REPORT ON PROCEEDINGS BEFORE

PUBLIC ACCOUNTABILITY AND WORKS COMMITTEE

INQUIRY INTO THE WORKERS COMPENSATION LEGISLATION AMENDMENT BILL 2025

CORRECTED

At Macquarie Room, Parliament House, Sydney, on Tuesday 29 July 2025

The Committee met at 9:00.

PRESENT

Ms Abigail Boyd (Chair)

The Hon. Susan Carter
The Hon. Greg Donnelly
The Hon. Bob Nanva
The Hon. Peter Primrose
The Hon. Damien Tudehope (Deputy Chair)

PRESENT VIA VIDEOCONFERENCE

The Hon. Mark Latham
The Hon. Sarah Mitchell

The CHAIR: Welcome to the second hearing of the Public Accountability and Works Committee's inquiry into the Workers Compensation Legislation Amendment Bill 2025. I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders, past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people joining us today or watching online.

My name is Abigail Boyd and I am the Chair of this Committee. I ask everyone in the room to please turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside of this hearing. I urge witnesses to be careful about making comments to the media or to others after completing their evidence. In addition, the Legislative Council has adopted rules to provide procedural fairness for inquiry participants. I encourage Committee members and witnesses to be mindful of these procedures.

Ms SUSIE HARWOOD, Assistant Auditor-General, Performance Audit, Audit Office of New South Wales, affirmed and examined

Mr BOLA OYETUNJI, Auditor-General for New South Wales, sworn and examined

The CHAIR: I now welcome our first witnesses. Thank you very much for making the time to give evidence. Would you like to make a short opening statement?

BOLA OYETUNJI: Yes, if that's all right, Chair. Thank you for inviting me to provide evidence in this inquiry. I would like to begin by noting that some aspects of the terms of reference of this inquiry may fall outside my remit as Auditor-General. As you'll be aware, the Government Sector Audit Act 1983, which establishes the role of the Auditor-General as an independent and accountable statutory officer, prevents the Auditor-General from questioning the merits of policy objectives of the Government. This restriction limits my ability to comment on the details of the Workers Compensation Legislation Amendment Bill 2025. However, the Auditor-General's remit includes conducting financial and performance audits that relate to workers compensation schemes in New South Wales.

A review of the relevant Audit Office reports to the New South Wales Parliament over the past 15 years shows that there have been long concerns about the financial sustainability of workers compensation schemes in New South Wales. For example, in 2011 the Audit Office reported that the financial position of the New South Wales WorkCover scheme, as it was then known, was deteriorating, with workers compensation liabilities increasing significantly. The report warned that the scheme may not be collecting enough premiums to meet its requirements to sustain long-term funding. The report suggested that the issues with the operations of the scheme required proactive management. The Audit Office reported an improved financial position for WorkCover in the financial years 2012-13 and 2013-14. This was attributed to high investment returns and lower outstanding claims liability as a result of the reforms introduced in 2012.

Financial audit reports in 2019 and 2020 drew attention to the fact that the financial position of both the private and public sector workers compensation schemes was again deteriorating. Further, financial audit reports in 2021 and 2022 made findings regarding the decline in the key measures of financial sustainability of workers compensation schemes and made recommendations about the need to address inaccuracies in payments to injured workers. Most recently, in April 2024, the Audit Office tabled a performance audit report titled *Workers compensation claims management*. The website states:

> This audit assessed the effectiveness and economy of icare's management of workers compensation claims, and the effectiveness of SIRA's oversight of workers compensation claims.

The report found:

> icare is implementing major reforms to its approach to workers compensation claims management - but it is yet to demonstrate if these changes are the most effective or economical way to improve outcomes.
>
> icare's planning and assurance processes for its reforms have not adequately assessed existing claims models or analysed other reform options.
>
> icare's activities have not focused enough on its core responsibilities of improving return to work and maintaining financial sustainability.

The report made several recommendations, including that icare should increase the transparency of its operations by ensuring its annual Statement of Business Intent clearly sets out its approach to achieving legislative objectives for the workers compensation scheme; icare should develop a monitoring and evaluation framework to assess the effectiveness of its recent reforms to workers compensation scheme; and that the NSW Treasury should work with agencies, including icare, SIRA and SafeWork, to identify actions to improve the long-term financial sustainability of the schemes.

In addition to the Audit Office's historical interest in the financial sustainability of workers compensation schemes and the efficacy with which those schemes are managed, I have a continuing interest in this topic. As of yesterday, I sent a draft of my audit work program to New South Wales departmental secretaries, setting out my audit priorities for the year ahead. In this program, I've included a proposed performance audit of workers compensation schemes, which is an audit I plan to conduct this financial year. The scope of this audit will complement the work of this inquiry by focusing on the efficiency and effectiveness of service delivery to improve outcomes for injured workers. We're happy to take questions, if there are any.

The CHAIR: That's excellent news. Thank you. We will commence with questions from the Opposition.

The Hon. DAMIEN TUDEHOPE: In fact, that is the first we've heard of your interest in the manner in which icare are currently managing claims managers. However, in 2024, the Auditor-General made this observation:

> icare's reforms for the TMF in recent years have not given sufficient attention to the key issue of the increasing number of psychological injury claims, which poses substantial risks to the financial sustainability of the TMF.

That was an observation made in 2024. Are you aware or have you had it drawn to your attention what steps, if any, the TMF or claims managers have taken in relation to seeking to maintain the financial viability of the scheme since April 2024?

BOLA OYETUNJI: In current times, I've not had any opportunity to do any audit process or follow-up on what was reported. What I will say is I've had meetings with the icare management, referring to some of their programs and approaches to improve the sustainability of the schemes. I think for me to be able to answer that question directly would be when we go there this year to do the assessment. If you look at the report, the report talked about the psychological injuries increasing from 11 per cent to 20 per cent, still at a very high 17 per cent of the total claims. That is a significant increase in the psychological claims that we're seeing, and hopefully very good proactive management of that would be a focus on what needs to be done in that space.

The Hon. DAMIEN TUDEHOPE: So just let me understand that the manner in which you say the key lever for, I suppose, dealing with the increase in psychological claims is proper claims management.

BOLA OYETUNJI: Two things—so that's one, proper claims management. The other one—if you just recall the report we tabled on the mental health and wellbeing of New South Wales police officers, one of the things we looked at in psychological claims is to look at the root cause of some of these issues coming through. The root cause and the data that is available and the analysis of that data can help not only before it gets to the claims—the preventative measures, which becomes important—and, again, some of the training and engagement with employers so that we have preventative measures before we get to claims management.

The Hon. DAMIEN TUDEHOPE: It is just focusing on claims management. There appears to be two aspects, from what I understand: claims management and collection of data for understanding the manner in which claims are arising.

BOLA OYETUNJI: The reasons, yes.

The Hon. DAMIEN TUDEHOPE: In dealing with claims management, what do you see are the issues relating to claims management within the perspective of the Auditor-General?

BOLA OYETUNJI: Your question goes into how we're going to scope the next audit, because the claims management—and we've reported oversights by icare, by SIRA. And the question would be, before I finalise the scope—or just the teaser is, actually, maybe going through to the claims managers. We've not done it before. We have the full deal of powers. That could be something that would be part of complementing what this inquiry is doing because, yes, we've heard a lot of discussion about claims management. I've received a lot of information from the public about what is wrong with the claims management. But because we've not audited it, at this point, I am not able to have a definitive answer to what the problem is there. But we're going to go there.

The Hon. DAMIEN TUDEHOPE: I don't know whether you've had an opportunity of reviewing any of the other submissions which have been made to this inquiry.

BOLA OYETUNJI: Yes, I have, at a high level.

The Hon. DAMIEN TUDEHOPE: Have you had an opportunity of reviewing the submission made by the NSW Bar Association?

BOLA OYETUNJI: I can't recall specifically.

The Hon. DAMIEN TUDEHOPE: The Bar Association makes certain observations, for example, relating to the manner in which the cost of rehabilitation reports are provided in terms of capacity for work and whether they are an appropriate use of expenditure in terms of the manner in which claims managers are dealing with return to work issues—whether they are potentially value for money in respect of which psychological claims would be handled. Is that something within the scope of your inquiry that you would be looking at, the cost effectiveness of bureaucratic decisions being made for the purposes of assessing the work capacity of an injured worker?

BOLA OYETUNJI: I believe it should, and it will, because I've included the efficiency aspect of the performance audit there. So we'll look at that as part of that process—again, part of what I think we were just discussing before, which is where we're going to look at the details of the transcripts of this inquiry so that when we are formulating the scope of the next audit it's robust enough to address some of the fundamental issues that

will help improve outcomes for injured workers because, again, that is what everyone is looking to do. How do you drive some of the efficiency, some of the expenditure controls? A few people in the public write to me and talk about some of the pricing of some of the services they get; they think it's incorrect, it's probably inflated. These are the things they tell me and, again, as Auditor-General, it's my role to independently verify that and report to Parliament.

The Hon. DAMIEN TUDEHOPE: Is it within the scope of the work that you would do that you would look at the potential effectiveness of commutations of claims?

BOLA OYETUNJI: I've not considered that, but it's something that we can discuss.

The Hon. DAMIEN TUDEHOPE: If, in fact, it provided downward pressure in relation to the financial pressure on the scheme, is that something which you would look at for the purposes of making recommendations as to the potential future viability of workers compensation in its current form?

BOLA OYETUNJI: Yes, it's something we can consider because that leads to the efficiency of the outcomes of the scheme itself. If it puts downward pressure on the liabilities, then that drives efficiency in the scheme.

The Hon. DAMIEN TUDEHOPE: I must say, the information you've provided this morning probably is a window into the consultation process which has gone on before this bill. The fact that we're doing this now would seem to me, potentially, to give much more information as to where the financial pressures are on this scheme currently, which would possibly educate the legislators for the purposes of making sure that they got all of the parameters right. That's an observation by me, but what I'm wanting to know is this: Is the broad-ranging nature of your inquiry to make recommendations or findings in respect of the way claims management is currently being run but, potentially, other things, in respect of the scheme, which should be looked at?

BOLA OYETUNJI: Yes, that's correct. I think I've read through—as I said, some of the transcripts have been useful to understand where the key drivers are, and some of the new things learned from reading this transcript that, again, when we're formulating our own scope, we'll definitely put in there. There are other fundamental issues that have not settled in my head yet—so I'm unable to make it public—that I'll also be looking at in terms of the structure of the scheme itself. So there are a lot of things that, hopefully, can add value to what this inquiry is doing. If I get my scope right, there will not be any duplication, but that will be something that will complement it to get the right outcomes for the injured workers.

The Hon. DAMIEN TUDEHOPE: One of the concerns also raised by the Bar Association was the potential cost-shifting from the compensation scheme to other welfare agencies, whether it be NDIS, the public health system or the like. Is that also something your inquiry will address? If we increase the whole person impairment to 31 per cent for continuing claims, will your inquiry look at the extent to which that involves cost-shifting to other agencies?

BOLA OYETUNJI: It won't likely include that, Mr Tudehope, because it will be too broad for a normal cycle performance audit and, if I understand the way you described it, it may also be moving towards what I would call a policy of government.

The Hon. DAMIEN TUDEHOPE: How long do you think this audit will take?

BOLA OYETUNJI: If I get it right, I want it over by June 2026. I want to make it quick and fast.

The CHAIR: Thank you for appearing today. I know it's the work under your predecessor, but the *Workers compensation claims management* audit report has been incredibly useful for my understanding of what is going on here as well. One of the issues that keeps coming up is the nebulous assumptions on which a lot of the valuations are based, and I'm hoping you can clarify some of this for me. You identified the assumptions in, I believe it was, the Nominal Insurer liability valuation as a key audit matter. Obviously, with these long tail insurance schemes like workers comp, even very small changes in assumptions can have quite a large impact on what's forecast to occur in the future, how much money the scheme needs and how financially stable it is. What I have noticed is that there is a bit of debate in the documents between various auditors as to how these assumptions should be crafted, and I'll bring you to one of them.

Finity, in their actuarial evaluation for the Nominal Insurer in June 2024, had an assumption that there would be a decrease in the proportion of WPI 15-plus psychological claims after March 2022, for after that accident year. But then another firm comes in and questions that assumption and essentially says that if you get that wrong, the impact will be quite large. As a result, Finity then revised that assumption upwards and now assumes a much worse-case scenario looking into the future. Obviously, there's this enormous level of judgement that goes into things, but how do you, as the Auditor-General looking at that, work out where the sensible assumption is? How should we be thinking about those assumptions?

BOLA OYETUNJI: Those valuations are very complex. Again, if you look at the actuaries, even they use central estimates. It's a lot of judgement and reasonableness. Central estimates have a probability of being 50 per cent right or wrong. This is where you start picking up the key drivers that will impact vibration. I remember a long time ago one of the key drivers was the cost of medicals, so we started looking at that. The actuaries will use what they call claims experience. If the rate is going up, that is what they'll project to the future. An actuary could look at a certain aspect of the assumption and, based on legislation reforms, assume that that may temper down in future. I think they do that every year. One of the things that then could happen is, once you start seeing the change and you're getting the assumption right—that's why they do it every year—then they change the valuation. That's why the valuation can move up very quickly.

Also, what the actuaries have perfected is—and this is where a lot of these things will be perfected better when you have quality and complete data. What used to cause problems was discount rates. It can go up and down depending on what the discount rate is. But the actuaries now have a process: They used the gap, between the CPI and the discount rate. That allows the consistency of the valuation. This is where we also then bring in our experts because, if it's not an area in which you have expertise, we then bring in an expert to have a look and have that discussion. That complexity requires that. What then helps us as the Audit Office is we now look at all the assumptions and look at the data backing the assumption and how reasonable it is. That's what we determine—which of the assumptions it fits into the valuation.

The CHAIR: Just on that, in the claims management audit report, there was discussion about how when icare moved to a single claims manager, the return to work rates fell quite significantly. In that report, it notes that the impact of that lower return to work rate is felt for many, many years before it flows out of the system. The report also notes that basically every time you make a change to the claims service provision and the models, it will then take a period of time for that to flow through as well. Given that, how much should we be relying on the changes over a couple of years versus looking at a much longer period of time when we're thinking about whether or not to make changes to workers compensation schemes.

BOLA OYETUNJI: It's a longer term that most actuaries and valuers would use anyway. What we pointed out in the report—and the reason it was done for that year was because of the new contracts, to give them time to settle in and get their processes right. But the key part of it is once you lose it for one year, the compounding effect will be felt going forward. So the compound impact of even losing one year just doesn't restrict to one year. It can stay for longer term.

But that's why icare, with their reforms in some of their strategies, their proactive management, should be picking up some of these things and should be agile enough to adjust as you go forward. You mentioned the lawyers; sometimes they're also part of the process where you can have the reform and you can have—you get a good reform if they pick up gaps in it and maximise what the outcome is for their clients. That's why there's a continuous process. It's a complex environment. Again, reading through some of the transcripts, the experience of the claim managers—if the claim managers are not experienced enough to start looking for some of these problems and loopholes and manage it well, then we'll have a system that will continue deteriorating if you don't manage it well.

The Hon. MARK LATHAM: Thank you to our witnesses. Can I thank overall the Auditor-General and his office for the outstanding work they do in New South Wales. The current Government we've got is the least accountable and transparent since the time of Askin. You're obviously a very busy office, and we look forward to seeing the work you're doing in this workers compensation space. Have you looked at the competence and accuracy of actuarial modelling at icare? We had their actuarial guy at the Committee. You'd think this was just his bread and butter 101, that he'd have at his fingertips the cost of amendments that were made to this particular bill in the lower House. He had no such thing. He just looked completely flummoxed and incompetent. Nor could he tell us the time frame in which he was asked to provide any information about those lower House amendments.

There was a lot of focus on potential upper House amendments, like they're a bolt of lightning that's hit everyone. This actuarial guy presented in a way where I have no confidence at all in his ability. I also wonder—as someone with a bit of a background in economics—what are the assumptions they use for this type of modelling, particularly on things that have never happened before and would be very subject to behavioural economic variations, reactions in human nature as to how people respond to their opportunity to get into the scheme, and then what happens once they're in? Have you got any comments on that, Auditor-General?

BOLA OYETUNJI: Yes, Mr Latham. What they would do normally is what we call scenario analysis, and within that scenario they have the probability of what will occur. But I'd also say that, when you talk about the actuaries, they also have—I think icare also will have specialist actuaries that are advising them. The witness probably would not be the only actuary that will be designing the model. They will also have experts, because an actuary is a very complex, highly technical profession. So those who do it well actually use a panel, just to think

through some of the judgements. As I said before, if something hasn't happened before, you model the scenario and use probability to do the initial count. Then what they do is they use what they call the claims experience, or claimants experience, to now start revising it. What we then look at is to make sure that all those assumptions are reasonable. We then, again, as I said, use our own experts. So there are a lot of experts before the final figure is struck, Mr Latham. And within the actuary standards, that's what we accept.

The Hon. MARK LATHAM: So you are saying they are matters of judgement and probability based on things that have never happened before. In the world of economics, we normally decode that as guesswork. That's how it appears to me. When the current Treasurer was in opposition, it's legend around Parliament House that he thought that the "i" in "icare" stood for "incompetent". He was so rigorous in his examination of icare witnesses at committees like this that he put a couple of them into mental homes and mental care. Have you noted any improvement in the competence of icare from those times—and also the revolving door? I have seen a fair bit about icare in my time as a parliamentarian. They must have had four CEOs in the last six years, and other changes. Surely this revolving door of senior management has led to instability and further incompetence.

BOLA OYETUNJI: What I would say, Mr Latham, is that the new CEO started in March. I've met the new CEO. I'm meeting her again in a couple of weeks. I've met the chair of the audit and risk committee, and I've also made a request to meet the chair of the board. Again, my answer to you is that it's important for me to have my own initial assessment and to be able to then at least hold them accountable to what our recommendations have been and what they have put out they're going to do. That is my approach to make sure that I have that engagement with them. But, at this stage, it's too early for me to make any strong comment.

The Hon. MARK LATHAM: I just flag that, obviously, management stability and competence is a big part of a performance audit. We look forward to your findings in that regard. Have you got any thoughts for us about industrial-scale rorting of workers compensation in the psychological injury field? I've given one famous example of it. It's kind of surreal. The word on the street is that if you're an honest psych and you're giving an honest assessment about patients who have tried to coach themselves to get these WPI gradings, and you find that, no, they haven't really got a psychological injury, you lose a lot of business. There's a cottage industry out there of psychs who are verifying anything. Someone who's completely functional, vibrant, active on Instagram and getting things done in the workplace can be said to be dysfunctional and can't go to large gatherings. How do we clean this out? The sensible people in this space, led by Unions NSW, identify that medical and legal fraud in this area is off the radar and absolutely essential to bringing down costs, while not punishing those who have genuine long-term psychological injuries and deserve genuine long-term income support.

BOLA OYETUNJI: What I've not heard in the inquiry—and maybe I've missed it—is the power in the use of data and data analysis and data analytics. What you've described is where you have enough data and you have enough analysis, you can actually pick where the red flags are. If, I believe, we use data analytics properly—and we have started using a significant amount of data analytics in our work—hopefully some of this will help decision-makers at least to have the information. You have described some problems out there. What we need is the data to back it up and make sure that decision-makers are using the data to improve the process. But if I answer your question, I believe, yes, we've heard it's there. I've got some messages from the public about what is happening. But I just need to make sure that I get enough data as evidence to then have the right recommendation of how we move forward. We want to minimise those who are gaming the system. Will people game the system? Of course, yes. But if we can reduce that percentage to what you call a statistically insignificant amount, then we know we're in the right trajectory to improve the sustainability of the schemes.

The Hon. MARK LATHAM: I appreciate that. I think, Auditor-General, like me you appreciate accuracy and exactitude in your work life. But then we've got a basic problem in terms of data and the accuracy of this data. We've got X-rays for the back; we can see who has a physical back injury. But we've got no X-rays for the brain. Medical science in this area is still unformed. I'd say we know everything about mental illness and psychological injuries, except what causes them and what fixes them. So we're a long way off having data that anyone can rely on. Haven't we got to get to the point of government being serious? I mean, they're out there de-registering and harassing tobacco shops where people are trying to get a cigarette. But these hikes—

The CHAIR: Order! Sorry, Mr Latham, your time did run out.

The Hon. MARK LATHAM: [Disorder] audit of the psych industry, please.

The CHAIR: Apologies, Mr Latham. You can't hear the bell, but your time ran out about a minute ago. I will allow the witnesses to answer, if they would like, and then I'm going to hand over to Government time.

The Hon. MARK LATHAM: Thank you. Sorry, Chair.

The Hon. PETER PRIMROSE: Good luck.

The Hon. BOB NANVA: You can take it on notice.

BOLA OYETUNJI: Again, I'll take that on notice, because I think it is an important—

The Hon. MARK LATHAM: Okay. It's quite a wonderful thing, isn't it, in a Parliament that dances around the mulberry bush with the Treasurer, who does that. Anyway, if you can take that on notice, I'd appreciate it. Thank you.

BOLA OYETUNJI: Thank you, Mr Latham.

The Hon. BOB NANVA: Thank you for your evidence this morning. Could I just come back to the actuarial analysis that has been undertaken by icare. Have you or your office reviewed it or inspected it?

BOLA OYETUNJI: Every year, before we sign off on the financial statement, we do review it. We also have our own experts, actually, to have a review on it, and that's the basis we sign off the opinion and the financial report.

The Hon. BOB NANVA: So from a public accountability perspective, you believe the icare actuarial analysis is a reasonable basis for assessing financial risk to the scheme?

BOLA OYETUNJI: Yes. The 30 June 2024 we've already said, yes, that's correct.

The Hon. BOB NANVA: If I could refer to your predecessor's report into workers compensation claims management from last year, it made this observation:

> Over the last five years, the NI's financial position has deteriorated from a net asset surplus of $1.6 billion at 30 June 2019 to a net asset deficiency of $1.8 billion at 30 June 2023. The negative net assets means that the NI does not hold sufficient capital to meet the estimated present value of its future payment obligations.

Now obviously those numbers have gone to $6 billion this year—deficit—and hold 78¢ in assets for every dollar, so a future liability. For a layman, it appears as though the scheme doesn't hold enough capital to meet the value of its current and future payments. Is that an accurate assessment?

BOLA OYETUNJI: At a point in time, that's correct.

The Hon. BOB NANVA: Would it be fair to say that for employers, workers and the public at large to have confidence in the system and in the scheme, it should be fully funded—that the public ought to have confidence that there's a scheme to support workers in the short and long term in a way that is self-sufficient, without these recurring deficits?

BOLA OYETUNJI: Yes, that's correct, because you need the confidence that it's fully funded. You need the confidence that injured workers will have funding to pay for their continuous treatment. Also, which is probably the complexity of it, is you also want to make sure that the employers and the premiums are reasonable so that you don't lose employers to other States or they go under. Again, to answer your question, a fully funded scheme is the only way that employers and employees would have confidence in the scheme.

The Hon. BOB NANVA: You say that that's an assessment at a point in time, but obviously the issues and the deficits that the scheme face are a factor of what has happened not just in the current financial year but what has happened over historic trends, over a significant number of years. There have been a number of criticisms of claims management, particularly in the past, which has no doubt contributed to the current shortfall in the scheme. We've now had the McDougall review, the Dore review and the Auditor-General's 2024 review into aspects of the workers compensation scheme. Can you outline for the Committee improvements that you have seen over that period to the scheme's administration and operation including, but not limited to, claims management?

BOLA OYETUNJI: I think we'll be able to answer that question when we do the new audits, in the sense that I don't want to speculate because I've not audited any aspects of what is happening currently. So we will put that as part of the scope of a new audit. I must say, though, the reason why I say it's a complex structure is that even if you get the scheme to be fully funded, there needs to be enough rigour and proactive management to make sure that it continues. And this is what I believe—again, which we'll audit in the next year—in my discussion with the current management of icare, that is what the plan should do and that's what their new approach and reform is intended to do. Because, as I said before, if you have your eye off the ball for one year, the compounding effect takes longer to correct. Sorry I'm not able to answer your question directly, but I believe the audits that we'll do this year will be able to do that.

The Hon. BOB NANVA: Could I ask that you take this question on notice, particularly in terms of recommendations that arose from the Auditor-General's 2024 review into claims management, as well as the McDougall and Dore reviews. There have been a number of significant reviews with significant recommendations,

many of which claims providers and icare say have been implemented and are starting to bear fruit. I'd be interested in your analysis as to whether that is accurate or not. Could you take that on notice?

BOLA OYETUNJI: We can take that on notice.

The Hon. BOB NANVA: The secretary of the Treasury has provided evidence to this Committee that Treasury has taken the view—following its operational review into icare—that where it can and should save money, it has done that. He said:

> … at a high level our benchmarking indicated that once you've delivered those savings, icare looked to be, at a high level, a relatively efficiently run organisation.

Would you have any reason to question that conclusion by the secretary?

BOLA OYETUNJI: No, I think that's what a secretary of Treasury should do, so I don't have any question about that.

The Hon. MARK LATHAM: Well, he would say that, wouldn't he?

The Hon. BOB NANVA: In the event the deficit can't be reduced through a series of non-legislative reforms, McDougall suggested that changes to benefits should only be considered if they are seen to create perverse disincentives to recovery or if they're placing an unmanageable burden on the scheme. The Victorian Government recently introduced a series of workers compensation reforms. Its advice was that prevention and claims management initiatives alone were not sufficient to address the financial challenges that that scheme was facing, which are very similar to the challenges facing the New South Wales scheme. In the event that those non-legislative changes don't restore the scheme to a financially sustainable position, is it prudent for the Government to explore legislative reforms, including those to eligibility of benefits under the scheme?

BOLA OYETUNJI: That will be a matter for government, and I don't think I can comment on that, if that's all right. But, broadly, if a scheme will not return to surplus, what I'm hearing you say is that you move from a bandage to surgery, and there's nothing wrong in that. Specifically though, regarding government's policies to this, I'm unable to comment on that.

The Hon. BOB NANVA: The Committee has received evidence that the single element or driver that's causing the greatest deterioration to the Treasury Managed Fund and a Nominal Insurer is "the trend of ever-rising whole person impairment assessments, combined with the rising number of new psychological claims coming into the scheme". That is the single element or driver causing the greatest deterioration. The Committee has also received evidence that, while improvements to return to work rates and improvements to claims management processes are obviously welcome, compared to the multibillion-dollar challenges facing the scheme, those savings are helpful but not game changers. Will you be looking at that in your review?

BOLA OYETUNJI: Yes, we will. Again, just within the reports that I quoted on the mental health and wellbeing of police officers, part of what we'll be looking at is some of the root cause analysis because, if you look at the psychological injuries, that has suddenly increased significantly. I think, if you get to the bottom of it and the root cause of it, it's a significant thing that needs to be done. I was also looking at the evidence and some of the confidence we'll have on the PIAWE. Now, you mentioned some of the psychological injuries. If we don't have trust in how accurate some of these things are—these are the things we need to look at. It's a broad spectrum of issues in this complex area. That's why I'm actually also, again, looking forward to your report: because it's complex, it's important, and we need to get it right. That's why we are looking at this also very seriously and looking at the evidence here and making sure that, when we scope our audit, we don't go light; we go deep into what the issues are.

The CHAIR: That does conclude our time. Thank you very much, Mr Oyetunji and Ms Harwood for attending today. We do enjoy, as a Committee, working with you and your team. To the extent there were questions taken on notice or any supplementary questions, the Committee secretariat will be in touch. That concludes this session.

(The witnesses withdrew.)

Mrs SONIA KAKOULIDIS, Head of Workers Insurance Contracts and Claims, icare Claims, GIO, sworn and examined

Mr MATTHEW RODWELL, General Manager, Insurance for NSW, EML, sworn and examined

Mr PETE NICHOLSON, Chief Executive Officer, Gallagher Basset Australia, sworn and examined

Mr JOSH NEWBERRY, Acting General Manager – SA and NSW, Gallagher Bassett Australia, affirmed and examined

Dr NICK ALLSOP, Chief Reserving Actuary, AUSPAC, QBE, affirmed and examined

Ms REBECCA SAID, Acting General Manager, Government Services, Allianz, on former oath

Mr MARK PITTMAN, Acting Chief General Manager, Personal Injury, Allianz, on former oath

Mr MATTHEW VICKERS, General Manager, SME and Specialty, EML, on former oath

Ms LYNDA REEVES, Executive Manager, Choice Employers, icare Claims, GIO, on former oath

The CHAIR: I now welcome our next panel of witnesses. Would any of you like to make a short opening statement?

SONIA KAKOULIDIS: I appreciate the opportunity to make a short statement and the Committee inviting us again to participate in the hearing. GIO has been operating in the New South Wales workers compensation scheme since 1927. As part of the Suncorp Group, we are the largest personal injury insurer in Australia. We operate in all privately underwritten schemes across Australia via the CTP and workers compensation schemes. On a personal note, I have been privileged to contribute to the New South Wales scheme for the past 21 years, having joined GIO in 2004 as a claims adviser. Over the course of my career, I have remained dedicated to supporting injured workers and employers across New South Wales, progressing to now lead the New South Wales business. My entire professional journey has been shaped by a commitment to this scheme and the value it represents.

GIO has an extensive experience in every aspect of claims management. Our expertise ranges from handling the most intricate and long-term claims within the scheme to efficiently managing short-term return to work cases and medical-only claims. Our role as a claims service provider is to deliver fair and sustainable return to work outcomes for the scheme to assist injured workers back to work and back to life. As part of the New South Wales workers compensation scheme, GIO has contributed to arguably the two biggest scheme changes: the 2012 reforms, and the largest transition of open claims and finalised claims in 2017. The 2012 reforms brought major changes to New South Wales workers compensation. GIO quickly adapted, guiding stakeholders through the transition while keeping fair and sustainable outcomes. This showcased our reliability and ability to thrive in legislative change. In 2017, GIO proved its agility, swiftly taking in over 25,000 open tail claims and maintaining strong performance throughout the rapid transition. This highlighted GIO's reputation as a reliable partner for icare and showcased its capability to manage large-scale, complex programs of work.

The scale of GIO and Suncorp means we can leverage our extensive experience in personal injury to ensure we are at the forefront of best claims management practices. We are committed to administering the legislation to the workers and employers of New South Wales and are here to assist the Committee in delivering better outcomes for all those who may need to access workers compensation or interact with the scheme. We thank you for your time and are happy to answer any questions you may have.

MATTHEW VICKERS: EML would reiterate its opening statement from 17 June.

MARK PITTMAN: Likewise, we reiterate our previous opening statement.

PETE NICHOLSON: No opening statement from us, thank you.

NICK ALLSOP: No opening statement from us either, thank you.

The Hon. DAMIEN TUDEHOPE: Thank you all very much for coming back. There has been a fairly significant focus on claims providers and claims managers. Can I start by going through each of you and asking about assessing work capacity. Under section 44B, there is a work capacity assessment which is obliged to be done. Generally, when is that work capacity assessment done?

LYNDA REEVES: Anytime a work capacity decision can be made, we assess it on an ongoing basis. Essentially, if we have the evidence to make a work capacity decision and the time is right, we do that.

The Hon. DAMIEN TUDEHOPE: When, generally? Do you monitor the data as to when a work capacity assessment would be made?

LYNDA REEVES: Yes, we do. If a certificate warrants and there is a capacity to work, we undertake a number of assessments to determine that.

The Hon. DAMIEN TUDEHOPE: Again, just returning to the question, in terms of the time from the initiation of the claim to the first work capacity test, do you have any data which says the average time for doing a work capacity test?

LYNDA REEVES: No. We do it when the evidence is there.

The Hon. DAMIEN TUDEHOPE: What's that evidence?

LYNDA REEVES: A certificate of capacity where the evidence is that that person can work.

The Hon. DAMIEN TUDEHOPE: Where do you get that from?

LYNDA REEVES: The doctor. That's a nominated treating doctor. If they say they have evidence, we might get an independent medical assessment that says that the person has the capacity to work. We might get clinical notes. We might receive information from a physiotherapist that the person has capacity. We might then test that capacity with the doctor. If the person is unfit and we determine through the process that they have capacity, then we will undertake that test.

The Hon. DAMIEN TUDEHOPE: Do you ever test the assumptions relating to the certificates which are provided to you?

LYNDA REEVES: Yes. If we have a number of parties that suggest otherwise—that the person has capacity—we undertake that work capacity decision or test.

The Hon. DAMIEN TUDEHOPE: Does anyone else disagree or want to make any other observations in relation to the manner in which or the timing in respect of which work capacity tests are undertaken?

MATTHEW VICKERS: From an EML perspective, Mr Tudehope, during FY25, EML undertook between 400 and 450 work capacity assessments per month. Sixty-four per cent of those 400 to 450 a month were undertaken at 0 to 78 weeks. There's obviously a legislative requirement that every claim, at 130 weeks, has had a work capacity assessment completed as part of the section 38 process.

The Hon. DAMIEN TUDEHOPE: But you can do that more often, can't you?

MATTHEW VICKERS: Absolutely you can.

The Hon. DAMIEN TUDEHOPE: Do you?

MATTHEW VICKERS: Yes, we do. Between 2 per cent and 2½ per cent of the claims in receipt of weekly benefits each month are—

The Hon. DAMIEN TUDEHOPE: How many would be done within the first 28 days?

MATTHEW VICKERS: I would suggest very few within the first 28 days.

The Hon. DAMIEN TUDEHOPE: Does anyone else want to make a comment? One of the observations made by the Bar Association is relating to rehabilitation consultants and the fees paid to rehabilitation consultants. I'll start with EML this time. Do you have a panel of rehabilitation consultants which you use?

MATTHEW VICKERS: No, we don't, Mr Tudehope. The panel is managed by icare.

The Hon. DAMIEN TUDEHOPE: In respect of the fees payable to those rehabilitation consultants—

MATTHEW VICKERS: The hourly rate is set by icare as part of the contractual arrangements they have with rehabilitation service providers.

The Hon. DAMIEN TUDEHOPE: Do you ever raise concerns about the quality of those rehabilitation consultants?

MATTHEW VICKERS: At an individual level, if there's a particular matter, yes. Our provider services manager would raise that with the particular firm. We equally meet with those providers on a quarterly basis as well, to discuss performance and trends.

The Hon. DAMIEN TUDEHOPE: One of the observations made by the Bar Association was:

> This is the use of so-called "Vocational Capacity Reports" ... It is understood these reports cost some $3,000 to $5,000 each. They are produced by what has become a small industry of consultants, who are paid the report fees by insurers and scheme agents. The report fees are then included in the claim costs for the worker in question.

Then there is a significant criticism by the Bar Association in relation to the capability of those vocational capacity reports that are produced. Do you want to make any observation on to that?

MATTHEW VICKERS: I have read the bar submission. I have formed a view that they have conflated an earning capacity assessment undertaken for the purposes of a WID matter with a vocational assessment undertaken for the purposes of a work capacity assessment, particularly with reference to the figures in terms of the cost of the report. A vocational assessment for the purposes of a work capacity assessment would be in the order of between about $1,600 and $2,000 and supported by a labour market assessment, which showed last time, I understood, that it's between about $800 to $900 from there.

The Hon. DAMIEN TUDEHOPE: Does your contract with icare have any key performance indicators you're required to meet?

MATTHEW VICKERS: Yes, it does.

The Hon. DAMIEN TUDEHOPE: What are the return to work rates set for psychological injuries in your contract?

MATTHEW VICKERS: There's not a specific psychological injury return to work rate set. We covered this ground on 17 June. It's a mix, adjusted based on individual portfolio size and type of injury. The 40 different individual characteristics that a claim can be bucketed into then determines the target against which we are assessed.

The Hon. DAMIEN TUDEHOPE: In relation to those targets which have been assessed, are you meeting those targets for psychological injuries?

MATTHEW VICKERS: The target rolls up to a whole. The 40 different buckets roll up to a single target, which is the focus from a contract perspective, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Would you object to a contract being framed in terms of meeting targets in relation to psychological injuries?

MATTHEW VICKERS: Happy to enter into any sort of commercial negotiation with icare around targets, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: You'd be happy to, in fact, have targets set by icare in respect of your performance and continuing operation as a claims manager for psychological injuries?

MATTHEW VICKERS: Yes, if that was the direction that the scheme wish to take.

The Hon. DAMIEN TUDEHOPE: In relation to section 11A, how many claims are defended in respect of a "reasonable management action" test by EML?

MATTHEW VICKERS: Not very many at all.

The Hon. DAMIEN TUDEHOPE: Why?

MATTHEW VICKERS: As covered on 17 June, there have been three key precedent decisions in the last 12 years that have significantly shifted away from the legislation as stated to a common-person interpretation around what is or isn't an accepted psychological injury claim.

