REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO 2018 REVIEW OF THE COMPULSORY THIRD PARTY INSURANCE SCHEME

UNCORRECTED

At Jubilee Room, Parliament House, Sydney, on Thursday 23 August 2018

The Committee met at 9:15

PRESENT

The Hon. Natalie Ward (Chair)

The Hon. David Clarke
The Hon. Trevor Khan
The Hon. Daniel Mookhey
Mr David Shoebridge
The Hon. Lynda Voltz (Deputy Chair)

The CHAIR: Good morning and welcome. Thank you for joining us this morning, for your time today and for the submissions you have provided. This is the first hearing of the 2018 review of the compulsory third party [CTP] insurance scheme. My name is Natalie Ward and I am Chair of the Standing Committee on Law and Justice. I will start by making some opening comments. I am sure you are well aware that our Committee has an important role in oversighting a number of insurance and compensation schemes, including the workers compensation and compulsory third party insurance schemes. The review we are currently undertaking will focus on the performance and effectiveness of the CTP scheme, including elements of the new statutory benefits scheme and insurer claims handling.

Before I commence I acknowledge the Gadigal people, who are the traditional custodians of this land. I pay respect to elders past and present of the Eora nation and extend that respect to other Aboriginal people present today. Today we will hear from a number of representatives, including industry associations, unions, medical professionals, lawyers and the regulator. Before we commence I make some brief comments about the procedure for today's hearing. Today's hearing is open to the public and is being broadcast live via the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available.

In accordance with the broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of filming or photography. I remind 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 of their evidence at the hearing, so I urge witnesses to be careful about any comments they may make to the media or to others after they complete their evidence, as such comments would not be protected by parliamentary privilege if another person decided to take action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat.

After witnesses give their opening statements and evidence today, there may be some questions during the course of that evidence that might only be able to be answered if witnesses had more time or certain documents to hand. In these circumstances witnesses are advised that they can take a question on notice and provide an answer to the secretariat within 21 days, should they wish. Witnesses are advised that any messages should be delivered to the Committee members through the Committee staff, and at the outset I thank the Committee staff for their help today. To aid the audibility of this hearing, I remind both Committee members and witnesses to speak into the microphones. In addition, several seats have been reserved near the loudspeakers for people in the public gallery who have hearing difficulties. I ask that mobile phones be turned off or turned to silent for the duration of the hearing.

BRIAN WALTER WOOD, Secretary, Motorcycle Council of NSW Inc., affirmed and examined

JASON ANTONY, Vice Chairman, Motorcycle Council of NSW Inc., affirmed and examined

MARTIN ROGERS, Chief Executive Officer, NSW Taxi Council, sworn and examined

NICK ABRAHIM, Deputy Chief Executive Officer, NSW Taxi Council, sworn and examined

The CHAIR: Do any of you have an opening statement you would like to provide to the Committee first?

Mr WOOD: Yes, I would like to make an opening statement.

The CHAIR: Do any other witnesses have an opening statement?

Mr ROGERS: I have.

The CHAIR: Alright. The Committee will hear from Mr Wood and then Mr Rogers.

Mr WOOD: The motorcycle community of New South Wales was shocked and disappointed to discover that the reforms to the compulsory third party scheme introduced 1 December last year did not result in a reduction in our premiums or we are not eligible for a rebate. We are the only group who did not get a reduction in their premiums. We have held two meetings with the State Insurance Regulatory Authority and exchanged some correspondence with them regarding the reasons for this, SIRA claiming that on an annual basis there will be an estimated 1,400 additional claims made under the new scheme. The Motorcycle Council of NSW has questioned the basis of this figure.

When we met with SIRA in June they were unable to provide indication of the number of claims that have been received in the scheme in the commencing six months. They advised that it would take several years for the number of claims to stabilise as road users become aware of their ability to make a claim under the new scheme. We are paying premiums to cover those additional 1,400 claims, yet by their own admission the level of claims will not get to that level for several years. Therefore we are being overcharged. The only way that we will be able to reclaim any of that overcharging would be through the proper normalisation scheme.

