



LEGISLATIVE COUNCIL

STANDING COMMITTEE ON LAW AND JUSTICE

# 2020 Review of the Compulsory Third Party insurance scheme



Report 77

July 2021

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Standing Committee on Law and Justice

# **2020 Review of the Compulsory Third Party insurance scheme**

Ordered to be printed 30 July 2021 according to Standing  
Order 231

New South Wales Parliamentary Library cataloguing-in-publication data:

**New South Wales. Parliament. Legislative Council. Standing Committee on Law and Justice.**

2020 review of the Compulsory Third Party insurance scheme / Standing Committee on Law and Justice. [Sydney, N.S.W.] : the Committee, 2021. – [viii, 67] pages ; 30 cm. (Report ; no. 77)

Chair: Hon. Wes Fang, MLC.

“July 2021”.

ISBN 9781922543288

1. Accident insurance—Law and legislation—New South Wales.
2. Accident law—New South Wales.
3. Automobile insurance—Law and legislation—New South Wales.
4. Liability for traffic accidents—New South Wales.
5. Compensation (Law)—New South Wales.
  - I. Title
  - II. Fang, Wes.
  - III. Series: New South Wales. Parliament. Legislative Council. Standing Committee on Law and Justice. Report ; no. 77.

346.944086384 (DDC22)

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## Terms of reference

1. That, in accordance with section 27 of the State Insurance and Care Governance Act 2015, the Standing Committee on Law and Justice be designated as the Legislative Council committee to supervise the operation of the insurance and compensation schemes established under New South Wales workers compensation and motor accidents legislation, which include the:
  - (a) Workers' Compensation Scheme
  - (b) Workers' Compensation (Dust Diseases) Scheme
  - (c) Motor Accidents Scheme
  - (d) Motor Accidents (Lifetime Care and Support) Scheme.
  
2. In exercising the supervisory function outlined in paragraph 1, the committee:
  - (a) does not have the authority to investigate a particular compensation claim, and
  - (b) must report to the House at least once every two years in relation to each scheme.

The terms of reference were referred to the committee by the Legislative Council on 8 May 2019.<sup>1</sup>

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<sup>1</sup> *Minutes*, NSW Legislative Council, 8 May 2019, pp 92-93.

## Committee details

### Committee members

<b>The Hon Wes Fang MLC</b>	The Nationals	<i>Chair</i>
<b>The Hon Greg Donnelly MLC</b>	Australian Labor Party	<i>Deputy Chair</i>
<b>The Hon Anthony D'Adam MLC</b>	Australian Labor Party	
<b>The Hon Scott Farlow MLC<sup>2</sup></b>	Liberal Party	
<b>The Hon Trevor Khan MLC</b>	The Nationals	
<b>The Hon Taylor Martin MLC<sup>3</sup></b>	Liberal Party	
<b>The Hon Rod Roberts MLC</b>	Pauline Hanson's One Nation Party	
<b>Mr David Shoebridge MLC</b>	The Greens	

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<sup>2</sup> The Hon Scott Farlow MLC replaced the Hon Sam Faraway MLC as a substantive member of the committee from 8 July 2020.

<sup>3</sup> The Hon Taylor Martin MLC replaced the Hon Catherine Cusack MLC as a substantive member of the committee from 15 March 2021.

## Chair's foreword

The committee's regular statutory reviews of the Compulsory Third Party insurance scheme are important. They provide a mechanism in which the committee can get feedback from stakeholders on how the scheme is performing, and whether the *Motor Accidents Injuries Act 2017* is meeting its objectives.

In this review, stakeholders raised a number of concerns with the operation of the Compulsory Third Party insurance scheme. There were arguments put forward in support of expanding the no-fault statutory benefits available under the scheme, as well as calls for the minor injury test to be reviewed, to ensure it is not too severe and is operating fairly. Legal stakeholders also questioned the need for a 20 month 'cooling off' period in which a person with a non-minor injury must wait before making a claim for damages, suggesting this requirement can draw out the resolution of some claims. The committee also heard concerns relating to internal reviews, and the challenges faced by claimants when navigating the system without legal support.

Importantly, this review also examined premium pricing and insurer's profits, and stakeholders concerns related to the regulator's data on both of these matters. The committee agrees that greater transparency and accountability is required in this regard, to ensure the performance of the scheme can be assessed appropriately by all who have an interest in it.

While all of these issues undoubtedly warrant further examination and could be the subject of future reforms to the scheme, the committee has recommended that they be considered during the independent statutory review of the *Motor Accidents Injuries Act 2017* currently underway. The committee notes the broad consultations taking place as part of that review, and looks forward to seeing its outcomes, expected in December 2021.

On behalf of the committee, I express my sincere thanks to all of the stakeholders who contributed to this review. Many of you participate in these reviews regularly, always with the aim of strengthening the scheme's operations, to ensure it works to the benefit of those injured in motor vehicle accidents. We appreciate your input and experience.

I also thank my committee colleagues for their collaboration during these reviews, and the secretariat for their hard work and professional support.



The Hon Wes Fang MLC  
**Committee Chair**

## Recommendations

### Recommendation 1

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That the current statutory review of the *Motor Accident Injuries Act 2017* closely consider the following issues for reforms to the scheme:

- whether the no fault statutory benefit period should be expanded to a minimum of 52 weeks
- how the minor injury definition can be amended to ensure it does not exclude those with genuine minor injuries, including in relation to psychological claims
- whether the 20 month cooling off period should be reduced or abolished, to facilitate the faster resolution of some claims
- the provision of legal support to claimants in the scheme, particularly in relation to disputes, including the internal review process
- how to improve transparency and accountability in relation to insurer profits and premium setting.

## Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on Wednesday 8 May 2019.

The committee received 10 submissions and 4 supplementary submissions.

The committee held two public hearings at Parliament House in Sydney, combining witnesses from this inquiry with witnesses from the *2020 Review of the Lifetime Care and Support scheme*.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

## Chapter 1 Overview

This chapter provides an overview of the New South Wales Compulsory Third Party (CTP) insurance scheme, including developments since the committee's last review. It also outlines the oversight role the committee has in relation to the scheme.

### Oversight role of this committee

- 1.1 Under s 27 of the *State Insurance and Care Governance Act 2015*, the operations of the Compulsory Third Party (CTP) insurance scheme are required to be supervised by a committee of the Legislative Council.
- 1.2 The Standing Committee on Law and Justice has been designated by the Legislative Council to perform this oversight role. The resolution appointing the committee requires it to report to the Legislative Council in relation to the scheme at least once every two years.
- 1.3 The same resolution also requires the committee to supervise the operation of other insurance and compensation schemes established under the state's motor accidents and workers compensation legislation, including the Motor Accidents (Lifetime Care and Support) scheme, the Workers' Compensation scheme and the Workers' Compensation (Dust Diseases) scheme. Those schemes are subject to separate reviews by the committee.
- 1.4 This report is the third review of the scheme since the State Insurance Regulatory Authority (SIRA) assumed its regulatory role in 2015. However, this will be the committee's second review of the scheme since further legislative reforms were implemented through the *Motor Accident Injuries Act 2017*.
- 1.5 The committee's previous reviews of the scheme, including those under the former regulator, the Motor Accidents Authority, can be found on the committee's website at [www.parliament.nsw.gov.au/lawandjustice](http://www.parliament.nsw.gov.au/lawandjustice).

### Overview of the CTP insurance scheme

- 1.6 The CTP insurance scheme is established by the *Motor Accident Injuries Act 2017*. The scheme makes it mandatory for all motorists to have CTP insurance, known as a Green Slip, to cover them against liability for injury or death of another person.<sup>4</sup>
- 1.7 The CTP insurance scheme protects third parties injured in a road accident by providing for their treatment and care, for the duration of their life if required, as well as loss of income and any damages they may be entitled to.<sup>5</sup>

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<sup>4</sup> Submission 4, State Insurance Regulatory Authority, p 6.

<sup>5</sup> State Insurance Regulatory Authority, *What is a Green Slip?*, <https://www.sira.nsw.gov.au/insurance-coverage/CTP-insurance-Green-Slips/what-is-a-green-slip>

- 1.8 The 2017 scheme sought to address failings in the original scheme and was developed to meet the certain key objectives, including a reduction in the time taken to resolve claims, an increased proportion of benefits being provided to the most seriously injured road users, a reduction in the cost of Green Slip premiums and reduced opportunities for claims fraud and exaggeration.<sup>6</sup>
- 1.9 The scheme focuses on a person's recovery from injury by providing fast access to payments for medical treatment and loss of income in order to assist them to return to work or their other pre-injury activities.<sup>7</sup>
- 1.10 Under the scheme, an injured person with minor injuries is able to claim statutory benefits, regardless of fault, for up to six months. Those with non-minor injuries can claim for common law damages after a 20 month waiting period.<sup>8</sup> People who sustain severe injuries, such as a brain or spinal cord injury, may be eligible for support under the Lifetime Care and Support Scheme. A review of that scheme was undertaken concurrently with this review.
- 1.11 The following table outlines the full benefits available under the CTP insurance scheme:

**Table 1 CTP benefits****2017 scheme benefits and damages at a glance**

Benefits/damages type	At fault		Not at fault (benefits and/or damages may be adjusted for part fault)	
	All	Minor injuries <sup>1</sup>	Non-minor WPI <sup>2</sup> ≤ 10%	Non-minor WPI > 10%
Ambulance and hospital emergency treatment	Available for anyone injured in a motor vehicle accident			
Weekly benefits payments for loss of earnings	Up to 6 months	Up to 6 months	Up to 3 years	Up to 5 years
Damages for future economic loss	No	No	Yes (after 20 months)	Yes
Damages for non-economic loss (e.g. pain and suffering)	No	No	No	Yes
Treatment and care benefits	Up to 6 months	Up to 6 months	Lifetime (LTCA <sup>3</sup> after 5 years)	Lifetime (LTCA after 5 years)
Funeral expenses	Available whether at fault or not at fault			
Damages for dependants in compensation to relatives claims	No	No	Yes (WPI threshold not relevant)	
Legal and other expenses	Available as prescribed under the 2017 Act and Regulations			

1. Minor injuries: soft tissue and/or minor psychological or psychiatric injuries

2. WPI: whole person impairment

3. LTCSA is the Lifetime Care and Support Authority

<sup>6</sup> State Insurance Regulatory Authority, *Why reform was needed*, <https://www.sira.nsw.gov.au/fraud-and-Regulatory/reforms/ctp-green-slip-reforms/why-reform-was-needed>

<sup>7</sup> Submission 4, State Insurance Regulatory Authority, p 7.

<sup>8</sup> State Insurance Regulatory Authority, *What is a Green Slip?*, <https://www.sira.nsw.gov.au/insurance-coverage/CTP-insurance-Green-Slips/what-is-a-green-slip>

- 1.12** The State Insurance Regulatory Authority (SIRA) is the statutory body established to regulate the CTP insurance scheme in New South Wales. It also regulates the Workers Compensation scheme and the Home Building Compensation scheme, as well as performing regulatory functions in other schemes including the Lifetime Care and Support scheme.<sup>9</sup>
- 1.13** Created by the *State Insurance and Care Governance Act 2015*, SIRA was established to provide a consistent and robust framework to monitor and enforce insurance and compensation legislation in New South Wales. Its role is to ensure that the scheme continues to be fair, effective and affordable for policy holders and sustainable into the future.<sup>10</sup>
- 1.14** SIRA is responsible for developing and issuing the *Motor Accidents Guidelines* which support the delivery of the scheme by establishing clear processes and procedures to guide the activities of stakeholders including insurers, legal representatives and health practitioners.<sup>11</sup>
- 1.15** SIRA also licences private insurance companies to administer the scheme and regulates their premiums. There are currently six licenced insurance companies that underwrite the CTP insurance scheme.<sup>12</sup> The *Motor Accident Injuries Act 2017* also provides for SIRA to adjust premiums and fund levies in order to avoid excess profits or losses by insurers.<sup>13</sup>

### Key developments

- 1.16** The 2017 CTP insurance scheme was first reviewed by this committee in 2018. That review recognised the long-tailed nature of the scheme and that a comprehensive review of the scheme's performance would not be possible until scheme maturity was achieved. Nevertheless, that review noted positive signs that the scheme was meeting its intended objectives and made six recommendations to government on a wide range of matters, including the need to develop comprehensive criteria to measure insurer performance and the need for educational resources in relation to minor injuries.<sup>14</sup>
- 1.17** The New South Wales Government responded to these recommendations in July 2019, supporting five and agreeing to consider the remaining recommendation. It also provided a progress report against its implementation of the recommendations. The full response and

<sup>9</sup> Submission 4, State Insurance Regulatory Authority, p 3.

<sup>10</sup> Submission 4, State Insurance Regulatory Authority, pp 3-4.

<sup>11</sup> State Insurance Regulatory Authority, *Motor Accident Guidelines*, Version 7, 1 March 2021, p 4, [https://www.sira.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0004/325777/Motor-Accident-Guidelines.pdf](https://www.sira.nsw.gov.au/__data/assets/pdf_file/0004/325777/Motor-Accident-Guidelines.pdf)

<sup>12</sup> State Insurance Regulatory Authority, *CTP Scheme Performance Report 2020*, May 2021, pp 8-9, [https://www.sira.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0004/984604/2017-CTP-Scheme-Performance-Report-2020.pdf](https://www.sira.nsw.gov.au/__data/assets/pdf_file/0004/984604/2017-CTP-Scheme-Performance-Report-2020.pdf)

<sup>13</sup> *Motor Accident Injuries Act 2017*, s 2.25.

<sup>14</sup> Standing Committee on Law and Justice, *2018 review of the Compulsory Third Party insurance scheme*, p 24, <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2489/2018%20review%20of%20the%20CTP%20insurance%20scheme%20report.pdf>

progress against the recommendations can be found on the Parliament of New South Wales' website.<sup>15</sup>

**1.18** The committee notes that the *Motor Accident Injuries Act 2017* requires a statutory review of the scheme to be conducted three years after the commencement of the Act. SIRA advised that this review has commenced and a report is due to be tabled in Parliament by 1 December 2021.<sup>16</sup>

**1.19** Additional developments since the last review include:

- a new insurer, YOUI, joining the market, which is the first new entrant in 20 years<sup>17</sup>
- the commencement of the Personal Injury Commission in March 2021, replacing the former Dispute Resolution Service operated by SIRA. The Commission is now performing the function of resolving disputes between CTP claimants and insurers<sup>18</sup>
- the establishment of CTP Care, which commenced in late 2020. This program provides care for people under the new scheme who require treatment and care for more than five years after the accident, but who do not meet the severe injury test of the Lifetime Care and Support Scheme<sup>19</sup>
- SIRA having commissioned a number of reviews into various aspects of the scheme including into independent legal supports for claimants; the application of the minor injury test; the Authorised Health Practitioner Framework and a study to measure customer experiences.<sup>20</sup>

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<sup>15</sup> Correspondence from the Honourable Victor Dominello, Minister for Customer Service, to Chair, Standing Committee on Law and Justice, providing the government response to the *2018 review of the Compulsory Third Party insurance scheme*,

<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquirydetails.aspx?pk=2489#tab-reportsandgovernmentresponses>

<sup>16</sup> State Insurance Regulatory Authority, *Statutory review of the Motor Accident Injuries Act 2017*, <https://www.sira.nsw.gov.au/hub/statutory-review-of-the-motor-accident-injuries-act-2017>; Evidence, Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, 26 May 2021, p 26.

<sup>17</sup> Evidence, Ms Donnelly, 26 May 2021, p 26.

<sup>18</sup> Submission 4, State Insurance Regulatory Authority, p 20; Evidence, Ms Donnelly, 26 May 2021, p 28.

<sup>19</sup> Submission 4, State Insurance Regulatory Authority, p 31.

<sup>20</sup> See Evidence, Ms Donnelly, 26 May 2021, p 26; Submission 4, State Insurance Regulatory Authority, p 16; Answers to questions on notice, Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, 21 June 2021, p 9; Submission 4a, State Insurance Regulatory Authority, p 12.

## Chapter 2 Key issues

This chapter will explore the main issues raised in this review, including the operation of the no fault statutory benefits period and the definition of minor injury. It will also outline stakeholders concerns in relation to the 20 month cooling off period which applies to claims for damages and other issues related to premium pricing, insurer profits and transparency with the regulator's data.

### No-fault statutory benefits

- 2.1** One of the key issues explored in this review was the operation of the no-fault statutory benefit period under the scheme. Essentially, there is a six month period of defined statutory benefits available to those injured in a motor vehicle accident, irrespective of fault or injury severity. This means that all people injured in a motor vehicle accident, including those injured in blameless accidents, are entitled to 26 weeks of statutory benefits, which includes treatment, return to work and vocational support, as well as weekly payments of income benefits while off work.<sup>21</sup>
- 2.2** After this six month period, an insurer can stop providing statutory benefits to the injured person if the person was wholly or mostly at fault for the motor vehicle accident or if the person's only injuries are minor in nature. If a person was not at fault in the accident, there are some instances in which statutory benefits for people with minor injuries may continue past 26 weeks.<sup>22</sup>
- 2.3** The committee explored the way in which statutory benefits are operating and the adequacy of the 26 week timeframe. The committee also considered concerns in relation to the definition of minor injury, which will be discussed separately below.
- 2.4** The State Insurance Regulatory Authority (SIRA) provided the following update in respect of no-fault statutory benefit claims:
- 34,834 injured people have received statutory benefits since the beginning of the new scheme
  - more than 5,800 at-fault drivers, in the first accident year, have been provided with up to six months of benefits for medical expenses and income cover
  - in this same period, 2,680 not-at-fault people with non-minor claims continued to receive benefit payments beyond 26 weeks
  - between 1 December 2017 and 30 June 2020, over \$73.7 million in benefits have been paid to at-fault drivers, which represented an average payment of \$16,196 per claim and 17.5 per cent of overall benefits paid out to injured motorists
  - the percentage of at-fault claims increased from 5.8 per cent of claims under the 1999 scheme, to 18.75 per cent of claims under the 2017 scheme

<sup>21</sup> Submission 4a, State Insurance Regulatory Authority, p 3.

<sup>22</sup> Submission 4a, State Insurance Regulatory Authority, p 4.