The Hon. DAMIEN TUDEHOPE: So you would welcome an amendment to section 11A to give more flexibility in relation to employers to be able to defend claims on the basis of reasonable management action?

MATTHEW VICKERS: EML believe that there is a need for legislative amendment, particularly where you now have someone's perception of events being compensable.

The Hon. DAMIEN TUDEHOPE: Does anyone else want to make any observation in relation to the reasonable management action? None of you have a view about whether, for example, employers' lawyers ought be able to be outsourced for the purposes of bringing those reasonable management action defences?

MARK PITTMAN: Mr Tudehope, from an Allianz perspective, I'd agree with what Mr Vickers has said. We feel that 11A is used as appropriate, and there's evidence that's gathered to determine whether reasonable management action has been taken. That involves a number of different parties. It's not just the employer; it also looks at the worker's perspective as well and the medical evidence that's received. We feel there's an opportunity for review, but I think we gather sufficient evidence currently.

The Hon. DAMIEN TUDEHOPE: Would you agree that the current framing of section 11A provides for the reasonable management action to be the predominant cause of the injury? What would you say if, in fact, the wording was changed to a "significant"? Would that change the potential outlook in relation to the interpretation of that section?

MARK PITTMAN: It could do, Mr Tudehope, based on the interpretation of what's significant.

The Hon. DAMIEN TUDEHOPE: That's true. But would you agree that "significant"—

MARK PITTMAN: It does clarify.

The Hon. DAMIEN TUDEHOPE: It would clarify the opportunity for employers to be able to have more say in relation to what they had done and investigate what they had done in relation to a particular psychological injury?

MARK PITTMAN: Depending on what the overall wording is, yes, it certainly could.

The Hon. DAMIEN TUDEHOPE: Does anyone else have a view?

MATTHEW VICKERS: I don't to that, Mr Tudehope, but the definition doesn't stop the investigation to determine whether or not liability exists for a claim. Claims are not simply being accepted. In fact, it comes through in a number of the submissions to this inquiry that people have been asked to retell their story. People feel that they are not simply being believed. Whether "significant" is a stronger word than "predominant" is probably—if that was to be the change, it would be something that would be tested in the Personal Injury Commission, I would suggest, very quickly to obtain a precedent basis of the word.

The Hon. DAMIEN TUDEHOPE: There are decisions of the Personal Injury Commission, in fact, which have relied on the word "predominant" in respect of an 11A defence where the word "predominant" itself was used for the purposes of excluding reasonable management action. Would you agree with that?

MATTHEW VICKERS: I then come back to the challenge of, particularly, *Hamad v Q Catering*. In terms of waterfalling your case management decision-making, first you establish workers, second you establish that there's an injury and thirdly that the workplace is a substantial contributing factor to that injury and then you move to 11A.

The Hon. DAMIEN TUDEHOPE: A substantial or a predominant?

MATTHEW VICKERS: If you were to address 11A with "predominant", you would need to come past 9A with "substantial", which isn't a change that I've seen noted in the draft or the proposed amendments because then work would be a substantial contributing factor still. You're then coming to was it predominantly caused by—or significantly or whatever word you would like to have in 11A, whether it was caused by that word from there. But while you still have perception within the current framework, the injury would still have occurred, you would still require the medical evidence and the individual who has submitted the claim has still got a mental injury or illness from the workplace.

The Hon. DAMIEN TUDEHOPE: Can you take me through a timeline of how you would deal with an injury once notified? What's the process which EML adopts? Perhaps this is a flowchart that you have and it may vary from claim to claim, but generally there would be key markers which you would identify for the purposes of dealing with claims. Are you able to provide that sort of flow chart? If so, perhaps on notice the other insurers can provide us with similar flow charts for the manner in which they say are the key markers for dealing with claims.

MATTHEW VICKERS: Absolutely.

The Hon. DAMIEN TUDEHOPE: Perhaps you can do that now, and then the others can do it.

MATTHEW VICKERS: No worries at all, Mr Tudehope. Obviously the claim is first lodged within the first three days of it being a significant injury, which a claim of the nature that we're talking about would be significant injury by legislative definition. You're required to complete your three-point contact, so your contact with the worker; contact with the employer; and contact with the nominated treating doctor, if that's required, to clarify any information. By day seven, you're required to have determined your first liability step, in terms of your provisional liability period. In a normal course of events, that could see the claim accepted on that day seven. Alternatively, you'd make a decision that you need to obtain further information, be it medical or factual investigation.

If reasonable excuse is applied for a claim, you have 21 days from receipt of a claim form to have determined your final liability decision. Provisional liability period can run for up to 12 weeks of weekly benefits or $10,000 of medical benefits. I'm not going to sit here and ask for a return of claim form. I know that has been raised in previous inquiries, but the concept of date claim made is one that is challenging. It becomes an individual

test as to whether you've got enough information to make a decision on liability. For a claim at present, a claim form at least gave you a marker. From there, you've got 21 days from date claim made to have executed your formal liability decision and, in most majority cases where a claim is accepted, move forward with helping someone get their life back and returning to work after injury or illness.

The CHAIR: I don't know how to put this gently, so let me just say it. Every time SIRA conducts an audit of your collective and individual performance as claims managers, the results are not particularly impressive. When I look at the July 2023 SIRA audit, they found that collectively you breached your legislative obligations 40 per cent of the time, in determining subsequent liability decisions. In more than a quarter of cases, you failed to consider all information available when making an initial liability decision. It found that in almost 50 per cent of cases, you failed to provide all relevant details in your written advice to workers and employers regarding the liability decision, and it found in more than 50 per cent of cases where reasonable excuse or a provisional liability decision was made, you failed to proactively follow up to obtain the information you claimed you required in order to make a liability decision. SIRA completed another audit of your performance in December 2024. We're expecting that release imminently. Should we expect more of the same poor performance? Who wants to take that?

MARK PITTMAN: Chair, on Allianz's behalf, the last published SIRA review actually found that, on balance, Allianz's claims management with both psychological and non-psychological injuries was positive, and actually felt that the way that we were managing claims was proactive, on balance. There were definitely opportunities for improvement, as there always is in a claims environment. But, overall, it wasn't a damning report—certainly from an Allianz perspective.

The CHAIR: What we've heard from the Auditor-General—and we've just heard from the predecessor to the Auditor-General in the report on claims management—is that even the slightest decrease in return to work rates can have a really significant impact on the financial viability of the scheme for years and years to come. Do you accept the statement made by SIRA in that report, that "Non-adherence to the legislated timeframe for liability decision can lead to a delay in the injured worker being paid their weekly entitlements and is associated with higher incidence of anxiety, depression and poorer return to work outcomes."? If you agree with that statement, are you not a little sheepish about the performance that you collectively have when it comes to performing your legislated obligations?

MARK PITTMAN: I think that there are a number of different factors that need to be taken into consideration when we're gathering the evidence, in terms of making a determination on whether it's a liability assessment or treatment acceptance. Certainly, there are times where our claim staff don't act on time, but the majority—they are also measured. We have internal KPIs to make sure decisions are made in a timely manner, because we do recognise there is an impact on the worker if there is a delay in us making a decision, whether it's a positive or negative decision, and also the linkage to payments. So we acknowledge that there is, or we accept there is, a connection there, and there's obviously a linkage to return to work. Our aim—I'd like to think my colleagues are the same—is if we can establish a position of trust with the worker from the time the claim is received, that actually makes it a more conducive arrangement, not adversarial, to helping with the return to work process. Part of that is not making a delayed decision and not delaying payment, because they are factors that negatively impact on, potentially, the outcome of the claim.

SONIA KAKOULIDIS: GIO would agree with that. There are instances, of course, with personal injury management that claims advisers might have a delayed decision, but there are many factors in that, in collecting evidence from the injured worker and other parties to make that decision. I would think, with GIO, internally we monitor KPIs very heavily around meeting the legislative requirements. We have a high percentage of that and, certainly, we've seen improvement from 2023. But we agree with Allianz on this.

LYNDA REEVES: Yes, significant improvement since the December 2024 audit.

The CHAIR: Do you think that's what the SIRA report will say when it comes out?

LYNDA REEVES: Yes.

The CHAIR: SIRA found multiple instances of claims where the CSP failed to take into consideration all the information to make a liability decision. It found multiple claims where determination of provisional liability was made despite there being no outstanding information identified to deter it from accepting full liability. The list goes on in terms of these poor claims management practices, and the comment was made by SIRA that this directly relates to and directly impacts on return to work rates. If return to work rates were improving, perhaps we could accept that claims management is also improving and we're back on the right track. But it paints this picture of claims management being directly responsible for the deterioration of the scheme, that psychologically injured workers are now being asked to bear the brunt of. What is your response to that? I'm saying to you that

I think we should be really focusing on claims management and improving return to work rates in order to bring this scheme back into some form of financial stability. Is there any financial penalty when you don't meet these performance standards? What kind of comfort can you give the Committee that you are on the right track to improving your performance?

LYNDA REEVES: There are penalties, Chair. As Sonia said, we monitor it closely internally in relation to our quality audit, ensuring that we're making decisions quickly, that we have the information as quickly as we can on file so that we're not impacting return to work rates or those individuals and contributing to a mental health injury.

The CHAIR: I understand that there can be penalties, but have you actually felt the impact of any kind of financial penalty for poor performance?

MARK PITTMAN: There's built into our remuneration—it means we don't get paid.

The CHAIR: But has that happened?

MARK PITTMAN: Yes, it has.

LYNDA REEVES: Yes.

MARK PITTMAN: Nobody is achieving—that I'm aware of, anyway—the maximum available remuneration where they're not meeting their targets for return to work.

The CHAIR: But it's a structured remuneration agreement, as I understand it, where there are multiple layers. So it's not like you're not getting paid.

MATTHEW VICKERS: The contract has the ability to not get paid, if you're performing poorly enough.

The CHAIR: But has that happened?

MATTHEW VICKERS: Pleasingly, EML have continued to improve, quarter on quarter, in terms of their performance. It's publicly available on the icare website and, indeed, the SIRA recovery through work data that sits on their website.

The CHAIR: I might follow up the specifics, on notice.

SONIA KAKOULIDIS: For GIO, building capability is a mainstay and a priority internally and has been for many years, from 2017. We're very well aware that there are many staff within the business. They're all individuals, they're all people, and they make mistakes. But building capability and monitoring that internally is a priority—and having great culture, internally, to allow them to do this difficult job. Yes, there are KPIs that monitor this by icare and, internally, we monitor very closely. Yes, there are penalties if you don't meet certain areas. But, for GIO, our performance is improving also over the past year.

The CHAIR: I'll turn to Mr Latham.

The Hon. MARK LATHAM: Thank you, Chair, and thank you to the various witnesses we have. In particular, can I just say how absolutely thrilled and excited I am that the great Matthew Rodwell is on the panel. As a St George Dragons fan since 1970, it's fantastic to have someone who was the Dally M player of the year—a rookie at the Newcastle Knights who then went to the first Perth team; then the great St George team in the late '90s; then the Panthers, who are so successful today; then on to England; and then the CEO of the players' association. Matthew, I am now suffering a psychological injury myself, as a Dragons fan, and I hope you can notice some clues for me as to where the wretched joint venture has gone wrong, because I looked up the data just yesterday, and the Dragons, as a standalone club between 1921 and 1997, had an over 60 per cent win rate in rugby league, the highest in the league by far. Now we're down, in this joint venture, to barely 50 per cent. If you can take that on notice, you'll be doing a lot—please, I beg you—to ease my psychological injury in following the Dragons week in, week out. Having said that, let me move on to perhaps a more serious matter, although nothing's more serious than the Dragons, I suppose. What happened, Matthew, when EML lost the Woolworths contract?

MATTHEW RODWELL: First of all, thanks, Mr Latham, for those kind comments and flattering comments. I'm thoroughly embarrassed. Turning my attention now—I'm not involved in that part of the EML business. That falls under another side involved with managing self-insurance, so I'm not privy to exactly what occurred in that space that you make reference to.

The Hon. MARK LATHAM: Do you know when it happened?

MATTHEW RODWELL: Earlier this year, is my understanding. The exact dates, I'm not certain of.

The Hon. MARK LATHAM: Perhaps you can take on notice how many times you lose these self-insurers. It must be a big contract with Woolworths.

MATTHEW RODWELL: My understanding is it was the most significant contract for EML. Again, I'm not privy to the contractual arrangements in our self-insurance space, so I'll have to take that on notice and defer to other colleagues within EML.[1]

The Hon. MARK LATHAM: Do you know the reaction of Geniere Aplin at the time of losing this massive contract to DXC?

MATTHEW RODWELL: I had no involvement with Ms Aplin in her time at EML during that particular period, so I would not know her reaction.

The Hon. MARK LATHAM: But it's true that EML lost the massive Woolworths self-insurance contract to DXC.

MATTHEW VICKERS: That's correct. We understand that Woolworths chose to go to DXC, Mr Latham.

The Hon. MARK LATHAM: This is Mr Vickers, is it?

MATTHEW VICKERS: Yes, it is.

The Hon. MARK LATHAM: Who did you play for?

MATTHEW VICKERS: I'm a long-suffering St George supporter as well, Mr Latham. Unfortunately, my ability didn't see me take a football field in any capacity.

The Hon. MARK LATHAM: I once captained Parramatta under-15s, before I decided study was more fruitful and I foolishly got into politics. Anyway, you didn't play for anyone, but you seem to have some expertise here. Do you know the reaction of Geniere Aplin when the Woolworths contract was lost?

MATTHEW VICKERS: No, I don't know the specific reaction of Geniere. I know that EML were disappointed to see a contract leave, as I assume everyone on the panel would be if a contract was to choose to take their business somewhere else.

The Hon. MARK LATHAM: Are you aware that when Geniere moved on to be the head of the hapless icare, DXC was then axed, seemingly with no preamble or adequate explanation, on 17 June, losing its icare business?

MATTHEW VICKERS: I was present when you informed the panel of that decision, Mr Latham.

The Hon. MARK LATHAM: You're aware of that. Sorry, I didn't notice. I pay more attention to NRL grades. In that regard, are you aware of very disturbing reports that Geniere Aplin then rang Woolworths to say, "Get that up you. DXC, who you went to, has now lost its icare business," in an act of spite and completely unethical behaviour?

MATTHEW VICKERS: I've not spoken to Ms Aplin other than two icare-organised meetings since her departure from EML.

The Hon. MARK LATHAM: Where is she today?

MATTHEW VICKERS: I don't know, Mr Latham. She doesn't work at EML anymore.

The Hon. MARK LATHAM: This is the second time we've had these inquiries. It would be nice to see the head of icare.

The CHAIR: Back to the KPIs and the performance-based incentives, when we were talking a moment ago, I understand that there's a base remuneration and there are a couple of other things that sit on top of that. When it comes to how much you're getting paid overall, though, could you explain to me what you think this penalty is, in reality, for not having met the KPIs under the scheme? Are you still getting 110 per cent of your costs covered? Where's the profit?

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[1] In correspondence to the committee received 29 August 2025, EML requested a clarification to the evidence of Mr Matthew Rodwell, General Manager, Insurance for NSW, EML.

MATTHEW VICKERS: The base fee is not designed to cover 100 per cent of the costs. Icare was very clear about that in 2022 and the intent of moving towards a risk-reward based contract. In fact, the base fee goes nowhere near covering EML's operating costs.

The CHAIR: I understand it's about 85 per cent, isn't it, and then the additional amount—

MATTHEW VICKERS: I really wish it would cover 85 per cent, Ms Boyd. The next step is around the quality metrics—doing things the way that icare would like to see them done to ensure that each worker and each employer sees a consistent experience from the scheme, irrespective of where the claim is managed. Then you move into the performance fees based on return to work. Predominantly, approximately 60 per cent of the performance fee pool is based towards front end performance metrics and 40 per cent towards longer tail claims management.

The CHAIR: When it comes to return to work, I understand that that makes 50 per cent of that performance bonus amount—correct me if I'm wrong. But when they're talking about return to work under that metric, it's my understanding that that only covers someone going back to work for an hour. Is that correct? What is the definition of return to work for the purposes of the contract?

MATTHEW VICKERS: For the purposes of the current contract, it's based on work status code, which does mean that a worker can return for an hour and a positive work status code is applied. That would be an 02 if they're at their same employer or an 04 if they're at a different employer, in terms of the hierarchy code set by SIRA.

The CHAIR: From the perspective of the contract, then, are there multiple levels of return to work or is it just that simple—that return to work is based on a one-hour back and that's the end of it?

MATTHEW VICKERS: The return to work metrics are solely based on work status code.

The CHAIR: Understood. Thank you.

The Hon. BOB NANVA: The Treasury has provided evidence to the commission that the claims management model is assumed under its modelling to deliver benefits of an average of $450 million a year in avoided costs. Can you provide any insight into how that is proposed to be achieved in the coming years?

MATTHEW VICKERS: From an EML perspective, we haven't seen the modelling or been involved to be able to answer that question, Mr Nanva.

The Hon. BOB NANVA: The evidence provided was that there are going to be a series of changes with respect to administration and operational activities, tailored support for workers—particularly in the psychological injury space—and further implementations of recommendations from numerous reviews.

MATTHEW VICKERS: We've not been engaged in conversations about that.

The Hon. BOB NANVA: We've also received advice that any savings from operational and administrative measures in the scheme, while welcome, aren't going to address the multi-billion dollar challenges in the TMF and the NI. Could you provide your view on what the greatest contributors are to the deterioration in the scheme, based on claims that have come through the CSP process?

SONIA KAKOULIDIS: From GIO's perspective, it's obvious that the psychological component has increased post-COVID. The landscape pre-COVID to post-COVID is completely different. I don't think there's one answer to that, either. I think there's multiple factors that impact the difference that we're seeing now. But the obvious one is definitely psychological claims have increased and I would think, across all CSPs, the volumes that are coming in are certainly different pre-COVID to post-COVID.

The Hon. BOB NANVA: Anyone else?

MARK PITTMAN: From Allianz's perspective, we would agree we've seen a significant increase post-COVID of psychological injuries in the TMF contract. Similarly, we've seen an increase in psychological injury in the NI contract as well.

The Hon. BOB NANVA: Would you agree with the view that ever-rising whole-person impairment assessments, combined with the rising number of new psychological claims coming into the scheme, would be a significant contributor, if not the most significant contributor, to the scheme's deterioration?

MATTHEW VICKERS: I'd suggest it is a—I don't know whether I'm using "significant", "substantial" or otherwise—contributing factor to the increase.

The Hon. BOB NANVA: Are there any mechanisms within the scheme's structure that are a cause of concern for providers with respect to improving the return to work rates particularly in the psychological space?

MARK PITTMAN: At the previous hearing we mentioned there's not enough psychologists in the New South Wales scheme, and it's actually a national issue. So I'd probably take a step back and look at the actual assessment process in the first instance to determine do we have enough people with the appropriate level of qualifications? Do we have enough of those people in the scheme to make a valid assessment to determine whether an injury is a valid psychological disorder, psychological injury? That's one step I'd be looking at, at the very first step, before we even worry about anything else.

The other factor we'd look at—and I was going to reference it to a response to a question from the Chair around return to work earlier—is that it is a multifactorial issue. It's not just if the claims managers were operating 100 per cent across all the measures; there are still other factors in terms of the role that the employer plays, the role that the workplace in terms of—a worker is a whole person. They do have issues around their connection with the community, their connection with their family and their financial pressures. So there are a number of other factors that come into somebody's willingness or mental ability to consider returning to work. I hesitate to think this is a very simple thing that the case managers within our businesses would make a significant contribution to return to work in and of ourselves.

LYNDA REEVES: I agree, Mark.

The Hon. BOB NANVA: Any other views?

PETE NICHOLSON: Just the same view. As it might have been identified by Mark, it is something we see across the nation in terms of the rise post-COVID in psychological injuries. It's also important to acknowledge that individual psychological claims are all different. A lot of what we see are interpersonal workplace conflicts, which are very different from complex mental injury that occur in other industries, for example, which are harder to treat, harder to get people back to work, for example. What I would say is that it's treated very sensitively across the industry. I'll certainly say Gallagher Bassett's people are highly trained and skilled, and very empathetic and attuned to what's going to be helpful to that poor individual that's gone to work one day and come out with an injury. But it's a difficult job to get right 100 per cent of the time. There are multiple facets in how you might work with someone that's experienced some form of psychological injury.

The Hon. BOB NANVA: I come back to the avoided costs from claims management that I referred to earlier. The view is that improving the professional framework for case managers, high quality support earlier in the journey of a claim, keeping people connected to work and getting them back to work more quickly is what will result in those avoided costs. Are you making progress with respect to those metrics and, if so, can you provide some examples of that?

MATTHEW VICKERS: Absolutely. If we go back to February 2019, the proportion of the EML workforce with two years or greater tenure was 16 per cent, following the changes that were implemented from 1 January 2018. At the commencement of this contract on 1 January 2023, we just ticked over 50 per cent of the workforce with greater than two years tenure. I am very proud to sit here and say that now 73 per cent have greater than two years tenure. There is no substitute for tenure in experience in building capability and competence in a workforce to assist the achievement and strategic planning towards return to work outcomes.

The Hon. BOB NANVA: Anyone else?

PETE NICHOLSON: Just to back up what Matt is saying, I think we're in an industry that tends to be in the press only for bad reasons when, actually, if you look at our workforces, they are so motivated by helping people. I think it's really important to say that outright. I'm not saying that just on behalf of our organisation but everyone else here. What they do each day and how they help people through some really tough times in their lives is really incredible to see. It has been an industry where it's tough and it's in the press for the wrong reasons. In some ways it can be seen as a thankless task, hence the very high turnover and the stress levels that are on our workforces as well because of the way in which often it's only the negatives that are focused upon. Similar to EML's experience, our experience in tenure in our operations has increased significantly. We're also adding a lot of case managers with experience now to help provide even more tailored support for injured people in New South Wales.

The Hon. BOB NANVA: Is reduced case load for each case manager a part of that model?

LYNDA REEVES: Yes.

MATTHEW VICKERS: Categorically.

PETE NICHOLSON: It is.

SONIA KAKOULIDIS: Absolutely. From GIO's perspective, case loads are monitored very closely. It's very key to ensuring that the service is delivered correctly and with empathy. Case load numbers are important, absolutely.

The Hon. BOB NANVA: Does that vary between physical and psychological injury and industry or are your ratios pretty consistent across the board?

SONIA KAKOULIDIS: They are consistent within GIO.

MARK PITTMAN: From Allianz's perspective—and I think this is generally the same across all the CSPs—for a psychological injury or a complex physical injury, you would like to have a lower case load than you do for somebody who has broken their leg. It's quite simple; they will return to work. We are mindful that if you're managing especially a primary psychological injury or a complex physical injury, you do need to have more time with that worker to help support them through the recovery process. There is a variation from that perspective, but I think we all have a similar approach.

SONIA KAKOULIDIS: Correct.

LYNDA REEVES: Agree.

PETE NICHOLSON: And also the size of the employer can play a role as well because larger employers would have more sophisticated return to work resources on their side and more suitable alternate duties that people can be deployed into, for example. If you're dealing with really small employers, you might need to have lower case loads to spend more time even helping them understand the complex way in which workers compensation works.

The Hon. BOB NANVA: With respect to the long-term sustainability of the scheme, there's obviously the question around eligibility for benefits and then duration of benefits. There is interesting evidence that the Committee has received with respect to whole person impairment increasingly being conflated with capacity for work. Do you see any potential built-in incentives within the scheme that are meaning people are getting entry into the scheme and staying longer in the scheme when they might otherwise have been able to return to work sooner?

MATTHEW VICKERS: I'd articulate it slightly differently, in that in a scheme that is driven by "If you have capacity, you're no longer entitled to receive weekly benefits"—we covered work capacity early—or "If you don't meet an impairment threshold, you are no longer entitled to receive benefits", there are, potentially, in a small proportion of cases a perverse incentive and actors within the scheme that drive claims in a particular direction to achieve an outcome that's not in keeping with the objectives of the Act, which is to return to work.

The Hon. BOB NANVA: Does anyone else have a view on that?

PETE NICHOLSON: The same view. I think it's a small percentage, but it's absolutely there. I think most people actually want to get back to work, and they understand the benefits to themselves from the social and from the psychological perspective. They're doing their best, by and large, to get back.

SONIA KAKOULIDIS: I agree.

The Hon. BOB NANVA: Notwithstanding that it might be a very small minority, and I accept that it would be, given the complexity and diagnosis around psychological injury—it's not getting a scan and identifying a broken arm and having a rehabilitation plan in place, but it is multifaceted; it is increasingly complex—are there concerns with respect to nominated treating doctors perhaps being overly restrictive in their assessment of an individual's capacity to work, potentially then colliding with the WPI thresholds where they are resulting in people entering the scheme and staying in the scheme to their own detriment?

MATTHEW VICKERS: The PIRS scale that we covered on the 17th is largely based on an evidence interview between a consultant psychiatrist and the worker that—

The Hon. BOB NANVA: At a single point in time?

MATTHEW VICKERS: At a single point in time. The capacity, or the category I'd refer to within the PIRS scale, is employability. The PIRS scale asks, "Can that person work again within the next 12 months and the next 12 months only?" Out of the hearing last time, EML went away and we considered how do we obtain some evidence to deal with the statements that were being made around the ability to work again post 21 per cent whole person impairment. We ran a survey. We identified that we had 226 workers who had had a psychological whole person impairment claim of 21 per cent to 30 per cent, being within the band of what was being spoken about, and that they had received a work injury damages claim—so a financial settlement. A couple of the other witnesses had spoken to—I'll use the term "financial justice", and I apologise if I've used a wrong term to them.

We went forth and tried to contact these 226 workers who'd had had a resolved claim, and we were successful in making contact with 167 of the 226. Pleasingly, 73 agreed to participate in the survey that we had. We asked them whether they'd returned to work; if they hadn't returned to work, whether they had an intention of returning to work; and whether there was anything else immediately following the settlement of the claim that they would like to have seen the scheme provide. Of those 73, 22 had already returned to work, 24 indicated a desire in finding work or returning to work at some point in time thereafter, and 27 of the 73 expressed no intention or desire to return to work. Those 27 had an average age of 53, a median age of about 54, and had received an average WID settlement size of $432,000. There may be other reasons that there was no desire for those individuals to return to work, but it was interesting to learn that some had returned to work as soon as within six months of their WID claim resolving from there.

The Hon. BOB NANVA: Are you proposing to publish those survey results?

MATTHEW VICKERS: I provided the briefing note to icare on Friday 18 July.

The CHAIR: That does end our session with you today. Thank you again for coming and answering our questions. I know that's not always easy, but it's really important evidence for this inquiry. To the extent there were questions taken on notice or there will be supplementary questions, the Committee secretariat will be in touch.

(The witnesses withdrew.)

(Short adjournment)

Mr HILBERT CHIU, **SC**, Deputy Chair, Common Law Committee, New South Wales Bar Association, affirmed and examined

Mr DAVID HOOKE, SC, Chair, Common Law Committee, New South Wales Bar Association, sworn and examined

Mr RICHARD DABABNEH, Member, Injury Compensation Committee, Law Society of New South Wales, sworn and examined

Mr TIM CONCANNON, Chair, Injury Compensation Committee, Law Society of New South Wales, sworn and examined

Mr SHANE BUTCHER, Chair, New South Wales Branch Workers Compensation Subcommittee, Australian Lawyers Alliance, affirmed and examined

Mr DAVID JONES, Member, New South Wales Branch Workers Compensation Subcommittee, Australian Lawyers Alliance, before the Committee via videoconference, sworn and examined

The CHAIR: I welcome our next panel of witnesses. Would anyone like to make a short opening statement?

DAVID HOOKE: Thank you, Chair. The Bar Association thanks you for the opportunity to appear before the Committee today. We acknowledge the critical work being undertaken by all members and look forward to contributing to the Committee's examination of the workers compensation scheme and its inquiry into the New South Wales Government's Workers Compensation Legislation Amendment Bill 2025. Members of the Bar Association provide legal representation and support to all parties affected by the New South Wales workers compensation system, including workers, employers and insurers. Among the Bar Association's Common Law Committee, which Mr Chiu and I have the privilege of leading, our members have many decades of experience and expertise relevant to this inquiry.

Could I start by saying that it ought not need to be said in 2025 that a comprehensive system of workers compensation is one of the hallmarks of an advanced and civilised society. It is integral to such a society that it protect and provide for its most vulnerable members. The submissions of the Australian Lawyers Alliance at paragraph 4 direct attention to the objectives set out in section 3 of the 1998 Act that forms part of this scheme. When one has regard to those objectives, it's quite alarming that a worker who was injured a hundred years ago had more valuable and secure rights than a worker injured today, and all the more so under the proposed amendments to be wrought by the bill being considered by the Committee.

The association acknowledges that the scheme can and should be more cost efficient. Our written submission to the Committee sets out a number of ways of improving the scheme's efficiency without impinging on the rights of injured workers. If the Committee is of the view that these measures are insufficient to address the sustainability of the scheme, then the association recommends that it consider potential amendments to the bill's definition of "bullying" at proposed section 8A of the Act. We would welcome the opportunity to discuss some of these measures at this morning's hearing.

Stakeholders and the wider community continue to be working at a significant disadvantage when considering potential measures to improve the viability of the scheme. Many stakeholders, including our association, have consistently called for the Government to release meaningful data and actuarial modelling to transparently understand and address the purported financial problems faced by the scheme as well as the projected savings from the proposed reforms by reference to the assumptions underlying the modelling. This has not occurred. Without this information, experts and stakeholders are hamstrung in their ability to work constructively with government and with this Committee to test whether the financial impacts of the proposed reforms really justify their considerable detriment to workers or to develop alternative solutions for the true improvement of the scheme. That said, the Bar Association has undertaken a close analysis of the bill, provision by provision, to understand its effect on workers, employers, insurers and the scheme more generally. The fine detail has been set out in our written submissions.

Based on this examination, we make the following introductory comments: Firstly, this Committee and the Standing Committee on Law and Justice before it have received a substantial body of evidence about the devastating impact that this bill will have on those who suffer a psychological injury at work. The bill substantially reduces the rights of injured workers to receive benefits for medical treatment for their injuries and to receive weekly payments while they are out of work due to those injuries, by imposing arbitrary caps on the duration of these benefits. These and other reductions in rights are primarily directed to workers with psychological injuries, but the proposed changes, such as those that go to the mechanism for assessing claims, are likely to adversely

impact all injured workers. Many of these provisions are cruel, unjustifiable and should not be supported by this Committee.

Secondly, according to this bill, those who suffer a psychological injury at work are less worthy of care, support and compensation than those who suffer a physical injury. This is despite what we've learned over many years about the devastating, lifelong impacts that conditions like PTSD can have on individuals. Again, this should not have to be said in 2025. However, this bill demands that it be repeated: Psychological injuries are just as real as physical injuries. Treating them differently, as this bill does, is illogical and only serves to perpetuate the stigma that those who suffer psychological injuries are somehow less worthy of our care and support.

Thirdly, the New South Wales Government has consistently told us that its priority is preventing psychological injuries in the workplace. If that is the case, then it is appropriate to enact improvements to workplace safety, including the Government's recent industrial relations reforms and the proposals contained in the Bar Association's written submissions, before considering drastic cuts to workers' entitlements. These workplace and industrial relations reforms should be given sufficient time to operate and then be measured to see if they result in safer workplaces, which, in turn, drive down the number of workers compensation claims. Cuts to workers' entitlements should only be considered as a last resort.

Fourthly, among the various cuts proposed by this bill, the most egregious of those erode the fundamental rights of any modern workers compensation system, those being medical payments and weekly benefits that allow for injured workers to live with dignity. By introducing new time limits and threshold requirements, as I've said, a worker injured 100 years ago will have had substantially superior rights compared with a worker who seeks support under this proposed remake of the scheme. This will devastate those who have already been profoundly disabled by psychological injuries. It will make it harder for injured people to return to work, and it will shift significant costs onto an already overburdened public health system.

Fifthly, as well as removing substantive rights from injured workers, this bill creates unnecessary and avoidable complexity within the two principal Acts which establish and regulate the workers compensation scheme; generates an untenable conflict of interest for the State Insurance Regulatory Authority by placing it in the position of both regulator and umpire; strips the Independent Review Office of much of its independence; reduces parliamentary oversight of the system; and creates further inefficiencies across the scheme, which will only increase costs. For all these reasons, the Bar Association does not support the Workers Compensation Legislation Amendment Bill.

We've engaged in good faith with the content of this bill and suggested significant amendments to reform its operation, which are comprehensively outlined in our written submission. However, and fundamentally, we believe that there are better and fairer ways to reduce costs to the workers compensation scheme without radically reducing the rights and entitlements of injured workers. As explained in our written submission, lasting reform of the current scheme is required, but this is a task that must involve at least a thorough examination of the objectives of workers compensation in a changing workforce; the true problems and inefficiencies in the operations of the current scheme, some of which we have identified; and perhaps a complete rewrite of the existing legislation. It is not something to be rushed.

TIM CONCANNON: Thank you for inviting the Law Society to give evidence at today's hearing. I am here in my capacity as chair of the Law Society's Injury Compensation Committee. I am joined by Richard Dababneh, a member of the Law Society's Injury Compensation Committee. Our members, who represent claimants, insurers and employers, recognise that reform of the New South Wales workers compensation legislation is overdue and understand the importance of ensuring a scheme that is financially sustainable and safeguarded against potential abuse.

In our view, the bill fails to achieve the intended objectives of this reform and should not proceed. We suggest that the proposed reforms are likely to prevent injured persons from accessing treatment, rehabilitation and appropriate compensation, and having their claims professionally represented. We remain deeply concerned that the preposed changes, particularly the 31 per cent whole person impairment threshold, would effectively preclude most individuals who experience a workplace psychological injury in New South Wales from accessing appropriate compensation and support. We suggest that, rather than relying on a significant reduction to whole person impairment as the only way to address concerns around the financial sustainability of the scheme, a more nuanced approach is required, including a focus on improving claims management processes for persons who have sustained a psychological injury at work.

The Law Society emphasises that the changes in the bill are not limited to psychological injury claims but have wide-reaching implications for the broader scheme. Our submission addresses issues such as the joint principal assessment process which, in our view, will increase disputes and discourage settlement. Similarly, the Law Society encourages the introduction of broader commutation provisions than those proposed in the bill,

noting that such voluntary arrangements can benefit individual workers and the scheme as a whole by achieving closure of claims with high administrative costs. Further, we urge the Committee to reconsider the proposed funding changes to the Independent Legal Assistance and Review Service, known as ILARS, which risk undervaluing the essential role of lawyers in supporting the efficient operation of the scheme and assisting injured workers to access justice.

We welcome the Committee's inquiry into the bill and the opportunity to appear today. We do regret the insufficient legislative process, including limited consultation preceding the bill's introduction, particularly given the significance and scope of the proposed reforms. Our preference is for the Government not to proceed with the bill and return to a genuine consultation and design phase—one that enables a wholesale revision of the scheme, simplifies the statutory framework and better reflects the needs of injured workers in modern workplaces, including through appropriate claims management processes. Thank you again for the opportunity to appear before the Committee today.

SHANE BUTCHER: I'd also like to thank all members of the Committee for inviting the Australian Lawyers Alliance, the ALA, to appear at today's public hearing. I'd like to acknowledge the traditional owners of the lands on which this public hearing is taking place today, the Gadigal people of the Eora nation. I pay my respects to their Elders past and present, and to any Aboriginal and Torres Strait Islander peoples taking part in today's public hearing. The ALA is a national association whose members are dedicated to protecting and promoting access to justice and equality before the law for all individuals. Our members and staff advocate for reforms to legislation, regulations and statutory schemes to achieve fair outcomes for those who have been injured, abused or discriminated against. The Government put forward these amendments with dire warnings on the financial position of the New South Wales workers compensation scheme, with call for urgent action to prevent the scheme from collapsing. The evidence before this Committee and the Standing Committee on Law and Justice do not support those claims. The case for urgency has not been made out.

What everyone can agree on is that the system is failing injured workers and, in particular, those that have psychological injuries. It is our view that poor case management is at the heart of many of these failings. We believe that with a renewed focus on improvements that can be made in the management of claims, the scheme can ensure that early treatment is provided, return to work rates are improved, and the cost of the scheme are reined in to levels that will continue to make the scheme sustainable and achieve the objects of the scheme in providing fair compensation to both psychologically and physically injured workers. A six-to 12-month review of the case management systems of insurers should be ordered, with a focus on return to work outcomes and compliance with the current provisions of the legislative framework. There is evidence before this inquiry that would support the conclusion that insurers and scheme agents are failing on both fronts. We must come to an understanding of why this is to provide appropriate solutions.

