C O R R E C T E D V E R S I O N

ECONOMIC DEVELOPMENT COMMITTEE

Inquiry into Workcover premiums for 2000-01

Melbourne – 4 December 2000

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Witnesses

Mr D. Gregory, General Manager, Workplace Relations Policy; and

Ms A. Kaminski, Workcover Adviser, Victorian Employers Chamber of Commerce and Industry.

The CHAIRMAN — I welcome Mr David Gregory and Ms Anita Kaminski from the Victorian Employers Chamber of Commerce and Industry.

Today the committee is taking evidence in relation to its inquiry into Workcover premiums for 2000–01. I advise all present that evidence taken by the committee including submissions is subject to parliamentary privilege and is granted immunity from judicial review pursuant to the Constitution Act and the Parliamentary Committees Act. Any comments made by witnesses outside the committee's hearing are not protected by parliamentary privilege.

You will receive a draft copy of the transcript to which you may make minor corrections. I invite you to make an opening statement, and the committee will ask questions.

Mr GREGORY — My name is David Gregory. I am the general manager of workplace relations policy at VECCI. With me is Anita Kaminski, VECCI's Workcover specialist. Thank you for the opportunity to make a submission and to have a chance to make additional comments.

If I may make a couple of introductory comments at the outset, it is fair to say that the events of recent months in the changes to Workcover premiums have become an issue that has reverberated around our membership like no other in recent times. VECCI represents about 8000 individual firms and businesses across a range of different industry areas. They extend to not-for-profit organisations, and local government and councils are within our membership. We have a diverse membership of large, medium and small businesses. The issue across that broad spectrum has prompted a response from our members the like of which we have not seen recently.

Our members are still commenting about the impact of the recent Workcover premium changes. Recently I have been on a round of member meetings about the Fair Employment Bill. Although that has been the focus of what we have been talking about in those meetings, we still get comments from our members about the Workcover premiums. Ms Kaminski, in her specialist work, is still receiving comments and criticisms, and issues are being raised by members about the changes in premiums and what the options may be in response to them.

It is fair to say we have also been criticised as an organisation in some quarters regarding our involvement in and handling of the issue. I shall put that into some context. We were involved with the government almost since government was formed in a series of discussions about the Workcover system and the government's proposals for changes to the system. I commend the government for the extent to which it sought to consult with us and to raise a whole range of issues particularly, as we understand it, about the reintroduction of common law. We had a number of discussions on that.

At the end of the day we did not agree with the government about a number of its proposals. In particular, we have an in-principle opposition to the reintroduction of a common-law scheme to a no-fault workers compensation scheme. For a whole range of reasons that we need not go into today, it is not an appropriate element to introduce into the scheme now.

We also consulted widely with our members about the government's proposals. We had members' meetings and on a couple of occasions we had special mail-outs to members when we went through the changes in detail and provided extensive details to our members about what was proposed.

Underpinning all those comments we made to members was the view being put to us by the government that the package of changes to be encompassed within the amending bill was that we would see increases to premium levels by from 1.9 per cent to the average proposed figure of 2.18 per cent — the figure, we understood, was to be about 15 per cent, but I think the figure was subsequently revised to about 17 per cent, given some of the GST implications.

It should be made clear that that was the context in which the increases were presented to us by the government — that is, an increase in premiums of around 15 to 17 per cent. That was the context in which it was put to us in a special briefing received from the minister's advisers, and in the minister's second-reading speech the statement about the implications of the changes is repeated.

Mr THEOPHANOUS — That is average?

Mr GREGORY — Yes. It was an average figure, but clearly it was put to us that that would be the typical expectation that most employers would see as a result of the changes being proposed. Our members were given a detailed briefing about the proposals. It is fair to say that at the end of the day, although they were not happy about that increase in costs — generally for most members Workcover comes in third behind wages and

salaries and superannuation in their up-front costs for their employees — there was a degree of grudging acceptance that they were to be lumbered with an increase. Given the government's stated policy position and perhaps the processes of providing us with information about those changes, at the end of the day there was grudging acceptance that they were to receive that increase in premiums.

The reality was obviously different. In mid to late July, when the premium notices finally went out, the situation was dramatically different from what we had been led to believe. We started to get the calls from members when the premium notices indicated increases of 40, 50, 60 or 80 per cent, with all other factors being unchanged. They were simply being lumbered with increases in that order through a combination of factors that were not then clear. We had been given a position that we had accepted in good faith. I have some sympathy for the government in this context, as it is fair to say it had no real understanding that premium notices would be going out that would result in increases in the order of the figures I have talked about.

To cut a long story short, had we known in May or June when we were completing the process of consultation with the government what we came to be aware of in July and August, when the premium notices started to be received by our employer members, our advice to those members and our leadership on the issue with our members would have been dramatically different. As we have indicated in our submission, as a bottom-line position it is unacceptable by any standard for the implementation of a change in government policy to result, in some cases, in a doubling of costs to individuals who are the end funders or recipients of those policy change outcomes. It is a totally unacceptable outcome, particularly given the government's policy views on what it was trying do with Workcover premiums regarding small business. Perhaps I have said enough. All committee members from their own experience would be aware of the concerns created in the employer community about the change in policy and the way that policy change was implemented.

Now we are looking to the future. We have included comments in the submission about the sorts of directions we would like to see in the future. We were provided with some bandaid solutions through the meetings we had with the Premier, the small business minister, the Workcover minister and others designed to try to deal with the worst aspects of the situation that occurred. It is fair to say that most of the immediate responses did not necessarily provide any real alleviation of the financial impact of the changes. Perhaps they gave some employers who were having real problems more time in which to meet the new obligations imposed on them as a result of the changes.

In our submission we have provided summary details about the impact upon our members. Ms Kaminski has a file of the individual comments and concerns expressed by members, and we have provided some samples of those sorts of comments and outcomes in the submission. We have also responded to the individual terms of reference established by the committee. At the end of the day, in looking to the future there are a number of processes now in train to try to ensure we never go through what we have been through in recent months and that we try to introduce changes that will particularly give a better outcome for small and medium businesses.

The two points we have emphasised in our submission are: firstly, we need a framework that is credible and understandable for employers who are ultimately the ones funding the scheme; and secondly, we also need a contribution system that motivates the right sorts of outcomes so employers are encouraged to take actions and make changes in their workplaces which can produce benefits that will in turn give them some return and which link their own experience to the sorts of contributions they make under the scheme. I am happy to answer questions.

Ms KAMINSKI — Following on from what Mr Gregory said, in our submission we comment on the recommendations we are making about improving the scheme. I hope the outcome of the inquiry will lead to those changes. Already in place is the outline of Workcover's three-year strategic plan. We welcome the strategy it proposes, because from what we understand from the chief executive officer there it is addressing the critical issues of the scheme. As it stands now it appears to be something of a dinosaur.

It has plateaued in many measures so far as improvements to occupational health and safety, early intervention and return to work outcomes are concerned. Those critical issues will ultimately determine premium levels. Given that employers are funding the scheme and entrusting the funding to a government body that is managing the scheme, it is important that the scheme be effective and, most importantly, transparent and fair.

That is one of the major issues that came from the recent premium increases. Employers do not understand the system; it is complex, as has been identified by the government and Workcover. We must have more accountability and transparency. As I said earlier, Workcover has acknowledged that, and I believe it will be addressed as part of

its strategic plan. Also, looking at return-to-work rates and the prevention of injuries in the first place are important considerations.

Given that the ball is starting to bounce in the right direction, to have a truly experience-based premium system employers need to be rewarded and feel they have some measure of control. Therefore, the appropriate incentives need to be put in place, as Mr Gregory said. Good performance must be rewarded. VECCI certainly welcomes the small business package that the government will launch later this week, I believe, which will particularly address incentives to help small businesses reduce their premium levels.

The government must also introduce genuine measures to assist employers across the board, given the raft of policy changes they have experienced this year. One of the recommendations in the submission is that the government provide tax reform as a means of assisting Victorian business. That is all I would like to say now about making recommendations for future improvements.

The CHAIRMAN — On page 4 of your submission you refer to the motivation of employers being damaged. On page 10 you talk about the options organisations have given you through various means of feedback to do with the possibility of closures or limitation of investments, business growth and staff. On page 14 you talk about throwing businesses and organisations into turmoil. Can you further justify that statement? Can you give further information on how you received that information and the breadth of the information across various sizes of businesses?

Mr McQUILTEN — Are you talking about paragraph 5.3 of the submission?

The CHAIRMAN — I referred to three pages — 4, 10 and 14.

Ms KAMINSKI — The means of obtaining the data or feedback from employers was largely through telephone contact and letters, facsimiles and emails highlighting the implications of the premium increases. It was a matter of collating the information and allocating it into appropriate sectors.

The CHAIRMAN — I assume they were telephoning you or writing to you rather than you doing the ringing or writing?

Ms KAMINSKI — Most definitely. I suggest they were also inundating the offices of the respective ministers and their local members of Parliament. I have not previously known the sort of outcry VECCI experienced; it was relentless.

Mr GREGORY — To add to that, as I said at the outset certainly in my time at the organisation we have not experienced a reaction from our members about an issue as we have with this. The phones literally went ballistic across a whole range of sectors. In the submission we say we also act for a lot of the not-for-profit organisations that have real problems in being able to pass on some of the additional costs.

We have included in the submission some of the actual examples. We were provided with a whole range of premium notices by individual employers, taking us through the pattern of changes in recent years to demonstrate the significance of the change this time round. Ms Kaminski has worked with a number of those members individually to try to help them through particular problems, to take advantage of what I refer to as the bandaid immediate responses provided by the government to try to assist the employers who were in the deepest trouble.

The other aspect was that because of the changes employers were not given the normal notice period they generally receive. They normally get a set period in which they are given their premiums and then have time to make the relevant payments. There is generally a period in which they can get a discount if they make the payments by certain dates. All that process this time round was more compacted. They were not given those options, but were given a significant increase in premiums, in many cases not budgeted for, that was to be paid in less time. For all those reasons the effect was compounded.

Mr THEOPHANOUS — You mentioned earlier that you agreed reluctantly with the government about the 15 per cent increase on average — —

Mr GREGORY — The only correction I make to that is I do not agree. We provided the information and advice to our members. We respond on the basis of that advice. Once we had fully briefed them they were not beating our doors down to say it was outrageous.

Mr THEOPHANOUS — You reluctantly accepted — —

Mr GREGORY — They reluctantly accepted.

Mr THEOPHANOUS — They reluctantly accepted the 15 per cent plus the 2 per cent GST. Are you suggesting that anything other than 15 per cent on average has been applied? Is that the outcome?

Mr GREGORY — I honestly cannot answer that question.

Ms KAMINSKI — I would suggest that we and our members were misled because the outcome of the increases was not just 15 per cent plus 2 per cent for the GST or the tax reforms.

Mr THEOPHANOUS — Are you saying that is not the outcome, on average? Are you prepared to stand on that statement?

