REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

2018 REVIEW OF THE WORKERS COMPENSATION SCHEME

UNCORRECTED PROOF

At Preston Stanley Room, Parliament House, Sydney, on Wednesday 25 July 2018

The Committee met at 10.30 a.m.

PRESENT

The Hon. Natalie Ward(Chair)

The Hon. Trevor Khan
The Hon. Scot MacDonald
The Hon. Daniel Mookhey
Mr David Shoebridge
The Hon. Lynda Voltz

The CHAIR: First of all, I apologise for the delay in our commencement. I do not like being late. We have had some technical issues, which we tend to have from time to time. I thank you for your patience. I thank the Committee, Hansard and IT staff for working very hard to fix that, and I thank people present for their forbearance in the meantime while we try to get underway. We ordinarily would have a broadcast of proceedings, but we have had some issues with the broadcast, which we are trying to fix, so we do not have that but we do have Hansard. I thank all the staff were working as a team for bringing everything together.

Welcome to the Standing Committee on Law and Justice 2018 review of the workers compensation scheme. I welcome everybody here today, which is the second day of the hearing. My name is Natalie Ward and I am Chair of the Standing Committee on Law and Justice. At the beginning of yesterday's hearing I mentioned that our Committee has an important role in oversighting a number of insurance and compensation schemes, including the Workers Compensation Scheme. This particular review is focusing on the feasibility of a consolidated personal injury tribunal for workers compensation and compulsory third party disputes.

Before I commence, I acknowledge the Gadigal people, who are the traditional custodians of this land, and pay respect to elders, past and present, of the Eora a nation. I extend our respect to other Aboriginals who are present. Today we will hear from representatives from the Workers Compensation Independent Review Office, the State Insurance Regulatory Authority, and icare. Before we commence, I will make some brief comments about the procedures for today's hearing. Today's hearing is open to the public and we welcome members of the public who are here today. We do not anticipate a live broadcast at this stage, and extend our apologies for that. However, a transcript of today's hearing will be placed on the Committee's website when it becomes available. I thank our staff for their hard work in that area.

I am not sure that we have members of the media here today but we do have media broadcasting guidelines. Members of the media may film or record Committee members and witnesses. However, people in the public gallery should not be the primary focus of any filming or photography. I remind any media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside their evidence at the hearing. I urge witnesses to be careful about any comments they make to the media and others after completing their evidence because such comments would not be protected by parliamentary privilege if another person decided to take action for defamation. I was not a defamation lawyer, so I will not give advice on that front. It is just a warning. The guidelines for the broadcast of proceedings are available from the Committee's secretariat staff.

Today there may be some questions on notice. If a witness can answer only if they have more time or they have certain documents to hand, they may take those questions on notice. In those circumstances, witnesses are advised that they are to provide an answer within 21 days. Witnesses are advised that any messages should be delivered to Committee members through the Committee staff, who are on my left. To aid the audibility of this hearing, I remind both Committee members and witnesses to speak into the microphones. I ask everybody to now check that their mobile phones are turned off for the duration of hearing. I now welcome our first witness today from the Workers Compensation Independent Review Office.

KIM ADRIAN GARLING, Workers Compensation Independent Review Officer, Workers Compensation Independent Review Office, sworn and examined

The CHAIR: Do you have an opening statement?

Mr GARLING: I have a brief opening statement that I asked to be circulated to you so that you can read it while I speak to it, which I hope you do not mind.

The CHAIR: That has been circulated. I confirm that Committee members have copies of that.

The Hon. TREVOR KHAN: I am already making notes.

The CHAIR: The Hon. Trevor Khan has made notes already. We love prepared and circulated statements.

Mr GARLING: Madam Chair, and members of the Committee, I thank you for the opportunity of giving evidence this morning. I commend the Minister for Finance, Services and Property, Mr Dominello, for his initiative in undertaking a review of the dispute resolution system within the Workers Compensation Scheme. As you know, on 4 May the Minister announced that the bifurcated dispute resolution system, which this committee previously had criticised, would be varied to ensure that there was one tribunal which would deal with all disputes within the workers compensation system. That is a welcome reform which will provide greater certainty for injured workers as to their rights and entitlements.

My office has a statutory function to oversee the Workers Compensation Scheme. I take that very seriously. My office has collected significant data from more than 60,000 cases that we have funded and something like 20,000 complaints and inquiries from workers on their behalf. It may not be fully appreciated that in the course of providing funding to assist injured workers that the expert lawyers in my office, many of whom are here this morning, review the entire file, which includes reading documents such as the claim form, witness statements, medical reports from both the worker and the insurer. That has enabled us to seek to resolve cases where it is apparent that there is a strong basis for a particular outcome. I am pleased to confirm that the insurers have generally been very responsive in their support for this process.

No other agency has that degree of insight into the reasons for disputes. I have been passionate about publishing as much data as is relevant on a regular basis from the day we started. If I get it wrong, then it is there for everyone to see. I am aware that the publication of that data has been effective sometimes with insurers altering their approach when their performance is highlighted publicly. We have had a number of insurers where a director has casually looked at our website and caused havoc within the team, so I know it does work. I appreciate that we are looking at a single tribunal, but there are parts of existing legislation that I must draw to your attention because they are confusing and ambiguous and really need urgent review.

Just one example—and I will not bore you too much—section 39, which contains the 260-week limit, seems straightforward. Unless you have permanent impairment above the 20 per cent threshold then you do not continue your payments. Apparently a simple provision. An issue has arisen which is whether an injured worker whose level of permanent impairment did not exceed the threshold at the expiry of the 260 weeks. It is a guillotine provision that subsequently is assessed as being in excess of the threshold. Is that person subsequently entitled to once again receive weekly payments and, if so, should that be backdated to the date of the cessation of the 260 weeks? If that is correct—and that is being challenged in the commission at the moment—then that has a potentially significant financial impact on the fund because you could have people coming back after 10 years.

It is a big issue and what we say is it can be simply resolved by some minor legislative amendment to make the Government's intention clear. I just need to draw that to your attention because it is a matter of current concern. One of the things my office is fortunate to have is an early insight into what is happening because no-one starts their claims when there is a dispute without coming to us for us for funding. We are generally well in advance of the insurers in knowing what is coming, so we have observed that. I look forward to participate in the hearing today. I am more than happy to make available to the Committee any information which it sees as being of assistance.

The CHAIR: The Committee appreciates the provision of your written submission in addition to your opening statement. You can be assured that we have read the written submission. I have a couple of questions about it. You referred to data. Data, of course, informs future decisions and is a basis on which to make future decisions. Will you elaborate on the degree of insight you have based on that data and how that might inform the Committee to inform the subsequent decision about one tribunal? Would you care to elaborate on the data gathering that you have undertaken and how that differs from other organisations?

Mr GARLING: I am happy to make available any data that would assist the Committee. We can measure the performance of an insurer and an insurer's lawyer, a worker and a worker's lawyer across the system. We can tell you when an application is made for funding, how long it then takes before it develops into a request for funding to pursue the dispute in the commission. We can tell you in the commission where that dispute ends—either way, satisfactorily or not satisfactory, depending on your view. We can tell you whether the worker wins, whether the insurer wins. We are in the process, and I think we can do it fairly accurately, of measuring what the perceived results should have been.

You have got to be careful because quite often people ask for a particular outcome early on and that changes across the course of the conduct of the claim. When looking at the final outcome, it may be that the worker is successful. The question we have been asking is, "What did they start with? What did they end up with?" Because there is a continuing tendency to bungle up the outcome into a sum of money that everyone is happy with. It may not reflect what the dispute was. We have to be careful about that but we measure that as best as we can. We can tell you that approximately half the cases that come in our door get resolved without having to go to the commission.

The CHAIR: I am interested in your insight on that. It may well be your opinion, but are you seeing trends in that data when you say less numbers are going to the commission?

Mr GARLING: We certainly do. One thing I need to make sure is fully appreciated is that not all the matters that go to the commission are "disputes" because some matters have to go to the commission—death claims and other cases must be determined in the commission. It is a little misleading to call that a dispute in the sense of a disagreement between parties. There are other cases such as whole person impairment outcomes, which have to go to the commission. Some have to go because of disputes and others have to go because of the circumstances. There is a wide range but essentially we can tell you early trends such as the section 39 cases I have mentioned, and there will be a batch of section 59A, which is the compensation period for medical expenses coming through. They are starting. One of the things we have access to, which I think we are probably alone, is the wonderful arguments that lawyers put up to get funding. We are not always persuaded that those arguments are ideal but we are aware of them. There are some wonderful arguments around. However, I think they are the important ones at the moment.

We have highlighted in the past the difficulty with getting agreement to whole person impairment where the policy of the regulator was not to permit it. There are a number of disputes that have to go to the Workers Compensation Commission because even though the parties agree as to them being not acceptable, there is still some doubt about that policy. That is an issue. There a number of those. I am sure we can find more but they are the spectacular ones at the moment. You will find the work capacity issue is another major issue because, as the Committee knows, work capacity decisions involve two aspects. One aspect is money—that is, what are my pre-injury earnings and how much am I entitled to? They are relatively easy. The second aspect is capacity for work because a worker needs to get information to assist in dealing with that decision. They cannot do it simply by writing a letter saying, "I think I am worse off than you think I am." There is quite a distinction there. We are seeing a lot of those disputes made up as other disputes heading towards the Workers Compensation Commission. In fact, the Workers Compensation Commission has done more work capacity decisions than the insurers.

The CHAIR: As you say, there are people who want to get back to work or who want to get a resolution to their claim and/or both. What is your view of the one tribunal proposition and what do you see as the role of the Workers Compensation Independent Review Office [WIRO] in that landscape?

Mr GARLING: I am in favour of the one tribunal. I listened to the evidence of various different parties yesterday and I think some of it was being over-protective. I do not think that a sensible judicial officer, whether it be an arbitrator, Deputy President or a President equivalent, would have any difficulty with determining disputes in either jurisdiction. They are essentially much the same. I do not think that is an issue. As was mentioned yesterday, District Court judges have multiple different functions every day and that seems to work fine. I do not think that is an issue.

How you set it up is a challenge. Obviously it would be ideal for a new tribunal to be free of all the past constraints, but from a practical perspective that is not going to happen in an early period. If the Committee is going to recommend that, it has to be realistic. Realistically, the Workers Compensation Commission is probably the model at the moment and we hook on the compulsory third party [CTP] jurisdiction. It should not affect the workers compensation jurisdiction at all. Personally I think you should leave it to the Workers Compensation Commission to determine the processes in consultation with the experts who appear in that jurisdiction. It is very important that it is not the Workers Compensation Commission determining it; it should be in consultation. I think that will be much more effective and productive and it will clear up a lot.

The CHAIR: Yesterday there was discussion at length about how determinative the Parliament should be in specifically setting out how that should operate or whether that should be a decision best left to those who are given the job of running it.

Mr GARLING: It is detailed and complicated and best left to experts who practise in that jurisdiction every day, rather than trying to bring it from on high when, frankly, the experience is not as great as those working at the coalface.

Mr DAVID SHOEBRIDGE: And able to be modified as different claims become dominant?

Mr GARLING: Absolutely.

Mr DAVID SHOEBRIDGE: As you described in your earlier evidence there is a tide, is there not, of certain claims? Sometimes it is medical expenses or return to work and you need to be able to modify your processes to deal with the tide of claims coming through?

Mr GARLING: Exactly and to some extent we anticipated the section 39 spike by introducing our own processes for funding. We spoke to the Workers Compensation Commission about a more effective way of dealing with those and that is exactly the example you are giving.

The CHAIR: One of the recurring themes has been the necessity for independence of any new tribunal and being arms-length perhaps from the regulatory or other bodies? What is your comment on that?

Mr GARLING: That is a fundamental proposition.

The CHAIR: I think there has been universal agreement on that. I do not think anyone has disagreed.

Mr GARLING: It is absolutely fundamental in access to justice to have an independent tribunal that is not pressured by other pressures. If you want the comparison, go and look at Orange County in Los Angeles where the judicial officers have to be re-elected and they deal with decisions depending upon where they are on the election path.

The CHAIR: We have enough issues with re-election in this House. I do not think we need to put it into our commissions. You have helpfully referred to other jurisdictions. There was a question yesterday about comparative jurisdictions. Are you able to assist the Committee with some data in order that we might learn from other jurisdictions, if there are learnings to be had? Do you have access to such data?

Mr GARLING: Probably five years ago now the office joined the International Association of Industrial Accident Boards and Commissions [IAIABC] based in the United States. It has as its regular members the individual States in the United States of America and the provinces from Canada, and five years ago it started to attract international attention. I have been to six of those meetings at various different places in the United States. We have had presentations by the Indonesian workers compensation group and they have formed the Asian workers compensation group. We have got a summary of every system in Asia and how it works. Interestingly, the Indonesians had come up with a solution to the Uber gig economy because their Uber is not flash-looking cars but motorbikes. They found a solution to that. At the last meeting I went to the South Koreans had a major presentation. In addition to that, we have had the Austrians and the Germans as regular participants. We have learnt from those experiences.

We can provide the Committee with more information but it is a lot of detail. Essentially there is nothing the same. Everyone is different and they are generally different because of the marketplace. You will have adjoining States in the United States with different processes even though they are substantially similar. As a matter of interest, we have been invited to address the State of Virginia's Workers Compensation Commission about the introduction of a WIRO in their jurisdiction and while there are Ombudsman's offices—there are only eight or nine—they operate completely differently. By way of additional comment because I know of the member's interest, the Austrians recently commissioned a study by the London School of Economics into how a workers compensation system fits in where you have a Medicare system. I do not think the report was very helpful but they were at least looking at it. We do have exposure to that. We can give you a summary of the United States and Canadian jurisdictions. We are very well received over there. I have given presentations and spoken on a number of occasions.

The CHAIR: Thank you. I am sure that we can learn from each other. Would you please take that as a question on notice.

Mr GARLING: Sure.

Mr DAVID SHOEBRIDGE: First, I do not know that I do this on behalf of all the Committee members, but on behalf of all the stakeholders I speak to I would like to give credit to you and your office, as often the

stakeholders say that you are the one bright light in a pretty dark atmosphere of workers compensation. The fact that I repeatedly get that feedback from stakeholders is something that I would like to pass on to you and your office.

Mr GARLING: Thank you.