The insurers have not yet come forth with a sound explanation or identifying barriers preventing them from being able to reduce claim expenses or return people to work. The solution has been put forth to cut benefits to workers, who many would consider vulnerable to long-term incapacity to work without early support and treatment of the scheme. The people of New South Wales should not sit idly by and accept wholesale attack on benefits to injured workers whilst other options remain viable. If the scheme reform must be made, it's our view that it would be sufficient to introduce appropriate "relevant event" tests along with appropriate definitions. Coupled with the review on case management, this should provide immediate forecast in savings, as well as provide sufficient time to see the improvements that can be made before having to consider substantial attack on benefits. Thank you again for the opportunity for the ALA to appear before this public hearing. I'm happy to answer questions from the Committee.

The CHAIR: I will just check whether Mr Jones has anything additional.

DAVID JONES: No, I don't.

The CHAIR: On that basis, I'll turn to the Opposition.

The Hon. DAMIEN TUDEHOPE: Each of you has indicated concern in terms of the manner in which case managers manage claims and that, before embarking upon wholesale changes, as has been identified, we should be doing some review into the manner in which claims have been managed. If I can start with the Bar Association, what do you say are the chief problems that exist in the manner in which claims managers are currently managing claims?

DAVID HOOKE: The question is probably one more directly addressed to the Law Society and the ALA, but the association has made the observation that one of the difficulties with claim management in the current atmosphere is that there seems to be a disproportionate deployment of resources in fighting claims rather than meeting them. There are examples in some of the submissions before the Committee already, from workers and

from other sources. Indeed, there was a media report only this morning of a case study involving the deployment of $85,000 in costs in resisting a $5,000 claim for surgery. One would think that, on any view, that is an unhealthy state of claims management to have in operation in a scheme such as this, and it self-evidently demonstrates where a lot of waste is occurring and a lot of unnecessary cost is being incurred.

The Hon. DAMIEN TUDEHOPE: Would the Law Society like to comment?

TIM CONCANNON: We would say that one of the issues is the high turnover of claims managers. The decisions themselves, I don't think, adequately deal with the concept of work capacity decisions anymore in any regular manner, which was foreseen to have been the role of claims managers under the 2012 scheme. We would say, I think, that it's not just the claims management processes but those directives given by icare to the claims managers as to how they are to operate in a given scenario, these so-called operational instructions or—

The Hon. DAMIEN TUDEHOPE: Do you have any evidence of that?

TIM CONCANNON: We hear about that on a regular basis from those acting on the other side. Regrettably, we act for workers in these claims—the three solicitors who appear before us. We don't directly see these operational directives, but we do hear this complaint being made on a regular basis.

The Hon. DAMIEN TUDEHOPE: Mr Butcher?

SHANE BUTCHER: I agree with the comments made. I agree that I'm not in a position to speak about directives given by icare. The Australian Lawyers Alliance is comprised entirely of people who represent injured workers and, as such, we don't take instructions from insurers and see those directives. What we do hear from our clients is stories of constant changeover of case managers and constantly being ignored in terms of their requirements and their needs and disputes being managed. I think one was touched upon earlier. But if you look at the whole picture, what we do see is people not being returned to work in appropriate time frames. There are submissions before this inquiry—at least one—of a worker who's fit for duties and willing to work but not being provided any suitable duties by a government department. I think there was a submission by Roshana May pointing to evidence that there were 3,500 workers with capacity in the government that haven't been able to be placed in employment. All those things contribute to the cost of the schemes.

The Hon. DAMIEN TUDEHOPE: You made some observation in relation to capacity for work tests done at an earlier date. Are you supportive of that as an appropriate return to work structure?

SHANE BUTCHER: We are supportive of appropriate work capacity tests and assessments being done. If an employee has capacity to return to work and they can, they should.

The Hon. DAMIEN TUDEHOPE: I notice the Bar Association also makes observations in relation to vocational programs, which are often paid for by the insurers, as potentially not fit for purpose in terms of expenditure by insurers on claims which could be better used. Have you got more observations to make in relation to that?

DAVID HOOKE: Yes, in the sense that they often tend to be a fairly blunt instrument and they lack much nuance in terms of actually being targeted at getting a particular worker back to work, as opposed to going through a formulaic process. The other observation we would make about vocational assessments flows on from the ALA's submission about return to work or work capacity assessments, which were originally designed to be undertaken by a claims manager using publicly available data and the medical data available in relation to a particular worker, and the application of the two to the statutory test. That seems to have devolved into a system where whenever a work capacity decision comes to be made, rather than the claims manager actually doing that part of their job, they farm it out to an expensive consultant and then just adopt the consultant's report as their work capacity decision. That just imposes a layer of cost of some substance on top of the system of employing claims managers, which was intended to encompass that very task. It's another example of the overlay of costs in the system that we would see as something to which attention might be directed.

The Hon. DAMIEN TUDEHOPE: Does anyone else want to comment on that? Can I just ask this? One of the suggestions in relation to various psychological injuries and the potential to make claims in respect of negligence against the employer for those injuries—is it correct that under the current bill before the Parliament, that ability to sue the employer for negligence in relation to the psychological injury will be removed unless there is a whole person incapacity above 31 per cent?

DAVID HOOKE: Yes.

SHANE BUTCHER: Yes.

The Hon. DAMIEN TUDEHOPE: So even in circumstances where an employer was negligent in the manner in which they dealt with racial harassment, sexual harassment or bullying claim, a claim for negligence could not be made against that employer unless the whole person impairment was above 31 per cent?

DAVID HOOKE: Yes.

The Hon. DAMIEN TUDEHOPE: That's a massively significant removal of workers' rights. Would you agree?

DAVID HOOKE: Absolutely. Indeed, one can take it to extremes without being overly rhetorical about it, because the effect of it would be that an employer could have numerous reports of the bullying or harassing conduct, do absolutely nothing about it, have the injury develop, have the injury continue to deteriorate in severity and have no liability for common law damages unless the WPI was at least 31 per cent.

The Hon. DAMIEN TUDEHOPE: I think your observation concluded in your submission that that would, in fact, reduce work health and safety in the workplace.

DAVID HOOKE: Indeed. One of the driving forces of common law rights in the workplace, one of the effects of it and one of the objectives behind the development of common law rights in the workplace was the reduction of injury and death.

The Hon. DAMIEN TUDEHOPE: Mr Concannon, one of the allegations made is that there is a significant amount of coaching by lawyers in relation to psychological injuries. In fact, that's evidenced by virtue of the fact that there are very few claims between the 11 and 14 per cent whole person impairment, but then after 15 per cent, there is a significant spike. How do you respond to that allegation?

TIM CONCANNON: I just don't think there's any evidence of that at all, from what I've seen. There's a concept known as "you can't lead a witness". You can't—I certainly think it's inappropriate to tell a particular claimant this is the way they've got to operate in order to satisfy the requirements of the PIRS rating scale. I think it may be the fact that doctors have worked out themselves, based on experience over the period of time since the PIRS rating scale became applicable. They understand the operations of the scale perhaps better than they did at the outset.

SHANE BUTCHER: There's also another simple explanation as to why you don't see many claims less than 15 per cent, and it's simply because lawyers don't make those claims. There is no entitlement.

TIM CONCANNON: True.

SHANE BUTCHER: If a client of mine was assessed at 14 per cent, we just wouldn't serve that report on an insurer. We wouldn't make the claim, and there'd be no record of that except through IRO, who paid for the report. But the insurer wouldn't even know of its existence.

The Hon. DAMIEN TUDEHOPE: The Government sought to rely on various advertisements being placed by lawyers offering to, I suppose, provide advice to people about how to deal with claims so that they meet the 15 per cent threshold. Have you seen such advertisements, and what would you say in relation to relying on those advertisements?

SHANE BUTCHER: I would say that if lawyers are doing the wrong thing and not fulfilling their obligations, there are already regimes in place for those people to be referred, whether it be to the Law Society or the Legal Services Commissioner, for investigation.

The Hon. DAMIEN TUDEHOPE: Would the Law Society take the view that those sorts of advertisements were inappropriate?

TIM CONCANNON: Well, we'd need to see—I haven't personally seen any of those advertisements.

The Hon. DAMIEN TUDEHOPE: One of the other notions which concerns the Government in terms of the financial viability of the scheme is what it identifies as "threshold creep". Even if you increased whole person impairment to 21 per cent, there would be this threshold creep that a lot more claims would be over the 21 per cent because, as Mr Butcher identified, doctors would assess in terms of identifying factors under the PIRS, bringing workers within that new category. What do you say in respect of the ability of the scheme to be able to deal with threshold creep?

SHANE BUTCHER: We address that partially in our submission. Prior to 2012 the number of thresholds that were available to be disputed between insurer and injured worker was minimal. In 2012 we introduced a number of thresholds, and what we've seen is what was described in our submission as discovery akin to, in economics, price discovery. Prior to 2012 we wouldn't have a fight about what is the difference between someone who is on 19 per cent or 21 per cent, because it simply didn't matter. As you introduce new thresholds, you're

creating a dispute point. Workers, their lawyers, insurers, their lawyers are going to have disputes about that, and we're going to learn the difference between those disputes. So in my view, it's the scheme evolving. As long as you introduce new and significant thresholds, you're going to have fights that previously didn't matter, to help transition people's knowledge of how to navigate the scheme and get those results.

The Hon. DAMIEN TUDEHOPE: One of the potential assertions, of course, is that those people who are providing medical reports or psychological reports also seem to be gaming the system. Is there any evidence that psychologists, psychiatrists, potentially in conjunction with lawyers, are gaming the system?

SHANE BUTCHER: I haven't seen any evidence of that.

DAVID HOOKE: No.

SHANE BUTCHER: As far as the doctors are concerned, I suppose it's a question for them.

The CHAIR: I think all of you made statements that some of the pressures on the scheme could potentially be relieved by improving case management. All of you have been involved, to an extent, in previous inquiries and reviews. Is that suggestion new? Is this something that has already been pointed out to various governments over the years? Are you surprised that the focus is not on that but is instead on cutting people out of the system?

DAVID HOOKE: I'm not aware, personally, of whether it's been raised. I'd be happy to take the question on notice to go back to review that issue. I would say, from experience of the current scheme as opposed to earlier iterations of the scheme, that I think there's a lot more technicality involved in the current system. There are a lot more decisions that are made by claims managers, and they then, as has been alluded to, create dispute points, which end up being argued out in the Personal Injury Commission or in the Supreme Court. So it's perhaps an indirect answer to the question to say that I think there's a lot more involvement of claims management in the creation of disputes than there has been under earlier versions of the legislation and its predecessor.

The CHAIR: Interesting. I'll go to you, Mr Concannon, and just add to my earlier question by asking this: Do you think that the proposals in the Government legislation will increase the number of dispute points where lawyers would be involved?

TIM CONCANNON: Yes. Thank you, Chair. The 2023 inquiry into the functioning of the workers compensation scheme, involving Law and Justice, from recollection—this issue of claims management was squarely raised in the context of what were, even at that stage, said to be surging numbers and costs of psychological injury claims. I think the Law Society and, from recollection, my friend to my left, on behalf of the ALA, made this point very clearly: This problem with surging numbers has a lot to do with claims management practices. That was in the context of EML having only just very recently stepped out of the role as sole provider under the then workers compensation scheme. Yes, it's an ongoing issue, and I think what has been helpful since that time is the evidence we heard at the first sitting day of this Committee from the insurance brokers, who have a bit more of an insight into those issues relating to operational directives, for instance, because they have involvement from both sides of the fence. Absolutely, it's an ongoing problem. It's a chronic problem, and I think that's recognised by a lot of people I speak to in the workers compensation field.

The CHAIR: In the interest of time, I might ask you, Mr Butcher, a slightly different question. The Independent Review Office's submission points out the percentage of erroneous disputations where a claims manager or insurer has denied a claim that then goes before the commission and is eventually approved in favour of the worker, and I understand that that's around that 80 per cent mark. Given what we know about the ongoing consequences to injured workers where they do incorrectly have their claims denied, do you see that there is room within the claims management framework, and the attitude, to make significant savings and avoid the changes being proposed in this bill?

SHANE BUTCHER: Absolutely. The success rate—I think it has long been published by IRO—of plaintiff lawyers is very high. Conversely, that must mean that the decisions that have been made have either been incorrect or there's been perhaps some negotiation done between the parties. But you must wonder, I suppose, the amount of money that's been spent in cases such as the example raised during the bar's opening of fighting over $5,000 and spending great, enormous sums of money in legal fees and independent medical examinations to do that. I think there's not enough commercial decision-making being done by the insurers. They are willing to spend the scheme's money to fight for a position, and the workers should be willing to also fight for the same position. It just turns out that those funded by ILARS tend to have a great level of success.

The CHAIR: As someone who does a lot of work on that worker side of the equation, what is the impact you see in terms of—when someone has their claim unfairly or erroneously denied and they have to go through that process, how does that impact on things like their ability to return to work and that sort of thing?

SHANE BUTCHER: The two biggest things would be the inability to get treatment in the meantime and the loss of wages covered. No income coming into the family unit—our clients speak of the significant financial stress that puts on them. To tell them, "Don't worry. When you win"—which is our opinion—"you'll get that money back" is of little consolation when the damage has already been done to that whole family unit. Not getting the treatment they need sometimes might mean more significant treatment now needs to be incurred because what was a relatively modest cost for a relatively minor treatment expense, not being treated properly, it gets worse over time, and now we're asking for more expensive treatment—surgical options.

The CHAIR: Finally, in relation to work capacity decisions, looking at the report that Finity consulting provided in relation to insurance liabilities and the Nominal Insurer for the last calendar year, they point to there being a significant decline in the number of work capacity decisions done. They say that if we get back to 2015 and 2017 numbers of work capacity decisions being undertaken, we could save up to $426 million per year, which would be a significant saving. Can you explain to the Committee, in your experience, why those decisions aren't being taken? Do you support a higher frequency of work capacity decision?

SHANE BUTCHER: I haven't seen that report, but our submission effectively comes to the same conclusion. I can't speak for why they're not doing work capacity decisions, having been on the plaintiff's side of the fence rather than insurer's side of the fence. But I can say our experience—at the firm I work at and from colleagues at the ALA—is that, as the years go on, the frequency with which we receive those decisions has definitely decreased.

The CHAIR: Does anyone else want to comment?

RICHARD DABABNEH: A comparison with 2017 is probably not appropriate because between 2012 and 2017, there were a number more work capacity decisions being made. When the laws changed in 2012, it made weekly compensation finite. The insurers had to make these decisions about people's work capacity. There's less of a need now for those work capacity decisions. That could be one of the reasons why you'd see a difference now. You still see those work capacity decisions in practice, commonly—perhaps less than a few years ago. But the big issue is the way that these work capacity decisions are being made. They're basically being made based on these vocational assessments. What that creates is a situation where you have an injured worker who has to respond to that by obtaining their own evidence—supposedly expert evidence—from another vocational assessment. It's the ongoing incurring of these disbursements on both sides of the fence that ends up meaning the cost to the scheme is substantially more than it needs to be. I think that there is probably less of a need for work capacity decisions. As my friend says, it probably needs to fall back into the ambit of the case managers making these decisions based on treating evidence as opposed to hired evidence.

TIM CONCANNON: The other issue is if the case manager doesn't send it out to an internal consultant, such as a vocational assessor, to assess work capacity, then they're reliant on their experience. These work capacity decisions can often be several pages long. You're not going to get a junior claims officer being able to do that too readily. But when you do it, it's just a lot of work. It's as simple as that. If you don't have the experience, it's even harder for that to be produced. I think that's a critical cause of why there are fewer than there were several years ago.

The Hon. MARK LATHAM: Thank you to the witnesses. I had an employer once who spoke a lot about so-called labour lawyers. Are there law firms where workers compensation is their entire income base? Is there anyone on the panel who can answer, please?

TIM CONCANNON: I can't think of any. Certainly, law firms who practise in this area are a lot more diversified than they were in the past. Certainly, our firm is, and my friend who is a partner at Turner Freeman, which is a large plaintiff firm as well, would probably say the same.

The Hon. MARK LATHAM: What's your income from workers comp as a proportion of overall revenue and profits?

TIM CONCANNON: I would not know.

The Hon. MARK LATHAM: Seriously? You're here and you don't know the proportion of revenue and profits your firm takes from workers comp?

TIM CONCANNON: No, I wouldn't.

The Hon. MARK LATHAM: That's your evidence? What about the Turner man, please?

RICHARD DABABNEH: I wouldn't be able to answer that. I could take it on notice and provide that information. I could indicate to you that workers compensation is a big part of our personal injury practice, but it's certainly not the only part of that practice. There are other practice areas as well.

The Hon. MARK LATHAM: But it has been a pretty good feed and wicket for so-called labour lawyers for a long while, hasn't it?

RICHARD DABABNEH: If you look at the costs situation with workers compensation, it's a completely regulated area, with respect to both statutory cases as well as work injury damages. In terms of how that impacts on the scheme, I'm not sure where that's relevant. If you go back 20 years, perhaps it was unregulated and there might have been a bigger portion of profit attributable to workers compensation. But I can assure you now that it's a very minuscule part of profit. In fact, I could tell you that to run a workers compensation claim these days, it's very technical and one where, unfortunately, it takes a lot more time, effort and money than what we would recover under a conservative IRO-regulated scheme.

The Hon. MARK LATHAM: Under the technicalities and the expertise that's needed here—I'm looking at the SIRA website for impairment ratings. Psychological impairment rating, self-care and personal hygiene—class 2, as a mild impairment, the person relies a lot on having takeaway food. Is that something that requires a lawyer to have a lot of expertise, to understand this nonsense that someone's impaired because they rely on takeaway food? This will be joy for the Trump deranged, but the leader of the free world apparently is not impartial to a taco and a Macca's burger. This is just some kind of joke, isn't it—class 2?

TIM CONCANNON: Class 2 wouldn't be enough to get you, for instance, to 15 per cent, if that was the two median classes that were assessed for your particular psychological injury with which you're dealing. That would be considered to be a relatively modest impairment scheme under the current system.

The Hon. MARK LATHAM: What about class 3, "needs prompting to shower daily and wear clean clothes"? That would be most teenage children that I know of, and probably most male MLCs. This is just comical nonsense, isn't it? A moderate impairment means you've got some limitation in your capacity to work. But reflected on the SIRA website that means "prompting to shower daily and wear clean clothes" and "does not prepare their own meals". Thank goodness I'm not part of that. I've got to cook, so I'm quite a dab hand in that. But this is all just comical, isn't it? You guys make money out of this rubbish.

RICHARD DABABNEH: I think you'll find that's sort of a guideline. The PIRS is not a strict guideline. The questions will be around social and recreational activities and the other classes. But it is a medical question, ultimately, and the doctors will make an assessment.

The Hon. MARK LATHAM: That's a medical question, about they don't prepare their own meals? You said you don't coach these people to come up with these things, but what level of imbecile would you need to be to require coaching on this? Because obviously you just go to the SIRA website and say, "I'm aiming here at a class 3 impairment. I'm just going to tell the psych and my lawyer that I don't prepare my own meals and someone has to tell me to shower daily and wear clean clothes." This is apparently costing taxpayers and businesses money. You don't need to coach anyone, do you, because any old imbecile could qualify for understanding this and coach themselves?

RICHARD DABABNEH: No coaching is required, and the PIRS is required—

The Hon. MARK LATHAM: You people have got law degrees to make big profits out of this nonsense. This is just unbelievable, isn't it?

RICHARD DABABNEH: But there's no coaching required and there's no coaching given because the PIRS is a publicly available document.

The Hon. MARK LATHAM: But you don't require coaching, do you? Any old imbecile can read the SIRA website and say, "To qualify for class 3 impairment, I just need to tell the psych and my lawyer—who'll be charging on a time basis, having got a law degree and must be feeling themselves like a goose—that I don't prepare my own meals and my mum needs to ring me up to tell me to shower daily and wear clean clothes." That's how the system works, isn't it?

SHANE BUTCHER: Any worker is entitled to go and look at the material available on the SIRA website and form their own view as to their rights and obligations. They get advice from us, but ultimately it's the doctors that do the assessments. There was evidence before this inquiry on the last occasion from some of those doctors about the PIRS scale. There's been some criticism of that scale for many years. But it's the system that we have, and workers are entitled to know how that system is going to treat their claim with the evidence that they give.

The Hon. MARK LATHAM: This is money gouging on a scale even beyond the NDIS, isn't it?

TIM CONCANNON: We strongly disagree with that.

The Hon. MARK LATHAM: You think the NDIS is world's best practice money gouging and fraud. This thing about having a shower, wearing clean clothes and preparing your own meals—people who've been to university for five years, like psychs and lawyers for four or five, make money out of this.

SHANE BUTCHER: We run claims for clients who exceed the 15 per cent threshold. I think the evidence before this Committee on the last occasion by Associate Professor Robertson and the other doctor, whose name I can't recall right now, was that a worker who gets to 21 per cent is, effectively, incapable of working. I think, as my friend Tim Concannon pointed out, the lower level scales that you're talking about in those examples wouldn't get to those thresholds.

The Hon. MARK LATHAM: I know one thing: Mookhey is nowhere near addressing any of this. He's a joke.

The Hon. BOB NANVA: I turn to amendments to the Government's bill proposed by Mr Tudehope and Mr Latham in relation to bullying, sexual harassment and racial discrimination. Are you across the details of those amendments?

TIM CONCANNON: Yes.

The Hon. BOB NANVA: Amendment 12 ,"Objective Test", inserts:

> In relation to sexual harassment, racial harassment or bullying, the alleged perpetrator's knowledge and intent is the primary factor in determining whether a relevant event has occurred.

In providing context to that proposed amendment, the Opposition leader stated that the changes "would still protect workers from ignorant bigots". Would it be fair to say that ignorance would be a significant factor in someone's motivation to racially harass, sexually harass or bully someone else in the workplace?

The Hon. MARK LATHAM: Point of order: The Leader of the Opposition is not part of the inquiry and those observations are not part of the amendments. The changes on racial discrimination, as the Hon. Bob Nanva would know full well, are to learn from the errors of 18C and take out "insult" and "offend". Anyone will be offended in the workplace, of course, and get up a claim. In terms of procedural fairness, he is misrepresenting the nature of those amendments, which don't contain the comments that he attributes to the Leader of the Opposition.

The Hon. BOB NANVA: To the point of order: I am directly quoting the Leader of the Opposition through a public press statement that the changes "would still protect workers from ignorant bigots", in providing context to the amendment.

The Hon. MARK LATHAM: This is Speakman?

The Hon. BOB NANVA: Yes.

The CHAIR: In the context of that debate all being in *Hansard* for the record and having been well aired, I think we can allow the question and allow for it to be answered.

DAVID HOOKE: The question needs a little bit of unpacking, with respect. The first observation we would make is that the proposed amendment 12 provides that knowledge and intent is the primary factor, not the only factor. That leaves open the protection addressed by the Leader of the Opposition in what you've put to us. The more important aspect of the proposition, though, is, as we've set out in our written submissions, that what really should be sought is a consistent definition of harassment, rather than breaking down harassment into different forms of harassment and treating them differently. All that does, in our submission, is to make the situation worse. If one has a properly drafted and considered definition of harassment, then one doesn't need to go down all the rabbit holes of defining different types of harassment. The other effect of doing that is to create more dispute points.

You might have someone who's subjected to more than one form of harassment. Does that mean that they then have to approach their claim under different definitions for each different form of harassment and how it fits into the injury that they then suffer as a consequence? If one takes the more principled approach that we advance in our written submissions, then amendment 12, we would think, would be unnecessary as would the other definitions of micro forms of harassment. There would be a consistency and objectivity involved in the test that applied across the board.

The Hon. BOB NANVA: I appreciate that this may be an imperfect approach and there may be a better approach, but they're the amendments that are currently before us.

The Hon. DAMIEN TUDEHOPE: Well, that's a concession.

The Hon. BOB NANVA: There are amendments before us. If I could return to those, just for the sake of clarity, the matter of someone's ignorance would surely inform whether or not they had an intent or were motivated to sexually harass, to bully or to racially abuse.

DAVID HOOKE: That's so. Of course, it depends what the ignorance is of—

The Hon. DAMIEN TUDEHOPE: And whether it was reasonable.

DAVID HOOKE: —whether it was reasonable and the subject matter of the ignorance. You could have someone who might be ignorant of the fact that they were harassing. They might be ignorant of the fact that the subject matter of their comment is racially based. You might have someone who's ignorant of the fact that it's likely to cause harm. You might have some other form of ignorance. It's the one of the difficulties with the deployment of that term at large. But we come back to the proposition and that the knowledge and intent is only the primary factor in amendment (c); it's not the only factor. But the fact that amendment 12 lies in the context of the other amendments in relation to racial harassment, reasonable management action, vicarious trauma and sexual harassment is why I answered the question more expansively in the first place, and that is that if you have that consistent definition of harassment, you're streets ahead.

The Hon. BOB NANVA: Where a test goes to intent, who meets the evidentiary burden of proof in relation to that?

DAVID HOOKE: In the ordinary course, it would be the claimant unless the statute provided otherwise.

The Hon. BOB NANVA: Is there a risk that legitimate victims would be denied justice—victims of sexual harassment, racial harassment or bullying would be denied justice under these amendments?

DAVID HOOKE: The more and more complex this legislation becomes, the greater the risk that any legitimate claimant is going to miss out on what they rightfully entitled to. It's one of the reasons we've supported a wholesale rewriting of the legislation and making it into a cohesive, workable Act. As anyone with a passing knowledge of legal proceedings in this State and any other State and the Federal courts knows, intent is something that's proved in criminal and civil courts on a daily basis, ordinarily by way of inference from established facts—for example, the content of what's said, the circumstances in which it's said and the overall context in which the interaction arises, all of which can establish, by way of inference, an intent. Indeed, in legislation of this Parliament addressing a similar proposition, section 3B (1) (a) of the Civil Liability Act speaks of an intentional act done with the intent to cause harm as a basis for excluding an action from the operation of the Act. Now, all of that's got to be established by the plaintiff in the proceedings, and it can be done. It's done by way of, generally, inferential reasoning from the facts that are able to be established.

The Hon. BOB NANVA: Is the proposed definition consistent with the Commonwealth definition or the definitions you'd find in other jurisdictions?

DAVID HOOKE: I'd have to take that on notice. The question would probably, with respect, need to be directed to particular areas of discourse, because questions of intent arise in criminal proceedings, they arise in all manner of civil proceedings and it can take different forms in different contexts, even within the criminal or civil jurisdictions. So I'd be happy to take it on notice, but it would have to be a far more targeted question for us to be able to address it in a meaningful way.

The Hon. BOB NANVA: Perhaps I could do that by way of a supplementary question. You'd agree, though, that the changes would likely deter workers from pursuing such claims, particularly if the burden of proof were to lie with them?

DAVID HOOKE: I think that's a speculative proposition. There are all sorts of circumstances in which intent of different kinds has to be established. We think that the issue of intent, in a sense, falls away. As I say, if you go for a consistent, objective definition of harassment, then the question of intent becomes less important. How you frame the intent becomes very important as well, and you'll see that in our proposed definition of bullying—which is not the form that appears in the amendments, but in our written submission, I think at paragraph 101, we have used the terminology "with intent to cause harm or distress". Now, that's something that we would envisage would be able to be established by inference from the nature of the interaction and the context in which it occurred, in the ordinary way. I don't see, necessarily, subject to the way in which it's couched, that having to prove some form of intent would act as a deterrent. It would act as a threshold, but I don't know that it would act as a deterrent to bringing a legitimate claim.

The Hon. BOB NANVA: I might turn to a line of questioning previously raised by Mr Tudehope. I will read to you a piece of advertising from a law firm, just to see whether this is something that your organisations would look dimly upon. The advertisement states:

> If you have been unable to reach the 15% WPI threshold. We also regularly assist injured workers in appeals to the Medical Appeal Panels in the PIC and Judicial Review applications in the Supreme Court of NSW relating to 15% WPI threshold disputes or appeals.

Is this something that is of concern to you in terms of trying to get more injured claimants through a threshold where they might not otherwise have first succeeded?

DAVID HOOKE: For our part, no, because the advertisement is directed to appeals and judicial review, which are themselves directed at the correction of error. An appeal to a medical appeal panel is only going to be good if the original medical assessment was wrong. A judicial review to the Supreme Court from a medical appeal panel is only going to be any good if the medical appeal panel fell into jurisdictional error or an error of law on the face of the record. So there's nothing ethically questionable in the advertisement that you've read out. It's all directed at the correction of error, which wouldn't be necessary if the original decisions had been right.

The CHAIR: I'm just going to ask a real cheeky one in your last six seconds, just on the back of those questions. I note that the industrial relations bill that passed at the end of the last sitting fortnight, which sets up that bullying and harassment jurisdiction in the IRC, has an objective test on its sexual harassment test where it talks about how the offence needs to have been viewed as reasonable in the reasonable opinion of a bystander, or whatever the test is. Obviously that is different to the objective test that has been proposed, I understand, by Mr Latham and Mr Tudehope, but it is also different to what is in the bill proposed by the Government. Given your comments, Mr Hooke, about the trouble of having multiple definitions, do you think that this provision in the workers comp bill should at least be aligned to have the objective test of what is now in the IR bill? Please take it on notice if it requires more analysis.

DAVID HOOKE: I think the simple answer to the question is that the provision in the IR bill creates an offence, so one's dealing with a criminal context rather than a civil or insurance context. So the approach is going to be different and should be different. But it also points out why we draw attention to the desirability of a consistent definition of harassment rather than a sprayed approach of defining different harassments in different ways.

The CHAIR: That's really useful. I could ask you another hour of questions, but unfortunately that does bring us to the end of this session. Thank you so much for appearing. We will no doubt have some supplementary questions for you and, to the extent questions were taken on notice, the Committee secretariat will be in touch.

(The witnesses withdrew.)

Mr MARK GIBBINS, President, Australasian Association of Medico-Legal Providers, sworn and examined

Ms JENNY CRANE, New South Wales Delegate, Australasian Association of Medico-Legal Providers, sworn and examined

Dr REBEKAH HOFFMAN, Faculty Chair, Royal Australian College of General Practitioners NSW and ACT, affirmed and examined

Professor NICK GLOZIER, Professor of Psychological Medicine at University of Sydney, Fellow of the Royal Australian and New Zealand College of Psychiatrists, affirmed and examined

The CHAIR: Thank you very much to our next panel of witnesses. Would any of you like to make a short opening statement? I'll start with you, Professor Glozier.

NICK GLOZIER: I will give you a little bit of background and then where I'm coming from. I've been working in this area for well over 2½ decades. I've written hundreds of papers on workplace mental health impairment assessment and disability in this area. I was an author of the World Health Organization's guidelines on workplace mental health. I wrote the World Psychiatric Association's statement in this area. I developed the evidence base for SafeWork NSW, which underpinned the guidelines and then later the regulations—the evidence of all of the stressors and the interventions for those things. I developed such things and hold patents in them. Very specifically to some of what has been discussed previously, I was commissioned by the South Australian Government to do a formal comparison of the GEPIC and the PIRS in the determination of impairment.

I would like to say something later, or maybe now, about why you need to disentangle the use of the particular instrument within the legislation guidelines—which I know has been raised—from the specific percentage of whole person impairment, because you can't tackle one without the other. Finally, whilst representing the college, we would represent that it looks quite clearly that the legislation has been intended to further discriminate against people with severe psychiatric disorders. The changes from the draft exposure have appeared to have removed the focus on limiting entry into the system and begun to focus entirely on the severity of people's psychiatric disorders, raising the threshold to a level that we see as ridiculously punitive, such that almost no-one will ever get compensation for a psychiatric disorder. Therefore, almost no-one will ever be able to proceed to work damages claims.

REBEKAH HOFFMAN: The RACGP is the largest doctors' professional organisation. We represent over 50,000 members in New South Wales. That's around 15,000 GPs. As a GP, we have one of the most vital roles in WorkCover in workplace injury. We're often the only person who the people will see from before the time they're injured, throughout the entire claim and then onwards and following the injury as well, not only supporting them but also supporting their families, their community members and their supports as well. I'm not here just as RACGP but also here as an everyday GP. I've seen WorkCover patients this morning, and I look forward to taking any questions.

JENNY CRANE: Good afternoon, Chair and Committee members, Thank you for the opportunity to present on behalf of the Australasian Association of Medico-Legal Providers. We're an organisation that represents over 60 per cent of the providers in Australia in the medico-legal industry. Our members deliver independent and impartial medical expert assessments within the personal injury system. These services help injured workers access timely care, support insurers and employers in decision-making, and ensure a sustainable workers compensation scheme that delivers better return to work outcomes for all parties.

Our association supports the Government's goal of creating a sustainable, modern workers compensation system that better supports workers, especially those with psychological injuries. However, we are concerned that some proposed reforms could cause treatment delays, reduce access to justice and impact clinical independence. It is vital that any reform prioritises early access to care and fair, independent assessments. When these principles are upheld, workers recover faster and the system benefits through lower long-term costs and reduced premium pressures for employers and the Government.

There are three points that we wanted to emphasise. The first one is the importance of early engagement and return to work planning. Within the first 21 days of a valid claim, workers must have access to qualified independent mental health experts, working closely with their treating GP. This collaboration ensures a clear diagnosis, coordinated treatment and informed liability decisions. Independent mental health professionals bring specialised expertise in accurately diagnosing genuine psychological injuries, ensuring liability decisions are made promptly and based on sound clinical evidence.

This prevents workers without true workplace-related psychological injury from remaining in the system unnecessarily, while ensuring those with legitimate injuries receive early, targeted care. Early expert input also,

importantly, determines whether a worker should return to their employer or transition to a new workplace for better recovery. The current scheme strongly encourages returning to the same employer but, for many psychological injury cases, this can prolong recovery and lead to disputes. The second point that we'd like to raise is our concern with part 6 of the bill, permanent impairment assessments. Part 6 would introduce a centrally controlled process for impairment assessments, requiring workers to obtain legal advice before an assessment and limiting both workers and insurers to authority-approved assessors.

This approach could impact clinical independence and raise concerns about the authority's dual role in managing the scheme and controlling access to experts. It may also limit access for workers and insurers to seek their own independent expert opinions, which are often important in resolving complex and contested claims. Courts and tribunals already have the structures and expertise to manage these disputes and assess conflicting medical evidence, so we believe the existing dispute resolution system should remain the primary pathway for resolving medical disagreements. We recommend that no changes proceed until the impact of new impairment thresholds is clear. Combining restricted access to independent opinions with higher thresholds risks limiting access to justice and fair compensation for genuinely injured workers. The current approach should be maintained until there is clear evidence that further reforms are both necessary and will not create additional barriers.

Our final point is on legislating the role of other expert assessors. Currently New South Wales legislation requires that a medical doctor—such as a GP or psychiatrist—must diagnose psychological injuries for the purposes of workers compensation claims. However, due to high demand, accessing psychiatrists for independent assessments can involve lengthy wait times, often extending for several months, despite their best efforts to the meet demand. These delays can postpone liability decisions, delay treatment and ultimately prolong an injured worker's time away from work. To address these challenges, we propose amending the legislation to allow appropriately trained clinical and neuropsychologists to diagnose psychological injuries and contribute to liability decisions alongside medical doctors.

Trained nurse practitioners and occupational physicians also should be considered, we believe, given their understanding of workplace environments and demands, which helps them tailor practical recovery plans. Expanding the pool of qualified assessors would improve access, cut delays and allow treatment to begin sooner, while enabling specialists to address workplace and psychosocial factors so that injured workers can return to function faster, achieve sustainable employment and reduce the risk of long-term disability or relapse. In summary, early expert engagement—with GP collaboration, quick return to work planning and access to qualified assessors—is essential for timely care, accurate decisions and better outcomes. We believe these steps will support workers, reduce delays and contain costs for insurers and employers, creating a more sustainable and balanced compensation scheme while ensuring workers and insurers can still access truly independent medical opinions to keep the system fair and transparent.

The Hon. DAMIEN TUDEHOPE: Good afternoon. Thank you very much to all of you for being here. I will start with you, Dr Hoffman. Often the first port of call for an injured worker is their GP. The GP is called upon to make an assessment of the psychological injury and capacity to work, potentially following from that assessment. There would be varied abilities, would you agree, in relation to GPs to be able to actually make that assessment?

REBEKAH HOFFMAN: There are a number of things there. I think if it's a patient that is known to you and known to your practice, that you have met multiple times before and that you have a good understanding of their supports and their environments, undertaking assessment of their psychological changes and abilities is well within what any GP should be able to do. The difficulty comes when it's a new patient you've never met before and you don't have an understanding of what their baseline is. Making that decision is far more tricky.