- 42 per cent of people with minor injuries finished their treatment and care claims within 13 weeks after a motor accident, which increased to 75 per cent by 26 weeks, and 98 per cent by 52 weeks.<sup>23</sup>

- 2.5** While SIRA advised that the at-fault statutory benefit claims have been tracking in line with expected claims for the first two years of the scheme<sup>24</sup>, a few stakeholders expressed concerns in relation to access and communication regarding entitlements under the scheme. For example, Mr Martin Rogers, Chief Executive Officer, NSW Taxi Council, suggested that communication regarding the benefits needed improving.<sup>25</sup> Mr Brian Wood, Secretary Motorcycle Council of NSW Incorporated, also explained that many motorcyclists are not aware of their entitlements under the scheme if they are at fault in an accident. He also noted that some injured motorcyclists may be reluctant to make a claim for statutory benefits due to the risk of receiving a negligent driving charge when they file a police report.<sup>26</sup>
- 2.6** Several stakeholders indicated their support for an extension to the current statutory benefit period of six months. Following consultation with its members, the Insurance Council of Australia noted its support for an extension to the no fault statutory benefits beyond 26 weeks for at-fault road users who have sustained a non-minor injury as it believes this would 'provide a fairer and more equitable outcome for all'. It added that a proposed extension would allow non-minor injury at-fault claimants more time for full recovery, providing 'the best opportunity for an injured person to return to previous activities in a reasonable timeframe'.<sup>27</sup>
- 2.7** The Insurance Council of Australia discussed two options for an extension of statutory benefits for at-fault claimants with non-minor injuries – firstly, an extension of all statutory benefits by increasing the time period under the legislation in which entitlements are available or secondly, an extension to the statutory benefit period for treatment and medical care but not income replacement.<sup>28</sup> In terms of a potential extension in the time period, Ms Meghan Isley, a member of the Insurance Council of Australia's NSW CTP insurance committee, proposed an extension of two years, noting that this was a 'compromise position' of insurers.<sup>29</sup>
- 2.8** While the Law Society of NSW generally considered the six month liability period of statutory benefits to be appropriate, it suggested that an extension could be beneficial for claimants who are not wholly or mostly at fault and involved in a dispute with the insurer. It also suggested there would be benefit in this proposal for psychological claims.<sup>30</sup>

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<sup>23</sup> Submission 4a, State Insurance Regulatory Authority, pp 5-6; Evidence, Ms Carmel Donnelly, Former Chief Executive, State Insurance Regulatory Authority, 26 May 2021, p 26; Answers to questions on notice, Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, 21 June 2021, p 3.

<sup>24</sup> Submission 4a, State Insurance Regulatory Authority, p 6.

<sup>25</sup> Evidence, Mr Martin Rogers, Chief Executive Officer, NSW Taxi Council, 25 May 2021, p 12.

<sup>26</sup> Evidence, Mr Brian Wood, Secretary Motorcycle Council of NSW Incorporated, 25 May 2021, pp 11-12.

<sup>27</sup> Submission 6a, Insurance Council of Australia, pp 2-3.

<sup>28</sup> Submission 6a, Insurance Council of Australia, p 3.

<sup>29</sup> Evidence, Ms Meghan Isley, member of the Insurance Council of Australia's NSW CTP insurance committee, 25 May 2021, p 36.

<sup>30</sup> Submission 7, Law Society of NSW, p 5.

- 2.9** The Law Society of NSW explained that psychological injuries may take longer to surface than when a minor injury determination is made or not until after the 26 week benefit period has ended. It contended it would be unfair to deny a claimant benefits due to a delayed onset of symptoms, recommending that statutory benefits be required to continue beyond six months if a claimant is unable to be diagnosed for minor injury purposes and the insurer's minor injury determination is reviewed upon receipt of further evidence demonstrating a non-minor injury exists.<sup>31</sup>
- 2.10** Both SIRA and the Insurance Council of Australia acknowledged the challenges associated with the 26 week statutory benefit period where psychological injuries are concerned. Ms Estelle Pearson, an actuary representing the Insurance Council of Australia, acknowledged the difficulties in decision making for claims involving psychological injuries, pointing to the higher overturn rate on reviews as an indicator that these matters tend to evolve over time as more information becomes known (reviews will be considered later in this chapter).<sup>32</sup> Dr Petrina Casey, Acting Executive Director, State Insurance Regulatory Authority, also acknowledged that there is a higher proportion of those with psychological injuries receiving support after the 26 week period.<sup>33</sup>

## Definition of minor injury

- 2.11** A number of stakeholders raised a concern about the definition of 'minor injury' under the scheme and how the application of this definition can affect an injured person's entitlements.
- 2.12** Generally, statutory benefits will cease at the 26 week mark if an injured person was wholly or mostly at fault for causing an accident or if they have a minor injury. The determination of whether a person has a minor injury will also impact a person's ability to claim for common law damages.
- 2.13** Essentially, three months after a statutory benefit claim is made, an insurer is required to make an assessment about liability and whether an injury is non-minor.<sup>34</sup> This is an important juncture because a common law damages claim is not available to an injured person if the person's only injuries resulting from the motor accident are minor injuries.
- 2.14** Under the *Motor Accident Injuries Act 2017*, a 'minor injury' is defined as a soft tissue injury or a minor psychological or psychiatric injury.<sup>35</sup>

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<sup>31</sup> Submission 7, The Law Society of New South Wales, p 5.

<sup>32</sup> Evidence, Ms Estelle Pearson, Actuary supporting the Insurance Council of Australia, 25 May 2021, p 28.

<sup>33</sup> Evidence, Dr Petrina Casey, Acting Executive Director, State Insurance Regulatory Authority, 26 May 2021, p 41.

<sup>34</sup> Evidence, Ms Isley, 25 May 2021, p 27.

<sup>35</sup> *Motor Accident Injuries Act 2017*, s 1.6

**2.15** The Insurance Council of Australia explained the intention underpinning the introduction of the minor injury approach:

The 'minor injury' definition supports the timely resolution of minor injury claims, reducing the length of time that an injured person needs to spend in the personal injury compensation scheme.<sup>36</sup>

**2.16** Legal stakeholders raised various concerns about the application of the minor injury test, including that it is:

- too severe, capturing a lot of people who do not have genuinely minor injuries<sup>37</sup>
- operating to deprive many genuinely injured people of appropriate benefits and compensation despite the legitimacy and accepted realities of their injuries<sup>38</sup>
- resulting in unfair outcomes for injured people with persistent physical and psychological symptoms who, despite having diminished work capacity after an accident, are nevertheless cut off from access to statutory benefits at 26 weeks and have no recourse to common law claims for damages, because under the legislation, their injuries are considered 'minor'.<sup>39</sup>

**2.17** The NSW Bar Association outlined a number of examples in its submission of problems encountered in relation to the minor injury definition, including insurers not accepting the opinion of a treating doctor, and claims officers and rehabilitation providers attending medical consultations between doctors and a claimant, undermining doctor patient privilege.<sup>40</sup> It also highlighted that 60 per cent of claims are closed after 26 weeks as 'minor injuries' whereas original predictions made by actuaries had this figure at 50 per cent.<sup>41</sup> The NSW Bar Association, in particular, called for the whole person impairment test to be reduced from 10 per cent to 5 per cent.<sup>42</sup>

**2.18** The Law Society of NSW also expressed concerns about the definition, recommending it be amended to address the fact that incapacitated people are being denied proper compensation because their disability does not meet the test imposed by the legislation.<sup>43</sup> The Law Society of NSW called for the minor injury definition to be reformulated. It also suggested a 'narrative test' could be developed instead of the current 'minor injury' definition. In its view, due to the current definition not operating as intended, a narrative test, while not without issues, would be a better

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<sup>36</sup> Evidence, Mr Chris Butel, Chair of the Insurance Council of Australia's NSW CTP Insurance Committee, 25 May 2021, p 25.

<sup>37</sup> Evidence, Ms Elizabeth Welsh, Deputy Chair of the New South Wales Bar Association's Common Law Committee, 25 May 2021, p 37.

<sup>38</sup> Evidence, Mr Timothy Concannon, Chair, Injury Compensation Committee, The Law Society of New South Wales, 25 May 2021, p 38.

<sup>39</sup> Submission 7, The Law Society of New South Wales, p 4.

<sup>40</sup> Submission 8, New South Wales Bar Association, p 2.

<sup>41</sup> Submission 8, New South Wales Bar Association, p 5; Evidence, Mr Robert Sheldon SC, Chair of the NSW Bar Association's Common Law Committee, 25 May 2021, p 52.

<sup>42</sup> Submission 8, New South Wales Bar Association, p 9.

<sup>43</sup> Submission 7, The Law Society of New South Wales, p 6.

approach as it would consider the consequences of the injury on a person, without relying on an impairment threshold.<sup>44</sup>

**2.19** In addition to these concerns, legal stakeholders were united in their view that the current definition of minor injury is particularly inadequate in relation to psychological injuries. Mr Andrew Stone SC, representing the Australian Lawyers Alliance, stated that the 'biggest complaint about the insurer approach to minor psychological injury is that it very much appears as if they are looking for reasons to try to say no'.<sup>45</sup> He added :

They are finding all sorts of nitpicking reasons, and you have non-qualified people trawling through reports from—even when there is a report from the treating GP, the treating psychologist or the treating psychiatrist, you will have the insurer going through it and somebody unqualified writing both a decision and then an internal review decision, saying, 'Well, I don't agree with your approach to the diagnostic criteria in DSM-5. In my view, you have a minor injury. I am cutting you off'. But the insurers are meant to be paying attention to treating practitioners and, if there is any reason they do not have to, they take it.<sup>46</sup>

**2.20** Mr Timothy Concannon, Chair, Injury Compensation Committee, Law Society of NSW, agreed, also noting that many assessments are being completed on inadequate evidence, without significant regard to the treating doctor or psychologist reports.<sup>47</sup> Both these witnesses also noted that one third of minor injury assessments involving a psychological injury are overturned on review.<sup>48</sup>

**2.21** When questioned about the quality of decision making regarding minor injuries, Ms Isley, member of the Insurance Council of Australia's NSW Compulsory Third Party insurance committee, agreed that about a quarter of decisions are overturned on review, but did not consider this to indicate a problem with the original decision making.<sup>49</sup> Ms Pearson, an actuary supporting the Insurance Council of Australia, acknowledged that it can be difficult to make a decision on minor injury where there is a psychological injury involved but attributed the overturn rate to new information becoming available over time.<sup>50</sup>

**2.22** Relevant to this, it is important to note that SIRA conducted a review of the minor injury definition in 2019 and reported that 75 per cent of people with minor injuries had completed their treatment and care by 26 weeks. It did, however, consider that improved data was required from insurers and that it needed to continue to monitor the application of the minor injury test.<sup>51</sup> At a hearing, Ms Carmel Donnelly, Former Chief Executive, State Insurance Regulatory Authority, agreed that the minor injury test, including the assessment of psychological injuries,

<sup>44</sup> Submission 7, The Law Society of NSW, p 6.

<sup>45</sup> Evidence, Mr Andrew Stone SC, Representative, Australian Lawyers Alliance, 25 May 2021, p 42.

<sup>46</sup> Evidence, Mr Stone SC, 25 May 2021, p 42.

<sup>47</sup> Evidence, Mr Concannon, 25 May 2021, p 42; Evidence, Mr Sheldon SC, 25 May 2021, p 44.

<sup>48</sup> Evidence, Mr Stone SC and Mr Concannon, 25 May 2021, p 42.

<sup>49</sup> Evidence, Ms Isley, 25 May 2021, p 28.

<sup>50</sup> Evidence, Ms Pearson, 25 May 2021, p 28.

<sup>51</sup> State Insurance Regulatory Authority, *Review of Minor Injury Definition in the NSW CTP Scheme*, February 2020, p 2, [https://www.sira.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0005/600737/Review-of-Minor-Injury-Definition-in-the-NSW-CTP-Scheme-report.pdf](https://www.sira.nsw.gov.au/__data/assets/pdf_file/0005/600737/Review-of-Minor-Injury-Definition-in-the-NSW-CTP-Scheme-report.pdf)

requires closer examination as an issue, with input from medical experts. She advised that there would be benefit in this being considered as part of the statutory review underway.<sup>52</sup>

## 20 month cooling off

**2.23** Another issue raised by stakeholders in this review was the operation of the 20 month cooling off period, the timeframe in which a person with a non-minor injury must wait before making a claim for damages.<sup>53</sup> SIRA explained that to 'encourage recovery', people with less serious injuries (that is 10 per cent or less impairment) must wait 20 months to lodge a claim for damages with their insurer.<sup>54</sup> A claim for damages must, however, be made within three years of the date of the motor accident.<sup>55</sup>

**2.24** Legal stakeholders questioned the need for the 20 month waiting period before being able to lodge a damages claim and highlighted unintended consequences that arise because of it. Mr Concannon explained that the 20 month delay in making a common law damages claim draws out the resolution of a claim and leaves affected parties in a state of uncertainty for a protracted period.<sup>56</sup>

**2.25** Mr Stone SC called for the removal of the 20 month threshold, pointing to a practice by insurers where they essentially do not take any action to investigate liability on a matter until 20 months has passed, hoping that people will just walk away.<sup>57</sup> In its submission, the Australian Lawyers Alliance questioned the need for the threshold, and why it would be necessary to delay the resolution of damages claims.<sup>58</sup>

**2.26** Similarly, Mr Leigh Davidson, Deputy Chair, Injury Compensation Committee, Law Society of New South Wales, questioned the purpose of the 20 month threshold when people have already satisfied the non-minor injury test, stating:

We already have this minor injury threshold and you have cut a huge portion of people out of the scheme already, so why put further time constraints on those severely injured people actually getting their compensation? It just does not make sense.<sup>59</sup>

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<sup>52</sup> Evidence, Ms Donnelly, 26 May 2021, pp 41-42.

<sup>53</sup> State Insurance Regulatory Authority, *Apply for common law damages (lump sum compensation)*, <https://www.sira.nsw.gov.au/claiming-compensation/motor-accidents-injury-claims/from-1-december-2017/lump-sum-compensation>

<sup>54</sup> Submission 4, State Insurance Regulatory Authority, p 7.

<sup>55</sup> State Insurance Regulatory Authority, *Apply for common law damages (lump sum compensation)*, <https://www.sira.nsw.gov.au/claiming-compensation/motor-accidents-injury-claims/from-1-december-2017/lump-sum-compensation>

<sup>56</sup> Evidence, Mr Concannon, 25 May 2021, p 37.

<sup>57</sup> Evidence, Mr Stone SC, 25 May 2021, pp 38-39.

<sup>58</sup> Submission 10, Australian Lawyers Alliance, p 42.

<sup>59</sup> Evidence, Mr Leigh Davidson, Deputy Chair, Injury Compensation Committee, Law Society of NSW, 25 May 2021, p 39.

## Reviews and disputes

- 2.27** Stakeholders also raised concerns about the timeliness and high overturn rates associated with internal reviews and disputes.
- 2.28** If a claimant is dissatisfied with an insurer's decision regarding their claim, they can seek an internal review. If they are dissatisfied with the outcome of an internal review, they can take their matter to the Personal Injury Commission (PIC), formerly known as the Dispute Resolution Service.<sup>60</sup>
- 2.29** Information provided in the submission from SIRA indicates the following performance in respect of reviews and disputes:
- insurers are getting better at meeting the review timeframes
  - seventy six per cent of matters are upheld by internal review decision makers
  - this figure decreases to 59 per cent of matters being upheld at the dispute resolution phase
  - at-fault decisions have the highest rate of overturn at dispute resolution phase, with 66 per cent overturned in favour of the claimant.<sup>61</sup>
- 2.30** The Australian Lawyers Alliance was concerned about insurer compliance with internal review timelines, particularly for two insurers. It also questioned the level of regulatory action taken by SIRA in relation to these compliance issues.<sup>62</sup>
- 2.31** The Law Society of New South Wales also expressed concern about the timeframes for decisions at the dispute resolution phase and said that it understands that there is a backlog of over six months for matters before the PIC.<sup>63</sup>
- 2.32** In discussing the overturn rates, Mr Stone SC said that information from SIRA's website suggests that matters proceeding to the PIC are overturned at a rate of 41 per cent. According to Mr Stone SC, this is an under-estimation because it does not take account of those where the insurer has backed down before PIC's involvement. In his view, insurers are getting the decisions wrong two thirds of the time.<sup>64</sup> In the submission from the Australian Lawyers Alliance, it was explained:

There have been numerous examples of CTP insurers denying liability at first instance, continuing to deny liability on internal review, but accepting liability after a DRS application has been lodged and before a DRS determination has been made.<sup>65</sup>

<sup>60</sup> State Insurance Regulatory Authority, *Disputes and Complaints*, <https://www.sira.nsw.gov.au/disputes-and-complaints>

<sup>61</sup> Submission 4, State Insurance Regulatory Authority, pp 19-21.

<sup>62</sup> Submission 10, Australian Lawyers Alliance, p 14.

<sup>63</sup> Submission 7, The Law Society of New South Wales, p 8.

<sup>64</sup> Evidence, Mr Stone SC, 25 May 2021, p 41.

<sup>65</sup> Submission 10, Australian Lawyers Alliance, p 33.

- 2.33** Considering the delays and high overturn rates, the Australian Lawyers Alliance questioned the efficacy of the internal review process and suggested that a claimant should be able to proceed straight to an independent, external decision maker at the PIC.<sup>66</sup>
- 2.34** During the hearings, concerns about the internal review process were put to the Insurance Council of Australia. Ms Isley acknowledged that 22 per cent of decisions are overturned on review, with 11 per cent of these relating to minor injury decisions. She also confirmed that there is a higher overturn rate for at-fault decisions and treatment and care. She advised that the overturn rate involving a psychological injury is 35 per cent.<sup>67</sup>
- 2.35** Ms Isley did not consider the overturn rate to point to problems with the review process. She suggested that the rates can be attributed to the fact that new information can be obtained throughout the internal review process:
- The internal review process is important to ensure that the right decision is being made. There are times when new information is being presented at the internal review process, so it is important to consider that the information that the first decision is being made on may be different to what the internal review decision-maker has. So that will account for some of the overturn rate.<sup>68</sup>
- 2.36** Ms Isley also referred to a review of internal decisions undertaken by Mr John Watts at SIRA's request. She advised that the finding of this review showed that 'insurers are independent in their decision-making process ... and demonstrating the required skills to make fair and just determinations'.<sup>69</sup>
- 2.37** SIRA agreed with the Insurance Council of Australia on this proposition.<sup>70</sup> Ms Donnelly also confirmed that SIRA has been monitoring the review process with a particular focus on timeliness. Ms Pearson pointed to the latest report from SIRA showing that 90 per cent of reviews are being completed in the timeframe, which was an improvement from 60 per cent the year before.<sup>71</sup>
- 2.38** Ms Donnelly acknowledged concerns in relation to the overturn rate and stated that SIRA is actively analysing those outcomes to 'get to the bottom of what is driving those results'.<sup>72</sup> Ms Donnelly acknowledged that the internal review process has been the subject of criticism and while she indicated her support for and the value of the review process, she acknowledged that the concerns should be explored further during the statutory review underway.<sup>73</sup>

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<sup>66</sup> Submission 10, Australian Lawyers Alliance, p 33.

<sup>67</sup> Evidence, Ms Isley, 25 May 2021, p 28.

<sup>68</sup> Evidence, Ms Isley, 25 May 2021, p 28.

<sup>69</sup> Evidence, Ms Isley, 25 May 2021, p 29.

<sup>70</sup> Evidence, Dr Casey, 26 May 2021, p 28.

<sup>71</sup> Evidence, Ms Pearson, 25 May 2021, p 29.

<sup>72</sup> Evidence, Ms Donnelly, 26 May 2021, p 29.

<sup>73</sup> Evidence, Ms Donnelly, 26 May 2021, pp 28-29.