Mr DAVID SHOEBRIDGE: I think it is also apparent from the submissions we had yesterday that they pretty much universally supported your office. The Insurance Council of Australia in setting out their principles for design for a tribunal have as their first principle this concept of perception of fairness. I quote from their submission:

> Perceptions of fairness—Research highlights that people generally have a better recovery if they feel they have been treated fairly. A perception of fairness is promoted by having an open and transparent system which sits separately from the original decision makers or scheme stakeholders.

What do you say about that proposition?

Mr GARLING: Whether they have that perception, it is a fundamental principle that you have to have transparency so that people know what is happening—so if they lose, why they have lost, and if they cannot win, why they cannot win. Part of the difficulty that is constantly raised is that because of the ambiguities sometimes we cannot give that answer. It is important, yes.

Mr DAVID SHOEBRIDGE: What has been your experience in the office with regard to when a worker is faced with ambiguities and uncertainty and the observation about their recovery and how they subjectively respond?

Mr GARLING: I think you need to put in perspective that there are approximately—using round figures—100,000 workplace incidents annually. Only a very small number of those incidents result in a dispute, comparatively. Approximately 20 per cent end up in some form of dispute; the other 80 per cent are satisfied with their outcome. But that is because they have only been off work for a few weeks and there is really nothing to dispute and they are quite happy. Once a workers goes off work for a period of time, it is obviously much more difficult for them to be cheerful about the outcome because of the impact on their family and life. Icare have worked hard to improve the service to the individual workers. The difficulty is that it is constrained by the legislation. It is very hard to do more than the legislation permits. There will be unfair outcomes and that is quite deliberate. Hopefully the workers understand that that is a deliberate outcome. It is something that we make very clear in discussion that we have with workers. We say, "Sorry, that is the law."

Mr DAVID SHOEBRIDGE: Your submission identifies some of what I would I call "perversely" unfair outcomes. One that I was not aware of is that if an injured worker suffered a severe psychological injury but had the misfortune of being injured between 1 July 1987 and 31 December 2001, then no matter how disabling or severe the psychological injury, they cannot pass the section 39 threshold and they get cut off. Is that right?

Mr GARLING: It is correct, with one rider, which is being challenged at the moment in the commission; and we are waiting on a decision. It is a case with a worker with a 18 per cent to 20 per cent physical impairment and a 45 per cent psychological impairment. When we look at the period the question is that even though they cannot recover damages for the loss before 31 December 2001, can it be taken into account in assessing their current impairment for the purposes of section 39? We are waiting on that decision. We are funding that challenge at the moment.

Mr DAVID SHOEBRIDGE: It may or may not be the case, but, again, it is the ambiguity in the law.

Mr GARLING: That is the difficulty.

Mr DAVID SHOEBRIDGE: Is there a relationship with the regulator where you can go to the regulator and say, "Look, there is this ambiguity and obvious unfairness. Can we have a quick turnaround for a consideration for legislative amendment?"

Mr GARLING: There seems to be, over the nearly six years, a reluctance to embrace reform in that sense. We have had a number of cases that have found their way to the High Court where workers were disadvantaged depending upon the advice they received and where they were in the system. It is a clear one. We know it is a problem; we know it is a problem today. We have been calling for reform for some time now. Each year, reports have set out recommendations for reform, but there does seem to be a reluctance to embrace them.

Mr DAVID SHOEBRIDGE: Another issue is that appears that the tribunal does not have the power to order the back pay in cases concerning the recovery of a back payment in weekly payments when there has been a termination but then a resumption of weekly payments.

Mr GARLING: The difficulty comes with the definition of a work capacity decision and whether the commission should vary a work capacity decision or not. It is a question of primacy. There is a good reason for that, arguably, because circumstances change. If there is a decision or an award of the commission and circumstances change, the insurer can make a fresh decision that overrides the commission. The question then becomes where the back pay begins. If a worker is assessed by the insurer as having pre-injury average weekly earnings of $100 and subsequently discovers that, in fact, the pre-injury average weekly earnings are $1,000, there is no compensation for the gap, as a matter of law.

Mr DAVID SHOEBRIDGE: Is there a policy rationale for that or is it just, "computer says no"?

Mr GARLING: That is the way the legislation is drafted. Icare have been flexible on that but other insurers may not be quite as flexible.

Mr DAVID SHOEBRIDGE: For injured workers, it should not depend on whether their insurance is managed through icare, the Treasury Managed Fund [TMF] or a self-insurer, should it? The law should be clear and no worker should be prejudiced based upon the insurer. But it sounds to me like that is not the way it works.

Mr GARLING: It is a great theory. In practice the way the legislation has been amended in a bandaid fashion has meant that there are ambiguities. Whether they were foreseen or not, there are ambiguities, and that makes it very difficult for the worker. Icare have pursued a policy of "social heart and commercial mind", which means that it is perhaps more flexible than a self-insurer and is certainly more flexible than the TMF.

Mr DAVID SHOEBRIDGE: Who satisfies the threshold after the five-year period or can evidently satisfy the section 39 threshold after the five-year period? There is a question about whether there is any entitlement to back pay in those circumstances.

Mr GARLING: There is a case we are funding with that argument at the moment. We are waiting on written submissions before we get an outcome. The issue is that it is a relatively straightforward issue if it is six weeks later. We could say, "Well, they were always 20 per cent and it has just formally been found out." But what happens if it is 10 years later and someone says, "In 2018, I thought I was 20 per cent but I didn't go and get a formal finding. I accepted that I lost my weekly payment. But now, 10 years later, I have a certificate from the commissioner to say I am 25 per cent and I would like my money going back to 2018"?

Mr DAVID SHOEBRIDGE: These are the kinds of issues that you are aware of; you are funding the cases. Do you bring them to the attention of the regulator?

Mr GARLING: Probably not as often and as regularly as we should. We have had regular meetings with the regulator where we have alerted it to some of these issues. We have not had a meeting for some time.

The Hon. TREVOR KHAN: How long has it been since you had a meeting?

Mr GARLING: I would have to take that on notice so I do not put my foot in it, but it has been some time.

Mr DAVID SHOEBRIDGE: Given the data that you are collecting—and in some ways you are right at the front end of it and almost like an early warning system—I would have thought that a regulator worth its salt would have seen the value in having regular structured communications with you so it can make whatever tweaks are needed in the system before a problem becomes florid. Have you ever tried to establish that kind of relationship with the State Insurance Regulatory Authority [SIRA]?

Mr GARLING: To be fair, it has not worked as successfully as it could. For example, I meet every second week with senior representatives from icare to go through these very issues to see if we cannot resolve them through the icare system, but it has not been as successful with SIRA, probably because it has a vast number of issues that it has to deal with.

The Hon. TREVOR KHAN: Is there another explanation other than they are busy?

Mr GARLING: In true diplomatic style, that is probably a question you should ask them. We are certainly available any day and any time.

The Hon. TREVOR KHAN: Both Mr Shoebridge and I had the pleasure of sitting on various inquiries dealing with inspectors to bodies such as the Independent Commission Against Corruption [ICAC] and the like. The dynamic of the relationship between the commission and the inspector has been a matter of interest from time to time. Is the interest that we developed in those dynamics perhaps applicable in your environment?

Mr GARLING: I think it is a valid comparison. The difficulty is an acceptance by not only the regulator but by others in the industry that we have this early warning information and do actually have a depth of knowledge. I have more than 20 lawyers who are experts in workers compensation; they do workers compensation

cases all day. As I said, they read everything. We know what the arguments are and what the early warnings are and we have, if you look at my annual reports, flagged them for some years. But there has not been any excitement about foraging further for information.

The CHAIR: You are the canary in the coalmine, so to speak?

Mr GARLING: Thank you.

The Hon. LYNDA VOLTZ: But unlike the inspector in the ICAC example you are not the person overseeing it, it is SIRA that is overseeing it?

The Hon. TREVOR KHAN: I understand there is a difference in the analogy but there was a dynamic in that relationship.

Mr DAVID SHOEBRIDGE: The external independent officer.

The Hon. LYNDA VOLTZ: Being on the ICAC I am briefed on that. The difference here is the person keeping an eye on the regulator. You are the information pool that they can go to to see if the regulator is doing the job. What they are doing is not necessarily using the information you have as part of that structure?

Mr GARLING: That is certainly correct. However, we do have a statutory function of oversight of the whole scheme which enables me to embark on an inquiry into any part of the scheme if I wish, or if the Minister directs me to. So far we have taken the view that the two inquiries we initiated did not result in outcomes for different reasons out of our control and, therefore, we have approached it with a more collaborative method of talking to insurers and seeing if we cannot get them to understand.

The Hon. LYNDA VOLTZ: The results of those inquiries were forwarded to the Minister?

Mr GARLING: Yes.

Mr DAVID SHOEBRIDGE: I take it you would not object if we made a recommendation that proposed structured monthly meetings between your office and SIRA to deal with developing issues?

Mr GARLING: Not at all. There was a consultant about meetings that came and spoke to us about how to have meetings.

Mr DAVID SHOEBRIDGE: A consultant from SIRA?

Mr GARLING: Yes.

Mr DAVID SHOEBRIDGE: They have a meeting consultant?

Mr GARLING: They came and had a meeting with us about how to have meetings.

The Hon. TREVOR KHAN: Was the problem identified as you?

Mr GARLING: Probably.

The CHAIR: I am not sure that was Mr Garling's evidence. Mr Garling, can you elaborate on those two other inquiries to which you referred? The previous committee had a recommendation that at least one if not both of those continue. What is your view on that?

Mr GARLING: Yes.

The CHAIR: Is there some utility in those continuing or being reinvigorated in some sense?

Mr GARLING: The then Minister announced that there was going to be reforms to the workers compensation system so I instituted an inquiry which we called the Parkes inquiry, after Henry Parkes, where we got the major stakeholders around a table as a consultative committee and we worked on that for six to seven months where they met at least every month to discuss the developing proposals. We finalised it and came up with 12 principles. The best description is that at one of the meetings we had a left wing unionist yelling across the table at a right wing senior executive of an insurer and they both stopped and said, "Hang on a second, we agree." We got unanimous agreement from everyone around the table. The funding for the finalisation of that report was withdrawn. It was never completely finalised. The 12 principles were published, and are still published.

The second inquiry was for hearing loss. It may not be well known around the industry but 28 per cent of all the matters we fund are for hearing loss. When you realise a set of hearing aids is $5,000 you can understand my concern that I am spending a lot of money with disputes over hearing aids for no value, in the sense I would be better off giving everyone hearing aids than funding the dispute. We had an inquiry by a consultant who was highly regarded and came up with a new system whereby there would be no delay, because there is a two-year delay for hearing aids. You would go into an audiologist, the software we developed would enable them to say

you need a hearing aid because of your work background and if you were entitled to compensation. It did not get further funding to finalise it, so it has not proceeded.

The CHAIR: Is there utility in continuing those?

Mr GARLING: I thought there was. I took the view this would flow on very fast around the Commonwealth countries as a system. The hearing hub experts at Macquarie were in favour of it but other issues emerged that meant it did not proceed.

Mr DAVID SHOEBRIDGE: It cuts out the expense of an ENT report?

Mr GARLING: That is right.

Mr DAVID SHOEBRIDGE: Funding the lawyer to get the report and create the dispute. Going back to the matter the chair raised, it means the person who has a hearing deficit and cannot hear when he or she meets with friends at the club and is therefore socially isolated gets their hearing aid two years earlier. What is the resistance?

Mr GARLING: That was the point of the inquiry and the outcome, to remove all that cost, because at the end of the day we spend more on the dispute than we do on the hearing aid.

Mr DAVID SHOEBRIDGE: Where was the resistance? Why is that not the way the law works now?

Mr GARLING: Our office is funded by the Department of Finance, Services and Innovation and by SIRA. SIRA has a say in the funding because it controls the operational fund and the department has a view because we have to fit within their structures.

The Hon. TREVOR KHAN: What does that mean?

Mr GARLING: If I seek staffing that has to be done through the Department of Finance, through their bureaucracy to get approvals for those things, we do have some delegations but we are subject to control by a deputy secretary or the secretary depending on where we fit in the structure, and we are also subject to review by SIRA on our funding because they control the payments out of the operational fund, which is where our funding comes from.

The Hon. TREVOR KHAN: Is their input into that decision-making transparent?

Mr GARLING: No.

Mr DAVID SHOEBRIDGE: This Committee has previously recommended that your office be an independent statutory office, would that assist?

Mr GARLING: Yes. That has not progressed.

Mr DAVID SHOEBRIDGE: If you could provide on notice the proposed form of words or recommendation that we could consider that would direct the Government towards implementing the changes for hearing aids, that would be of assistance. I have read your submission that identifies the general structure.

Mr GARLING: I am happy to do that.

Mr DAVID SHOEBRIDGE: The wording would be helpful.

Mr GARLING: I am happy to do that.

Mr DAVID SHOEBRIDGE: There is consensus across every stakeholder, apart from the regulator, as per evidence in the March 2017 report from Professor Sourdin about fixing pre-injury average weekly earnings [PIAWE]. That is 16 months ago. Do you know where that is up to?

Mr GARLING: I can answer it this way: I understand that there is to be a meeting next week hosted by SIRA on further discussion about that.

The Hon. TREVOR KHAN: With whom?

Mr GARLING: There are a group of us that were consulted by Professor Sourdin and that group is being reconvened to look at the possible way of redefining PIAWE. However, I understand that it may also be under review by another department.

Mr DAVID SHOEBRIDGE: SIRA is pulling together a meeting a week after this Committee hearing with the stakeholders that have already come and agreed well before March 2017 in front of Professor Sourdin, and that meeting will happen next week?

Mr GARLING: Yes, 1 August.

The Hon. DANIEL MOOKHEY: Are they bringing a consultant?

Mr DAVID SHOEBRIDGE: You said from your review of the work that PIAWE, and issues in relation to PIAWE, form a significant chunk of the disputes. Could you give us any idea about the relative workload that is created by PIAWE?

Mr GARLING: I do not think it is that huge. What occurs is that my solutions group deals with the bulk of those issues because we can fairly quickly get on to the insurer and say, "I think you have made a mistake. Can you correct it?" They are pretty responsive to that. We do deal with a lot of those. The difficulties are, particularly in the construction industry, with so many different awards and bits and pieces, say at Barangaroo or elsewhere, or the other extreme, which if you look at track work in the horse industry, that is another area that is a difficult issue. The old definition was pretty simple and we have complicated it to no great benefit that we can see.