The Hon. DAMIEN TUDEHOPE: If it was a GP making an assessment who wasn't the normal within the practice of the GP, that would probably diminish the reliability of the potential certificate which was being given?

REBEKAH HOFFMAN: No, I think for both cases the GP has to take what's being told to them. We always believe that our patients are doing their best and they're telling us the truth. There's no reason not to. I don't think that the certificate itself would be diminished, but I think equality, history and examination of that patient can determine whether or not the patient is having an acute panic attack or is in significant distress or has significant depression. All of those skills are skills of a good GP. If there's any deliberation or concern, we would call on our allied health partners and talk to clinical psychologists or other people in the team before finalising a formal diagnosis. Often that's what happens in these cases. The initial diagnosis may be an adjustment disorder whilst we're actually trying to determine what the ongoing diagnosis may be.

The Hon. DAMIEN TUDEHOPE: Familiarity of most GPs with the DSM-5 scale for the purpose of workers compensation—would most GPs have that familiarity?

REBEKAH HOFFMAN: Yes, absolutely. Some 70 per cent of GP consults have got a psychological component to them. Most of what we're doing every day at the moment is mental health.

The Hon. DAMIEN TUDEHOPE: One of the submissions, which you've no doubt just listened to, is early access to specialist treatment. Would you agree with that as a proposition in terms of recovery and return to work? Is early access an essential component?

REBEKAH HOFFMAN: First of all, GPs are specialists. We're specialists in general practice and in family medicine. If we're talking about non-GP specialists—

The Hon. DAMIEN TUDEHOPE: Correct.

REBEKAH HOFFMAN: I think that there's a cohort of patients that absolutely need to see non-GP specialists. But not every WorkCover patient I see needs to see a non-GP specialist. Do they need to see a psychologist? Do they need to see, potentially, an exercise physiologist? Do they need to see me regularly? Yes. Do they need to see a psychiatrist? Possibly, if they're not improving on first-, second-, third-line medication and therapy that we've started together.

The Hon. DAMIEN TUDEHOPE: In relation to that cohort which is in the 21 to 31 per cent range, would you say that that is a cohort which is in need of specialist—and I'm not diminishing GPs; my father was a GP, so I would be very loath to do that. Would you assess that those people need very early access to specialists of the sort that you have identified?

REBEKAH HOFFMAN: Absolutely. They will need specialist intervention and often even an inpatient intervention as well.

The Hon. DAMIEN TUDEHOPE: When the Treasurer cited you as supporting his contention that all or most workers with a psychological injury and a whole person impairment assessment of up to 30 per cent have work capacity, is that your view?

REBEKAH HOFFMAN: My view is that everyone has work capacity at some point in time. As doctors, what we're wanting to do is make people better. Are they okay day one post injury? No. But with therapy, with medication, with inpatient stays, absolutely by the 12-month mark or by the two-year mark we want people back in work. Work is good for people, whether they're going back often to a new job—and I completely agree that early identification of people needing new jobs is important. But, definitely, if they're going back to same job, which is often the minority in psychological injury, we want them re-engaged and returning to work.

The Hon. DAMIEN TUDEHOPE: Is that your view, Professor?

NICK GLOZIER: Which particular part of that?

The Hon. DAMIEN TUDEHOPE: The people between 21 and 31 per cent, and their capacity to work.

NICK GLOZIER: I think you've got two things here. Firstly is the determination of 21 per cent and when is that made, because you only make those determinations much later on. As my colleague pointed out, many people, when they are first unwell and first presenting—almost always to general practitioners—will have a much higher degree of impairment than they will over time through both treatment, the passage of time, other life events et cetera. Many people presenting initially will have a much higher impairment that is resolved substantially by the time we see them. In terms of that, if one uses PIRS—the rating scale—it's actually almost impossible to get a rating of over 21 per cent without being rated as totally impaired on the PIRS, because of the way it works. Someone who's probably done more PIRS than I—the PIRS is the measure that we use.

You've probably heard about this many, many times, but because it is almost always the employability that gets the highest score within the PIRS, most people—in fact, anyone who really gets over 15 per cent is generally rated as having a severe or total impairment. To get to over 21 per cent, you've got to have three of the six categories rated as over a four, because of the median class—actually, not quite; you can just about do it slightly differently, but it's almost unheard of that someone would be rated 21 per cent or higher with permanent impairment, who is not rated as having no work capacity. Many of us are looking at things like, "Do you have the ability to maybe spend a few hours a week doing support work or volunteer work?" I think you've got to be fairly concrete that that person's symptoms and impairment are such that they cannot work not just in the open workplace but actually in supported and volunteer work areas as well.

The Hon. DAMIEN TUDEHOPE: If a person who had a 21 per cent and above WPI, after 2½ years would that person have capacity to work, in your estimation?

NICK GLOZIER: Not at that time. But I've been around this system long enough to see people who've been rated as having that whole person impairment—over 21 per cent—who, for instance, made a claim in the

early-2000s; I saw one only about four weeks ago. They made a claim in the early-2000s, had a whole person impairment at that level, and about six years later returned to work for another five years. Always one of the issues with these is that the concept of permanent impairment is a bit silly. It really isn't permanent; it fluctuates. All we can say is, at that time, from the symptoms and from the overall impairment that person is reporting across all the domains of life, that it is unlikely—or we think that they are totally impaired for the foreseeable future.

The Hon. DAMIEN TUDEHOPE: If the test or the scale that is being applied for cutting off people's benefits, you say, is not the right one, what would be your suggestion in terms of a replacement?

NICK GLOZIER: I never said anything was not the right one.

The Hon. DAMIEN TUDEHOPE: You seem to suggest that it's the inappropriate one because it's a point of time assessment. If at a point of time, after 2½ years, you may be 21 per cent and have no capacity to work, and you were trying to make a decision about whether people should be continuing to receive benefits, what would be the test you would apply?

NICK GLOZIER: I don't think that definition of the timing is really determined about whether someone should—it determines whether people receive benefits, but I don't think it's determined upon their employability or not. At that stage, most people would have been out of the workforce for so long that the chances of them returning to the workforce are very, very low so they would transition onto other benefit schemes, such as Centrelink et cetera, but they would be taken away from the insurer's payouts.

The Hon. DAMIEN TUDEHOPE: So you would support, is that what you're telling us, a position that someone would be removed from compensation benefits?

NICK GLOZIER: If you're going to provide a sustainable workers compensation scheme, given that the flow into the scheme is ever increasing, at some stage you've got to stop paying out benefits without raising premiums to a level that's unacceptable or, as we've seen over the past few years, raiding the public purse for billions of dollars.

The Hon. DAMIEN TUDEHOPE: What's the model you would adopt?

NICK GLOZIER: I actually don't have a problem, personally, with the idea that actually at some stage you have to limit benefits. This needs to be flagged early, and there will be a stage. And really, if someone is that unwell, there's a range of other things that will kick in, including such things, potentially, as the NDIS; the Disability Support Pension; they can access their super, potentially; some people may be able to access total and permanent disability schemes, which are actually held within their super. So there are a range of other things that could kick in the benefits. One has to make a balance of "are you going to pay someone that amount of money forever or at some stage does a scheme like this have to limit itself?"

The Hon. DAMIEN TUDEHOPE: If they're on welfare or NDIS, isn't that a similar sort of process?

NICK GLOZIER: It's coming from a different purse.

The Hon. DAMIEN TUDEHOPE: It just comes from a different purse, so it's really just cost shifting.

NICK GLOZIER: Well, it's not cost shifting because if you look at the proportion of the salary that might be reimbursed under a workers compensation scheme, for many people that will be quite a dramatic cut in their income.

The Hon. DAMIEN TUDEHOPE: What about the removal, though, of continuing medical treatment? Do you support that?

NICK GLOZIER: It's not removal of medical treatment because, if you think about it, we actually have a public health scheme and anyone at that level, they—people can access the public health system. We do have a public health system in this country. There is a Better Access scheme. These things are not necessarily easy to access, and in certain areas they can be hard to access. But if you've been in the system for 2½ years, you should be relatively well engaged with a whole set of medical providers. Now, if people choose to cut you off if you are unable to pay for them, then one may look at the ways that those people are reimbursed. But we do have a medical public health scheme.

The Hon. DAMIEN TUDEHOPE: In terms of early access to medical support, which I think is the thrust of the claim by the medico-legal providers, is that readily available? Is there a sufficient supply of medico-legal providers?

JENNY CRANE: If you're looking at mental health, there is a wait time at the moment for psychiatrists. There's a huge demand for their services, so it could take months to see a psychiatrist. Having said that, if an appointment was really needed urgently, most psychiatrists will provide an appointment for you. They try to assist

in terms of the delay. But going to the third point we raised, if psychologists, appropriately trained—so, a neuropsychologist, for example, or a clinical psychologist—were allowed to also diagnose in that early stage, it would help significantly.

The CHAIR: Are there medical providers—I don't know if that's the right terminology, but doctors or psychiatrists or any other medical professional—who refuse to take people who are going to claim through workers compensation? Is there a difference in a medical professional's eyes in terms of who they would—

REBEKAH HOFFMAN: I'm happy to talk to this first. Absolutely. And even within the past 12 months, the number of doctors, the number of psychiatrists that I can refer to and have a WorkCover patient accepted has dropped by about 50 per cent. We used to have about six or seven that we could reliably refer on to in the region that I work in, and it's dropped down to one to two, and one will only take one particular type of WorkCover. So it has drastically reduced. But that's not just with psychiatrists, that's with psychologists as well. Psychologists also don't seem to really enjoy or love doing WorkCover.

The CHAIR: Why?

REBEKAH HOFFMAN: For my understanding, it really comes down to paperwork and red tape.

The CHAIR: So it's not to do with the—

REBEKAH HOFFMAN: It's not the patients. The patients are great. The patients are lovely. It's the paperwork.

The CHAIR: And it's not to do with the amount of compensation?

REBEKAH HOFFMAN: No.

NICK GLOZIER: I think it's across the board; it's not just psychiatrists. You see it in the GP notes, that GPs will refer to other people in the practice or refuse. You see it in other specialists as well. It's an across-the-board issue.

The CHAIR: As we all know, we have quite a shortage of psychiatrists and psychologists in New South Wales, and that has been an ongoing problem. If there is then this reduction in supply of people who can do this work from a psychological perspective, how does that then impact on the speed at which patients are being seen when they come through the workers compensation system?

NICK GLOZIER: If it's coming through workers compensation, people are seen relatively quickly. They see their GPs really very quickly because, in order to access the scheme, if you like, you've got to have seen a GP to actually move into the scheme. So it's almost like the GPs are the gatekeepers for a workers compensation claim, effectively. They have to have seen one medical professional. GPs actually are very good at initiating psychotropic medication, if necessary, at an early stage. I would suggest that—

The CHAIR: But in terms of—

NICK GLOZIER: But in terms of psychological interventions, that can vary enormously. But there's an increasing provision of telehealth by various insurers, including telehealth providers, of both psychiatry and psychology. There's the Government's Head to Health digital program, and there is MindSpot, which are all evidence-based digital programs that are relatively accessible.

The CHAIR: The latest icare analysis in relation to psychological claims liabilities, from 4 December last year, said that the average time to first psychological treatment in the Nominal Insurer is 47 days from the date of first report and, for the TMF, it is 48 days. They then say, for both the Nominal Insurer and the TMF, 25 per cent of claims have longer than 80 days before that first psychological treatment. We have also seen statistics that show that the sooner the psychological treatment is given the quicker people return to work. Well, that's what the data is showing us. My question to you is, what is stopping people from seeing someone quicker, if it's not the problems with the workforce?

NICK GLOZIER: No, that is a supply issue; you are correct there. Some of those people will have seen EAPs and other providers as well before they're seeing the person who is identified through the system, remember, because you're only seeing the ones who identify through the system. A month and a half—to be perfectly honest, that's not unusual in many cases. There are some practices that will have psychologists embedded with them, but that will vary enormously and vary enormously to where you are. Yes, there is a bottleneck in the system. There are a limited number of providers of evidence-based care, and you're always stuck with this: If you broaden the number of providers, you will reduce the effectiveness of the care that they provide.

The CHAIR: If we are taking people out of workers compensation and saying there is another system that they can go onto, but we know that the public health system has even more severe problems—we've just had a mass exodus of public psychiatrists from the public—

NICK GLOZIER: They've pretty much all come back now as VMOs. They're just costing a lot more money in the system.

The CHAIR: Which is ridiculous in itself.

NICK GLOZIER: Yes, I know.

The CHAIR: But what's going to happen? It's not really addressing the problem, is it? If people are getting injured, whether they're being dealt with in our public health system or under workers compensation is not really the point. How much of this could be solved by the Government instead focusing on improving the workforce conditions and attracting more psychiatrists or psychologists into New South Wales?

NICK GLOZIER: Psychology is almost one of the biggest growth industries in the country. The psychiatrist numbers are limited. We actually have a cap on the number of training placements. That's actually a Federal cap. The New South Wales Government could do nothing about that. That has been increased ever so slightly next year with Federal funding. Psychology training is a more fluid, expandable number of those, so you could increase more supply of those. We have increased numbers enormously.

If you look at the numbers, they have increased enormously over the past few years. It's that the demand has increased and if you look, for instance, at the Better Access scheme reports, you'll see what's happened is that people are staying in treatment for a long time. The Better Access scheme was set up as a short-term treatment—get this; you're meant to move on. If you read the two Better Access scheme reports, what you'll notice is that people are staying, for year after year after year, in chronic treatment. We're providing a lot more treatment for a lot more people, but the demand is outstripping supply.

The CHAIR: Before I move to Mr Latham, I want to give the other witnesses a chance to respond to those questions as well. Dr Hoffman?

REBEKAH HOFFMAN: The six-week wait to see a psychologist isn't uncommon. That's particularly if we're looking at six weeks for a CBT or an EMDR specific type of therapy. If we have a patient before then, quite often we'll be doing the therapy. We'll be doing the supportive counselling. We'll be seeing them weekly or fortnightly until they're able to get in to see the specifically trained therapists that we're wanting them to see. Many GPs have had additional training in FPS—focused psychological strategies—to be able to do that additional training as well. But for most of us, we're the ones who they see in that time slot. We're very particular on which psychologist or which therapist we want them to go to because often we're looking for a match, whether that's on age or personality or what we think will be successful. That's where the wait often comes in.

The CHAIR: Did you have anything to add on those questions?

MARK GIBBINS: I'm not sure what the drivers are for psychologists or psychiatrists providing their services in either the clinical pathway or the workers compensation return to pre-injury capacity journey. However, the gazetted rates for assessments in the New South Wales scheme have been provided to me as the single most restrictive reason why psychologists and psychiatrists are dropping out of the system. The number of psychologists and psychiatrists that we have on our panel, and on our members' panels, has been significantly reduced. In discussions with them, it comes down to, "I've got greater demand in a different area where I can make more money. Why would I do that? Now, that's anecdotal. It's with our members and that's what we're hearing. There are probably other drivers for that behaviour and the reasons to withdraw supply in the workers compensation scheme. But, anecdotally, that's what we hear.

NICK GLOZIER: That's the gazetted fees for assessments rather than treatment.

MARK GIBBINS: Correct.

NICK GLOZIER: Those are two different systems you're talking about here.

MARK GIBBINS: Correct.

The Hon. MARK LATHAM: Thank you to the witnesses. To Mark and Jenny, excuse my ignorance but what is a medico-legal provider?

MARK GIBBINS: We provide independent medico-legal reports to remove any conflict of interest in either specialist doctors or non-specialist doctors providing evidence for both sides of the adversarial system.

The Hon. MARK LATHAM: Wearing your legal hat, have you looked at these amendments, described earlier as the Tudehope-Latham amendments? They're actually the other way around—the Latham-Tudehope amendments. Have you looked at those in any detail?

MARK GIBBINS: Yes.

The Hon. MARK LATHAM: Can I take you to the one about racial discrimination. It takes out the folly of section 8E (a)—insult and offend—but leaves in harass and intimidate. I will give a case study here—an example that Mr Nanva knows well—of someone who tried to make the Premier of New South Wales and very much tried hard to make the Attorney General, with success. If you're working at a company like No Borders, which has Asian directors and Asian workers and, apropos of nothing, you barge in one day and give them a good old spray, saying that Asian PhDs are taking all the jobs in Sydney—an obvious act of racism that harasses and intimidates—wouldn't you be eligible for a psychological injury workers compensation claim under this amendment?

MARK GIBBINS: I'm not a lawyer, so I'm happy to take questions on notice and respond at a later date.

The Hon. MARK LATHAM: You can take it on notice and get some legal advice. But I would have thought barging in at No Borders, which is full of Asian workers, Asian directors and a few others there that we know well, and saying, "People like you Asian PhDs are taking all the jobs in Sydney," would be seen as harassing and intimidating those workers in the workplace. Take a second example—again, someone Mr Nanva worked very hard to make the Premier of New South Wales. It is a case study from a Christmas party. This was in 2016, but let's hypothetically say it was a Christmas party coming up later this year. You stand next to a reasonably attractive, thin, blonde woman, and you put your hand down her dress and her underwear. Wouldn't that still qualify under this definition as being knowingly unwelcome in terms of sexual harassment and, even worse, you'd say, sexual assault? Wouldn't you qualify for a psychological injury under workers compensation?

MARK GIBBINS: We provide independent medico-legal assessments and reports for the insurers and the plaintiff lawyers. We don't provide legal advice.

The Hon. MARK LATHAM: In the first instance, you can do that and still be the Labor Attorney General. In the second instance, you get close to being the Labor Premier of New South Wales. But clearly, it's knowingly unwelcome to stand next to a woman at a Christmas party and put your hand down her dress and underwear in an uninvited, spontaneous moment of sexual harassment. Just to come to Mr Speakman in this description of "ignorant bigots", what if you had colleagues—in his case, the former member for Pittwater and the soon to be former member for Kiama—who've raped people, allegedly in the first instance and convicted in the second? It doesn't really matter, does it, under what threshold of sexual harassment you've got. Obviously this is a lot worse, but this too would qualify, wouldn't it, under the amendments that we're talking about?

MARK GIBBINS: I'm going to take your question on notice.

The Hon. MARK LATHAM: I'm just saying there are a lot of bad people around and perhaps those in glass houses should be a bit aware of the stones that can be thrown.

The CHAIR: I will throw to the Government.

The Hon. MARK LATHAM: Come in on those examples, Bob, of people you've worked hard for.

The Hon. BOB NANVA: Not defending any of them.

The Hon. MARK LATHAM: No, you wouldn't be, mate.

The CHAIR: Order!

The Hon. MARK LATHAM: And can I just say, on notice, more to come.

The Hon. BOB NANVA: I might just go briefly to evidence that we received in the last session in relation to the subjectivity around the assessment processes and provisions that might not be objective and clear in relation to workers compensation benefits. Concerns have been raised by witnesses previously around gaming of the system and finding ways to incentivise threshold-beating evidence in order to receive some sort of financial outcome. In the previous session that was a question that we put to the lawyers' panel. They said it really wasn't a matter that they had come across but that we should perhaps put the question to the doctors' panel. Do you have a view on any of that, particularly given there is an inherent subjectivity in assessments using the PIRS scale and qualifying for benefits in order to reach a certain WPI?

REBEKAH HOFFMAN: Subjectivity is definitely an issue that we see as GPs. One of the things that we would be calling for is a really clear identification, both for us and for our patients, around what the impairment severity is and then, therefore, what the insurance coverage is, so that we can start working as early as we can

with our patients so that they have clear understanding of whether it's "we need to be getting you back to work" or "we need to be looking at other options, like Centrelink or other ongoing options". But, at the moment, there's too much breadth in it.

The Hon. BOB NANVA: And ambiguity?

REBEKAH HOFFMAN: Yes.

The Hon. BOB NANVA: Any other observations?

NICK GLOZIER: You're talking about the assessment of impairment, and I assume you're talking about psychological/psychiatric injuries when you talk about subjectivity.

The Hon. BOB NANVA: Correct.

NICK GLOZIER: The first thing I'd like to say, actually, is there is considerable subjectivity in the assessment of impairment in every single one of the other scales, as well, using the AMA4 or AMA5. We see that in the disputes quite frequently, where different orthopaedic surgeons, for instance, will rate very differently because they are also using "subjective" approaches to supposedly objective measures. So it's not just an issue for psychiatric/psychological injuries. I think it's across the board. Any assessment scale you use for anything will have a degree of subjectivity in it, because you are always reliant upon individuals. If you look at the particular ways of assessing psychiatric or psychological impairment or disability, the further you go towards actual impairment—and I was part of the WHO team that devised the definition of impairment—the more you are reliant upon subjectivity. The GEPIC is actually more subjective than the PIRS, for instance, because the PIRS doesn't really rate impairment—

The Hon. BOB NANVA: Sorry, the GEPIC being the scale they use in Victoria?

NICK GLOZIER: The GEPIC being the scale that's used in South Australia and a couple of other jurisdictions. It was used in Victoria. It systematically rates 10 to 20 per cent higher. That's why South Australia have been able to move to a much higher level for psychiatric injuries. The actual measure of impairment that they use is a far more generous measure of impairment, which is one of both my and my colleague's key concerns about the 31 per cent threshold. If it's based upon comparison with other legislations, you're comparing apples with oranges in terms of determining thresholds. It's a real problem utilising some of the other jurisdictions as your benchmark. They actually have a very different metric for doing that.

That being said, if you look at the rating scale for the PIRS, the descriptors are by no means perfect. It needs rewriting because it is substantially out of date. But, actually, the point of where the thresholds were—and I think Julian Parmegiani spoke to you last time—is the idea that, once you reach a rating of 3, it has a degree of objectivity. Other people can rate it and it will be rated by GPs and psychologists et cetera, whereas the rating of 1 or 2 tends to be a more subjective rating. That is, of course, not perfect. Everyone agrees it is not perfect.

None of these scales have actually been subject to standard psychometric tests. Yes, people can game it. Yes, people can actually do that. Well-trained assessors—and this is what I've been doing for years—learn ways of asking to find out the degree to which that is there. But, of course, the newer you are to this system, the harder it is to do this because you learn with experience. We don't have a machine that goes "bing!" and gives you a number, so some people game the system. It is quite clear that some people turn up with statements that have been written basically copying out the PIRS as their statement to give them a certain set of classes.

The Hon. BOB NANVA: Isn't part of the issue that the worker presents themselves on any given day—on that day—and they are, effectively, assessed on that day of the assessment?

NICK GLOZIER: They are. That's in the statement. But the point of when they come to the whole person impairment assessment that I do or medical panels—we are looking at all the evidence. You can choose, as an assessor, the degree to which you weight the evidence of the individual's statement, their partner's statement and what you assess on the day. There actually is now a new course being developed at Monash that I'm involved in which actually is aimed to train people to do these assessments better and to look at not just what the person tells you. We spend a lot of time asking questions and asking about things that the person doesn't necessarily tell you or asking about what you can do. The injured worker will always tell you what they can't do. We spend a lot of time on that. That being said, the other issues around gaming actually are what I see within the legal profession, which is the redaction of the notes that get sent to us—the classic one being that the GP notes have only been requested from the date of the assessment, thus removing any information that we might have about a pre-existing injury. That being said, in terms of what I see—and I see a lot of these cases coming through the commission—it's a minority.

The Hon. BOB NANVA: And the reason for that would be in order to weight surpassing a particular threshold to receive benefits over time?

NICK GLOZIER: I think it is a minority. It's a small minority of people. It occurs probably in certain types of workers and certain types of law firms, depending on where they specialise. But it is a minority that do this. The aim is to try and increase the whole person impairment assessment. Most of us have been doing this for a long time. We are very aware of this. When you get to the commission, we are very aware of this and we generally have a lot more evidence. Sometimes with the firms you're only given the evidence from either the worker's lawyer or from the insurer's lawyer. By the time they get to us, actually, the determination of the whole person impairment assessment—we actually have both sets of evidence that come. I think most of us make a pretty good job of looking at both of those and, in order to afford procedural justice and procedural fairness, talking to the worker about when they say something that's different in the evidence and actually bringing that up at the time and trying to tackle inconsistencies. We are specifically asked to address inconsistencies in the template and in the rating.

The Hon. BOB NANVA: Just coming back to the use of that concept of WPI, it's obviously not a measure of a worker's capacity for work. The former Workers Compensation Independent Review Officer, Kim Garling, has given evidence to this Committee. I'm just going to read parts of his evidence. I form no value judgement on it, but I just want to put the proposition to you and get your views on it. Mr Garling has said:

> Whole person impairment has nothing to do with capacity for work. There are plenty of people who can work who have very significant whole person impairment ratings.
>
> …
>
> When you talk about capacity for work, that has nothing to do with impairment. We have plenty of impaired people with high ratings of impairment who could work but choose not to. That is a bigger issue that overrides these reforms.

Is that a view that you would share?

NICK GLOZIER: Completely, yes. The whole person impairment is not purely a rating of capacity to work. I don't think it was ever intended to be a rating capacity. It's an assessment of impairment. I can give you the ridiculous extreme, the classic being the concert violinist who loses the tip of their ring finger. Now, to anyone here that would have no bearing whatsoever on their ability to work; it completely removes that person's ability to work. Yet, for all intents and purposes, they have no impairment whatsoever from a whole person impairment perspective, but they can't work. We can do that vice versa. The two have a small degree of correlation, but I don't think there's any expectation that the two should be completely correlated.

REBEKAH HOFFMAN: We would support that as well.

The Hon. BOB NANVA: It obviously goes without saying that getting people back to work earlier as quickly as we can is probably the best form of rehabilitation. That's a view that you would share.

NICK GLOZIER: Not necessarily.

The Hon. BOB NANVA: No?

NICK GLOZIER: If you're sending someone back to the workplace that actually is seen as punitive, bullying or discriminatory, then you're just creating more and more problems, where there is a real issue in terms of deciding very early on. Here I think the evidence is more clear. There's a wonderful paper from Scotland about this that asked people if they want to go back to that workplace, and there is a focus on rehabilitating back to their employer. Frequently, the employer doesn't want that person back. The person may not want to go back; quite often they do want to go back. But the system has a particular focus, which may not necessarily be in the best interests of the worker or the employer.

The Hon. BOB NANVA: As a general proposition, though, could I put to you that those who do suffer from a mental health condition would do better from an earlier return to work, which could result in an earlier recovery? That is as a general proposition, bearing in mind those guardrails that you put to the Committee.

NICK GLOZIER: There's an issue around causation here. The data around that is observational, in that those who return to work earlier tend to do better. But, actually, what you can't say is that is causative. I know this literature very well, and, in fact, I cannot identify anything causative that shows that. It's probably that—

The Hon. BOB NANVA: That there is a correlation?

NICK GLOZIER: There is a correlation—i.e. those who are able to go back are doing better and are able to go back earlier. But I would challenge you to find me the definitive causative evidence that shows that that is the case—and I know it really well.

The Hon. BOB NANVA: Perhaps I'll take that on notice!

NICK GLOZIER: You could take that on notice!

The Hon. BOB NANVA: Would that general proposition that I've put to you apply to those with severe symptoms but less than a 31 per cent WPI?

NICK GLOZIER: I would say anybody with really severe symptoms of that level of—

The Hon. BOB NANVA: Less than 30 points is what I'm—

NICK GLOZIER: I'm not going to put a particular figure on it, because I think that's pretty pointless, because a figure of 15 or 21 per cent can be caused by very different levels of impairment in different domains. But I think someone who is highly symptomatic, let us say, with significant anxiety or panic, sleep disturbance, lack of energy, lack of focus or lack of concentration—sending them back to the workplace will be bad for them. It will be bad for their colleagues. It will be bad for their employer in terms of their outcomes. You need to wait until people have a degree of symptomatology that they can actually tolerate going back to work, even on a part-time basis. The simple proposition that everyone should go back early is really determined a lot by the person's choice, what their experiences were, what the context is and their symptomatology.

The Hon. BOB NANVA: This is the final question from me. There's obviously a range of concerns around the financial sustainability of the scheme in its current form. A sustainable scheme has to place some limits on it, and it's open to the Parliament to place those limits. Is it a legitimate position for a government to have that it pursues a structural or legislative reform to tilt the scheme towards those who have the most significant injuries, to make the scheme sustainable in the longer term?

The Hon. DAMIEN TUDEHOPE: Point of order: That's asking the witnesses to form a political view in relation to what's before them. They can comment on the structure of what is in the bill, but not the political view about whether it's appropriate.

The Hon. BOB NANVA: To the point of order: I'm asking if it's legitimate.

The CHAIR: With that guidance to the witnesses about what they are required or not required to answer, I think they can be asked to answer.

NICK GLOZIER: I'm happy to take a jab at it first and others can join in and tell me whether they disagree or not. I completely agree that we need a sustainable workers compensation system, and it is becoming unsustainable, particularly in certain sectors. I was in the Fin Review only the week before last, talking about how it is becoming unsustainable within the TPD and IP sectors as well. It's becoming an existential risk for some of our life insurers. My particular concern from, if you like, my expert view, is that the focus on the pointy end and the levels that have been chosen are so extreme that, given the current way that we rate impairment, you're not even going to be compensating people with really, really substantial, impairing psychiatric injuries.

Almost no-one will ever receive compensation and be eligible for work damages claims. And what I have not seen and has not been made publicly available—and it's an area I work in—is any information about why the legislation has not done more to address the inflow into the system, which actually would have a much greater effect on limiting those with mild injuries that might resolve more quickly, and is focusing solely on what we see as being extremely punitive against people with really quite severe injuries.

The Hon. DAMIEN TUDEHOPE: Brilliant. That's a great answer.

The CHAIR: It's pretty conclusive.

The Hon. DAMIEN TUDEHOPE: I'm glad you answered it.

NICK GLOZIER: I could go on if you want.

The CHAIR: That does bring us to time. Thank you very much for coming along and providing your expert advice. Sorry, I will just check—no-one piped up to want to answer in addition, but if you did have something you wanted to say and I've not given you the chance, please do.

REBEKAH HOFFMAN: I do think that, as a GP, we would always say we need prevention rather than cure, and any attempt to stop workplace injuries would be wholeheartedly supported by us.

The CHAIR: Hear, hear! On that note then, thank you very much for attending. The Committee secretariat will be in touch in relation to further questions.

(The witnesses withdrew.)

(Luncheon adjournment)

Ms NONI BYRON, President, Australian Rehabilitation Provider Association NSW, sworn and examined

Ms LOUISE CADBY, Co Vice-President, Australian Rehabilitation Provider Association NSW, affirmed and examined

The CHAIR: We now welcome our next witnesses. Would you like to begin with a short opening statement?

NONI BYRON: Yes. Firstly, thank you on behalf of ARPA for having us today to participate in the inquiry. The Australian Rehabilitation Provider Association, also known as ARPA, represents over 90 per cent of workplace rehabilitation providers within New South Wales delivering return to work services to support workers with injury or illness. All workplace rehab providers delivering services within the New South Wales Workers Compensation Scheme are accredited by the State Insurance Regulatory Authority and must adhere to strict professional standards, including minimum return to work performance benchmarks, holding relevant allied health qualifications, maintaining membership with professional associations, and demonstrating compliance with regulatory and legislative requirements. Our membership brings extensive experience in vocational rehabilitation, participating particularly in supporting individuals with psychological injuries to achieve return to work outcomes. Workplace rehab providers operate independently and collaborate closely with general practitioners, psychiatrists, psychologists, counsellors, social workers, insurers, legal representatives, unions, brokers, employer groups and, most critically, workers with injury themselves.

Our unique positioning in industry is that our membership work on the ground with all stakeholders in scheme to facilitate recovery and return to work. Our workforce is mobile, attending to referred workers at home, in the workplace, and at medical or allied health practices. We have a direct interface with stakeholders and are the conduit to supporting the worker to achieve meaningful recovery in return to work in a sustainable manner. This unique position enables ARPA to offer insight into the practical challenges and opportunities across stakeholder groups within the scheme. ARPA supports the New South Wales Government objectives to enhance scheme outcomes and ensure scheme viability. However, the approach to how these changes are made must consider the risk to workers as some of the most vulnerable participants in the scheme.

One of the most significant concerns of ARPA, both within the current legislation and proposed amendments, is the impact of adversarial processes for workers with primary or secondary psychological injury. Our membership has observed an increase in self-harm and high-risk concerns for workers with injury. For example, workers may have capacity that enables a work capacity assessment and work capacity decision to be made. This does not, however, mean that the worker is void of symptomatology or their diagnosed psychological injury. As such, we hear frequently of reported cases of self-harm behaviours, whether this be suicidal ideation or suicide attempts, where a reduction in benefits or change in claim status occurs. Often, workplace rehab providers and, more specifically, the rehabilitation consultants that work within the organisations are the very allied health professionals providing intensive support to ensure the worker has access to appropriate care and support at this time. Where an adverse decision has been made, the focus changes from delivering return to work supports to keeping the most unwell and vulnerable alive.

With an understanding of some of the risks to workers in the current legislative framework, it is pertinent that future amendments consider the vulnerability of those with psychological injury, ensuring safeguards are in place throughout the claim to protect workers from further psychological harm as part of the claims management and/or legislative decision-making process. These safeguards are achievable through early access to medical care, assessment and treatment to facilitate recovery from psychological injury prior to and during liability determination; early return to work, workplace rehabilitation support—returning workers to full sustainable employment remains the most effective way to contain claims costs and meet the ethical and integrity responsibilities of the workers compensation scheme; there is no substitute for targeted investment in early effective intervention and workplace rehabilitation to improve return to work and recovery outcomes; and consideration of independent pre-liability psychological assessments conducted by suitably qualified and experienced psychologists to ease the burden on psychiatric independent medical examinations.

Further recommendations are continuity of care and support at 130 weeks where a worker may not meet the WPI threshold, with an understanding that many workers we support are very unwell and are not at the WPI threshold identified in the draft amendments. We further recommend review of SIRA-approved psychologists, counsellors and social workers fees, acknowledging many are exiting from the scheme due to administrative burden, financial impact on business and negative stakeholder interactions, and are questioning the value of their profession and their clinical opinion; and ensuring at all times suitably qualified and accredited allied health professionals are supporting workers with psychological injury, ensuring no further risk of psychological harm. Our unique role working in the field with workers and all other stakeholders, alongside our allied health

qualifications and clinical experience, enables us to share today our observations, learnings and recommendations to enhance scheme outcomes whilst safeguarding the most vulnerable members in the scheme.

The Hon. DAMIEN TUDEHOPE: How many members do you have?

NONI BYRON: How many members do we have? That's a really good question. The membership is nationally with ARPA, but the members that would sit easily within New South Wales would be upwards of 60 members. They're made up of workplace rehabilitation providers with different numbers of FTE staff within each organisation.

The Hon. DAMIEN TUDEHOPE: At what point in the process are you engaged on behalf of—are you engaged by the insurer or the employee?

NONI BYRON: We're engaged by the insurer. The referral will come from the insurance company, but the way in which a referral is instigated can be a choice made by the worker. The worker may select their workplace rehab provider, which is their legislative right to do so. The employer may have a preferred workplace rehab provider based on quality of service delivery, assisting those individuals to return to work, or the insurer may choose the workplace rehab provider.

The Hon. DAMIEN TUDEHOPE: And you charge a fee for the service you provide obviously?

NONI BYRON: Yes.

The Hon. DAMIEN TUDEHOPE: How do you work that fee out?

NONI BYRON: The fee is a gazetted fee that's given to us that we all abide by through icare.

The Hon. DAMIEN TUDEHOPE: What's that currently?

NONI BYRON: I think it is $233.67, but I can take that on notice and come back.

LOUISE CADBY: It's $216.33.

The Hon. DAMIEN TUDEHOPE: Per hour?

LOUISE CADBY: Per hour.

The Hon. DAMIEN TUDEHOPE: Do you get any bonuses for any quick rehabilitation to get people back into the workforce?

LOUISE CADBY: Not bonuses as such, but we're certainly encouraged to meet the requirements of the deed and encouraged to return as quickly, safely and effectively as possible.

The Hon. DAMIEN TUDEHOPE: Do your members sign contracts with icare or with the actual individual insurers? Who's your contract with?

LOUISE CADBY: Some providers are under the icare deed, so that's a contractual requirement. Other providers choose not to go onto deed, or aren't accepted onto deed. There are what we call deeded providers and non-deeded providers in the scheme.

The Hon. DAMIEN TUDEHOPE: And then the non-deeded providers would then be engaged by the case managers, would they?

LOUISE CADBY: Sometimes through the insurer, but often times through employers as well.