## Legal support

**2.39** Related to concerns about the internal review process, legal stakeholders were consistent in their views that, owing to the lack of legal support, claimants are at a disadvantage when navigating the scheme and seeking reviews.<sup>74</sup>

**2.40** According to the New South Wales Bar Association three in four people who are injured in motor accidents do not have a lawyer and injured people are told they do not need one.<sup>75</sup> Legal stakeholders expressed that, because of the complexity of the scheme and the decision to reduce the role of lawyers, most people will struggle to understand their rights and entitlements.<sup>76</sup> The New South Wales Bar Association stated:

... there are so many friction points in the system that the insurer has multiple opportunities to reject a claim. Their resources extend to commonly using traffic reconstruction experts and interviews with police officers to decide that an injured person is at fault for the accident, forensic accountants to reject a claim for loss of income, and medical specialists to overrule a treating doctor's recommendations. Each of these areas of dispute would be time consuming and wearing for anyone but even more so for a person who has been injured and is without legal representation.<sup>77</sup>

**2.41** Ms Elizabeth Welsh, Deputy Chair of the NSW Bar Association's Common Law Committee, noted that SIRA is still promoting that people do not need to have a lawyer and that they can navigate the scheme on their own.<sup>78</sup> Legal representatives pointed to the complexity of the scheme and the power imbalance that exists between the injured person and the insurance company as an inequity in the scheme. The New South Wales Bar Association added:

A clear culture has developed in claims handling whereby insurers routinely deploy their access to experts, police and the medical profession to defeat a claim. Rather than an exchange of information as promised, what has arisen is a quasi-forensic approach fuelled by an adversarial approach where in the vast majority of cases only the insurer is properly equipped and experienced. This imbalance has heightened the inequity of the scheme.<sup>79</sup>

**2.42** Legal stakeholders discussed the internal review outcomes as an indicator of these inequities. Mr Stone SC summarised the impact of injured people not having legal support:

There is a less than 30 per cent representation rate across statutory benefits disputes. Where people are represented they are getting better outcomes. Where they are represented they get a better overturn rate on internal review. Where they are represented they get a better overturn rate of the internal review at DRS, now the PIC. Giving people assistance leads to better and different outcomes.<sup>80</sup>

<sup>74</sup> Evidence, Ms Welsh, 25 May 2021, p 38; Evidence, Mr Concannon, 25 May 2021, p 37; Evidence, Mr Stone SC, 25 May 2021, p 37.

<sup>75</sup> Submission 8, New South Wales Bar Association, pp 4-5.

<sup>76</sup> Submission 8, New South Wales Bar Association, pp 4-5; Evidence, Mr Concannon, 25 May 2021, p 38.

<sup>77</sup> Submission 8, New South Wales Bar Association, p 5.

<sup>78</sup> Evidence, Ms Welsh, 25 May 2021, p 43.

<sup>79</sup> Submission 8, New South Wales Bar Association, p 5.

<sup>80</sup> Evidence, Mr Stone SC, 25 May 2021, p 49.

- 2.43** With a contrasting perspective, Ms Isley noted that it was the Insurance Council of Australia's view that internal reviews are designed to be informal and inquisitorial and that legal assistance should not be required.<sup>81</sup>
- 2.44** However, Ms Donnelly from SIRA advised the committee that it is cognisant of this matter, with a specific independent review underway to consider the issue of legal support for claimants.<sup>82</sup> Ms Donnelly also pointed to the Statutory Review as another avenue for these issues to be considered.<sup>83</sup>

## Premiums, profits and data

- 2.45** A key objective underpinning the reform of the CTP scheme in 2017 was to reduce the cost of insurance premiums for motorists and to manage insurer profits by providing a greater proportion of benefits to motorists.<sup>84</sup> Noting SIRA's position that it is still too soon to assess the performance of the 2017 scheme<sup>85</sup>, the committee was nevertheless interested in the current status of premiums and insurer profits and the way in which data is being used to assess these figures.
- 2.46** SIRA's Former Chief Executive, Ms Donnelly, provided information to the committee regarding current premiums. She told the committee that the average green slip premium is down by \$149 since the new scheme commenced in 2017.<sup>86</sup> Ms Donnelly advised that Green Slip premiums have reduced by 34 percent under the 2017 scheme, from an average of \$635 pre reform (for all vehicles), to an average of \$486 at 30 June 2020. She also said that 59 cents from each dollar of premiums is being paid out in claims.<sup>87</sup>
- 2.47** Some stakeholders acknowledged the decrease in premiums but raised concerns about the amounts being paid back to motorists in claims and the profits being made by insurers.<sup>88</sup> Ms Welsh, representing the New South Wales Bar Association, captured these concerns in her evidence to the committee:

This has to be the most profitable venture that each of them has on their books at the moment. Their profits are guaranteed. The objective of lower premiums has been achieved. It is only the delivery of benefits that has not been achieved.<sup>89</sup>

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<sup>81</sup> Evidence, Ms Isley, 25 May 2021, p 30.

<sup>82</sup> Submission 4, State Insurance Regulatory Authority, p 28.

<sup>83</sup> Evidence, Ms Donnelly, 26 May 2021, pp 26 and 40.

<sup>84</sup> State Insurance Regulatory Authority, *Why reform was needed*, <https://www.sira.nsw.gov.au/fraud-and-regulation/reforms/ctp-green-slip-reforms/why-reform-was-needed>

<sup>85</sup> State Insurance Regulatory Authority, *CTP scheme performance report 2020*, May 2021, p 5, [https://www.sira.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0004/984604/2017-CTP-Scheme-Performance-Report-2020.pdf](https://www.sira.nsw.gov.au/__data/assets/pdf_file/0004/984604/2017-CTP-Scheme-Performance-Report-2020.pdf)

<sup>86</sup> Evidence, Ms Donnelly, 26 May 2021, p 26.

<sup>87</sup> Evidence, Ms Donnelly, 26 May 2021, p 37.

<sup>88</sup> See, for example, Evidence, Mr Stone SC, 25 May 2021, pp 44-45; Submission 3, Motorcycle Council of New South Wales, p 3; Evidence, Ms Welsh, 25 May 2021, p 38.

<sup>89</sup> Evidence, Ms Welsh, 25 May 2021, p 38.

**2.48** According to the Australian Lawyers Alliance, under the old scheme insurers consistently filed projected profit figures with SIRA ranging from 8 to 10 per cent, whereas the average profit over an 18 year period was 20 per cent.<sup>90</sup>

**2.49** To address this issue and prevent excess profits being collected by insurers, the 2017 scheme provided certain powers to SIRA. Referred to by some stakeholders as the 'profit clawback mechanism',<sup>91</sup> the transitional excess profit and loss mechanism (TEPL) was included in the new scheme to prevent excess profits being collected by insurers.<sup>92</sup>

**2.50** Ms Donnelly explained that SIRA, in conjunction with independent actuaries, undertakes assessments of the accident years to assess whether or not there has been excess profits that would trigger SIRA to take action to recover those profits.<sup>93</sup> SIRA further explained:

Under the TEPL mechanism, where the collective profit of the insurers is deemed to be excessive (i.e. above ten percent), SIRA will recoup excess profit from those insurers who are above the target profit margin of eight percent. Conversely, where insurer losses are excessive, (collective profit below three percent), SIRA will reimburse an insurer a component of their losses by way of a future levy adjustment.<sup>94</sup>

**2.51** In discussing insurer profits at hearing, Ms Donnelly reassured the committee that SIRA would act swiftly to recover profits if it was warranted.<sup>95</sup> Ms Donnelly explained that if excess profits are identified an insurer would be required to pay the amount back to the SIRA fund which would in turn be offset against the levy.<sup>96</sup>

**2.52** Some stakeholders, however, raised concerns about SIRA's use of TEPL, as well as the data relied upon by SIRA to determine premiums from which profits have flowed. Examples include:

- SIRA not publishing a range of insurer profit, filing and loss ratio data, despite it having the power to do so, with this making it difficult to assess how the scheme is performing<sup>97</sup>
- a lack of information available to know whether insurers are sticking to the 8 per cent profit that they agreed to or whether the promised benefits are being paid to motorcyclists<sup>98</sup>
- claims being less than predictions, which amounts to greater profit for insurers.<sup>99</sup>

<sup>90</sup> Submission 10, Australian Lawyers Alliance, p 5.

<sup>91</sup> Evidence, Mr Wood, 25 May 2021, p 9; Submission 10, Australian Lawyers Alliance, p 5.

<sup>92</sup> Submission 4, State Insurance Regulatory Authority, p 17.

<sup>93</sup> Evidence, Ms Donnelly, 26 May 2021, p 26.

<sup>94</sup> State Insurance Regulatory Authority, *CTP scheme performance report 2020*, May 2021, p 21, [https://www.sira.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0004/984604/2017-CTP-Scheme-Performance-Report-2020.pdf](https://www.sira.nsw.gov.au/__data/assets/pdf_file/0004/984604/2017-CTP-Scheme-Performance-Report-2020.pdf)

<sup>95</sup> Evidence, Ms Donnelly, 26 May 2021, p 26.

<sup>96</sup> Evidence, Ms Donnelly, 26 May 2021, p 39.

<sup>97</sup> Submission 8, New South Wales Bar Association, pp 5-6.

<sup>98</sup> Evidence, Mr Wood, 25 May 2021, pp 8-9; Submission 3, Motorcycle Council of New South Wales, p 3.

<sup>99</sup> Evidence, Mr Stone SC, 25 May 2021, p 45.

**2.53** In its submission, the Australian Lawyers Alliance set out its views regarding the approach by SIRA to assess performance and determine insurer profits based on estimates that continue to be adjusted to take account of actual experience. It raised concerns with SIRA's approach to continually revise estimates of expected figures to align with actual experience stating that instead of getting a proper picture of scheme performances, insurer profits will be disguised rather than highlighted.<sup>100</sup>

**2.54** This sentiment was echoed by Ms Welsh who contended that SIRA changes the underlying assumptions over time and adjust their assumptions in line with the actual experience. She stated that 'they are just changing the numbers to fit the results'.<sup>101</sup> Mr Sheldon SC similarly stated:

They are back analysing the prediction, which is why they are converging on the reality. If you go back to the original assumptions underlying the scheme, they are miles away from this.... The line keeps moving to get closer to what is happening, obfuscating the difference between what was predicted years ago and what has actually transpired.<sup>102</sup>

**2.55** Legal stakeholders all agreed that greater transparency regarding what the expectations were when the premiums were set and how those expectations are tracking now is required. Ms Welsh noted that the guidelines set out the assumptions that are made for the purpose of the premium calculation and that there is provision there for the actual experience to be added to the table. She said that 'actual experience' is never there, rather there is just a change to the assumption in the original column, 'so it becomes very difficult to follow what is going on'.<sup>103</sup> Ms Welsh summed up these issues by stating:

We tried to grapple with this in paragraphs 45 to 47 of our submissions on how much was allocated and how much has been spent. At that stage we thought that \$400 million should have been spent on care by the time of our submissions; the real figure was \$112 million. We thought \$323 million should have been spent on treatment, which is the thing that is being paid, which should be solid; it was only \$260 million. We say that whenever you go back to what was initially predicted and if you can actually get the figure on what the reality is, you will find it is less. There will not be an example where that is wrong.<sup>104</sup>

**2.56** In responding to the concerns raised about data and the impact this has on assessing insurer profits, Ms Donnelly acknowledged that the profit income retained by insurers can be attributed to not having to pay out the number of no-fault claims that were expected or predicted, but told the committee that there are many factors at play. Ms Donnelly responded to concerns about the shifting of parameters, advising that they need to be continually adjusted so that excess premiums are not charged. She explained:

... it is important that we keep on reassessing and fine-tuning those estimates so that you are correctly feeding into the premium guidance and the assessment of profit estimates that reflect what is happening with the scheme now, not the mature scheme

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<sup>100</sup> Submission 10, Australian Lawyers Alliance, p 6.

<sup>101</sup> Evidence, Ms Welsh, 25 May 2021, p 46.

<sup>102</sup> Evidence, Mr Sheldon SC, 25 May 2021, p 45.

<sup>103</sup> Evidence, Ms Welsh, 25 May 2021, p 47.

<sup>104</sup> Evidence, Ms Welsh, 25 May 2021, p 47.

and not what we thought first would be the honeymoon period parameters but what is actually happening, and then fine-tuning those estimates for the next period.<sup>105</sup>

**2.57** Ms Donnelly also offered the following explanation on the way SIRA approaches the data and estimates:

If we go back to the first estimate of what would be a mature scheme—say 17,000 claims—we have never used that figure in driving the insurer premiums because we always knew it would take some time for a growth in, for instance, at-fault claims. We used a figure that was much more like 13,000-something, and we have been fine-tuning that through the actual experience and then making sure that we are driving the premiums down further. But we are not assessing profit on either the estimates of what would happen in the scheme in eight or nine years after it started or the estimates that we had a couple of years ago. We are doing it based on what is happening now so that it is as close as possible to an accurate estimate of what the premiums should be and what the profit is.<sup>106</sup>

**2.58** Ms Pearson, an actuary supporting the Insurance Council of Australia, recognised the significant gap in insurance premiums collected and payments going out, however she explained that the payment figures continue to increase (as claims come in). While she did not comment on the amount that would be made in insurer profits, she explained that they estimated payments to claimants being at about 70 per cent of the premium income. Mr Chris Butel, Chair of the Insurance Council of Australia's NSW CTP insurance committee, also stated that it is too early to be able to determine profits, given there has only been 24 per cent of payments.<sup>107</sup>

**2.59** Ms Donnelly advised that SIRA is assessing these matters all of the time to consider whether it needs to trigger the TEPL provisions, noting that SIRA will undertake this assessment process on each accident year and will not wait for 7, 8 or 9 years until they have 100 per cent clarity regarding the ultimate profits.<sup>108</sup>

## Road safety and concerns from specific road users

**2.60** This final section sets out some other issues raised by stakeholders in relation to the operation of the compulsory third party insurance scheme.

### Road safety

**2.61** Citing the cost of road trauma to the Australian economy as \$30 billion, the Australasian College of Road Safety identified opportunities for the CTP scheme and insurers to promote road safety, thus reducing the number of accidents and claims.<sup>109</sup> Mr Michael Timms, Treasurer and Committee Member, Australasian College of Road Safety, New South Wales Chapter,

<sup>105</sup> Evidence, Ms Donnelly, 26 May 2021, pp 36 and 39.

<sup>106</sup> Evidence, Ms Donnelly, 25 May 2021, pp 39-40.

<sup>107</sup> Evidence, Ms Pearson, 25 May 2021, p 34; Evidence, Mr Butel, 25 May 2021, p 34.

<sup>108</sup> Evidence, Ms Donnelly, 26 May 2021, p 38.

<sup>109</sup> Evidence, Mr Michael Timms, Treasurer and Committee Member, Australasian College of Road Safety, New South Wales Chapter, 25 May 2021, p 8.

emphasised that the best way to sustainably deliver high-level post-crash care and lower CTP premiums is by reducing and eventually eliminating road trauma in New South Wales.<sup>110</sup>

- 2.62** The Australasian College of Road Safety was of the view that the compulsory nature of the scheme offers an opportunity to provide drivers with information about safer vehicles. It noted that just under half of young drivers involved in fatal crashes were driving a vehicle made before 2005, where safety features were significantly less.<sup>111</sup> The College, therefore, advocated for strategies that 'put older vehicles out to pasture' including better information to support drivers in deciding what cars to buy as well as incentives to buy newer, safer vehicles.<sup>112</sup>

### **Point to point transport sector**

- 2.63** The NSW Taxi Council advised that it has been working with SIRA to address a number of concerns it has about inequities across the point to point transport sector, including with respect to the CTP and workers compensation scheme. It stated that while progress on these issues has been made, it remains concerned about the inequities that stem from all point to point providers not being grouped in class 1 for CTP purposes.<sup>113</sup>
- 2.64** In explaining the inequities, Mr Martin Rogers, Chief Executive Officer, NSW Taxi Council, noted that the biggest cost to taxi operators is insurance.<sup>114</sup> He said that the playing field should be levelled by having all point to point providers in Class 1 for CTP insurance:

We would be saying that to fix the issues ... it is CTP class 1 for everyone. Yes, it would increase policies across all vehicles by a few dollars per year, but it is a way that then we can contribute. It is a way in which it does not matter whether you are community transport, whether you are a courtesy bus, whether you are a taxi, a hired vehicle or a ride-sourcing vehicle, you are all in the market together paying the same and you can then compete on other things, not just the cost of CTP.<sup>115</sup>

- 2.65** SIRA advised that taxi premiums are higher than those of other passenger vehicles because they are more likely to have an accident in which they are at fault. SIRA provided a comparison:

For comparison, as at April 2020, the average premium for a metropolitan class 1 passenger vehicle is \$514 compared to \$3,730 for a metropolitan taxi. This is largely because metropolitan taxis have 12 times the claims frequency of metropolitan passenger vehicles.<sup>116</sup>

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<sup>110</sup> Evidence, Mr Timms, 25 May 2021, p 8.

<sup>111</sup> Evidence, Mr Timms, 25 May 2021, p 8.

<sup>112</sup> Evidence, Mr Timms, 25 May 2021, p 15.

<sup>113</sup> Evidence, Mr Rogers, 25 May 2021, p 9.

<sup>114</sup> Evidence, Mr Rogers, 25 May 2021, p 17.

<sup>115</sup> Evidence, Mr Rogers, 25 May 2021, p 17.

<sup>116</sup> Submission 4, State Insurance Regulatory Authority, p 30.

**2.66** SIRA did, however, acknowledge that information was still being gathered on this issue, although it noted early data which suggested there was a three times higher claims frequency rate when comparing rideshare vehicles to standard passenger vehicles. SIRA advised that it is currently working with the industry to resolve these issues.<sup>117</sup>

### Motorcyclists

**2.67** The Motorcycle Council of NSW expressed difficulty with assessing the scheme's impact on motorcyclists because of the data available to it to make these assessments. It suggested there was a lack of transparency in relation to the impact or benefits for motorcyclists, highlighting the TEPL process as an example:

It is disappointing that the transitional mechanism only examines the insurers profit for the scheme as a whole. This means there is no guarantee that insurers are still not making super profits in excess of the allowable 8% from motorcycle policies.<sup>118</sup>

**2.68** The Council also raised concerns about:

- motorcyclists not being aware that they can make a claim where they are at fault (for example for single-vehicle accidents) and that they may not exercise these rights out of fear of receiving a negligent driving charge by police (as raised earlier)<sup>119</sup>
- the NSW CTP insurance not covering a motorcyclist for a crash that occurs interstate and the lack of communication about this to road users<sup>120</sup>
- the cost of accidents being borne by motorcycle policy holders where in fact the fault can be attributed to the Road Authority on the basis that it failed to provide a safe road network.<sup>121</sup>

### Committee comment

**2.69** The committee acknowledges the support of stakeholders in conducting this review, and the wide-ranging evidence received in relation to the scheme's performance. We note the many competing interests and views and acknowledge the way in which all parties are working together to continue to strengthen the scheme's operations, for the benefit of those injured in motor vehicle accidents in New South Wales.

**2.70** The committee notes that many, if not all, of the issues raised during this inquiry will be considered during the current independent statutory review of the *Motor Accident Injuries Act 2017*. We note that there is further consultations that will take place as part of that statutory review. To take advantage of the further consultations, and noting that the review is effectively paralleling this committee's deliberations, rather than recommending these changes be

<sup>117</sup> Submission 4, State Insurance Regulatory Authority, p 30.

<sup>118</sup> Submission 3, Motorcycle Council of New South Wales, p 3.