Ms KAMINSKI — The increases were incremental in the 20 per cent increase — —

Mr THEOPHANOUS — I understand that, I am asking you a simple question: has the government applied more than 15 per cent plus 2 per cent on average? I understand there are distribution differences, some employers got a helluva lot more than they were expecting and others got a lot less. My question is: is it more than 17 per cent?

Ms KAMINSKI — I believe we would be better able to answer that if we had some actuarial reports. It does not add up in terms of what our members are disclosing. We have been asking for clarification on the numbers. In the absence of that, we cannot comment.

Mr THEOPHANOUS — When the government and Workcover says the increase in Workcover was up to 2.18 per cent without the GST, or 2.2 per cent with the GST, that that is the outcome and that is the basis on which people have been sent their notices, are you saying that is not true or that it is true?

Ms KAMINSKI — We are saying we understand the F factors have been increased dramatically, which has impacted on the premiums paid by employers. Those are additional costs that are separate from the 15 per cent plus 2 per cent. We are looking for clarification of the figures.

Mr THEOPHANOUS — With all due respect, the actuaries who have seen us — —

The CHAIRMAN — We are not here to debate it. Put it in the form of a question, Mr Theophanous.

Mr THEOPHANOUS — I put it to you that what has occurred is that the distribution may not be optimal from your point of view but the amount by which the government said, on average, it would increase premiums is exactly what has occurred, even though that distribution may not have been in accordance with your understanding. Would you agree with that statement?

Ms KAMINSKI — I would agree it is so complex that it is difficult for us to answer that question.

Mr THEOPHANOUS — Can I put another question to you?

The CHAIRMAN — We must spread the questions among committee members.

Mr THEOPHANOUS — Do you accept responsibility for the numbers in your submission?

Ms KAMINSKI — Yes — which numbers?

Mr THEOPHANOUS — You put a whole range of numbers in relation to — —

Ms KAMINSKI — The premium increases?

Mr THEOPHANOUS — The reported premium increases by small business.

Ms KAMINSKI — Yes, they were examples I had sent to me.

The CHAIRMAN — Are you talking about page 11?

Mr THEOPHANOUS — Yes. Do you think you have a responsibility to at least inquire at a basic level whether these people had increases in the size of their operations which may affect the numbers to some extent?

Ms KAMINSKI — Absolutely. That is not included, that is another lot, but these were selected on the basis that they had no remuneration growth and no claims.

Mr THEOPHANOUS — I challenge you to supply to this committee, for example, information on the construction firm you list that has had its premium increased by 100 per cent. I challenge you to provide to the committee details of that firm to see whether that increase occurred without an increase in the number of employees and the remuneration paid to employees.

Ms KAMINSKI — We are talking about two different tables. The one on page 11 contains companies without any remuneration growth or claims. The previous table contains an example of the magnitude of some of the increases employers were experiencing.

Mrs COOTE — On page 5 you speak about Victorian business being entitled to know the impact of the reforms on Victorian jobs and employment. You qualify that by suggesting an economic impact study should be implemented. With that economic impact study suggestion — and there has not been one — on your understanding what sort of impact have the Workcover changes had on the competitiveness of Victorian businesses?

Ms KAMINSKI — Mr Gregory and I were discussing this earlier. We have reported in our submission the direct feedback from members. We have not done a careful outcome study to know about the actual impacts. We know this is what they have reported to us and what they continue to report to us. I cannot tell you how many businesses have closed. Certainly there was a strong response that many businesses would not be recruiting or expanding or what have you.

Mrs COOTE — There is no talk about having an economic impact study in the future, or have there been guarantees?

Ms KAMINSKI — No, not at all.

Mrs COOTE — That has not been followed through?

Ms KAMINSKI — No.

Mr BEST — I refer you to page 10. You said there were four impacts on businesses after they received their premium notices in July. They were to reduce staff levels, to reduce business growth, to limit future expansion or investment or to close down. What has happened since that initial period? Are you aware of any businesses that are in trouble?

Mr GREGORY — As to the discussions we have had with members particularly about Workcover, we have continued to have discussions with them about a range of issues. This is not the only issue around at the moment. There are pressing issues concerning fuel, proposed industrial relations changes, interest rates or whatever.

Mr McQUILTEN — And the GST.

Mr GREGORY — Yes, and the GST. I do not want to overstate the case, but obviously if costs for a business increase, there will be a reaction within that business. That reaction will be different in a whole range of different businesses. Some will absorb the costs, some will be able to pass them on, others will react in different ways. In general terms, probably all we can say is that the implications particularly in combination with those other factors are significant. They are being felt particularly by small businesses, which feel particularly aggrieved by the changes that have come literally out of the blue.

Mr BEST — Particularly when they have not been budgeted for?

Mr GREGORY — Exactly. It was not just the size of the change but the fact that what was unexpected was the amount of premium by comparison with the previous year.

Mr BEST — Have bankers and other financial sources been accommodating for small businesses? Has there been a circumstance of that nature?

Mr GREGORY — It is fair to say they have endeavoured to be reasonable, where they can. The bandaid measures, as I described them, that the government put in place were designed to help the firms and businesses facing the biggest problem to get over that particular hump. They were to be given additional time.

People were able to negotiate with their agents about extra time to make additional payments and variation of premiums to try to help them through the worst circumstances.

The CHAIRMAN — In your view what types of businesses are more affected than others? Is that information coming through in the feedback you are getting?

Ms KAMINSKI — I would say non-profit organisations are particularly affected. Quite a few devastating stories are coming out of the farming community as well. There are many problems, but one of them is that even though the government made concessions and employers were able to ring their agents for clarification, the Workcover agents themselves are having numerous problems with their own staffing levels and the skills deficits they are currently experiencing.

Even though employers were ringing up agents, they were not getting clear responses. A recurring theme is, 'I still do not understand how these increases apply to my business'. The sort of feedback they are getting is in what they could call Workcoverspeak. They are hearing about risk levels of certain sorts, and it is not — —

Mr BEST — No-one has demystified the process?

Ms KAMINSKI — No. I believe if they understood how the increases applied it would be far more palatable, notwithstanding that they were not budgeted for and came unexpectedly. They are at least entitled to a clear explanation, and that has not really occurred.

Ms DARVENIZA — Earlier Ms Kaminski was giving answers about the list of premium increases at the top of page 11, and I refer you both to that page. It refers to a small dairy farm and says its premium has increased by 113 per cent. I put to you that it would be impossible for that sort of increase to occur without payroll increases.

Ms KAMINSKI — Yes. After we spoke earlier I noted the comments and said that there would be a marginal — if any — remuneration increase. In those cases, looking at those figures, I agree with you: there was a bit of remuneration growth within that.

Ms DARVENIZA — VECCI has referred to a number of anonymous businesses whose Workcover premiums have allegedly gone up dramatically. Can you provide further information about those businesses so the committee is able to see where the increase was derived from, how much of the increase was due to poor industry performance, how much was due to the GST and how much was due to increased remuneration?

Ms KAMINSKI — You are referring to the tables following on from the table you were referring to previously?

Ms DARVENIZA — Yes, that is right.

Ms KAMINSKI — Yes. That would be dependent on — —

Mr GREGORY — We hold material from individual members which we would be happy to provide to the committee, subject to those members being happy about it. I have no doubt some will be prepared to let the committee have their actual material, so the committee can identify the companies and the steps they have been through.

Ms DARVENIZA — We would be very keen to see — —

Mr BEST — On a point of order, Mr Chairman, I seek clarification. Obviously employer groups have a special relationship with their memberships, and I am not sure that in giving that information to the committee that confidentiality would be maintained. If the organisation were to pass that information over to the committee, would it be protected by parliamentary privilege? How would that information then be handled, particularly given that competitive advantage may be an issue?

Mr THEOPHANOUS — On the point of order, Mr Chairman, as I understand it VECCI has offered to provide that information after asking the individuals concerned whether they have any difficulty in providing it to the committee. I do not see that there would be any problem with confidentiality if the individuals concerned say they are quite happy for VECCI to provide the committee with the information, and I would argue that it would be appropriate only under those circumstances.

As to the issue of confidentiality, all the information that comes before the committee is held in-house and is not released unless the committee decides to release it.

The CHAIRMAN — In ruling on the point of order I state that, firstly, the committee has the ability to take evidence in camera, in which case it would remain confidential.

Secondly, if we proceed the way Mr Gregory is suggesting and he establishes that the owner of the business is happy for the information to be made available to the committee, the committee would have the ability to keep that information on a confidential basis.

Thirdly, the committee could also resolve to either seek or not seek the information. I understand one member of the committee has asked for some information; however, if it were the committee's view by resolution that it did not want that information, that request for information would be negated.

Ms Darveniza has asked VECCI to obtain — with the permission of the owners — some specific information, and in the absence of the committee's retracting that request it is over to VECCI, on the understanding that if the information was provided to the committee it would be kept confidential.

Ms KAMINSKI — I believe the information is freely available. Ministers receive faxes from employers with their premium notices, and that is where all this information is. I do not see that as being a problem, because that information is out there. I am not sure how useful the information would be, given that with all the increases the maximum premium increase without remuneration or claims was 84 per cent. The figures that fall below that percentage would suggest that the industry rate had not increased or that there were various other aspects which meant that the premium was below the 84 per cent increase. I do not believe that is sensitive information.

The CHAIRMAN — The committee has before it a request from Ms Darveniza for information to be provided to it on the basis that it will be given only if the owner is happy that it be provided and on the understanding that it will be kept confidential by the committee for the reasons Mr Best enunciated.

Mr CRAIGE — Can you demystify something for me? From February, when the working party handed in its report, until May–June, when you were talking to the government about the 15 to 17 per cent, was there a lot of ongoing dialogue between government and yourselves?

Mr GREGORY — Yes.

Mr CRAIGE — And we have heard a lot about the magical F factor and compounding. Even in May and June, after you had had all those discussions, you were not aware that the premium notices would go out with increases greater than you thought. Is that correct?

Mr GREGORY — That is correct.

Mr CRAIGE — Was the government aware?

Mr GREGORY — I think you would have to say that it was probably not aware either. But I cannot answer for the government, I can only gauge by the surprise that seemed to register in some areas of government, as it did with us.

Mr CRAIGE — Are you saying that the Victorian Workcover Authority was the only one that knew?

Mr GREGORY — I cannot really add a great deal more to the answer I have already given. We certainly were not aware. It appears from its subsequent reaction that the government was not aware at the time either.

Mr CRAIGE — Are you telling me that there were no discussions in the corridors and no whispering in the background at all? You heard nothing and got no information about what was happening? The minister has to sign off on whatever the Victorian Workcover Authority did, anyway. You heard nothing?

Mr GREGORY — We heard nothing, and to have consented — either tacitly or openly — to the sort of outcomes I have described in July–August would mean we would have been lynched by our members. There is no way anyone in our organisation knew about the outcome we were about to confront. Who else knew, I am not too sure. What appears to have happened is the interaction of some changes in a whole range of bells and whistles, if you like, produced in combination that different outcome.