The Hon. DAMIEN TUDEHOPE: Talk me through the process. The claims manager contacts you, or one of your organisations, for the purposes of managing a claim.

LOUISE CADBY: Most often they would send us a referral, yes.

The Hon. DAMIEN TUDEHOPE: At any one time, how many claims would you be managing?

NONI BYRON: It would depend on the size of the organisation and the number of employees within each organisation. We can probably talk to caseloads by rehabilitation consultant, but each provider would be different, based on the size and volume of their workforce.

The Hon. DAMIEN TUDEHOPE: Have you any idea about the average cost of a rehabilitation program per employee who returns to work?

LOUISE CADBY: At the front end of the claims process, it would be considered to be a successful claim if the worker had returned to work within a 26-week period for a same employer claim and, ideally, at a cost of under $5,000.

The Hon. DAMIEN TUDEHOPE: What's your success rate in relation to psychological injuries, or what are your members' success rates—you may not have this data—for return to work in 26 weeks for psychological injuries?

NONI BYRON: We'd have to take it on notice on behalf of the members. I think we could talk individually for our organisations in saying that we're successful in returning people back to work with psychological injury above the SIRA benchmark requirements. It's also noting that workplace rehab providers aren't shared collective data across all workplace rehab providers delivering services within New South Wales. We will know our own data, and icare, SIRA and the CSPs will be aware of our data, but we don't have access to other people's performance.

The Hon. DAMIEN TUDEHOPE: SIRA has conducted a review of the rehabilitation providers, has it not?

LOUISE CADBY: Correct.

The Hon. DAMIEN TUDEHOPE: Has that review become public, or are you aware of the terms of that review?

NONI BYRON: No.

The Hon. DAMIEN TUDEHOPE: When was it completed, are you aware?

LOUISE CADBY: We've been involved in that review—both of us individually and through ARPA. We believe it's been completed and we believe the results are imminent, but we haven't been provided with them as yet.

The Hon. DAMIEN TUDEHOPE: Do you recall when it was finalised?

LOUISE CADBY: I believe March 2025, but I would not be confident of saying that absolutely.

The Hon. DAMIEN TUDEHOPE: In terms of the manner in which that review was conducted, was it a focused review in terms of the manner in which rehabilitation providers were getting workers back to work, the programs they had in place, and the potential work health and safety issues attached to providing rehabilitation services?

LOUISE CADBY: It was looking at the effectiveness of providers in the scheme across many factors, yes.

The Hon. DAMIEN TUDEHOPE: Including costs?

NONI BYRON: It would be costs, return to work outcomes, duration and also just the interaction and efficacy of workplace rehab provision in general.

The Hon. DAMIEN TUDEHOPE: One of the things we heard in the media yesterday and today is the impact of large premiums on disability service providers, and potentially some of those disability providers facing insolvency as a result of workers compensation premiums. Have you got any insight in relation to the specific aspects of disability providers relating to work health and safety around disability workers?

LOUISE CADBY: I think that would be outside of our area of expertise. Apologies.

The Hon. DAMIEN TUDEHOPE: It would be within the scope of the rehabilitation services you provide in circumstances where you're providing rehabilitation services to the disability industry, would it not?

NONI BYRON: We wouldn't have the interface in terms of the claims cost to that disability industry; we would only have the interface in terms of the individual worker and their supported recovery and return to work.

The Hon. DAMIEN TUDEHOPE: In relation to their supported recovery, do you have any observations to make in relation to the particular manner in which disability workers are being supported in their workplace and the risks related to being a disability worker, which attract an additional workload or, alternatively, the stress or psychological injury with being in that workplace?

LOUISE CADBY: I don't think we'd have the scope across the industry, no. We certainly deal with individual claims for disability support providers specific to their individual workplaces, but I don't know that we'd have the scope across the industry.

The Hon. DAMIEN TUDEHOPE: What are the risks in the disability industry?

LOUISE CADBY: I couldn't speak to that, Mr Tudehope. I think that's outside of my area. I'm sorry.

The Hon. DAMIEN TUDEHOPE: Would it be within the scope of one or other of your members who would be providing rehabilitation services to one of those industries?

NONI BYRON: We would be able to talk to the risks that we see in the nature of the types of injuries that occur within the disability sector, like we would be able to, for example, with first responders or within health. If that's the question that you're asking around the risks that workers with injury are faced with, we can talk to, I guess, the work health and safety risks they're faced with, but we wouldn't be able to talk to anything additional to that.

The Hon. DAMIEN TUDEHOPE: I may formulate some questions later. At what stage in the process are you engaged?

LOUISE CADBY: Ideally, as early as possible. We tend to get the—

The Hon. DAMIEN TUDEHOPE: I agree with that; that was my next question. But, on average, when are you generally engaged?

LOUISE CADBY: Ideally, in the—

The Hon. DAMIEN TUDEHOPE: No, when?

LOUISE CADBY: I can't speak to the whole of scheme from that perspective. We certainly encourage CSPs to refer as early as possible. In fact, our recommendation is usually that if a worker hasn't returned in the first four weeks of a claim from date of injury, we would encourage our involvement so that we can get the best outcome possible.

The Hon. DAMIEN TUDEHOPE: So how often are you engaged within the first four weeks of a claim?

LOUISE CADBY: Not as often as we would like.

The Hon. DAMIEN TUDEHOPE: Can you take that on notice and, potentially, from the data available to you, provide us with evidence about the manner in which early engagement of rehabilitation providers is part of what claims managers are requesting.

LOUISE CADBY: Of course.

The Hon. DAMIEN TUDEHOPE: It's the claims manager which contacts you? Is that the general process? The claims managers engage you for the purposes of a particular worker?

NONI BYRON: Yes, they'll make contact with us. As Louise described, generally speaking, that will be through a referral made, and then contact is established with the case manager.

The Hon. DAMIEN TUDEHOPE: Do you have a role in assessing work capacity for individual workers, which you then share with the claims providers?

NONI BYRON: The role that we would have is in the assessments or the workplace rehabilitation service delivery that we're delivering to that worker. One of the components of supporting a worker returning to new employment would be to conduct a vocational assessment. The primary goal of a vocational assessment is to identify options suitable to a worker for them to be redeployed into new employment. That document in itself can be utilised for work capacity assessment.

The CHAIR: Thank you for coming along today, and for your submission as well, which was very useful. I've had some people tell me some horror stories about rehab providers. Those stories seem to focus on the fact that a rehab provider is hired by the insurer rather than the worker, and that there is an incentive for the rehab provider to pass back to the insurer that the worker is well before they're well. What do you say to that allegation—that the rehab providers are sort of the agents of the insurer and incentivised to basically almost spy on the worker?

LOUISE CADBY: I think we'd respectfully refute that. I think we are all allied health professionals. We operate within our clinical justification. We all have codes of conduct against our professional associations that we operate under, and we advocate heavily for the workers as well as other stakeholders in the process. But, ideally, our goal is for a safe and durable return to work, and we are not incentivised by bonuses to get somebody back earlier. Our goal is safe and durable, suitable employment for the worker.

The CHAIR: In terms of having that relationship with the insurer then, under the agreement with the insurer, how much information can be given by the rehab provider about their patient, or the worker, back to the insurer?

LOUISE CADBY: I guess, probably taking a step back, if we go back to the referral process, contact is then made with the worker and an assessment will be conducted as a first port of call, where we obtain informed

consent around what we can obtain and release around that individual. It needs to be related to their injury and it needs to be related to their rehabilitation, whether that be the treatment that they're undertaking, an assessment of their workplace and supported identification of duties, feedback from their treating health professionals—so a psychologist might provide feedback. Really, the best way I look at workplace rehab provision is that we are the information gatherers of medical information, information from the employer and from the worker. That information is then being married up in reporting and shared with the insurer.

The CHAIR: So, for example, when people tell me things like they went to see a rehab provider, they had a psychological injury, but on the day that they went to see the rehab provider they were having a particularly good day. They managed to get out of the house. They went and saw the rehab provider, and then the rehab provider had written that, "No, actually, this person's not that sick." That led to an insurer then denying ongoing payments. That is in line, then, with what you're saying around—we might not call it "spying" on them, but there is an information flow.

LOUISE CADBY: There's an information flow, but it's not our role to comment on the wellness of an individual or whether they're presenting worse or better. Our role is to be a conduit in sharing information from the GP, psychologist and psychiatrist. We're not to cast aspersions around whether a worker is or isn't well, or is or isn't feigning injury. That's not our role. It's sharing the medical information at hand to facilitate a recovery and return to work plan.

The CHAIR: Isn't there a sort of inherent, not even a conflict of interest, but if the rehab provider is dealing directly with the injured worker and has that responsibility and that relationship with the injured worker but then doesn't really owe a duty to them—they're owing their duty to insurer—firstly, do you think that's well understood by workers? Do you think that that's adding a layer of potential ethical murkiness to the situation?

LOUISE CADBY: Can I make a point, Ms Boyd, that all of the stakeholders within the scheme—medical professionals, treatment professionals, employers and ourselves—all provide information to the insurer based on what's occurring for that worker at the time within the claim. I think that needs to be taken into consideration. It's contextual. All of the stakeholders are part of that.

The CHAIR: But the other stakeholders owe a duty to the worker, rather than—

LOUISE CADBY: As do we.

The CHAIR: —being employed directly by the insurer.

NONI BYRON: My comment to that would be that the perception is that we're delivering a service for the insurer. We're delivering a service independently for the worker to support them with their recovery and return to work.

The Hon. MARK LATHAM: Thank you to the witnesses. I'm just wondering if you can give us an outline of the main difficulties you face in this area of psychological injuries and getting people back to work. One of the constant themes of our inquiry is that, to use what I suppose is a cliché, there's an X-ray machine for the back injuries but there's no real accurate X-ray machine for the human brain as yet.

NONI BYRON: There are many challenges that we observe. I think one of the largest challenges that we have is small to micro employers who may have, for example, one claim that comes through and that's their only experience with a claim, with limited knowledge of how a workers compensation claim runs and the supports that they need to deliver. That would be, certainly, one area where it's placed upon us to provide that education and support to employers to support their workers with their recovery and return to work.

LOUISE CADBY: Probably the access to psychological treatment and the delays that were alluded to earlier today is certainly a factor in the return to work process. We find that wherever those delays exist, it can sometimes hamper recovery and the return to work process.

The Hon. MARK LATHAM: I suppose the other variable in this space, if you've got a physical injury—I've got a broken meniscus at the moment, and it's there until the doctor fixes it. But with these psychological injuries, people can be up one week and down the next. It's more much more fluid than a physical injury, isn't it?

NONI BYRON: It can be. I guess the point around early assessment and early treatment sets an individual up for the most success with their recovery. It's really dependent on the psychological diagnosis and whether somebody moves through that more fluidly and quickly, or whether it's more sporadic or up-and-down in nature. It really speaks to some of the conditions that we were alluding to, and more chronic conditions such as PTSD, which can fluctuate more. And then we see other individuals come through with, say, an adjustment disorder. With early treatment and workplace rehab provision, they're back at work within a short period of time at that 12- to 13-week mark.

The Hon. MARK LATHAM: Generally, do you try to send people back to the job that they used to have? The experience I've had, with umpteen people making representations because of this inquiry, is that people have popped out of the system because of some bad person, bad incident or bad treatment of them. When I say to them, "Where do you want to go back? Do you go back to your old workplace?", they say, "Oh, no, the bad people are still there." But if they move to a different job, is that taken as a sign of defeat that adds to the trauma?

LOUISE CADBY: Not at all. I think the role of workplace rehab providers is to intervene early—to be onsite in the workplace and facilitate breaking down of some of that interpersonal conflict, if required, between the employer and the worker, to try to smooth that process and negotiate, communicate and try to break down some of those barriers. Where there are the more minor psychological injuries being reported, it is possible to be able to facilitate that return to work and break down those communication barriers and those conflicts earlier. Wherever that is the case, that's our goal. Of course, there are some more serious injuries where that's not feasible, in which case we try as early as possible to redirect into a new employer goal, so that we can utilise that worker's transferable skills into a similar job with a different employer and do that efficiently for their own mental health. Oftentimes, if it is something specific to that workplace, it's just as easy and faster to be able to redirect that away from that workplace, but use their skills with a similar employer.

The Hon. MARK LATHAM: Perhaps you could take this on notice. I'd be interested to get some data on what proportion of people you send back to their old workplace successfully and unsuccessfully—like "collapses a second time"—and what proportion of people go to a new workplace successfully and unsuccessfully. Would you be able to give the Committee that data on notice, please?

LOUISE CADBY: We would take that on notice, yes. Do you mean specific to psychological injuries, Mr Latham?

The Hon. MARK LATHAM: Yes, PI. This inquiry really is about PI. What about the role of resilience? One of the modern trends—I speak against it in the Chamber, of course—is employment on the basis of diversity and other immutable personal characteristics, rather than resilience. I'd love to be a prison officer; I think this was my lost calling in life. But I've got a colleague who did it for one day and he said, "They throw their urine at you, they swear at you and they tell you what they've done to your mother and what they're going to do to your pets when they get out". It's a really horrible work environment, being a prison guard. But we've got 30 per cent of them in New South Wales out on psychological injury workers comp. We mustn't be testing for resilience, surely. If you're a softer, kinder, gentler person, you wouldn't be suited to that work, even if you're got all the personal characteristics that fit DEI employment. Isn't this a big thing, just getting people in the right fit for these tougher jobs in society?

LOUISE CADBY: It's up to the employer to determine the characteristics that are best suited to their workforce.

The Hon. MARK LATHAM: But you must see this. You must get people who've popped out of being a prison guard. They didn't like having urine thrown at them and being sworn out all day. I'd get the big baton out and whack them right over the skull, if that's allowed. You must see it all the time, mustn't you—people who just weren't suited? They're pulling dead bodies out of a car as a paramedic or a police officer is going in to cut people down who've hanged themselves. This is a real factor, isn't it? They just weren't suited in terms of personal resilience and toughness to that line of work.

NONI BYRON: Because we're seeing individuals post the event, we don't have a baseline measure to refer to. We don't have a baseline measure of what that individual presented like in their resilience levels prior to. When exposed to a traumatic event, post-injury, people present themselves in a really different way to how they may as part of that recruitment process, because they've been faced with that trauma. That's probably all we could really comment on in that regard, but understanding that we're seeing individuals post-injury and we're not seeing them prior to that time to assess levels of resilience. It's more impact of trauma—

The Hon. MARK LATHAM: Right.

NONI BYRON: —and also what we know of an individual's lifestyle factors and what has happened for them through their livelihood as well—

The Hon. MARK LATHAM: Yes.

NONI BYRON: —which has led them to where they are.

The CHAIR: Order!

The Hon. MARK LATHAM: Yes, good point. It's hard to get the baseline. Maybe the resilience was sucked out of them in that work environment, bit by bit. Anyway, one good thing about the Latham-Tudehope

amendments is a provision in there. Employers say, "We've got too many claims." They do. The one area where they can really help themselves is make sure that if it's a tough type of work, the resilience profile fits the type of work. We've got something in there to help employers make it a bit easier in that regard. If they and their staff are going into this highly resilient type of job and they've made a mistake in that regard, perhaps they shouldn't have the same rights of claiming as those in other circumstances. Thanks for your time today and thanks for your answers. And I look forward to that material on notice about the breakdown.

The Hon. BOB NANVA: There are only a few questions from us. Obviously, I've got a crude understanding of what takes place with the rehabilitation of a physical injury or drug rehabilitation. I must plead ignorance—and please excuse my ignorance—but could you give me a flavour of what's involved in the rehabilitation of someone who is suffering from a psychological workplace injury? From the point of view of Mr Tudehope's question about when you're engaged by the claims service provider, what does the day-to-day work for your membership look like?

NONI BYRON: I'll take you through what a referral would look like. It's the easiest way. There'll be variations up and down between different individuals. An individual will be referred to our organisation. We will then make contact with that individual and arrange to conduct an assessment with them. Generally speaking, with primary psychological conditions, we'll meet with that individual outside of the workplace. There's a variability. If they're fit for work, we may meet with that individual in the workplace. If they're not fit for work or too unwell, we will meet them either in offices of where workplace rehab providers work or at the worker's home if they're too unwell at that point in time. We'll undertake an allied health assessment of where they're at, factoring into consideration feedback from the medical health profession. We'll assess the individual. We'll then go and meet with the GP and conduct a medical case conference with the worker and the GP to gain an understanding of exactly where that individual is at. What is their diagnosis? What treatment do they require? What is their prognosis with treatment? What will work look like? When are they able to go back to work and how can we support them with that?

Where they have a treating psychologist or psychiatrist, we'll be making contact with those treating health professionals to obtain information from them, with the same types of questions confirming diagnosis, treatment, prognosis and return to work considerations. Outside of that, we're interfacing with the employer. We're speaking to the employer around the duties that individual was performing prior to their injury, and we marry all that information up over that time to then work out when that individual can go back to work, what duties they can perform and what conditions are there in front of them. Again, that might be they're returning to their original employer or we may be planning for new employment down that way. But probably more to that point, we're out in the field, so we're seeing all of the stakeholders face to face.

The Hon. BOB NANVA: It seems for a layperson like me that there is a real complexity to the process and that you're corralling the employer claim service provider, GP, psychiatrists and psychologists. Presumably, in such a subjective area, there'd be a fair bit of professional disagreement between the medical professionals, the GPs and psychiatrists. How do you find the—

LOUISE CADBY: Often it's more that each stakeholder has their view or their opinion of the status of that particular worker or claim, and it's often our role to bring those differing aspects of information to the table. We often see ourselves as the central coordinator to make all parties aware of all of the information—of course, with consent—and make sure that we present or propose a return to work plan that essentially meets everybody's goals—the worker, the employer—in line with collaborating with the medical professionals and treating professionals. So it's not about us presenting our opinion. It's about bringing all the information together and trying to navigate and coordinate a path that works for everyone.

The Hon. BOB NANVA: I haven't come across too many workers who have found the experience to be positive in the system. That's no criticism of any one party; it's just a very complex process. Given all the moving pieces and the complexity, would it be fair to say that we should only be bringing the most complex injuries into the system and potentially keeping as many people out of the system if we can, if they have a capacity to work? I suppose I'm asking do you support commutations, for example, that would allow workers to deal with things on their own terms in a more structured way that suits them, without getting into the complexity of a system like this?

NONI BYRON: Commutations is really outside the scope of our expertise. What we know is that individuals with a diagnosed condition, with early intervention and support to return to work, is where the most success occurs. So it's out of the scope of our expertise to talk about commutation.

The Hon. BOB NANVA: There's a submission that the Committee has received—and we haven't had an opportunity to cross-examine it, but I'd take it at face value—from the Workers Insurance Association of NSW. They've said:

> Fewer than 10% of claimants with psychological injury are certified as having any work capacity at initial assessment. In our experience, this is not because they lack any work function, but because the environment around them has not yet supported recovery.

Is that an assessment that accords with your experience?

LOUISE CADBY: It would not be unusual for a worker with psychological injury to be unfit at referral. Certainly we know that to be the case. Of course there are others that present with work capacity, and they're certified for some type of work on referral, so it is certainly a mixed bag.

The Hon. BOB NANVA: In terms of this idea of the environment around them not yet supporting recovery—presumably that includes the work environment—I'm interested as to why there is such a disparity between return to work rates and the psychological injury space and the physical injury space. What do you see as the greatest impediments to improving those return to work rates, specifically with respect to psychological injury? You've raised concerns already with respect to microemployers and their capacity to deal with things, and access to psychiatrists. Are there any other things that could be done by way of reform to improve those return to work rates?

LOUISE CADBY: Certainly if we compare to physical injury, it's much easier for some employers to be able to compare and contrast the level of function of the worker with the duties that they have within their employment, and so it's more visible and therefore easier to understand. I would suspect that employers with psychological injury claims may have less understanding of what types of employment they need to provide to be able to support that worker. But that's where we come into play to be able to help them to determine what might be suitable for that worker. To answer your question about what barriers we think exist for psychological injury, I think there are many. It depends on the severity of the symptoms, the diagnosis at the time, and what level of treatment and medical treatment and psychological treatment has been put into place. I think there are many variables there.

The Hon. BOB NANVA: You've spoken already about the importance of early prevention. If one of the mechanisms available to a government were to try and reduce delayed decision-making with respect to some of these injuries, presumably, that would be something that you would welcome?

LOUISE CADBY: Yes.

The Hon. DAMIEN TUDEHOPE: One of the observations made by the Bar Association was that a lot of money spent on the rehabilitation providers is in fact money which could be better spent, not so much in relation to the coordinating of reports from doctors but the vocational capacity of reports. Did you see that observation that they had made?

LOUISE CADBY: Yes, we did.

The Hon. DAMIEN TUDEHOPE: What's your response to that? Clearly, you disagree.

NONI BYRON: There are multiple responses to that. There was one commentary in there around non-qualified or inappropriately qualified individuals. I just wanted to make a point there that we're regulated by SIRA and we have to have appropriately qualified allied health professionals that they nominate to conduct those vocational assessments. They are registered psychologists, provisional psychologists and rehabilitation counsellors. They are the only allied health professionals required to conduct those assessments. I thought that was important for the record. The cost of those assessments sits anywhere between $1,800 and $2,400, depending on whether we're also going to attend the GP with the worker after the assessment to discuss the vocational options that we've identified and the appropriateness of those medically. I think that's an important part.

The second part to address is that the vocational assessment for workplace rehab provision predominantly is to support a worker to identify what job options they can perform moving into new employment. The reason we're doing them is to support that individual to either return to work in an alternate position with their same employer or to obtain new employment. That's the purpose of why we conduct a vocational assessment. But an insurer can use that document to formulate a work capacity assessment at any time. The purposeful nature of the voc assessment for us as workplace rehab providers is to support a placement of somebody into a new role or a similar role with their new employer. But I make that point again that the insurer can use that as one part of evidence for a work capacity assessment. It's not necessarily the sole document that they're utilising.

LOUISE CADBY: We would like to point out as well, Mr Tudehope, that the costs outlined in previous submissions could be considered a very small aspect of a whole claim cost and, in fact, could be considered to be two or three weeks worth of wages. We don't consider that to be excessive.

NONI BYRON: There was one other point to make there around the costings of workplace rehab provision. There was a note there that workplace rehab provision can cost up to $30,000 to $40,000. We just wanted to make a note that there will be outliers where some individuals require more intensive intervention over

years period of time, based on their wellness. It would be expected that those individuals with the right levels of support would be more costly, but they would be outliers in the service delivery that's provided by workplace rehab provision.

LOUISE CADBY: It's certainly not the norm.

The CHAIR: Thank you very much for attending and providing your evidence today. To the extent that questions were taken on notice or there are supplementary questions, the Committee secretariat will be in touch. That brings our session with you to an end.

(The witnesses withdrew.)

Ms ADELE SUTTON, Head of Policy, Council of Small Business Organisations Australia Association, affirmed and examined

Mr MIKE SOMMERTON, Head of Industrial Relations, Council of Small Business Organisations Australia Association, sworn and examined

Mr CHRIS GATFIELD, Director of Government and Industry Affairs, Australian Hotels Association, affirmed and examined

Mr SIMON SAWDAY, Director of Government Affairs, ClubsNSW, affirmed and examined

Ms JOANNE EDE, Chief Legal and Risk Officer, ClubsNSW, sworn and examined

Mr DANIEL KICUROSKI, NSW Branch Director, Pharmacy Guild of Australia, affirmed and examined

Mr PEPPE RASO, NSW Branch Committee Member, Pharmacy Guild of Australia, affirmed and examined

Mrs LYN CONNOLLY, President, Australian Childcare Alliance NSW, sworn and examined

The CHAIR: I welcome our next witnesses. Would anyone like to commence by making a short opening statement?

ADELE SUTTON: Yes, we would. I will defer to my colleague Mike.

MIKE SOMMERTON: Good afternoon. I'm here representing COSBOA to outline our position on the proposed amendments and the critical impact on small businesses. Just to clarify our position for what COSBOA supports, we support several key reforms in this bill that we believe will bring much-needed clarity and protection for employers. First, the narrower definition of compensable psychological injuries: The new legislation proposes to limit these claims to specific objectively identifiable incidents, acts of violence, criminal conduct, witnessing serious injuries or conduct formally found by courts to constitute harassment or bullying. We believe this provides the certainty that small businesses need.

Second, the statutory definition of reasonable management action: If employers act reasonably and in a reasonable way, their actions will be presumed not to cause compensable psychological injury, and we believe this protects the legitimate interests of business operations. Third, requiring formal tribunal findings for harassment claims: Psychological injury claims from bullying or harassment will only be compensable, it is proposed, where conduct has been formally determined by a court or a tribunal. We believe that this prevents speculative or frivolous claims, and we support this on behalf of small business. Finally, the exclusion of work pressure claims, while still providing eight weeks of medical support, recognises that normal business pressures, particularly for small businesses, shouldn't automatically become compensable claims.

We do, however, strongly oppose some aspects of the proposed legislation which talk to the massive benefit increases proposed in this bill. Death benefits are proposed to jump from $750,000 to nearly $956,000—an increase of 27 per cent. Equally, maximum weekly compensation rises by 40 per cent and permanent impairment compensation increases by 28 per cent. COSBOA believes that these increases will have a detrimental impact on small businesses through premium spikes.

The bill also removes certainty around excess payments by shifting them to regulations rather than guidelines, which we believe will create an unpredictable financial obligation upon small employers. COSBOA's view is that, as part of this bill, we recommend that a small business premium protection mechanism ought to be in place, capping year-on-year premium increases for small businesses at 5 per cent, for businesses under 50 employees. We also see any benefit increase, if it's required, phased in over a longer period of time, not immediate, and over a three- to five-year horizon.

We also support the need for a small business mental health support program, providing practical tools and templates for small businesses to help them manage psychological injuries if and when they do occur in their workplaces. Most critically, we need clearer "reasonable management action" definitions, although we do support the concept of reasonable management action. In particular, we seek for it to be recognised that small business has realities different from larger organisations, where owners can give direct feedback, make immediate operational decisions but in some circumstances cannot afford formal HR procedures or access to employment lawyers or HR managers.

Small businesses, as you know, employ over 4.7 million Australians. We support worker protection, but these reforms must recognise that a five-person cafe operates differently from a multinational corporation. We see size-based definitions to protect informal direct management styles. We see safe harbour provisions for good faith management decisions. The current draft, while containing good elements, risks pricing small businesses out of

the workers compensation system entirely. We urge the Government and the Parliament to implement recommendations to ensure these reforms protect workers, without dramatically increasing the costs of the small business sector that drives our economy.

CHRIS GATFIELD: Thank you for the opportunity to appear before the Committee today. I represent the Australian Hotels Association, which does exactly what it says on the packet. I'll try to keep this short and sweet. AHA NSW supports the meaningful reform proposed in the bill, as well as some of the amendments proposed by the Opposition and the crossbench. We're not here to support any one side of this political debate, but we are here to support good policy. The workers compensation framework in New South Wales is a renovator's delight, and we support reform and the intent of the bill on that basis. It's clear from the trajectory of premiums and the increased frequency of psychological injury claims in particular that reform is needed.

We recognise that the current scheme is under significant pressure and agree that changes are needed in order to make sure it remains sustainable, fair and efficient for all stakeholders, those being employers, workers, insurers and the community. Our members want to see a system that delivers timely support to injured workers, while also providing certainty and affordability for businesses who do the right thing. We welcome the bill's intent to improve financial viability and address systemic issues, and we appreciate our engagement with many members of the Committee on this already. We look forward to contributing constructively to this inquiry and to supporting reforms that restore confidence and long-term stability to the workers compensation system in New South Wales.

SIMON SAWDAY: Chair and members of the Committee, thank you for the opportunity to appear before this inquiry. The flaws in the New South Wales workers compensation system have created serious challenges for the club industry. More than 90 per cent of our members reported that they will need to cut back on employment or community donations if their premiums increase by the projected 36 per cent over the next three years. But what I want to focus on in this opening statement is those clubs that pay far greater premiums due to substantial compensation claims. We have seen countless examples of clubs paying hundreds of thousands of dollars because a worker has exceeded the 15 per cent WPI threshold for a psychological injury. These clubs all tried to support the person's rehabilitation, including by offering them other meaningful work within the business. For many of these WPI claims, no reasonable person would think it's fair for the club to pay such a significant amount.

One club reported that a worker was assessed at 22 per cent WPI, despite studying full-time and continuing to run her own business. Our submission describes a regional club that has paid $500,000 through higher premiums to a worker assessed at 24 per cent WPI. That was because the club scheduled training on a day that the person didn't work. For a small bowling club, these costs will send the business broke. Yet the threshold for a person to claim these substantial payments is far too low. The WPI threshold urgently needs to increase to ensure that the system rehabilitates workers and supports their return to work, while reserving significant lump sum payments only for severely impaired workers. This bill will go a long way to improving the workers compensation system. For that reason, we support the bill and, particularly, raising the WPI threshold to 31 per cent. Thank you, once again.

DANIEL KICUROSKI: Chair and members of the Committee, thank you for the opportunity to appear as the New South Wales branch director of the Pharmacy Guild of Australia. There are over 2,000 community pharmacies across New South Wales, and each one of those is a small business. They are often family owned, locally staffed and deeply embedded in the communities that they serve. Our members play a vital role in the State's and nation's healthcare system, and they take their duty of care to their staff very seriously—as seriously as they take their duty of care to their patients. We support proposals to fix the State's workers compensation scheme. These reforms are urgently needed to improve protections for genuine psychological injuries, fast-track claim assessments and curb insurance premiums. The members tell us that increasing premiums are placing pressure on their businesses.

We believe that it is possible to create a sustainable and fairer system that supports workers while removing structural flaws that currently reward extended absences and discourage recovery. The changes should return the scheme to its intended focus on rehabilitation, return to work and prevention. Reforms should strike the difficult but critical balance of supporting injured workers with dignity and fairness while remaining financially sustainable and operationally effective for employers and the public.

Members of the Pharmacy Guild tell me that the current trajectory of the scheme is unsustainable. We're already seeing rising insurance premiums, slow claims processing and mounting deficits. For many small pharmacy businesses, this is becoming untenable and, if premiums continue to rise unchecked, there will be choices that need to be made by those small businesses, including the unfortunate options of staff reductions and reduced community services. We believe that reform is necessary to ensure the system can continue to function for the years ahead.

The bill includes several sensible, evidence-based provisions that we welcome. We see the importance of having a workers compensation system that functions predictably, affordably and fairly, and we want our members to be able to provide fulfilling, secure employment and not be driven to reduce staff hours or forgo hiring because of unpredictable premium hikes. Not acting on reform will harm both workers and employers. Delaying any changes would risk greater damage to the system and its capacity to serve those most in need. On behalf of our members, I would like to ask for certainty and urge you to progress reforms with appropriate safeguards and monitoring to restore confidence in the workers compensation system and to protect jobs and services across our State.

PEPPE RASO: Chair and members of the Committee, I'm a community pharmacist and self-employed small business owner. I operate the Cincotta Discount Chemist in Warrawong, a southern suburb of Wollongong. I'm also a proud member of the Pharmacy Guild of Australia and serve in the New South Wales branch. I'm here today not just as a business owner but as an employer, a healthcare professional and a member of the local community. We support workers compensation. Our staff are at the heart of everything we do. They are our greatest resource. Our pharmacy assistants are often the first point of contact for triage for people who are sick, vulnerable or scared. We understand the pressure they're under, and we support a system that helps them if they get hurt or experience trauma at work.

But I'm also here to say that the current system isn't working. Workers compensation premiums have increased significantly in the past few years. This financial year alone we've seen an increase of over 8 per cent. Guild New South Wales members report that our claims are taking too long to process, and the unpredictability of the system makes it harder to invest in staff, expand services or even stay open in some cases. For small pharmacies like my own, this isn't an administrative issue; it's an existential one. Some of our colleagues in regional areas report facing premium increases of up to 40 per cent. Others are avoiding hiring new staff because they're worried about the long-term financial risks if a claim arises and due to on-costs associated with workers comp. That's not a healthy system. That's why I support the reforms. These reforms are a necessary reset and a way to stabilise the system before it collapses under its own weight. If we don't act now, we're going to see cuts to services, with a reduction in hours of community pharmacies and support that is far worse than anything being proposed here.

The current approach leads to long delays, legal disputes and uncertainty for everyone. We need a system that is clinically focused, transparent and faster. I believe these reforms are a move in that direction. At the end of the day, this is about balance. I want to look after my staff, but I also need to keep the doors of the business open. I want to employ more people, not fewer. I want to invest in mental health training and flexible working arrangements, but I can't do that if a significant component of the revenue goes to rising insurance costs and drawn out claim processes. This is a tax on business. My understanding is this bill isn't about cutting corners. Rather, it seeks to build a system that works for injured workers, for small businesses and for the public who rely on services like ours. Chair, I thank you for your time and for the thoroughness of this inquiry. I urge the Committee to support a responsible, evidence-based path forward and to ensure the final legislation reflects the realities faced by employers who care deeply for their staff and their communities.

LYN CONNOLLY: Thank you for the opportunity to present today. I'm the president of the Australian Childcare Alliance NSW. We represent over 1,600 early childhood education and care services across New South Wales that operate long hours, with some operating as much as 24/7—professionals entrusted with the education, care, development and safety of our youngest Australians. As such, early childhood educators and teachers are vital to all early childhood education and care services, and how we look after them is of paramount importance to us.

Currently, the existing workers compensation framework can leave us, as employers, vulnerable to vexatious psychological injury claims when we take necessary and lawful action to address serious performance or conduct issues. Too often, we see industrial relations disputes morph into medical issues. This is because it is arguably the path of least resistance for an employee to preserve her or his income. This is also alarming in the contemporary context of allegations of child abuse. When a provider suspends or terminates a staff member's employment in response to such allegations—often in line with mandatory reporting obligations and child protection protocols—said provider may be met with a workers compensation claim for psychological injury. Consequently, these claims can result in significant premium increases, even though employers have acted responsibly, legally, ethically, transparently and in the best interests of children.

The public expects—and rightly demands—that we as early childhood education and care providers act swiftly and decisively to protect children. Yet the current workers compensation system penalises us when we do. To give you an example of the dire situation we as early childhood education and care employers face, I will tell you of a conversation I had recently with one of our members, who told me that in February an allegation was made that an educator used excessive force on a child. The provider spoke with said educator and explained that

she would be stood down until a thorough investigation could be carried out. The provider notified the authorities and proceeded to carry out the investigation, which began with viewing the CCTV footage, followed by speaking with the other educators, who substantiated the claim.

The provider called the accused educator to set up an appointment to discuss the issue, informing her of her right to bring a support person with her. At said meeting, the educator proffered that she had reflected on the situation, named the child she thought it was about, confessed to her behaviour and expressed remorse. The educator declined the offer to view the CCTV footage, saying she knew that she had done what she had been accused of. The provider had no choice but to terminate the educator's employment. The following week said educator attended a GP and claimed stress, saying, "I was falsely accused of hitting a child. After an investigation, no evidence was found to support this claim. Despite this, my employer chose to focus on an unrelated CCTV recording, which did not indicate any wrongdoing, and terminated my employment the following day." Said statement is simply not true.

This was confirmed later by the Department of Education when, in their investigation report, they said, "The two allegations have been substantiated. A formal caution regarding these incidents has been placed on her file." In addition, verbally, the department investigator confirmed that the educator had admitted guilt, expressed remorse and was undergoing further child safety training with the Department of Education. This workers compensation claim has now been declined, following the completion of the factual investigation, but the educator has been paid workers compensation payments for several months, including a notice period after the declinature date, as it had to be investigated by the insurer, even though the evidence proved that she made a false statement to the GP. There are many other cases brought to our attention. That is why the Australian Childcare Alliance now strongly urges this Committee to support the proposed bill.

The proposed amendments to the legislation to protect employers are a critical step toward restoring fairness and balance in the workers compensation system. It recognises the unique responsibilities of us as early childhood education and care providers and ensures that those who act in accordance with performance management protocols, child safety and child protection obligations are not unfairly penalised. Ensuring all children have the most effective and best skilled early childhood educators and teachers should never come at the cost of punishing those who would protect them. Thus, we strongly urge you to support this bill.

The Hon. DAMIEN TUDEHOPE: Thank you all for coming. I could probably spend 20 minutes with each of you to explore some of the suggestions that have been made, but I will start with you, Ms Connolly. Do you think this bill solves the problem that you've identified?

LYN CONNOLLY: The current situation, as you read about in the media all the time—and we, as educators, are terrified. By law, we have to do staff appraisals. If we do a staff appraisal and somebody is—not that they're injuring a child; I don't mean that. But if they need to lift their game in certain areas, quite often it turns into a workers compensation claim of mental health issues.