Mr DAVID SHOEBRIDGE: If your officers are spending time, then the insurer's staff are spending time and they are directing employers to spend time. All of that comes at a cost.

Mr GARLING: Yes.

Mr DAVID SHOEBRIDGE: It is ultimately money that is not available for benefits.

Mr GARLING: Yes.

The Hon. TREVOR KHAN: Can you give the Committee a description of what has happened with the March 2017 report since it was prepared?

Mr GARLING: No, I cannot because it was a report that was delivered to the regulator and we have had no communication, until yesterday. The invitation came out for the meeting next week.

Mr DAVID SHOEBRIDGE: The invitation was yesterday?

The Hon. LYNDA VOLTZ: Yesterday? What a surprise.

Mr DAVID SHOEBRIDGE: We should hold these hearings more often.

The CHAIR: Apparently we are very effective.

The Hon. TREVOR KHAN: There has been no communication with you since then?

Mr GARLING: No.

The Hon. DANIEL MOOKHEY: I join my colleague in praise of WIRO and I extend that praise to the members of staff who are in the gallery. Congratulations on maintaining your standard as the most popular part of the workers compensation system. You have maintained some data or at least some interaction with people who have lost benefits under section 39.

Mr GARLING: Yes.

The Hon. DANIEL MOOKHEY: What can you tell us about that?

Mr GARLING: First of all, thank you for mentioning my staff. The success of the office has been much due to their performance. Section 39 is something I keep a personal tally on. I can give you the exact fingers, but the broad round figures are we have funded 2,000 applications for injured workers to get advice about their entitlements.

The Hon. DANIEL MOOKHEY: Icare has advised there are approximately 5,000 to 6,000 people who have lost benefits under that section. You are saying 1,300.

Mr GARLING: It is a moveable feast, depending on what point in time you look at. There were probably closer to 4,000. A lot of those people were never going to qualify. They did not seek advice or, if they did, assistance was not sought from us to fund that advice. We understand a lot of lawyers have given that advice free. However, there were 2,000 of them, approximately half, who did come and seek formal advice. About 70 per cent fail the test and about 30 per cent get through the gate. We estimate of the 70 per cent that fail the test, about 10 per cent to 15 per cent qualify for social security. There is a large gap that do not qualify.

The Hon. DANIEL MOOKHEY: About 55 per cent of people?

Mr GARLING: Yes.

The Hon. LYNDA VOLTZ: Of the 2,000?

Mr GARLING: Of the 2,000 that we have looked at.

The Hon. DANIEL MOOKHEY: They have effectively found themselves with neither income support from the workers compensation scheme nor from Centrelink?

Mr GARLING: Correct.

The Hon. DANIEL MOOKHEY: Do you have any idea what has happened to them?

Mr GARLING: We do get some feedback, but not a lot.

The Hon. DANIEL MOOKHEY: What is the feedback that you have got?

Mr GARLING: There are a number of workers who feel disadvantaged because their impairment is such that they cannot go back to work, notwithstanding a formal assessment of their impairment. There is a group that are not happy in that sense. The difficulty to some extent—this has also been the subject of challenge—is whether you can aggregate impairments for the purposes of section 39, or whether it is a single impairment test. If you have two our three injuries, can you aggregate them for the purpose of getting across the line? At the moment the view is that if they are separate injuries, you cannot. You might have someone who is quite severely disabled but does not pass the test on a single view.

Mr DAVID SHOEBRIDGE: They got disabled the wrong way.

Mr GARLING: Disabled the wrong way.

The Hon. LYNDA VOLTZ: They might have a 5 per cent impairment in one arm and a 5 per cent impairment in one knee.

Mr GARLING: Depending if they were separate injuries. If it is all consequential, that is different. People do get injured more than once. That issue is currently the subject of consideration by the commission.

The Hon. DANIEL MOOKHEY: Is that dispute arising from an ambiguity in the law?

Mr GARLING: Yes.

The Hon. TREVOR KHAN: Is it an ambiguity in the law or is it the design of the scheme?

Mr GARLING: No, it is an ambiguity in the law. It is a question of what does the law mean. As you well know, there are a number of lawyers who will come up with interesting arguments. The fairness issue is a different issue. That is, should we be measuring entitlement to income support merely on a theoretical impairment test, which is not designed for the purpose of assessing disability? There is a difference between impairment and disability.

The Hon. TREVOR KHAN: I think we went through that at some length.

Mr GARLING: Yes.

The Hon. DANIEL MOOKHEY: In your submission you recommend to the Committee that the regulator should revoke its operational instruction to insurers that prevents resolution of whole person impairment [WPI] disputes based upon a compromise between competing assessments. Have you made that recommendation to the regulator?

Mr GARLING: We have had discussions about that. It now appears that the regulator takes the view that you can compromise. The issue arose from an operational instruction issued by WorkCover rather than a direction by the regulator. That has eased up, but the message does not get through to everyone all the time.

Mr DAVID SHOEBRIDGE: It has only taken six years.

Mr GARLING: Yes.

The Hon. LYNDA VOLTZ: On impairment under section 39, there was always concern that some injuries would get worse over time.

Mr GARLING: Yes.

The Hon. LYNDA VOLTZ: Knee injuries and back injuries, are they the injuries that would be captured by the idea that you are not 10 per cent now but in five or 10 years you may be?

Mr GARLING: It is the challenge. The challenge is this: You only get one assessment of your impairment in your whole life. The question is when do you seek that decision, which is binding. Do you do it now, or do you wait? If you do not do it now, you lose your entitlement to current income support. However, delaying it may be beneficial, in one sense. Yes, it is a challenge and from my perspective, looking across the scheme, it is really difficult for a medical consultant or independent medical officer to determine whether you will

deteriorate or at what level it will happen in your life. Then it is really difficult for a lawyer to say: This is the path you should follow because that is the advice we have got. Knee and hip replacements are classic examples.

The Hon. LYNDA VOLTZ: The science is now telling us and orthopaedic surgeons are saying, particularly with anterior cruciate ligament [ACL] injuries requiring knee replacements, that they are reluctant to do those and want a long-term look at exercise protocols to resolve them and surgery is the last option. That often takes years.

Mr GARLING: You have two issues. The provisions of section 59A require you to have that surgery within the period. That is a guillotine period. If you do not have it, you have a problem. We had the difficulty that there were a number of people towards the end of the period who could not get the surgery because the surgeons were not available and, therefore, missed out on their compensation for the surgery. There are a number of issues in there which are related to the drafting of the legislation.

The Hon. TREVOR KHAN: If you pay enough money you can almost get it done at the time of day you want.

The Hon. LYNDA VOLTZ: The problem with that is it goes against the best medical evidence that is being presented, that is with rotator cuff injuries, ACLs and a raft of injuries.

Mr GARLING: Not all injured workers are old. You can have someone who may be in their early twenties who will face a long life of having further surgery but does not get the benefit of having that paid for by the insurer.

The Hon. LYNDA VOLTZ: That is for the type of injuries suffered by people such as furniture removalists.

Mr DAVID SHOEBRIDGE: One of the issues that the inquiry is looking at is having a single tribunal to deal with both motor accidents and workers compensation. A number of stakeholders have proposed that it would be beneficial that the role you currently undertake in workers compensation you also undertake in motor accidents. Is that viable? What would your office need to do that if it was viable?

Mr GARLING: It is viable. In the 2013 amendments that were proposed by the then Minister, which did not go any further, our office was to be the independent review office for the motor vehicle scheme. We actually drew up a structure at that stage anticipating that possibility. We would see that we could envisage doing that without a great deal of additional resources.

The Hon. TREVOR KHAN: Really?

Mr GARLING: Yes. It may be two or three extra people on our claims team but it is not likely to be doubling our size. The question is whether—and it was not anticipated at that time—we would have the funding capacity so that is a different issue. Dealing with complaints and inquiries, we can absorb with a little extra resources but the question of a separate Independent Legal Assistance and Review Service [ILARS] is a different ball game.

Mr DAVID SHOEBRIDGE: Do you have any views about the ILARS funding model for those statutory benefits?

Mr GARLING: I am attached to it because it is something that we have developed over the last five and a half years. It is a very effective way of monitoring the performance of the legal profession and we are able to effect behaviours by the method of our funding. If we decide that it is unreasonable to fund a particular aspect for good reason, then it does not happen. To take an example that was raised yesterday, there are less appeals from arbitrators to deputy presidents. One of the reasons is we do not fund them except by way of what is called conditional funding, so they are not going to get paid if they lose. That has drawn back the number of potential appeals because the lawyers do not take them on unless there is some real merit. There are ways of effecting behaviour without being dramatic. We think it is a very significant model for funding of the profession. There was a lot of interest when I spoke about it at the international association as a model.

Mr DAVID SHOEBRIDGE: Particularly as certain classes of rights are dependent upon a preliminary assessment?

Mr GARLING: Yes.

Mr DAVID SHOEBRIDGE: Nobody knows the costs until the preliminary assessment is obtained and that is where the ILARS funding can be crucial?

Mr GARLING: Yes. The ILARS is funny, if I could stress. It is to enable workers to know what their rights and entitlements are. It is not always that they are going to succeed but at least they know what their rights and entitlements are.

The Hon. DANIEL MOOKHEY: In the first review we had a limited conversation about the merit review processes and you advanced at the time that perhaps the merit review lacked any sort of utility. In your view has that changed or improved? Is it now more effective than it was back then?

Mr GARLING: It is not. The administrative review pathway was an initiative that was seen to be beneficial. It could have worked had it been dealt with differently but once you have an administrative review pathway that is secretive, then it cannot work. At least I am comfortable with saying the procedure reviews that my office undertook were all published immediately so at least there was guidance for the participants in understanding what the view was. The merit reviews were not published so no-one was able to be guided by them and, therefore, there is a suspicion and, therefore, it did not work.

The Hon. DANIEL MOOKHEY: And it is still not published?

Mr GARLING: It is still not published.

The CHAIR: There is a universal view, proposed by Mr Khan, that we invite you, Mr Garling, to come back, if you are amenable to that. We would like to explore more with you. I will finish with a question that I have asked each witness: It is all very nice for us lawyers to contemplate which agency and which body should go where but at the heart of this there are real people and real lives. Can you comment on what you think are the benefits to the injured person of having the one tribunal approach?

Mr GARLING: I think it is certainty and confidence that the tribunal, being independent, deals very fairly with their disputes because of a recognition that they do it openly and properly, and hopefully there will be a certainty in the process that can be identified for the injured worker. To some extent the bulk of injured workers only have one face with the process. They do not generally have more than one. There are some who are unlucky but generally speaking they only have the one exposure.

The CHAIR: But they do not know the difference between the Workers Compensation Commission or icare, or any of the other bodies?

Mr GARLING: No, they do not.

The CHAIR: They just know that they are in this position and they would like it to be fixed?

Mr GARLING: Correct.

The CHAIR: I reiterate Mr Shoebridge's comments that your office and the work that you do is universally helpful to all of the stakeholders. It is very nice to see that universal agreement; we do not see it very often in this place, so thank you to you and your staff.

Mr GARLING: Thank you.

The CHAIR: Thank you for coming today. You will have communications from the Committee staff about the questions taken on notice and there is a 21-day turnaround period for the answers to those questions. We appreciate your time today. We flag that we will invite you to return at a later time.

Mr GARLING: I am more than happy to come at any time.

(The witness withdrew)

CARMEL DONNELLY, Chief Executive Officer, State Insurance Regulatory Authority, affirmed and examined

The CHAIR: Do you have an opening statement you would like to give to the Committee?

Ms DONNELLY: I do, if you do not mind. I begin by acknowledging the traditional custodians of the land on which we meet. I thank the Committee very much for the opportunity to meet with you today. We provided a submission. To start I would like to acknowledge that usually with these reviews we receive a series of questions on notice beforehand, and we did not this time. But one of the things we do say in the submission is that clearly we are very happy to provide additional information. One of the things I thought I would do is perhaps email to the secretariat of the Committee a number of links to material that is freely available on our website and that may have useful information. As you will see, I have brought along a couple of documents today, one of which is the report by Professor Sourdin, which was commissioned by the State Insurance Regulatory Authority [SIRA] and about which I believe there was some comment in relation to its being difficult to find.

The CHAIR: Thank you for that. We now have two copies of that. Can I confirm each of the Committee members has that to hand?

Mr DAVID SHOEBRIDGE: Yes.

Ms DONNELLY: I have also circulated a snapshot, which is our preliminary data on the work of our Dispute Resolution Services over the 2017-18 financial year. It is very recently extracted and pulled together. That is preliminary; we have not published that data elsewhere and would need to continue to update it.

The CHAIR: Can I double check that you are referring to the document I am holding up?

Ms DONNELLY: Yes, that is it. I thought I might make a few observations. The focus of the Committee's review about feasibility of our consolidated tribunal is a very important question. The Committee may recall—and previous times I have given evidence about it—the scientific evidence that is now available about the impact of perceived injustice on health and social outcomes for injured people. I think that has been highlighted in some of the submissions, but I would just like to say that I think that is top of mind in looking at this area.

I would like to be clear that I do not see my role as defending the current arrangements. I see my role as a regulator to be listening and improving. There certainly is work to be done there. To that end, I and the team have been reviewing the submissions. We will be reviewing the transcripts and we have been able to listen to some of the witnesses at the hearing. We look forward to the report. One of the things I think is important to assure the Committee of is that we stand ready to implement government policy—the policy of the government of the day—and the will of the Parliament if there are any legislative changes.

The Hon. TREVOR KHAN: I hope so.

Ms DONNELLY: Absolutely. But I think there has been some commentary that would convey that there is a contest between agencies about approaches. That is not my view, and I have had conversations with the SIRA staff about the importance of implementing government policy and the will of the Parliament. I do have a key role that I should acknowledge in providing advice to the Minister on matters, and that would include such significant changes as are being reviewed by the Committee. There is some limit to comment that I can make about Government policy as well.

Before I am open to questions, I understand there was quite a bit of discussion about the independence of SIRA in testimony so far. The Committee might recall there was a time when I appeared before you last year when I acknowledged that there is some conflict of interest in being a regulator and undertaking dispute resolution. I am mindful of the best use of the Committee's time. It might be good to be clear that I acknowledge that while there are protections in the legislation for the independent decision-makers such that it is very clear that no public servant—not the authority—can influence a decision-maker in a matter where they are making a decision about a dispute between two parties, it does not have the degree of independence as a tribunal. Clearly, the head of the agency is not an independent statutory officer in the same way.