<sup>119</sup> Evidence, Mr Wood, 25 May 2021, pp 10-12.

<sup>120</sup> Submission 3, Motorcycle Council of New South Wales, p 4.

<sup>121</sup> Submission 3, Motorcycle Council of New South Wales, p 5.

implemented immediately, we recommend that the issues outlined below form a part of the review's work.

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### **Recommendation 1**

That the current statutory review of the *Motor Accident Injuries Act 2017* closely consider the following issues for reforms to the scheme:

- whether the no fault statutory benefit period should be expanded to a minimum of 52 weeks
  - how the minor injury definition can be amended to ensure it does not exclude those with genuine minor injuries, including in relation to psychological claims
  - whether the 20 month cooling off period should be reduced or abolished, to facilitate the faster resolution of some claims
  - the provision of legal support to claimants in the scheme, particularly in relation to disputes, including the internal review process
  - how to improve transparency and accountability in relation to insurer profits and premium setting.
- 

- 2.71** The committee will continue to monitor premium pricing and insurer profits, in particular, and concerns related to SIRA's data and the impact this is having on stakeholders assessing the performance of the scheme. While we acknowledge the long-tailed nature of the scheme and the uncertainty that exists while scheme maturity is achieved, we agree that greater transparency is necessary. In this regard, we encourage SIRA to closely consider the stakeholder feedback provided as part of this review to ensure that any assessments regarding scheme performance are undertaken on transparent data and assumptions.
- 2.72** The committee will also continue to monitor how the PIC is performing in terms of resolving disputes, noting concerns in this review about a backlog in matters.
- 2.73** Finally, the committee acknowledges the valuable input and perspective provided by the Australasian College of Road Safety in this review. We agree that improving road safety is paramount in reducing CTP claims. We encourage greater road safety initiatives to be undertaken, and support drivers to be educated about their responsibilities while on the road. So too, we support greater education in terms of injured people being advised about their entitlements if accidents occur. We encourage both SIRA and insurers to expand their work in this area.

## Appendix 1 Submissions

No.	Author
1	Carers NSW Australia
2	Australasian College of Road Safety - New South Wales Chapter
3	Motorcycle Council of New South Wales Incorporated
4	State Insurance Regulatory Authority (SIRA)
4a	State Insurance Regulatory Authority (SIRA)
5	NSW Taxi Council
6	Insurance Council of Australia
6a	Insurance Council of Australia
7	The Law Society of New South Wales
7a	The Law Society of New South Wales
8	New South Wales Bar Association
8a	New South Wales Bar Association
9	Suncorp Group Limited
10	Australian Lawyers Alliance

## Appendix 2 Witnesses at hearings

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
<b>Tuesday 25 May 2021 Macquarie Room Parliament House, Sydney</b>	Dr Nicole Brooke	Chief Executive Officer, Australian Community Industry Alliance
	Mr Michael Timms	Treasurer and Committee Member, Australasian College of Road Safety – New South Wales Chapter
	Mr Kevin Henry	Chairman, Motorcycle Council of New South Wales Incorporated
	Mr Brian Wood	Secretary, Motorcycle Council of New South Wales Incorporated
	Mr Martin Rogers	Chief Executive Officer, NSW Taxi Council
	Mr Nick Abraham	Deputy Chief Executive Officer, NSW Taxi Council
	Mr Chris Butel	Chair of the Insurance Council of Australia's NSW CTP committee
	Ms Meghan Isley	Committee member of the Insurance Council of Australia's NSW CTP committee
	Ms Estelle Pearson	Actuary supporting the Insurance Council of Australia
	Mr Andrew Stone SC	Representative, Australian Lawyers Alliance
	Mr Robert Sheldon SC	Chair of the New South Wales Bar Association's Common Law Committee, New South Wales Bar Association
	Miss Elizabeth Welsh	Deputy Chair of the New South Wales Bar Association's Common Law Committee, New South Wales Bar Association
	Mr Timothy Concannon	Chair, Injury Compensation Committee, The Law Society of New South Wales

Date	Name	Position and Organisation
	Mr Leigh Davidson	Deputy Chair, Injury Compensation Committee, The Law Society of New South Wales
<b>Wednesday 26 May 2021 Macquarie Room Parliament House, Sydney</b>	Mr Richard Harding	Chief Executive Officer and Managing Director, icare
	Dr Nick Allsop	Group Executive, Care and Community, icare
	Ms Rashi Bansal	Group Executive, Organisational Performance, icare
	Ms Suzanne Lulham	General Manager Care Innovation and Excellence, icare
	Ms Carmel Donnelly	Chief Executive, State Insurance Regulatory Authority (SIRA)
	Dr Petrina Casey	Acting Executive Director, State Insurance Regulatory Authority (SIRA)

## Appendix 3 Minutes

### Minutes no. 1

Thursday 30 May 2019

Standing Committee on Law and Justice

Members' Lounge, Parliament House, Sydney, 1.31 pm

#### 1. Members present

Mr Blair, *Chair*

Mr Donnelly, *Deputy Chair*

Mr D'Adam

Mr Fang

Mr Khan

Mr Roberts

Mr Shoebridge

Mrs Ward

#### 2. Tabling of resolution establishing the committee

Chair to table the resolution of the House establishing the committee, which reads as follows:

##### Appointment

1. Three standing committees are appointed as follows:

- (a) Law and Justice Committee,
- (b) Social Issues Committee, and
- (c) State Development Committee.

##### Law and Justice Committee

2. The committee may inquire into and report on:

- (a) legal and constitutional issues in New South Wales, including law reform, parliamentary matters, criminal law, administrative law and the justice system, and
- (b) matters concerned with industrial relations and fair trading.

3. For the purposes of section 27 of the State Insurance and Care Governance Act 2015, the committee is the designated Legislative Council committee to supervise the operation of the insurance and compensation schemes established under New South Wales workers' compensation and motor accidents legislation:

- (a) the Workers' Compensation Scheme,
- (b) the Workers' Compensation (Dust Diseases) Scheme,
- (c) the Motor Accidents Scheme, and
- (d) the Motor Accidents (Lifetime Care and Support) Scheme.

4. In exercising the supervisory function outlined in paragraph 3, the committee:

- (a) does not have the authority to investigate a particular compensation claim, and
- (b) must report to the House in relation to the operation of each of the schemes at least every two years every Parliament.

.....

##### Referral of inquiries

7. A committee:

- (a) is to inquire into and report on any matter relevant to the functions of the committee which is referred to the committee by resolution of the House,
- (b) may inquire into and report on any matter relevant to the functions of the committee which is referred by a Minister of the Crown, and

- (c) may inquire into and report on any annual report or petition relevant to the functions of the committee which has been laid upon the Table of the Legislative Council.
8. Whenever a committee resolves to inquire into a matter, under paragraph 7(b) or 7(c), the terms of reference or the resolution is to be reported to the House on the next sitting day.

#### **Powers**

9. The committee has power to make visits of inspection within New South Wales and, with the approval of the President, elsewhere in Australia and outside Australia.

#### **Membership**

10. Each committee is to consist of eight members, comprising:
- (a) four government members,
  - (b) two opposition members, and
  - (c) two crossbench members.

#### **Chair and Deputy Chair**

11. (a) The Leader of the Government is to nominate in writing to the Clerk of the House the Chair of each committee.
- (b) The Leader of the Opposition is to nominate in writing to the Clerk of the House the Deputy Chair of each committee.

#### **Quorum**

12. The quorum of a committee is three members, of whom two must be government members and one a non-government member.

#### **Sub-committees**

13. A committee has the power to appoint sub-committees.

#### **Conduct of committee proceedings**

14. Unless the committee decides otherwise:
- (a) submissions to inquiries are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration,
  - (b) attachments to submissions are to remain confidential,
  - (c) the Chair's proposed witness list is to be circulated to provide members with an opportunity to amend the list, with the witness list agreed to by email, unless a member requests the Chair to convene a meeting to resolve any disagreement,
  - (d) transcripts of evidence taken at public hearings are to be published,
  - (e) supplementary questions are to be lodged with the Committee Clerk within two days, excluding Saturday and Sunday, following the receipt of the hearing transcript, with witnesses requested to return answers to questions on notice and supplementary questions within 21 calendar days of the date on which questions are forwarded to the witness, and
  - (f) answers to questions on notice and supplementary questions are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration.

### **3. Committee Chair and Deputy Chair**

The committee noted that the following members were nominated by the Leader of the Government and the Leader of the Opposition as Chair and Deputy Chair of the Standing Committee on Law and Justice:

- Mr Blair (Chair)
- Mr Donnelly (Deputy Chair).

#### 4. **Conduct of committee proceedings – Media**

Resolved, on the motion of Mr Shoebridge: That unless the committee decides otherwise, the following procedures are to apply for the life of the committee:

- the committee authorise the filming, broadcasting, webcasting and still photography of its public proceedings, in accordance with the resolution of the Legislative Council of 18 October 2007
- the committee webcast its public proceedings via the Parliament's website, where technically possible
- committee members use social media and electronic devices during committee proceedings unobtrusively, to avoid distraction to other committee members and witnesses
- media statements on behalf of the committee be made only by the Chair.

#### 5. **Correspondence**

##### *Received:*

- 6 February 2019 – Email from an employee of Ausgrid, to committee, in relation to parking fines to electrical network provider vehicles when undertaking maintenance of the electrical network
- 4 February 2019 – Email from a practicing advocate at Nashik Maharashtra, to committee, in relation to the Conciliation Act 1996
- 20 February 2019 – Letter from an individual to the Law and Justice Committee, seeking an investigation of the Executive Director and Registrar of the Supreme Court and the Attorney General .

##### *Sent:*

- 26 February 2019 – Letter from Mr David Blunt, Clerk of the Parliaments, to the Hon Don Harwin MLC, Leader of the Government in the Legislative Council, requesting a government response to the report of the 2018 review of the Dust Diseases Scheme
- 26 February 2019 – Letter from Mr David Blunt, Clerk of the Parliaments, to the Hon Don Harwin MLC, Leader of the Government in the Legislative Council, requesting a government response to the report of the 2018 review of the Lifetime Care and Support Scheme
- 1 March 2019 – Letter from Clerk Assistant – Committees responding to the individual who wrote to the Law and Justice Committee, seeking an investigation of the Executive Director and Registrar of the Supreme Court and the Attorney General.

Resolved, on the motion of Mr Shoebridge: That the following correspondence be kept confidential, as per the recommendation of the secretariat, as it contains identifying and/or sensitive information:

- 20 February 2019 – Letter from an individual to the Law and Justice Committee, seeking an investigation of the Executive Director and Registrar of the Supreme Court and the Attorney General
- 1 March 2019 – Letter from Clerk Assistant – Committees responding to the individual who wrote to the Law and Justice Committee, seeking an investigation of the Executive Director and Registrar of the Supreme Court and the Attorney General.

#### 6. **Legacy report of 56th Parliament**

The committee noted the Legacy Report detailing the committee's work in the previous Parliament.

#### 7. **Oversight reviews and timeframes**

The committee discussed timeframes for the next reviews of statutory schemes, specifically considering Recommendation 2 of its 2018 Review of the Dust Diseases scheme:

That the Standing Committee on Law and Justice's next review of the Workers Compensation (Dust Diseases) Scheme focus on silica dust and silicosis, particularly in the manufactured stone industry.

Resolved, on the motion of Ms Ward: That the committee's next review of the Workers Compensation (Dust Diseases) Scheme focus on silica dust and silicosis, particularly in the manufactured stone industry, and open for submissions at the beginning of July 2019.

Resolved, on the motion of Ms Ward: That the committee write to icare, ccing the Hon Victor Dominello MP, Minister for Customer Service, seeking an update on the establishment of a dust diseases register, acknowledging that the committee has not yet received the government response to the report on the 2018

review of the dust diseases scheme, and advising that it will commence its call for submissions for the 2019 review of the dust diseases scheme in early July.

## 8. Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019

### 8.1 Terms of reference

The Committee noted the terms of reference for the inquiry as referred by the House to inquire and report into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019.

### 8.2 Proposed timeline

Resolved, on the motion, of Mr Shoebridge: That the committee adopt the following timeline for the inquiry:

- submission closing date of 30 June 2019
- the Chair liaise with committee members regarding the timing and location of hearings
- table report by end August.

The committee discussed the need to carefully manage stakeholder expectations about the purpose and scope of the inquiry.

The committee noted that the secretariat will liaise with the chair to develop then circulate for comment proposed wording to be included in the call for submissions and on the inquiry website.

### 8.3 Advertising

The committee noted that the inquiry would be advertised via social media, stakeholder letters and a media release distributed to all media outlets in New South Wales.

### 8.4 Stakeholders

The Chair tabled a proposed stakeholder list. The Committee noted that the secretariat will circulate a revised list, with members to provide any further additions early next week.

## 9. Publication of minutes of the first meeting

Resolved, on the motion of Mr Fang: That the committee publish the minutes of the first meeting on the committee's webpage, subject to the draft minutes being circulated to members for agreement.

## 10. Other business

Resolved, on the motion of Mr Shoebridge: That the secretariat provide to the committee proposed timeframes for the workers compensation, motor accidents and lifetime care and support reviews.

## 11. Adjournment

The committee adjourned at 1.56 pm, *sine die*.

Merrin Thompson  
Committee Clerk

### Minutes no. 2

Wednesday 5 June 2019

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney, 10.01 am

### 1. Members present

Mr Blair, *Chair*

Mr Donnelly, *Deputy Chair*

Mr D'Adam

Mr Fang

Mr Khan

Mr Roberts  
Mr Shoebridge  
Mrs Ward

## 2. **Draft minutes**

The committee noted that draft minutes no. 1 were confirmed via email on 4 June 2019, as per a previous resolution of the committee.

## 3. **Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019**

### 3.1 **Wording to be included in the call for submissions and on the inquiry website**

The committee noted that on 6 June 2019 it adopted via email wording developed by the secretariat in liaison with the Chair for inclusion in the call for submissions and on the inquiry website, as per a resolution on 30 May 2019.

### 3.2 **Informal private briefing with family members in Bowraville**

Resolved, on the motion of Mrs Ward: That:

- The committee conduct an informal private briefing (with catering) in Bowraville with two to three representatives of each family group, where no formal evidence is taken, for up to 2 hours, for the purpose of explaining the legal focus of the inquiry
- The meeting take place at the Pioneer Community Hall in Bowraville, subject to availability
- The visit to Bowraville take place on 17, 24, or 26 June 2018, with the date to be determined following consultation with the committee
- A representative of the Aboriginal Health Clinic and/or Jumbunna Institute for Indigenous Education and Research be invited to support attendees.

### 3.3 **Resources**

Resolved, on the motion of Mr Shoebridge: That the secretariat:

- (a) Prepare a short briefing paper addressing:
  - the legal background to the bill, including double jeopardy law in New South Wales and Australia
  - timeline and outcome of court decisions
  - any known cases other than Bowraville
  - UK model for double jeopardy law
  - publication documenting relevant UK cases
- (b) Distribute cultural awareness resources to assist communication with Aboriginal people.

### 3.4 **Public hearing**

Resolved, on the motion of Mr Khan: That the committee hold a public hearing on 9 or 10 July 2019, subject to the availability of members.

## 4. **Oversight reviews**

The committee noted that:

- both the 2018 Review of the Workers Compensation Scheme and 2018 Review of the Compulsory Third Party Scheme reports were tabled on 12 February 2019 and the government responses are due 12 August 2019
- both the 2018 Review of the Lifetime Care and Support Scheme and 2018 Review of the Dust Diseases Scheme reports were tabled on 26 February 2019 and the government responses are due on 26 August 2019.

Having previously resolved to commence the 2019 review of the Dust Diseases Scheme in July 2019, the committee discussed its approach to and timeframes for the next round of other oversight reviews.

Resolved, on the motion of Mr Shoebridge: That the following be adopted for the next oversight reviews:

2019 Review of the Dust Diseases Scheme	<ul style="list-style-type: none"> <li>• Submissions open early July 2019 and close 12 August 2019</li> <li>• 1-2 hearings days early September 2019</li> <li>• table by early December 2019</li> </ul>
2020 Review of the Lifetime Care and Support Scheme and Compulsory Third Party Scheme, in one combined report	Commence January 2020
2020 Review of the Workers Compensation Scheme	Commence June 2020

#### 5. Other business

Resolved, on the motion of Mr Shoebridge: That the committee request that the government response to the 2018 review of the Dust Diseases Scheme be provided early, in light of its timeframe for the 2019 review of the scheme.

#### 6. Adjournment

The committee adjourned at 10.30 am, *sine die*.

Merrin Thompson  
Committee Clerk

#### Minutes no. 25

Wednesday 9 September 2020  
Standing Committee on Law and Justice  
Macquarie Room, Parliament House, Sydney at 2:48pm

#### 1. Members present

Mr Fang, *Chair*  
Mr Donnelly, *Deputy Chair*  
Ms Cusack  
Mr D'Adam  
Mr Farlow  
Mr Khan  
Mr Roberts  
Mr Shoebridge (from 3:01 pm)  
Mr Mookhey (participating member)

#### 2. Previous minutes

Resolved, on the motion of Mr Khan: That draft minutes nos 22 and 23 be confirmed.

#### 3. Correspondence

Resolved, on the motion of Ms Cusack: That the committee note the following items of correspondence:

##### *Received*

- 3 September 2020 – Email from Ms Georgia Lovell, Senior Advisor, Government, Industry and Public Policy, Suncorp to secretariat, regarding the publication status of responses to questions taken on notice.
- 4 September 2020 – Email from Ms Selene Hung, Associate Director, Ministerial and Parliamentary Services, NSW Treasury to secretariat, confirming acceptance of invitation for NSW Treasury officials to appear before a hearing on 9 September 2020.

- 8 September 2020 – Email from Ms Gabbie Gallagher, Director Public and Product Safety, Department of Customer Service to secretariat, providing rationale for why draft MOU should not be published.

**Sent**

- 4 September 2020 – Letter from Chair to Mr Michael Pratt, Secretary, NSW Treasury, reiterating the committee's wish to proceed with a hearing on 9 September and advising adjusted appearance time.

#### **4. 2020 combined review of the Compulsory Third Party insurance scheme and Lifetime Care and Support scheme**

The committee considered the timeline and conduct of the review of the Compulsory Third Party insurance scheme and Lifetime Care and Support scheme, noting that it was previously resolved to be conducted as a combined review, with joint hearings and a joint report in early 2020.

##### **4.1 Terms of reference**

Committee noted that this review will meet the committee's responsibilities under section 27 of the State Insurance and Care Governance Act 2015.

##### **4.2 Proposed timeline**

Resolved, on the motion of Mr Khan: That submissions for this review open on 21 September 2020 and close on 24 October 2020.

##### **4.3 Advertising**

The committee noted that the inquiry will be advertised via social media, stakeholder letters and a media release distributed to all media outlets in New South Wales.

#### **5. 2020 Review of the Workers Compensation Scheme**

##### **5.1 Answers to questions on notice and supplementary questions**

Resolved, on the motion of Mr D'Adam: That:

- the committee keep the email from Suncorp to the Chair, providing responses to questions taken on notice, confidential
- the committee publish appendix A to the response with all identifying and personal information removed.