How many people were sufficiently aware of the operation of the system to be able to understand that that was going to be the outcome, I cannot tell you. We certainly were not.

Mr CRAIGE — It hit the fan when one of your members received the first notice and rang you?

Mr GREGORY — Notices started to be received from mid to late July, from memory. The you-know-what continued to hit the fan throughout July and into early August.

Ms KAMINSKI — There were a few rumblings in the corridors just prior to the notices being sent out that we might face a maximum of 47 per cent with the compounding effect, and even then it was a 'might'.

Mr CRAIGE — And including the F factor?

Ms KAMINSKI — Well, not including that. We do not understand why the increases to the F factor occured.

Mr CRAIGE — You do not understand the F factor?

Ms KAMINSKI — No, not to that degree.

Mrs COOTE — You spoke about there being a package of other things that were going in, and I think they would include the rate increases that jumped up several rates, the administrative costs that were lumped in there too, and of course the GST. They were known factors they wanted to increase over and above the premium increase. Were you told at the outset about that other package? Did the Workcover authority or the government tell you about those changes before the new premiums were added?

Mr GREGORY — I think the answer to that is no. We presumed the increases were going to be applied against a background of the way the system had previously been administered. The framework that normally applied contained various safeguards about how much things could be varied and changed over time. We presumed there was going to be that one-off change initially for common law and the changes associated with that, and then subsequently the further 2 per cent for the GST, but that that would be applied all other things being equal. That did not seem to be the case in actuality.

Mrs COOTE — Would your members have been happier had the changes been staged or staggered and had the authority brought in the first package and then the new premium as a result of the common-law changes being implemented? Would that have been more helpful to your members?

Mr GREGORY — Indeed. If it had been staggered over time it would undoubtedly have assisted. It would have depended on what the time frame was and what the level of the changes. I come back to the statement I made at the outset — again I cannot speak for what our members would accept at the end of the day without significant protest — that the outcome we got this time around was totally unacceptable in terms of a policy change and how that policy change was implemented. I cannot envisage any circumstance in which a 70 or 80 per cent increase — all other things being equal — could be justified as sound implementation of a changed policy position.

Ms KAMINSKI — The feedback I have had from members is that they would be the first to admit that we need a fully funded scheme. If that information had been relayed to them, if they had been aware of the level of debt of the scheme and if the changes had been staggered, I think it would have been far more palatable to them, given that we need a fully funded scheme.

Mrs COOTE — You deal with both the minister and the Workcover authority in relation to that sort of information, so you have been dealing with both on those issues?

Mr GREGORY — Yes.

Ms KAMINSKI — Yes.

Mr McQUILTEN — Ms Kaminski, I have to clarify what you said then. It seems to me that you have not worked out the problems about that $781 million that has been mentioned in the newspapers in the past week. The package you are now talking about and which we have been talking about is not to remedy that situation, because they are the unfunded liabilities of the old scheme. We are not talking about repairing that; that is another issue. I just thought we should clarify that.

Ms KAMINSKI — You are talking about the staggering in of the increases to account for the common-law changes and the other reforms?

Mr McQUILTEN — That was the question to you, and you brought in that other issue.

I have a question. I have been in small business all my life, and it is the squeaky wheel that gets the oil. When people hurt, they scream, because they are always pushed for time and they are always pushed for money as well. From what you have told me, this document and your examples in it are from people calling your office and complaining. I can understand that; I have also had those complaints in my office. But I have not had any phone calls from anyone saying, 'This is a good scheme. I am happy'. Is it not the case that what you have here are all of the worst examples and all of the pain?

Ms KAMINSKI — We have stated all along that we do not hear from the happy employers.

Mr McQUILTEN — Right. I just needed that clarified. Another thing I have problems with is the 20 per cent application if you do not present your wages or remuneration return on time. That in the past has been CPI-linked, as I understand it, and now it is 20 per cent. I also understand that about 38 per cent of all small employers have not returned those. That is understandable: you forget, it gets in the bottom of the pile and all of a sudden you end up with a 20 per cent increase, plus the common-law 17 per cent increase, plus the 10 per cent GST without any other changes. Is it possible that many of your clients are in that category where suddenly they have 20 plus 17 plus 10 per cent always compounding — nothing else has changed, okay — but they open up the bill and it is a lot later than they thought; is that the case?

Ms KAMINSKI — Yes, that would certainly often be the case. We informed our members that was one of the first things they should identify is whether they had submitted their estimations for the new year.

Mr McQUILTEN — You said earlier that the system is very complicated, and I agree entirely with that — it has always been complicated. It seems to have become a bit more complicated with the GST, as has everything else in life, but your view was that once people understood how it worked it would be more palatable. Can you enlarge on that comment?

Ms KAMINSKI — I suppose it is just basic human nature. If the employers can plan for whatever increases they are faced with, that is more palatable than not. I am simply saying that either way any increases for small businesses will be particularly hard, and for larger businesses too, depending on their individual situation. The particular issue for the employers who contacted us was the cash-flow implications when they did not budget for those increases. So had they planned and had the increases been staggered it would have been far more palatable.

The CHAIRMAN — You suggest in your submission that the introduction of the no-claim bonus for small business might be a way of improving the scheme. It is difficult for a no-claim bonus in a very small business to have a statistically valid result. Can you enlarge on your suggestion to us, keeping that fact in mind?

Ms KAMINSKI — I would not say it was necessarily a recommendation but it was a suggestion as one option to assist small employers. In the absence of having travelled overseas and having studied international best practice, I understand that Workcover is suggesting a different form of incentive for small business which, although I believe it does not like the term, is called a retrospective rebate, and that initiative will be implemented within the next 12 months. I think VECCI fully supports that initiative. It makes a great deal of sense. The no-claims bonus was one suggestion as a means of putting it on the table. We need to be doing something.

Mr CRAIGE — You now have a very good dialogue with the minister's office and have done since February. Since the increase no doubt you have had an even greater dialogue with the minister's office. As one of the major employer organisations in this state were you advised at any stage in recent times of any actuary-revised estimates of the ongoing costs of Workcover under the new scheme? Have you received any information as to what the unfunded liabilities or the liabilities under the new scheme are? Has anyone from the government had a discussion with you about that?

Ms KAMINSKI — Only inasmuch as what the media has reported in the paper — no more depth than that.

Mr CRAIGE — We have a new scheme. In 12 months where will it be; what estimates have been made; and what information did you get of what the system would look like? Have you received any information; have you any idea?

Mr GREGORY — We have not.

Mr CRAIGE — None at all?

Mr GREGORY — We have consistently said that the introduction of common law into the Workcover system creates the potential for all sorts of cost blow-outs. It adds to the difficulty in making actuarial calculations about the operation of the scheme. We have asked for and have been told that there will be a continuing consultative process to monitor the operation of the scheme over time so those sorts of factors can be kept under review, but I am not aware of any. We have not been provided with any recent figures in that regard.

Mr CRAIGE — As a major employer organisation with many employers as members you have no idea of what the system will look like in one year's time with unfunded liabilities?

Ms KAMINSKI — No. In fact it was mentioned in the submission that we recommended a review of the statistical cases model, given that almost on a weekly basis, it seems, we hear of changes to the projections.

Mr McQUILTEN — That was the old scheme again.

Mr THEOPHANOUS — I am intrigued at your new position of wanting the experience rating system to be looked at again, because it has been in place for five years and on almost every occasion that I have heard VECCI make comment about it, it has always supported the experience rating system as it has been applied. Why have you changed your mind?

Ms KAMINSKI — Our response was really a reflection of what happened in July with the way small businesses were hit with the increases. There was no means of protection for them and it highlighted that for small to medium employers it is not an experience-based system.

Mr McQUILTEN — But it never was.

Mr THEOPHANOUS — It never was.

Ms KAMINSKI — But it highlighted that point. Small businesses have always called out for better incentives, but that is really a catalyst to making sure that it occurs.

Mr THEOPHANOUS — So the system was set up wrong in the first place for small business?

Ms KAMINSKI — With the sudden increase that they are faced with, yes. And I think with common law being introduced into the scheme again they are at risk. The scheme is at risk, so it has to be managed very closely.

Mr THEOPHANOUS — You mentioned the $771 million, and it was outlined to you that that the $771 million — —

Mr McQUILTEN — It is $781 million.

Mr THEOPHANOUS — The fact that that $781 million was as a result of the previous system does not take into account future common-law claims. I have a calculation here that in 1994–95 the average premium was 2.25 per cent; it went down progressively to 1.9 per cent in 1998-99, and my calculation suggests that the net loss of revenue as a result of that was $812 million. So had the premium remained — —

Mr CRAIGE — Where is that coming from?

Mr THEOPHANOUS — They are my calculations. So if that is correct, would it not have been better to have simply kept the premiums at 2.25 per cent, which is approximately what they are now, and not have this decrease which was artificial and which put the system into the red, and then have to bring them back to what they originally were? Would you agree with that as an overall assessment?

Ms KAMINSKI — Based on your figures I would have to say that what employers would want is stability and predictability and they have not had that. So if the scheme were predictable and if those figures were there on the table for us to look at, yes, that would make sense. That is what we are calling for — to have that

element of predicability and to have those figures on the table. We are told about increases; we are told about all sorts things that we have no evidence of. It is taken at face value.

The CHAIRMAN — Is it right in that context — you refer to this at page 6 of your submission — that the government made an agreement to provide a full disclosure from VWA to you about industry rates and premium calculations. Given that this submission was made to us a little while ago now, do I take it from what you have just stated that you have not received the full disclosure of what was agreed with the government?

Ms KAMINSKI — That is right.

Mr CRAIGE — Have you followed that up?

Ms KAMINSKI — Yes, I actually thought that was why the parliamentary inquiry was occurring. There had been no disclosure at all.

Mr THEOPHANOUS — Of what, in particular?

Ms KAMINSKI — Of any justification for the increases in actuarial reports.

The CHAIRMAN — Did you have that in writing from the government?

Ms KAMINSKI — Yes.

The CHAIRMAN — When you return to your headquarters could you have a look and send us copy, if that is in order?

Ms KAMINSKI — Yes.

Mr BEST — Not-for-profit organisations and some government departments have been assisted through the government by getting a rescue package of some $7 million to assist in offsetting their Workcover premiums. You were asking for the introduction of genuine measures to ease the Workcover burden paid by many Victorian employers and you talk about the promise of tax reform. What specific tax reform are you looking at for the various categories of people represented by your organisation?

Ms KAMINSKI — Payroll tax relief is a bit out of my area of expertise. I am aware that the government has indicated that it would provide some relief in the form of tax, and we are just throwing on the table that that may be a means of providing some relief for employers, given that the scheme has to be paid for.

Mr BEST — Has that been by way of what you read in the paper, by way of general comment or as a result of discussion with ministers of the Crown?

Mr GREGORY — They are discussions that I do not think Anita or I have been involved in, but we have been involved in discussions with the government about the possibilities of reductions in state taxation. I notice the Premier again in today's *Australian Financial Review* talks about reductions of $200 million being still in the pipeline, or still proposed to be implemented.