Also I know that there have been conversations that we have had before about transparency and publication of decisions. One of the things that is not afforded to SIRA that a court of record would ordinarily have is a level of exemption from privacy legislation, which complicates things for us. In conclusion, the submissions include a number of additional matters and concerns from different stakeholders, which I would be happy to follow up with them.

The CHAIR: Thank you. We appreciate your commentary and having taken time to review the submission so far in providing those answers. We also appreciate your written submission, which we all have and which you can assume we have read.

Mr DAVID SHOEBRIDGE: What is the exemption you need from the privacy legislation in order to publish?

Ms DONNELLY: The 2017 motor accidents legislation is probably a model there, which actually gives us the ability to publish the decisions. There is a little bit of restriction around health information, but I think that legislation gives more of an ability for us to publish decisions, and we have started publishing those decisions.

The Hon. DANIEL MOOKHEY: But you publish some now, do you not?

Ms DONNELLY: We do publish some. The merit review decisions, which have been the ones that have caused concern, we publish in a very carefully redacted form.

The Hon. DANIEL MOOKHEY: What is to stop you from doing that as a general practice?

Ms DONNELLY: I am not opposed to it and I have said that before. In looking at practice on my watch as the chief executive, the issue that we have had there is resourcing, without going back over all of them.

Mr DAVID SHOEBRIDGE: You said it before, "over a year ago", and now there is a new barrier that you identify. When did you become aware of this new barrier about the privacy legislation?

Ms DONNELLY: No, it is not a new barrier, I am sorry. I did not mean to imply that. My point was to really say that we have not historically had the same ability to just publish a decision in full.

Mr DAVID SHOEBRIDGE: I will just go through your submission. It deals with the recommendations that were adopted by Government—not just recommendations of this Committee, but recommendations that have been adopted by Government.

Ms DONNELLY: Yes.

Mr DAVID SHOEBRIDGE: On page six of your submission, you deal with recommendation 2, and the description you have there is that "SIRA is working on" it—not implemented, but working on it. That is recommendation 2 about data.

Ms DONNELLY: Yes.

Mr DAVID SHOEBRIDGE: Recommendations 3, 5, 9 and 18, which are about guidelines, the comment is "SIRA is reviewing … and developing"—not implemented, but reviewing and developing. Recommendation 10 is about expediting stakeholder consultation and the comment is "SIRA … will develop"—not even developing, but will develop. Recommendation 11 is about a guidance note and the comment on that is that there are "plans to reform". Recommendation 15, which is about a single notice for both work capacity decisions and liability decisions, has the comment "will develop" again. How is it that not a single one of the recommendations has been implemented? Can you understand the frustration? The comments are "will develop", and not "will announce", "is considering", "will review", "working on". How cannot one of them have been implemented?

Ms DONNELLY: I will acknowledge that your perspective, in terms of there being work in progress, for some of these there is a requirement for some legislative reform. For some of them we are undertaking extensive consultation in order to address them through a claims administration manual.

The Hon. DANIEL MOOKHEY: In addition to the ones that my colleague—

Mr DAVID SHOEBRIDGE: I am sorry, I do not think Ms Donnelly had finished her answer

Ms DONNELLY: That is fine.

Mr DAVID SHOEBRIDGE: I would not want to cut you off if you have any other explanation about how not a single one of them has actually been implemented.

The Hon. TREVOR KHAN: Before you answer that, are you able, on notice, to identify those that require legislative change compared to those that are the subject of some internal work?

Ms DONNELLY: Of consultation? Yes, I would be happy to.

The Hon. DANIEL MOOKHEY: In addition to the recommendations that my colleague just mentioned, we made another recommendation, No. 22, to which your submission to this review provides no insight as to what SIRA has done. It was recommended that icare and SIRA expedite work on mandatory

surveillance guidelines for scheme agents, which set objective standards for when surveillance should be used. If you recall the first review, this Committee made that recommendation after hearing extensive evidence from traumatised workers, particularly those in emergency services and the NSW Police Force about being under surveillance and how that was compounding their trauma. Indeed, at the time, SIRA came and said that it was undertaking that work, and that is why this Committee called for that work to be expedited. I am alarmed that your submission to this review provides no update as to what work has been done in that respect. Can you tell the Committee what SIRA has done in respect to its call for it to expedite the surveillance guidelines for scheme agents?

Ms DONNELLY: We are working on that in the context of the claims administration manual. I will give you some detail on notice about that too.

The Hon. DANIEL MOOKHEY: Have you issued any guidance to scheme agents? Have they been undertaking them? Has SIRA been monitoring their use of surveillance in the past two years?

Ms DONNELLY: I will take that on notice.

The Hon. TREVOR KHAN: As with some other members, we have been on so many committees that our eyes are sort of rolling in our heads. My recollection is that there seemed to be unanimous agreement from virtually everybody who appeared, I thought including SIRA, that this was a problem requiring address.

The Hon. DANIEL MOOKHEY: We were told it was quite urgent address, in my recollection.

The Hon. TREVOR KHAN: Is that your recollection?

Ms DONNELLY: My recollection is, yes, that it is an important matter, absolutely. There are other guidelines from other jurisdictions that bind insurers. Part of our exploration was considering to what degree we need to have additional guidelines. I am happy to take it on notice and give you some more information about that.

The Hon. DANIEL MOOKHEY: Do scheme agents still use surveillance?

Ms DONNELLY: I understand that it has significantly reduced. That is probably a question to ask icare as well.

The Hon. DANIEL MOOKHEY: But you regulate them.

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: Does icare report to you as to its use of surveillance? Is icare required to report to you as to its use of it?

Ms DONNELLY: I am happy to double-check that. We ask them to report on a large range of measures. My understanding is that they would be reporting it because we are aware that the usage has been reduced.

The Hon. LYNDA VOLTZ: I refer to recommendation 10 and the report on New South Wales workers compensation by Professor Sourdin, which you received in March 2017. Is that correct?

Ms DONNELLY: That is correct.

The Hon. LYNDA VOLTZ: SIRA had a project team as part of that project?

Ms DONNELLY: SIRA commissioned that report and received it in March 2017. I did not release it until November because it was Cabinet-in-confidence.

The Hon. TREVOR KHAN: You commissioned the report?

Ms DONNELLY: I commissioned the report.

The Hon. LYNDA VOLTZ: It is your report?

Ms DONNELLY: It is the report that I commissioned and it is published exactly as provided to us.

The Hon. LYNDA VOLTZ: I was asking when you received it.

Ms DONNELLY: We received it in March and I provided advice to government, which was Cabinet-in-confidence.

The Hon. TREVOR KHAN: The advice was Cabinet-in-confidence.

The Hon. LYNDA VOLTZ: You said November 2017?

Ms DONNELLY: In November we published it because I was satisfied that I no longer needed to keep it Cabinet-in-confidence. The Minister has advised me, and I mentioned it in our submission, that the Government will proceed to bring some legislative reform on this. That came out of the Department of Finance, Services and Innovation review into dispute resolution and will be part of the same reforms that move functions from the Workers Compensation Independent Review Office [WIRO] and SIRA to the Workers Compensation Commission. We have a steering committee that is made up of me, Judge Keating and Kim Garling that meets fortnightly, and they have been briefed on the whole package. The meeting that was mentioned by the earlier witness is to invite the people who were part of contributing to Professor Sourdin's report to be briefed and to have further input about the approach that is proposed.

The Hon. TREVOR KHAN: That earlier evidence was the evidence of Mr Garling that he received an email yesterday.

Ms DONNELLY: For that meeting he did, but we have fortnightly meetings and he has been part of a reference group before that that has been part of this review.

The Hon. LYNDA VOLTZ: To be clear, when was the last time you met with Mr Garling?

Ms DONNELLY: Our next meeting is Friday this week and it was a fortnight—

The Hon. TREVOR KHAN: No, no.

Mr DAVID SHOEBRIDGE: We are not talking about the steering committee.

Ms DONNELLY: It was 10 days ago.

The Hon. LYNDA VOLTZ: You met with Mr Garling 10 days ago?

Ms DONNELLY: Yes, the Friday before last.

Mr DAVID SHOEBRIDGE: But that is a steering committee that is being convened by whom?

Ms DONNELLY: By me.

Mr DAVID SHOEBRIDGE: That is to talk about the implementation—

Ms DONNELLY: Of the Government's announced changes, that is right.

Mr DAVID SHOEBRIDGE: That is not a meeting between you and Mr Garling to go through your respective agencies' issues; it is for a very specific purpose, is it not?

Ms DONNELLY: That is for a purpose, although I have found it very constructive and part of our discussion has been that it would be a good idea to continue that meeting with Judge Keating, Mr Garling and me to coordinate matters—understanding their respective independence of everybody—as we progress further in dispute resolution right across the system.

Mr DAVID SHOEBRIDGE: Is there a reason icare is not involved in that meeting?

Ms DONNELLY: There is. I consulted Mr Nagle about his membership, given that this steering committee is particularly looking at implementation of the Government's announced reforms around dispute resolution, we are separately engaging with icare, in a sense, having a level playing field between them and the self-insurers and specialised insurers. We have a different consultation arrangement. We do have many meetings with icare.

Mr DAVID SHOEBRIDGE: I am still not sure why icare, which is like the gorilla in that particular grouping with, one would have thought, the broadest experience about how it is managing the claims, is not in that meeting?

Ms DONNELLY: What I am saying is we have, I believe, adequate channels for consulting with icare and that was the approach that was agreed in conversation between me and Mr Nagle and discussed, as we set up that steering committee, whether it was appropriate for icare to be there.

The Hon. LYNDA VOLTZ: You have a steering committee that will look at disputes. There will be reforms in disputes?

Ms DONNELLY: Yes. The Government has announced making some changes in disputes.

The Hon. LYNDA VOLTZ: You mentioned that some of those functions will move from WIRO?

Ms DONNELLY: And from SIRA to the Workers Compensation Commission. Work capacity decisions that lead to disputes will no longer be subject to merit review by SIRA or procedural review by the WIRO. It is

proposed that the Government will bring legislative amendments to move that jurisdiction to the Workers Compensation Commission. I understand the aim is to do that as soon as possible. Also, we will transfer the function of dealing with complaints from injured workers from SIRA to the WIRO so that there is a much simpler path where, if you are an injured worker and you are not content with a decision or behaviour of your insurer, you can go to the WIRO. They will assist you through the solutions groups, through Independent Legal Assistance and Review Service [ILARS] if required, and then you dispute will go the Workers Compensation Commission. That steering group that I have established is coordinating effective implementation of that change—obviously there are some changes for the people who work in the different agencies—but also including what advice needs to be given to Government about the way that the legislation is drafted.

The Hon. LYNDA VOLTZ: Is that the legislation in regards to the pre-injury average weekly earnings [PIAWE] or in regards to disputes?

Ms DONNELLY: It includes legislation about PIAWE, yes.

The Hon. LYNDA VOLTZ: I do not understand why after 18 months we have now got two more complicated pieces and why has it taken so long for the PIAWE to be dealt with, given you commissioned a report that was unanimous in March 2017.

Ms DONNELLY: I am not really at liberty to talk about government processes in developing policy. I have commissioned the report and given advice and I am now in a position to work to implement the Government's announced intended reform.

Mr DAVID SHOEBRIDGE: Ms Donnelly, can you understand how it looks to this Committee when a March 2017 report identifies unanimity amongst all stakeholders about redesigning PIAWE, and the invitation to those same stakeholders to come to a meeting to actually implement it, is issued the day before this hearing?

Ms DONNELLY: I certainly can but it is not correct for you to assume that SIRA sat on its hands or not given advice.

Mr DAVID SHOEBRIDGE: This is your opportunity to dissuade me from that objective assessment.

The Hon. LYNDA VOLTZ: Can I ask a different question?

The CHAIR: One member at a time. Mr Shoebridge can finish his question. There is plenty of time.

Mr DAVID SHOEBRIDGE: I am giving you the opportunity now to dissuade me from the conclusion I have come to based upon the material I have put to you.

Ms DONNELLY: I have told you that I received the report, I gave advice to government and it was Cabinet-in-confidence.

The Hon. TREVOR KHAN: You released it in November.

Ms DONNELLY: I released it when I was satisfied that it was no longer Cabinet-in-confidence. You can see that I have given advice to government. You can see that it is a government policy decision.

Mr DAVID SHOEBRIDGE: You released it at the end of last year?

Ms DONNELLY: That is right.

Mr DAVID SHOEBRIDGE: I am assuming the confidential Cabinet process to which it was subject—and I could be wrong—is not what has caused the delay in the last six months, and the email went out yesterday. Again, I give you the opportunity—

Ms DONNELLY: I am in a difficult situation because I am not at liberty—

Mr DAVID SHOEBRIDGE: I am happy for you to take it on notice.

Ms DONNELLY: I will take it on notice but I am not at liberty to talk about Cabinet and government policy development processes.

The CHAIR: I think the question was directed to your role but I am happy for you to take the question on notice if Mr Shoebridge has nothing further.

Mr DAVID SHOEBRIDGE: Obviously it is about her role.

The Hon. LYNDA VOLTZ: I return to my original line of questioning. You released this report and we got the announcement yesterday. What feedback did you give to the list of people who were part of the stakeholder committee in the interim? What feedback was given to icare and WIRO that action was being taken on this report?

Ms DONNELLY: Icare, WIRO and the Workers Compensation Commission all formed part of a reference group for the policy work associated with the discussion paper on dispute resolution issued by the Department of Finance, Services and Innovation [DFSI]. As to PIAWE and the findings from Dr Sourdin's report, PIAWE was identified again as a cause of disputes. That was part of the reason it then was part of the package considered by the Government.

Mr DAVID SHOEBRIDGE: Are you saying that forming the way PIAWE works was part of the various option models that were being discussed about dispute resolution?

Ms DONNELLY: No.

Mr DAVID SHOEBRIDGE: Is that your evidence?

Ms DONNELLY: No, I am saying—

Mr DAVID SHOEBRIDGE: You seem to be blurring the two together.

Ms DONNELLY: I am basically saying that I gave advice again that it would be a good consideration if you wanted to reduce dispute resolution.

The Hon. LYNDA VOLTZ: We knew the PIAWE was already a problem.