##### **5.2 Public Hearing**

Witnesses were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Michael Pratt AM, Secretary, NSW Treasury
- Phil Gardner, Deputy Secretary, Commercial, NSW Treasury
- Stewart Walters, Chief Financial and Operations Officer, NSW Treasury

Mr Mookhey tabled the following documents:

- Letter from Carmel Donnelly, Chief Executive, SIRA to Michael Pratt AM, Secretary, NSW Treasury dated 6 June 2019
- Letter from Michael Pratt AM, Secretary, NSW Treasury to Carmel Donnelly, Chief Executive, SIRA, dated 28 June 2019
- Letter from Carmel Donnelly, Chief Executive, SIRA to Michael Pratt AM, Secretary, NSW Treasury dated 10 September 2019
- Treasury Secretary Briefing Note titled: *Secretary's meeting with the Chair of Insurance and Care NSW*
- Email from Andy Hobbs, Director, Investment Management, NSW Treasury to John Nagle, Former CEO of icare, dated 9 December 2019
- NSW Treasury document titled *Attachment E: Examples of Previous Experiences*
- Icare procurement complaint report concerning a complaint lodged by Whitecoat Pty Ltd on 18 September 2019

- Email from Jon Doyle, Director Capability and Governance, NSW Procurement to Phil Gardner, Deputy Secretary, Commercial, NSW Treasury dated 3 June 2020.

Mr Shoebridge tabled the following document:

- Email from Phil Gardner Deputy Secretary, Commercial, NSW Treasury to Charlotte Alexander, Andy Hobbs and Laura Lombe, dated 26 May 2020.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 5.00 pm. The public and the media withdrew.

Resolved, on the motion of Mr Khan: That the committee accept and publish the following documents tendered during the public hearing:

- Letter from Carmel Donnelly, Chief Executive, SIRA to Michael Pratt AM, Secretary, NSW Treasury dated 6 June 2019, tendered by Mr Mookhey
- Letter from Michael Pratt AM, Secretary, NSW Treasury to Carmel Donnelly, Chief Executive, SIRA, dated 28 June 2019, tendered by Mr Mookhey
- Letter from Carmel Donnelly, Chief Executive, SIRA to Michael Pratt AM, Secretary, NSW Treasury dated 10 September 2019, tendered by Mr Mookhey
- Treasury Secretary Briefing Note titled: *Secretary's meeting with the Chair of Insurance and Care NSW*, tendered by Mr Mookhey
- Email from Andy Hobbs, Director, Investment Management, NSW Treasury to John Nagle, Former CEO of icare, dated 9 December 2019, tendered by Mr Mookhey
- NSW Treasury document titled *Attachment E: Examples of Previous Experiences*, tendered by Mr Mookhey
- Icare procurement complaint report concerning a complaint lodged by Whitecoat Pty Ltd on 18 September 2019, tendered by Mr Mookhey
- Email from Jon Doyle, Director Capability and Governance, NSW Procurement to Phil Gardner, Deputy Secretary, Commercial, NSW Treasury dated 3 June 2020, tendered by Mr Mookhey
- Email from Phil Gardner Deputy Secretary, Commercial, NSW Treasury to Charlotte Alexander, Andy Hobbs, and Laura Lombe, dated 26 May 2020, tendered by Mr Shoebridge.

### 5.3 Further hearings

The committee discussed further hearings and potential witnesses for the inquiry.

The committee noted that the secretariat would circulate a proposal regarding witnesses for two future hearing dates, with this proposal to be discussed by members at a future meeting.

### 5.4 Extension to the reporting date

Resolved, on the motion of Mr Shoebridge: That the committee report on or before Thursday 10 December 2020.

## 6. Inquiry into the Work Health and Safety Amendment (Information Exchange) Bill 2020

### 6.1 Publication of draft MOU provided by SafeWork NSW

Resolved, on the motion of Mr Donnelly: That the draft MoU and the correspondence from the Department of Customer Service be published, with a watermark to signal that the MoU is a draft.

## 7. Adjournment

The committee adjourned at 5.18pm, *sine die*

Joseph Cho  
Committee Clerk

**Minutes no. 29**

Friday 13 November 2020

Standing Committee on Law and Justice

Jubilee Room, Parliament House, Sydney at 9.48 am

**1. Members present**Mr Fang, *Chair*Mr Donnelly, *Deputy Chair*

Ms Cusack

Mr D'Adam

Mr Farlow

Mr Khan

Mr Roberts

Mr Shoebridge

Mr Mookhey (participating member)

**2. Draft minutes**

Resolved, on the motion of Ms Cusack: That draft minutes nos. 25, 26, 27 and 28 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 5 August 2020 – Email from Mr Maamo to secretariat, regarding the Commonwealth Modern Day Slavery Act 2018
- 22 August 2020 – Email from Mr Cooper to secretariat, regarding a workplace injury and his workers compensation case
- 10 September 2020 – Emails from Mr Danis to the Hon Mark Speakman MP, copied to the committee, regarding a complaint to the Office of the Legal Service Commissioner (including a number of attached documents)
- 23 September 2020 – Email from Mr Andrew Orfanos, President, Australian Institute of Occupational Hygienists to Chair, expressing disappointment that the report on the Work Health and Safety Amendment (Information Exchange) Bill 2020 did not contain a record of the organisation's concerns
- 24 September 2020 – Email from Mr Danis to the secretariat, regarding preferred publication status of the previous email and offering further information
- 27 September 2020 – Email from Ms Janet Dore to the secretariat, regarding answers to questions taken on notice and transcript corrections
- 29 September 2020 – Correspondence from Mr Simon Cohen, Workers Compensation Independent Review Officer, to Chair, providing a copy of the Key Findings of the Assessment of WIRO's Solutions and ILARS work
- 6 October 2020 – Correspondence from Mr Simon Cohen, Workers Compensation Independent Review Officer, to Chair, regarding the WIRO Direction 2020-22
- 20 October 2020 – Email from Mr Andrew George to committee, regarding the right to protest
- 28 October 2020 – Email from Mr Leighton Barr to committee, regarding a workers compensation matter, including attachments
- 3 November 2020 – Email from Mr Leighton Barr to committee, regarding a workers compensation matter, including attachments.

Resolved, on the motion of Mr Khan: That the following correspondence be kept confidential due to identifying / sensitive information:

- Email from Mr Maamo to secretariat, regarding the Commonwealth Modern Day Slavery Act 2018
- Email and attachments from Mr Cooper to secretariat, regarding a workplace injury and the subsequent workers compensation case.

Resolved, on the motion of Mr Khan: That emails and attachments from Mr Danis to the Hon Mark Speakman MP, regarding a complaint to the Office of the Legal Service Commissioner, be kept confidential, and that Mr Danis be advised that the committee will not be taking any action in response to his emails.

Resolved, on the motion of Mr Khan: That the emails from Mr Leighton Barr to committee, dated 28 October 2020 and 3 November 2020, regarding a workers compensation matter, be kept confidential, including the attachments provided.

#### 4. **2020 combined review of the Compulsory Third Party insurance scheme and Lifetime Care and Support scheme**

Resolved, on the motion of Mr Farlow: That the committee adopt the following timeline for the inquiry:

- One to two hearing dates in February/March 2021
- Table report by May 2021.

Resolved, on the motion of Mr Khan: That submissions be reopened, with stakeholders invited to make comments in relation to the six month limitation period under the CTP insurance scheme, in which claimants are entitled to claim benefits irrespective of fault.

#### 5. **2020 Review of the Workers Compensation Scheme**

##### 5.1 **Answers to questions on notice and supplementary questions**

The committee considered the publication status of the KPMG claim file review report and the accompanying supplementary report provided as an answer to questions on notice from Unions NSW.

Resolved, on the motion of Mr Khan: That the committee keep the claim file review reports confidential, noting:

- that the documents were provided to the committee by a third party, who was not involved in the commissioning nor the writing of the report
- the documents contain names of staff in various organisations involved
- key information contained in the report are already on the public record.

##### 5.2 **Future hearings**

The committee noted, in terms of witness invitations for future hearings, the following:

- Mr Chris McCann accepted the invitation to appear on 23 November, from 1.15pm to 2.15pm
- Mr Peter McCarthy accepted the invitation to appear on 23 November, from 2.15pm to 3.15pm
- Mr Nigel Frietas accepted the invitation to appear on 23 November, from 3.30pm to 5.30pm (in camera)
- Mr Michael Carapiet accepted the invitation to appear on 1 December, but has maintained he would still like to only give evidence for an hour, despite being invited from 2.45pm to 4.30pm
- icare has accepted the invitation to appear on 2 December, from 10.00am to 1.00pm, nominating the following witnesses: Mr John Roberston (Chair of icare's Board), Mr Don Ferguson (Interim CEO), Ms Rashi Bansal (Group Executive Organisational Performance) and Mr Rob Craig (Interim Group Executive Personal Injury Claims).

The committee noted that Mr David Plumb has also accepted the invitation to come along with other icare representatives, in accordance with the committee's previous resolution.

Resolved, on the motion of Mr Shoebridge: That the Chair write to Mr Carapiet to reiterate the invitation request and ask again for him to attend for the full allocated time.

Resolved, on the motion of Mr Donnelly: That the following additional icare representatives be invited to attend the 2 December hearing:

- Ms Samantha Liston, Group Executive, People and Workplace, as a witness
- Mr Peter Bell, potentially in an advisor capacity, or as witnesses if necessary.

### **5.3 Public Hearing**

The witness was admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

Mr Mookhey tabled the following documents:

1. Board Briefing re ITP
2. CIT Committee Meeting Minutes
3. Correspondence to Fineos re tender
4. Internal Procurement report
5. CapGemini-Guidewire Evaluation Report
6. icare Facebook post
7. Board Briefing re ITP Business Case
8. Correspondence from Korn Ferry re recruitment
9. Correspondence from Carapiet to Pratt re Nagle complaint
10. Gilbert Tobin report to board re Nagle complaint
11. Audit report re TO staffing arrangements
12. Gilbert Tobin Project Stanley investigation report
13. Interviews from Audit Report
14. Payment of TO staff by icare
15. Email re Yap recruitment
16. Excerpt of gift registry
17. Bhatia gifts summary
18. Board Briefing re CEO Performance Payment
19. Board memo re CEO remuneration
20. Board briefing re ICAC referrals

The following witness was sworn and examined:

- Mr Vivek Bhatia, former Chief Executive Officer, icare.

The evidence concluded and the witness withdrew.

The public hearing concluded at 11.55 am. The public and the media withdrew.

Mr Mookhey agreed to circulate via email which of the documents he tendered should be accepted by the committee and/or published, noting that there are two documents which at this stage should not be published – an affidavit of an individual and a document from Treasury.

### **6. Video footage**

Resolved, on the motion of Mr Khan: That Mr Nigel Freitas be provided with video footage from Mr Bhatia giving evidence, in advance of his appearance at an upcoming hearing.

### **7. Adjournment**

The committee adjourned at 12.14 pm until 23 November 2020 (Public hearing for the 2020 review of the workers compensation scheme).

Tina Higgins

**Committee Clerk**

**Minutes no. 30**

Monday 23 November 2020

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney at 1.03 pm

**1. Members present**Mr Fang, *Chair*Mr Donnelly, *Deputy Chair*Ms Cusack (*by videconference, from 2.15pm*)Mr D'Adam (*until 3.15pm*)

Mr Farlow

Mr Khan

Mr Mallard (*participating member for the inquiry into the Mandatory Disease Testing Bill 2020*)Mr Mookhey (*participating member for the 2020 review of the workers compensation scheme, until 3.15 pm, and substituting for Mr D'Adam from 3.30pm*)

Mr Roberts

Mr Shoebridge

**2. Draft minutes**

Resolved, on the motion of Mr Farlow: That draft minutes no.29 be confirmed.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 23 November 2020 – Email from the Hon Mark Buttigieg, Opposition Whip, to committee, advising that Mr Mookhey will substitute for Mr D'Adams when Mr D'Adams is not present in the hearing on the 23 November
- 17 November 2020 – Email from the Office of the Hon. Shayne Mallard to committee, requesting to participate in the Mandatory Disease Testing Bill 2020 inquiry
- 16 November 2020 – Email from Mr Michael Carapiet to secretariat, confirming he will be attending for the full time allocated to his hearing on 1 December 2020
- 13 November 2020 – Email from Mr Michael Carapiet to secretariat, acknowledging the correspondence from the Chair dated 13 November 2020
- 27 October 2020 – Various audio files from Ms Jennifer Lynch to committee, outlining her views about the workers compensation scheme.

***Sent:***

- 16 November 2020 – Email from secretariat to Mr Michael Carapiet, following up correspondence from the Chair dated 13 November 2020
- 13 November 2020 – Correspondence from the Chair to Mr Michael Carapiet, regarding the invitation to give evidence on 1 December 2020
- 9 November 2020 – Chair to Ms Jennifer Lynch, regarding her audio files and request to give evidence to the committee.

Resolved, on the motion of Mr Roberts: That:

- the audio files from Ms Jennifer Lynch to committee, received 27 October 2020, be kept confidential, as they contain identifying information
- any future audio files received from Ms Jennifer Lynch be kept confidential, and be available to members on request.

**4. Inquiry into the provisions of the Mandatory Disease Testing Bill 2020****4.1 Terms of reference**

The committee noted that the terms of reference for the inquiry are as follows:

That:

- (a) the provisions of the Mandatory Disease Testing Bill 2020 be referred to Standing Committee on Law and Justice for inquiry and report,
- (b) the bill be referred to the committee upon receipt of the message from the Legislative Assembly,
- (c) the committee report by Wednesday 17 February 2021.

#### **4.2 Participating member**

The committee noted that Mr Mallard has requested to be a participating member for the duration of the inquiry.

Resolved, on the motion of Mr Khan: That Mr Mallard, who has advised the committee that he intends to participate for the duration of the inquiry into the provisions of the Mandatory Testing Bill 2020, be provided with copies of all inquiry related documents and be entitled to participate in all deliberative meetings.

#### **4.3 Proposed timeline and activities**

The committee considered the timeline for the inquiry, including the potential for the inquiry to be extended and have a later reporting date than 17 February 2020.

Debate ensued.

Resolved, on the motion of Mr Khan: That submissions close on 21 December 2020, and a timeline be circulated via email regarding potential hearing dates.

Mr Mallard left the meeting.

#### **4.4 Submissions, online questionnaire and proformas**

Mr Khan moved: That the committee open submissions in the standard way, allowing individuals and organisations to make a submission, but not accept proformas or conduct an online questionnaire.

Mr Shoebridge moved: That the motion of Mr Khan be amended by omitting at the end 'but not accept proformas'.

Amendment put and negatived.

Original question put and passed.

#### **4.5 Submission and witness invitations**

Resolved, on the motion of Mr Shoebridge: That the following stakeholders be invited to make a submission and also be invited to appear as a witness, and that members be given until midday Thursday 26 November 2020 to nominate additional stakeholders/witnesses.:

- ACON
- Hepatitis NSW
- NSW Users and Aids Association
- Council for Civil Liberties
- Law Society of NSW
- NSW Bar Association
- Australian Lawyers for Human Rights
- Australian Medical Association NSW
- NSW Health
- Aboriginal Affairs NSW
- Multicultural NSW
- Positive Life NSW
- Sex Workers Outreach Project (SWOP)
- Mental Health Commission.

#### 4.6 Advertising

The committee noted that the inquiry would be advertised via social media, stakeholder letters and a media release distributed to all media outlets in New South Wales.

### 5. 2020 combined Reviews of the Compulsory Third Party insurance scheme and Lifetime Care and Support scheme

#### 5.1 Submissions

The committee noted that in accordance with the committee's previous resolution:

- submissions were reopened for the review of the CTP insurance scheme until 10 December 2020
- stakeholders for the review of the CTP insurance scheme have been invited to make a submission on the operation of the 6 month limitation period in which claimants are entitled to claim benefits irrespective of fault.

### 6. 2020 Review of the Workers Compensation Scheme

#### 6.1 Answers to questions on notice

Resolved, on the motion of Mr Shoebridge: That the committee keep the second version of answers to questions on notice from Treasury NSW, dated 9 October 2020, confidential at this stage (this document being entitled 'Privileged – Treasury responses').

#### 6.2 Video footage

The committee noted that in accordance with the committee's resolution, on 16 November 2020 Mr Nigel Freitas was provided with video footage of Mr Bhatia's evidence to the committee.

The committee further noted that Mr Peter McCarthy and Mr Chris McCann have also been provided with video footage on 19 November 2020 following agreement by email.

#### 6.3 Support person

The committee noted that it agreed via email to the *in camera* witness bringing along a support person to the hearing.

#### 6.4 Public Hearing

The witness was admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Mr Chris McCann, Former General Manager – Compliance, Fraud and Corruption Control, icare.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Peter McCarthy, Former Partner, Ernst & Young and Former Principal Actuary, NSW Workers Compensation System and CTP, SIRA.

The evidence concluded and the witness withdrew.

The public and media withdrew.

#### 6.5 *In camera* hearing

The committee proceeded to take evidence *in camera*.

Persons present other than the committee: Ms Tina Higgins (*via videoconference*), Mr Sam Griffith, Mr Joseph Cho, Ms Angeline Chung, Mr Ky Chow (support person) and Hansard reporters.

The following witness was sworn and examined:

- Mr Nigel Freitas, Former Chief of Staff, NSW Treasurer.

The evidence concluded and the witness withdrew.

The hearing concluded at 5.06 pm.

#### 7. Other Business

The committee considered the publication of evidence received *in camera*, noting a previous resolution to publish the evidence subject to redactions.

Resolved, on the motion of Mr Mookhey: That:

- the secretariat request Hansard to fast track the preparation of transcript of evidence received today *in camera*
- the transcript of the *in camera* evidence, if prepared by Hansard before icare's appearance on 2 December, be provided to icare on a confidential basis without any redaction
- the transcript of the *in camera* evidence be published on inquiry's webpage on the morning of 2 December prior to icare's appearance, with the names of all persons previously seconded from icare to the Treasurer's Office redacted (with the exception of Mr Edward Yap).

#### 8. Adjournment

The committee adjourned at 5.16 pm until 1 December 2020 (Public hearing for the 2020 review of the workers compensation scheme).

Tina Higgins / Joseph Cho

**Committee Clerks**

#### Minutes no. 31

Tuesday 1 December 2020

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney at 2.15 pm

#### 1. Members present

Mr Fang, *Chair*

Mr Donnelly, *Deputy Chair*

Ms Cusack (*from 2.25pm*)

Mr D'Adam

Mr Farlow

Mr Khan

Mr Roberts

Mr Shoebridge (*from 2.19pm*)

Mr Mookhey (*participating member*)

#### 2. Draft minutes

Resolved, on the motion of Mr Roberts: That draft minutes no.30 be confirmed.

#### 3. Correspondence

The committee noted the following items of correspondence:

##### **Received:**

- 18 November 2020 – Correspondence from Ms Clemency Morony, Head of Ministerial and Parliamentary Support, icare, to secretariat, confirming additional icare witnesses for the hearing on 2 December 2020.
- 14 November 2020 – Email from Mr Leighton Barr to committee, regarding incomes rates and the workers compensation system.