When the accident notification form [ANF] was introduced in 2008 it as estimated that it would add between $22 and $37 per motorcycle premium. That is because under that ANF you are able to claim up to $5,000 even though you are at fault. Experience showed that the ANF scheme only added $4 per premium. Therefore only about one in seven of the expected claims actually eventuated. There would be a number of reasons why riders did not take up that benefit, one being that if you report to the police that you have come off your bike you are quite likely to get a negligent driving charge and therefore the associated demerit points. Our feeling is that those same sort of reasons why the ANF was not taken up will probably also apply to this new scheme.

SIRA provided us with a bar chart which showed where the expenses are under the old scheme and under the new scheme. This was really on the basis of the whole scheme rather than just for motorcycles. We asked for a similar chart just for motorcycles so we had a better understanding of where the costs go. SIRA advised that it was too difficult for them to produce such a chart. Using the Ernst & Young for which we had been asking for a number of years, which we have finally received a copy of, plus the data in SIRA's correspondence plus the information on their website we proceeded and produced our own bar chart. It showed that under the old scheme we were only getting about 38¢ in the dollar being returned to a benefit to a rider and that on average the insurers were getting about 21 per cent. On our calculation the bar chart shows that under the new scheme we will be able to get about 56¢ in the dollar returned as a benefit. That will bring us into line with the scheme as a whole.

SIRA's website explaining the new CTP scheme has stated that in 90 per cent of motorcycle accidents the rider is at fault. This is often because there is no other vehicle involved in the accident. We are not aware of any data that would support that sort of percentage. SIRA initially said it was based on hospital triage data but our advice from a hospital data is that the hospital data does not record fault so therefore SIRA is incorrectly using that database. Also the database does not record whether the vehicle is registered or unregistered. There are many unregistered motorcycles out there whose riders would present to hospital and who would therefore not be able to make a CTP claim. We have requested that SIRA remove that statement from its website.

SIRA has also provided information from Victoria to support its claim but this would only work on the basis that the two schemes are identical and have equivalent cost structures. We do not believe that to be the case. Victoria has recreational registrations for motorcycles so it means a lot of the motorcycles that perhaps would otherwise be unregistered in Victoria do have registration and are contributing to the scheme.

The Hon. TREVOR KHAN: They are dirt bikes.

Mr WOOD: Yes, they are trail bikes. SIRA has also raised the Lifetime Care and Support scheme in correspondence to us, but to us LTCS is a separate scheme to CTP. SIRA's claim is that we are not paying sufficient into that scheme but we view that as a different scheme and we look forward to having further discussions or separate discussions about the LTCS. Again the recreational registration would come into that because of the fact that a number of those who are in that LTCS were on unregistered motorcycles.

Going forward, we have asked SIRA for sufficient information that would allow us to monitor how much is being contributed and how much is going as a benefit to riders. SIRA referred us to its quarterly insights information sheet. It gives quite good data on a number of claims and those sorts of things—even the payouts—but again just for the scheme as a whole, which does not allow us to be able to monitor how the 25 motorcycle classifications are proceeding. We would like to be in a position where we get regular updates so we have a good handle on how the scheme is performing for motorcyclists. We would also look to welcome other changes to the administration of the scheme so we are able to do that. I thank the Committee for allowing me to have an opening statement.

Mr ROGERS: On behalf of the Deputy Chief Executive Officer and myself, the NSW Taxi Council enjoys the opportunity to be here and welcome the reforms around the CTP process. For taxis in particular it was becoming an untenable option with the premiums hike on a year by year basis. We welcome the opportunity to reduce the premiums. Unfortunately, the 40 per cent communicated reduction did not materialise. That was acknowledged by the fact that what we thought to be 40 per cent reduction on the current premiums was actually to be on future premiums. The 40 per cent reduction for our industry did not materialise. When we brought it to the attention of Minister Dominello we were thankful that his reaction was quick and swift, in the sense that we then engaged with SIRA to come to a level playing field with our rideshare counterparts.

The cost differential for taxi operators was some 15 times what a rideshare operator would pay to compete in the same space. We believe that we both do the same type of journeys from point A to point B. The risk at the moment is unable to be calculated to understand should there be a premium differential between rideshare and taxis. At this stage we are grateful to be working with SIRA to level the playing field to pay equivalent amounts of risk premium associated with the services we are offering. The taxi industry delivers 170 million passenger journeys on a yearly basis and provides income to some 30,000 people on a daily basis across New South Wales.