Ms DONNELLY: Yes, we did.

The Hon. LYNDA VOLTZ: That is why you commissioned this report.

Ms DONNELLY: That is right.

The Hon. LYNDA VOLTZ: We already knew the PIAWE was subject to disputes. Then you got another stakeholder group together to look at disputes.

Ms DONNELLY: Yes.

The Hon. LYNDA VOLTZ: As part of that stakeholder meeting on disputes you looked at PIAWE again, is that correct?

Ms DONNELLY: It was identified again that that was an outstanding problem, so I again gave advice to government about solving PIAWE.

The Hon. LYNDA VOLTZ: Was there a report from that stakeholder committee as well?

Ms DONNELLY: That committee was able—if you looked on the DFSI website you would see that some members of that committee put in submissions that are public, some gave advice in reference group meetings.

The Hon. LYNDA VOLTZ: That was not my question. Did a report come out of that stakeholder committee?

Ms DONNELLY: No, not on PIAWE again. I did not feel there was a need for me to commission another report.

The Hon. LYNDA VOLTZ: You had the stakeholders group and a report came out on that on PIAWE?

Ms DONNELLY: Yes.

The Hon. LYNDA VOLTZ: Then you had a disputes committee and again PIAWE formed part of that. Was there a report out of that stakeholders group?

Ms DONNELLY: For that reference group—again we are going into Cabinet-in-confidence, government policy development—there was a discussion paper put out, consultation, feedback and then advice to government that is Cabinet-in-confidence.

The Hon. LYNDA VOLTZ: The discussion paper that formed part of these hearings that we have been looking at in regard to the processes, is that the policy paper you are talking about?

Ms DONNELLY: No, that is the discussion paper that was public. The policy paper would be a Cabinet submission.

Mr DAVID SHOEBRIDGE: In the submission of the Insurance Council of Australia to this Committee they talk about principles and designs for dispute resolutions.

Ms DONNELLY: Yes.

Mr DAVID SHOEBRIDGE: They have as their first principle the following:

> Perceptions of Fairness—Research highlights that people generally have a better recovery if they feel they have been treated fairly. A perception of fairness is promoted by having an open and transparent system which sits separately from the original decision makers or scheme stakeholders.

Do you adopt that?

Ms DONNELLY: I agree that perceptions of fairness and perceptions of injustice are critical for many of the people who have injuries to their attaining good health and social outcomes. I agree that in the proof points for good dispute resolution in all of the various frameworks for excellence, and pretty much all of our stakeholders, and I agree with them, independence and transparency are important principles. I am not going to disagree with those.

Mr DAVID SHOEBRIDGE: I put to you an express proposition that came out of the Insurance Council of Australia submission. Is there any element that you disagree with?

Ms DONNELLY: In their entire submission?

Mr DAVID SHOEBRIDGE: No, in that which I have just read to you. I am happy to read it again.

Ms DONNELLY: Would you mind?

Mr DAVID SHOEBRIDGE: I quote:

> Perceptions of Fairness—Research highlights that people generally have a better recovery if they feel they have been treated fairly.2 A perception of fairness is promoted by having an open and transparent system which sits separately from the original decision makers or scheme stakeholders.

Ms DONNELLY: I do not disagree.

Mr DAVID SHOEBRIDGE: The model that has been adopted for the dispute resolution in motor accidents does not meet that, does it?

Ms DONNELLY: As I said in my opening statement it does not have the same level of independence or transparency.

Mr DAVID SHOEBRIDGE: It does not have the perception of fairness that the Insurance Council of Australia has said is the first principle?

Ms DONNELLY: I am not sure that I can conclude what the perceptions are but I am happy to agree with you that it does not have the same level of independence or transparency, and those are contributors to the perception of fairness, I think.

Mr DAVID SHOEBRIDGE: Looking back with the experience of merit review, which is now to be terminated—

Ms DONNELLY: Yes.

Mr DAVID SHOEBRIDGE: It is being terminated because it did not work. It did not deliver on that perception of fairness. It did not do the job it was designed for.

Ms DONNELLY: My understanding of why this terminated has a lot to do with this Committee's recommendations and agreement amongst all stakeholders that I have spoken to—and you would have spoken to—about the complexity of the system, questions about why a person with an injury who may well be a vulnerable person should need to go through such a complex journey to have a dispute resolved. From my understanding that was the driving reason for simplifying as quickly as we can.

Mr DAVID SHOEBRIDGE: You do not think that any of it had to do with the fact that merit review was being done by the regulator and there was a conflict of interest?

Ms DONNELLY: I did not say that.

Mr DAVID SHOEBRIDGE: You do not think that was the stakeholders' view?

Ms DONNELLY: Obviously that is a component because it did not have the independence and the transparency.

Mr DAVID SHOEBRIDGE: That lack of independence and transparency has now been replicated with the dispute resolution service, which is also being run by the regulator. Would you agree with that?

Ms DONNELLY: It has, yes. That goes to my opening statement that I do not think my role is to defend current arrangements. Interestingly, if I might add, in recent days I thought I would have a look at the second

reading speech. The dispute resolution service embedded in the then Motor Accidents Authority was introduced in 1999. That was before my time of being involved in these schemes. It seemed to me that the intent in John Della Bosca's speech was more focused on moving away from court to necessarily the questions that we are considering today about one form of embedded dispute resolution service versus an independent tribunal, rather than the trade-off between court or a form of tribunal. I think that in those times we did not have the evidence that we have now about perceptions of injustice and the impact on people's health and social outcomes.

Mr DAVID SHOEBRIDGE: I have seen a list of approved dispute resolution services decision-makers, including the Medical Assessment Service, et cetera, on your website?

Ms DONNELLY: On our website there is a list, yes.

Mr DAVID SHOEBRIDGE: Some of them are employees of SIRA.

Ms DONNELLY: Yes.

Mr DAVID SHOEBRIDGE: Some of them are solicitors and some of them are barristers. Who determines who gets allocated matters?

Ms DONNELLY: The determination of the matters depends on whether they are the claims assessors or the medical assessors. In terms of claims assessors, the principal claims assessor is the person who is responsible for the general control and direction of the claims assessors and the systems for allocating their work. For the medical assessors, there is a proper officer who would be involved in that allocation. I am happy to take the question on notice if you would like some more detail.

The Hon. TREVOR KHAN: What is a proper officer?

Ms DONNELLY: It is a statutory office. There are a couple of other statutory offices—the principal claims assessor and the proper officer—who have roles in allocating.

Mr DAVID SHOEBRIDGE: On what basis is a dispute allocated, let us say, for statutory benefits and motor accidents—let us limit it to the new class of statutory benefits under motor accidents? On what basis is that allocated to a SIRA employee, a solicitor or a barrister?

Ms DONNELLY: My understanding is that it would depend on the complexity of the matter and the expertise of the independent decision-maker.

Mr DAVID SHOEBRIDGE: Where do we find out whether it is going to be decided by an employee of your office or an independent contractor of your office?

Ms DONNELLY: I am happy to take the question on notice and give you some information. I certainly acknowledge that under the 99 scheme we have a claims assessor manual that is available. It is a work in progress to have a similar manual that would outline the procedures for the new scheme.

Mr DAVID SHOEBRIDGE: One of the issues facing this Committee is whether that statutory dispute resolution scheme, which seems to be rapidly developing with forms, assessors and processors, should continue at all, given the history of merit reviews, or whether it should find its way into a—

Ms DONNELLY: Yes, I understand. That is certainly within the terms of reference.

Mr DAVID SHOEBRIDGE: What would you say to the various stakeholders about the fact that a large amount of your resources are being spent to develop this system now, while there is a prospect that it may have no future? How do we get to this point?

Ms DONNELLY: I am not sure exactly what your question is getting at, but clearly we are at a point where my role is to administer the legislation as it stands now and also to understand more about the issues this year than we did last year. There will be outcomes from this review. My approach will be—and has been since I was confirmed in this role late last year—to look very closely at how we implement this to ensure that we do it in a way that is agile to changes that might come along with changing government policy or changing legislation. One of the things that I am looking very closely at is whether we have the right assumptions and whether there are areas where—and I will be very interested in insights from the Committee—we could increase the independence and increase the transparency. Clearly, there are some areas that we can work on. I understand that the Minister is likely to appoint and announce a new principal claims assessor shortly and my intention is to work with them to ensure that they have the support and the resources that are required to undertake that role as independently as possible. They are some of the considerations.

The Hon. DANIEL MOOKHEY: How many enforcement actions has SIRA brought against the insurers since we last met?

Ms DONNELLY: There is a range of enforcement activities but there are four penalty notices that we have issued against an insurer in particular.

The Hon. DANIEL MOOKHEY: Which one?

Ms DONNELLY: Against icare.

The Hon. DANIEL MOOKHEY: What for?

Ms DONNELLY: They were for delays in determining a claim and a failure to issue a notice of a dispute.

The Hon. DANIEL MOOKHEY: How many other compliance actions that did not involve the issuing of a penalty notice have been undertaken since we last met?

Ms DONNELLY: There is a number of audits that we have undertaken, some of which have identified matters that are on foot now and are under consideration for that same approach in terms of insurers. We are addressing those with icare under model litigant and guidelines for litigation between government agencies in a constructive way to make sure that we are not simply acting in a compliance-focused way when the outcome that we want is better claims management and better compliance. In the workers compensation space we also have a number—more than 40—of fraud matters on foot. We have had a number of audits of workplace rehabilitation providers, we have visited well over 1,000 businesses and we have issued notices around premium activity.

The Hon. LYNDA VOLTZ: What about compliance? Do you have the figures on compliance notices?

Ms DONNELLY: We have issued more than one hundred section 1 (61) notices and twenty-seven section 174 notices to employers.

The Hon. DANIEL MOOKHEY: What proportion of the complaints are reaching it through to the compliance and enforcement action stage?

Ms DONNELLY: Every month we receive approximately 2,000 inquiries and 200 complaints.

The Hon. DANIEL MOOKHEY: During the last inquiry we had a lot of attention focused on the independent medical examiners [IMEs] and the perceptions of independence from insurer direction. What have you done in that respect?

Ms DONNELLY: That was canvassed in the discussion paper that we were talking about earlier that was issued by—

The Hon. DANIEL MOOKHEY: Did that qualify for any one of the audits that you have undertaken?

Ms DONNELLY: I am not sure. I can take the question on notice, if you like.

The Hon. DANIEL MOOKHEY: Were there any implications at the time that there would be something that would resemble a special focus or special enforcement action task force by SIRA? Did that lead to anything?

Ms DONNELLY: I am sorry, I will have to take that on notice.

The Hon. DANIEL MOOKHEY: Have you adopted any changes to how the insurers have to report to you on this? Have you established any procedures that would allow people—the IMEs themselves—who feel that they were subject to the undue pressure of insurers to produce outcomes that the insurer wanted to come forward? Have any such whistleblower actions or other forms of actions been established by SIRA?

Ms DONNELLY: I am happy to take that on notice as well.

The Hon. TREVOR KHAN: Both Mr Shoebridge and Mr Mookhey asked various questions with regard to the recommendations, which is where we started this hearing off. I asked you to identify the recommendations that required some legislative action. Do you remember that area of the evidence?

Ms DONNELLY: Yes.

The Hon. TREVOR KHAN: With regard to the other recommendations that are not the subject of a requirement for legislative action, will you look at those recommendations and come back to us with some indication as to when this Committee could expect a concluded position with regard to each of those recommendations?

Ms DONNELLY: Of course.

The Hon. DANIEL MOOKHEY: In addition to that, when will the case manual that you have made reference to be published and/or applied?

Ms DONNELLY: We are intending to have the claims administration manual completed by the end of the year. We have circulated a discussion paper, taken submissions, are considering those submissions and have had some follow-up discussions with a number of the parties that made submissions to better understand their input and refine our approach. That is to be completed by the end of the year.

The Hon. DANIEL MOOKHEY: Yesterday, did you hear the criticism about SIRA delaying the premium? There was a perception that the interface between icare and SIRA broke down such that the premiums could not be issued and that there were adjustments being made the week before 30 June, which created great uncertainty in the marketplace and created a problem with renewals.

Ms DONNELLY: I did not hear that evidence, I am sorry.

The Hon. TREVOR KHAN: Have you heard that complaint or that concern being raised with regard to delay?

Ms DONNELLY: With regard to workers compensation?

Mr DAVID SHOEBRIDGE: With regard to the pricing of premiums for workers compensation policies—they did not know what the price was.

The Hon. DANIEL MOOKHEY: Late this year is the general summary of it.

Ms DONNELLY: What I can say is that SIRA strengthened the guidelines to require icare to provide that information about premiums and policies to employers much faster than had happened in previous years.

The Hon. DANIEL MOOKHEY: Were any changes made to the premium guidelines in the week prior to the end of financial year this year that you are aware of?

Ms DONNELLY: No. There was a change in which the board decided to allow that there could be an exemption from a cap that is imposed in the amount of increase an employer can experience. We had a discussion and members of the icare board and executive came to the SIRA board to present. We had a discussion after that. There was a small change. I do not believe it would have driven a substantial delay. I would be happy to have a look at what that complaint was and give you an explanation.

The Hon. TREVOR KHAN: I want to deal with a couple of procedural matters. I anticipate there will be some questions on notice.

Ms DONNELLY: Yes.

The Hon. TREVOR KHAN: You have taken questions on notice. Subject to receipt of those would you be happy to appear before the Committee once we have had the opportunity to look at your answers?

Ms DONNELLY: Of course.

The Hon. TREVOR KHAN: I anticipate you might be invited back.

Ms DONNELLY: All right.

The Hon. DANIEL MOOKHEY: In addition to that perhaps you can look at the evidence of the *National Insurance Brokers Association*.

Ms DONNELLY: Yes.

The CHAIR: The secretariat will provide you with the information on specific issues.

Ms DONNELLY: Yes. Thank you.

Mr DAVID SHOEBRIDGE: I have a simple question to get a sense of your knowledge about the environment you are working in. Were you aware of any complaints about the late notice of the actual premium prices?

Ms DONNELLY: I have been aware for some years, going back for several years, of complaints from employers finding out in August, September, October, November what their premium would be. There has been an ongoing problem with that and hence tightening the premium guidelines.

