including employer groups and specialists in the field and suppliers of hoist material to try to set up a structure that we can just give out to employers about how they can implement those sorts of technologies which will eventually assist in their injury rate. So there are things that we can do and, yes, there is a role for government.

CHAIR: Are there any other comments?

Ms Badke: I do support Mr Gilbert's comments in having initiatives that aim to prevent injury for workers in specific groups. I think it is important to recognise, though, that the government is the employer of a lot of our health industry workers. We also have ambulance officers. With regard to the point that Mr Gilbert raised about increasing occupational violence, unfortunately you have increasing weight in the population which leads to the manual-handling injuries. We have police officers who are driving at significantly high speeds to get to incidents and then areas of fatigue. So I think it is also important that we are working together and that these initiatives are supporting employers and workers and that those issues are actually recognised.

Mr Foote: To answer the member's question—and thank you for another good question—I am representing our company and not our industry on this point. We have managed to successfully reduce our WorkCover premium by 50 per cent over the last seven years which is basically through disciplines and programs. We are a part of the former government's Zero Harm at Work program, which we find of great interest. So there is definitely a driver, for those businesses that choose to, to reduce the impact of the cost of WorkCover on them, but there is still more to go. There are still the little bits around the edges that are

becoming the expensive bits and now common law claims are 17 times higher in settlements than the stat claims. So it is obviously a process, and unless we redefine that and get that back in order we are still going to be—it will not matter what we do as a company—compounded further than we should be.

Snr Sgt Maxwell: An idea is maybe to limit the aggressive advertisement of these giant factory law firms that go out there and create an industry in which they try to prove the neglect of the employers.

Mrs OSTAPOVITCH: I have two questions around the definition of 'injury'. Firstly, it has been suggested that the change in definition of injury from 'the significant contributing factor' to 'a significant contributing factor' has not appropriately expanded the opportunity to attribute unrelated injuries to the workplace. Would anyone like to comment on this?

Mr McKell: From our point of view, we support the fact that it should be amended so that it is 'the major contributing factor'. The primary reason for that—and, again, there are other reasons—is to distinguish the point as to where the work related scenario is principally the cause of that injury or illness, because there have been many occasions where it has been integrated or involved aspects of preinjuries from previous employers and/or aspects of degenerative situations. One of those that has come up from time to time in our industry is the carpel tunnel syndrome, but others can fall under the banner. Without proper investigation and without the inclusion of the fact of the injury being the prominent issue at the particular employer, all of these other issues, under the current wording, cloud the results of the claim that becomes a workers comp claim. Again, we would support the fact that it should be the wording of 'the significant contributing factor'.

Mr Henderson: In our experience—and, again, dealing predominantly with psychological injury—the present definition ensures that there is a connection with the workplace and that that connection has to be clear and able to be understood. In that respect we do not believe that there would be any benefit in changing the definition from what it is presently.

Mr Gilbert: I have been reading some of the other submissions and I note that the Slater and Gordon submission provided a reference that when that change occurred in 2000 there was only a 3.7 increase in injury numbers, so it is not a vastly significant number in terms of the number of injuries that increased when the change was made in 2000. We say that any change to that component of the act would severely disadvantage our members. I have already explained that a significant number of injuries that our members sustain are aggravations of pre-existing conditions through the ageing process and I believe it would probably end up in a lot of litigation around claim acceptance were that to occur. So I think it may end up costing a significant amount of money to the scheme were that to occur.

Mrs OSTAPOVITCH: If the definition of an injury was to be modified to reflect the workplace as being 'the major contributing factor' to an injury before the employee becoming liable for workers compensation, what do you consider would be the effect of this? As another question related to that, many submissions have called for a percentage measure for work being the major contributing factor in the definition of 'injury'. For example, work as a factor has to have contributed over 50 per cent of the cause of the injury. What would you consider would be an appropriate measurement for the major contributing factor in the definition of 'injury'? I put this question to the meat industry, I think, since you seem to be for it.

Mr Foote: That is a really tough, judgemental question. I can only support your first comment that the work became the major contributing factor to the injury. That will overcome the injuries that were brought to work as a result of, and were exacerbated by, their normal duties which, if they did not have the pre-existing injury, would not have become an injury pertaining to the normal duties. I am not in a position to say whether the contributing factor should be 49, 50 or 51. If it is 50, that means there has been no decision. You are asking is it the workplace or the worker that has contributed to that tactic, which is another question again. I am afraid I actually cannot give you a specific answer on whether I think it should be the worker or the workplace, but maybe my colleagues can.

CHAIR: Would anyone else like to make a comment? Everyone is silent so we will go to the member for Murrumba.

Mr GULLEY: The community has been charged with considering the current level of self-insurance that exists, and currently the Queensland level is set at 2,000 employees. I am interested in the opinions and guidance of the panel today as to whether or not that self-insurance level is appropriate and/or whether or not other considerations should or should not be considered for self-insurance.

Mr McKell: Not to repeat what is in our submission, but we would consider, yes, there should be a reduction. There have been details and other submissions, even from self-insurers, that they have been performing very well—the 25 that currently exist. Of course, a number of those have less than 2,000—I think around 500. Therefore, we would say that if that is proven to be a success, fair enough, but at the same time you have also got the strict criteria and guidelines in order to go in that direction. I would also ask why should not others have that opportunity, which was a comment that was expressed previously? The fact is that there is more direct control, more direct involvement insofar as dealing with a return-to-work process and, of course, therefore controlling the cost with a benefit of reduced premium and reduced time that the person is away from the workplace. We think that there are proven benefits, as has been proven by the current self-insurers, let alone the others in other states. Most definitely there should be a reduction. As to the amount, I think we have put it at around 500, but definitely a reduction below the 2,000.

CHAIR: David, you can say something, but I am sure there are going to be some comments from others.

Mr Foote: The point we want to get across for the committee's understanding is that self-insurance is not about the cost process or the cost to the employer process, because history will show they almost net each other out. What self-insurance does is allow the employer to be fully engaged at the coalface of the injury management, the return to work and the assessment. So it is about actually bringing part of the business back into our control, instead of relying on a third party and having to pay for the cost of that third party to manage the process. For us, it is not about the money; it is about having control of the process as we have with all of the other employee issues that we deal with.

Mr Le: United Voice has concerns regarding any reduction in the requirement of the 2,000 threshold at the moment. We have concerns that the process can sometimes be self-serving and it can be inherently biassed without an independent assessment from WorkCover or Q-Comp. We have anecdotal evidence within our membership. We deal with several self-insurers that have more than 2,000 employees. Where an employee sustains an injury at that particular workplace, such as an RSI injury, the self-insurer assesses that injury, they go through the claim, they go through the rehabilitation and within a short time the employee is back at work. Then they resume their normal duties—they go back into their repetitive type of work again—and then they get injured. The self-insurer actually assessed that as an aggravation of a pre-existing issue and they discounted the second claim, even though it was an injury that was sustained at work.

We have spoken to WorkCover about it and they have advised that they would not treat that as a new injury and that claim would have been processed. But because it went through the self-insurer, that did happen for that particular employee and then we had to go through dispute processes and Fair Work Australia and then reach some kind of severed agreement as to the processes that should have been followed. So we have concerns about the improprieties and inherent bias of the self-serving nature of it all. We would oppose any reduction of the 2,000 employee requirement.

Mr Henderson: We share a similar view. We deal with a number of very large employers that have self-insurance schemes in operation. We do not have any specific complaints to make about them, but our members are always concerned about whether there is proper separation in the operations of the insurance wing from the main body of the employer. Sometimes it is clear to us that those concerns they have may not have any real foundation in fact. Given the nature of the matters that we are dealing with—that is, people's personal health—they are entitled to be concerned that there is some separation between what is being told to the insurer, who has a right to know, and what is being told to the employer. The issue of perception may well be a very important aspect of that. Without saying that there is leakage between the two sides of these organisations, I think it is something that we should be concerned about—that people can have some confidence and a perception that there is that protection of their private medical details. Our concern is that, if you reduce the threshold down from 2,000, then you get to the point—and no-one can really say where that point is—where it is going to be difficult for the employer, with the best will in the world, to properly separate the operations of their insurance arm from their own operations.