We welcome the fact that the taxi operators in the past who had a fixed premium are able to pay a premium based on the kilometres they travel. We are not quite there yet. There is still a differential in the fact that a rideshare operator pays $600, a taxi operator can still pay $6,000. We are working with SIRA and with the office of Minister Dominello to get to a scheme where we are normalised and equalised and levelled the playing field for CTP premiums. We believe that we should be getting to a point where risk should be appropriate to the individual not necessarily the class or category. They are the opening comments. Thank you for allowing us to be here today.

The CHAIR: Mr Wood, you spoke of not receiving a premium rebate.

Mr WOOD: We did not get a rebate because the premiums did not change.

The CHAIR: You did not get a reduction either?

Mr WOOD: No.

Mr DAVID SHOEBRIDGE: It was a marginal reduction.

The CHAIR: There was increased coverage due to the extension of benefits to at fault drivers?

Mr WOOD: Yes.

The CHAIR: Of which you—let us not disagree on the numbers—form a large part of?

Mr WOOD: It is yet to be established how many riders will take up that at fault benefit part of the scheme.

The CHAIR: Why do you say that?

Mr WOOD: Under the ANF only one in seven took it up, so will the same factors that influenced them not to take up the ANF also influence them? To be able to make a claim you have to make a police report and many riders are reluctant to do that. The default position with the police is as soon as you report a single vehicle motorcycle crash is you get a negligent driving charge and that is because the motorcycle is found to be lying on its side so they deem you lost control. It is not negligent driving it is physics and the fact that a motorcycle is a single track vehicle and ends up on its side.

The CHAIR: Can I return to the comparison of the old scheme and the new. Under the old scheme there was no benefit whatsoever and you are over represented in at fault claims. Is your view this is of some benefit, it is not perfect, but it is an improvement on the old system; would you agree with that statement?

Mr WOOD: It is the basis of the data to say motorcycles are at fault. The crash data from Roads and Maritime Services we are at fault a little over 50 per cent, there is not much difference between at fault and not at fault based on RMS data which is based on police reports. We are not overly represented in at fault.

The CHAIR: I know you disagree with that.

Mr WOOD: When you look at hospital triage data the Centre for Road Safety is currently matching police reports or RMS against hospital data and they can only match 50 per cent of motorcycle crashes whereas with car drivers it is more like 80-90 per cent they have a match for. In that unmatched data there would be a lot of unregistered motorcycles. That is because only about half of the motorcycles imported into Australia are registered. There are potentially as many unregistered motorcycles out there as there are registered motorcycles.

The CHAIR: Can I take you back to the comparison between the two schemes. Under the other scheme there was no benefit of this kind.

Mr WOOD: You could get the ANF up to $5,000 under the old scheme.

The CHAIR: So, as a class you are paying less.

Mr DAVID SHOEBRIDGE: You said earlier only 4 per cent?

Mr WOOD: It only added $4 to the premium, whereas they did expect it was going to be between $22 and $35.

The CHAIR: You may not have received a rebate but as a class you do represent a higher risk than other classes, and I know you disagree with the number, but there is a higher risk for motorbikes, you are paying less based on your risk as a class.

Mr WOOD: As a vulnerable road user we are at high risk of injury, yes. But that is the same for pedestrians and cyclists.

The CHAIR: Based on that class you have received a reduction.

The Hon. LYNDA VOLTZ: I did not catch the last part of the statement.

The Hon. TREVOR KHAN: You cannot talk over the top of him.

Mr WOOD: Sorry?

The Hon. LYNDA VOLTZ: We did not catch the last part of your statement.

Mr DAVID SHOEBRIDGE: You were saying you a more vulnerable road user?

Mr WOOD: We are a more vulnerable road user. We are more at risk of injury like other vulnerable road users such as pedestrians and cyclists, for the same reasons.

The CHAIR: Pedestrians are insured.

Mr WOOD: If they are hit by a car they can claim, similarly with cyclists.

The CHAIR: Your average premium of around $350 is still less than a class one premium. The class one passenger vehicle is still potentially higher even though it is less risk?