Mr BEST — Another major review is going on?

Mr GREGORY — Yes. So all we are saying is that given the significance of cost impacts in this area, what other options does the government have to try to ameliorate the impact of all that by making changes elsewhere, particularly as we have had unexpected increases in costs being imposed through this means?

Mr BEST — Are you holding your breath?

Mr GREGORY — Probably not, but we are certainly keen to continue the discussion with the government about what options might be available to deal with the impact of the increase in Workcover premiums.

Ms DARVENIZA — In its submission VECCI states that the government must introduce measures to ease the burden on Victorian employers. How do you reconcile that with the fact that Victoria has one of the lowest premium rates in Australia? We are lower than New South Wales, South Australia, and Western Australia.

Mr GREGORY — I think that is a good thing. Comparisons are very different. There have been all sorts of Productivity Commission inquiries and inquiries by other groups looking at the operation of different schemes.

They all have different criteria. It is hard to make comparisons. But there does seem to be a generally acknowledged view that our system is still the second cheapest or the second least costly scheme in Australia, and that is terrific. It would be great if it was the least costly scheme in terms of the obligations for employers.

Again I come back to the point I have already made. We accept that there is a workers compensation scheme, that there are mandatory contributions by employers to that scheme — that is accepted and understood. What is not accepted or understood is when from a year-to-year basis there are changes in the impact of the operation of that scheme for individual employers, particularly of the magnitude of what has occurred over recent months. It is simply that I cannot state it much more clearly than that. It is just not acceptable, in our view, to have outcomes which produce changes in the order of 80 per cent increases in premiums from one year to the next.

The CHAIRMAN — Mr Gregory and Ms Kaminski, thank you very much for coming and giving your evidence today. As I indicated earlier, we will send a copy of the transcript to you, to which you can mark anything that is wrong and can make some suggested alterations, if that is your desire. This inquiry we are undertaking will go for another month or two yet. It is certainly possible that we may ask you to have another discussion with us about the potential changes. Today we did not home in on that to any great extent, and that is an important part of the work we have to do. If it is our desire to have another discussion with you, with your agreement we may give you another call. Thank you for coming today.

Mr GREGORY — Thank you very much for the opportunity.

Witnesses withdrew.

C O R R E C T E D V E R S I O N

ECONOMIC DEVELOPMENT COMMITTEE

Inquiry into Workcover premiums for 2000-01

Melbourne – 4 December 2000

Members

Mr R. A. Best
Mrs A. Coote
Mr G. R. Craige
Ms K. Darveniza
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Witnesses

Mr P. Fennelly, Director, and;

Mr P. Deakin, Senior Adviser OHS/WorkCover, Australian Industry Goup.

The CHAIRMAN — I declare this part of the hearing open and welcome Mr Paul Fennelly, director, and Mr Paul Deakin, senior adviser, OHS/Workcover, from the Australian Industry Group.

The evidence that will be presented today, including submissions, will be subject to parliamentary privilege and be granted immunity from judicial review pursuant to the Constitution Act and the Parliamentary Committees Act. Any comments made by witnesses outside the committee's hearing are not protected by parliamentary privilege.

Gentlemen, welcome to the hearing. I propose to allow you to make an opening submission to us, after which we might ask you some questions.

Mr FENNELLY — Thank you. Firstly, the Australian Industry Group is very supportive of the committee's inquiry. Unfortunately we were not in a position to get a submission to you, mainly because of the resourcing issue internally. I will not elaborate on that. Our focus over the past couple of weeks in particular has been on the proposed provisions in respect to industrial manslaughter. We have given that a higher priority for a variety of reasons. Notwithstanding that, I think we can outline our key concerns in respect to the introduction of the Workcover premium. I deliberately came towards the end of the VECCI submission to capture some of its submissions, and I may be able to build on some of those if that is appropriate.

The Australian Industry Group is a national organisation which represents 11 000 companies nationally, and in Victoria represents 5000 companies. Those companies are predominantly involved in the manufacturing, engineering, information technology and telecommunications sectors, as well as in engineering and construction. As a whole, if I could put it in general terms, the vast majority of our members have been subjected to significant increases in premium arising from the last financial year.

The whole introduction of Workcover is a concern to our organisation, not only in terms of economic shock to Victorian industry but also because of the fact that as a national organisation we consistently see, whenever there is a change of state government, that one of the first pieces of legislation that changes is the Workcover legislation. Nationally we have called for and have endeavoured to get inquiries into the establishment of common benchmarks that we can employ across the country, but that has never been terribly successful.

It is probably now appropriate to go through what has actually occurred. We were part of the common-law working party. The other employer group involved in that working party was VECCI. That was, as you are well aware, commissioned to look at the potential costs of the reintroduction of common law. As an organisation we were opposed to the introduction of common law, or common law being a feature of the workers compensation system. I am sure you have heard the arguments. It is a no fault system, and we do not believe there is a place for common law in a no fault system. The proposition we put to the common-law working party was one in opposition, notwithstanding the government's clear intention; it argued it had a mandate for the introduction of common law. So we sought to constructively work with that party, as I understand the other employer group did.

Towards the end of the deliberations of the common-law working party it became very evident to us that three options were available to the working party. But our primary concern was that the entire debate was about the average total cost to the system — the average cost across the whole of the Victorian economy. We represent a vital industry in Victoria, mainly in the manufacturing sector. Some 40 per cent of all common-law claims lie within manufacturing, so there is a high exposure particularly in that industry.

We engaged a firm of actuaries to endeavour to reinforce the cost to the manufacturing sector as a result of the reintroduction of common law. At the time we utilised the options being explored by the working party to highlight the potential impact. It ranged from a $60 million to a $120 million increase in the first year, just in manufacturing. I will not table the report, because it was modelled on a series of options which were not a feature of the final report. However, we sent it to Minister Cameron and to the Premier to reinforce in a tangible and an independent way the potential damage the reintroduction of common law in the new system could cause in Victorian industry. So we were up front. We were very clear that what we were dealing with here could have a profound impact on Victorian industry.

After the release of the common-law working party obviously, as you would expect, we lobbied heavily to again reinforce the potential cost impact. The government came down with the option with which you are aware and the retrospective determination — rather, the effective date of retrospectivity. Since then our organisation has been literally swamped by companies seeking clarification, an explanation and reasons why there has been such a substantial increase. My colleague, Paul Deakin, can outline some of those concerns, if the committee so desires.

It is fair to say that there is consistency with the submission of VECCI — consistency in respect to the outrage of a large number of companies. It is difficult, with 5000 member companies, to put a precise figure on how many companies were impacted on and the full extent of the total increases. It is fair to say that, yes, we have received inquiries and letters from companies that have had substantial increases — up to 85 per cent; some companies allege 100 per cent.

In terms of the submissions that have gone to the inquiry, the main focus from our point of view has been on the Victorian Workcover Authority submission. I think it is a comprehensive submission; it embraces the key reasons why we have had the increases. We may question those, but it is the first attempt at an explanation of why the industry rate has increased. It is of great concern to the Australian Industry Group that that information was not made available at the time. I think there was clearly an unawareness by the major employer groups that these types of increases would be imposed on industry.

The other aspect of the Victorian Workcover Authority submission is this — and I am sure it is sitting closely to the terms of this inquiry. I overlooked a fundamental factor that we cannot ignore. While we are considering major increases this year, there will be further increases next year, as it is anticipated and amplified in the document. But it affords little attention to the potential blow-out and the potential impact on industry if common law is not curtailed.

As a national organisation we have had the good fortune to work in a number of states. There is one common feature associated with the blow-out in workers compensation systems in this country — that is, a lack of control, a lack of enforcement, and a lack of policing in respect to common law. From our point of view one of our key focuses, or our key emphasis in our dealings with Workcover is to work closely with it in ensuring that it manages the common-law process very carefully.

From the Labor Party's point of view, I would suspect that it is a key opportunity to demonstrate that you can have common law in a workers compensation system, that it can be managed, and that you can avoid a huge blow-out in the liability of the fund. That is the real challenge, I would suggest, to the government. If it does not get it right this time we seriously have to look at the real benefit of incorporating common law into the Workcover system. With those few opening comments I am happy to take questions.

The CHAIRMAN — Does Mr Deakin wish to say anything?

Mr DEAKIN — I might add to that. Certainly there has been a lot of discussion about the reintroduction of common law and variables that were accepted, and at least acknowledged, by the working party throughout the course of the initial restoration period. One of the things we have been most concerned about is perhaps the practical implementation of the reintroduction of common law and some of the variables that have been affected by that. Certainly the majority of our members, while they have noted an increase in their premiums, have had little understanding about the actions taken, for example, by authorised insurers in this scheme. They are having a lot of problems with it. An example of the many questions they are asking is: 'Why are authorised insurers increasing estimates on claims by such a substantial amount without evidentiary justification?'. That is one of the key components of the premium scheme.

So there has been large discussion among our members about that and certainly about the impact on industry rates resulting from common-law claims. There are some practical things that have also been mentioned — variables that have come from our members that they are quite concerned about.

The CHAIRMAN — Are you saying that it is possible that in coming years that will flow through to further increased cost estimates?

Mr DEAKIN — I have absolutely no doubt about it. We have seen the increase in this financial year, but we suspect that the next financial year, when the new system kicks in in its proper form, will certainly introduce substantial increases from a claims point of view, and therefore a claims cost point of view, and therefore a premiums point of view.

The CHAIRMAN — Just to make that clear: you are predicting that next year and into the future, on top of what has happened this time, there could be some substantial increase?

Mr DEAKIN — Correct.

Mr FENNELLY — On anecdotal evidence produced to us by our member companies.

Mr BEST — You said that the majority of members have faced premium increases and that there is potential for damage to the Victorian industry. Can you expand on that? Have you done surveys to register employers' attitudes about whether they will employ more, whether they are decreasing or stabilising their work force, or whether they are not interested in investing because they just want to hold the line for the moment?

Mr FENNELLY — Our paramount concern is, as I am sure the committee is aware, the Australian economy is now the most open economy in the world. A recent economic survey by the Australian Industry Group highlighted that between 70 per cent and 80 per cent of Victorian manufacturing companies were facing severe to very severe price competition. So companies are open to the world, they are embracing globalisation, and they are susceptible and vulnerable to price impact. It is just one element of the whole debate about ensuring that we have an environment that provides competitive business taxes and low costs. That is the paramount concern. As VECCI effectively put it, one of our major concerns is the enormous increase, the enormous price hike that came out of these results. That has put strong pressure on the decisions of companies, particularly in the employment of labour.

Mr BEST — When were you first advised that it was to be 17 per cent and what discussions had you had with government other than being on the working party?

Mr FENNELLY — I think we were in a privileged position in that we were on the common-law working party committee and the 17 per cent was relayed probably early in the year. The increase of 20 per cent for not declaring the remunerations, the compounding of the GST, the compounding of the industry rate, those factors were not clear. They were not put strongly. The implications of that were not put to us and it was not until it occurred that we had this enormous revolt by companies.