Mr Gilbert: I concur with Neil's views. What we believe is that the Chinese walls, as they have been referred to, have certainly been, in some instances, what we believe is a move across where the employer and the insurer have become so blurred that it is actually the insurer that is running it—the person's return to work and giving advice on HR issues in relation to possibly terminating the employee. We have those concerns. We think the current regime is probably the way it should remain. The thing with the 2,000 employees is that it means that employer has a certain level of sophistication, skills and resources available to them so that they can run the operation properly.

Mr GULLEY: I have a supplementary question for David Foote. I have heard comments about the perceived separation in the workplace. When it comes to confidentiality, how would the self-insurer manage that confidentiality of medical records, for instance?

Mr Foote: We actually do not come across the threshold and have not been able to entertain self-insurers, but I would like to pass on to the group manager of our HR division of our company. He has just joined us from a company that has been through both. Maybe David Matthews would be prepared to comment.

Mr Matthews: I have actually worked for a self-insurer and managed self-insurance. The obligations and the legislation are very clear. If there are breaches, there are mechanisms in place with Q-Comp to deal with those breaches or perceived breaches or allegations of breaches. I know they are treated very seriously. The separation and confidentiality is not an issue that I have ever come across.

Mr GULLEY: Continuing on self-insurance, I have a question for David Matthews. Can you outline some of the strengths and weaknesses of self-insurance?

Mr Matthews: It has been touched on already. Most of the strengths in relation to self-insurance are the control and the speedy services that can be delivered. You are not waiting for a third-party insurer. Nine times out of 10 you are on the ground and you are there within the first instance of a claim being made. So you can virtually refer the person to surgeons for more specialist medical opinions very promptly. Some of the weaknesses are that it is very onerous. There are no two ways about it; it is very onerous. There are

audits, requirements, entry requirements, insurance requirements and, most of all and most importantly, there are occupational health and safety requirements. You must have a good occupational health and safety system to get in the door. If you do not have that, my belief is that you should not be going through the door.

Mr GULLEY: Following along the same line of thought, at the moment the threshold is set at 2,000. Is the number of employees the right classification, or should it be based more on an industry because each industry has a different risk profile? Therefore, if there is a review, should it be based more along an industry line or a number line? That is a question for David Matthews unless anybody else wants to jump in.

Mr Foote: I will go first and I may learn something from my staff, which will not be the first time. I think the critical mass is actually the scale-up from the ground. If you have the support structure that can run a self-insurance program it actually generally means you have enough employees underneath to have supported that support structure. Those people who maybe have 300 employees may only have one person in HR whereas the company that has maybe 500 employees will have HR, OH&S, industrial—there is a whole different support network there. That is actually what is critical: the business structure, which generally is reflected by the asset value or the turnover value versus the number of staff value.

Mr Matthews: In relation to the number of employees, again, as David has touched on, the ability of a business to run an insurance scheme, whether it is self-insurance or a worker's comp scheme, is the main threshold. In relation to the number of employees, I recall in the submissions in 2009 that Q-Comp did a lot of numbers on the effect on the scheme with 500 employees. What the number is and what the parliament agrees to be the number for entry into the scheme is a matter for parliament. I would certainly support that only larger employers have access to it if that number is 500, 600, 800—whatever it is.

Mr GULLEY: What would be the motivations for an employer to go down the self-insurance line? That is a question again for David.

Mr Matthews: I think they would be the engagement with the workforce, improvement of safety systems, control and being a master of your own destiny. Self-insurance comes off your bottom line. Insurances come off your bottom line. So it is about making a more viable business. There are a lot of standards in place for self-insurance including actuarial standards which all WorkCover schemes have to abide by. It is controlling your own future and getting the services to injured workers a lot quicker.

Mr PITT: I want to make sure we break up the member for Murrumba's streak! The question relates to the fairly complex formulas that are used by WorkCover to calculate premiums. We had a very detailed briefing. I think we are much better for having had that briefing to actually gain a full understanding of what comprises how a premium is made up, what the various elements are. Can I ask for feedback about how that information is presented in terms of when, as an employer, someone receives a premium form and how they think that is presented and how it could be improved in terms of more instruction or education from the government in terms of the process? Some of the things that we have heard as a committee have been based more on urban myth than on reality and some of that is to do with the complex arrangements that are in place. I am keen to hear people's thoughts on how that situation could also be improved.

CHAIR: This will be the last answer. So give it your best shot and we will be bringing things to a close then.

Mr Foote: It is a really tough one to have to close on because it is complex and because of the fact that the cost of WorkCover to us is almost like an unveiling of a surprise in that we actually construct a budget, like most businesses, in May-June to start from 1 July. We actually have no transparency or feel for our WorkCover premium until around about now—late October-November. It has an industry impact; it has a returns impact. We probably have the least impact on what the premium is going to be. Clarity or early clarity is really out of our control. It is a bit like your rates notice: it just arrives and you pay it.

CHAIR: 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 this would assist the committee's deliberation. 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 11.45. You are welcome to observe these proceedings from the public gallery. Beth, if I can ask you to make sure that you pass on that information that you wanted to pass on. If anyone else who did not quite get to the end of their opening statement wishes to pass it on, feel free to get that information to us and any other additional information between now and 23 November.

Proceedings suspended from 11.31 am to 11.48 am

ANDREW, Ms Sophie, Senior Policy Analyst, Chamber of Commerce and Industry Queensland

ANGHEL, Mr Mark, Assistant Secretary Services, Queensland Teachers Union

BEHRENS, Mr Nick, General Manager, Advocacy, Chamber of Commerce and Industry Queensland

DREW, Ms Rachel, Representative, Queensland Teachers Union

FINLAY, Mr Brent, General President, AgForce Queensland

GALLIGAN, Mr Dan, Chief Executive Officer, Queensland Farmers Federation

JONES, Mr Donald, Chief Executive Officer, Marine Queensland

NASH, Ms Jennifer, Policy Officer, AgForce Queensland

NOLAN, Mr Dominic, Chief Executive Officer, Australian Sugar Milling Council

SANSOM, Mr Gary, Director, Queensland Farmers Federation

SWAN, Mr David, Manager, Commercial Solutions, Local Government Association of Queensland

TUCKER, Ms Cecily, Principal Adviser, Workplace Relations, Australian Industry Group

WARREN, Mr Peter, Manager, Industrial Relations, Australian Sugar Milling Council

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 MP, the member for Murrumba; Mr Ian Kaye MP, the member for Greenslopes; Mrs Freya Ostapovitch MP, the member for Stretton; and Mr Mark Stewart MP, the member for Sunnybank. The members of the committee who are unable to attend the hearing today are Mr Ted Sorensen MP, the member for Hervey Bay and 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 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. 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 the comments through me. The committee has agreed to accept supplementary material subsequent to the hearing should you feel that this would assist 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 hearings.

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 yourselves of that opportunity. So, first off, the Australian Sugar Milling Council, please.

Mr Nolan: As the body representing 99 per cent of raw sugar produced in Queensland, our comments will go largely to policy and strategic matters rather than specific individual cases, but we are happy to delve into that where it is appropriate. We have made submissions in the past to WorkCover and workplace health and safety inquiries. We do not resile from the theme of those previous submissions around the introduction of a common law threshold of 10 per cent or 15 per cent for whole person impairment, improving rehabilitation and return-to-work processes and imposing caps on common law damages.

We today would like to emphasise, like others, our aspirations around improving safety and WorkCover performance. We would like to emphasise safety performance as our key goal and reducing the incidence of issues actually going to WorkCover. The line that I think we use in our submission was to avoid the need to use WorkCover by emphasis on processes to reduce workplace accidents or illness. We note that Dr Blackwood from Workplace Health and Safety Queensland and Mr Hawkins, the WorkCover CEO, also had similar sorts of themes in their evidence to this inquiry. We advocated as an industry the working together of the three key agencies, WorkCover, Q-Comp and Workplace Health and Safety Queensland, as a critical relationship. An example we emphasised was the need around education and information to introduce programs to raise—

CHAIR: Thank you, Dominic. We do not have time for your example at this point, but you might have an opportunity later, or after the meeting feel free to give it to us. Marine Queensland?