Mr WOOD: While that might be the average, there are 25 classifications for motorcycles. There is a big variation. The smaller bikes in country areas obviously pay under $100 whereas someone with a large motorcycle, most of them being metropolitan, they can be charged a premium up to $1,000. Again, there are big differences between what one insurance company wants for a premium compared to another. Many insurance companies are not interested in it. So if a motorcyclist buys a motorcycle from a shop that has a deal with an insurance company that has a higher premium when they go to renew they can end up paying up to $1,000. There are big variations in it. While the average might be that there are riders who are paying substantially more than what they are for a car.

The CHAIR: Do you disagree with the statement, on the averages—I accept there are big variations based on the type of bike—but for a class one average passenger vehicle it is $550 and a motorbike average premium is $370; that is a substantial reduction?

Mr WOOD: It is not a reduction that is what we were paying under the old scheme. Whereas other classes did get a reduction, on average $120 off their premium, we got nothing. Changing the scheme was also to get rid of rorting of the scheme and inefficiencies, we got no benefit from those improvements to the scheme.

The CHAIR: You have had no benefits from the new scheme?

Mr WOOD: We should in the fact that you can now make an at fault claim. Again, it is still to be established how many riders will take that up.

The Hon. LYNDA VOLTZ: Looking at the bar graphs you provided, where the scheme has come down is in insurer profits, they have gone from 21 per cent down to eight?

Mr WOOD: Hopefully, under the profit normalisation scheme that will be the case. We would like to monitor the scheme to know.

The Hon. LYNDA VOLTZ: You would expect that insurers profits have been reduced because of the mechanism the Government has put in place. Those savings would be handed on to you whether you are a motorbike rider or drive a vehicle. That is the nub of your argument, is it not?

Mr WOOD: I guess. Also, where has that profit originated? Many of the insurers will add malice to a motorcycle premium, so we are paying up to the maximum. If you look at the calculator, you will see quite often that a number of those insurers have very close premiums, and that is because they have added the malice. They have put it up to the maximum amount they possibly can, usually to discourage riders from taking up a premium with them.

The Hon. LYNDA VOLTZ: The taxi industry is seeing that reduction coming across. Is that a fair assessment?

Mr ROGERS: Yes, there have been a reduction in premiums that have come across to the taxi industry. That is to normalise it with the rideshare model. There is still a big differential. That average of $550 for a class one premium was mentioned. Taxi operators were heading towards $10,000 for the same type of service that we are offering.

Mr DAVID SHOEBRIDGE: If rideshare operators do more kilometres they will pay more. It is not fair to compare the class one premium with a taxi premium. That is just a starting point.

Mr ROGERS: No, I am saying that, previously, that was it. Now we welcome the fact that there is a 10 ¢ per fare paying kilometre for rideshare. It was meant to come in on 1 December. Unfortunately, that was delayed. Therefore, the rideshare operators enjoyed the opportunity of not having that premium collected for four months. It created an unlevelling. CTP insurance is one of the largest contributors to the cost of running a taxi.

Mr DAVID SHOEBRIDGE: The scheme going forward of per passenger kilometre is a risk-based model?

Mr ROGERS: Yes.

Mr DAVID SHOEBRIDGE: I thought you were asking for a risk-based model?

Mr ROGERS: We are.

Mr DAVID SHOEBRIDGE: You have got one.

Mr ROGERS: Yes, we are heading towards that now.

The Hon. TREVOR KHAN: What does "heading towards" mean? It is like heading in the right direction; I heard that, too.

Mr ROGERS: What we do not quite have at this stage is a scheme that pays the same. If you are a rideshare operator, you would pay your $550 up-front, and that is all you pay for the whole year. Then the booking service provider, that is the network under which you operate, pays your 10¢ per kilometre. Only $550-odd per year comes out of the actual pocket of the rideshare operator. As a taxi operator, your obligation is to pay the whole of the premium. It has reduced, but it would be upwards of $5,800 per year now for metro operators. We have the opportunity to move to that model, obviously. We want to see an industry in which we have the same model for both.

Mr DAVID SHOEBRIDGE: You may not agree with the model, but the overall rideshare industry is now paying a risk-based premium, and that is a good thing, surely?