The Hon. DAMIEN TUDEHOPE: I understand that, but the question was this: If you strengthen the employer's position in relation to reasonable management action, would you eliminate the problem which you've identified in your opening statement if you gave stronger defences to employers to be able to rely on reasonable management action?

LYN CONNOLLY: I think so, because if it becomes adjudicated by the Industrial Relations Commission as proposed then that takes it out of the hands of somebody just trotting off to the doctor and saying, "Blah, blah, blah."

The Hon. DAMIEN TUDEHOPE: The point I think you're making though is that much more needs to be made of an employer's right to be able to conduct their business and do it in circumstances where they reasonably manage their staff.

LYN CONNOLLY: Absolutely.

The Hon. DAMIEN TUDEHOPE: In circumstances where there is an allegation of potential child abuse, that should constitute reasonable management action which in fact should be something which would prohibit a workers compensation claim. Is that correct?

LYN CONNOLLY: Absolutely.

The Hon. DAMIEN TUDEHOPE: Thank you. Can I now go to the pharmacists. Your chief concern is the rise in premiums, is it not?

DANIEL KICUROSKI: Correct.

The Hon. DAMIEN TUDEHOPE: The chief concern?

DANIEL KICUROSKI: Correct.

The Hon. DAMIEN TUDEHOPE: That chief concern relates to increasing premiums.

DANIEL KICUROSKI: That's right.

The Hon. DAMIEN TUDEHOPE: If there was a system in place which would effectively retain the workers' rights in relation to their workers compensation claims but in fact make other changes to the legislation which had the impact of reducing premiums, would you support that legislation and those amendments?

DANIEL KICUROSKI: We would need to look at the legislation.

The Hon. DAMIEN TUDEHOPE: There are amendments which have been provided to the Committee. Have you looked at those amendments?

DANIEL KICUROSKI: I haven't seen those amendments in particular that you are referring to. Looking at the redrafted bill with amendments included, if they did reduce premiums to a reasonable level or reduced their increase—

The Hon. DAMIEN TUDEHOPE: If the actuarial analysis of those amendments was very much in line with what the Government is proposing but at the same time retaining the benefits available for employees, would you—

DANIEL KICUROSKI: Our primary concern, as you said, has been the rising cost of premiums for our members.

The Hon. DAMIEN TUDEHOPE: What is the workers compensation industry classification for pharmacists?

DANIEL KICUROSKI: I'm not aware of what that is.

The Hon. DAMIEN TUDEHOPE: Would you agree with me that it's about 1.35 per cent of payroll?

DANIEL KICUROSKI: I see what you mean.

PEPPE RASO: Percentage-wise. I'm not aware of the full percentage myself. I can't speak—

The Hon. DAMIEN TUDEHOPE: It's about 1.35 per cent of payroll.

PEPPE RASO: If you say so.

The Hon. DAMIEN TUDEHOPE: In the circumstances, you're a low-risk industry in many respects. There are some industries where it's 6 per cent of payroll and higher in relation to the manner in which their premiums are assessed, so you're a low-risk industry. By making amendments to ensure that reasonable management action plans and better definitions relating to what constituted harassment were put in place for the purposes of ensuring that this was a more workable bill for the purposes of ensuring premiums are driven down, you would support that, would you not?

DANIEL KICUROSKI: As I said, we would have to look at the amendments and have to look at the new bill.

The Hon. DAMIEN TUDEHOPE: If that was the Government's analysis of the amendments, you would have to struggle to disagree with that analysis, wouldn't you?

DANIEL KICUROSKI: Whether it was the Government's analysis or not would be irrelevant. It would be our analysis.

PEPPE RASO: It would be in the member's interests, Mr Tudehope. In the end we're talking about a system that is broken. Yes, our concern is rising cost but also the sanctity of the actual processes as well.

The Hon. DAMIEN TUDEHOPE: Correct, and exactly the same position—

PEPPE RASO: We've heard exactly the same situation here with child care. Our members are relaying the same thing.

The Hon. DAMIEN TUDEHOPE: I think it's the position of COSBOA, is it not, in respect of the provisions relating to—a great number of the complaints that COSBOA face is in circumstances where a claim is made for compensation in a circumstance where the employer says, "There is a reasonable explanation for what I have done." Is that the case?

MIKE SOMMERTON: That is the case, yes.

The Hon. DAMIEN TUDEHOPE: That is their chief concern, is it not?

MIKE SOMMERTON: It is a concern, yes. A primary concern.

The Hon. DAMIEN TUDEHOPE: Because often you don't have the HR capability for small businesses to be able to deal with that as expeditiously as bigger employers are potentially able to do. That is also a concern, is it not?

MIKE SOMMERTON: Yes, it absolutely is a concern.

The Hon. DAMIEN TUDEHOPE: Having early intervention with a view to return to work programs is often not available in the same way as larger employers. Is that the case?

MIKE SOMMERTON: That is the case. We don't have access.

The Hon. DAMIEN TUDEHOPE: A system which addresses those issues rather than taking away the rights of very seriously injured people—you would agree with making those amendments if there was a reduction or downward pressure on premiums, would you not?

MIKE SOMMERTON: Again, I think that's a hypothetical.

The Hon. DAMIEN TUDEHOPE: But if it was the case?

MIKE SOMMERTON: I'd need to look at what's proposed. I understand that you've put forward amendments to legislation, but I'm not privy and haven't had a look at those amendments at this stage.

The Hon. DAMIEN TUDEHOPE: I'll go back to my primary position. If, in fact, there were amendments which were put to safeguard reasonable management action plans, is that something that you would embrace?

MIKE SOMMERTON: Conceptually, yes, but we'd need to see the detail.

The Hon. DAMIEN TUDEHOPE: Mr Gatfield, AHA are generally self-insurers, are they not?

CHRIS GATFIELD: The majority are self-insurers, but it's a slim majority.

The Hon. DAMIEN TUDEHOPE: It's a slim majority, but is there much of a—

CHRIS GATFIELD: Sorry, specialised insurers I should say, rather than self-insurers.

The Hon. DAMIEN TUDEHOPE: Is the return to work rate for the specialised insurers better than the non-specialised insurance industry?

CHRIS GATFIELD: We are very proud of Hospitality Industry Insurance. We have the best return to work rate, I believe, in New South Wales: Some 93 per cent of our injured workers return to work within 13 weeks.

The Hon. DAMIEN TUDEHOPE: Why is that?

CHRIS GATFIELD: We as an association provide quite a lot of training, particularly in the WHS space, and we ensure that the members that we cover are well trained and equipped to provide a safe workplace that prevents injury happening in the first place.

The Hon. DAMIEN TUDEHOPE: And in fact, that's a bit of the key, is it not, the WHS environment in which the members are conducting their workplace environment?

CHRIS GATFIELD: I believe we would agree furiously with the public comments of the Chair in that preventing injury is absolutely the number one issue for us in a workplace.

The Hon. DAMIEN TUDEHOPE: And do you agree with me that reasonable management action plans are really a bit of the key to what the employer concerns are in relation to workers compensation claims for psychological injuries?

CHRIS GATFIELD: Along with exponentially increasing premiums for our industry? Yes.

The Hon. DAMIEN TUDEHOPE: To the extent that the reasonable management action is not successful, that contributes to long-term pressure on premiums, does it not?

CHRIS GATFIELD: Yes, it does.

The Hon. DAMIEN TUDEHOPE: So if, in fact, there were opportunities for the employers, your members, to be able to rely on reasonable management action, you would say that that is in many respects all the things that you want to see achieved for a much fairer workers compensation scheme for psychologically injured workers.

CHRIS GATFIELD: I think it would be fair to say that the AHA believes that we can walk and chew gum at exactly the same time, and that if you're going to reform the front end of the scheme, there's no reason why you should not reform the back end as well.

The Hon. DAMIEN TUDEHOPE: If in fact the evidence of the psychiatrists was that this bill places too much emphasis on the back end and not enough emphasis on the front end, you'd be saying, would you, or agreeing with me that we should be putting more emphasis on things we do at the beginning?

CHRIS GATFIELD: As a non-psychiatrist, I'm not entirely sure that I can make that assessment, but I agree. If there is reform to be had in this space, we support reforms to make the scheme more equitable, more transparent and, ultimately, hopefully more financially sustainable.

The Hon. DAMIEN TUDEHOPE: And I previously put to the Pharmacy Guild—if in fact you could make amendments to the workers compensation scheme without removing workers' rights in the manner that this bill does, you would embrace that, would you not?

CHRIS GATFIELD: We'd have to see the details of the bill. I think I echo everyone else's feedback on that. But, conceptually, if there are amendments that can be made, yes, we would support them.

The Hon. DAMIEN TUDEHOPE: Mr Sawday, how many people have you ever met with a 31 per cent whole of person impairment by way of psychological injury?

SIMON SAWDAY: Thanks for the question, Mr Tudehope. I don't ask people that I meet what their WPI threshold is. I don't know the answer to that.

The Hon. DAMIEN TUDEHOPE: Have you ever been told of anyone who has been an employee of ClubsNSW that they had a 31 per cent WPI?

SIMON SAWDAY: Not that I'm aware of, but I haven't spoken to the large majority of our workers throughout our organisation's history.

The Hon. DAMIEN TUDEHOPE: And yet you support a WPI to be established to, in fact, deny workers' rights until they get to that level of impairment?

SIMON SAWDAY: We've spoken to a number of our members, Mr Tudehope, who have experienced—

The Hon. DAMIEN TUDEHOPE: Two you told us about.

SIMON SAWDAY: I gave two examples in the opening statement. We've spoken to a lot more than two—probably closer to seven or eight of our members—who have experienced claims where a WPI above 20 per cent was recorded. In each of those instances, there were sufficient grounds to say that the club should not have been liable to pay the significant sums of money.

The Hon. DAMIEN TUDEHOPE: One of the cases you identified was a case where there was a complaint about the person being rostered on for a day when they were unavailable. Was that the case that you identified?

SIMON SAWDAY: That example was provided in our submission.

The Hon. DAMIEN TUDEHOPE: Wouldn't that be a reasonable management action, which should be identified and give the employer an opportunity of rejecting that claim?

JOANNE EDE: If I could just clarify that, Mr Tudehope, what had happened in that particular case is that training was organised on a day that the person wasn't working, and that particular worker alleged that that was bullying because the training she had wanted to perform was organised on a day—

The Hon. DAMIEN TUDEHOPE: Isn't scheduling of training a reasonable management action?

JOANNE EDE: In terms of when you're scheduling for an entire workforce, it's sometimes going to be the case that on that particular day someone's not going to be rostered on. I wouldn't say that that's bullying action.

The CHAIR: I've heard that case said a couple of times. Are you able to provide us with the name of that so that we can look it up ourselves?

SIMON SAWDAY: That case, as I understand, did not go to the Personal Injury Commission, so it's not public. I don't have the details of the club in front of me and, for privacy reasons, I can't provide that.

The CHAIR: To be fair, it does sound a little bit fantastical. Is there a way that you can substantiate this, because you have used it a number of times as some sort of evidence. It's been put up there as a sort of bogeyman

example. We really do need to know that that's actually what happened, particularly as you referred to a 24 per cent WPI. These are quite specific serious allegations you're making. Do you have any backing for that?

SIMON SAWDAY: We're representing our members who are registered clubs across the State. In appearing before this inquiry, we clearly want to give evidence that will support the Committee to understand the impact of these reforms on the ground, given that our clubs are at the forefront of dealing with the workers compensation system.

The CHAIR: Of course.

SIMON SAWDAY: I have qualified in the submission and in my opening statement that we are speaking to our members, and our members are giving us examples.

The CHAIR: Okay, but it would be quite irresponsible to come to a parliamentary inquiry, having made those same statements elsewhere in the media, to also put them in your submission to this inquiry without having checked the veracity of that claim, wouldn't it?

SIMON SAWDAY: We have not put those statements to the media.

The CHAIR: They've been put to us. Then let's talk about it in terms of providing misleading information to this Committee, because it is put today in your statement and it's something that I've certainly heard said by ClubsNSW before. Are you able to say that that is actually correct, or is it just hearsay and something that was just written in, or whatever, to your statement today because you felt that it would have some impact?

SIMON SAWDAY: I am able to say that we've spoken to a number of our members for the purpose of providing information to this Committee to support your inquiry, and that I have relayed to this Committee some of the case studies that our members have provided to us, which we hope will support the Committee in inquiring into this bill.

The CHAIR: To be fair to you, then—because it's a very serious matter when you're providing evidence to a parliamentary Committee—could you provide on notice exactly how you got that information and who that came from, just so that we can have some comfort that that work was done by you before you provided that as evidence to this Committee? Mrs Connolly, the case that you were referring to—I'm aware of a very similar case where that claim was denied. Are you saying that that was not denied in this case and that worker did receive that workers compensation?

LYN CONNOLLY: It was denied in the end, but it was after months of the person being on workers compensation.

The CHAIR: But it was denied in the end.

LYN CONNOLLY: I can get the evidence for that, if you like. I've spoken personally with the provider and she's happy to give it to me.

The CHAIR: But it's certainly not your evidence here today, then, that we are faced with a choice between either protecting children from sexual assault in childcare centres or passing a bill that would sentence seriously psychologically injured people to a life without support. Correct?

LYN CONNOLLY: The point is, this woman said—because she had to have a discussion with her about the injury to the child—it turned into a workers compensation case.

The CHAIR: But it was disputed and—

LYN CONNOLLY: But it's not always about that. We are required by law to do staff appraisals. Look, you know what's going on out there.

The CHAIR: Yes, but I also take the point on the reasonable management. I'm sorry to rush you; I unfortunately have very little time.

LYN CONNOLLY: We are concerned about this 15 per cent being too low and being used too carelessly. We have to protect the children, and we have to do these studies.

The CHAIR: Okay. I will turn to you, Mr Raso. Are your premiums set by icare? Or are you part of the Pharmacy Guild's self-insurance or—sorry, I don't know if you're a self-insurer or a specialised insurer.

PEPPE RASO: Specialised insurance.

DANIEL KICUROSKI: Specialised insurance.

The CHAIR: Right, so you're not part of the pool of businesses that needs to worry about the premiums as set by icare?

PEPPE RASO: As I understand it, icare doesn't set our—

The CHAIR: No, icare doesn't set your premiums at all.

PEPPE RASO: No, we're not—

The CHAIR: It's interesting that this letter that was distributed—this joint media release from ClubsNSW, AHA NSW, the Pharmacy Guild and ACA—is predominantly from businesses that don't have their premiums set by icare, yet you collectively saw fit to come out trying to argue that this reform was necessary to reduce premiums through icare. On what basis do you think that that was a fair way to proceed? Does anyone want to speak to that? Perhaps you, Mr Sawday? I noticed that you put in here "increases up to 36 per cent"—and you repeated it in your opening statement—"over the next three years". Given that premiums are set at 8 per cent for the next year under the previous government direction, why do you think that there's going to be an extra 28 per cent in the following two years? Where'd you get that figure from?

SIMON SAWDAY: I understand that the Government's estimate is that premiums would increase 36 per cent over three years due to the volume and the cost of psychological claims. Like all industries, our members are affected quite significantly by those premium increases. If a not-for-profit club needs to pay more money in premiums, it means that they pay less money to hire other staff, that they pay less money to support the local sporting team—

The CHAIR: For your information, I do understand that the Government has given a bit of false information as well—it's not 36 per cent when you consider the 8 per cent—but I will let you off on that one. Apologies for being so quick, but it's limited time. I will go to Mr Latham.

The Hon. MARK LATHAM: Can I ask everyone on the panel, do you believe that the problem you've got with the existing laws—not the bill, but the status quo as it stands today—is that it's way too easy to get a claim up? A lot of these, especially for small entities, are nuisance claims that automatically drive up your premiums. That's the main thing we need to address in this process of legislative reform.

LYN CONNOLLY: I'll start first. Yes, I agree, Mark. Not only does it drive up premiums but it also affects our clients. With ACA NSW, it's children that are affected and their families, who have got to have their children cared for and educated while they work. So, for us, it's a yes.

The Hon. MARK LATHAM: Is there anyone who disagrees with that proposition—that it's way too easy to get a claim up at the moment, and that this is a major nuisance to scheduling workers on timetables and, of course, when you've got to handle these claims and the premiums go up. I'll take it that we've got a bit of consensus on that. Does anyone believe that the Mookhey definitions in this bill, at subdivision two, could be tightened to make it more realistic and stop these nuisance claims being made? Let me give you an example. Say someone asks a woman out for a drink and she's offended by that.

Under the meaning of sexual harassment, she can make a claim. Am I wrong in saying that? "Sexual harassment, in relation to a worker, means a person who makes an unwelcome sexual advance"—not three or four times, but just once. I don't know; maybe some people don't like going out for a drink or being asked for dinner or whatever it is, or they don't like the joke that was told, or they don't like being told, "That's a nice dress." Do you think that's a low bar, that just once can be an unwelcome sexual advance and trigger a claim just like the nuisance ones you have right now?

DANIEL KICUROSKI: I think that's a level of detail that—I'm not across what the legal interpretation would be of the proposed amendment, and it would be very difficult for us to put a position forward on that basis, Mr Latham.

The Hon. MARK LATHAM: It's the bill that you're here to talk about as part of this process. What about racial discrimination? Part of it is nationality. Nationality is not race, of course. In our nation we have scores of different races and people of ethnic background. If you insult or offend someone, in the eyes of the worker, they can lodge a claim. Do you think this is a low bar? Say you've got someone who's a Kiwi working in your club or your small business and you tell them a Kiwi sheep joke, perhaps in bad taste. Because of their nationality, New Zealander, and they're insulted and offended, they can lodge a claim. That's a very low bar, isn't it? Anyone think that's going to work out for you in practice?

LYN CONNOLLY: I haven't come across that, so I can't comment.

The Hon. MARK LATHAM: People who are Irish, English, Kiwi, Indian, Chinese who take offence at a well-meaning joke that missed are going to be insulted and offended and lodge a claim against you?

LYN CONNOLLY: I haven't come across that, Mark, so I can't comment.

The Hon. MARK LATHAM: Well, it's in the bill. It's possible.

LYN CONNOLLY: No, but I haven't come across—

The Hon. MARK LATHAM: What about the pubs and clubs guys? You must get this all the time, surely?

CHRIS GATFIELD: Mr Latham, we don't shy away from the fact that psychological injuries can and do occur in any workplace, including in the hospitality industry, and that genuine workplace-caused psychological injury that prevents a person from working again should be compensable. However, I think the issue is that it's currently extraordinarily subjective as to what extent a psychological injury was caused by events that actually happened within the workplace, and whether there were pre-existing conditions that might contribute to that. Generally, the onus at the moment is on the employer and/or their insurer to disprove that the injury was work related.

LYN CONNOLLY: I would concur with that statement.

The Hon. MARK LATHAM: Righto, well I'm glad you read that out. But, Simon, this bullying matter you had up in the club on the mid North Coast—the woman who didn't work on a Monday, the training program was scheduled for the Monday and she said that it was bullying that she was excluded. In the meaning of "bullying" here in the Mookhey bill, if that happens twice—so it's repeated—she's still got the claim against you. Don't we need to toughen this right up where there's an intent to intimidate and strongarm someone? That's the meaning of bullying—to make them submit to you. Bullying in real life, as opposed to Mookhey fantasy world, is bullying to stand over someone and intimidate them to make them submit to your will, rather than just a couple of incidents where they think the behaviour is unreasonable. You're still going to have the problem, aren't you, if she's invited a second time on a Monday and she'll still lodge the claim?

SIMON SAWDAY: Mr Latham, we want to make sure that our members who do provide a psychologically safe workplace environment, as many of our members do, and follow their policies and procedures are not liable for claims where the club bears no responsibility.

The Hon. MARK LATHAM: I'm talking about nonsense claims. Everyone wants a safe everything in this world, but there's a real world out there. Pubs and clubs, let's face it, they're knock-around places—in many respects, the last bastion of Australian working-class larrikinism, and God love them for that. But to say that because a couple of times you missed out on a training program on the Monday, or someone told a Kiwi sheep joke by which you felt insulted, or someone asked a woman out for a drink, or asked a man out for a drink—

The CHAIR: Order!

The Hon. MARK LATHAM: These are very low-bar definitions. I just put it to you: The Mookhey fantasy world ain't helping you much.

The CHAIR: Your time did expire, unfortunately. We will go to Government members.

The Hon. BOB NANVA: You may not have this information to hand, but you can take it on notice. I'm just interested as to what, currently, the rates are that your members pay for their workers compensation premiums as a percentage of your wages. Perhaps you've got that on hand. If you don't, is it something you could take on notice?

CHRIS GATFIELD: I'm happy to kick off. I believe 2.6 per cent but, in the interests of not misleading the Committee, I will take that on notice and come back to you.

The Hon. BOB NANVA: As we've discussed, premiums have already gone up by an average of 8 per cent this year, and some of you have spoken about the impact that that has had on your membership base. We have received evidence from the Treasurer that the scheme is currently running at a $6 billion deficit, that it has currently got 78 cents in the dollar for current and future liabilities, and to restore the scheme to some sort of long-term financial sustainability we will be looking at not only the 8 per cent that's arriving in 2025-26 but two 12 per cent increases beyond that, which will have a compounding effect of 36 per cent for employers.

We have heard evidence from the former workers compensation Independent Review Officer, who stated—and I want to get your response to this—that that increase would certainly be cheaper than getting a common law policy with Lloyd's. If you're an employer, you're getting a good deal. The answer is, if that is the financial position, your premiums would have to go up. I'd like your reaction to that, but also to the impact that a 36 per cent compounding increase in premiums would have on your members.

The Hon. DAMIEN TUDEHOPE: Point of order: Other than COSBOA, each of these members is not covered by the insurance scheme that the Treasurer has identified. Their ability to comment in relation to the impact on their insurance premiums is zero, because icare does not set their premiums.

The Hon. BOB NANVA: To the point of order: I'm happy to hear the response from COSBOA, but this goes to structural reforms of the workers compensation benefits as a whole, which will have impacts on those that are self-insured and not within the Nominal Insurer.

The CHAIR: I'll allow the question. Go ahead.

MIKE SOMMERTON: I'm happy to respond on behalf of COSBOA. Our view is that even the smallest business faces a dramatic increase in workers compensation policy premiums of 28 per cent. Even the smallest premium that's currently set at the moment is set to increase from $175 to $225, so that's an increase of 28 per cent. The information that we have is that the average performance premium of a business is $30,000 or less, which, as I understand it, constitutes a small business in so far as icare is concerned, but that represents the majority of New South Wales employers.

When you're looking at proposed increases in certain aspects of this bill of between 28 per cent and 40 per cent, our view is that those premium increases will obviously result in increases in the premiums that small businesses need to pay. That money will need to be accommodated from other operations that the small business is currently performing. To your point, would we expect, as a result of everything staying the same, premiums increasing? Absolutely. Our view is that change is required, for the reasons that we've previously stated.

The Hon. BOB NANVA: Notwithstanding that others may not be in the Nominal Insurer, these still go to structural elements of the scheme that are resulting in increased psychological injury costs in the workers compensation framework. Do any of you have a view with respect to the threats that those pose to your premiums?

LYN CONNOLLY: I can say, in relation to increased premiums, my personal premiums have gone up 67 per cent over the last five years. If premiums go up again, which is predicted, at least 80 per cent of childcare centres across the nation—we're talking New South Wales, so it's the same thing—have also had their fees capped by the Federal Government due to the worker retention payment, so it will be impossible for them to pay these increases.

DANIEL KICUROSKI: I think the majority of our members, as we understand, have specialised insurance. But their premiums are going up at similar rates, so they've gone up 8 per cent this year.

JOANNE EDE: We have a club who's given us an example, a medium-sized club on the South Coast. Their workers compensation premium has risen 66 per cent, from $72,000 to $128,000. They've had two claims in the last few years. One cost them $80,000, but that ended up being a birth defect. The other was a bullying complaint where they found no wrongdoing by the club, but it was perceived bullying. It has been a huge increase. As not-for-profit community clubs, that money going to insurance premiums results in less money going to the community for services.

The Hon. BOB NANVA: Presumably, there are fewer people your members employed.

JOANNE EDE: We have conducted a survey also which would demonstrate that clubs are much more likely to have fewer employees and employ fewer people if their premiums continue to rise.

The Hon. BOB NANVA: Mrs Connolly, does that apply in the childcare sector?

LYN CONNOLLY: Of course. We have to abide by the regulations. However, most services have extra staff on top because that's better for the children. But if it gets to the point where they can't do that, the children suffer again. You get it right for the children; you get it right for the nation. All these financial pressures, plus we've got capped fees by the Federal Government—what can we do? You can't keep doing this to us. You can't keep doing it to the children and families. Parents have to go to work to pay the mortgage and the cost of living. We know all these things. We read about it all the time. We need to be able to protect the children. We need to be able to look after our staff. But it needs to be sensible. We can't keep pushing, pushing and pushing.

The Hon. BOB NANVA: The Government has choices available to it with respect to cost avoidance at the front end and the back end, as Mr Tudehope has referred to. We've received evidence again that there are operational and administrative levers, certainly, that the Government can pull. Those go to claims management models, investment returns in the scheme, operating expenses and improving return to work rates. But the evidence that we have received is that, compared to the multi-billion-dollar challenges, certainly in the Nominal Insurer—for those that it's relevant to—the savings are certainly helpful, but they are not going to be game changers with respect to bringing costs under control. That will result in the need to explore changes to scheme design and structural reforms. We've received evidence that the single biggest element or driver that is causing the

deterioration to the Nominal Insurer, if one can be specified, is the trend "of ever-rising whole person impairment assessments, combined with the rising number of new psychological claims coming into the scheme". Do you agree with that assessment with respect to the Nominal Insurer, but also with respect to your own insurers?

MIKE SOMMERTON: Yes. We agree with that assessment. In research for today's hearing, the information that we have is that, albeit changes to the proposed definitions around psychological injury will have some impact and some benefit in terms of cost reduction, they are not the solution to all problems in terms of the scheme. But the fact of the matter remains, with the information that we have, that the psychological injury claims, as they stand at the moment, comprise of around 12 per cent of all claims and constitute 38 per cent of all costs associated with the psychological claims. The actual injury claims for psychological injuries themselves has doubled from 1920 to 2024-25. If that trend continues, unless something occurs in terms of change to legislation concerning psychological injury, we can only see that there is going to be further detrimental impact on premium increases, if nothing is done.

LYN CONNOLLY: Our industry insurer, Guild Early Learning, has found the same situation with those same types of numbers—the increases in mental health claims.

The Hon. BOB NANVA: The influx of people qualifying with the current threshold coming into your scheme.

LYN CONNOLLY: Sorry?

The Hon. BOB NANVA: There is the significant number of people qualifying for compensation because of the WPI threshold level. Is that the—

LYN CONNOLLY: No, the number of claims has increased but, when it works out, these claims are not necessarily legitimate. That is an issue as well. We feel that the level should be increased in fairness to everyone. We feel that it should be a case for the Industrial Relations Commission to decide, not just going to the local doctor and telling the local doctor your little story and having him say, "Yes, sure. A mental health claim." It's not acceptable.

The Hon. BOB NANVA: As a general proposition, would you all agree that reforms to the scheme should be centred on tilting the scheme towards those that are in serious need of compensation and medical assistance?

LYN CONNOLLY: Proven serious need, yes. Proven serious need—that's the issue.

DANIEL KICUROSKI: For us representing our members interests, it is—as has been identified earlier—primarily about reducing increases to premiums. I'm sure there is a way that this Committee and the Parliament can find a solution where premium increases are slowed or reduced, at the same time as making sure that the safety net is there for the most seriously injured workers.

The CHAIR: Thank you very much for attending and giving us the benefit of your insight today. To the extent there were questions taken on notice or supplementary questions, the Committee secretariat will be in touch.

(The witnesses withdrew.)

(Short adjournment)

Mr TOM EDWARDS, Policy and Research Officer, Unions NSW, affirmed and examined

Ms NATASHA FLORES, Industrial Officer, Work, Health and Safety and Workers Compensation, Unions NSW, affirmed and examined

Mr MARK MOREY, Secretary, Unions NSW, affirmed and examined

The CHAIR: I now welcome our next witnesses. Would you like to commence with a short opening statement?

MARK MOREY: Unions NSW and the New South Wales union movement continue to oppose the bill in its current form. We believe it exacerbates the harm caused by insurance practices that choke the New South Wales workers compensation system of funds, delay treatment, ignore complaints and hinder return to work. Instead of dealing with this area of waste and harm, the bill instead seeks savings by limiting compensable psychological injuries and raising the whole person impairment threshold of 31 per cent, forcing severely injured workers off the scheme and cost shifting to other service providers. Instead, we propose the Government reform insurance practices to save money while promoting early intervention and return to work. Our submission identifies more than $332 million annually in savings by stopping the default adversarial approach taken by insurance companies denying claims and delaying treatment.

Evidence from the last hearing revealed that New South Wales workers with psychological injuries who gained access to treatment within two weeks see a 94 per cent improvement in work capacity compared to those who do not. Yet, as our case studies demonstrate, insurers are using the scheme funds to run cases with "little reasonable chance of success". While the Government disparages injured workers, it does nothing to address the questionable practices of insurance companies. The financial benefits of early intervention are clear. Psychological injury claims which receive their first payments within two months have a 24 per cent higher return to work rate and costs the scheme almost 20 times less, according to SIRA data. Unlike the bill, our submission's proposal offers a more effective and fairer path to financial sustainability, one that does not rely on restricting care and support for injured workers, whether at the outset of the injury or after 130 weeks.

The Hon. DAMIEN TUDEHOPE: It's good to see you back here again. One of the components of workers' rights which will be impacted by the reforms will be the removal of a potential negligence claim against employers that may be available to workers, unless they have a WPI of 31 per cent. Were you aware of that?

MARK MOREY: Yes.

NATASHA FLORES: Yes.

TOM EDWARDS: Yes.

The Hon. DAMIEN TUDEHOPE: That's a very significant removal of a worker's rights, in relation to potentially improving workplaces but also providing proper remedies for workers. Wouldn't you agree?

NATASHA FLORES: Yes.

The Hon. DAMIEN TUDEHOPE: For someone who is potentially sexually harassed at work, to remove that right of a potential negligence claim against the employer, (a) the evidence we heard this morning was that it doesn't do anything to improve the workplace but (b) it removes an entitlement for a very seriously injured worker.

NATASHA FLORES: Yes, I would agree with that. I heard this morning's evidence and I would share the views of the bar society. My concerns also lie with the impact that may have on general safety in workplaces and the incentives to make your workplace a safe workplace. SafeWork does what SafeWork can do, but they have limitations. Without that sort of stick, for lack of a better word, what incentive is there for a workplace to ensure that it is a safe workplace and that it does not tolerate certain behaviours? There would be a reduction, in my opinion, of any incentive, if that were to be—

The Hon. DAMIEN TUDEHOPE: Removed.

NATASHA FLORES: —implemented or removed, as you say. Yes.

The Hon. DAMIEN TUDEHOPE: Mr Morey, you've identified in your statement an emphasis or an observation, which probably is garnering a bit more publicity in recent times, that potentially the best savings for this scheme are better attitudes by insurers and claims managers. Do you want to identify some of the changes you say should be made in relation to the activities of the insurers and claims managers?

MARK MOREY: I think there's the macro and there's the micro in this. The macro is self-insurers. What we see in self-insurance is people taking the best parts of the insurance scheme or the best employers and then

icare becomes an insurer of last resort and has all the claims that are long tail and hard to manage. There's a real problem with the way in which that then skews, we believe, the insurance industry. We think that everyone should be in. That way it spreads the risk across everyone more evenly than people being able to pick out the best parts of the scheme and privatise those, for want of a better word, while the government carries the can on the rest of it.

At a lower level—and I think there are a couple of examples in our submission—where workers are injured, they want to get treatment quickly, and the insurance company will deny that treatment. What we know is, as I've said, the sooner people get treated, the quicker they return to work. What we find, certainly, with workers who we deal with and within our Injured Workers Campaign Network, are people who, as soon as they enter the system, it's about defending your position, trying to prove that you are injured, and getting sent around to numerous doctors and numerous specialists by the insurers. And then, when a case is actually run at the Personal Injury Commission, these insurance agencies use the scheme's funds to bankroll their cases against the injured workers. What we know of the PIC is that, overwhelmingly, about 91 per cent of workers leave there with an improved situation, and I think it's around 71 per cent outright win their cases. You've got a system that's set up to grind people down, rather than getting them back to work as soon as practicable.

The Hon. DAMIEN TUDEHOPE: What I think you identify there is that primarily the scheme is driven by an adversarial nature, rather than having a return to work emphasis and doing what they should do to potentially identify opportunities to return to work.

MARK MOREY: Yes. What we say, and we've said it for a long time, is that the injured worker is not at the centre of the scheme. The scheme is not set up to focus on the injured worker and getting them back to work. It has just drifted off into a nowhere land where people actually have to battle just to get through it. As we know, we're talking about psychosocial injuries, but many people who get physically injured and go through the system end up with a secondary psychosocial injury because of how hard the system is to get through and its adversarial nature.

The Hon. DAMIEN TUDEHOPE: Have you had an opportunity of reviewing the Government's return to work strategy document?

NATASHA FLORES: I've been involved in that.

MARK MOREY: Yes, we've had a look at it and have been involved.

NATASHA FLORES: I'm involved in those.

The Hon. DAMIEN TUDEHOPE: One of the things the Government says is this is going to take potentially years before these opportunities actually flow through to improved workplaces and, I suppose, better handling of claims. Why is that?

NATASHA FLORES: I think it's because the current status is so ingrained. I can give you a few examples of the frustrations that workers have experienced in trying to return to work in the public sector, and there were a few legal, I guess, barriers. An example was a nurse who was told that she could no longer perform CPR. She could do all of her other duties and, because of that, it was determined that she couldn't return to work at the hospital that she'd worked at, which, in our view, is ridiculous because she could do everything else. You have a hospital full of doctors and nurses who can perform CPR. In some instances, there are situations where a particular thing or task might be labelled as an inherent requirement of your job, and if you can't perform that particular task, you're deemed to not be able to perform your job. This is a real problem in the system because, as in that particular instance, this particular nurse was fully able to go back to work and do everything else; she just couldn't do CPR. That was preventing her from going back to work.

The Hon. DAMIEN TUDEHOPE: So why doesn't the health secretary—

NATASHA FLORES: This is the problem. This is where the barriers are. The health secretary has to change that mindset and say, "Well, it doesn't matter that you can't do CPR. You can do all of your other tasks, and we'll put you in a hospital where plenty of other people can do CPR. We'll acknowledge that you've got lots of other skills, and we will use those skills." But at the moment this is not always happening. Years ago, in another job I did, a teacher was deemed not to be able to perform the inherent requirements of her job because she couldn't do playground duty. I trained as a teacher. Never once did I go to a class about how to do playground duty. But that was the court's decision, so the employer didn't want her back, because they said, "Well, you can't perform everything. You've got to perform everything or we don't want you back."

The Hon. DAMIEN TUDEHOPE: At the heart of the Government's return to work strategy is the responsibility of departmental secretaries—that's at the heart of it—and to drive the strategies. The health secretary earns big money.

NATASHA FLORES: Yes.

The Hon. DAMIEN TUDEHOPE: Why haven't they got KPIs, for example, which says that if you are in fact not meeting your return to work KPI, there's a potential penalty attached to not meeting that KPI?

NATASHA FLORES: That's a good idea, and I think we'd support that. To be fair, Minister Cotsis has displayed dismay at some of these scenarios and is quite appropriately outraged where people aren't getting back to work.

The Hon. DAMIEN TUDEHOPE: I don't question her dedication to this process at all. But it appears to me that if we are really serious about driving a return to work strategy in the public sector, then in those circumstances we ought to be, in fact, having circumstances where there are penalties for not reaching the goals which you are setting us.

MARK MOREY: One of the biggest problems is that in the departments they sit and wade out injured workers—literally, sit and wade them out. As Natasha was saying, if you can't fulfil the full requirements of the job, you can't come back to work. We have been advocating for a number of years now the question should be, "What capacity have you got for work?" and then getting that person back into the workplace, whether it's a day, a week or a couple of days a week, but reconnecting them with that workplace and keeping them in contact with that workplace so that they can come back. But at the top, there isn't a drive, and there isn't a defending of "injured workers have a right to come back to work". They're seen as a problem. A number of departments, we've had, certainly, when advocating for workers, a year, two years, just watching the department wait them out until they give up and go. Or they can—

NATASHA FLORES: But, of course, they can dismiss them after six months.

MARK MOREY: Or they can dismiss them in six months. And there are no pressures on people to actually do something in the department.