Mr Jones: Our organisation represents the recreational and light commercial marine industry in the state. It is a fairly broad church that encompasses everything from the property sector through to the manufacturing and retail sectors. Our focus and area of interest relates primarily to the manufacturing sector. Recreational boatbuilders in Queensland is a significant part of the industry—both in Queensland and nationally. Eighty-five per cent of recreational vessels built in Australia come out of Queensland and, within Queensland, predominantly out of South-East Queensland.

We have a particular issue of concern relating to that aspect. The industrial classification for boatbuilding, unfortunately, does not discriminate between a small recreational vessel like a tinnie and a large ship. As a result, one of the by-products of the calculation of premiums is that the risk factor, which that classification introduces, makes premiums extremely expensive for small enterprises. We are happy to provide further evidence and discussion on that point. Thank you.

CHAIR: Thank you very much. The Local Government Association of Queensland, please?

Mr Swan: I would just like to clarify at this stage that the LGAQ is probably wearing a couple of hats throughout this process. We are the representative body for local government in Queensland. So we represent them as an industry association but local government is also a major self-insurer, with almost all Queensland councils being self-insured either through the local government group scheme or on an individual basis. Thank you.

CHAIR: Thank you. The Chamber of Commerce and Industry Queensland?

Mr Behrens: Queensland's workers compensation framework is acknowledged as performing well, yet businesses are of the view that it remains heavily skewed towards claimants. Queensland employers feel strongly about workers' unfettered access to common law, with claim numbers continuing to be 40 per cent higher than just five years ago. At present, there is little incentive for employers to invest in training, improve processes and upgrade plant and equipment as there is a poor return on this investment with no commensurate improvement in premiums. Employers are liable for claims relating to pre-existing injuries or injuries sustained in other activities or an individual's life. Queensland employers do not have control over the health and safety of employees when travelling to and from work, yet are indirectly liable through premiums paid to the scheme. Queensland's no-fault scheme undermines employee responsibility for their own health and safety. These elements are examples that are either unjust to employers or a luxury that our state can no longer afford as other states have already decided.

This inquiry has an opportunity to restore balance to the scheme that was overlooked by the previous 2010 inquiry. A more balanced workers compensation system would greatly enhance Queensland's competitiveness, benefiting both employers with improved viability and employees with secure employment and inevitably greater opportunities. Thank you.

CHAIR: Thank you. On to the Australian Industry Group, please.

Ms Tucker: I refer to our submissions as previously provided. Queensland business and industry consistently identify workers compensation as a key area of concern and it is a very important part of the regulatory landscape. We note that there is quite significant overlap with other industry associations, so we will not belabour those points.

We share the view of others, though, in relation to the importance of introducing a threshold for common law claims and maintaining reasonable premiums to ensure that Queensland businesses remain competitive. As we have a membership of some 2,000 members employing approximately 30,000 personnel across Queensland and we on a daily basis assist our member employers with claims and

advise them about their rights under the scheme, we have a unique understanding of employer concerns along with a detailed knowledge of the scheme. I personally sat for two years as Ai Group's nominee on the Q-Comp board. Our workplace relations team is very much at the coalface in this context on a daily basis. I would like to focus on a couple of key issues, one of course being that—

CHAIR: I am sorry, Cecily, we are very tight on time. We have come to the end of your minute and a half, but I am sure there will be opportunities for you to talk through the proceedings or, if not, please make sure that we get that material that you have there. Queensland Farmers Federation?

Mr Galligan: I am here today with the director of our board, Gary Sansom, who is also a chicken meat producer in South-East Queensland. I will not belabour some of the existing points that a lot of the other industry groups have made, which are very consistent. In terms of our submission, we represent what is commonly known as the intensive agricultural sector in Queensland. AgForce will probably reflect upon the broadacre sector as well.

The two points we make is essentially that rural businesses need to have the scheme recognise the unique nature of the businesses that they operate, both in terms of the risk and their return-to-work procedures and also we need to see a change to ensure that investment in premiums actually goes back to mitigating those risks. At the moment we are paying into the scheme but there is not necessarily investment back into the risks. I will leave it at that and let you get on with the rather large panel.

CHAIR: Okay. Thank you very much. AgForce?

Mr Finlay: AgForce represents the broadacre industry group—the agricultural industries of beef, sheep and grains. I have just a couple of points. I support the comments by QFF. I will leave them out. There is a need for a strategy of education and awareness about workplace health and safety between WorkCover and agriculture. We need to work on that. I also want to highlight a couple of things. One is the definition of contractors and workers. That confuses a lot of our members and then they learn to their detriment that they are not the same. Also, the term 'light duties' and what that means in agriculture: in broadacre agriculture, most of the duties are heavy duty—very physical duties—so light duties does not apply. Also the financial sustainability of the scheme is a concern. Thank you.

CHAIR: Last but certainly by no means least—and I apologise for the mix-up with your letter—we will hear from the Queensland Teachers Union.

Ms Drew: I am a solicitor for TressCox Lawyers, representing the Queensland Teachers Union. The brief submission that we wish to make today is that each of the witnesses here today presenting their views are certainly presenting them from a particular angle. We represent the workers. We are well and truly outnumbered here in terms of workers representatives in this particular session, but we do represent well and truly over 43,000 members and voters in this state, all of whom are very concerned about their right to access a fair, just and equitable system of workers compensation for people who are legitimately injured in the course of their employment.

The 2010 reforms are continuing to reduce claim costs, continuing to reduce particularly common law costs and will continue to have that effect for at least another 12 months. That needs to be borne in mind when considerations are given to things like thresholds, which will absolutely exclude a huge number of claimants who are otherwise deserving and who will otherwise have to rely on government handouts of some type if there is not a workers compensation scheme. So our primary submission is that consideration needs to be given to the basis on which workers compensation was introduced in this state and to the very need for it and not undermining that by imposing arbitrary thresholds. Thank you.

CHAIR: Thank you very much. The short introductions are very much appreciated. Let me assure you all that we are here for an hour and 18 minutes, so we will be departing here at 1.20 pm. We have added the five minutes we lost at the beginning to the end. We will give you all ample opportunity to answer questions. Once again, apologies to the Teachers Union. The list of people in the previous session that we meant to have you in was far more balanced, if I could say that. But I am sure that with 43,000 members you will be able to fight above your weight amongst these people. However, it is not a fight; it is a matter of us asking you questions and you giving us information so we can absorb it, take it back and consider it as part of the overall process.

You will be well heard today. You will also have an opportunity to give us any supplementary information that may come out of today. You will also have an opportunity to give us any further written submissions that you think may help us in our deliberations. So it is a very open hearing. It is a very transparent one, and we are determined to get it right as best we can for the workers of Queensland and the employers of Queensland. So be assured of our undertaking in that regard. I call the member for Mulgrave to start the questioning.

Mr PITT: I want to reiterate the chair's comments in relation to what this inquiry is about. It is about ascertaining information. It is part of a review process that happens every five years. The committee has not drawn any conclusions as to what its recommendations will be. I think it is important to note that this is an open process in that regard. I think along the way you will get an opportunity to talk about the strengths and weaknesses of the overall scheme. We might leave that towards the end—maybe a wrap-up might be a way to do it.

I want to specifically talk about journey claims and the fact that there are different definitions of journey claims between jurisdictions and that can sometimes be a disadvantage particularly to national employers in terms of going between those jurisdictions. My questions are related to getting feedback on

what the views are in terms of the current definitions in Queensland. Are there any suggestions about how that definition could either be further tightened or broadened to benefit Queensland in terms of journey claims under the workers compensation scheme? It is an open question to all witnesses appearing today, and I do thank you all for taking the time to be here with us.

CHAIR: Who would like to start things off on journey claims? Is it a burning issue for you, Rachel?