I can put some balance into that. From my dealings with the government — and I cannot put it a better way — I think it is a monumental stuff-up. There are a range of factors. There was uncertainty with the chief executive of the Victorian Workcover Authority, and there was clearly a lack of communication between the authority and companies during the whole process. The preparation has been appalling. Other jurisdictions — for example, Queensland — have guide books for accountants, for lawyers, for small business, and for large business, which take them through the nature of the changes. There were guide books for employees and for trade unions before the increase. The whole communications strategy was lacking in this exercise.

Mr BEST — Given that you were on the working committee, have you had the opportunity of putting those concerns to the minister and, if so, what has been his response?

Mr FENNELLY — Very much so. We have strongly reinforced our concerns. We have written numerous letters to politicians; we have encouraged companies to write directly to the Premier and the Minister for Workcover. We have had dealings with the shadow Minister for Workcover. At the end of the day, I think it is fair to say: 'It has happened, what do you want us to do?'. That is the extent of it at the moment.

Mr BEST — I was referring to the forms of communication and how involved you were able to be.

Mr FENNELLY — My apologies. The dealings with the new chief executive of the Victorian Workcover Authority have been very constructive. He adds a new dimension to the organisation. He is very aware of the authority's high responsibility for the communications strategy. That has been made very clear to him by ourselves, and indeed the management of common law is probably the most pronounced thing we have put to him.

Mr THEOPHANOUS — Most of us would say that with the transition and the new chief executive most of those decisions were made under Bob Officer, rather than the new chief executive.

Mr FENNELLY — I am not sure of that.

Mr THEOPHANOUS — I do not know how it happened. Did you get any complaints or any communication from the 31 per cent of small businesses that saw a reduction in their premium rates? Did any of them ring up and complain?

Mr FENNELLY — I am not convinced that that ratio applies to the manufacturing sector. I have seen no information whatsoever. I suppose this is again clearly in the anecdotal category, but we had a seminar on Thursday attended by 175 people. The question was asked: who incurred substantial increases in their premiums? I put to the committee that 98 per cent of people in that room raised their hands. Statistically I am sure that does not stack up, but to me that is a fairly strong indication.

Mr McQUILTEN — But that would have happened with the GST alone, would it not? If I was in manufacturing and I had a 10 per cent rise in my premiums, I would put my hand up.

Mr FENNELLY — Given that our organisation has been at the forefront in the pursuit of the GST and the GST is good for manufacturers, I think they would have counted that issue before they put their hands up.

Mr THEOPHANOUS — I know there is a distributional issue: some went up and some went down, and I think everybody would agree with that. There was the 15 per cent plus the 2 per cent that you knew about as the average increase, but a number of other things happened that meant other forces came into play and aggravated the problem, such as the 20 per cent notification being brought in and a number of those things. But it was still the application, and no-one has said to us anything other than that the average increase will be 17 per cent. Do you accept that?

Mr FENNELLY — Yes, 17 per cent, but we still do not know why the industry rate went up. If you look at the Victorian Workcover Authority's submission, there are issues of cross-subsidisation — —

Mr THEOPHANOUS — You mean the industry rate for some industries went up and some went down.

Mr DEAKIN — Over 250 industry rates went up.

Mr THEOPHANOUS — The previous year it was 260-odd. Why is that abnormal?

Mr FENNELLY — It is the magnitude of the increase and it is the reclassification and the issue about the debate — —

Mr THEOPHANOUS — Doesn't the AIG support the view that the rates of industries that have accidents should go up? If you have an industry that is not performing, surely you would not be of the view that the ones that are performing should subsidise it.

Mr FENNELLY — Yes, but I am not convinced that is the sole reason for the increase. They mention other issues that were taken into consideration in the review of the industry rate. I am trying to find the relevant section but I am sure I will not find it now.

Mr THEOPHANOUS — In principle do you oppose the notion or do you support the notion that the experience rating should reflect the experience in an industry? That is, if an industry has accidents, its rate should go up; if it avoids accidents, its rate should come down; do you support that principle?

Mr FENNELLY — Yes, in principle what you are advancing is an experience-based system, or based on an industry. Yes, as an organisation we support an experienced-based system. But we are saying that at the end of the day there has to be a closer interrelationship between the performance of the company and the premiums it pays — but that is not answering your question.

Mr CRAIGE — I assume, as with VECCI, that you were fully informed by the government and I guess your mind was on Workcover before the industrial relations manslaughter incident occurred. Were you in the same boat as VECCI in that you were unaware, other than the agreed position of the 15 per cent and the 17 per cent, of the magnitude of the increases your members were facing?

Mr FENNELLY — We were advised — I guess it was alluded to — after the legislation was announced that the industry rates would be looked at. But there was no mention to my recollection of this 20 per cent penalty.

Mr CRAIGE — No-one really came clean.

Mr FENNELLY — No, it was not precise and was not in terms that this will have an enormous impact on our members; this will really blow out costs.

Mr CRAIGE — The first thing you knew was from a phone call from one of your members saying, 'I have just got my bill'. You were promoting the line that your members would get a certain increase because that is what you were told.

Mr FENNELLY — Our call centre was choked with inquiries and we had great difficulty explaining it. To be honest, the major employer groups met and it took some time for that group to fathom what had occurred.

Mr CRAIGE — I could imagine, and you probably still do not know. You have spoken about your national profile. In your view, as a national organisation, which workers compensation scheme in Australia is the best and why?

Mr FENNELLY — It is a difficult question in a lot of ways because as usual in this country we do everything differently in each state. I refer to the fundamental issue I raised before and indicate that we are strongly opposed to common law being a feature of the system. On that basis I would say the South Australian system is one which we would support as embracing the correct strategy, and its financial situation reflects that. I just want to reinforce that what we are looking at is solid statutory benefits for injured workers rather than the pursuit of common law. I can expand on that but I think the committee will know the reasons.

Ms DARVENIZA — Do you accept that the unfunded liability of $781 million is related to the previous scheme, and if that is so, do you now think it was irresponsible of the previous government to reduce the premium from 2.25 per cent to 1.9 per cent?

Mr FENNELLY — That is difficult to indicate. I could probably turn it around and say it demonstrates in my view a negligence on behalf of the government to reintroduce common law without true consideration of the viability of the fund. But it is a question of the timing, whether they had the information available to be balanced. I do not think you can necessarily turn it around that way.

Mr THEOPHANOUS — If the debt of $781 million — —

Mr FENNELLY — It is a question of how much of the unfunded liability is associated with the management of the fund and how much is associated with common law. The last government removed common law.

Ms DARVENIZA — It is all to do with the previous government's common-law claims.

The CHAIRMAN — We can have a discussion, but if we have not got the detailed information Mr Fennelly is in a difficult position.

Mr THEOPHANOUS — We know there is a $781 million blow-out in the old scheme, and the point I am making — and I think Ms Darveniza's question was directed to it — is that would not be there if the scheme had been kept at 2.25 per cent, which it was back in 1991.

Mr McQUILTEN — It would still be cheaper than South Australia.

Ms DARVENIZA — Instead of it being reduced by the previous government from 2.25 per cent to 1.9 per cent.

Mr FENNELLY — Yes. It is difficult for me to explain. I will state that I have had the experience of being on a Workcover board in Queensland. Depending on your common-law situation and the performance of your reserves, your liability situation changes from year to year. Whether the government was faced with the same sort of situation — I do not think it was, so I am not going to place myself in the position of saying whether the government did the right thing or the wrong thing. I am not trying to skirt that question. I know I am not in a position where I can answer it.

Mrs COOTE — Earlier you spoke in detail about the communication in Queensland and about the various guides and how good they were. Presumably you have passed on to Workcover here the lack of communication it had in the whole process?

Mr FENNELLY — Yes, I have — very much so.

Mrs COOTE — Given that, have they given you any indication that they may communicate with you if there might be additional premium increases in the future, or do you believe there might be some in the future?

Mr FENNELLY — I think the greatest challenge Workcover has is to regain the confidence of Victorian employers. It is going to have to be very up front and very open about what employers can expect next year and the nature of it, to ensure there are no hidden surprises next year — that is just critical, and also not to duck the issue of common law, that common law is now a feature of the system and if you have a claim that would also be brought into consideration.

Mr DEAKIN — I think it also relates to the practical management of that scheme as well. So there has to be some direction on how common-law claims will be managed and the information distributed to those who are affected by them.

Mrs COOTE — Do you have an idea about the ramifications for your members and what percentage increase there is likely to be?

Mr FENNELLY — As I said, in the previous system 40 per cent of all common-law claims lay in the manufacturing sector. There is a variety of reasons for that, and one obviously is the risk. But I am very, very strong on the behaviour of the legal profession and the influence they have had on the common law as well. To answer the question, if you look at the 40 per cent and you argue that the risk or exposure is still there, I think our industry is in for some very difficult times in respect of the premiums in the future. You might want to explain what is happening with the writs.

Mrs COOTE — You have 5000 members, and you said that one of the categories you represent is manufacturing. What are the others?

Mr FENNELLY — Engineers, engineering construction, IT, telecommunications.

Mrs COOTE — Are there any of those industry categories being influenced more by the premium rate increases than others?

Mr DEAKIN — Certainly the manufacturing and construction areas.

Mrs COOTE — More than, say, IT or engineering?

Mr DEAKIN — Yes.

Mrs COOTE — Which is the least affected?

Mr DEAKIN — Probably IT.

The CHAIRMAN — When we were talking to the representatives of the Victorian Employers Chamber of Commerce and Industry, they indicated that they had an agreement from the government to obtain from it information about the calculations in determining industry rates, et cetera. Have you asked for that information, and have you received that information? What is your position on all of that?

Mr DEAKIN — We have made similar inquiries of the government asking it to provide us with actuarial details and the industry rate calculation formulas as well and have not received a response.

The CHAIRMAN — Have you had any agreement from the government to provide that information?

Mr FENNELLY — That was part of the arrangement that we had. There was a meeting with the Premier, Minister Cameron and Bill Mountford, where we were pursuing a range of measures that may alleviate some of the strain of the recent premium increase. Part of the deal that was struck there was that we would receive information on industry rates and how they were calculated and formulated.

Mr THEOPHANOUS — When was that?

Mr FENNELLY — That was at least two months ago, maybe three.

The CHAIRMAN — Would there be any reason that you are aware of why they are withholding that information?

Mr FENNELLY — No, and really it was not until I saw the Victorian Workcover Authority submission that we had seen any expansion on what has happened. We do need to do that; we need to question and challenge, and we need to understand the various segments of our industry and what has happened.

Mr DEAKIN — Certainly some parts of the agreement were dealt with fairly swiftly. For example, the extension of the discount period was dealt with. But the information we have sought has not been addressed at all.