#### 4. Inquiry into the provisions of the Mandatory Disease Testing Bill 2020

##### 4.1 Timeline

Resolved, on the motion of Mr Khan: That the Chair seek an extension of the reporting date from the House until the end of March 2021.

#### 5. 2020 combined Reviews of the Compulsory Third Party insurance scheme and Lifetime Care and Support scheme

##### 5.1 Timeline

The committee considered adjusting the inquiry timeline, taking into account the new Bill inquiry it has been referred.

Resolved, on the motion of Mr Farlow: That the hearings be arranged in April / early May and the report be tabled by late July.

#### 6. 2020 Review of the Workers Compensation Scheme

##### 6.1 Partially confidential submission

Resolved, on the motion of Mr Farlow: That the committee authorise the publication of submission no. 25, with the exception of identifying and/or sensitive information which is to remain confidential, as per the request of the author and the recommendation of the secretariat.

##### 6.2 Confidential submissions

Resolved, on the motion of Mr Farlow: That the committee keep supplementary submission no. 25a confidential and submission no. 26 confidential, as per the recommendation of the secretariat, as it contains potential adverse mention.

##### 6.3 Report deliberative and tabling date

The committee deferred the consideration of the tabling and report deliberative dates to the meeting scheduled on 2 December 2020.

##### 6.4 Transcript from 23 November

The committee considered whether it wishes to have the transcript from 23 November 2020 reviewed by the secretariat before publication.

Resolved, on the motion of Mr Shoebridge: That the secretariat review the transcript from 23 November 2020, and in consultation with the Chair, circulate via email any proposed redactions of individual names and any suggestions in relation to allowing an individual / organisation to provide a written response to potential adverse mention, to provide for procedural fairness.

Ms Cusack joined the meeting.

##### 6.5 Public Hearing

The witness was admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was examined on his former oath:

- Mr Michael Carapiet, Former Chair - icare Board.

Mr Mookey tendered the following documents:

- 1 Letter -10 September 2020 - C Alexander - NSW Treasury - to C Morgan - icare - Appointment of John Robertson
- 2 icare - information - Tuesday 4 August 2020 - entitled - Leadership change at icare'
- 3 Confidential Board Report - icare - Board Effectiveness Review - 29 May 2020 - prepared by Challis and Co Pty Ltd
- 4 Page from Gift register
- 5 Board paper - Conflicts of Interest - Deep Dive - reference no item 3.4 - Meeting 24 May 2019
- 6 Email from Gilbert and Tobin to John Nagle 7 May 2019

- 7 Note from John Nagle to Kate - 13 May 2019
- 8 icare letter dated 4 June 2019 - to Michael Pratt
- 9 icare briefing for the board - Overseas travel to Las Vegas for Guidewire 2018
- 10 Email from Michael Carapiet - to Larissa Auditore - cc Michael Carapiet - 23 April 2018
- 11 Appendix 05 - Overseas travel - icare annual report 2018-19
- 12 icare briefing for the board - current matters with ICAC - 29 Oct 2018
- 13 icare briefing for the board - Insurance Technology platform - 25 October 2015
- 14 Briefing for the board - Nominal Insurer Unified Technology Platform - 31 August 2015
- 15 Letter from Wayne Smith, Contact Officer, Safety, Return to Work & Support to Mr Dave Matthews, Director Sales & Marketing Asia Pacific, FINEOS Corporation dated 17 August 2015
- 16 Letter from Anthony Stevens, Corporate Council, Strategic Business Consulting to Mr Wayne Smith, NSW Safety, Return to Work and Support – dated 13 August 2015
- 17 Email from Wayne Smith to Tara Moore, dated 7 August 2015 – CSC questions
- 18 Letter from Mr Dave Mathews, Fineos Asia Pacific to Don Ferguson, Lifetime Care Support Authority dated 5 August 2015
- 19 Meeting minutes – ITR Evaluation Committee – 21 July 2015
- 20 SRWS Board paper cover - for discussion – SRWS & SICorp Technology Business Case – 31 March 2015
- 21 icare article – Monday 27 July 2020 – icare provides further update on PIAWE remediation
- 22 Letter from John Nagle, CEO & Managing Director, icare to Ms Carmel Donnelly, Chief Executive, SIRA, 4 March 2020 – Incorrect Weekly Payments to Injured Workers
- 23 icare board meeting minutes – 25 November 2019
- 24 icare board meeting – Minutes – 25 November 2019

The evidence concluded and the witness withdrew.

The public and media withdrew.

The hearing concluded at 4.30pm.

## 7. Adjournment

The committee adjourned at 4.35pm until 2 December 2020 (Public hearing for the 2020 review of the workers compensation scheme).

Joseph Cho

**Committee Clerk**

## Minutes no. 33

Thursday 11 February 2021

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney at 9.04 am

### 1. Members present

Mr Fang, *Chair*

Mr Donnelly, *Deputy Chair*

Ms Cusack (*from 9.51 am to 12.27 pm*)

Mr D'Adam

Mr Farlow

Mr Khan

Mr Mallard (*participating member for Mandatory Disease Testing inquiry*) (*from 9.25 am*)

Mr Roberts

Mr Shoebridge (*from 9.28 am to 12.27pm and 1.58 pm to 2.25 pm*)

## 2. Draft minutes

Resolved, on the motion of Mr Donnelly: That draft minutes no.31 be confirmed.

## 3. Correspondence

The committee noted the following items of correspondence:

### *Received:*

- 24 September 2020 – Letter from Mr David Plumb, member of the icare board, to Chair, clarifying evidence given to the committee on 24 August 2020.
- 8 December 2020 - Email from Ms Michelle Falstein, Secretary, NSW Council for Civil Liberties, declining the invitation to make a submission to the Mandatory Disease Testing Bill 2020 inquiry.
- 13 January 2021 – Email from Ms Clemency Morony, Head of Ministerial and Parliamentary Support, icare, to committee, advising of the new icare Chief Executive Officer.
- 19 January 2021 – Email from Mr Chris McCann to secretariat, providing a statement made as part of his workers compensation claim.
- 22 January 2021 – Letter from Mr Frank Zimmermann to Chair, responding to evidence provided by Mr Chris McCann on 23 November 2020.
- 25 January 2021 – Letter from Ms Samantha Liston, Group Executive People and Workplace, icare to secretariat, clarifying evidence given to the committee on 2 December 2020.

### *Sent:*

- 18 December 2020 – Letter from Chair to Mr Greg Barnier, former Chief People Officer, icare, inviting a response to evidence provided to the committee on 23 November 2020.
- 21 December 2020 – Letter from Chair to Mr Gavin Pearce, former Group Executive Risk and Governance, icare, inviting a response to evidence provided to the committee on 23 November 2020.
- 12 January 2021 – Letter from Chair to Mr Frank Zimmermann, inviting a response to evidence provided to the committee on 23 November 2020.

Resolved, on the motion of Mr Khan: That the correspondence from Mr McCann to secretariat, providing a statement made as part of his workers compensation claim, be kept confidential as per the recommendation of the secretariat, as it contains identifying and sensitive information, and potential adverse mention.

## 4. 2020 Review of the Workers Compensation Scheme

### 4.1 Clarification of evidence

Resolved, on the motion of Mr Farlow: That the committee authorise the publication of the correspondence from Mr David Plumb, member of the icare board, clarifying the evidence given to the committee on 24 August 2020.

Resolved, on the motion of Mr Roberts: That the committee authorise the publication of the correspondence from Ms Samantha Liston, Group Executive People and Workplace, icare, to committee, clarifying the evidence given to the committee on 2 December 2020.

### 4.2 Provision of an opportunity for individuals to respond – procedural fairness

Resolved, on the motion Mr Farlow: That the committee authorise the publication of correspondence from Mr Frank Zimmermann, dated 22 January 2021, responding to a statement made by a witness on 23 November 2020.

### 4.3 Reporting Date

Resolved, on the motion of Mr Khan: That the committee table its report by the end of March 2021.

## 5. 2020 combined Reviews of the Compulsory Third Party insurance scheme and Lifetime Care and Support Scheme

### 5.1 Public submissions – Compulsory Third Party insurance scheme

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-10.

### 5.2 Public submissions – Lifetime Care and Support scheme

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-4.

## 6. Inquiry into the Mandatory Disease Testing Bill 2020

### 6.1 Public submissions

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-27.

### 6.2 Report deliberative date

Resolved, on the motion of Mr Khan: That the Chair seek an extension of time via the House to report until the end of April 2021.

### 6.3 Answers to questions on notice and supplementary questions

Resolved, on the motion of Mr Farlow: That the witnesses appearing at the hearings on 11 and 12 February 2021 be requested to return answers to questions on notice and/or supplementary questions from members within 14 days of the date on which questions are forwarded to witnesses by the committee clerk.

### 6.4 Public Hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Mr Patrick Gooley, Secretary, Police Association of NSW
- Mr Tony Bear, Manager, Strategy and Relationships, Police Association of NSW
- Mr Stewart Little, General Secretary, Public Service Association of NSW
- Ms Nicole Jess, Senior Vice-President, Chair, Prison Officers Vocational Branch, Public Service Association of NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Nicholas Medland, President, Australasian Society of HIV, Viral Hepatitis and Sexual Health Medicine (ASHM) (*by videolink*)
- Dr Nicholas Parkhill, Chief Executive Officer, ACON
- Ms Karen Price, Deputy Chief Executive Officer, ACON
- Mr Steven Drew, Chief Executive Officer, Hepatitis NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Mary Ellen Harrod, Chief Executive Officer, NSW Users and AIDS Association (NUAA)
- Ms Kali Kanivale, Special Projects and Advocacy Specialist, NUAA
- Ms Jane Costello, Chief Executive Officer, Positive Life NSW
- Mr Neil Fraser, Deputy Chief Executive Officer, Positive Life NSW
- Professor Andrew Grulich, Head, HIV Epidemiology and Prevention Program, The Kirby Institute, UNSW Sydney
- Mr Cameron Cox, Chief Executive Officer, Sex Workers Outreach Project (SWOP).

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Danielle McMullen, President, Australian Medical Association (NSW) (*by videolink*)
- Professor Kylie Valentine, Deputy Director, Social Policy Research Centre, UNSW Sydney
- Professor Martin Holt, Research Convenor, Centre for Social Research in Health, UNSW Sydney
- Dr Kari Lancaster, Scientia Senior Research Fellow, Centre for Social Research in Health, UNSW Sydney.

The evidence concluded and the witnesses withdrew.

Mr Shoebridge left the meeting.

The following witnesses were sworn and examined:

- Mr Alastair Lawrie, Senior Policy Officer, Public Interest Advocacy Centre (*by videolink*)
- Ms Gabrielle Bashir SC, Senior Vice-President and Co-Chair of Criminal Law Committee, NSW Bar Association
- Ms Jane Sanders, Member, Law Society of NSW Criminal Law Committee.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Natalie Lang, Branch Secretary, Australian Services Union NSW and ACT (Services) Branch.

The evidence concluded and the witness withdrew.

The public and media withdrew.

The hearing concluded at 4.39 pm.

## 7. Adjournment

The committee adjourned at 4.52 pm until 9.15 am 12 February 2021 for the second public hearing for the Inquiry into the Mandatory Disease Testing Bill 2020.

Joseph Cho and Peta Leemen

**Committee Clerks**

## Minutes no. 35

Tuesday 27 April 2021

Standing Committee on Law and Justice Committee

Room 1043, Parliament House, 9.34 am

## 1. Members present

Mr Fang, *Chair*

Mr Donnelly, *Deputy Chair*

Mr D'Adam

Mr Farlow

Mr Khan

Mr Mallard (substituting for Mr Khan)

Mr Martin (from 9.36 am)

Mr Mookhey (participating member for the 2020 Review of the Workers Compensation Scheme)

Mr Roberts

Mr Shoebridge (from 9.35 am)

**2. Committee membership**

The committee noted that the Hon Taylor Martin replaced the Hon Catherine Cusack on the committee from 16 March 2021.

**3. Previous minutes**

Resolved, on the motion of Mr Donnelly: That draft minutes nos. 31, 32, 33 and 34 be confirmed.

**4. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 5 December 2020 – Letter from a former icare employee to Chair, requesting redactions to the 23 November 2020 transcript
- 15 December 2020 – Email from Ms Vanessa Gill, Executive Officer, Office of the Auditor General to secretariat, providing a copy of the Central Agencies 2020 report for the committee's information
- 8 January 2021 – Letter from Mr Greg Barnier to committee, providing a response to matters raised at the hearing on 23 November 2020
- 11 February 2021 - Email from Felix Delhomme, Acting Manager - Policy, Strategy & Research, ACON, providing documents 'NAPWHA's The System is Broken' and 'ACON's Ending HIV-related Stigma for All'
- 23 February 2021 – Letter from Mr Simon Cohen, Independent Review Officer, Independent Review Office to Chair, informing the committee about the Workers Compensation Independent Review Office's re-establishment as the Independent Review Office
- 1 March 2021 - Email from Michelle Vo, Executive and Ministerial Services, NSW Health, on behalf of Gary Forrest, Chief Executive, Justice Health and Forensic Mental Health Network, to the committee, responding to the committee's request for information
- 10 March 2021 – Letter from the Hon Kevin Anderson MP, Minister for Better Regulation and Innovation, to the clerk of the Legislative Council, providing the Government response to the *WHS Amendment (Information Exchange) Bill* inquiry
- 24 March 2021 – Email from an injured worker to secretariat, requesting change to the workers compensation scheme based on her experience.

***Sent***

- 15 February 2021 – Letter from the Hon Wes Fang MLC, Committee Chair, to Gary Forrest, Chief Executive, Justice Health and Forensic Mental Health Network, requesting information on the current procedures for screening inmates for blood borne viruses, current programs or procedures in NSW correctional facilities to diagnose and treat blood borne viruses, and any data relating to the prevalence, incidence, transmission and treatment rates of blood borne viruses in NSW correctional facilities.

Resolved, on the motion of Mr Shoebridge: That:

- the letter from a former icare employee to Chair, requesting redactions to the 23 November 2020 transcript be kept confidential, as per the recommendation of the secretariat, as it contains identifying information
- the email dated 24 March 2021, from an injured worker to the committee, requesting changes to the workers compensation scheme be kept confidential, as per the recommendation of the secretariat, as it contains identifying information
- the letter from Mr Barnier to the committee, dated 8 January 2021, be published.

**5. 2020 Review of the Compulsory Third Party insurance and Lifetime Care and Support schemes****5.1 Pre-hearing questions**

The committee noted that on 1 March 2021 SIRA and icare were forwarded the pre-hearing questions the committee agreed to via email. Responses are due 14 April 2021, ahead of the hearings on 25 and 26 May 2021.

## 6. 2020 Review of the Workers Compensation scheme

### 6.1 Answers to questions on notice

The committee noted that the following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Mr Vivek Bhatia, former Chief Executive Officer and Managing Director, icare, received on 7 January 2021
- answers to questions on notice from Mr Nigel Freitas, former Chief of Staff to the Treasurer, received on 8 January 2021
- answers to questions on notice from Mr Michael Carapiet, former Chair, icare Board, received on 20 January 2021
- answers to questions on notice from icare received on 25 January 2021.

Resolved, on the motion of Mr Shoebridge: That all documents provided as Mr McCann's answers to questions on notice be kept confidential, as they contain adverse mention and sensitive and identifying information, except for the cover page which can be published, with the exception of the last sentence.

### 6.2 Tabled documents

Resolved, on the motion of Mr Shoebridge: That:

- the document 'Appointment Letter – Receptionist – tendered on 23 November 2020' be kept confidential as it contains identifying and personal information.
- the document 'Icare letter 4 June 2019 – tendered on 1 December 2020' be accepted and published, with the name of Mr Nagle's wife removed.

Resolved, on the motion of Mr Farlow: That the document 'Allens Linklaters - Report on Investigation - Summary - 22 October 2018' be accepted and published, with the names of the individuals and businesses redacted.

### 6.3 Consideration of the Chair's draft report

The Chair submitted his draft report entitled '2020 Review of the Workers Compensation Scheme', which, having been previously circulated was taken as being read.

#### Chapter 1

Resolved, on the motion of Mr Shoebridge: That paragraph 1.10 be amended by:

- a) inserting 'and controversial' after 'were significant'
- b) inserting 'that were said' after 'introduced changes'.

Resolved, on the motion of Mr Shoebridge: That paragraph 1.25 be amended by inserting at the end: 'Importantly, the office of Independent Review Officer is a statutory office, appointed by the Governor, and the provisions of the Government Sector Employment Act 2013 relating to the employment of Public Service employees do not apply to that office. This ensures the office's independence'.

Resolved, on the motion of Mr Shoebridge: That paragraph 1.47 be amended by inserting at the end: 'The committee's work in holding public hearings to test the responses of icare management and the government to the concerns being raised in the public arena has had an important role in delivering accountability'.

#### Chapter 2

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 2.84, with the secretariat to include references:

"The committee received evidence that early and active intervention in cases with musculoskeletal injury that had a risk of delayed return to work has a significant positive impact on return to work rates. This in fact is the direction that NSW Health in particular have taken since 2015 when they began working with an array of academics and specialists using the WISE protocols.

The WISE protocols saw a 20 per cent reduction in days lost for workers who had total or partial incapacity to work, a 100 per cent sustained return to work at 6 months for those injured workers who had return

to pre injury duties, a 20 percent reduction in long term costs to the employer and reduced long term disability and chronic pain for injured workers.

Despite the success in NSW Health, despite repeated positive international reviews of the outcomes and despite even receiving an award from EML and Workcover for the work, the WISE protocols on early intervention were not adopted by icare for the Nominal Insurer or the TMF. In fact icare went in exactly the opposite direction with the implementation of their new platform which radically reduced interactions with injured workers in the first stages of their injury, rather than increasing the number and types of interventions to assist with return to work.'

Resolved, on the motion of Mr Shoebridge: That the following new finding be inserted in the committee comments section in Chapter 2 in appropriate place:

**Finding x**

The implementation of the WISE protocols that deliver early and active intervention for injured workers with musculoskeletal injury that have a risk of delayed return to work has a significant positive impact on return to work rates, and despite this evidence being available to icare they have not been adopted in the Nominal Insurer or the Treasury Managed Fund.'

Resolved, on the motion of Mr Shoebridge: That paragraph 2.112 be amended by inserting 'injured workers' after 'potential to expose'.

Resolved, on the motion of Mr Farlow: That Finding 1 be omitted: 'That the multi-billion losses incurred recently by the Nominal Insurer and Treasury Managed Fund have been primarily caused by a collapse in return to work rates arising from icare's implementation of a new claims management model', and the following new Finding inserted instead:

'The multi-billion losses incurred recently by the Nominal Insurer and Treasury Managed Fund has been caused, in large part, by a collapse in return to work rates arising from icare's decision to introduce a new claims management model'.

Resolved, on the motion of Mr Shoebridge: That the following new committee comment and recommendation be inserted above paragraph 2.115:

**'Committee comment**

'The committee was especially concerned at the fact that icare's position throughout the inquiry was to look for external factors to explain the scheme's poor outcomes and to refuse to clearly accept responsibility for the outcomes of the scheme they manage. This inability to self-reflect and accept responsibility was seen at both a board and senior management level. This also meant that the dramatic falls in the RTW rates in both the TMF and the NI were not addressed with the urgency or thoroughness they deserved given the negative impact they have on injured workers and the financial sustainability of the scheme.