The Hon. DAMIEN TUDEHOPE: No penalties.

MARK MOREY: There are no penalties, no.

NATASHA FLORES: No.

The Hon. DAMIEN TUDEHOPE: You're not going to agree with me in relation to this next question, but I'll ask it anyway. In respect of a provision relating to excessive work claims, I know you think that should be a head of. Isn't excessive work claims something which is generally covered by most agreements that unions enter into?

MARK MOREY: No, because a lot of this, excessive work claims—you've got an agreement that you work eight hours. Right? You're assuming that at the time you're working in that workplace there are enough staff to do all the jobs that are required to be done. What we hear constantly about are areas where there's short-staffing; people are run off their feet, they don't get breaks, they work additional hours.

The Hon. DAMIEN TUDEHOPE: What do you put in the enterprise agreement to cover that circumstance? You know that.

MARK MOREY: We do.

NATASHA FLORES: We try, but—

The Hon. DAMIEN TUDEHOPE: So what do you put in the enterprise agreement to cover that event?

MARK MOREY: Because when you actually go to the systems to report it, say, SafeWork, and you make a complaint, all you get is crickets.

The Hon. DAMIEN TUDEHOPE: But isn't that where we should be solving the problem?

MARK MOREY: Absolutely. SafeWork should have some teeth. To be quite frank, SafeWork hasn't done anything, in my opinion, for the past 14 years. I mean, people are getting killed on worksites. People are having injuries, psychosocial injuries, and you report it, and they don't even turn up. They don't even turn up to the workplace. They don't even prosecute these employers. I'll give you an example. When a nurse was killed in Balmain recently, a couple of years ago, SafeWork argued that they weren't going to do anything because it was a murder and it was a criminal matter. They didn't even go and investigate the systems of work that allowed a person to be isolated in their workplace because they're out doing their job in their workplace. They said, "We're not going to investigate it." Now, that's why we lobbied hard to be able to do prosecutions again, because SafeWork are not putting up any fight. There is no stick. And no matter how good our agreements are on paper, in practice, you can't enforce them a lot of the time.

NATASHA FLORES: In the private sector you cannot dictate to someone how many people they employ. In the retail industry, for example, this is a huge problem. The staff are very young. They are what we would actually call vulnerable staff, and they're running large department stores with very, very little support. That makes the customers quite angry at times, and sometimes aggressive, sometimes violent. Those young workers are dealing with this, with very little support.

The Hon. DAMIEN TUDEHOPE: I understand.

NATASHA FLORES: It's a wild world out there in the world of work and, certainly, what we see.

The CHAIR: On the 17th of this month, the Premier said to a News Corp journalist in a video interview, "None of our changes have any change or bearing on workers comp physical injuries; it's solely on psychosocial injuries in the workplace." Is that your understanding?

NATASHA FLORES: No. There is a requirement in this bill that a worker meet some sort of means test. Now, it's not clear to us what that exactly is, if it's a financial means test. This is in relation to the ILARS scheme. That would impact all workers—so physical injuries and psychological injuries. I'm assuming that a worker would have to—well, firstly, there are a whole list of things that they have to—basically, their case has to have merit. That's already the case, but this just places more burdens on a worker to prove that their case is most likely going to succeed. There's a prudent person test, and that test says we need to look at whether the prudent person would spend their money on this case. That doesn't apply to insurers, but workers are now being asked to prove that their case is most likely going to be successful. That would be all workers. There's also the introduction of "and" in the reasonably necessary test. This would limit treatment.

The CHAIR: This is medical expenses, is it?

NATASHA FLORES: This would be medical expenses. That would cover all workers regardless of—it wouldn't be just psychological injuries; it would be physical injuries as well. We believe—

The CHAIR: Sorry to interrupt. Is that the Dust Diseases Scheme as well?

NATASHA FLORES: That would also cover the Dust Diseases Scheme. That's quite concerning, because I sit on the Dust Diseases Board. Part of our job as the Dust Diseases Board is to, basically, look at grants and look at research and research grants. We are part of the process in accepting or giving those grants the tick of approval and, obviously, there are medical people that are doing this as well. But, in doing so, what I've learnt is that we need to look for really innovative, novel treatments because, if you've got asbestosis or mesothelioma or silicosis, there are no cures. So we are looking for a trial. We're looking for a miracle, and we are looking at what is novel, what is new, and what might be the breakthrough that we're looking for to give these people some hope.

The CHAIR: Can we break that down for people playing at home? We're looking at how this bill changes the test under which people who, under the Dust Diseases Scheme, which is a completely separate part and separate pool of funds to what we're talking about normally with workers comp—it would change a person's ability to get treatment and make it harder to get a certain type of treatment.

NATASHA FLORES: I believe it would, yes, because the "reasonable and necessary" test does change all treatment. So it does mean that. A worker that we worked with years ago who had a psychological injury, a very serious one—and he went to *Four Corners*. For his psychological injury, he was doing a very unusual therapy of cold water therapy or something like that, and he said it helped him. Under this bill, I doubt he would have any access to that. But my main concern or my big concern is for the workers who are on the Dust Diseases Scheme, because they rely entirely on new treatments, trials, and novel, experimental-type treatment that isn't necessarily the norm because the norm doesn't cure them.

The CHAIR: Apologies for going quickly, but I don't have very much time. The other aspect of this bill that's given been given a lot of attention from the Premier in particular is in relation to the definition of sexual harassment and bullying. What is the status quo compared to what the Government's bill is going to do in relation to sexual harassment and bullying injuries or psychological injury from sexual harassment and bullying? Are they making changes to make it harder?

NATASHA FLORES: Yes, I think someone this morning said that we're just placing more complications into the scheme, and there will be more litigation and more arguments around, "What does this mean?" I have concerns that we are adding more complications to the Act, rather than simplifying things.

The CHAIR: Because the status quo is that you either have an injury or you don't.

NATASHA FLORES: Correct. That's it.

The CHAIR: You don't have to jump through that additional hurdle of proving harassment.

NATASHA FLORES: Absolutely. You have an injury, and your doctor determines that. As we say, we support medically informed care. And we say, if the doctor decides that you've got an injury, whether that's because you were sexually assaulted, racially harassed or whatever, you have an injury. I've always said, throughout this whole debate, a hazard is a hazard is a hazard. In the world of work health and safety, a hazard differs. A chair can be nothing until you trip over it and suddenly it's a hazard. In my work health safety mind, defining hazards is somewhat bizarre because you don't do that in the health and safety world. You accept that this chair is fine when it's tucked under the table, but if it's left in the middle of the room then it becomes a hazard.

TOM EDWARDS: I might just add, with the issues that are deemed relevant conduct under the bill—that includes sexual harassment and bullying—there's an additional step for a worker as well. They've got to go through the New South Wales IRC in order to defend their claim if it's denied by an insurer. That's a new thing as well.

The CHAIR: Something the Government is proposing.

TOM EDWARDS: Correct, yes. The Government did present the new bill post the exposure draft as being absent of a requirement to first go through the New South Wales IRC to make a claim. Effectively, that's maintained for people who experience sexual harassment or bullying in the workplace because you need to first go to the New South Wales IRC to have it determined that you've experienced sexual harassment, and then the insurer can still deny the claim after that. They can continue to deny the claim, and then you have to go to the Personal Injury Commission after that. So there are multiple hoops that a worker would need to jump through and retraumatise themselves along the way—no focus on return to work and rehabilitation during that process, and ultimately it keeps them on the scheme for longer.

The Hon. MARK LATHAM: Thank you to the witnesses. One thing we haven't focused on, and perhaps I'm showing my age here, is a belief that governments should keep their election promises. It's an old-fashioned idea that if you make a promise, implement it—and don't break solemn promises that have been made. Mark Morey, what's your understanding in regard to this legislation and particularly the 31 WPI—Labor's election promise in 2023?

MARK MOREY: We're very unhappy, very disappointed—and I think I've said that to this Committee before—that the Treasurer would seek to basically cut a whole lot of injured workers out of the scheme. It's a broken promise and hence we have campaigned very hard over the last three months to try and turn this around with the aid of the Parliament.

The Hon. MARK LATHAM: And it's a promise, you thought, as the industrial wing of the labour movement. For people to sign a pledge before the last election—what was the process there? You just went around and a large number of the Ministers signed, didn't they?

MARK MOREY: Yes. Our Injured Workers Campaign Network that we've had at Unions NSW for about five years put a plan together for the election, getting a commitment to ensure that the workers comp was reformed for the better. I think 20 of the current 22 Cabinet people have signed it.

The Hon. MARK LATHAM: And what was that reform for the better? What was the detail of the pledge?

MARK MOREY: It was around after five years not being cut off from support and after seven years not losing your medical supports. But overwhelmingly, there was a commitment there—implicit in that pledge—that the Government would look after injured workers.

The Hon. MARK LATHAM: Has the Government given you any explanation as to why the pledge has been so horrifically broken?

MARK MOREY: No. I have been told that the scheme is in all sorts of trouble, and it's now a financial imperative, which is very disappointing. I'd think there'd be bigger financial imperatives to address in the budget than cutting injured workers off.

The Hon. MARK LATHAM: Well, I can point to hundreds of areas of wasted money. Boy, oh, boy, it's going out of fashion, that one. But do you believe this man, Mookhey? Having terrorised icare staff and made a public reputation for his work on committees like this and others in the icare and workers compensation space, surely he's got no excuse in saying, "Oh, I got into government and I got a briefing that the insurance schemes were in financial trouble." He had advance warning of this, didn't he? He was actually waving the alarm bell or ringing the alarm bell years ago. Isn't that right?

MARK MOREY: I think the Treasurer was very active around the workers comp space prior to coming into government. To say I am disappointed in him moving to put this legislation up can't be overstated enough.

I have voiced the opinion publicly that the one thing a Labor government should never do is disadvantage injured workers. If the union movement and the Labor Party aren't defending injured workers, I don't know who is.

The Hon. MARK LATHAM: Did Mookhey talk to you before the election and foreshadow any of these changes with his knowledge that the schemes did have financial issues about them?

MARK MOREY: No. In fact, I remember the last State conference where a number of industrial and workers comp resolutions put up by the union movement were supported and went into the ALP platform. They have walked away from that.

The Hon. MARK LATHAM: Do you see this now as a promise made only to be broken? They were never serious about keeping it.

MARK MOREY: I don't know. I see it as my role to educate the Government and hopefully turn them around to coming to some common sense about this. That is my role now.

The Hon. MARK LATHAM: I have a decades-long association with the Labor Party in some interesting positions and roles. I've even got a special plaque on my portrait now down there in Canberra. I was never of the industrial side; I was from the branches. Even I can recognise it as a complete betrayal of Labor values that workers who were permanently injured wouldn't be receiving permanent income support. Isn't that the core essence of one of the reasons the Labor Party was in fact established?

MARK MOREY: I believe that is one of the core, fundamental principles for the union movement and the political wing—to be defending injured workers and ensuring that, when they're doing some of the most difficult jobs in our society and some of the jobs that no-one else wants to do, if they are injured at work they should be protected. They should be assisted to come back to work. If they are unable to come back to work, then they should be supported for the job they've done.

The Hon. MARK LATHAM: I agree with that. I think it's a core Labor value. It's unthinkable that you would ever challenge it or ditch it in any shape or form. People have got certain ethics and values that can change over time. In terms of best practice, different Labor governments around the Commonwealth have had a crack at this reform challenge. What do you see as the better model: the Queensland one, which I think Mookhey is imitating, or the Victorian Labor model where you're trying to half close the door on the way in but also people who are genuinely injured, permanently so, get permanent support?

MARK MOREY: The Victorian model now is very problematic, particularly around psychosocial. Whole groups of people have been cut off. We have said for a while now that the scheme is fundamentally broken. WPI was never meant to be used in the way it is using and assessing injuries. The system needs to be looked at. It's broken, and it needs to be fixed. We've got to stop tinkering around with this because more and more injured workers are staying in the system for longer. It's costing us more, and people aren't going back to work.

I would think given the history of the last 20 years—this is the third time I've been through this workers comp struggle. A tripartite approach—Government, Opposition and community could get together and put a proper scheme together that looks after injured workers that we all rely on in our daily lives. Many of them are doing jobs we don't see but are some of the most horrible jobs you'd ever have to do, such as child protection workers. They're the people that we should be supporting. We should be able to do it in a mature way and put our differences aside, at least for injured workers who—whether you're in government or in opposition or back in government—you're actually employing.

The Hon. MARK LATHAM: Well said. Thank you for your time today.

The Hon. BOB NANVA: Thank you for your evidence this afternoon. There are obviously aspects of the reform that are courting a lot of controversy. But not all aspects of the reform, I would have thought, are as controversial. I might seek your views on some of those elements. With respect to commutations—a mechanism to commute an ongoing entitlement to benefits into a single lump sum—is greater eligibility to commutations something that Unions NSW supports?

MARK MOREY: I think that is something we actually raised during consultations with the Government. We think there is an opportunity for commutations. With the workers we work with, and being aware of the previous scheme, sometimes there is an opportunity for a worker to leave the scheme. For want of a better explanation, they have had enough of it. It has ground them down so much that they would prefer to get a payment to separate from the system and just get on with their lives. That's something that we should be looking at. I know there have been problems in other schemes where it's seen to be excessively using that provision. I think there need to be safeguards around that provision. But if that provision is used appropriately, has the right set of requirements around it and is managed properly, I think it can be a good thing for workers sometimes to just get out of the system completely.

TOM EDWARDS: We do have a recommendation regarding commutations as well. There is an issue with schedule 3 [6] to the bill, which gives SIRA the ability to trump the IRO in regulating legal fees. The issue with that is that the history of SIRA's involvement in that area is that they have been seen to deregulate legal fees, which could end up with workers having to fund some of their commutations into legal fees, and that could potentially undermine the benefit of the commutation and lead workers not to take up that avenue. If you have the opportunity to stay on the scheme and keep getting your weekly payments versus a commutation where a chunk of that's going to be taken out, of legal fees, then you might make a financial decision around that.

The Hon. BOB NANVA: If you were to iron out the kinks with respect to executing it, as a broad proposition you'd agree that commutations provide greater choice, greater flexibility and facilitate the departure of workers from the scheme at a time of their choosing or in a way that suits them?

TOM EDWARDS: Correct.

The Hon. BOB NANVA: One other aspect of the broader reform package that I don't think is too controversial is the desire to fast-track decision-making, early supports and greater prevention. I assume that Unions NSW is supportive of broader reforms to the Industrial Relations Act and the safety Act that went through Parliament in the previous session?

MARK MOREY: Yes.

The Hon. BOB NANVA: You're supportive of mechanisms with respect to the investments in workplace mental health prevention and the workplace mental health package that was part of those reforms?

MARK MOREY: Yes.

NATASHA FLORES: We are.

The Hon. BOB NANVA: I assume that Unions NSW is also supportive of the workplace bullying and sexual harassment jurisdiction that has been created within the IRC.

MARK MOREY: Yes.

The Hon. BOB NANVA: Could you speak a little to the industries that are most susceptible to sexual harassment, racial harassment and bullying?

NATASHA FLORES: The health industry, unfortunately, is very susceptible to sexual harassment. Unfortunately, nurses often have to deal with that on a daily basis. It's very common and that's something that we hear very regularly in the nursing field. Unfortunately, it is becoming an issue in schools as well where students are sexually harassing teachers. The unfortunate rise of the Andrew Tates and what have you on the internet have caused all sorts of problems in the education sector. We're seeing that play out in younger and younger children, unfortunately, and teachers are having to deal with that. That's a problematic area. It's unfortunately common in hospitality. It's also common in retail. Unfortunately for the hospitality and the retail industry, they are not part of the industrial relations State system, so they don't have any recourse.

MARK MOREY: I think in any position you're susceptible to it, whether you have a forward-facing public position where some people just think they've had a bad day and they come in and tee off on you. In white collar positions and offices, these sorts of behaviours exist all around the place and they don't get called out enough.

The Hon. BOB NANVA: Would you have concern about any definitions or access to benefits for psychological injury caused by bullying, sexual harassment and racial discrimination that might inadvertently or otherwise unduly inhibit claims to compensate for those injuries?

NATASHA FLORES: I'd prefer to keep it as it is, where you've been injured, there was a hazard, and it doesn't matter what that hazard was; the doctor determines that you've got an injury. That's the current status. That's where I'd like to see it stay.

TOM EDWARDS: The focus should be on treating that injury and rehabilitation.

NATASHA FLORES: If anything, I think it's going to cause further litigation and further costs in navigating new definitions and new systems where people will still get injured and they will still make claims, but there will be a new need to litigate and determine what the status quo is. Changes have been made since the exposure bill, obviously, but I remember speaking to Shane Butcher, who was here earlier. He said he saw at least five years of litigation before things become settled. That's probably improved since we've had the second bill, the exposure bill, but introducing these new terms will create more litigation. As I said, we also asked in our pledge that the scheme should be focused on doctor-led care. The doctor is the specialist here. The doctor

determines there's an injury. It doesn't matter how that injury happened. If it happened in the workplace because of a hazard, it's an injury.

The Hon. BOB NANVA: Mr Morey, I'll turn to you and your previous views about self-insurance. You've previously stated to the Standing Committee on Law and Justice that self-insurers can have a dramatic effect on the viability of the Nominal Insurer because, and I quote:

> … the best bits of the scheme out, the most profitable parts of the scheme out, and the businesses, as well, that are self-insurers are the ones that actually provide safe workplaces.

You've restated aspects of that this afternoon. I just want to elaborate on those views and why you think that's the case. Do you have a concern about the cumulative financial impact of self-insurers and specialised insurers on premium levels for the Nominal Insurer, given it's a risk-based industry?

MARK MOREY: As I said before, I think you're taking out the good aspects of the system. You're allowing insurers to take out the parts where there are limited claims, if any claims at all. They're getting paid premiums and are not having to provide any insurance. What then happens is the areas where there are a lot of problems end up staying within icare. The whole idea of insurance is that you spread the risk out across as many people as you can. Once you start taking parts of the system out, the risk you're spreading gets concentrated and a certain group of people are lumbered with having to pay for that.

One of the things that we've said in our submissions—and it used to be up until about 12 years ago—is that, if you're a good employer and you didn't make claims, there was a financial incentive because your premiums were reduced. We shouldn't be talking just about bad behaviour. We should also be encouraging responses for good behaviour and good employers who are doing the right thing. If you're breaking up the system, you just can't do those things because you just haven't got the scale. It's privatisation by stealth. People get to make a lot of money out of it because they're pulling the good parts out of the system, and the Government ends up having to carry the can on the parts that are most deleterious to the system.

NATASHA FLORES: Can I add to that, too, that a lot of unions have said to us that what they find with the specialised and self-insurance is, firstly, it's a conflict of interest because you're insuring yourself. There really isn't a great incentive to accept the claim against yourself, so they don't. They don't accept the claims because it's against themselves. They're admitting that they have not been a safe workplace. They are incredibly litigious, most of the self-insurers and specialised insurers, and they deny claims all the time. I've even had workers say to me, "What's the point? I'm fighting against them on all fronts." A worker will often just walk away. They may look like they're a good employer, but they're just denying their claims because they don't want to accept their own liability.

The Hon. BOB NANVA: Just from a previous life, and my experience with the process and the transparency concerning approvals of self-insurers, do you have a view with respect to the step-by-step process, the stakeholder engagement that SIRA conducts?

NATASHA FLORES: I would say that SIRA has been quite transparent with us. One of the problems is we just don't have the resources, or unions don't always have the resources, to dedicate spending the amount of time that needs to be spent working with the employer and SIRA through that process. I've done it on a few occasions. It's extremely laborious. It takes a long time. It's not a bad process—it's a good process—but it's just labour intensive and requires significant resourcing from the union over a period of time to work with the insurer or the employer to get through the process. So not necessarily critical of SIRA—they've been up-front with us—but it's just very difficult for us to sometimes be able to resource that as effectively as we'd like to.

MARK MOREY: I'm more happy to be critical of SIRA. They haven't been regulated properly and they don't regulate the insurers. They need to do a better job around that.

NATASHA FLORES: I'm just talking about SIRA's insurance application process.

MARK MOREY: We're doing "good cop, bad cop" here.

The CHAIR: Thank you very much for your attendance and for your submission. We do appreciate it. To the extent questions were taken on notice or there are supplementary questions, the Committee secretariat will be in touch. That concludes our session with you today.

(The witnesses withdrew.)

Mr TONY WESSLING, Group Executive, Workers Compensation, icare, on former affirmation

Mr DAI LIU, General Manager, Actuarial Services, icare, on former affirmation

The CHAIR: Thank you to our next witnesses, who have been here once before so do not need to be sworn in today. On that basis, I will ask our representatives from icare whether they've got a short opening statement at this time.

TONY WESSLING: Thanks, Chair. We don't have an opening statement. We're happy to take your questions.

The Hon. DAMIEN TUDEHOPE: We seem to be forming a wonderful and close relationship, Mr Wessling. When did you first become aware that the Government was considering legislation to limit payments to people with up to a 31 per cent whole of person impairment?

TONY WESSLING: I'll try to answer your question, Mr Tudehope. The discussions on reform have, I think, occurred since the new Government came to power. In the conversations that I've been in, through the back end of last year, there were further discussions on reform. A working party—was it called a working party?—was established earlier this year, where I think—

DAI LIU: The taskforce.

TONY WESSLING: The taskforce, sorry, where the details of that reform—so I would say, to the best of my recollection, earlier this year.

The Hon. DAMIEN TUDEHOPE: When you say earlier this year, was it January, February, March?

TONY WESSLING: To be clear, I wasn't part of the taskforce. Did you want to answer that, Mr Liu?

DAI LIU: Yes. Mr Tudehope, as part of my role, I briefed the Government with regard to costs in terms of claims and cost pressures. To Mr Wessling's point, we've been talking about costs for quite some time. In terms of the threshold of 31 per cent, that came about after the taskforce was formed. It would have been late March, I would say.

The Hon. DAMIEN TUDEHOPE: What was the advice being given or the modelling that you were being asked to do before that date?

DAI LIU: We looked at the various cost drivers in workers compensation, so both the increasing volumes of psychological claims as well as the threshold erosion. There was scenario analysis done around what the threshold could be, but there was a wide range that was done, so there was not a specific threshold.

The Hon. DAMIEN TUDEHOPE: So there were various models put to the Government over that period of time?

DAI LIU: I wouldn't say models; they were more just scenario analysis around the cost pressures and where the costs were coming from.

The Hon. DAMIEN TUDEHOPE: When you were dealing with that material, there were advices provided to the Government, were there?

DAI LIU: As I kind of started with the answer, I regularly provide advice to government around the cost in workers comp and what's driving the cost in workers comp.

The Hon. DAMIEN TUDEHOPE: And that was written advice, was it?

DAI LIU: There were briefings.

The Hon. DAMIEN TUDEHOPE: Briefing notes?

DAI LIU: There were briefings—presentations.

The Hon. DAMIEN TUDEHOPE: That you provided to the Government. So if there were documents produced pursuant to a Standing Order 52, I should expect to find all those documents, should I not?

DAI LIU: I can't answer that question.

The Hon. DAMIEN TUDEHOPE: Mr Wessling?

TONY WESSLING: I couldn't answer that question either.

The Hon. DAMIEN TUDEHOPE: Did you have any involvement in answering the Standing Order 52 which was directed to icare and the Government?

TONY WESSLING: A large number of people at icare provided documentation for that Standing Order 52.

The Hon. DAMIEN TUDEHOPE: What work has icare done since April 2023 on reviewing the list of presumptive cancers for firefighters?

DAI LIU: We've done a few versions around the costing of presumptive firefighters—so in terms of costing advice.

The Hon. DAMIEN TUDEHOPE: You've done some work in relation to that?

DAI LIU: Yes.

The Hon. DAMIEN TUDEHOPE: Again, if you've done work in relation to that, are there any documents that you've produced in response to the Standing Order 52 for the production of documents relating to presumptive cancers for firefighters?

DAI LIU: We've done a search but, again, I'm not in a position to answer in terms of which bits of information it is.

The Hon. DAMIEN TUDEHOPE: When you said you did a search—

DAI LIU: As per required—

The Hon. DAMIEN TUDEHOPE: —there are documents which evidence the work which you have done?

DAI LIU: Yes.

The Hon. DAMIEN TUDEHOPE: I should expect to find them, should I not, in response to—

DAI LIU: Again, I can't answer that question because I'm not familiar with the rules, and some of these could be considered Cabinet in confidence.

The Hon. DAMIEN TUDEHOPE: You're aware of that rule, are you?

DAI LIU: Yes.

The Hon. DAMIEN TUDEHOPE: Well, was it a document provided to Cabinet?

DAI LIU: I don't remember on that front. It was provided for the purpose of policy, so I would assume so.

The Hon. DAMIEN TUDEHOPE: Have you done any work in comparing the rules relating to presumptive cancers for firefighters with other jurisdictions?

DAI LIU: Yes.

The Hon. DAMIEN TUDEHOPE: That wouldn't be a Cabinet-in-confidence document, would it?

DAI LIU: No.

The Hon. DAMIEN TUDEHOPE: Would I expect to find that document amongst the documents to be produced pursuant to an order under Standing Order 52?

DAI LIU: If it was requested, yes.

The Hon. DAMIEN TUDEHOPE: So why wasn't it produced?

DAI LIU: I'm not sure, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Are you aware, Mr Wessling?

TONY WESSLING: Mr Tudehope, we haven't seen what documents were produced.

The Hon. DAMIEN TUDEHOPE: It was a Standing Order 52 directed directly to icare. Why haven't you seen the documents or at least an index of the documents that have been produced?

TONY WESSLING: I haven't got that list, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Where are we up to in a policy formulation in relation to presumptive cancers for firefighters?

DAI LIU: That's a matter for government, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Have you provided any briefing in recent times in relation to that?

DAI LIU: As I've said in my previous answer, I'm regularly providing advice to government around various costs matters.

The Hon. DAMIEN TUDEHOPE: When was the last time you provided advice to the Government in relation to presumptive cancers for firefighters?

DAI LIU: It's ongoing.

The Hon. DAMIEN TUDEHOPE: When was the last time?

DAI LIU: There's a recent request that we're working on at the moment.

The Hon. DAMIEN TUDEHOPE: Sorry?

DAI LIU: There has been a recent request that we're working on.

The Hon. DAMIEN TUDEHOPE: Recent being how long ago?

DAI LIU: This week, I think.

The Hon. DAMIEN TUDEHOPE: This week? There has been a request from the Government for you to do what?

DAI LIU: Continue the costing work on presumptive firefighters' cancers.

The Hon. DAMIEN TUDEHOPE: Continuing means what?

DAI LIU: Different scenarios are being costed.

The Hon. DAMIEN TUDEHOPE: Haven't you already done that work?

DAI LIU: This was a new set of scenarios.

The Hon. DAMIEN TUDEHOPE: What are those scenarios?

DAI LIU: Again, I think that's a matter for government. Again, I'm not sure about the rules around Cabinet in confidence and whether I can talk through those.

The Hon. BOB NANVA: Point of order: I've refrained from taking a point of order, but I do question whether this line of questioning is consistent with the terms of reference of this inquiry, which are specifically in relation to the Workers Compensation Legislation Amendment Bill and the examination of the impact of the bill on business and economic conditions in New South Wales. I understand the substance of the questioning, but I do question whether it's—

The Hon. DAMIEN TUDEHOPE: I'm, in fact, proposing to move an amendment to the Workers Compensation Legislation Amendment Bill to include presumptive cancers for firefighters.

The CHAIR: There we go.

The Hon. DAMIEN TUDEHOPE: What are the scenarios you've been asked to model?

DAI LIU: As I mentioned previously, I'm unsure that I can disclose that, given Cabinet in confidence. I can talk about it in general terms. Looking at different combinations of eligibility and different combinations of cancers is what the work has always been on.

The Hon. DAMIEN TUDEHOPE: Yes?

DAI LIU: Yes. Those are the various different scenarios we are working on.

The Hon. DAMIEN TUDEHOPE: Mr Wessling, you'd be aware that there is a requirement to certify that all documents required to be produced pursuant to the Standing Order 52 have been provided to the Parliament and that, in fact, that certification was provided by the chief executive officer. Were you aware that she, in fact, signed off on that certification?

TONY WESSLING: I'm not involved in the final stages of that process, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: We've had a significant amount of media recently in relation to disability services and home care services. What are the WICs in relation to the disability service providers?

TONY WESSLING: We haven't brought all the WIC codes. Are you talking about rates?

The Hon. DAMIEN TUDEHOPE: Yes, the WIC codes.

TONY WESSLING: Are you asking which WIC codes—

The Hon. DAMIEN TUDEHOPE: The WIC code is 872910 in relation to home care services and 872920 for non-residential care services.

TONY WESSLING: What information would you like, Mr Tudehope?

The Hon. DAMIEN TUDEHOPE: What are the percentage rates for—

TONY WESSLING: There are 500 WIC codes. I'd have to get that information and come back to you.

The Hon. DAMIEN TUDEHOPE: Can you take that on notice and provide me with that? One of the issues which arises in relation to that is their premiums appear to be going up at twice the rate of other industries. What are the factors which are impacting on their increases in premiums?

TONY WESSLING: I'll answer it at a high level and maybe Mr Liu can provide the detail. We look at the performance for each WIC code. As I said, there are about 500 WIC codes that cover each industry, and the way we rate is based on the performance of those industries. That's an attempt to maintain community rating but have industry rating within that. The drivers of that primarily relate to the claims experience and the expectations on that claims experience going forward. We obviously calculate a break-even premium for each WIC code and then create the premium rate off the back of that analysis, which the actuarial team undertake.

The Hon. DAMIEN TUDEHOPE: What are the risk factors which you've identified as to the disability service providers which have impacted on their increase in premium rates?

DAI LIU: It's the credibility rating factor approach, where we look at the individual WIC code's actual claims experience, both in terms of claims frequency as well as claims cost, but that is a credibility rated for the size of the sector. Some sectors are too small to be rated purely on their own claims experience, so then they are grouped up with like sectors and they're given weight for their own claims experience as well as the broader sector. That's a pretty standard credibility approach in the actuarial practice.

The Hon. DAMIEN TUDEHOPE: Let me ask you this: Have you done any work on the cost of a possible government subsidy to hold premiums for disability providers at a fixed level?

DAI LIU: No.

The Hon. DAMIEN TUDEHOPE: It's open to government, though, isn't it?

DAI LIU: Yes.

TONY WESSLING: I've got the premium rates for those two WIC codes. Non-residential care services, which is 872920, is 3.780. Home care services, which is 872910, is 6.690. Those are relatively high industries.

The Hon. DAMIEN TUDEHOPE: What are the risk factors which you say attach to them?

TONY WESSLING: We've done a lot of work with care services. There is significant growth in physical claims and psychological claims in that industry. It's been an industry that has had, unfortunately, a high incidence rate of workers comp injuries.

The Hon. DAMIEN TUDEHOPE: A lot of them are not-for-profits, aren't they?

TONY WESSLING: Yes.

The CHAIR: I've just asked for a copy of a document to be handed to the witnesses. Just to let you know, this is extracted from the SIRA open data system as at 15 July 2025. It's just a bunch of the slides that are printed out once you select the various things. Mr Latham, we can email you a copy—apologies that it wasn't sent to you earlier. What this document does is it drags out of the system what we think is happening with mental health claims. I'm hoping that you can explain it to me, because from a layman's perspective, particularly if you look at what will be page 4 of that document, entitled "Mental Health Conditions"—even though we've extracted this at July, it's taking us up until April 2025. It looks like there's a really massive decline in the amount of mental health claims coming in. Can you explain what that's about and tell us what the actual situation is in relation to psychological claims?

TONY WESSLING: Yes. I presume this is—I don't know if you know the date of injury.

DAI LIU: You would expect to see that any time you cut the SIRA open data this way, because it takes time for claims to be accepted and then reflected in the data. There is a lag in that process. The way this data is cut, you see the lag in the form of that kind of cliff where the numbers come down. But if you just give it a few more months, the numbers for, say, April, March and February will increase every month.

The CHAIR: That's liability accepted month by month. Do you have then the raw data for the number of total claims that have come in over that period so we can actually look at that? What is the trend, if you like, for psychological claims coming in over that period of time since we last spoke?

DAI LIU: Yes, we have that data. I think that was part of the question on notice that we're preparing answers for. Generally speaking, the psych claim volumes we've seen year on year increase—in the psychological claims volumes, both reported and accepted.

The CHAIR: How does that growth rate look? I know we were looking at quite a steep growth rate over a couple of the years, and a lot of those assumptions were based on whether the growth rate would continue at that level or whether it was actually closer to the base case scenario rather than the worst case scenario. How is it tracking along what we thought might be the case when we spoke at the last hearing?

DAI LIU: It's still growing close to expected.

The CHAIR: But in terms of that year-on-year growth rate? Is the amount of growth increasing or is it just the amount of claims in total that is increasing? That's what I'm trying to get a handle on.

DAI LIU: I've got the data up to 2024. I don't have 2025 with me. The growth rate for the Nominal Insurer in 2024, year on year, for psych, is 38 per cent and 2023 was 35 per cent. For the TMF, the growth rate for psychological injuries in 2023 was 33 per cent and for 2024 was 20 per cent.

The CHAIR: I'm trying to get a handle on what it is now for 2025. Perhaps you could take that on notice.

DAI LIU: Of course.

The CHAIR: The other thing that struck me out of this pack was that there seems to be a huge number of "reasonable excuse" decisions—if you go to about the third last page of the slide pack. Is that consistent with what you would expect to see? What is the reason for that? You were saying before about the data taking a while to come through, but this is actually a much greater number. We're looking at 263 for March versus 141 for February. What's the explanation for that?

DAI LIU: It's a similar explanation. Some claims come in and they are reasonably excused until more information is provided. As time progresses, some of these claims progress to being accepted or some other status code.

The CHAIR: Do you have the data for what that would look like at a similar time in relation to previous months—a few months ago, if you know what I mean? How do we, as laypeople, get an idea of what this trend should be or what it is actually, in reality, once we consider the points that you've raised?

DAI LIU: The best way to do that would be through an actuarial model. The short answer is yes, we have data available. But, really, to do it properly you need a model where you break the difference between when the accident has happened and the delay to when these actions happen so you can see the progression of the claim. Short of that, it's difficult to read the snapshot data and draw conclusions.

The CHAIR: Because when we've looked at this compared to what we did a few months ago, it does seem to be quite a significantly high percentage. But I guess what we're saying is we don't have that data yet.

DAI LIU: It's difficult, with the snapshot data, to draw conclusions.

The Hon. MARK LATHAM: Mr Liu, why haven't you got the 2025 psych data?

DAI LIU: So 2025 in terms of the calendar year?

The Hon. MARK LATHAM: The first six months. We've had half a year, and the Chair has raised legitimate issues about trend. It would be very helpful to the Committee if you have that data.

DAI LIU: I don't have it with me on hand, but we'll produce it.

The Hon. MARK LATHAM: Why? This is your job, isn't it? Why?

DAI LIU: I can't lug around every single data point there is, but I'm very happy to take the question on notice and answer it.

The Hon. MARK LATHAM: You lug around? How heavy is your laptop in front? This is not the first time you've come to the Committee.

DAI LIU: Mr Latham, if you're happy to wait, I'm happy to look up the number for you, but you may have to wait.

The Hon. MARK LATHAM: Okay. It's not the first time you've come to the Committee with a surprising level of ill-prepared approach. Is this part of some strategy that the Treasurer has discussed with you to keep us in the dark as much as possible?

The Hon. BOB NANVA: Point of order: Chair, just the procedural fairness resolution of showing courtesy to the witness, but the witness has also undertaken to take the question on notice, as he's entitled to do.

The CHAIR: I uphold the point of order. We will proceed a bit more cautiously and allow the witness time to respond.

The Hon. MARK LATHAM: In fairness, Chair, we devote a fair bit of time and effort to these inquiries, and I know the New South Wales public service is not replete with rocket scientists by any means, but you expect that basic forms of information to be provided to us. Anyway, I'll move on. Mr Wessling, where is Ms Aplin? This is my third full day hearing on workers compensation. She hasn't appeared yet. Is this something that's below the remit of the CEO of icare?

TONY WESSLING: Mr Latham, when we received the invitation last week, the invitation was for a maximum of two witnesses, and we thought the continuity of Mr Liu and myself made sense.

The Hon. MARK LATHAM: What about the CEO?

TONY WESSLING: That was part of the decision-making, yes.

The Hon. MARK LATHAM: Right. You weren't allowed to bring a third person?

TONY WESSLING: The invitation asked for a maximum of two representatives.