Mr DAVID SHOEBRIDGE: I will be specific. This was a concern about premium pricing at the end of the financial year this year and the brokers were expressing very real concern that none of their clients knew

what the cost of the premium would be and they could not tell them because of the delay in premium setting. That was the evidence we had yesterday. Were you aware of that?

The Hon. DANIEL MOOKHEY: They tell us that they are currently advising their clients to continue paying the premiums and "we will tell you as soon as we know".

Ms DONNELLY: I would need to look at that complaint. I am not sure where that would be coming from.

The CHAIR: It is a specific example. We will do you the courtesy of providing you with that example and ask you to come back to us.

Ms DONNELLY: Thank you.

Mr DAVID SHOEBRIDGE: There are a series of what appear to be, on the face of it, unfair or ambiguous provisions in the Act. A number of them relate to the way weekly payments are paid. Are you aware of those series of concerns about ambiguities and potential unfairnesses in the Act?

Ms DONNELLY: Could I ask you to clarify which Act?

Mr DAVID SHOEBRIDGE: The Workers Compensation Act.

Ms DONNELLY: You are talking about workers compensation?

Mr DAVID SHOEBRIDGE: The two Acts are one.

Ms DONNELLY: That is right. Could you repeat the question?

Mr DAVID SHOEBRIDGE: Are you aware that there are a series of ambiguities and uncertainties in the legislation that are currently being litigated on in the Workers Compensation Commission?

Ms DONNELLY: I am certainly aware that having two Acts does create ambiguities. I ask you to point me to the particular issue that you are talking about?

Mr DAVID SHOEBRIDGE: For example, if a worker has had a work capacity determination made and payments have stopped and they then have it reversed, there is a question whether or not back pay can be made. Are you aware of that concern?

Ms DONNELLY: Yes, I am.

Mr DAVID SHOEBRIDGE: Can you tell us about it?

Ms DONNELLY: I do not have notes on that in front of me. I believe there is a matter that is being considered at the moment and we are expecting it will give some clarity of interpretation.

Mr DAVID SHOEBRIDGE: I am happy for you to give us the answer on notice that identifies what the issue is. "Clarity of interpretation" sounds to me like there is a neutral stance from the regulator about which way it should fall. Either the worker is able to get the back pay or the worker is not able to get the back pay. Is it true the regulator is neutral about this?

Ms DONNELLY: No. We would tend to think that the person should—I will take it on notice.

The Hon. TREVOR KHAN: When taking it on notice can you identify whether WIRO, Mr Garling, has made any recommendations to you regarding that matter and, if so, what was that recommendation and when?

Ms DONNELLY: Yes, I am happy to do that.

Mr DAVID SHOEBRIDGE: The next one I will take you to is a worker who suffers a significant psychological injury but had the misfortune of suffering it sometime between 1 July 1987 and 31 December 2001. Even if they are assessed with a whole person impairment assessment, that would on the face of it satisfy the section 39 threshold. There is substantial ambiguity as to whether or not they are able to rely upon that to overcome the section 39 threshold. Are you aware of that issue?

Ms DONNELLY: I am aware of that issue and I am happy to give advice on that. I will take that on notice.

The Hon. TREVOR KHAN: Would you be prepared to indicate whether WIRO, Mr Garling, has given advice to you, SIRA, on that and, if so, when?

Ms DONNELLY: Sure.

Mr DAVID SHOEBRIDGE: The other issue I ask you to consider is when a worker has suffered a series of discrete injuries, not one accident with multiple injuries, but an injury in June, an injury in December and an injury in the following year, and the end result of those multiple injuries is that the worker has a whole person impairment that satisfies the section 39 threshold because they are utterly unable to work. There is ambiguity about whether or not they can be accumulated in that fashion to meet the section 39 threshold or whether or not they have to be seen as three separate accidents, none of which meet the threshold. Are you aware of that ambiguity in the system?

Ms DONNELLY: I am quite happy likewise to give you some advice on that.

Mr DAVID SHOEBRIDGE: My first question is whether you are aware of it?

Ms DONNELLY: I am aware of it. I am also aware that some of the people impacted by section 39 have had injuries in other jurisdictions as well—for instance, in motor accidents—and then had another accident in workers compensation and those are a bit more clear-cut.

Mr DAVID SHOEBRIDGE: I am asking about the ones who have had a series of workers compensation injuries because that is a clearer issue. Could you provide us with the advice including dealing with Mr Khan's addendum question on it?

Ms DONNELLY: Yes, of course.

Mr DAVID SHOEBRIDGE: I have raised with you three of a series of ambiguities. Why is it that none of them are resolved? Why are workers still facing this extraordinary uncertainty about whether or not they are going to get something as basic as their workers compensation premiums? Why have none of these ambiguities been resolved and why were none of them addressed in your submission to the Committee? They are two very real questions for me: Why have they not been resolved and why were you not telling the Committee about them?

Ms DONNELLY: I have agreed to take on notice information about those particular matters. I said in my opening statement I am happy to take questions and provide additional information.

Mr DAVID SHOEBRIDGE: Do you not think it is your job to not only give us the happy tales and "working on reviewing", "considering", "working towards", but also tell us what is going on? If not you, then who? Do you not have an obligation to tell us what is going on so we can work to fix it? You have not told the Committee what is going on. I think it is a failure of the regulator. What do you say to that?

Ms DONNELLY: What I would say to that is that the submission to the Committee, with the greatest respect, and I understand the perspective you are expressing, is not the only publicly available information that we produce. We do have scheme performance reports and annual reports in which we highlight significant matters. I am happy to point you to those as well.

Mr DAVID SHOEBRIDGE: In addressing any of the questions I have put to you, or any questions put to you by other Committee members, I give you the opportunity to assist by lifting the veil from our eyes by pointing to those other reports and where they are addressed in those other reports.

Ms DONNELLY: Of course.

The CHAIR: Are there any further questions? Of the questions on notice, the secretariat will be in contact with you. There is a 21-day period for you to answer and we have flagged that the Committee will be inviting you back to give further evidence.

(The witness withdrew)

(Short adjournment)

JOHN NAGLE, Interim Chief Executive Officer and Managing Director, icare, sworn and examined

ELIZABETH UEHLING, Acting Group Executive–Workers Insurance, icare, sworn and examined

NICK ALLSOP, Chief Actuary, icare, affirmed and examined

The CHAIR: Do you have any opening statements to give the Committee?

Mr NAGLE: Icare started its journey to deliver a customer centric and empathetic service model almost three years ago. In that time we have delivered a significant range of improvements across the scheme, culminating in our policy in billing and our new case model that we started in January. But every step is co-designed with employers or injured workers; our customers. It is measured with their feedback via our Net Promoter Score, the NPS. Overall we are pleased with our progress, but there is much that remains to be done to give the citizens of New South Wales the confidence that they will be appropriately supported if they are injured at work or on the roads. We are on track to deliver more than $200 million per annum in operational savings, while improving customer satisfaction. We have maintained premium rates while absorbing more than $2 billion worth of scheme changes and adjustments from the 2015 benefit reform, section 39 adjustments, medical inflation and judicial interpretations.

We have invested in our foundation, which looks to support innovative ways of providing better care and treatment or covering gaps that impact customers and their families. We continue to dispel many of the myths, especially those around mental health and the value investigations. We continue to challenge the status quo of inefficient providers and the process burden across the scheme. Icare supports the initiatives around simplifying the dispute process and has worked hard to address the areas that cause disputes in the first instance. Our concerns are that any change is not prescriptive and is allowed to be operationalised by all system participants in the most effective and efficient way possible. Our role is to operationalise any change and that will impact approximately 84 per cent of the market. As best we can we are fully prepared to support and engage to this end as the Committee requires. Thank you.

The CHAIR: Thank you for your written submission. You can take it that the Committee members have read that and we appreciate you taking the time to provide it.

The Hon. DANIEL MOOKHEY: You say that the current funding ratio for the nominal insurer is 114 per cent at 80 per cent probability of assessment. That is down from 127 from the last time we had a chance to chat. Can you tell us why?

Mr ALLSOP: I think you have slightly different bases of comparison there, potentially.

Mr DAVID SHOEBRIDGE: Probability of adequacy.

Mr ALLSOP: The probability of adequacy at the 127 per cent would have been at the 75 per cent probability, rather than the 80 per cent.

The Hon. DANIEL MOOKHEY: If you wish to give us like for like numbers.

Mr ALLSOP: Absolutely. We have seen a small reduction in the funding ratio at the 75 per cent probability of adequacy, from 119 per cent at June 2017 to 118 per cent at December 2017. That reduction has come about for a number of reasons and it does put us marginally below our target green zone of 120 per cent to 140 per cent. But we do believe that with the initiatives we are putting in place to improve customer service we will return to that target operating zone within the five-year horizon that we specify. The reason for the small reduction is basically more information around the whole person impairment levels of some of our customers who are heading towards the section 39 cap. That has given us greater insights into the proportion of those people that will remain on benefits post the five-year or 260-week period.

Knowing that greater detail about our customers has led us to understand that we will have more persist beyond that mark, and hence we have had a small liability strengthening on the back of that. That has followed a couple of previous liability strengthenings where we have again been understanding more about our customers post the 2012 reforms. The 2012 reforms were really the first time that we had such a heavy reliance on whole person impairment as a means of determining benefits and so we have had to collect more and more robust information around that descriptor of the individuals that we are supporting. Again, that has led us to change liabilities in a couple of cases where perhaps the application of the 2012 reforms was viewed more favourably than it has turned out to be.

Mr DAVID SHOEBRIDGE: More favourably from a liability perspective, less favourably for workers.

Mr ALLSOP: Certainly from a liability perspective.

Mr DAVID SHOEBRIDGE: What proportion of workers do you now believe are going to fail the section 39 threshold when they get to their five year receipt of compensation?

Mr ALLSOP: For that cohort that is pre-2012 I do not have the exact number but from memory I think it is around 17 per cent that will persist, 17 per cent of those that we thought were going to come off at that point. There were some that we knew would stay beyond that point because we already had a reasonable measure of the level of severity of their injury. But for those that we had assumed post-2012 would exit the scheme at that point, it is around 17 per cent that are now going to remain on benefits.

Mr DAVID SHOEBRIDGE: Could you give the Committee the number on notice?

Mr ALLSOP: The exact number?

Mr DAVID SHOEBRIDGE: Not just of those who you thought would not meet, but now will meet, but of all workers, what proportion are going to meet the section 39 threshold.

Mr ALLSOP: All workers who have had the opportunity to reach that five-year threshold?

Mr DAVID SHOEBRIDGE: Correct.

Mr ALLSOP: Yes, we can take that on notice.

The Hon. DANIEL MOOKHEY: The investment income on the icare workers' insurance component was $439 million in the 2016-17 financial year. What was it the year before?

Mr ALLSOP: Off the top of my head I think it was lower, from memory, but I could not give you the exact number.

Mr NAGLE: We would have to look at that and come back to that question.

The Hon. DANIEL MOOKHEY: The figures I have, which I think are derived from your annual reports, show that it was $933 million. It implies that it is not doing as well.

Mr ALLSOP: We are subject to market changes and we adopt for the nominal insurer a fairly defensive portfolio of assets relative to some of our other schemes. We are very conscious that those assets are there to support the obligations we have to our customers into the future and we need to ensure that we are not investing them so aggressively that we run the risk of compromising the scheme's sustainability.

The Hon. DANIEL MOOKHEY: I appreciate that you have a defensive mindset towards scheme investment. The previous year, again going off the annual reports—and for this particular year icare perhaps was not the investor—in 2014-15 the investment income was $1.4 billion. Granted, of course, you will probably say that year was quite a good year and there was a return after the global financial crisis. You are telling us that you have invested in the last three years with a defensive mindset but during that time you have gone from 1.4 to 439. That is quite a turnaround. It is open to you to suggest that perhaps I am using the wrong figures, and perhaps on notice you will say that I am using the wrong figures, therefore I am being mean to you. Are you able to provide the Committee with any insight into that right now?

Mr ALLSOP: We are absolutely subject to market forces and there will be years where we do not get the performance that we have had in the past. That is never more true than in the current environment, where volatility has increased dramatically. The fact that we are 50 per cent towards defensive assets means that we are minimising that volatility to the extent that we can, but we cannot remove it in its entirety. What I can say is that based on early information for the financial year to 30 June 2018 we are back up around that $900 million mark, so it has rebounded, but it is subject to volatility.

Mr NAGLE: I think, just to add some colour to that, there has been no change in that investment strategy so it is not like we trade the markets aggressively from one stock to another or anything.

The Hon. DANIEL MOOKHEY: Which I take some comfort from, but I am advised that the Dust Diseases investment return has been 8 per cent; Lifetime Care and Support, 9.2 per cent; the Sporting Injuries Fund, 3.9 per cent; the Treasury Managed Fund [TMF], 12.5 per cent; and the Workers Compensation Fund, 2.46 per cent. There is quite a discrepancy there?

Mr ALLSOP: Yes, there is, absolutely. That comes down, in part, to the aggressive nature of some of those other funds. If you go back to, say, 2009, at the point of the global financial crisis, you will see some fairly adverse returns on, for example, the TMF, where the aggressive investment approach has led to actual losses that are reasonably material in that case. For the nominal insurer we did not suffer as big a downward swing because of the more conservative approach that we have taken.

Mr DAVID SHOEBRIDGE: I wish you had told the Parliament that at the time.

The Hon. DANIEL MOOKHEY: I will ask Treasury that.

Mr NAGLE: It is worthwhile noting that the nominal insurer is not government guaranteed; the Treasury Managed Fund is, so we can, under Treasury instructions, be more aggressive in an investment profile. In the profile for the nominal insurer we have to be far more conservative.

Mr ALLSOP: It is also worth noting that the long run average return for the nominal insurer is similar to that of the TMF so we have taken a lot of the volatility out without actually reducing the long run average return.

The Hon. DANIEL MOOKHEY: Well, I am not sure who to give my superannuation to now in light of what you are saying, but what is the expense ratio on workers compensation right now?

Mr ALLSOP: How would you define expense ratio in this case?

The Hon. DANIEL MOOKHEY: Well, scheme expenses as a proportion of premiums collected?

Mr ALLSOP: With or without State Insurance Regulatory Authority [SIRA] levies?

The Hon. DANIEL MOOKHEY: You tell me how you define it and we will go off that.

Mr DAVID SHOEBRIDGE: If you go to page 5 of the icare update you have other costs paid as expenses.