While we note that there has been a new Chief Executive Officer and Chair of the Board since then, the fact that the culture in icare is so unwilling to accept their agency in poor outcomes is of very real concern. For this reason, while we acknowledge the substantial change in the senior leadership, we remain extremely concerned and will be looking to keep a close eye on the scheme in the coming 12 months.

**Recommendation x**

That the Standing Committee on Law and Justice undertake a brief hearing to review the status of reforms in icare and the implementation of various reviews of the scheme towards the end of the 2021 calendar year'.

**Chapter 3**

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 3.3:

'Mr McCann gave his evidence in a clear, forthright and compelling fashion. His insights into the manner in which icare addressed risks, including regarding procurement and conflicts of interest, was of very real

value to the committee, and through the committee, to injured workers, employers and the people of NSW.'

Resolved, on the motion of Mr Shoebridge: That paragraph 3.11 be amended by inserting 'that was presented to the icare Board' after 'business plan'.

Resolved, on the motion of Mr Shoebridge: That paragraph 3.17 be amended by inserting at the end: 'This was despite the unchallenged evidence before the committee that Mr Bhatia was present at the Board meetings where the Capgemini contract was considered and ultimately approved and there was no evidence to suggest either a conflict of interest declaration was made by Mr Bhatia or he excluded himself from any part of the Board's deliberations during these matters.'

Resolved, on the motion of Mr Shoebridge: That a new paragraph, drafted by the committee secretariat, be inserted after paragraph 3.13 outlining the reasons as to why Fineos withdrew from the tender process.

Resolved, on the motion of Mr Shoebridge: That the following paragraph 3.60 be omitted: 'Subsequent to this, the committee received written confirmation that Mr Craig, along with Mr Nagle, had unlimited delegation to contract in relation to the build of the Nominal Insurer Single Platform', and the following new paragraph be inserted instead:

'It is notable that Mr Plumb was also the head of the audit and risk committee of the icare Board's audit. When he was asked were you aware that an executive within icare had unlimited authority on behalf of icare in that matter, Mr Plumb responded:

No, I was not... My understanding is that the delegation is that contracts above \$10 million have to be approved by the board. Obviously, not physically signed—the board can delegate to that—but \$10 million is the board threshold.

[FOOTNOTE: Evidence, Mr David Plumb, non-executive director, icare Board, 2 December 2020, pp 25-28].

When Mr Plumb was asked what the risks are in having unlimited delegations at an executive level which informed a \$10 million policy, Mr Plumb replied:

The risks are, obviously, of concentration of approval that can obviously occur, and the risks of, if there is a process deficiency, that there is not that extra level of challenge and governance that deals to that.

[FOOTNOTE: Evidence, Mr David Plumb, non-executive director, icare Board, 2 December 2020, pp 25-28].

Mr Plumb was then asked 'were you kept in the dark, as the Chair of the Audit and Risk Committee, that a senior executive of icare, contrary to board policy, had unlimited delegations to contract on behalf of the Nominal Insurer?'. He responded:

I was not aware that there were unlimited delegations to contract on behalf of the Nominal Insurer. However, I am aware of the requirement that all contracts above \$10 million are required to be reported to the board— sorry, the board to approve those contracts. I am also aware of the requirement to report significant contracts to the board.[FOOTNOTE: Evidence, Mr David Plumb, non-executive director, icare Board, 2 December 2020, pp 25-28].

The evidence from icare was that this unlimited delegation was in regards to the construction of the Nominal Insurer single platform and the "transformation" program that followed it, having a total contract value in the end that exceeded \$300 million. This was confirmed in correspondence received from icare following the last hearing day.'

Resolved, on the motion of Mr Shoebridge: That paragraph 3.82 be amended by the committee secretariat, to acknowledge icare's use of psychological services.

Resolved, on the motion of Mr Shoebridge: That paragraph 3.83 be amended by omitting 'Some' before 'concerns'.

Resolved, on the motion of Mr Shoebridge: That paragraph 3.85 be amended by omitting 'the documentation' and inserting instead 'any documentation'.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 3.91:

'Mr Nagle last appeared before the Committee on 3 August 2020 when he commenced his evidence stating that he wanted "to thank the committee for the opportunity to correct the campaign of misinformation and accusations based on inaccuracies that has recently been generated." He resigned from his position at icare at the conclusion of the hearing that day'.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted after paragraph 3.125:

'Under the State Insurance and are Governance Act, the ICNSW Board has the following functions:

- (a) to give the Minister any information relating to the activities of ICNSW that the Minister requests,
- (b) to keep the Minister informed of the general conduct of ICNSW's activities and of any significant development in ICNSW's activities,
- (c) to determine general policies for ICNSW and to give directions to the chief executive of ICNSW in relation to the ICNSW's activities,
- (d) such other functions as are conferred or imposed on it by or under this or any other Act or law.

In addition, under section 6 of that Act, the Minister may give the ICNSW Board a written direction in relation to ICNSW if the Minister is satisfied that it is necessary to do so in the public interest. In the case of icare, the Minister in question has at all times been the Treasurer.'

Resolved, on the motion of Mr Shoebridge: That a new paragraph, drafted by the committee secretariat, be inserted after paragraph 3.141 in relation to the number of icare employees who receive or were entitled to bonuses.

Mr Shoebridge moved: That paragraph 3.142 be amended by inserting at the end: 'and that the funding for it came from money set aside to assist injured workers'.

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Donnelly, Mr Roberts, Mr Shoebridge.

Noes: Mr Fang, Mr Farlow, Mr Mallard, Mr Martin.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Resolved, on the motion of Mr Farlow: That Finding 5 be amended by omitting 'systemically' and inserting instead 'too often'.

Resolved, on the motion of Mr Shoebridge: That the following new committee comment be inserted after paragraph 4.65:

'We note that concerns regarding the implementation of PIAWE in the Nominal Insurer extend to the Treasury Managed Fund. Remediation efforts relating to PIAWE need to be addressed by icare in both the Nominal Insurer and Treasury Managed Fund as a matter of priority'.

Resolved, on the motion of Mr Donnelly: That:

- a) The draft report, as amended, be the report of the committee and that the committee present the report to the House;

- b) The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, summary report of the online questionnaire and correspondence relating to the inquiry be tabled in the House with the report;
- c) Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- ⇨ Upon tabling, all unpublished transcripts of evidence, submissions, responses to the online questionnaire and summary report of these responses tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be kept confidential by the committee;
- e) The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- f) The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- g) Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- h) The report be tabled on Friday, 30 April 2021.

## 7. Inquiry into Mandatory Disease Testing Bill 2020

### 7.1 Answers to questions on notice

The committee noted that the following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Mr Alastair Lawrie, Senior Policy Officer, Public Interest Advocacy Centre, received on 25 February 2021
- Ms Gabrielle Bashir SC, Senior Vice-President and Co-Chair of Criminal Law Committee, NSW Bar Association, received on 2 March 2021
- Dr Michelle Cretikos, Executive Director, COVID-19 Response, Population and Public Health, NSW Health, received on 3 March 2021
- Dr Mary Ellen Harrod, Chief Executive Officer, NSW Users and AIDS Association (NUAA), received on 4 March 2021
- Deputy Commissioner Malcolm Lanyon APM, Deputy Commissioner for Corporate Services, NSW Police, received on 4 March 2021
- Ms Gayle Robson, Chief of Staff, Office of the Commissioner, Corrective Services NSW, Department of Communities and Justice, received on 4 March 2021
- Mr Paul Miller, Acting NSW Ombudsman, received on 4 March 2021
- Mr Stewart Little, General Secretary, Public Service Association of NSW, received on 5 March 2021
- Dr Danielle McMullen, President, Australian Medical Association (NSW), received on 8 March 2021
- Ms Natalie Lang, Branch Secretary, Australian Services Union NSW and ACT (Services) Branch, received on 10 March 2021.

### 7.2 Consideration of the Chair's draft report

The Chair submitted his draft report entitled 'Mandatory Disease Testing Bill 2020', which, having been previously circulated, was taken as being read.

#### Chapter 2

Mr Shoebridge moved: That the following new paragraph be inserted after 2.44:

'The position of Mr Little, that the Bill would be useful to ensure there are consequences for inappropriate conduct, is at odds with the stated position of the Government, the NSW Police Force and the Police Association that this Bill is intended as a protective measure for frontline workers rather than a punitive measure to be used against third parties.'

Question put.

The committee divided.

Ayes: Mr Shoebridge.

Noes: Mr D'Adam, Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Shoebridge moved: That the following new paragraph be inserted after 2.64:

'Mandatory testing is in breach of the Australian National HIV, Hepatitis B or Hepatitis C Testing Policies, which state that "testing is conducted ethically, is voluntary and performed with the informed consent of, and is beneficial to, the person being tested". These policies state Australian clinical standards and ethical practice; therefore, a person taking blood from a third party under a mandatory testing order can only make a decision about whether their actions will be in breach of these standards if they are aware of their obligations under the Act, and whether a person has consented to be tested.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Shoebridge moved: That:

- the following new paragraph be inserted after 2.64: 'Medical practitioners and other allied health professionals involved in taking blood for the purposes of carrying out a mandatory testing order under the Act may be open to civil and/or criminal liability as a result of their actions. The current version of the Bill does not specifically name medical practitioners, nurses and blood collectors (phlebotomists) as exempt from civil and/or criminal liability'.
- the following new recommendation be inserted after paragraph 2.67: 'Sections 31(1) and 31(3) of the Bill should be amended to specifically include and name medical practitioners, nurses and blood collectors (phlebotomists).'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Shoebridge moved: That:

- the following new recommendation be inserted after paragraph 2.67: 'Section 19 of the Bill should be amended to explicitly state that no obligations under the Act are placed on the medical practitioner or pathologist. Health workers who may be asked to conduct a mandatory test should be provided with specific education and training about their professional rights to refuse.'
- the following new recommendation be inserted after paragraph 2.67: 'Section 19(2) of the Bill should be amended to require that the person taking blood from a third party under a mandatory testing order be informed that no obligations under the Act are placed on them, and informed of whether or not the person has consented to be tested.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Shoebridge moved: That:

- the following new paragraph be inserted after paragraph 2.87: 'Given the unambiguous evidence from the medical profession that saliva cannot transmit a BBV there is no valid reason to retain saliva in the bodily fluids listed in the bill. If there is evidence of blood being mixed with saliva then the presence of the blood itself would satisfy an amended definition of bodily fluids that included blood and excluded saliva. The bill should therefore be amended to remove saliva from the list of bodily fluids in the dictionary. Even putting aside the medical evidence regarding the absence of risk of transmission the inclusion of saliva perpetuates the myth around sources of transmission for HIV and so exacerbates stress for frontline workers who may have occupational exposure to saliva.'
- the following new recommendation be inserted after the new paragraph: 'That the Bill be amended to remove saliva from the definition of bodily fluid in the Act.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Mallard, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Shoebridge moved: That:

- the following new paragraphs be inserted after paragraph 2.93:  
 'The decision to make a mandatory testing order is clearly a medical decision, with the whole purpose of the Bill being to assist in the medical response to an incident rather than be a form of punishment of the third party. Therefore the decision should be made in a health context by the most appropriately qualified and informed medical practitioner. The experience of dealing with Covid-19 has shown how capable and competent NSW Health is in dealing with medical crises and the social response to them.  
  
 Expertise in blood-borne diseases is a highly specialised area, and a decision maker without this specific experience will not be able to accurately assess transmission risk associated with a specific exposure to bodily fluids. In light of the evidence we have received the Bill should therefore be amended to provide that any decision to make a mandatory testing order is made by the Chief Medical Officer or their delegate. To achieve this Part 3, sections 10-12 of the Bill should be amended so that any decision to impose a mandatory blood test is made by the Chief Health Officer, in consultation with a BBV/HIV specialist medical officer rather than police, regardless of seniority.'
- the following new recommendation be inserted after the new paragraphs:  
 'That the Bill be amended so that all decisions to make a mandatory testing order are made by the Chief Medical Officer and this includes any appropriately qualified medical professional acting as delegate of the CMO.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Mallard, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr D'Adam moved: That the following new recommendation be inserted in the committee comments section at the end of the report:

"The Bill should be amended to require a mandatory disease testing order to be made by the Chief Health Officer, or an independent arbiter delegated by the Chief Health Officer who has relevant medical expertise, including the ability to assess complex information about transmission risk."

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Mallard, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Shoebridge moved: That:

- the following new paragraph be inserted after paragraph 2.101: "There are real privacy concerns raised where a third party who is proposed for testing comes from a small community, especially country towns with only one GP and a very small community. Any consideration of a mandatory disease test in these circumstances would need to include consideration of the privacy impacts before a testing order is made."
- The following new recommendation be inserted after the new paragraph: 'Amend Part 3, sections 10 (5) of the Bill so that in determining an application, the decision maker should consider the impacts of carrying a test on the third party's privacy and be fully compliant with privacy legislation.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Shoebridge moved: That:

- the following new paragraph be inserted after paragraph 2.101: "The lack of clarity surrounding the criteria under which a mandatory disease testing order can be made under the Bill is of concern. There are strong reasons for putting in place a more detailed legislative structure that guides a decision maker and produced greater certainty. The Victorian Public Health legislation sets out a useful example in this regard and requires the decision maker to consider the clinical management of the affected worker and the third party while also creating safeguards to ensure alternative, less intrusive measures are considered. Similar provisions should be included in this Bill."
- the following new recommendation be inserted:  
"That Section 10(7) be amended so that any decision maker must also be satisfied that:
  1. The worker came into contact with the bodily fluid of the third party as a result of a deliberate action of the third party; and
  2. In considering the medical evidence, the making of the order is necessary in the interest of rapid diagnosis and clinical management and, where appropriate, treatment for any of those involved; and
  3. In considering the medical evidence, there are no alternative measures available which would be less restrictive of the rights of the third party and equally effective in ensuring the rapid diagnoses and clinical management for any person effected."

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr D'Adam moved: That the following new recommendations be inserted in the committee comments section at the end of the report:

- 'The Bill should be amended to provide that, if alternative measures that are equally effective for the rapid diagnosis and clinical management of a worker are available, the measure that is least restrictive of the rights of the third party should be chosen.'
- 'The Bill should be amended to require that a decision to issue an order can only be made when it is necessary for rapid diagnosis, clinical management or treatment of the worker.'
- 'The Bill should be amended to require that evidence of a deliberate action is required to issue an order'.

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Shoebridge moved: That:

- a new heading 'Issuing of orders' be inserted after paragraph 2.101
- the following new paragraph be inserted after paragraph 2.101: 'Third parties mandatorily getting tested for blood borne viruses under this scheme, such as viral hepatitis and HIV should have the same rights as any other patient getting tested. This should include provision of accurate information and access to support services where these are required.'
- the following new recommendation be inserted: 'Section 18 of the Bill should be amended to require the third party to be provided with information about blood borne viruses, a referral to a medical practitioner with specific expertise in these, and a referral to counselling. This should be done at the same time the third party is personally served the mandatory testing order.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr D'Adam moved: That the following recommendations be inserted in the committee comments section at the end of the report:

- 'The Bill should be amended to provide that third parties are informed of the decision making and review process, relevant timeframes, and where to seek medical and legal advice.'
- 'The Bill should be amended to ensure detained people will have information to appeal a mandatory testing order.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Shoebridge moved: That:

- the following new paragraph be inserted after 2.101: 'Mandatory disease testing should not be used as punishment. Using mandatory disease testing as extra-judicial detention contradicts civil rights protections and is contrary to the objects of this Bill.'
- the following new recommendation be inserted: 'Amend Part 6, section 20 (1) so that there is no unreasonable detention in order to transport the person for a mandatory test – particularly where the test is not consented to and an appeal is made.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Shoebridge moved: That:

- the following new paragraph be inserted after 2.117: 'The legislation should comply with principals of natural justice including provisions to provide the person subject to mandatory testing with an effective appeal mechanism. This matches the Victorian, Queensland, Northern Territory and Western Australian provisions.'
- the following new recommendation be inserted: 'Part 7, section 22 of the Bill should be amended so that appeals against a mandatory blood testing order of the Chief Health Officer are conducted by the Local Court to be heard de novo.'
- the following new paragraph be inserted after 2.117: 'The current drafting of the legislation would allow an order to continue irrespective of any review process being undertaken and regardless of the fact procedural fairness may not have been provided to the third party under the legislation. This is contrary to the provisions in similar legislation in other jurisdictions and contrary to natural justice principles. In effect it makes the appeal rights contained in the Bill of no value.'
- the following new recommendation be inserted: 'Part 7 Section 23(1-3) be amended so that appeals held by the local Court, or any other appeal body, are to be held in a timely manner and power is given to the appeal body to put a stay on the order while the appeal is determined.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr D'Adam moved: That the following recommendations be inserted in the committee comments section at the end of the report:

- 'The Bill should be amended to provide that no mandatory blood tests should be required during the period in which a review application is being considered.'
- 'The Bill should be amended to provide an appeals mechanism for a mandatory testing order on a 'vulnerable third party', as a de novo hearing in the District Court.'
- 'The Bill should be amended to provide an appeals mechanism for a mandatory testing order on a third party, as a de novo hearing in the Local Court.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Shoebridge moved: That:

- the following new paragraph be inserted after 2.117: 'The Bill should be amended so that an order must be sought by the Chief Health Officer from the Local Court if reasonable force for the purpose of enforcing the order on people in detention is required. A similar provision is found within the *Victorian Public Health and Wellbeing Act 2008* (Section 134 (4)). The Court should be satisfied that the circumstances are so compelling that the making of the order to use reasonable force is justified.'
- the following new recommendation be inserted: 'The Bill should be amended so that an order must be sought by the Chief Health Officer from the Local Court if reasonable force for the purpose of enforcing the order on people in detention is required.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr D'Adam moved: That the following new recommendation be inserted in the committee comment section at the end of the report:

'The Bill should be amended to remove provisions allowing the use of 'reasonable force' on detained third parties'.

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Shoebridge moved: That:

- the following new paragraph be inserted after 2.127: 'There are strong policy reasons to have additional protective measures in place for minors. This, together with the very low prevalence of HIV and blood-borne viruses in minors does not justify the conduct of mandatory disease testing on persons under the age of 18.'
- the following recommendation be inserted: 'Amend part 2, section 7 so that no person under the age of eighteen (18) years is subject to mandatory disease testing.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr D'Adam moved: That the following new recommendation be inserted in the committee comment section at the end of the report:

'The Bill should be amended to ensure that mandatory tests for blood-borne diseases cannot be conducted on any person under the age of 18.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Shoebridge moved: That:

- the following new paragraph be inserted after 2.127: 'The legislation in its current form gives little opportunity to children and vulnerable people to seek support from their parent or guardian. For many children this is likely to be their first time learning of BBV's and the protections that they should take to minimise risk of transmission. A safe environment that offers support systems for the child would assist encouraging the child to engage with healthcare facilities in the future. *The Crimes (Forensic Procedures) Act 2000* has safeguards in place which this legislation should look to as a guide including providing the right to representation by a legal representative and an interview friend during proceedings and during the procedure.'
- The following new recommendation be inserted: 'The Bill must include a requirement for the meaningful involvement of parents/guardians or a support person in all aspects of the legislation involving people under the age of eighteen (18) years.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Shoebridge moved: That the following new recommendation be inserted after 2.130:

'To assist appeals by persons with literacy, language mental health or cognitive disability, assistance from a qualified support person must be provided to enable them to make an informed decision, understand their rights and submit an appeal.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr D'Adam moved: That the following new recommendation be inserted in the committee comment section at the end of the report:

'The Bill should make provision for support to be provided to vulnerable third parties who lodge an appeal'.