Ms Drew: I do understand that each different state has a different attitude to journey claims. Overall in Queensland though, even though they do make up I think from memory it might be nine per cent of claims, the system is still performing financially very well even with the 'burden' of journey claims. So I think the attitude is that perhaps if there is to be any tinkering around journey claims—whether there is to be any reduction in terms of you need to be on a direct journey between work and home, excluding stopping to pick up the kids or stopping to pick up things at the shops, that type of thing—again I do not think there are any statistics around what sort of saving that would create for the government. So our submission on the journey claims is that, even though they have a percentage of their own which is not insubstantial, it is still not affecting the overall financial performance.

Mr Behrens: It is very important to recognise that Queensland is a decentralised state with many employees having to travel significant distances to their place of employment, and I think that was a point very well made in your hearings in Mackay. Indeed, the chamber recognises that there are unique circumstances relating to some industries that would certainly warrant the retention of journey claims being covered by the scheme. However, we go on to highlight that Queensland now is the only state that continues to have journey claims in its entirety covered by the scheme. The point that we make is that employers continue to be indirectly impacted by journey claims being covered in that in an overall sense it relates to the solvency of the scheme and premiums are used to shore up the solvency of the scheme. So the final point I would make in relation to this issue is that employers in the main have very little capacity to influence outcomes in relation to journey to and from work, and accordingly we do not believe it should be covered by the scheme.

Ms Tucker: Our position on this is that journey claims or recess claims are notorious in terms of being contentious and sometimes vague. Therefore, our position is that there should be more rigorous investigation of them particularly where there is a possible exposure to abnormal risk. Certainly our anecdotal evidence is that that sort of rigour in relation to investigation of these claims is not apparent.

Mr Anghel: As a supplementary to that, I do not think anyone would mind more investigation in all forms of WorkCover claims. The amount of investigation has changed quite dramatically. It is very limited almost to the extent that we say no instead of yes. When we look at journey claims and we look at teachers in outback Queensland, a lot of them live on farms and travel to and from schools. Some of those roads are really not of a great standard and we would have real concerns that a worker travelling from their home to a place of work where through no fault of their own the infrastructure is not as good as maybe in the south-east corner would not be covered by a WorkCover claim.

CHAIR: If there are no further comments, I will go back to the member for Mulgrave.

Mr PITT: That is a fairly good segue to the next question. I talked earlier about the overall strength and weaknesses of the workers compensation scheme. I represent a seat in Far North Queensland called Mulgrave. So I am from regional Queensland and I am very interested to hear from all witnesses today about anything specific to regional or rural Queensland, not just in regard to journey claims but in regard to the broader scheme—what could be improved, what is actually working well and how are the service delivery aspects there from WorkCover itself and its locations in regional Queensland and rural Queensland? It is a fairly broad question, but I am very keen to pick up on that rural and regional Queensland aspect which may not necessarily be picked up in today's hearing otherwise.

Mr Anghel: As we said, we have 43,000 members and our members are across the state—even in the smallest country towns and in the most remote areas there are one-teacher schools where you will find only a school basically. With the regionalisation of WorkCover falling under one banner, I think from an educational point of view we are dealing with one office now. It is based in one area instead of being in separate areas as it used to be. I think there is a greater understanding of a particular industry. That is our view, that they have an understanding of the education industry. They are working in that climate. So I believe that from our perspective there has been an improvement putting it under one area. It is difficult though for regional Queensland, but I think as a whole regional Queensland is always going to have those problems. But we believe that centralisation with specialisation, with someone looking after and dealing with those claims, has helped our members and WorkCover to get a satisfactory outcome.

Ms Nash: With regard to rural and regional issues, in rural areas we have a lot of casual workers who are not career agricultural workers. They come in and out. They might work for two or three weeks at a time. I think essentially the question is: what policy or process does WorkCover have if there is a claim, if there is an injury, when an individual undertakes a casual role for a defined period of time and that work is not their usual work? At the moment WorkCover is trying to get those people back into that rural role. It is not a suitable duty to go back into. It is the intention of the scheme to provide effective return-to-work programs, but it is very difficult in a rural setting to provide a return-to-work program and return to suitable duties. Suitable duties need to be tied to the employee's experience and skills and generally those skills are not centred in that rural industry.

There are a lot of casual workers, workers who are just taking a journey of sorts, having a life experience. AgForce has done a survey which we can provide to you that shows that around 85 per cent of workers in the rural industry are casual workers. That is a big impost for us when there is a claim and then weeks and weeks later WorkCover is still trying to get that person back into the industry. Clearly at the outset it should be identified that there are no light duties generally especially in broadacre agriculture to put these people into back on the properties. I think it is a time period issue. It would be three or four months of going between WorkCover and the employer establishing that the worker is not able to come back. You need to establish that at the beginning, find a host employer, find suitable duties to rehabilitate the worker.

I think it is also very important to educate at an industry level—education, information, training and help with management of claims. We really need to get out there with people in regional areas and educate them, particularly in regard to the worker-contractor definition. That is a particular issue for us. People need to understand what that definition means and how it works so they can properly cover their workers. We also need to help them attain skills, skilling people to competently and safely complete work tasks on rural properties.

The other thing is that it is very clear in the information given what an employer and what an employee need to provide to WorkCover during a claims process. What is not clear is what WorkCover has to inform the employer about an employee during a claims process. I was trying to access the WorkCover service charter and found that that was inaccessible to me without applying for that under the Right to Information Act. I think that is a significant issue. Employers and employees have a right to know what they should expect from WorkCover during a claims process.

Mr Warren: The member who asked the question would be well familiar with the sugar-milling industry and the very nature of our industry in that its characteristic is rural and regional in almost every case. The area that we are most concerned about is the issue of finding medical expertise when you have an issue. A worker becomes injured in the workplace and the local GP has a bit of a view about the injury but, from the anecdotal evidence I get, will often just run with the worker's comment about what they think is wrong with them. That in fact becomes the basis for the claim. Often the injury might only require a week off work. So a week is given and we in fact carry that cost. But a week is given and nevertheless it is on the record. So the problem is in that sense.

The other problem is in getting the expertise—and this issue has been covered off by Ms Nash—in the medical profession locally to understand how you can reasonably fit the worker back into the workplace with the injury that they have for the purposes of rehabilitation, and we are committed to early rehabilitation if we possibly can. The anecdotal evidence is that some workers will get away with a claim that may well go into compensation because we hold a view that the doctor was not able to adequately assess the workers properly. Anecdotal evidence that I received yesterday coincidentally was that a worker injured themselves on a motorbike over a weekend. They came to work Monday morning, struggled through part of the day and said, 'I sustained an injury.' It might well have been legitimate in that the injury had been exacerbated by being at work. It was not until the company tried to rehabilitate the worker that they got expert medical attention for the worker and it was discovered then that the injury was not consistent with something that happened at work, and in fact the worker said, 'I did injure myself on the weekend on my motorbike.' We would not have got that evidence otherwise.

The hope—and we are optimistic about this and I think it will work well for us—is that we will be able to work with WorkCover, particularly now that WorkCover is not working in a regional sense but working in an industry sense, and have them begin to understand what the issues are and we will be able to work with WorkCover to be able to produce satisfactory solutions to the sort of example that I have just raised.

Mr Galligan: Very briefly, I just want to lend our support to the last couple of comments. In relation to the initial question, what I think is going to work better will be having industry specialists to look at some of these difficult foundation questions from an agricultural and rural perspective, and I think that is starting to assist. The challenge is to make greater incentives for WorkCover to do that which requires investment so that we are not looking at this in a couple of years time and saying, 'We are not emphasising prevention. We are still worrying about how the scheme can actually assist.' The problems that have been raised in the few examples today have been there forever and a day. I do not think we will ever have enough money put into getting people back to work. We need to put more emphasis on and have incentives for prevention mechanisms.

Mr Swan: Just from the rural perspective for local government, as has been mentioned, the primary issue for regional and remote councils is access to medical facilities, be it GPs or the local hospital, that those practitioners and the hospital are aware of workers compensation issues and are responsive to return-to-work efforts. I think it is a fairly similar issue as has been raised. Our key issue in those areas is access to responsive medical treatment, medical services.