The Hon. DANIEL MOOKHEY: That is not necessarily the one I am getting at.

Mr DAVID SHOEBRIDGE: That is where I think there is a missing thing, which is the icare expenses.

Mr NAGLE: That is right. We expense the SIRA levies and Dust Diseases levies as expenses so they appear to be in our expense ratio when in actual fact they are levies that are payable by us, so it makes our overall expense ratio approximately 39 per cent. Of our direct expenses it is about 18 per cent.

The Hon. DANIEL MOOKHEY: Sorry, can you repeat that, Mr Nagle; I could not hear that?

Mr NAGLE: Our direct expenses are approximately 18 per cent.

Mr DAVID SHOEBRIDGE: Of the scheme expenses, including benefits?

Mr NAGLE: No.

The Hon. LYNDA VOLTZ: Excluding benefits.

Mr DAVID SHOEBRIDGE: Excluding benefits.

The Hon. DANIEL MOOKHEY: So your 2017 annual report says that the expenses against the scheme were at $594 million and that the expense ratio was 31 per cent. Is that the same way you are calculating it?

Mr NAGLE: That is right.

The Hon. DANIEL MOOKHEY: What is the dollar figure?

Mr NAGLE: To operate icare?

The Hon. DANIEL MOOKHEY: Yes.

Mr NAGLE: I will have to take that one on notice as well. It is approximately $700 million.

The Hon. DANIEL MOOKHEY: What are the trend figures on that expense ratio; we will go off the annual report? Is it going up or down?

Mr NAGLE: It is starting to come down. We are coming to the end of our three-year transformation so we have been carrying a heavy expense burden as we go through that transformation in creating icare. Our anticipation is that over the next three years our expenses base will continue to lower.

The Hon. DANIEL MOOKHEY: By how much?

Mr ALLSOP: In our business plan we have set down expectations around how much we are going to move things like scheme agent remuneration by and the internal operating costs of icare. We will probably have to come back to you on the exact figures because I do not want to misquote them here but we are looking at significant reductions in the expenditure to operationalise what we are delivering while not compromising service to our customers and we have started to see some of that come through already, so bringing policy and billing back in house, taking it off the scheme agents, has led to a material reduction in the expenses for icare to this point.

The Hon. DANIEL MOOKHEY: So far as the changes you have implemented in respect of the scheme agents, what are the forecast savings or additional expenditure as a result of those changes?

Mr NAGLE: The forecast savings from the change with scheme agents is over $200 million.

The Hon. DANIEL MOOKHEY: Over what period—the duration of the contract?

Mr NAGLE: Per annum.

Mr DAVID SHOEBRIDGE: On the money again, when I look at page 5 of that update, in the second column it has claims and scheme costs paid and then other costs paid as expenses. It has $1.089 billion for icare insurance for New South Wales. The $232 million, the $103 million and the $8 million that are there as levies, are they part of the $1.089 billion?

Mr ALLSOP: Yes, it would be.

Mr DAVID SHOEBRIDGE: So then the residual cost for icare is then about $750 million, is that right?

Mr ALLSOP: That sounds broadly correct and consistent with Mr Nagle's earlier response.

The CHAIR: Do you want that specifically answered on notice?

Mr DAVID SHOEBRIDGE: I think the precise figure is going to come on notice, is it not?

Mr ALLSOP: Yes.

The Hon. LYNDA VOLTZ: While we are talking about the financials, can I ask about the icare foundation. Is that included in expenses?

Mr NAGLE: Yes, it is.

The Hon. LYNDA VOLTZ: That includes Craig's Tables, spinal cord injuries—

Mr ALLSOP: Correct.

The Hon. LYNDA VOLTZ: —local health districts, universities?

Mr NAGLE: Yes.

The Hon. LYNDA VOLTZ: Is that part of your core business?

Mr NAGLE: Yes. What we have found on our journey is that under the old scheme there are many grant-making powers but they were very spread out and across numerous activities. By bringing them together under the foundation we have been able to target the applications that we are looking for. When we look at research and universities, an example most recently would be that there is no comprehensive literature on the impact of families and return to work. We have recently engaged with Griffith University to review that and come back to us on what are the actual evidence bases that would allow us to make investments in that area that would support not only the injured worker but their families.

The Hon. LYNDA VOLTZ: That is Griffith University. What about the others? How do you choose who the beneficiaries of the icare foundation are?

Mr NAGLE: That is done on an application basis. We run the foundation at arm's length. It is separated and run by a separate committee, and then a subcommittee of the board makes the final decision.

The Hon. DANIEL MOOKHEY: Your market share is currently what?

Mr NAGLE: For the nominal insurer it is about 74 per cent and then for the TMF, which is the government employees, it takes us roughly to about 84 per cent of the market.

The Hon. DANIEL MOOKHEY: Is it fair to describe you as being the big gorilla, as Mr Shoebridge has said to other witnesses? That is probably a fair reflection of the size of your market power. How are you using it to leverage down costs of medical services and medical treatments?

Mr NAGLE: We have had quite a strong program looking at provider costs. Over the last 18 months we have taken action on scenarios like hearing aid costs, rehabilitation costs and imaging costs. We have been negotiating with various providers across the spectrum. The actual medical costs in terms of the Australian Medical Association fraternity is one that we have not yet tackled. Part of the reason for that is that our data is still poor. Our data generically gives us core information but it is not very specific information. We have been doing a lot of work with a number of providers to try to understand what is our information in terms of the value so that we can make decisions, but overall we have achieved over $100 million of savings from our provider network to date.

The Hon. DANIEL MOOKHEY: So in two years time when I repeat this question to you, what should be the baseline bar when we ask what you are doing in order to tackle particularly the exploding costs of medical devices that all healthcare systems are currently encountering? Given that you have far more market power than most insurers in the private health insurance industry, what is the baseline? How should we be measuring your success in this regard?

Mr ALLSOP: I think it is important to remember that while we are a sizeable share of the workers compensation market, we are a very small player in the overall health market. Our purchasing power is not as great as it might appear from the statistics around our share of the workers compensation market. Where we can we obviously try to leverage that purchasing power.

The Hon. DANIEL MOOKHEY: I accept your caveat there but still the question remains: How should we be measuring your success?

Mr NAGLE: I am not sure if that is the actual measure of success. The measure of success that we put ourselves under is the outcome. We may end up paying more for medical costs if the outcome is better for the injured worker.

The Hon. DANIEL MOOKHEY: On notice can you provide your preferred form, taking into account all these factors, which sound totally reasonable to me? My point is that we want to establish a baseline.

Mr NAGLE: And we have done a lot of work to measure our baseline against other similar funds and medical costs in Australia but we are not in control of all the medical costs across the scheme.

Mr DAVID SHOEBRIDGE: I have a different line of questioning. You implemented a series of reforms to how you deal with claims commencing 1 January this year. One of those was an internal review on medical disputes, particularly treatment disputes. Could you briefly outline what that is and whether or not it applies to all of your portfolio TMF and the Nominal Insurer, or not?

Ms UEHLING: I am happy to take that. We have implemented a medical support panel, which is there to review treatment plans. What we are finding is that case managers are sending people to independent medical examiners [IMEs] and 50 per cent of the time the IME was actually supporting the treatment. Actually, it was more than that: 85 per cent of the time the treatment was being supported by the IME. It took 42 days, or six weeks, to go through the IME process. We have put in a medical support panel of practising doctors, who review the claims files on request of a case manager and can make the decision as to whether to support the treating doctor or not, and they do it in five days time instead. We have done 2,500 of these. We have just left the pilot phase and do intend to roll it out further, but we have not yet.

The Hon. TREVOR KHAN: Roll it out further where?

Ms UEHLING: To TMF.

Mr DAVID SHOEBRIDGE: It is currently with the nominal fund. You are now rolling it out with TMF?

Ms UEHLING: Yes. We piloted it with the nominal fund and we are prepared to now roll it out across TMF.

Mr DAVID SHOEBRIDGE: Do you know if any of the other insurers in the market—the self-insurers and the industry schemes—have implemented something similar? Are you talking to them about it?

Ms UEHLING: I am sorry, no, we do not.

Mr DAVID SHOEBRIDGE: I accept that you are the wrong person to ask.

The Hon. TREVOR KHAN: You do not talk to them?

Ms UEHLING: We have not talked to them as to whether—

Mr DAVID SHOEBRIDGE: You have not spoken to them about—

Ms UEHLING: We do not know if they have a similar medical support panel.

The Hon. TREVOR KHAN: Is there some body—say, through SIRA—where you and, I will call it other insurers, get together to discuss innovations that improve performance of the scheme as a whole?

Ms UEHLING: SIRA does call together operational meetings across the interim space on different topics.

The Hon. TREVOR KHAN: Right. We will deal with this issue. Has a meeting being called to discuss this innovation?

Ms UEHLING: Not that I am aware of.

The Hon. TREVOR KHAN: Have you communicated to SIRA that this innovation is underway?

Ms UEHLING: Yes, we have.

The Hon. TREVOR KHAN: Have they come back to you to make inquiries as to how it has gone as you move from the pilot phase?

Ms UEHLING: Yes, and we have given them updates.

The Hon. TREVOR KHAN: When was the last update that you gave them? You can take the question on notice.

Ms UEHLING: I would have to check for the exact date, but it would have been in the last 60 days.

The Hon. TREVOR KHAN: In the last couple of months?

Ms UEHLING: Yes.

Mr DAVID SHOEBRIDGE: As I understand it, when a notice of claim is made there is a requirement on icare to make a determination on each notice. Is that right? Have I misunderstood it? Each time an injury is notified, there is a requirement to make a determination.

Ms UEHLING: Yes. When an employer or a worker sends in an injury notification under the Claiming Weekly Compensation Benefit Guidelines, insurers are required to make a determination on the claim.

Mr DAVID SHOEBRIDGE: But not every injury notification results in an actual claim for compensation.

Ms UEHLING: That is right.

Mr DAVID SHOEBRIDGE: There is a difference between injury notification and a claim.

Ms UEHLING: That is right.

Mr DAVID SHOEBRIDGE: Are you required to make a determination on liability, even when there has not been a claim for compensation?

Ms UEHLING: Yes, we are, and most of the time we end up with a reasonable excuse on the claim.

Mr DAVID SHOEBRIDGE: On what proportion of claims are you making a determination on liability when there is no actual liability claim?

Ms UEHLING: Of the injury notifications, about 16 per cent of them turn into a claim.

Mr DAVID SHOEBRIDGE: About 16 per cent turn into a claim?

Ms UEHLING: Yes, for the Nominal Insurer claim.

Mr DAVID SHOEBRIDGE: For the other 84 per cent you are making a determination on liability when there may not ever be a claim made?

Ms UEHLING: Yes, exactly. Within the determination framework we also are required to reach out and notify. It is about giving injured workers—if an employer has lodged a claim and, in injury notification, we have to reach out to the injured worker and let them know that a notification has been made on their behalf.

Mr DAVID SHOEBRIDGE: I think that is terrific. Notifying the injured worker that a notification is in, setting out what their rights are is essential. I am just wondering about the idea of making a determination on liability when there is no claim made, and that is in 84 per cent of cases.

Mr NAGLE: It does cause some confusion because we have to issue a letter to them, which they quite often do not understand. It actually causes calls into us for clarification.

Mr DAVID SHOEBRIDGE: I can imagine. You are a worker, you have had an injury at work, a notification has gone in. You have not made a claim, but then you get a letter from icare saying that liability is being disputed. Do you talk to SIRA? Is this your own decision to do all this?

Mr NAGLE: No. It is a requirement of SIRA.

Mr DAVID SHOEBRIDGE: Have you spoken to SIRA about this?

Ms UEHLING: Yes.

Mr DAVID SHOEBRIDGE: Have you pointed out that there might be better ways of doing it and giving information rather than determinations in most of these cases?

Ms UEHLING: We have had those conversations. They did give us a year to implement it.

The Hon. TREVOR KHAN: You had a conversation and they said, "Do it." Is that the nature of the conversation?

Ms UEHLING: It was probably a lot more lengthy conversation than that. The conversation happened around June 2016 and in July 2017 the actual implementation came in.

Mr DAVID SHOEBRIDGE: So "Do it in 12 months"?

Ms UEHLING: Yes.

Mr DAVID SHOEBRIDGE: It may be that SIRA has additional reasons, but notwithstanding what seems to me to be a fairly barren, costly and potentially confusing exercise. Have I mischaracterised it?

Mr NAGLE: It is one that we struggle with, yes.

The Hon. TREVOR KHAN: And that struggle was communicated to SIRA—that this seemed to be an expensive and pointless exercise?

Mr NAGLE: Yes.

The Hon. DANIEL MOOKHEY: What are the other expensive and pointless exercises that you are compelled to undertake?

Mr NAGLE: It is a difficult scenario for SIRA in terms of how they are organising their oversight. We cooperate with them.

The Hon. TREVOR KHAN: Do not worry about SIRA. They will have their own opportunity to explain their actions. From your position, what are you required to do that seemed to be administratively burdensome for very little return?

The Hon. DANIEL MOOKHEY: Ideally, there is the cost of that as well.

Ms UEHLING: I think that the number one thing—and this will not be coming as a surprise—is PIAWE, pre-injury average weekly earnings. At times it can take four hours to calculate a PIAWE calculation for a day off of work.

Mr DAVID SHOEBRIDGE: It takes a day to calculate a day's wages.

The Hon. TREVOR KHAN: Half a day.

Mr DAVID SHOEBRIDGE: Half a day. Sorry, I am always exaggerating.

The Hon. LYNDA VOLTZ: Your organisation was part of the consultation process that began in, on my understanding, February 2016?

Ms UEHLING: Yes.

The Hon. LYNDA VOLTZ: This report has been sitting on their website as part of their consultation process since March 2017.

Ms UEHLING: Yes.

The Hon. LYNDA VOLTZ: What feedback have you had since then?

Mr DAVID SHOEBRIDGE: It has been on their website since November.

The Hon. LYNDA VOLTZ: The report was completed in March 2017. What feedback have you had from SIRA in regards to that report?

Ms UEHLING: We have a meeting coming up next week to—

The Hon. TREVOR KHAN: We know that.

The CHAIR: Yes, we are aware.

The Hon. LYNDA VOLTZ: When were you notified of that meeting?

Ms UEHLING: Two days ago.