Mr THEOPHANOUS — One of the changes that has occurred this year which may have affected your members is that in previous times when the industry rate went up for an entire industry there was a capping system

in place, so it could go up by only one notch, as it were. That was removed on recommendation of the board. The reason it was removed was that the board argued that if the risk factors had increased in a particular industry by three notches, it should go up by three notches and not by one notch. That is a more accurate application of the experience rating system. Do you support that position of the board or the previous system where, even if the risk factors had gone up by three or four notches, you cap it so that it would go up by only one notch? That has been effectively the change in policy.

Mr FENNELLY — I support the concept of capping, mainly because if you look at the VWA submission you see the reason we have capping is to protect small business, which makes up a substantial number of payers or contributors to the fund. It is quite specific in that document that the authority took it off because of the potential impact, that some small companies that had bad records would have received a significant increase. To answer the question, I support the concept of capping.

Mr THEOPHANOUS — They have actually retained the cap for small business, so even though the industry rate might go up by three notches, effectively for small business it can go up by only one, but for larger businesses it can go up quite a bit, and that is the change of policy. Does AIG support that change of policy or not, or do you want to get back to us on that?

Mr FENNELLY — I think we will have to get back to you on that one.

Mr DEAKIN — Other than to suggest just one point, that the largest concern we have had has been from those members who do not have injuries and have seen their rates go up significantly because of that increase in the industry rate.

Mr CRAIGE — In the industry category?

Mr DEAKIN — That is right. They are the ones who have demonstrated the greatest concern. Their argument is, 'We don't have the exposure to this area of the reintroduction that perhaps some of the other people do, and we're paying for their mistakes'.

Mr THEOPHANOUS — If you are going to get back to us on that policy issue you might want to think about getting back to us on another policy issue. One of the attempts that Workcover has made which it tells us about is to try over time to remove the cross subsidy that is currently in place between larger businesses and small businesses. I do not know whether you are aware of it, but currently larger businesses are subsidising smaller businesses' premiums. Do you support Workcover's attempt to reduce or remove that cross subsidy between large and small employers, or is it your position that small businesses should be cross subsidised from the larger businesses?

Mr FENNELLY — It is obviously a difficult issue for an organisation that represents very large and very small businesses. I think the issue at hand is that we do not have a position on that, but at times we do believe there is merit in cross subsidisation. However, what strikes me as being of great concern — I am sure the Victorian Workcover Authority has a different interpretation — is that there was very little consultation about the potential impact of the decision on the competitiveness and the impact across the whole of Victorian industry. I would like to see greater communication with the industry groups before a lot of these things are actually implemented.

Mr THEOPHANOUS — The point I am making is that in part the complaints about the increases have been coming from small businesses, and part of it is that the ongoing program of removing the cross subsidy was applied again, which shifted some of the burden to smaller businesses and removed a bit more of that cross subsidy, but the cross subsidy is still there, and it is quite significant. The issue is: is it appropriate to have larger businesses cross subsidising smaller businesses? If you cannot give us an answer to that, I am not sure who we can ask.

The CHAIRMAN — I think Mr Fennelly gave us an answer.

Mr THEOPHANOUS — He might want to have another go at it.

Mr FENNELLY — I will have another go. The situation is that we do not have a formed opinion about that. I think I will have to get back to you on that because generally the view of our larger companies is that they will tolerate a degree of cross subsidisation.

Mr CRAIGE — I just cannot believe that with an issue such as the changes in the industry category, which had a significant impact on your members by removing the capping on large employers, that you were not

made aware of or informed either by the government or the Workcover authority that that major policy change was going to take place. I cannot believe that that is the case.

Mr FENNELLY — Unquestionably we were informed. We were told that the industry rates would be reviewed — they are reviewed every year — but it is the combined impact on industry. It just was not brought to our attention. To be quite honest, I do not think a lot of people at Workcover realised — or in government.

Mr CRAIGE — Somebody had to do it. Those things do not drop out of the sky, with the minister having to sign off in the morning. It has to go through a process. There had to be work done on it both in the Workcover authority and the government for that to take place.

Mr FENNELLY — What we asked for at the time was industry modelling. We have letters that said you cannot introduce the new system without looking at the impact on particular key industries in the Victorian economy.

Mr CRAIGE — And no response?

Mr FENNELLY — No response whatsoever. It was ignored. As I said, we engaged our own actuaries to try to reinforce the point that we had to look at the total cost on manufacturing — where all the jobs are, and the regional industries — and see what is the total impact on those industries. And we were ignored. We can sit around boards and talk about the average figure, but we have to get back to what the impact is on major industries.

Mr BEST — Can I pick up on that point? Do the actuarial figures you have differ from the information that is now available in the community?.

Mr FENNELLY — I think if our actuary had those figures they would be a lot worse than what was proposed. Although, to be fair, he was commissioned to look at the impact of common law.

Mr CRAIGE — On the manufacturing industry?

Mr DEAKIN — Yes.

Mr McQUILTEN — We were given a chart that shows the cost of Workcover premiums around Australia. Is that how you view the situation around Australia, from your experience?

Mr FENNELLY — That is looking at the average rate. We are trying to produce information today — and we will do so — looking at key segments of our industry and looking at it on a state-by-state basis. I think that will be helpful to the committee.

Mr McQUILTEN — It may be interesting. At the moment we are the second-lowest in Australia, and about half a per cent less than South Australia. Yet I think you were saying that you would prefer another half a per cent because you would prefer the South Australian scheme.

Mr FENNELLY — I was talking about the financial viability of the scheme.

Mr McQUILTEN — Now you are making judgments about the financial viability of the schemes in Victoria and South Australia.

Mr FENNELLY — No, I think it was in the context of what system I would prefer out of the jurisdictions that are available to us at the moment. I said the threshold issue is common law, and if that state does not have common law I would lean towards that state.

Mr McQUILTEN — Even if you have to pay half a per cent more?

The CHAIRMAN — Mr Fennelly has the floor.

Mr FENNELLY — The other issue that I think we need to reinforce there — and we have said this continually to the government in the lead-up to the introduction of the new system — is those averages mean nothing. The companies we represent are competing with the world. They are in price competition. They do not care what is happening in Queensland or Western Australia. They are looking at the potential cost burden that has been imposed on them — their capacity to compete, their capacity to employ. As I said before, 70 per cent to 80 per cent of our companies are operating in an environment of severe to very severe price competition.

Mr McQUILTEN — Surely being the second lowest in Australia is a better position than being the highest in Australia, particularly if you are going to compete with the rest of the world. Surely that is — —

The CHAIRMAN — I ask the committee to come to order. It is very difficult for Hansard to take three people talking at once. We have to try to be a bit more careful about that. Do you have a question? We are not entering into debate here. We have to have a question.

Mr McQUILTEN — I will move on to the question to Paul Deakin. I believe you are predicting major increases in the cost of Workcover over the next 12 months — you did say that earlier?

Mr DEAKIN — I based that on the practical implementation of the scheme, yes.

Mr McQUILTEN — Did you predict the increases to Workcover — their liabilities in 1998, 1999 and 2000? Have you predicted them at all?

Mr DEAKIN — Not in this capacity, no.

Mrs COOTE — Following on from Mr McQuilten's comments about rating, could you rate the former system against, say, South Australia, or what used to happen before the implementation of common law, and what this system is? Could you give me a rating and the comparison between those two — the previous system with no fault, et cetera, with this new system, with no common law, as now, and compare them nationally?

Mr FENNELLY — At the end of the day, why do we have workers compensation? There are two objectives — to run a sound financial effective workers compensation system and to look after injured workers. I think the previous system would have catered for that criteria. I am concerned — I only say this from experience — about the behaviour, in particular, of the legal profession and the abuse of common-law remedy. I am gravely concerned about it.

Mrs COOTE — Just to clarify that, you believe then, in comparison with the other national schemes, that Victoria's previous system was better than what this one is about, once it gets going?

Mr FENNELLY — Very much so.

Ms DARVENIZA — You said you oppose common law, but do you think that common law can act as a deterrent to negligent employers because they know that if they cause accidents, the result will be that they will have significant premium increases?

Mr FENNELLY — No, I do not. I do not really believe any employer is protected from common law. We have a duty to keep the workplace safe and without risk. Going through the CVs of people on this committee over the weekend, I notice we have a winemaker. I doubt if that person could confidently say that his workplace was totally safe and without risk. I put to the committee it is very difficult to demonstrate in a court and demonstrate in a common-law system that there was no negligence involved.

Mr THEOPHANOUS — I do not know how much you have looked at this issue of common law because it is complex. Ms Darveniza's question is a very interesting one in this sense, and I will give you an example: Some years ago the issue of repetitive strain injury was a very important issue in the workplace. Now it is hardly mentioned; it is hardly an issue in the workplace at the moment. I have seen studies which suggest that the main reason for that is that so many employers were litigated with common-law claims in relation to RSI that they simply changed their practices and, as a result of that, we now hardly have any RSI. That is just one example. I put it to you that what you are saying to us about common law is one point of view, but I take it that what you are really saying is that you want a system which works and is fully paid for. I hope it is not simply an ideological objection to common law?

Mr FENNELLY — No.

Mr THEOPHANOUS — Is that correct?

Mr FENNELLY — It is an ideological objection. It is the organisation's strong view — and we have put this consistently for ten years — that you cannot have a system based on fault at common law in a no fault system. The two are incompatible.

Mr THEOPHANOUS — Even though Queensland with the lowest premium system in the country has common law and is a fully funded scheme?

Mr FENNELLY — The Queensland system was one of the best systems and had the best financial books in the country. Probably five years ago it had enormous unfunded liabilities. The key feature of that was the extraordinary blow-out in common law. The common-law graph tracked statutory payments around the same time as the deregulation of advertising for the legal profession; the graph for common law almost goes 90 degrees. I am not a legal — —

Mr THEOPHANOUS — But they did not get rid of it; they — —

The CHAIRMAN — Mr Fennelly has the floor.

Mr FENNELLY — I am not into kicking the legal profession. Both of us are lawyers by background. I hope that can put some objectivity into it, but that is the real concern. Anyone who opens the local suburban rag can see the blow-out in activity in that area. That is our great concern. It gets back to management.

Mr DEAKIN — Can I respond to a couple of those points as well? From the Queensland point of view, one of the biggest differences we noticed — again a point I alluded to before — was that the actual risk is the assessment that the government will take in funding that, as opposed to Victoria where we are looking at the potential risk and the potential cost. So the actual funding or the actual exposure, if you like, is very much a different rating between the two states.

I wanted to make a point about the RSI discussion as well. I know that was just an example, but certainly what we have found in Victoria is that RSI has not changed at all. The only thing that has changed is the definition. The new code of practice in manual handling has changed the definition to occupational overuse syndrome. So it is exactly the same cause. The only difference is that RSI or occupational overuse syndrome are not diagnosable, so they are expressions quite often used in the medical fraternity to explain a condition without diagnosis. We see the incidence of those types of injuries as exactly the same, no different — just that the name has changed.