Mr Behrens: Back in the 2010 inquiry, one of the overwhelming messages that businesses were providing to that inquiry was the need for WorkCover to deliver efficiencies in its operations. The chamber would like to make the point that tension exists between providing services that are commensurate with expectations in the regions and from industries and achieving efficiencies through centralisation of office arrangements. I guess it relates to finding a balance between meeting the outcomes of those industries and areas of Queensland but at the same time ensuring that WorkCover is continuing to deliver an efficient scheme that has bang for its buck.

Ms Tucker: I would like to add a couple of points. With regard to the need sometimes to find host employment, the point that has to be made there is that that adds to the cost of a claim for an employer in terms of the pain that is passed down. I would also like to make some comment on the issue of causation. That is just an ongoing problem for many employers where there is some doubt about the actual cause of the injury given the speed often with which claims are accepted on sometimes quite tenuous medical evidence—simply self-reporting. That then puts an employer on the back foot and necessitates Q-Comp reviews and engaging medical experts and other experts to have a look at those issues. Our position is that there should be more accountability and responsibility on the part of individual workers, and certainly again there is the issue of more rigour with regard to investigation of those issues. As I said earlier, the host employment issue sometimes cannot be avoided but it does become an extra cost.

CHAIR: There being no further comments on that matter, I call the member for Stretton.

Mrs OSTAPOVITCH: Would you be able to advise the committee as to what you think the strengths and weaknesses of the existing system are and if you have any industry specific concerns that you would like to see addressed by the committee?

Mr Jones: We have an industry specific issue that we are quite concerned about which goes to the issue of how premiums are calculated for boat manufacturers. The national industry classification for boats covers a very broad range of craft—everything from a small tinnie right through to a large commercial ship. Obviously the manufacturing risk profile associated with the manufacturing of a ship is significantly different to that of manufacturing a small craft. Large ships obviously have risk factors like working at heights, working in confined spaces, working in dangerous situations with electrical equipment and so on; whereas when you are manufacturing a boat hull or a tinnie the risk profile is significantly different.

At the moment there are about 20,000 small craft that are manufactured in Queensland, some of which are exported overseas. Within the manufacturing sector in Queensland, one manufacturer which the chair would be quite familiar with manufactures about 12,000 vessels and there are about 40 to 50 other small manufacturers who manufacture the balance of those small craft in Queensland.

To give you a tangible example of the impact of what that might mean to a small employer, there was an employer here on the bayside who manufactures small recreational fishing vessels, literally tinnies. His premium, if he were to only manufacture the trailer on which the tinnie is carried, would be a factor of one-third of his current premium. Because he manufactures a tinnie which is defined to be a boat, and because of all the risk profile that is built into that classification and the calculation of the premium, his premium—and this is a small employer who employs 10 employees—is in excess of $25,000 a year. So that is a significant impost on that type of business within the state.

So we raise that issue as an industry specific issue but, notwithstanding our submissions to WorkCover, the reason given that it could not be changed was the national industry classification. To get the classification changed because it is a national classification is a long and significantly complex process. So we point that out as an anomaly within the way premiums are calculated and that they really are not reflective of the true risk profile for the majority of recreational craft manufacturers in the state.

CHAIR: Thank you. Just before we go on to the next witness, I just take the opportunity to say that the biggest marine expo in the Southern Hemisphere will be held this weekend in the state seat of Coomera. All sorts of boats and other paraphernalia will be available Friday, Saturday and Sunday. If you need any information, come and see me. That is a plug for the industry. I hand over to Rachel.

Ms Drew: I think one of the strengths from the perspective of the worker is in fact the claims processing of WorkCover teams. They are very quick. Decisions are made within the appropriate time frames under the act—less than a month. There was a time when a worker would have left work, been on sick leave for a period of time, done all their rehab and been back to work six months before WorkCover came up with a decision. So I think there is a strength in the process of WorkCover at the moment.

I think there is a weakness in the training provided to WorkCover. The reasons for decision that are issued by WorkCover are extremely important for all parties to understand the basis on which a decision has been made. I think often employers and workers are left wondering how a particular decision could possibly have been made and the reasons for decision do not explain it. For example, we get a number of decisions each year where we will have a teacher who has been bitten or kicked by a student and they just want to get the GP bill and the hepatitis shot covered by WorkCover, and they will receive a decision which says, 'Well, you were acting in the course of your employment when you were bitten. We cannot find any unreasonable management action and therefore we are going to reject your claim,' which is clearly wrong.

There needs to be a focus on those reasons, not just as a simple tick-a-box process—'Yes, we have issued our reasons for decision'—but also looking at the skill and the quality that goes into those. I compare that to Q-Comp which I think is a great strength of the scheme. Q-Comp has a separate entity independent from WorkCover. The quality of decisions that come out of Q-Comp are excellent. We do not always agree with them but the quality of the decision itself in being able to understand the legislative basis and the reasons for the decision is very good.

Ms Tucker: I would just like to endorse Mr Jones's comments about some of the anomalies with the WIC codes. That has certainly been the experience of our membership. I am thinking of one particular example—for instance, the Concrete Sawing and Drilling Association and their membership. They have serious issues with the very generic classification of their membership under concreting and building.

There is also another concern that we specifically have with regard to businesses that go through a growth spurt and maybe a significant management change and a change of their main business activity. They often inherit from their previous history, when they were smaller and less dynamic maybe, a claims history that comes back to bite them in terms of the calculation of their premium. We have recently had a very graphic example of that when one of our members was presented with something like an $800,000 premium bill for this round relating to a common law claim back in 2005 simply because they are still the same entity but they have fundamentally changed their business and their whole profile. But the way the formula is applied it has this magnifying and very disproportionate effect.

Mr GULLEY: I have a question for both Cecily and Don. You have raised an issue about industry classification. Do you have any suggestions for a solution to that—not only whole of business but I understand sometimes one entity can often fall within two classifications?

Ms Tucker: I think that has been an ongoing issue, but what I was focusing on with my example was the primary business activity. It is very difficult. We have looked at that recently and we have looked at it, to their credit, with WorkCover representatives as well. However, because the current codes are informed by the ANZSIC codes and you drill down to look at what is the fundamental basis of the Queensland codes, the limitations in effect of those codes have been passed on. So there really needs to be a quite substantive review and it has to go back as far as that, because that is the basis on which they are determined. But there certainly is an issue where you get industries that do not quite fit. So you find the closest fit and sometimes their position is that they are carrying a risk profile that they feel is manifestly unfair.

Mr Jones: Core to the concerns of our membership is the complexity of the formula used to calculate premiums. I field inquiries from small manufacturers totally mystified as to how the former is calculated. We have done a couple of case studies with individual manufacturers who are under significant duress, and I have to say it took us a good number of days to sit down and dissect the formula to find out where the problem was. We ended up with a problem where when we engaged with Q-Comp it was like, ‘Oh well, it is out of our control. That is tough,’ in effect. It is not only the classification but that is clearly a cause of the issues that we have been raising. I would also suggest the complexity of the formula is not conducive to enabling employers to sit down and understand what it is that they are actually paying for.

Mr Behrens: As the committee may be aware, we have extensively surveyed our members both as part of this inquiry and the 2010 inquiry, and one in three members have expressed concern over their industry classification largely relating to the fact that they do not feel it accurately reflects the risk profile and the business activity they are undertaking. They have gone on to make recommendations as to perhaps how this situation can be addressed. The chamber does not yet have a view on whether or not it is appropriate for Q-Comp to determine the industry classification, but that is certainly one of the solutions put forward by our members.

The second one is a rolling review of the industry classification. Again, it would not be unreasonable in terms of resourcing to have a particular industry reviewed periodically on a rolling basis. They are two recommendations that our members think have relevance to this issue.

Mr GULLEY: I have a question for Nick. Do you have existing businesses—one legal entity—that fall within two different risk profiles? How is that treated and are there improvements?

Mr Behrens: I am just reading an example that was provided to the chamber, and it was in the area of surveying and mapping where survey and mapping can be done in the office or outdoors and each of them have differing risk profiles. Accordingly, it is very difficult to come to a meaningful determination for that business or industry.

CHAIR: Does anyone have a solution for this? The member for Murrumba was looking for a solution, that was all.

Mr Finlay: I have a comment on what Nick has just raised about having a revolving review of industry by industry because all our industries are so different. We would certainly welcome the opportunity to be part of that.