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Shoebridge moved: That the following new paragraph be inserted after 2.145:

'The best way to continuing preventing occupational transmissions and to reduce fear and anxiety about HIV and BBVs is to provide people with adequate health information. This includes information on levels of risks – including the fact that HIV, hepatitis B and hepatitis C does not get passed on through saliva – and on how to prevent transmissions and stay safe.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Shoebridge moved: That:

- a new heading 'Treatment of the test results and medical information' be inserted after 2.134.
- the following new paragraphs be inserted after 2.134: '
 

'HIV and blood borne virus test results are highly sensitive personal information, the disclosure of which can have serious consequences for those living with such diseases. Inadequate privacy protections may lead to increased stigma and discrimination, which will hinder public health responses to HIV and BBVs.'

'Data obtained through mandatory disease testing should only be used to satisfy the objects of the Bill, in accordance with public health objectives. Allowing police to utilise mandatory disease testing results for other purposes may lead to an unjustified increase in mandatory disease testing orders.'
- the following new recommendation be inserted:
 

'Section 28 should be amended so that any and all information and data collected or utilised, including any test results and/or any medical information must be managed by the Chief Health Officer, observing all public health procedures and protocols.'
- the following new recommendation be inserted:
 

'Section 28 should be amended so that any information or data collected or utilised, including any test results and/or any medical information cannot be used by police or in any other criminal matter.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr D'Adam moved: That the following new recommendation be inserted in the committee comment section at the end of the report:

'The Bill should require that all blood samples are compulsorily destroyed after completion of testing and there should be an absolute prohibition on the use of samples in any other type of testing (including DNA testing).'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Shoebridge moved: That the following new recommendation be inserted after paragraph 2.150:

'All frontline workers, including those specified in the legislation should be provided with access and education on Hepatitis B vaccination and must participate in regular education on blood borne viruses including HIV with specialist organisations, including ASHM, Positive Life, ACON and Hepatitis NSW. This information and supporting education sessions should be mandatory.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Resolved, on the motion of Mr Shoebridge: That the following new paragraph be inserted as committee comment:

'The high rate of Hepatitis C in prisons should result in the expansion of the Hepatitis in Prisons Elimination program to reduce the identified risks to inmates and prison officers. Given the success of these programs to date this is the most effective way to meaningfully address this problem at the source.'

Mr Shoebridge moved: That the following new paragraph be inserted after 2.154:

'There is a real risk that a Mandatory Disease Testing scheme will cause frontline workers to overestimate the risk of transmission of blood-borne diseases from those they deal with, this will have significant mental health impacts. Any new scheme must be accompanied by myth-busting to ensure saliva for instance is not considered a likely vector for such infections.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Shoebridge moved: That recommendation 1 be omitted and the following recommendation inserted instead:

'That the Legislative Council not support the Mandatory Disease Testing Bill 2020 in light of the significant concerns identified by stakeholders including the fact that the diseases in question have very low prevalence in the community and are extremely unlikely to be transmitted in interactions with police and emergency service workers.'

Question put.

The committee divided.

Ayes: Mr Shoebridge.

Noes: Mr D'Adam, Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Shoebridge moved: That a new recommendation 2 be inserted as follows:

'That the NSW Government should continue to review the expert evidence about measures to protect front line workers from blood-borne disease including changes to protective equipment, workplace setup, access to post-exposure prophylaxis and general procedure and policies.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Shoebridge moved: That a new recommendation 3 be inserted as follows:

'That respect and dignity of people with blood-borne diseases is a central concern in any policies and procedures relating to blood-borne diseases.'

If the Bill proceeds then any amendments to the legislation should be made to ensure it reflects current NSW public health procedures in relation to HIV and Blood Borne Viruses (BBVs). Testing should only occur where there is an actual risk of transmission, which should be assessed by medical/public health professionals.

Decisions to carry out Mandatory Disease Testing orders should sit with the NSW Chief Health Officer and adequate appeals and safeguards must be in place to avoid adverse impacts, particularly on the most vulnerable community members.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr D'Adam moved: That the following new recommendation be inserted in the committee comment section at the end of the report:

'The Bill should be amended to ensure that testing orders can only be made when an actual risk of transmission occurs (taking account of the bodily fluid and type of contact).'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr D'Adam moved: That the following new recommendation be inserted in the committee comment section at the end of the report:

'The Bill should be amended to expand the definition of 'vulnerable third party' to include those who identify as Aboriginal or Torres Strait Islander people.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Shoebridge moved: That the following new paragraph be inserted after 2.54:

'The concern of stakeholders other than the Police Association of NSW is not the conduct of marginalised communities, but the use of police discretion.'

Question put.

The committee divided.

Ayes: Mr Shoebridge.

Noes: Mr D'Adam, Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr D'Adam moved: That the following new recommendations be inserted in the committee comment section at the end of the report:

- 'The Bill should be amended to clarify what is meant by 'deliberate action' by having a specific definition in the bill.'

- 'The Bill should be amended to insert clear criteria that should guide decisions on whether or not to issue an order including requiring that medical opinion must be taken into account in a decision to issue a mandatory disease testing order.'
- 'The Bill should be amended to clarify the standard of proof required to make an order.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr D'Adam moved: That the following recommendation be inserted in the committee comment section at the end of the report:

'The Bill should be amended to lengthen the time frame to make a review application.'

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Shoebridge.

Noes: Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Question resolved in the negative.

Mr Donnelly moved: That:

- The draft report [as amended] be the report of the committee and that the committee present the report to the House;
- The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions and correspondence relating to the inquiry be tabled in the House with the report;
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- Upon tabling, all unpublished transcripts of evidence, submissions, responses to the online questionnaire and summary report of these responses tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be kept confidential by the committee;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- The report be tabled on Friday, 30 April 2021.

Question put.

The committee divided.

Ayes: Mr D'Adam, Mr Donnelly, Mr Fang, Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts.

Noes: Mr Shoebridge.

Question resolved in the affirmative.

## 8. Adjournment

The committee adjourned at 11.34 am, until 25 May 2021 (*public hearing for the 2020 reviews of the Compulsory Third Party insurance and Lifetime Care and Support Schemes*).

Tina Higgins and Peta Leemen  
**Committee Clerks**

**Draft Minutes no. 36**

Tuesday 25 May 2021

Standing Committee on Law and Justice Committee  
 Macquarie Room, Parliament House, Sydney, 9.30 am

**1. Members present**

Mr Fang, *Chair*  
 Mr Khan, *Acting Deputy Chair*  
 Mr D'Adam  
 Mr Farlow  
 Mr Martin  
 Mr Moselmane (*substituting for Mr Donnelly*)  
 Mr Roberts  
 Mr Shoebridge

**2. Apologies**

Mr Donnelly, *Deputy Chair*

**3. Election of Acting Deputy Chair for the hearings on 25 and 26 May 2021**

Resolved, on the motion of Mr Martin: That, in the absence of Deputy Chair Donnelly, Mr Khan be elected Acting Deputy Chair for the duration of the hearings on 25 and 26 May 2021.

Mr Khan and Mr Shoebridge joined the meeting at 9.37 am.

Mr Khan declared that his mother was currently in the process of settling a CTP claim.

**4. Draft minutes**

Resolved, on the motion of Mr D'Adam: That draft minutes no. 35 be confirmed.

**5. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 19 May 2021 – Email from Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority, to secretariat, providing the committee with updated information on the performance of the motor accidents scheme, including two performance reports
- 7 May 2021 – Email from Ms Georgia Lovell, Suncorp, to secretariat, declining the invitation to give evidence at a hearing and advising that the Insurers Council of Australia will provide witnesses to appear on behalf of the industry
- 3 May 2021 – Email from Ms Sarah Judd-Lam, Manager, Policy and Research, Carers NSW, to secretariat, declining the invitation to give evidence at a hearing
- 3 May 2021 – Correspondence from the Office of Lynda Voltz MP to the committee, regarding the referral of a complaint.

Resolved, on the motion of Mr Roberts: That:

- the Chair respond to the correspondence received from the Office of Lynda Voltz on 3 May 2021, advising that it does not have the authority to investigate the complaint, and
- the correspondence be kept confidential, given the potential adverse mention and identifying information included.

## 6. 2020 Review of the Compulsory Third Party insurance and Lifetime Care and Support schemes

### 6.1 Responses to pre-hearing questions from SIRA and icare

The committee noted the pre-hearing responses received from icare and SIRA, which were agreed to be published via email.

### 6.2 Timeline

The committee noted that it previously resolved to report by end July 2021 and that the secretariat will soon canvas member availability for a report deliberative towards the end of July 2021.

### 6.3 Public Hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Dr Nicole Brooke, Chief Executive Officer, Australian Community Industry Alliance.

Mr Farlow joined the meeting at 9.49 am.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Michael Timms, Treasure and Committee Member, Australasian College of Road Safety – New South Wales Chapter
- Mr Kevin Henry, Chairman, Motorcycle Council of New South Wales Incorporated
- Mr Brian Wood, Secretary, Motorcycle Council of New South Wales Incorporated
- Mr Martin Rogers, Chief Executive Officer, NSW Taxi Council
- Mr Nick Abraham, Deputy Chief Executive Officer, NSW Taxi Council.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Chris Butel, Chair of the Insurance Council of Australia's NSW CTP committee
- Ms Meghan Isley, Committee member of the Insurance Council of Australia's NSW CTP committee
- Ms Estelle Pearson, Actuary supporting the Insurance Council of Australia.

The evidence concluded and the witnesses withdrew.

Mr D'Adam left the meeting.

The following witnesses were sworn and examined:

- Mr Andrew Stone SC, representative, Australian Lawyers Alliance
- Mr Robert Sheldon SC, Chair of the NSW Bar Association's Common Law Committee, NSW Bar Association
- Miss Elizabeth Welsh, Deputy Chair of the NSW Bar Association's Common Law Committee, NSW Bar Association
- Mr Timothy Concannon, Chair, Injury Compensation Committee, The Law Society of New South Wales
- Mr Leigh Davidson, Deputy Chair, Injury Compensation Committee, The Law Society of New South Wales.

Mr Stone tendered a copy of page 11 of a State Insurance Regulatory Authority (SIRA) report entitled 'CTP Insurer Claims Experience and Customer Feedback Comparison', dated 31 March 2021.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 3.30 pm.

The public and the media withdrew.

#### 6.4 Tabled documents

Resolved, on the motion of Mr Farlow: That the committee accept and publish the following document tendered during the public hearing:

- a copy of page 11 of a SIRA report entitled 'CTP Insurer Claims Experience and Customer Feedback Comparison', tendered by Mr Stone.

Mr Shoebridge tendered a document of the State Insurance Regulatory Authority showing the performance of the CTP scheme for the 12 months to February 2021.

Resolved, on the motion of Mr Khan: That the committee accept and publish a document of the State Insurance Regulatory Authority showing CTP scheme performance for the 12 months to February 2021, tendered by Mr Shoebridge.

#### 7. Adjournment

The committee adjourned at 3.35 pm until 9.30 am, Wednesday 26 May 2021 (Public hearing for the 2020 Reviews of the Compulsory Third Party Insurance and Lifetime Care and Support schemes).

Tina Higgins

**Committee Clerk**

#### Draft Minutes no. 37

Wednesday 26 May 2021

Standing Committee on Law and Justice

Macquarie Room, Parliament House, Sydney, 9.30 am

#### 1. Members present

Mr Fang, *Chair*

Mr Khan, *Acting Deputy Chair*

Mr D'Adam

Mr Farlow

Mr Martin

Mr Mookhey (*substituting for Mr Donnelly*)

Mr Roberts

#### 2. Apologies

Mr Donnelly, *Deputy Chair*

Mr Shoebridge

#### 3. 2020 Review of the Compulsory Third Party insurance and Lifetime Care and Support schemes

##### 3.1 Public Hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

Mr Khan joined the meeting at 9.34 am.

Mr Farlow joined the meeting at 9.36 am.

The following witnesses were sworn and examined:

- Mr Richard Harding, Chief Executive Officer & Managing Director, icare
- Dr Nick Allsop, Group Executive, Care and Community, icare
- Ms Rashi Bansal, Group Executive, Organisational Performance, icare
- Ms Suzanne Lulham, General Manager, Care Innovation & Excellence, icare.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Carmel Donnelly, Chief Executive, State Insurance Regulatory Authority
- Dr Petrina Casey, Acting Executive Director, State Insurance Regulatory Authority.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 12.47 pm.

The public and the media withdrew.

### **3.2 Correspondence**

The committee noted the following item of correspondence:

#### ***Received***

- 25 May 2021 – Email from Ms Ellyse Matterson, Policy Lawyer, New South Wales Bar Association, to the secretariat, providing a copy of the Motor Accident Guidelines published by the NSW Government, dated 13 July 2018.

Resolved, on the motion of Mr Farlow: That the copy of the Motor Accident Guidelines provided by the NSW Bar Association be published.

### **3.3 Report**

The committee discussed the approach to the report.

## **4. Adjournment**

The committee adjourned at 12.55 pm, *sine die*.

Tina Higgins

**Committee Clerk**

## **Draft Minutes no. 38**

Friday 23 July 2021

Standing Committee on Law and Justice

Via videoconference, 10.06 am

### **1. Members present**

Mr Fang, *Chair*

Mr Donnelly, *Deputy Chair*

Mr D'Adam

Mr Farlow

Mr Khan

Mr Martin

Mr Roberts

Mr Shoebridge

### **2. Correspondence**

The committee noted the following items of correspondence:

#### ***Received:***

- 23 June 2021 - Email from Mr Alastair McConnachie, Deputy Executive Director, NSW Bar Association, to secretariat, providing a link to the EY report on Dispute Resolution published on SIRA's website, in response to a question taken on notice at the hearing on 25 May 2021.
- 21 June 2021 – Email from Kiril Georgiev to committee, requesting an inquiry into the NSW Civil and Administrative Tribunal.

### 3. 2020 Reviews of the Compulsory Third Party insurance and Lifetime Care and Support schemes

#### 3.1 Answers to questions on notice

The committee noted that the following answers to questions on notice were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from icare, received on 21 June 2021, including attachment B
- answers to questions on notice from the Insurance Council of Australia, received on 21 June 2021,
- answers to questions on notice from the State Insurance Regulatory Authority, received on 20 June 2021,
- answers to questions on notice from the Motorcycle Council of NSW Inc, received on 20 June 2021.

Resolved, on the motion of Mr Shoebridge: That Tab A and Tab C, two attachments to icare's answers to questions on notice, received on 21 June 2021, be kept confidential.

#### 3.2 Report deliberative – 2020 Review of the Lifetime Care and Support scheme

The Chair submitted his draft report entitled '2020 Review of the Lifetime Care and Support scheme' which having been previously circulated was taken as being read.

Resolved, on the motion of Mr Donnelly: That:

- The draft report be the report of the committee and that the committee present the report to the House
- The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee
- Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee
- Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting
- The secretariat tables the report on 30 July 2021.

#### 3.3 Report deliberative – 2020 Review of the Compulsory Third Party insurance scheme

The Chair submitted his draft report entitled '2020 Review of the Compulsory Third Party Insurance scheme' which having been previously circulated was taken as being read.

## Chapter 2

Resolved, on the motion of Mr Shoebridge: That paragraph 2.14 be amended by omitting the second sentence: 'For an injury to be considered not minor, the person is required to have a degree of permanent impairment greater than 10 per cent'.

Mr Shoebridge moved: That paragraph 2.70 be amended by omitting 'Given the broader consultations that will take place as part of that process, and to avoid pre-empting outcomes, we do not make any recommendations on this occasion. We do, however, strongly suggest that the statutory review specifically consider the following matters, based on evidence and concerns raised by stakeholders in this review.' and inserting instead:

'We note that there is further consultations that will take place as part of that statutory review. There were a series of matters raised by stakeholders in this inquiry that, prima facie, require intervention and amendment to the scheme. To take advantage of the further consultation, and noting that the review is effectively paralleling this committee's deliberations, rather than recommending these changes be

implemented immediately, we recommend that the following issues form a significant part of the review's work.

### **Recommendation 1**

That the current statutory review of the *Motor Accident Injuries Act 2017* closely consider the following issues for reforms to the scheme:

- whether the no fault statutory benefit period should be expanded to a minimum of 52 weeks
- how the minor injury definition can be amended to ensure it does not exclude those with genuine minor injuries, avoiding unfair outcomes for injured people, particularly in relation to psychological claims
- whether the 20 month cooling off period should be reduced or abolished, to facilitate the faster resolution of some claims
- the provision of legal support to claimants in the scheme, particularly in relation to disputes, including the internal review process
- how to improve transparency and accountability in relation to insurer profits and premium setting.'

Mr Khan moved: That the motion of Mr Shoebridge be amended by:

- a) omitting 'There were a series of matters raised by stakeholders in this inquiry that, prima facie, require intervention and amendment to the scheme.' after 'We note that there is further consultations that will take place as part of that statutory review'
- b) omitting 'significant part of the reviews work' and inserting instead 'part of the reviews work'
- c) omitting 'avoiding unfair outcomes for injured people' after 'how the minor injury definition can be amended to ensure it does not exclude those with genuine minor injuries'
- d) omitting 'particularly in relation to psychological claims' and instead inserting 'including in relation to psychological claims'.

Amendments of Mr Khan put and passed.

Original question of Mr Shoebridge, as amended, put and passed.

Resolved, on the motion of Mr Donnelly: That:

- The draft report as amended be the report of the committee and that the committee present the report to the House
- The transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report
- Upon tabling, all unpublished attachments to submissions be kept confidential by the committee
- Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee
- Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting
- The secretariat tables the report on 30 July 2021.

#### **4. Timeline for next reviews and activity**

The committee discussed the timeline and order of its next oversight reviews.

Resolved, on the motion of Mr Shoebridge: That the 2021 Review of the Dust Diseases scheme commence in September 2021, with submissions open until 12 December 2021, and two hearing dates arranged for early February 2022 (one as a reserve), subject to the availability of members.

Resolved, on the motion of Mr D'Adam: That in accordance with the recommendations from the 2020 Review of the Workers Compensation scheme, the committee:

- request an update from icare by end November 2021 about its performance and the reforms it has implemented since the report was tabled
- have a 2 hour hearing with icare early December 2021.

**5. Other business**

Resolved, on the motion of Mr Donnelly: That the secretariat request the Parliamentary Research Service to prepare a briefing paper on federal developments regarding the dust diseases scheme, with respect to the use of manufactured stone in the building industry, for consideration by the committee in the forthcoming 2021 Review of the Dust Diseases scheme.

**6. Adjournment**

The committee adjourned at 10.41 am, *sine die*.

Vanessa O'Loan / Tina Higgins

**Committee Clerk**