The CHAIRMAN — In our terms of references we have two provisions which I will read. One is 'whether the government can or should take action to reduce or compensate for any such adverse impacts'. The second is 'what changes should be made to the manner in which Workcover premiums are determined in the future?'.

We have not really asked too many questions in that area of Australian Industry Group. Firstly, would you like to comment on either of those today, and secondly, given that there is a month or two of our inquiry to go yet, is it your wish — and we would certainly welcome it if it was — to put in writing any thoughts that you may have in those two areas.

Mr FENNELLY — We certainly would like to do that. We have had very good consultation with the Workcover authority about its strategic plan. I think some of the initiatives proposed by the authority about prevention are very sound, but I think we can build on those, and I would like to take you up on that opportunity if I could.

The CHAIRMAN — Thank you very much. Hansard has recorded the proceedings today. We will forward a copy of the transcript to you, and if you have any suggested alterations you can make them and send them back to us. That will happen in the next week or so. On behalf of the committee, thank you very much for your attendance today, for your time and the way in which you have answered the questions.

Mr BEST — Paul, you said you were going to look at a category-by-category breakdown of manufacturing sectors across states. Is that information available to the committee?

Mr FENNELLY — Very much so. It is to try and demonstrate where the industries are at across the country.

The CHAIRMAN — Thank you very much.

Witnesses withdrew.

C O R R E C T E D V E R S I O N

ECONOMIC DEVELOPMENT COMMITTEE

Inquiry into Workcover premiums for 2000-01

Melbourne – 4 December 2000

Members

Mr R. A. Best
Mrs A. Coote
Mr G. R. Craige
Ms K. Darveniza
Mr N. B. Lucas
Mr J. M. McQuilten
Mr T. C. Theophanous

Chairman: Mr N. B. Lucas
Deputy Chairman: Mr T. C. Theophanous

Staff

Executive Officer: Mr R. Willis
Research Officers: Mr M. Ryan and Ms K. Ellingford

Witnesses

Mr L. Hubbard, Secretary; and

Mr J. Moran, Workcover Liaison Officer, Victorian Trades Hall Council.

The CHAIRMAN — We welcome to our meeting Mr Leigh Hubbard, secretary of the Victorian Trades Hall Council, and Mr Jarrod Moran, the council's Workcover liaison officer. I wish to advise all present at this hearing that all evidence taken by this committee, including submissions, is subject to parliamentary privilege and is granted immunity from judicial review pursuant to the Constitution Act and the Parliamentary Committees Act.

You are aware of the details of the reference before us. What we usually do on these occasions is invite witnesses to make an opening submission, then we might ask you some questions. We have a bit over half a hour or longer if required.

Mr HUBBARD — This is probably something that I will leave to questions, as we did not put in a written submission. We have an interest in the matter in that we were represented on the restoration of common-law working party that deliberated late last year and early this year. That committee put a report to the minister, and from that the government made certain decisions in relation to the restoration of common law in particular and other statutory changes. We have an interest in that regard.

We were a constant critic of the previous government's policy in relation to what we would have said was the quarantining of the premium rate. There was almost a holy grail of 1.7 per cent, 1.8 per cent and eventually it went to 1.9 per cent of remuneration in relation to the premium rate. That was under considerable pressure earlier this year as it had been for some time. We have and continue to have an interest in the issue of the premium rate.

I do not pretend to be an expert in the way the premiums are calculated in the sense of the setting of industry-risk profiles and so on. I do not pretend to be an expert in the technical matters related to that, and I do not know that I am going to be much use to the committee in that regard.

Suffice it to say we certainly expected that there would be a premium increase in relation to premiums in Victoria as a result of the government's election commitments. As a union movement we were of the view that the average paid by employers in Victoria should remain competitive in this respect. We agreed with the government about that. The policy was that the rate should be competitive with other states. We were critical of the average that was struck. An average of 2.18 per cent came out of the common-law working party, and that was below the national average in terms of premiums given that other states like South Australia were nearly 3 per cent, New South Wales was certainly above 3 per cent, and Tasmania and Western Australia were just below 3 per cent in terms of their average premium rate.

It seems to us that there has been an unfortunate confluence of events with the GST and the impact of the legislative changes. That confluence of events has meant that some of the increases have been larger than many people would have liked.

In terms of the industry, I note from the Workcover authority's submission that a number of industry sectors were reassessed in terms of the premium rate for those industry sectors. In something like 265 industries — I may not have it correctly — the rate actually increased. I note that the government launched a health and safety strategy last Monday. I think it is right to use the premiums as a tool in terms of trying to boost safety performance. Over the past three or four years in particular there appears to have been if not a decrease in safety performance at least a plateauing of performance on a range of indicators such as serious injury and return-to-work rates. There is a range of indicators which would say that our health and safety performance is not a good one. As I understand it, the true cost is not being met by the current industry rates.

The committee probably knows this better than I, but there has been another compounding factor in relation to the premium part of the increase. Part of the increase suffered by employers has been due to the fact that a number of the industry sectors have had a realignment of their rate to reflect a true cost within the industry. While it was unfortunate, I believe much of the increase was necessary in several respects. Firstly, the scheme is sustainable; secondly, it provides decent and fair benefits; and thirdly, safety performance is measured more accurately by the premiums that are paid. That would summarise our position.

Trades Hall as an employer got a fairly hefty increase, but like most other employers we take that on the chin. We know it is in many respects for good reason. One of the committee's terms of reference was in relation to employment. My discussions with employers generally have not indicated that it will have a negative impact on employment for most employers. I have just come from talking to an employer whose premium had gone from about $140 000 to about $220 000. The people I spoke to did not indicate that that was an issue in relation to employment. There were far greater matters that I was talking with them about which were more important to them than the premium increase they had sustained. My view would be that anecdotally — and I have nothing more than that to go on — it may have had an impact on some small, marginal businesses, but I think a lot of businesses

would accept that some increase was inevitable. I am not sure I can add much more at this stage. Perhaps it can be opened up to questions?

The CHAIRMAN — Your web site indicates that it is the view of the Trades Hall that increases in Workcover premiums in general terms are passed on to the wage earner and that they have to meet the cost of that. That appears to be your opinion. Can you give us any information on any studies you have done that bear that out and justify that claim?

Mr HUBBARD — I had better refresh my memory on that. We can provide you with material in relation to that. It comes from a theory that basically there is a pool of money available for labour and labour-related costs and that workers compensation premiums come out of that pool of money. Increases in premiums are balanced out in other ways — there could be wages outcomes or whatever. That is not just me saying that, a range of people have said that. I understand Professors Porter and Freebairn have said that, and they are not people I would normally agree with on economic policy. The Centre of Policy Studies at Monash University has undertaken studies in that regard. I cannot give you the details of them now, but that was something we got advice of during the working party on restoration of common law. Marsden Jacob Associates did a paper for the Victorian Law Institute and we had that made available to us. That paper quotes some of that work. That is where that comes from.

The CHAIRMAN — If that view was on the Victorian Trades Hall Council web site prior to that information being available to the working party, what would you have based your view on then?

Mr HUBBARD — On the paper that was provided by Marsden Jacob.

The CHAIRMAN — Was it available prior to the discussions with the working party?

Mr HUBBARD — It was done during that process, which went over a four-month period. It was available during that time because we made it available to the working party.

The CHAIRMAN — You stand by the view expressed on the web site?

Mr HUBBARD — It is a view. As with all health and safety and workers comp costs, the cost of injury is not borne by employers. It is a given fact that 70 to 80 per cent of the cost of injury is borne by the community — families, workers, a range of people — but not necessarily by the employer. Ultimately many of those costs are transferred to other parts of the community, such as social security. There may be a legitimate reason for that. Obviously you cannot expect an employer in whose workplace an injury has been suffered to bear that cost forever. However, it is quite true that an employer bears a minority of the cost of an injury, in particular.

The CHAIRMAN — I assume from your use of the term 'a view' that there may be some other views and that you are not saying that that is the only view you would have?

Mr HUBBARD — It is a view, and we put it on the web site at the time of an argument about what economic impact a premium increase would have. Part of the argument we put up was that there is a good argument from quite conservative economists to say that the cost of premiums comes out of a pool of money that would generally be there for things like wages and other on-costs, so if premiums go up it is highly likely that other things like superannuation and other benefits to workers do not go up. There is an argument to that effect. It is not as though a premium increase is always an additional cost that an employer bears.

The CHAIRMAN — You do not think additional costs in the form of Workcover premiums will have any effect on the viability of a business?

Mr HUBBARD — I have said that. It is a bit like the argument we have around the Fair Employment Bill. Clearly in some isolated instance where a business is very marginal, any rise in anything — the price of fuel, which has gone up by 20 per cent, or the GST, which has increased tax by 10 per cent — may have some impact. However, as I say, most businesses have some flexibility within them. I know our premium went from something like $18 000 to $27 000 or $30 000. We are only a small business in that sense — we employ 20 people — but it will not mean that I will put workers off. I will manage within a budget of half to three-quarters of a million dollars to find that money. We will do it in other ways. It will not have an impact on employment. I think most employers would be the same.

Mr THEOPHANOUS — You would be aware of the latest figures that have indicated that Workcover has an unfunded liability of $781 million and that most of that relates to the management of the previous

common-law system — in other words, it is in relation to either common law or the management of the system up to now and does not relate to paying for the new common-law system.

Mr HUBBARD — Sure.

Mr THEOPHANOUS — It is also the case that premiums in 1994–95 were set at 2.25 per cent and they were progressively reduced down to 1.8 per cent. A calculation of the revenue lost as a result of that comes out at about $800 million — roughly the amount that Workcover is now in the red for. Do you think it was therefore irresponsible of the previous government to reduce premiums artificially from 2.25 per cent down to 1.8 per cent and put the system into the red? Do you think that was irresponsible?

Mr HUBBARD — Our view is well known — we thought premiums were artificially low. The changes were made over a period of time, particularly those made in 1997, and we had a lot of stop–start in the system, and at a number of points there was a rush to get claims in. That artificially boosted the number of claims that were coming through the system rather than letting the system stabilise, and that was the problem in 1997 in particular. On the one hand there was an artificial repression of premiums and on the other hand there was that boosting of the liabilities, because people were out there trying — understandably — to get workers to take up their rights quickly because those rights were being terminated at a particular point in time. So I think those two things obviously worked together. Our view was there ought to have been a reasonable and sustainable premium rate. Clearly that was the view, that it was somehow attractive to business and it was a selling point for Victoria that somebody drove premiums down below 2 per cent. That is why I used the expression 'holy grail' before, though I must say in terms of all the surveys being done it was a bit like the argument about unfair dismissal. Unfair dismissal and workers compensation come very low on the pecking order. In the Telstra Yellow Pages business surveys and so on they come well down the list as a priority for business in terms of investment decisions, yet that was the decision that was made. So our view is that they were artificially low and we have suffered as a consequence. But it was not just that, it was the fact that decisions were made about the way the system is structured that caused, if you like, artificially high leaps in claims to come through the system, and that it what we are trying to deal with now.