Mr KAYE: I would be very interested to hear the specific views of people on the strengths and weaknesses of return-to-work plans. I am not particularly trying to single anybody out, but I am interested in hearing from the QTU on the experiences of their members, in particular, and anybody else who would like to comment.

Ms Drew: We find the return-to-work process is conducted quite well by WorkCover. The scheme overall has something like a 97 per cent return-to-work rate, which is absolutely gold star and should be the focus of any workers compensation scheme—to provide the scaffolding around how you get an injured worker back to work. We have the opportunity frequently to compare a worker in the WorkCover system and their experience of return to work with a non-WorkCover teacher, for example, who has had an accident at home. Comparing the return-to-work progress of the two is apples and oranges. The WorkCover teacher is back at work much faster, starting on a graduated return to work much faster than the person without the WorkCover support. They seem to progress to the end of their plans much more quickly than someone without WorkCover support does and they get the right input as well into the program, which is obviously reflected in that 97 per cent success rate. We find the return-to-work process is done very well.

Ms Tucker: I would like to make a comment on the return-to-work process and refer to our submissions specifically in this regard. Our membership has some serious issues with secondary psychological injury claims which overlay a primary injury claim and the prevalence with which we are seeing them and the effect they have on return-to-work plans, because effectively they make it almost impossible for an employer to fulfil their rehabilitation obligations or to even challenge, because they have no separate life apart from the initial injury. We have quite serious issues with that. We see that as a very significant impediment at times to effective return to work and obligations being observed.

We have no issue with the 'return to work assist' program that Q-Comp runs. We think it is a brilliant program and it is very effective, but we also have some issues with the 97 per cent reported return-to-work rate—the statistic—because certainly our reports indicate that that probably applies to return to work generally but not necessarily to return to work with the actual original employer. The impact of what we view as the sabotaging effect of a common law claim damages the prospect of returning to work with the original employer, and we want to see more statistics in terms of returning to work with the original employer, not just within six months but maybe within a year as to whether return to work is sustained in that context. Because as far as we can see we are not getting that feedback at the moment.

CHAIR: I have a supplementary to take you up on what you have just said, Cecily. From an employer perspective, though, wouldn't it be difficult for them to hold a position for someone for an extended period of time given that they are in business and therefore need someone to take on that role?

Ms Tucker: There is an obligation under the Workers' Compensation and Rehabilitation Act to keep a position open at least for 12 months from the date of the injury.

CHAIR: I am just challenging what you are saying because we need to flesh that out. You are using the 12 months as an example but beyond 12 months I am wondering where that would leave employers if they were compelled to hold a position for an employee.

Ms Tucker: At the moment, technically speaking, and subject to other exigencies like workplace health and safety risks, deployment of an injured employer to host employment, for example, during that time because they do not have appropriate, suitable duties that they can safely provide an injured worker, most employers are keen to get an injured worker back to work. But their experience is that within a very short time with many injuries workers today have already taken legal advice about their common law claim prospects and that relationship gets sabotaged very early in the piece, sometimes within the first month and that is a reality. Having to comply with your obligations under the act is sometimes very difficult for an employer who might have the best will in the world. Put an overlay of a secondary psych claim on that and sometimes you can never get someone back to work. It ends up extending and extending the claim to the point where the whole thing just breaks down.

CHAIR: Nick, you had something to add?

Mr Behrens: Firstly, WorkCover is often criticised for various reasons, but the 'return to work assist' program is a glowing example of where it is stepping up and where its service offering has improved in recent years. Secondly, I think it is recognised by all parties that early return to work is in the best interests of both parties, both the employer and the employee. CCIQ wishes to highlight the voluntary nature of the return-to-work program. New South Wales has recently moved to introduce work capacity assessments and has really started to clamp down and provide more incentives for the employee to return to work. I just bring that to the committee's attention as you may wish to look at the changes that occurred in New South Wales.

Mr Finlay: I support Cecily's comments before; I think they were very good. In agriculture there is a return to light work. The nature of a lot of agricultural work is heavy, physical work. Therefore, if you have someone going back to work, you have to find light work for them to do, which is problematic in a lot of cases, but you also have to supervise them to make sure they do not drift off into heavy work which is what they were doing previously, so that is problematic.

Mr Swan: Local government has a very strong focus on return to work. The primary hurdle that we often run into is the approach of some medical practitioners—I will not say all, just some. That is improving through education but I think there is still a lot of work to be done there. The area where it is not working in return to work is with psychological claims. I would say that is effectively broken because the typical medical management of those claims is completely contrary to the normal objective of getting a person back to work. I think that is reflective of the fact that a lot of those claims really cannot be effectively managed through the workers comp system. They really should not be there.

Ms Drew: I just want to respond to a couple of things. I do not think the statistics prove the suggestion that the prospect of a common law claim damages a return to work at all. I do not think too many people would be concerned whether that 97 per cent is a return to the original position or the original job or whether it is a return to alternative employment. A return to work is a return to work for most people.

I will also comment on the holding of a position for 12 months. That is an extension on other entitlements that workers have. For example, for a non-WorkCover injury you are entitled to be off for three months and your employer has to hold your job for that period of time. So it is an extension on that, but it is also in a system where the worker and the employer both work with WorkCover to accommodate the return to work of the worker. It is not as though WorkCover says, 'Right, we have a certificate. That person is back in tomorrow.' They work with the employer as to whether they have a contractor sitting in that role or how they have gone about covering that role.

With regard to the comment that it is voluntary for the worker to participate in a return to work, it is voluntary in the sense that no-one is going to drag them back to work, but it is not voluntary in the sense that if they do not participate the very minute that WorkCover tells them to their benefits stop absolutely.

Mr KAYE: Directly to the QTU, I would imagine that probably one of the injuries that teachers would suffer would be psychological injuries, considering some of the places that they have to work. Do you find that the return-to-work plan does work sufficiently for those psychological cases?

Ms Drew: Psychological injuries are a substantial issue for teachers arising from a whole range of things—assaults by students, bullying, harassment issues in the workplace and the remoteness sometimes of communities that they are working in. The return-to-work process is probably slower for a psychological injury than for a physical injury. There is a need for greater medical involvement in a psychological claim. There is a need for a psychiatrist or a psychologist—someone of a specialty—to provide input about the speed at which a person needs to go back to work. So it is a more complicated process. But in terms of outcomes, I think the outcomes for returning to work from a psychological injury are good undoubtedly. Again, the statistics show that a psychological injury is likely to be a claim that is open for longer than a simple physical injury, but at the same time about 60 per cent of psychological claims are rejected from the reasonable management action basis. So even though they are potentially open for longer, the ones that get accepted are the ones that are probably more deserving of the compensation than others. So I think it still works so long as there is that ongoing medical involvement in the plan.

Mr PITT: Just following on from Ms Drew’s comments, I was formerly the minister for mental health in this state and I have to say that it concerns me—and I hope I did not hear you wrongly, Mr Swan—that it sounded like you were suggesting that psychological claims maybe do not fit within the workers compensation scheme. If I am incorrect, please let me know. That would worry me, because this is something that we have to be embracing and bringing more specialist assistance in rather than excluding it and putting it into a separate category. But that is not my question; I will have another question in a moment. Please feel free to respond, if you like.

Mr Swan: Our view is that there are certainly some psychological claims that do not belong in the system, because the major cause or originating factor of the problem is not work related. The work related component is probably a small component, which is probably just enough to get it through the door of the workers compensation system but because there are so many other factors involved the workers compensation process really is not equipped properly to deal with all of those other factors—and nor should they, because they are not work related. So there is this very unfortunate and very difficult to manage mixture of work related issues and non-work related issues.

What we are saying is that there are some circumstances where the non-work related issues are the predominant issues and they need to be dealt with through some other sort of mechanism, because our experience is that trying to deal with that mix when there is that predominant non-work related component just does not really work in the workers compensation setting.

Mr PITT: With respect, I would suggest that you are talking about the overall wellbeing of a person at work. That relates to productivity. That relates to a range of different matters. Again, I would like to make sure that the record is stating from my point of view that that is something that we should be building, not trying to separate out, because you cannot separate that out. That also goes sometimes for physical injuries—not only those injures relating to someone’s mental wellbeing.