The Hon. LYNDA VOLTZ: I note that in 2016-17—and I assume the last financial year—you spent significant amounts on consultation. In regards to this report, have you had any expenditure associated with developing an app and the software that would need to go with it as regards PIAWE arising from that report?

Ms UEHLING: We have not had any expenditure to date. However, as part of the new system, there is a PIAWE calculator attached. The system will be launched later on this year.

The Hon. LYNDA VOLTZ: You have developed the calculator?

Ms UEHLING: Yes.

The Hon. LYNDA VOLTZ: Will it be on an app platform?

Ms UEHLING: Not at the beginning.

The Hon. LYNDA VOLTZ: You have already developed what the calculation is going to be for the new system. Essentially, what we can pretty well determine is that the system is all ready to go?

Ms UEHLING: There are still some manual things that you have to do to collect the information to go into the calculator, which can be a time-consuming process because you have to get it from the employer and all that sort of thing. We have endeavoured to make it as accurate and simple as possible for people having to do the work.

The Hon. LYNDA VOLTZ: Is there an expectation—because it was a recommendation of the report—that there will be an app that people can use? It is about reducing disputes, obviously, and the app is a fundamental part of that process. Has there been a commitment to do that?

Ms UEHLING: There is definitely a commitment, once we stand up in the system, to have not just a PIAWE app as an example, but also the ability to lodge claims through an app and make it more accessible.

The Hon. TREVOR KHAN: Are you able to provide us with a copy of the email that you received inviting you to this meeting?

Ms UEHLING: Yes.

The Hon. DANIEL MOOKHEY: Is this new app built on the new definition of PIAWE? Is that right?

Ms UEHLING: We have not actually built the app yet.

The Hon. LYNDA VOLTZ: No, but they have the calculators.

The Hon. DANIEL MOOKHEY: The model.

Ms UEHLING: The calculator is built on the current legislative definition of PIAWE.

The Hon. DANIEL MOOKHEY: What are you going to do if that definition changes?

Ms UEHLING: It is still very complex and still time consuming. We have not implemented it yet so I do not know if it will reduce—

The Hon. LYNDA VOLTZ: Is that based on the understanding that the PIAWE will change and be simplified?

Mr NAGLE: No, it is built on the current PIAWE calculation.

The Hon. LYNDA VOLTZ: Is that problematic given that we have a unanimous report from SIRA that states that legislation is required and needs to be changed and that there is an expectation that that will be acted on? You are now saying that at some time towards the end of the year your calculator will go out with the old PIAWE calculations. Is that correct?

Mr NAGLE: That is right, but we built it outside our system so it is not hard wired so we can make changes to it reasonably quickly.

Mr DAVID SHOEBRIDGE: You would not be holding your breath for the change?

Ms UEHLING: Yes, we had to build it on the current legislation.

The Hon. DANIEL MOOKHEY: What are other claims management reporting requirements that you are subject to to SIRA in terms of quantum?

Ms UEHLING: There is a claims technical manual that requires us to comply with certain inform that we have to gather in order to make it a claim. I would have to take what those exact things are on notice.

The Hon. DANIEL MOOKHEY: How many notifications are you following per week with SIRA?

Ms UEHLING: We have about 5,000 new claims a month.

The Hon. DANIEL MOOKHEY: What benefit is derived by reporting them all to SIRA? Do you report them all to SIRA?

Mr NAGLE: Yes, we do. It sort of runs consolidated data across the whole system, so our data plus the private and self-insurers. The core of that data that we provide them would be necessary for any regulator to understand the system. Our difficulty probably comes on an average month we have about 75 additional queries from SIRA on various issues at any given time based on complaints or just wanting more information. What we have talked to SIRA about is what is the framework that these queries are supporting rather than just, kind of, the query of the day.

The Hon. DANIEL MOOKHEY: What did they say?

Mr NAGLE: They are working on their frameworks.

The Hon. DANIEL MOOKHEY: What substantially changes as a result of SIRA's intervention in respect to those 75 matters? You tell them, "Here is the information. Here are some additional inquiries." You provide them that information but what do they do with it? How does that lead to a change in behaviour by you particularly for the benefit of the injured worker?

Mr NAGLE: Where they believe that we have not met an appropriate standard we will have a discussion and they have a right to have an audit on our file and other information which is just for their information, effectively.

Mr DAVID SHOEBRIDGE: I would imagine that there would just be a protocol. If a person wanted some data information you would say that this is the protocol and you set up what the data request is and you set up what the reason is. You probably need that to deal with privacy issues. Do you need a rationale to deal with privacy issues? Do you have that kind of protocol in place where they are just automatically giving it to you so as you can provide the data?

Mr NAGLE: We operate a protocol around that which we have developed which is if it is a response to complaints they are regulator entitled, and if it is generic information we try to give them the generic information, not specific information.

Mr DAVID SHOEBRIDGE: In terms of meeting the privacy requirements is it clear? I think even to access generic information they need a reason. Do they give you the reason and allow you to meet your obligations under the privacy laws?

Mr NAGLE: Not on every occasion.

Mr DAVID SHOEBRIDGE: Why is there not a protocol that has that as a field that they have to enter? Why is that not established?

Mr NAGLE: That is an ongoing discussion.

The CHAIR: Has the new claims model that you have looked at, or were to implement—which is a new information technology platform for claims management—been implemented?

Mr NAGLE: We have partially implemented the case platform. On 1 January 2018 we went live with the new—

The CHAIR: It has gone live?

Mr NAGLE: But it is not the full model. The full model will roll out in November.

The CHAIR: What was the project budget for that?

Mr NAGLE: For the claims build?

The CHAIR: For the whole platform.

Mr NAGLE: For the claims portion there were two parts to it. There was approximately $7 million for the first part which was building a portal claims lodgement and joint EMLs backing system. For the full integrated system the budget is approximately $70 million.

The CHAIR: Is that the current total spend associated with the system to date?

Mr NAGLE: For the claims system, yes.

The CHAIR: I am not IT savvy, but is there another part to it?

Mr NAGLE: No. We have run a series of projects on various capabilities. Prior to that we undertook what are called policy and billing, which we launched 18 months ago. That was again delivered in various stages—our capability to underwrite new business and then take over all the renewals and existing business within the scheme.

The CHAIR: What is the total spend on that?

Mr NAGLE: I would have to come back to you with certainty but it is approximately the same number. It is about $70 million.

The CHAIR: Is that a current forecast spend associated with it?

Mr NAGLE: No.

The CHAIR: What is the forecast for that?

Mr NAGLE: No. They were a one-off build and delivery costs, and change costs.

The CHAIR: Is there any further implementation to that system?

Mr NAGLE: There will be an ongoing improvement cycle with those systems, yes.

The CHAIR: I direct you to the overriding purpose of this inquiry, which is about having one tribunal. Robust discussion has been had about what that should look like but I want to come at it the other way—that is, from the perspective of the injured worker. What are your views on having one tribunal? We have your papers but what would be the benefits of one tribunal from the injured worker or customer perspective? Will it benefit them or not?

Mr NAGLE: We support the one tribunal. The current system where there are multiple pathways and multiple contact points for an injured worker are quite confusing. We have done a lot of work, as I say, to try to look at the causes of the dispute but effectively having one tribunal that is built around a simplified and understandable pathway. A lot of what we have discussed previously and even in the dispute review committee is the difference between a complaint and a dispute. A lot of the contacts we have are simple information inquiries and we lodge them as a complaint. We try to respond to the customer as soon as possible. Where that answer does not meet their satisfaction it becomes a dispute. What is not clear in the current system is what should be the pathway from that point.

The CHAIR: There are various pathways; that is the difficulty.

Mr NAGLE: That is right. We think a single tribunal that has a defined pathway and time frame is something we support.

The CHAIR: Will you talk about the efficiency of the new claims model that was implemented?

Ms UEHLING: An example of the efficiency would be the fact that in the first quarter of 2017 the time from lodgement to your first service was approximately 20 days. It is now down to about 10 days and that is due to the fact that we are trying to speed up the treatment plans for people so they can return to work faster and they do not have to wait. That is an example of the efficiency. The operating model itself, as opposed to the service model, is based on a component of simple claims that get dealt with very quickly. Essentially icare is trying to get out of the way. Then there is a return to work model, which is the harder and more complex claims that take longer and need more capable staff. Then there is the specialised claims like mental health.

The difference between the different claims is a different case manager capability so therefore a different expense by case manager. It also creates clearer pathway for them. The efficiency in of itself is to be able to handle more claims at the lower end because they are simple—just provide service to the customer and get out of the way and provide them more empathetic and full support.

The CHAIR: So it is faster and more efficient. Has it improved the worker or customer experience?

Ms UEHLING: Our net promoter score has improved. We are running about 15 per cent at the minute, up from about 11.

The Hon. TREVOR KHAN: Just in regard to the efficiency, I know that we emphasise the position of worker or customer but are you able to give some indication as to the speed of payment of medical accounts? Do you gauge the efficiency with which those are being processed?

Ms UEHLING: We do measure that. At the time that the model launched it was slower than we would have liked it to be.

The Hon. TREVOR KHAN: Such as?

Ms UEHLING: Such as over 20 days. We are down to nine days on average payment and when we implement the full system a lot of that will be speeded up even more. It is important to us to get service providers paid so that they can focus on providing treatment to our customers.

The Hon. DANIEL MOOKHEY: Are you aware that there are employers in the marketplace who have complained that they received their premium notices late or are yet to arrive and they have no idea what they should be paying?

Mr NAGLE: Yes.

The Hon. DANIEL MOOKHEY: Can you explain how that arose?

Mr NAGLE: There are two distinct issues. Last year was the first year we took over the renewal program with our system—

The Hon. TREVOR KHAN: And it was not too flash then.

Mr NAGLE: That is right. What we discovered in October was a computer system error in which the invoices were not going clearly. It took us awhile to resolve that error so we could not process the premium adjustments. A number of customers did not receive their invoices in appropriate time. We have also found that about 30 per cent of them thought it was junk mail because they did not know the icare brand and threw them away.

The Hon. DANIEL MOOKHEY: Was this last year or this year?

Mr NAGLE: This was last year. For this year, June is our biggest renewal period and the renewal notices went out slightly delayed. As part of our filing with SIRA we file every year our rates and that was delayed by about four weeks.

The Hon. DANIEL MOOKHEY: By whom?

Mr NAGLE: A combination of a discussion between us and SIRA about what changes they wanted to make, which we found impacted our pricing quite significantly.

Mr DAVID SHOEBRIDGE: What was that change? The removal of caps?

Mr NAGLE: The removal of caps.

The Hon. DANIEL MOOKHEY: That was conclusively decided by the SIRA board—

Mr NAGLE: Correct.

The Hon. DANIEL MOOKHEY: —in late June?

Mr NAGLE: May.

The Hon. DANIEL MOOKHEY: That is what they said, that they invited representatives of yours.

Mr NAGLE: That is when they would have given formal approval in June.

Mr DAVID SHOEBRIDGE: If the board made a significant change about premium settings in late May you must have known that would create a delay in getting out the renewal notices. Did you tell them that?

Mr NAGLE: We did.

The Hon. DANIEL MOOKHEY: And what did they say?

The Hon. TREVOR KHAN: Did you tell them orally or did you tell them in writing?

Mr NAGLE: I believe we told them in writing.

The Hon. TREVOR KHAN: Are you able to provide the Committee with a copy of that?

Mr NAGLE: I would have to look at that and take it on notice.

The Hon. DANIEL MOOKHEY: What is the status of the current renewals?

Mr NAGLE: They have all gone out and we are now waiting for customers to send back their declarations so we can do the adjustments.

Mr DAVID SHOEBRIDGE: There is a committee or working group that is meeting, constituted by WIRO, SIRA and the Workers Compensation Commission, to talk about implementing this new one-stop shop. Were you invited? Did you have discussions with SIRA about it? Do you want to be part of that? Tell the Committee about that.

Mr NAGLE: We did have a discussion with SIRA about that. We are a participant in the market and because of our dominance we do not want to be seen to be overly dominant so we found it was better that we sit on the sidelines and give our advice and opinion at the appropriate time.

Mr DAVID SHOEBRIDGE: Is that working?

Mr NAGLE: We have not had any feedback yet.

The Hon. LYNDA VOLTZ: They have not had a meeting yet, have they?

Mr NAGLE: No.

Mr DAVID SHOEBRIDGE: This is not the PIAWE.

The Hon. LYNDA VOLTZ: No, this is the one for the disputes. They said they had not met yet.

Mr DAVID SHOEBRIDGE: Given that you have just gone through a significant reform about your processes—and I have not got a concluded view on it but some of it seems to be very good in terms of the way you are doing your internal medical reviews and the like—how comfortable are you that what you have done now will not have to be reinvented as a result of whatever decisions SIRA makes about a one-stop shop?

Mr NAGLE: In everything we have done we have tried to build the opportunity for flexibility. The scheme does continue to change so one thing we have done is to build flexibility into our capability to respond.

Mr DAVID SHOEBRIDGE: You have built flexibility in your capability to respond, but do you get a sense that there is a respect amongst the regulator for the cost and the investment that you have put in place and to ensure that is not wasted in any decisions they make about reform?

Mr NAGLE: It is certainly an issue we have raised with them and that they acknowledge.

Mr DAVID SHOEBRIDGE: In terms of going to a one-stop shop, do you envisage that producing cost savings and efficiency savings?

Mr NAGLE: The logic we believe would be correct, yes. More importantly, it would give consistency of decision-making. We look at comparison schemes across the country. We look at the Victorian scheme, which has a consistency of outcome and so has a very stable pathway so that people can make decisions with confidence.

Mr DAVID SHOEBRIDGE: The Insurance Council of Australia said in its submission when referring to any reform to the dispute resolution process that the first principle should be perceptions of fairness. I quote from that submission:

> Perceptions of Fairness—Research highlights that people generally have a better recovery if they feel they have been treated fairly. A perception of fairness is promoted by having an open and transparent system which sits separately from the original decision makers or scheme stakeholders.

What do you say about that principle? Do you adopt it? Do you want to modify it or reject it?

Mr NAGLE: No, we would support it. Coming from a commercial insurance background I have seen it operate very successfully.

The CHAIR: Thank you for appearing before the Committee today. The Committee has resolved that answers to questions taken on notice are to be provided within 21 days. There may also be further questions from members following on from that.

(The witnesses withdrew)

(The Committee adjourned at 1.16 p.m.)