The Hon. MARK LATHAM: When we last met, there was an announcement that day that the DXC were being popped out of icare. Have you got some update as to why that occurred and why were they contracted in the first place, only to find out a few months later that the goalposts had moved?

TONY WESSLING: There was a decision by the board in June that we would discontinue the panel arrangement with DXC in the Nominal Insurer, and we made the decision as well—they hadn't commenced taking any claims in the TMF—to not proceed with DXC in the TMF. They've been part of—

The Hon. MARK LATHAM: What changed after February, when they were contracted? This is a company that says they put on, they say, hundreds of extra people in anticipation of this work, and now they've been left stranded. What changed between February and June?

TONY WESSLING: The panel arrangement was actually struck last year. We didn't announce it until March because we were still finalising with other providers. But we've gone through a process with the board over quite a long period of time and looking at what's in the best interest of the Nominal Insurer scheme and panel arrangements, and the decision of the board in June was to make this decision.

The Hon. MARK LATHAM: What was so good about DXC in March that you announced that they were on board?

TONY WESSLING: The process specifically for the TMF panel spanned a period of probably nine or 10 months last year, and that was a compliant procurement process, which concluded with a development of a panel, which was not dissimilar, in terms of arrangements, to the Nominal Insurer panel. We obviously have similar providers across the two panels. As I said, now that we're almost three years into the Nominal Insurer panel, we've done a lot of consideration with the board around what's in the best interests of the scheme going forward, and that was the decision.

The Hon. MARK LATHAM: So what changed three months later? Do you think DXC was acting in good faith to put extra staff on, in anticipation that you might honour the contract?

TONY WESSLING: What changed is, looking at the performance of the entire Nominal Insurer scheme, the needs of the scheme, we looked at the optimal size of the panel and the Nominal Insurer, and that was the decision that was made. We had a consideration of what that would mean for the TMF, and this was the decision that was reached.

The Hon. MARK LATHAM: Who did that looking and analysis and made that decision? It's Ms Aplin, isn't it?

TONY WESSLING: These considerations, particularly on the Nominal Insurer, commenced last year, Mr Latham. That was well before Ms Aplin joined icare.

The Hon. MARK LATHAM: But this is obviously a decision that the CEO has ticked off on. Yes?

TONY WESSLING: No, the CEO, Ms Aplin, has a declared conflict of interest and played no role in this decision.

The Hon. MARK LATHAM: What was the basis of her conflict of interest?

TONY WESSLING: That's a matter between Ms Aplin and the board. But from what I understand, her prior employment at EML was declared as a conflict, and we've been managing that conflict diligently so that Ms Aplin doesn't get involved in any decisions that would have a direct impact or an indirect impact on EML.

The Hon. MARK LATHAM: EML are one of three or four claims managers you have. Is that right?

TONY WESSLING: No, we have five claims managers.

The Hon. MARK LATHAM: What share of the work does EML get?

TONY WESSLING: At the moment, in the Nominal Insurer, they've reduced over the last three years from over 80 per cent to now about 50 per cent. In the TMF they have probably in order of about 50 per cent market share of the TMF, and that hasn't changed as a result of this decision.

The Hon. MARK LATHAM: Was that 50?

TONY WESSLING: Yes, 50.

The Hon. MARK LATHAM: So half your work involves an outfit, EML, where your CEO will, one assumes, constantly declare an interest and not be involved. Who appointed Ms Aplin?

TONY WESSLING: That would be a matter for the board, Mr Latham.

The Hon. MARK LATHAM: Didn't the board think that, perhaps, in terms of propriety and value for money, appointing someone who would declare an interest in 50 per cent of the workload because of a past association with EML was in the theatre of the absurd?

TONY WESSLING: That would be a matter for the board, Mr Latham.

The Hon. MARK LATHAM: Did the board interview Ms Aplin and say, "EML matters are before you. What will you do?" Did they interview her and raise this obvious issue?

TONY WESSLING: I believe the process for the selection of the CEO is on the public record.

The CHAIR: Order!

The Hon. MARK LATHAM: The board makes the decision. Does the Treasurer play a role?

TONY WESSLING: This is not an area of my expertise, Mr Latham. I wasn't involved in the process.

The Hon. MARK LATHAM: Do you think the public could have any confidence in this hillbilly outfit that's employed someone who can only do half the work?

TONY WESSLING: That's a matter for the board, Mr Latham.

The Hon. MARK LATHAM: No, you're not going to answer that; it's in the area of the supernatural. Thank you.

The Hon. BOB NANVA: Obviously, the issues concerning the financial sustainability of the Nominal Insurer and TMF are factors of what's happened in previous financial years, as well as the current financial year. There have been a number of reviews into the workers compensation system and into icare specifically: the Dore review, the McDougall review, and the Auditor-General's review into workers compensation claims management. I'm interested in how icare has responded to those independent reviews, so far as they are relevant to it, with respect to its performance and management.

TONY WESSLING: Thanks for the question, Mr Nanva. You're right; since, I think, 2020-2021, we've had the Dore review and the subsequent SIRA 21-point plan into claims management, the McDougall review and the associated reviews that went with the McDougall review along the lines of the culture, governance, and accountability review, the financial sustainability review, the procurement review, the governance review. We've

had the TMF audit and review, the Audit Office performance audit, the Treasury review of our operational expense base and the Law and Justice committee review into psych claims.

The Hon. BOB NANVA: That's a lot of reviews.

TONY WESSLING: There's been a number of recommendations—hundreds, in fact—that we have been progressing over the past three or four years. As it relates to addressing the issues raised in the Dore review and the McDougall review, which were earlier on in that period, there was obviously the improvement program that icare progressed and completed. I recall, I think, last year we had the final Promontory review that closed out the 107 recommendations there that related to icare. That included things that came out of the Dore review around raising the capability of our frontline case management.

Arising from that we launched the Professional Standards Framework, which was about setting minimum standards for and an assessment of capability of our case managers and looking to raise that over time. We launched that, as you're aware, probably about two years ago. We're continuing to roll that out. We lowered case loads to ensure case managers had time to undertake the work of case managing injuries. I think we heard from another witness this morning, for example, the challenges around doing work capacity decisions. Capabilities are really a central part of that—professional standards and lowering case loads. We heard from EML that their tenure has gone up materially, of case managers, in the past few years, and the turnover has come down. We're seeing similar trends in the other claims service providers as well.

We've restructured the panel in the Nominal Insurer. That was part of the Nominal Insurer improvement plan that arose from the McDougall review and the Dore review. That included moving away from a cost-plus model with a single provider to what we launched with the panel arrangement in the NI and that we're subsequently now in the process of revamping in the TMF this year as well. We introduced the specialist model to address challenges with how psychological claims were being dealt with. That was a response to the model that had been in place—a bit like the legislation, which is that it's, essentially, a one-size-fits-all. We moved to a specialist model that had specialist capability, different case loads and different approaches to working with injured workers with a psychological injury.

We've started publishing performance of claims service providers on our website, which we update quarterly to provide transparency on performance. That covers return to work, compliance, case load and satisfaction. We introduced an expanded choice of claims service providers for employers. Obviously, when you have one provider, there's not a lot of choice. Employers above $100,000 of premium now have the choice of providers, which is certainly a good motivator to drive performance amongst claims service providers. We've had 800 policies actively choose to shift over the past two years, and these are larger employers. So 800 making that choice is a good start, as we've introduced choice. And we've had a big focus on working with SIRA over the past few years to continue to improve case managers, with a particular focus on early intervention, rehabilitation, early rehabilitation, quality of injury management, planning—a very big focus on the front end of setting claims up properly.

We've also been working with our claims service providers in other areas, like commutations. Up until last year, we did about 35 commutations per year. They're very time consuming and they're very stringent in terms of what claims qualify for commutations. We've actively expanded that process, proactively working with injured workers to ensure they're aware of their options around commutations, even within the existing regulations. We now do about twice as many commutations. We've had a very big focus on work capacity decision-making as well, and I think I heard some witnesses this morning talk about not enough being done. In 2021 we would do roughly 600 work capacity decisions a quarter that had an impact on injured worker wages. That's now doubled to 1,200 a quarter, as we've worked with the claims service providers on how and when to do work capacity decisions, because they are a very important part of the program we run. So there is a range of things that we've done as a result of all of those reviews, and we still have recommendations that are outstanding that we continue to work on.

The Hon. BOB NANVA: In terms of the Treasury operational review, presumably you've taken some executive roles out at head office, for want of a better description, and made other savings operationally?

TONY WESSLING: That's right. The Treasury operational review resulted in a program of work at icare around addressing efficiency opportunities in the cost base, and that included a reduction of executive roles. I will take it on notice for the exact number—I think it was 15 per cent. Twenty-five per cent of the group executive team roles were removed as part of that process, as well as a number of other cost efficiency opportunities across icare's operating cost base. Part of the conclusions reached in that Treasury operational review was that those efficiency exercises went a long way to demonstrating an efficient cost base at icare.

The Hon. BOB NANVA: You've already referenced some of this in your previous answer, but you are the body that oversees the resilience and integrity of the case management process and the workers compensation scheme. Perhaps just elaborate a little bit more on the mechanisms that you've got to proactively ensure the KPIs are being met by the claim service providers.

TONY WESSLING: Sorry, when you say resilience, do you mean of the case managers or the performance of the scheme?

The Hon. BOB NANVA: The scheme itself.

TONY WESSLING: The remuneration model that was introduced in the Nominal Insurer in 2023 basically had three material components of it. There was the base fee, which was set at 95 per cent of what we thought an appropriate cost base was, and that was really modelling a lower case load than had existed before. That set the base fee. An additional 10 per cent of that base fee was available for hitting quality metrics. These are quality metrics around compliance dimensions—quality of things like early intervention, data integrity, PIAWE calculations. So we had a set of quality measures that we assess, and that opens up a further 10 per cent remuneration. And then there's outcome fees, which are based on a set of KPIs. There's about ten or so of those KPIs, Mr Nanva. That includes return to work.

The return to work targets, which make up about 50 per cent of the available outcome fees, are at different stages of a claim. We obviously look at return to work at different stages within the life of a claim. Those KPIs are set for each CSP based on their portfolio at those different levels. There are other metrics like medical cost control, which looks at how well we're managing the medical costs of the scheme. There are metrics around continuance rates for older claims to make sure we still continue to have a focus on claims that exceed two years on the scheme. So there's a range of KPIs that form part of the remuneration model. Over and above that, we also—

The Hon. BOB NANVA: Are they proactively monitored and enforced?

TONY WESSLING: We monitor them on either a monthly or a quarterly basis, depending on how frequently those measures are able to be taken. We meet with each of the CSPs operationally on a monthly basis, and then quarterly on an aggregate performance basis for each CSP to look at those performance dimensions. I was just going to add, beyond the KPIs that impact remuneration, there's a whole raft of other quality assurance KPIs that we also track through our quality assurance program as well, which primarily look at are we complying with the legislation and with the SIRA standards of practice. There are a large number of time frames that are legislated or activities that are set out in standards of practice. We look at that both quantitatively—have we met time frames for certain decision-making?—but also from a quality perspective as well—have injury management plans been done to a sufficient enough standard?

The CHAIR: That brings us to a close for this session. Thank you very much for your attendance again. To the extent that there were questions taken on notice or supplementary questions, the Committee secretariat will be in touch.

(The witnesses withdrew.)

Ms MANDY YOUNG, Chief Executive, State Insurance Regulatory Authority, on former affirmation

Mr CHRISTIAN FANKER, Director, Scheme Design, Policy and Performance, Workers Compensation Regulation, State Insurance Regulatory Authority, on former affirmation

Mr SPENCER McCABE, Director, Insurer Supervision, State Insurance Regulatory Authority, affirmed and examined

The CHAIR: Thank you very much to representatives of the State Insurance Regulatory Authority for attending. You have been here before, but do you want to make a short opening statement at all?

MANDY YOUNG: I won't be making an opening statement today. I understand you have received our written submission. We're happy to respond to any questions you may have.

The Hon. DAMIEN TUDEHOPE: On page 19 of your submission, you set out a range of activities that SIRA is engaged in for improving the handling of psychological injury claims with a focus on real improvement on return to work. Which of those do you see as the most promising? Do you expect any of these measures to exert downward pressure on premiums?

MANDY YOUNG: It's important when we think about return to work initiatives that anyone who is experiencing the scheme has an individual experience. The nuance around this is that there will be a range of things that might help them. What we've shown here is that it's really important to intervene early. Early intervention strategies are the most important and then supporting people with an injury and then compliance with obligation in terms of the return to work initiatives that we have in play. There is not one that is more important than another, because different things will work for different people.

The Hon. DAMIEN TUDEHOPE: I understand. Is there any evidence yet about strategies which might be working?

MANDY YOUNG: In terms of the strategies that might be working, I take that in two ways. There are a range of strategies that sit within this. I'm just checking whether you're speaking directly around the vocational programs or just broader early intervention strategies.

The Hon. DAMIEN TUDEHOPE: Probably both. I'll come to the vocational strategy shortly.

MANDY YOUNG: Early contact with workers we know is critical in getting people back to work. We know that the earlier we can have conversations with people around their needs and what can help them return to work, you will get better outcomes. That first four weeks is the most important time. The strategies that are put in place around that and injury management will be the key things that deliver better return to work outcomes. I think that is probably the focus, I would say.

The Hon. DAMIEN TUDEHOPE: When were you first consulted in relation to lifting the WPI to 31 per cent—or when was SIRA?

MANDY YOUNG: SIRA?

The Hon. DAMIEN TUDEHOPE: Yes.

MANDY YOUNG: SIRA has participated in the taskforce that the Government set up which is led by Treasury and DCS. Through that taskforce process, that taskforce provided information to Government on what that could be. I wouldn't be able to give you an exact date, but it would have been through that taskforce process earlier this year.

The Hon. DAMIEN TUDEHOPE: Did SIRA provide any advice to the Government about increasing it?

MANDY YOUNG: We have continued to provide advice to Government on all of the information that has been put forward.

The Hon. DAMIEN TUDEHOPE: That has been an ongoing process?

MANDY YOUNG: It has been an ongoing process.

The Hon. DAMIEN TUDEHOPE: Would I expect to see those documents relating to that advice in respect of documents you have produced to the Parliament?

MANDY YOUNG: I would say that the advice that we have given has been through our process of providing advice to Cabinet, so they would likely be Cabinet in confidence. They would likely be protected under those measures.

The Hon. DAMIEN TUDEHOPE: Did you obtain advice about whether it was a document which is Cabinet in confidence or that that advice was Cabinet in confidence?

MANDY YOUNG: I suspect you're referring to the SO 52 which was requesting a range of advice.

The Hon. DAMIEN TUDEHOPE: Yes.

MANDY YOUNG: We provided close to 300 documents through that process. Some would have been considered Cabinet in confidence. Some would have been privileged and some commercial in confidence. We would have given that to the Government to make the decision more broadly.

The Hon. DAMIEN TUDEHOPE: Did you make any decision about whether it was Cabinet in confidence?

MANDY YOUNG: I made the certification in terms of the SIRA documents on whether they would have been Cabinet in confidence or not.

The Hon. DAMIEN TUDEHOPE: Have they actually been produced as Cabinet in confidence?

MANDY YOUNG: I would have to check because we've given so many documents. It would depend on which documents and what. But I can come back to you on notice in terms of specific documents.

The Hon. DAMIEN TUDEHOPE: It's a bit surprising that if you look at the documents produced, there are no documents evidencing advice provided by SIRA in relation to the raising of the threshold to 31 per cent.

MANDY YOUNG: As that advice would have been covered by Cabinet in confidence, as it was advice to the Government for government decision-making.

The Hon. DAMIEN TUDEHOPE: Is it common that advice provided to Government is Cabinet in confidence? What do you understand that to be?

MANDY YOUNG: I think that's when it's related to government decisions that are being made through the Cabinet process.

The Hon. DAMIEN TUDEHOPE: Had it been a position relating to a government decision at that time? It was advice you were being asked to give. I just wonder whether there's a policy position about what documents you have which are considered Cabinet in confidence.

MANDY YOUNG: It would be hard to say there's a policy decision. It's a decision of the Government on whether they were provided as Cabinet in confidence, and we get advice from TCO and the Crown Solicitor in relation to whether those documents are in fact—

The Hon. DAMIEN TUDEHOPE: Did you get that advice in this case?

MANDY YOUNG: I understand that that advice was sought particularly through the relevant processes for providing documents for an SO 52.

The Hon. DAMIEN TUDEHOPE: One of the documents which was requested to be produced is any advice which you have obtained in relation to the SO 52. Why wasn't that advice provided?

MANDY YOUNG: A decision was made that that was covered by the Cabinet's Cabinet in confidence.

The Hon. DAMIEN TUDEHOPE: And you obtained Crown Solicitor's and Treasury office advice in relation to that?

MANDY YOUNG: I'm finding it difficult to answer your question because ultimately the decision was made that it was advice to government for a Cabinet decision.

The Hon. DAMIEN TUDEHOPE: And you obtained advice from the Crown Solicitor and Treasury in relation to that?

MANDY YOUNG: We certainly consulted with both.

The Hon. DAMIEN TUDEHOPE: That advice hasn't been produced amongst the documents, has it, that they have given you?

MANDY YOUNG: As far as I'm aware, no, and it would be unlikely that advice from the Crown Solicitor would be part of that process.

The Hon. DAMIEN TUDEHOPE: The SO 52 sought, did it not, to the best of your recollection, any legal advice relating to the legality of the SO 52?

MANDY YOUNG: That would have been a matter for the Cabinet Office through coordinating the response for the whole of government.

The Hon. DAMIEN TUDEHOPE: Has SIRA done any policy work in relation to presumptive cancers?

MANDY YOUNG: We have provided advice to DCS, the Department of Customer Service, which is leading that work, and also to Treasury through the process. We've provided them advice on a range of things over some period of time. I think Mr Fanker has been around for much longer than I, so he may wish to contribute, but we have provided ongoing advice in relation to presumptive cancers.

The Hon. DAMIEN TUDEHOPE: The SO 52 sought those documents. Why were they not produced?

MANDY YOUNG: Again, they are advice for a decision of government and are protected by the Cabinet-in-confidence provisions.

The Hon. DAMIEN TUDEHOPE: Let me understand this. Is the position SIRA takes that if it's formulating policy advice to government, that's a Cabinet-in-confidence document?

MANDY YOUNG: It's dependent on the particular decision that's being made, and that was a decision for Cabinet. There's a range of policy that sits right across government. Some will be protected through the Cabinet process; others may not.

The Hon. DAMIEN TUDEHOPE: I must say this is an extraordinary development in relation to the transparency of government decision-making if the Cabinet is in fact being able to, or if the Government is able just to, unilaterally decide that it is Cabinet in confidence in circumstances where no such decision certainly was taken by previous governments in relation to that. In any event, have you got a copy of the final report from Alan Robertson, being the independent inquiry into SIRA complaints handling?

MANDY YOUNG: I have seen the report from Alan Robertson's inquiry. I'm the only one who has seen that within SIRA for the context, and DCS is leading that process.

The Hon. DAMIEN TUDEHOPE: Are there any adverse findings made by Mr Robertson in relation to that inquiry which he has conducted?

MANDY YOUNG: The Minister is due to table that report in line with the GSE Act shortly. Until that point, it's not something that I can speak about.

The Hon. DAMIEN TUDEHOPE: I'm not asking you to tell me what the adverse finding was, but are there are any adverse findings against SIRA contained in that report?

MANDY YOUNG: There is a range of recommendations within that report.

The Hon. DAMIEN TUDEHOPE: Are there any findings in relation to that report which have found their way into this bill?

MANDY YOUNG: I think that's a matter for the Minister. I don't think it's relevant for me to speak on that report when it hasn't been lodged and it's his responsibility to do that.

The Hon. DAMIEN TUDEHOPE: I put this to you: We have sought a copy of that review to be provided to help this Committee do its work. It would have been helpful, would it not, for us to at least have had a copy of that bill? That bill will probably be tabled next week. Do you agree with me that it would have been helpful for this Committee to have had a copy of that review into SIRA before this inquiry today?

MANDY YOUNG: I don't think it's a matter for me to agree with you on whether that is helpful or not because it's a matter for the Minister how he tables that report and manages it.

The Hon. DAMIEN TUDEHOPE: Considering that you know what's in that report, would it have been helpful for this Committee to have had that review today?

MANDY YOUNG: Again, I don't think I'm in a place to respond to that.

The Hon. DAMIEN TUDEHOPE: One of the things that the bill does is give SIRA power to endorse permanent impairment assessors and to select assessors when the parties can't agree. Did you seek that power, or did SIRA seek that power?

MANDY YOUNG: It hasn't been that we have sought any power. There have been a range of discussions of options for the Government, and then we've provided advice on those options.

The Hon. DAMIEN TUDEHOPE: Where was that range of options included? Is this one of the documents that hasn't been produced pursuant to the SO 52?

MANDY YOUNG: Again, we provide that advice to Government to make the decision.

The Hon. DAMIEN TUDEHOPE: So the Government makes a decision, which is reasonably controversial, to allow the regulator to appoint assessors and to appoint assessors in circumstances to formulate the capacity of injured workers and the like. There's no documentation which surrounds the manner in which that decision was made.

MANDY YOUNG: Again, we continue to provide advice to the taskforce, who then provided that advice to the Government.

The Hon. DAMIEN TUDEHOPE: Does anyone else want to tell me whether in fact SIRA sought that for themselves?

CHRISTIAN FANKER: I'll jump in, if I may. SIRA didn't necessarily seek it, but if I can maybe explain a little bit of what that provision does, the whole person impairment was introduced as a concept back in 2002 to basically be a threshold or a gateway to permanent impairment compensation, commutations, work injury damages. In 2012, it was expanded to provide access to weekly benefits and medical treatment. Presently, the way that works is you can seek an assessment for any of those. In many cases, a worker may have multiple assessments. At present, the worker may seek an independent medical assessor, or an impairment assessor, and the insurer may seek it, so you've basically got doctors at 20 paces.

The provision here is a single assessment. There are two elements to it: a single assessment and a joint assessment. A single assessment is to determine your access to ongoing benefits with commutations rather than doing one each time. A joint assessment is where SIRA will basically control or produce a list. We will ensure the people on the list are qualified, have the experience and meet the training requirements.

The Hon. DAMIEN TUDEHOPE: I understand exactly. I can understand that rationale. I was more interested in who sought the role for the regulator. Can I take you to another question, Ms Young?

There has been a review done in relation to rehabilitation providers, has there not?

MANDY YOUNG: Yes, there have been.

The Hon. DAMIEN TUDEHOPE: Who ordered that review?

MANDY YOUNG: That review was undertaken by SIRA and is just finalising at the moment, so we're in the very final stages of that. We got Urbis to do that review in partnership with Monash University, and it's due to be released imminently.

The Hon. DAMIEN TUDEHOPE: The Minister has it?

MANDY YOUNG: No, the Minister doesn't have it. It's a SIRA review of workplace rehab providers.

The Hon. DAMIEN TUDEHOPE: Will you be publishing it on your website?

MANDY YOUNG: We will be publishing it on our website. I can give you a sense of what's in that, if that's helpful?

The Hon. DAMIEN TUDEHOPE: Yes, that would be helpful.

MANDY YOUNG: So we've completed the review. Overall, the results indicate that the system for workplace rehab providers is working well and that they fill a really complex and valued role in the scheme. There are good return to work outcomes, durable return to work outcome rates, and there's emerging evidence that they contribute to that. The report identified some key challenges for us to continue to work through and some suggested enhancements, and we're working with the sector to think about that. We're going to be hosting a series of round tables with the sector in the next month or so to look in some detail into the outcomes of that review and think about how we can continue to improve the workplace rehab providers.

There are 105 approved rehab providers, and they have significant reach across the scheme at the moment. We found out of the review that three in four people with an injury who engaged with a workplace rehab provider on their claim achieved a durable return to work outcome. "Durable return to work" is defined as 13 weeks, essentially—being back in employment for more than 13 weeks. It did show that the costs of that are—it's quite cost effective. For those durable return to work outcomes, the average claim cost was about $8,471. That is quite a cost-effective way to get people back into work who may have been out of work for some time.

The Hon. DAMIEN TUDEHOPE: I've taken up a lot of my colleague's time. I apologise.

The CHAIR: No worries. When you say it's imminent for that report to be provided, our understanding from the witnesses we had earlier is that that was finalised some time ago, or at least the work had been completed some time ago. What dictates when that gets released, and how do you ensure that it doesn't get released at a politically opportune time?

MANDY YOUNG: We don't run our reviews on necessarily the political opportune time. That's not what we do; we're here to regulate. When we are doing a review process, part of that process is we get a final draft and then we look at that and we may need some changes. We might have some advice in terms of some of how that's laid—the findings themselves don't necessarily change, because it's an independent report, but we have some fact-checking and a range of other things that sit within that. We've just completed that process in the last week or two and we're now working through the plan for release. When I say "imminent", it is in the next couple of weeks.

The CHAIR: That will be very useful. Is there any scope, or has there been any involvement of any Government member in the timing of the release of that report?

MANDY YOUNG: No.

The CHAIR: When it comes to the performance review of claims managers, I understand you were doing another one of those as of last, I think, December '24, but we haven't seen that yet either. When will that be released?

MANDY YOUNG: Again, that one is in its final stages. It's slightly behind the workplace rehab providers. That's a broad claims management review, which was a review that we committed to undertaking out of the law and justice recommendations. Again, it's in the final stages, so I can give some sort of headlines around what we've found through that. Just to be clear, that broader review included a range of inputs. It included claims data and return to work data. It included an independent literature review and some customer insights. It included the findings from our claims management audits. That was an audit of the TMF, an audit of the Nominal Insurer, and we have had an auditing program of all of our self- and specialised insurers which is also inputted into that. We've also worked with insurers to get some insurer insights as well.

The key findings of that report probably echo a range of things that have come out of the conversations that you have had here today. Effective claims management leads to improved outcomes. Claims management performance does need some improvement. Modern work and workplaces have amplified the need for that improvement. Compensable claims management models might not align with the needs of workers and psychological injury. There are opportunities to reduce regulatory complexity and administrative burden, and there is emerging evidence supporting a shift towards a person-centred culture and a model to improve return to work outcomes. So no great surprises in the findings of that, and then there's a suite of recommendations that sit around that as well.

The CHAIR: That sounds like something that would be incredibly valuable for the work that we do on this Committee. Do you have rough timing for when that will be released?

MANDY YOUNG: We've been working on a timeline. Because it's a review that SIRA has done, we're finalising the draft, in terms of its presentation and what that looks like. We will aim to, again, release that, certainly, within the next month.

The CHAIR: Has there been improvement on the injury management plans, the legislative timelines, compliance and things like that that were raised in the 2023 review? Has there been any significant improvement?

MANDY YOUNG: I think there is still work to be done, and I'll ask my colleague Mr McCabe to jump in when we talk about this. But certainly the issues remain and remain very similarly to what they have previously. There have certainly been some improvements, but I think each insurer may have a different area of focus that they are required to do, it's probably fair to say. So specialised insurers have a particular runway, with things that they're better at than the others; self-, similarly; and then the Nominal Insurer and TMF. There's a range of things that sit within that and it's quite complex. More broadly, the key things that they all have to work on are embedding that person-centred claims management approach, enhancing our support for workers and employers and their role, some streamlining of our regulation and reducing administrative burden, and a real system-wide cultural and strategic change.

The CHAIR: Is it your view that improving those measures and that claims management process will, in turn, improve return to work rates and, in turn, the financial stability of the scheme?

MANDY YOUNG: I think so, yes. I think, particularly, an example would be injury management. If we have improved injury management, we will get better return to work.

The CHAIR: Apologies, because I don't have very much time. I would like to ask more questions, but maybe we'll do that on notice. It's very frustrating to me to look at every review that we've ever had into workers compensation in the last 10 years, including the work of the law and justice committee, yourselves and all of the recommendations that come out of every report, including the Auditor-General's report, which all go to the need to improve claims management and how that will then have that flow-on effect on return to work rates, and then that will help save hundreds of millions of dollars in the scheme. But we're not waiting for that work to bear fruit before the Government is coming in with these other proposals. I can't ask you to comment on that.

MANDY YOUNG: I would say, though, Ms Boyd, that I think it's no one thing. I think we need to improve claims management. We also need to improve the financial sustainability of the scheme in other ways. There's not just one thing; there's a range of things that we need to do.

The CHAIR: Sure, but it seems like that would be a rather large factor. I don't see the Treasurer having responsibility under the allocation of Acts for any of the three relevant bits of legislation here, particularly when it comes to the legislation that governs yourselves and icare. You have been involved in this process of these reforms being proposed. At what point did anyone raise the issue of why the Treasurer is involved in reforming legislation and a scheme that he has no statutory responsibility for?

MANDY YOUNG: The Treasurer ultimately has responsibility for the finances of the State. This is an impact on that. He does have some oversight, and Treasury has some oversight, of icare and the Nominal Insurer, which have a significant impact on the scheme more broadly.

The CHAIR: Sure. The Premier has an interest too, but at what point does Daniel Mookhey get to become Scott Morrison and take on portfolio responsibilities that are not his own? I'm just curious as to whether anybody raised that internally as an issue of good governance—that you had a Minister not responsible for an area intervening and leading reforms.

MANDY YOUNG: We've always approached it as a collaborative issue because there is the financial sustainability, which is a responsibility of the Treasurer more broadly. We have responsibility, and the customer service Minister has responsibility for the legislation and a lot of it, and so does Minister Cotsis. There are three different areas that are all working together to think about the sustainability of the scheme.

The Hon. MARK LATHAM: Daniel Mookhey is the smartest person in the room. Why can't he be Scott Morrison and run six portfolios? Thanks to our friends from SIRA for coming along. There was heavy criticism earlier on. I don't know if you heard Mark Morey, the head of the Labor Council but also on the board of icare, say that SIRA doesn't do its job. SIRA doesn't regulate in any sustainable, effective shape and form. In fairness, how do you respond to that?

MANDY YOUNG: I would respond to that in saying that we do regulate. There is always room for improvement in regulation. SIRA has been very focused on improving our regulation over the last particularly couple of years. One of the ways that we have done that is through its regulatory framework that we set last year and thinking about how we deliver our regulatory functions. That's to provide some transparency and clarity on our approach and how we do that. We continue to work to that today. We recently released our regulatory priorities for this year. That is really principles and governance in our approach, and our processes and tools and what is considered in arriving at an appropriate response. We talked through that.

We're looking at the design, our licensing, supervising and enforcing, and really being deliberate about how we go about that. We run a range of audits, and we do that across the scheme. We do quarterly audits of icare for the Nominal Insurer and TMF, and we're doing a self and specialised auditing program as well. We identify the common things across all of those, and we respond with our relevant regulatory actions where we can. Those regulatory actions are different depending on the insurer type. If it's a self or specialised insurer, we actually license them and then can put conditions on their licence or go through a range of other things.

With icare, we certainly work with them a little bit more collaboratively. When I say collaboratively, I want to be clear that we will regulate and we put them through remediation processes, and we may do a letter of censure or use our other regulatory tools. But we are working with icare to become very clear about what we expect and what that looks like. In fact, we have developed a supervision plan of icare for the next 12 months and it will be ongoing. That's really targeted, focusing on their policy and underwriting processes, their claims management, their info technology systems and their implementation of the relevant recommendations and commitments through any other reform work that we do. I would say to Mr Morey that it may not seem like we're doing a lot, but there has been a lot going on in the background. Our ability to increase that audit and refocus ourselves on those things has been really important to me as chief executive in coming in as well.

The Hon. MARK LATHAM: I'm sure he's listening, and that's your right of reply. Thank you very much. I'm also interested in a matter I raised earlier in the day, about these psychological impairment ratings that you

produce. They had me chuckling, I've got to say. Level three is moderate impairment in self-care and personal hygiene—needs prompting to shower daily and wear clothes, and doesn't prepare their own meals. I'm sorry. If you're a parent of teenage boys, you can only laugh about this kind of thing. Who prepares this material?

MANDY YOUNG: I might hand to my colleague next to me, Mr Fanker, who is very au fait with the policy around this.

CHRISTIAN FANKER: You're talking there about the PIRS scale, and some of the earlier witnesses were talking about PIRS and GEPIC. There are a couple of different tools to diagnose mental illness. PIRS has six functions that work across—intellectual, thinking, perception, judgement, mood and behaviour. Each of those are basically, as you said, ranked 1 to 5.

The Hon. MARK LATHAM: What about self-care and personal hygiene? Is that in there too?

CHRISTIAN FANKER: I don't have it in front of me, so—

The Hon. MARK LATHAM: For the benefit of the Committee, can you give us the full PIRS pack of material as how you do these ratings? What then happens with them? Who uses this stuff?

CHRISTIAN FANKER: We can provide—

The Hon. MARK LATHAM: The case managers in liaison with medicos?

CHRISTIAN FANKER: We can provide that to the Committee, that detail you've just spoken about. Basically, that is used by a mental health professional to diagnose an illness and then ultimately someone's level of whole person impairment. That is provided to the insurers for them to make decisions. It's provided to the worker and their legal representatives. If the matter ends up in dispute in front of the commission, that is used as part of the evidence. As you heard earlier today from one of the medical experts who's an assessor, they consider all of those materials when making their assessments.

The Hon. MARK LATHAM: What's the link between capacity to work and relying on takeaway food? What if someone just likes takeaway food? It is designed with certain components of fat and other tastes to hook you in. We all eat it at some stage—some more than others. But what is the link between work capacity and relying on takeaway food?

CHRISTIAN FANKER: As I said, there are six functions it's across, there's a score of 1 to 5 in each one, so you can't really look at one individual component of one function by itself. It has to be weighed up against all of the others to show someone's capacity to do things. As you heard earlier from one of the assessors, part of the conversation that they have with the individual is: How have things changed for you? Did you used to do these things? Did you used to enjoy certain aspects of life that you no longer can? So it's very much not just a single piece.

The Hon. MARK LATHAM: Sure, it's an honesty system. And I've only looked at this today. If I wanted to get a claim going, I'd just tell the psych, "I love Maccas. I love KFC. I really don't cook much. I don't comb my hair. I don't like having showers. My mother's got to ring me up to remind me about things. I don't go out much, and I've got headaches. My life's a wreck." And you'd get on compo, wouldn't you, just by saying that? This is the problem of the Mad Hatter's tea party guidelines. People just study it up, say these things, but who can disprove it? There's no X-ray of the human brain, and we've got a massively rorted, expensive system that's going broke. Bingo.

The CHAIR: Order! We've come to Government questions. I will check that there's no responses from the witnesses to the—

CHRISTIAN FANKER: I don't propose—no.

The Hon. MARK LATHAM: Can you take that on notice? It seems like a good summary of where we're at.

The Hon. BOB NANVA: One quick one from me. You would have to agree that any further operational and administrative improvements, including to claims management in the scheme, are not unhelpful when it comes to cost avoidance but alone they're not going to be game changers, given the multi-billion dollar deficit that the schemes find themselves in. Do you agree with that?

MANDY YOUNG: I would agree. That's what I was saying before. It's not just one thing that is going to solve the issues in the scheme.

The Hon. BOB NANVA: Beyond operational and administrative efficiencies and improvements, we are then talking about elements of scheme design. Is that correct?

MANDY YOUNG: Yes, we are.

The CHAIR: Are there any further questions?

The Hon. DAMIEN TUDEHOPE: Just my Columbo question, with not the same devastating effect. Have you ever looked at the amendments which have been proposed in relation to the bill?

MANDY YOUNG: Yes.

The Hon. DAMIEN TUDEHOPE: Did it surprise you to learn that the actuaries have saved almost as much as the Government's own bill, without reducing any of the potential worker benefits which are contained currently?

MANDY YOUNG: I'm not an actuary, so I would say surprising me is not hard to do.

The Hon. DAMIEN TUDEHOPE: In view of the answer which you have just given to Mr Nanva about potentially tinkering around the edges, and your response being that there's not a one-size-fits-all solution to this problem, would you agree with me that a lot more could potentially be done which makes significant savings at the front end of this scheme as much as at the back end of this scheme, where you already have seriously injured workers?

MANDY YOUNG: I think there are a range of levers that can be used right across the scheme. I think when you pull one, it might have an impact somewhere else. It's really hard to say whether something will work better than another until you put all of those assumptions into the actual costings themselves. It would be difficult to say that one particular thing is going to work in a particular way until you know how it's going to impact the rest of the scheme as well.

The CHAIR: If there are no further questions, then I think you get an early mark. Thank you very much for giving us the benefit of your expertise again today. To the extent that there were questions taken on notice or further supplementary questions, the Committee secretariat will be in touch. That concludes our hearing for today.

(The witnesses withdrew.)

The Committee adjourned at 17:55.