CHAIR: Member for Mulgrave, just hold on. We will just go to Nick now and try to finish off on that aspect before we come to your questions.

Mr Behrens: Mine was just a clarifying remark from a statement given earlier. Yes, there is provision for WorkCover to direct an employee to return to work, but one of the employer frustrations with that provision is that it is never actually enforced.

Mr PITT: In a previous session this morning we heard from the Australian Meat Industry Council about how they were able to reduce their WorkCover premium by 50 per cent and that they did that through a range of different approaches. Given that they are one of the most high-risk employers in terms of workers’ safety, I thought that was quite a good outcome. What I was interested to hear about was from the point of view of being peak bodies representing particular industries or occupations or sometimes also representing individual workers as well. What do you as a collective group in particular industries or representative areas think that you can do to assist in terms of reducing premiums for the people you represent? This is obviously a process about government and this legislative process, but it is also about making sure that the whole system works and that it is a shared responsibility. I was just interested to hear feedback from the witnesses here today in that regard.

Mr Finlay: We have 6,000 members across the state and we regularly communicate with them about workplace health and safety issues and their responsibilities through that. In my opening address I talked about coming together with WorkCover and Workplace Health and Safety Queensland to form a strategy with agriculture. I know as an industry we have probably been dragging the chain somewhat and we need to work on that and address those issues. We deal with a lot of large animals, not always quiet, and also in very remote locations and under a lot of extreme conditions. So it is problematic, but we need to work as an industry to address it.

Mr Behrens: Queensland employers require some incentive to invest in plant and equipment, in process and in training that ultimately delivers improved workplace health and safety outcomes, because indeed the workers compensation system is secondary in nature and the emphasis really should be on ensuring that accidents do not occur in the first place. Employer frustration exists that there is a decoupling, or a disconnect that exists between employers investing in process and training and plant and equipment and an inevitable beneficial impact on their premium levels. Certainly, Queensland employers would like to see WorkCover tighten the correlation that exists between proactive initiatives and proactive investment and their ultimate premium levels. So I guess it would be less emphasis placed on their claims history and what those employers are doing to address the underlying issue and being proactive about doing it. Thank you.

Mr Nolan: I think the safety of our people in the milling industry is absolutely front of mind for all of our members. It is an area where we put in a huge amount of effort and time and investment—and rightly so. One of the areas that just recently we have started looking at is to work with WorkCover staff to look at industry patterns and safety performance across the milling industry. We have eight milling companies in Australia, seven in Queensland, operating 21 separate mills. It may not always be obvious in terms of industry patterns in safety performance to an individual company or an individual mill, but it might be more evident if we can get more information and work with WorkCover Queensland to identify safety performance pattern issues and areas where we might be able to invest more time and energy to address some safety issues, particularly also around education and information.

Our anecdotal evidence would suggest that workplace parties are not always aware of their civil liability provisions with a view to have greater worker understanding of their requirements and responsibilities under the act, particularly in the area of contributory negligence. We want to make sure of that. Whilst it has been in place since 2010, we do not think that a lot of the workers understand their obligations and their right to use safety equipment that is provided and to look at obvious risk where it occurs. So we are certainly spending a lot of time with our own people and we would like to see—again, this was one of the points that was raised earlier—those efforts through premium responses on an earlier basis rather than dragged out over a further period of time.

Mr Galligan: Just to build on that, I think most people would be aware that agricultural businesses are so diverse and that makes it quite complex, but we agree that prevention would be better than a compensation scheme in the end. But, in fact, we are going backwards. That is our fear—that the current trajectory is that we are struggling to find partners to work with rural businesses and industries specifically to assist them in implementing safe work practices and schemes associated with that.

The Queensland government now has, in fact, removed funding from Farmsafe Queensland, which did a lot of work on that. So as a sector we are trying to identify ways to do that and trying to find partners to assist us. One of our central arguments here is getting WorkCover to invest in that and do the things that Dominic has talked about, which is provide advice back to the sector about where the issues are. That would be most helpful. In fact, we stand ready to do it. We are struggling a bit to get traction with anybody else.

The only other comment I would make is to reference the fact that one of the issues that is clearly evident by some of the examples that are presented to us, particularly through some of the more diverse industries that we are represent—intensive animal industries and in horticulture—is that it takes a lot years and a lot of money to drive your premium down, but it very quickly goes up. That is the nature of insurance schemes generally, but we need to think of a way of managing that jump that does not put that business in jeopardy, because clearly, particularly for some rural businesses, as soon as that happens unfortunately with the thresholds and the profit margins they have that can actually close their doors, which is no good for anyone. We need to provide an incentive for WorkCover to highlight that for some sectors. Particularly, we have identified those and there are some other submissions to the committee that have identified some particular industries where one accident can put one business out and one business to close its doors. That is no good. So we need to identify them and have a trajectory to work with them that does not just jump up the premium and then cause a greater problem in the long run.

Mr Warren: The role that I am directly involved in and the industry organisation is the pivotal role between the industry, the members of our organisation and the agencies in this case, Workplace Health and Safety Queensland and WorkCover. There is good evidence of us working well and the agencies working well with us and WorkCover continuing to work closely with us and we will use that well.

The area that we would be wanting to focus on quite strongly is the area of culture in the workplace. There are some big issues with culture in the workplace. There is some investment taking place in dealing with the safety culture in the workplace and that is important for us, because our workforce is complex in a couple of ways. Firstly, we have a significant seasonal intake, which is often fresh faces who stay with us for only six months and go again and then the other is a workforce that is sometimes for life—people who have only ever worked in the sugar mill. There is a familiarity that they have and in both of those two extreme examples of the workers in the workplace there is a need to constantly improve the safety culture.

One of the points that we made in our submission is that, where a company has made a significant investment in bringing about improved safety in the workplace—making an investment in lean manufacturing systems or DuPont safety systems, for example—and where they get instant early results that those early results for the investment often are not rewarded instantly. You have to wait until the

premium improvement comes through. What we advocated in our submission—and I go to it again—is that if, in fact, something could be done to introduce earlier reward for early significant changes, measured, demonstrable changes in safety performance through investment in something like the programs just outlined, we would welcome that.

Mr Jones: We are of the view that the association has an important role to play with our industry in managing risk in these areas. To illustrate, the industry is overwhelmingly skewed towards small and medium sized enterprises and the level of sophistication in some of those businesses is not high, as is the capability. That is not a criticism of them; it is just a reality of the way they operate. To help mitigate and manage that risk for that sector of the membership, we believe there is an opportunity to try to systematise some of the procedures and processes around how the system operates.

I guess to illustrate, we have done that quite successfully on unrelated issues such as the application of the new Australian consumer law to businesses where we have been able to provide industry specific tailored forms, processes, policies, templates and those types of things which has certainly made life a lot easier for a lot of those enterprises. The level of understanding increases. The level of confidence, in that case, as to how they conduct transactions and manage risks associated with the regulatory framework significantly increases. We have also done that from an industry specific perspective relating to the management of workplace health and safety systems and we would see that this regulatory framework would equally fit within that systematised approach.

CHAIR: Would anyone else like to make a comment in that regard?

Mr PITT: I have a follow-up comment. I just wanted to say thank you for those responses. It is something that we are seeing as a bit of a recurring theme, particularly from the Chamber of Commerce and Industry's contribution, around incentives. Part of this process is also about innovation and looking at new ways—ways to build and improve the system. Obviously the other recurring theme that we are seeing relates to people aspiring for a zero-harm workplace and having a greater emphasis placed on education and prevention in the workplace. So I just wanted to say thank you. That was a very important question that I wanted to have answered by you all. Thank you.

CHAIR: Essentially, you are investing in a solution to the problem rather than funding the outcome of the problem.

Mr STEWART: A number of the submissions that have come in have called for the introduction of a whole-person-impairment threshold of, say, 10 per cent to 20 per cent for accessing common law claims. I ask for comment from the industry groups in the room as to what would arise from the introduction of a threshold.