Mr THEOPHANOUS — So it was a question of core management?

Mr HUBBARD — Not just in relation to those two things. There were other things as well. I say that because I think people ought to get decent outcomes, but if you look at the way the Transport Accident Commission manages its claim process and you compare it with the findings of the restoration of the common-law working party, which had a paper done by independent consultants that compared the TAC management of common-law claims with the Workcover management of common-law claims, and it concluded very forcefully that the TAC was, I think the words were 'light-years ahead', in the way it handled common-law claims.

For example, at one point Workcover insisted that barristers would work for only a particular amount of money in settling the common-law tail. Of course that caused many experienced barristers to say, 'Forget it. We won't work for that amount of money'. Only junior and less experienced barristers would work for it, which meant the outcomes were good for the workers but the system was in fact paying tens of thousands of dollars above what Workcover should have been paying.

That contributed to the liability growing, and that is a management problem in not getting in skilled, experienced people and paying them enough. That was a problem for the system. Now I am hoping that that will be rectified. We certainly have an interest in its being rectified so that the scheme becomes more stable and more sustainable.

Mr BEST — I am interested in your comment that the Trades Hall Council has copped an increase from $18 000 to $30 000. Have your employment levels gone up or down?

Mr HUBBARD — I have not got to the bottom of that. Today I dug out our premium notices and so on for 1998–99 and 1999–2000, and it had certainly gone up. I am sure it has gone up again, but I could not give you an exact figure.

Mr BEST — How many people have you employed? You have 20 now you said. How many did you have last year?

Mr HUBBARD — It is a good question. We have a number of people who come through grants and other things — I would have to come back to you with an exact figure, but I am trying to think when one of the grants came on.

Mr BEST — Has it grown by one or two?

Mr HUBBARD — No. Since the middle or early 1999 it has probably grown by about five or six. I will come back to you. I can probably give you the exact figures.

Mr BEST — I would be interested because it is a 66 per cent increase just on that $18 000 to $30 000.

Mr HUBBARD — It is $33 000. It is around a third.

Mr BEST — I just wondered what sort of claims experience you have had.

Mr HUBBARD — Not too bad over the past year or two.

Mr BEST — And while you have you said that within your own organisation you would still have the ability to be able to manage that increase, and you have heard the outcry from various organisations and employer groups, do you think those increases are affecting Victoria's competitiveness?

Mr HUBBARD — Not in the sense that if you look at the overall rate of premium in Victoria compared to other states we are still down at the second-lowest level of all those states. I have not looked at the figures in detail since probably May, but my understanding is we are still second lowest. Queensland is in a sense a separate case, given the nature of its benefits.

I think Queensland would be the one that would be below us at this stage. So I think in terms of competitiveness we are still in a good position. We have had the legislative change, which was a 17 per cent increase; we have had GST — another 10 per cent; we have then had a number of categories of industry move up by 20 per cent. I have to say as I understand it 54 of those that moved are now less safe than they were, having more claims. Our view is that if industries were not unsafe, if they were not producing injured workers, we would not be talking about this. Therefore the safety performance of industries has to improve.

I suppose I am one of those who agrees that we have to do more about safety, and I think that is something that has slipped over the past two or three years. We need to give more assistance to employers to improve their performance — more resources, more information and so on. On the question about competitiveness, I do not think we are in a less competitive situation than we were 12 months ago. I do not see that.

Mr BEST — Particularly as most of our manufacturing is competing with overseas countries rather than competing in Australia, do you believe there is a loss of competitiveness internationally?

Mr HUBBARD — No. You have to strike a balance between fairness in the system and being competitive. I note that over the past 12 months in Victoria there have been around 38 000 additional jobs in manufacturing and that investment and capital expenditure in factory buildings has increased by about 8 per cent. Obviously, although we hear of the bad examples of manufacturing leaving Victoria, there is also a lot of optimism, so I do not think this issue is necessarily a make-or-break issue. As I said, for small, marginal businesses, where a couple of thousand dollars will make a difference, you may be right, but they are normally not businesses that will be in an environment where they have to be internationally competitive. They are not going to be in that sort of marketplace.

Mrs COOTE — I have a supplementary question to part of that answer.

The CHAIRMAN — I will allow the question because it is supplementary.

Mrs COOTE — It is partly to do with your answer to Mr Best about Queensland and comparing the rates with those of other states. In your opinion which state other than Victoria has the best system, and why?

Mr HUBBARD — Other than Victoria? I am sorry — —

Mr THEOPHANOUS — It is not really supplementary!

Mrs COOTE — It is part of it.

Mr HUBBARD — It is a fair while since I have looked at all of the comparative tables. I still think we have a way to go in Victoria. I am not completely satisfied with the Victorian system, particularly in the statutory non-economic loss area. Many people with significant injuries are still excluded from receiving benefits, and in the

outcome of the review the issue of people who do not qualify for a common-law claim was one we were quite disappointed with. There are several other state schemes that deal with those types of injuries in a better way.

Mrs COOTE — Specifically?

Mr HUBBARD — Probably New South Wales. Queensland I call a shocker. It is a terrible system in the sense of benefits for workers. It has a cap, and while it has had common law by and large it also has a cap to statutory benefits, and the two have to balance, so certainly Queensland is not from our perspective a very fair or reasonable system, even though it has a low premium. The toss-up would be between somewhere like New South Wales and Tasmania from other aspects, but I do not think there is a perfect scheme. I hope everyone is working towards something. We in the working party made efforts in relation to the reintroduction of common law, for example, we conceded that the discount rate would go from 3 to 6 per cent, which in terms of lump sums for common law obviously cut many large lump sums by a considerable amount of money.

So we do not want the best of all worlds, but we think this scheme in Victoria probably has some way to go before it is fair. It is fair to say that we probably would have urged the government to have had a slightly higher average than it currently has. We would probably have urged it to have a premium rate on average of around 2.3 per cent — 2.25 to 2.3 per cent — rather than what it was at the time, the 2.18 per cent that was settled on. For those who suffered increases of 50 to 85 per cent that would have made a very marginal difference to their actual increase, but it would have allowed us to deal with some of those other aspects of the scheme that we still find unreasonable and unacceptable.

Mr THEOPHANOUS — But given that we are still the second lowest in Australia in terms of premiums, competitiveness would not really be much of an issue, would it?

Mr HUBBARD — Yes, in short, I think I have said that already. The state has a $68 billion payroll and the average is around 2.2 per cent, which is below most other states, and I think most people out there see that. On top of that, I do not think this is necessarily an issue of someone who is going to invest in Victoria saying, 'I am not coming to Victoria because of its Workcover'. They come to Victoria for a whole range of reasons, including infrastructure, vocational training, access to markets, transport infrastructure, and the fact that it is a hub. They come for that; they do not necessarily look at Workcover and think that that is the be-all and end-all.

Ms DARVENIZA — I want to ask you about the some 30 or 40 Workcover inspectors, maybe even more now, who have been put on. Do you expect that that will help reduce accidents in the workplace, and as a result minimise the pressure on premium rate increases?

Mr HUBBARD — One would hope so. Our focus was always going to be on — and I hope everyone's focus is on — prevention rather than compensation. I think that is the key. Regulation and the inspectorate are a key factor in that, obviously. With 240 000 workplaces in Victoria at one point we had only about 170 inspectors. I hope to be fair about this, because they were trying their best, but they did not really have the technology or the leadership to do a good job out there. I hope that that improves enormously.

I think there are other aspects, though. One still cannot expect the inspectorate to do everything. For example, we constantly talked about the level of prosecutions. I know from looking at the annual reports of Workcover that two or three years ago there were less than 100 prosecutions, and all of those that related to health and safety — some, of course, related to dangerous goods breaches — were around traumatic injuries. There was nothing around lack of education or information or, for example, dust and noise and other long-term things.

So we would expect a better-resourced inspectorate using more defined enforcement powers, and more prosecutions, to have an impact. But I have to say that that is only one part of the matrix, if you like. The other part of it is obviously about education for both workers and employers, about their rights and responsibilities, and about looking to both health and safety representatives and health and safety committees in the workplace to be more informed, to be better resourced and to have more rights. Those are other important elements of the matrix.

The CHAIRMAN — I am being very lenient, given that we have gone right away from our terms of reference.

Mr HUBBARD — Sorry. In terms of the premium rate, all I am saying is that I would have expected that if we can cut those injury rates and improve the worst-performing employers and industries even by 10 per cent, I would hope we would be able to bring down premium rates in the medium term. I do urge members of the committee to read this 'Strategy 2000' document, which Workcover put out last week and which I think is a good

start. Certainly many industry parties are involved in it, both employer and union organisations. In terms of the statistics, it focuses on the worst-performing industries, the worst-performing employers and the types of injuries.

Mr McQUILTEN — In my view the best way of getting rates down is to reduce accidents in the workplace. I assume you agree with that?

Mr HUBBARD — I think I have just said that, yes.

Mr McQUILTEN — And what I have found in a good business is this: I have overseen an American business and one of the things it always tries to do is to organise a win–win position for the workers and the company. My experience has been that that has always involved it placing a strong emphasis on occupational health and safety in those factories. To me we should be watching those sorts of businesses and following what they do. It seems to me that world best practice is used in efforts to reduce accidents in model industries and factories. Do you have any comments to make about that?

Mr HUBBARD — Just briefly, yes, I think you are right. In terms of getting boards of larger companies to incorporate health and safety into everything they do and making it part of every discussion at every board meeting and being part of the bottom line, I think that is absolutely vital. I think there is a real issue for small business, in particular. In Victoria we have thousands of them — tens of thousands — and often they do not have the resources to put in place proper health and safety systems or training. There is a real role there for government and the Victorian Workcover Authority to assist in that.

I think there has been a bit of confusion about part of the earlier question about the inspectorate. The inspectorate was partly sent out there in previous years to lend a guiding hand — to almost act in a consulting role for the workplaces it went into. I do not think that was appropriate; I think it confused the roles of consultant and inspector. Our view is that inspectors ought to be there as an inspectorate with an enforcement capacity. On the other hand we have an obligation to assist smaller businesses to know how better to improve their health and safety performance. There are a number of ways that that could be done. I would — —

Mr McQUILTEN — Dr Yossi Berger could walk into a little factory and go, bang, in 3 to 5 minutes — —

Mr HUBBARD — That is one way; but also giving them low-cost resources, consultancies that they can have access to, and those sorts of things would be an important step forward. I hope that over time our premium system will encourage investment in prevention. We have talked about this before and I do not think there is any issue about the fact that some other states have premium systems that encourage investment in prevention, where if you have an audit and invest in the safety precautions or systems that are recommended that may have some impact on your premium in some form of discount. That is something we could investigate into the future on the premium side. I would certainly say that on the prevention side there is a lot more we can do.

The CHAIRMAN — Thank you Mr Hubbard and Mr Moran for coming along today. We will send you a copy of the transcript, to which you may make corrections, if you wish.

Mr HUBBARD — Thank you very much.

Committee adjourned.