Mr Behrens: Workers compensation premiums for Queensland you would regard as being a sustainable competitive advantage, but unfortunately premiums have gone from being $1.15 to $1.45 and Queensland now finds itself not being the lead state but the second state behind Victoria. That outcome in terms of the increase in premiums from $1.15 to $1.45 was largely seen as a result of the 2010 inquiry failing to address the issue of access to common law. Our members and businesses more broadly continue to highlight that unfettered access to common law is something that ultimately must be addressed. The chamber is not seeking to change the nature of the scheme. We are not seeking to move the scheme from being short tailed in nature to being long tailed. However, we are seeking to have implemented that those injuries that are minor in their nature be steered towards the statutory benefits pathway as opposed to the more costly outcomes achieved through the legal system.

Ms Drew: There needs to be a perspective on what 10 per cent whole-person impairment actually means. The percentages are based on a book which is about two inches thick, the Medical Association guides to the assessment of permanent impairment. The percentage impairment is a whole-person impairment, so it is all of the systems of the body from the psychological functioning of the person to every bone, their skin and every organ. The effect of that is that a person who gets a 20 per cent impairment, for example, is very substantially impaired. We are not talking about someone who has broken their leg. With a broken leg, you might be lucky to get a one per cent on something like that. Most psychological injuries, certainly within the teaching area, are between two per cent and five per cent. Some of those are people who have gone back to work. The two per cents tend to be those who go back to work. Frequently we will see people who get only a five per cent permanent impairment who will never work again because of some incident in their workplace.

The most common situation we will see is a teacher who has been attacked in some way or assaulted in some way by a student or a group of students who simply cannot walk through the door of a teaching institution. So they will never work again, but they get only a five per cent permanent impairment because that is the way that the system of medical assessment of permanent impairment actually rolls it down. So keep that in perspective in that you are not talking about a broken bone getting you 80 per cent. They are very small assessments of permanent impairment, so whatever threshold is set is going to be just arbitrary and that is what has been done in other states. I will make the point that over the years the Queensland workers compensation system has been quite responsible in managing those claim costs, so the average claim cost in Queensland is at a sustainable level.

With regard to the 2010 round of amendments, which was the last round of amendments, over time we have lost gratuitous care, you cannot get interest on anything and all of these sorts of parts of our benefits have been removed. The 2010 amendments resulted in an immediate reduction by something like

9.6 per cent in the cost of common law claims in the immediate following year. With common law claims you can make your claim three years after the injury. That decrease is going to continue for another year and then there is going to be a tail beyond that of claims lodged but not yet resolved. So I think that the comment that the 2010 reforms did not go far enough is probably not borne out by the statistics and it also needs to be borne in mind that the 2010 amendments are continuing to reduce both claim costs and numbers of claims.

Mr Behrens: Indeed, I do not wish to get into a to-and-fro with my respected colleague other than to say that in respect of the statistics they overwhelmingly continue to indicate that common law, in terms of its impact on the scheme, has not tapered yet. Individual claims may have tapered, but if you look at the sheer number of claims they continue to be in excess of 40 per cent from where they were five years ago. So CCIQ wishes to highlight that the sheer number of claims and the impact that it has on the scheme is costly. More importantly, the sheer number of claims means that WorkCover has more often than not no other option but to settle the claim without the scrutiny that it actually deserves. So there is this churn in terms of claims and the impact that it has on WorkCover. We believe that the implementation of a minor threshold—we are not seeking it to be significant—would largely address this issue.

CHAIR: Is there anyone else who would like to make a comment?

Ms Tucker: I just want to point out that presently the way the system works is that someone who is assessed at the closing of their statutory claim as having zero per cent is still entitled to seek damages at common law and to find their own assessment and to proffer that as the basis for making a further common law damages claim. So effectively the statutory assessment means nothing in terms of a deterrent presently, and that is of concern.

Mr STEWART: From the few who made those suggestions, is there maybe a suggestion at how that needs to be looked at and addressed?

Ms Drew: I would struggle to give you a suggestion as to how else you are going to do it. It is based on the American Medical Association guidelines for the assessment of permanent impairment, which have been around for a very long time. They themselves are constantly updated. I actually think WorkCover is an edition behind. I think WorkCover still looks at the fourth edition of the assessment of permanent impairment. There is a fifth edition that has been out for several years now. I think WorkCover could certainly come up with its own scales. It need not be attached to the American Medical Association guides. The WorkCover regulations do have a set of scales in them which over time have become more and more general. They were originally more specific in that, for example, a broken leg gives you X percentage. It is now a much more generalised leg injury and gives you a range rather than a specific. So that is an alternative—that is, WorkCover goes back to relying on its regulations rather than the AMA guides.

Mr Warren: Taking more of a helicopter view of the issue, one of the problems that we have encountered is that common law settlement is easy to access. In our case they mostly come back into the workforce and the settlement that the person receives is seen by some in the workforce as a reward for having got themselves injured. The other problem that we see with common law at the moment is that the injured worker does not get a very significant payout once other payments have been taken from the settlement that is offered and any process that gave the injured worker a greater percentage of the settlement would be encouraged by us.

Mr GULLEY: I want to look at the definition of 'worker' if we may as a group. The Attorney-General has asked this committee to consider the definition of 'worker' as part of this inquiry. Submissions received so far have been quite diverse, not only in what is the definition of 'worker' but also possible solutions. I particularly would like our agricultural sector to start off and whether or not it would have any implications on their definition of 'worker'.

Ms Drew: The only comment I want to make is that employers are used to dealing with different legislation treating workers differently. For example, you can be a worker for superannuation purposes but not a worker for WorkCover purposes. So in terms of having a specific definition in the act and the fact that it might be different from other definitions, I do not think that takes most employers by surprise.

Mr Finlay: We did not actually come up with a definition. I mentioned the confusion between the definition of a worker and a contractor. We have an example that we have given in the fencing industry in that you contract someone to do your fencing but as a pastoralist if you supply the posts then they all become workers and are no longer contractors. So, no, we did not actually come up with the definition but we would obviously like the committee to come up with something.

CHAIR: That is actually a very interesting one, isn't it, because I would say most people in the agricultural industry would like to supply the posts, because they have a few extra trees around, and then get someone to put them in the ground for them?

Ms Tucker: This is a particularly difficult definition when it comes to employers who have been audited by WorkCover. There is a retrospective audit in terms of their wages disclosure, and we see that again and again where going back through the books it is discovered that they have not disclosed subcontractors who they have not realised or believed were workers. So it can have a very significant impact financially on an employer if they are in that premium audit situation and it becomes quite distressing. Often the difficulty is that the contractors who are in question who are being scrutinised have the view that they are independent contractors and have not seen themselves as workers either, so it is a

shared perception. So it often comes with great surprise. The only way really to get around it is to only deal with contractors—workers—who have an interposed corporate identity, and that for many small trade businesses and so on is just not an option. But that is the only way that some of our employers have been able to deal with this because, particularly in the building industry and so on, it is really a problem.

Mr Sansom: I just wanted to support the comments that have been made. It is very difficult in terms of the definition. These days with the new workplace health and safety legislation it imposes even further problems because of the relationship between the person conducting the business or undertaking and his workers in terms of who is responsible for what. So you have it starting at that level and then it rolls down from there to issues like workers comp.

CHAIR: Is there anyone else who wanted to make a comment? I am just aware that we have about three minutes left. Is there anyone else who wanted to make a comment? If not, I will then throw it open to committee members to see if there are any final questions. Given there are no final comments, the member for Murrumba has a final question.

Mr GULLEY: I have a supplementary question on the same topic. I am looking for possible suggested solutions to that difficulty of definition of 'worker' and, for instance, that confusion between a contractor and, say, a farmer.

Ms Drew: I have been thinking about it for 13 years and I have not come up with an answer.

CHAIR: Okay. It looks like it is strike 3 and you are out, because we have asked each of the three groups today and I do not think we have got any meaningful solutions to that one. So it is a difficult one. Having said that and offering the last opportunity for anyone to say anything in that regard, 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. We thank you for your attendance today. The committee appreciates your assistance and I declare the hearing closed.

Committee adjourned at 1.18 pm