Mr ROGERS: I have not said that they have not. What I said, in the past—so on 1 December last year we were meant to pay the same risk-based model. That did not happen.

The Hon. TREVOR KHAN: Why?

Mr ROGERS: That question should be asked of SIRA. There were delays in implementation of that model. As I mentioned before, when I brought that to the attention of Minister Dominello he was quick to act on that to say let us meet the 1 April deadlines to make sure that happens. That is now in place. What I would like to add to that, where it was not level was around the CTP fund levy component. We are talking about a risk-based mileage premium as a component of the premium, but the starting point was not level. In our CTP fund levy for metro, we were paying $580. Class one was $142. Country was $680, down to $110.

Mr DAVID SHOEBRIDGE: There is a rationale for that, which is that once you have a taxi, you know you have a taxi and it will be used only for taxi purposes. Whereas in rideshare, you get a car, you can use it for private purposes or not. In fact, you could use it 100 per cent for private purposes or 100 per cent for rideshare purposes. Having an up-front base payment for rideshare would not be equitable or fair in the same way as it is with taxis. You have to confront that reality, rather than play with the numbers.

Mr ROGERS: Well, it depends on how much you actually drive those taxis. Driving taxis is intended to be full-time. We are there to provide that service. The fact is that when you drive one kilometre in this space, the CTP fund levy class 7 risk should be attributed to you.

Mr DAVID SHOEBRIDGE: Put the full picture out.

Mr ROGERS: We will not get that privilege when we have a taxi to say we are going to drive for one kilometre or 100,000 kilometres. When we drive one kilometre, we pay $680 or $580. Thankfully, that has been normalised and it has been aligned. I look at what the CTP fund levy pays for. In this space, the taxi industry was paying for the long-term medical care and the SIRA administrative costs of running the whole point to point scheme. Looking at it, saying it has normalised, we are grateful for that. We are moving to the point that we are getting to the same scheme. Therefore, we are on the same level playing field, and then when we get down to the individual risk appropriation, you pay for your risk—whether you drive for one kilometre, or 100,000 kilometres, you are going to drive on Friday nights, in country or metro. That is what we want to get to.

The Hon. DANIEL MOOKHEY: Mr Rogers, the submission of the NSW Taxi Council is that the risks borne by taxi operators are identical to the risks borne by rideshare operators.

Mr ROGERS: Yes.

The Hon. DANIEL MOOKHEY: Are you aware of any jurisdiction in the world that has endorsed that principle for insurance purposes?

Mr ROGERS: Not yet.

The Hon. DANIEL MOOKHEY: Are you able to point us to any model in the world that applies that principle and the legislative design mechanism for premium setting in CTP schemes?

Mr ROGERS: Not at this stage, no.

Mr DAVID SHOEBRIDGE: Do you have any data that shows that?

The Hon. DANIEL MOOKHEY: Do you have any evidence?

Mr ROGERS: No, I do not have any evidence. I refer to an article that came out in the *Daily Telegraph* about the risk associated with rideshare. It says that 42 per cent of drivers who pick up work through apps have damaged their vehicle in a collision at work, and one in 10 of those respondents said someone has been injured as a result of the crash.

The Hon. DANIEL MOOKHEY: What is the basis of that story in the *Daily Telegraph*? What study is it reporting?

Mr ROGERS: It is from interviewing 200 drivers and 48 in-depth interviews. All I am getting back to is this: We do not have enough data yet to fully evaluate those risk profiles. That is what we are working through. The whole idea is to move to a model so that we can collect the appropriate data, apply the appropriate risk profile and validate if this is the model of the future. At present, all we know is that if you want to come into the rideshare space and offer point to point services, then there is a risk associated with that.

The Hon. DANIEL MOOKHEY: Mr Rogers, you just said that the position of the Taxi Council is that the risks borne by rideshare operators is identical to taxis and you have just said there is no data to support that point.

The Hon. TREVOR KHAN: That is his assertion.

Mr ROGERS: That is my view.

The Hon. TREVOR KHAN: That is his assertion.

The Hon. DANIEL MOOKHEY: I am trying to understand that.

The Hon. TREVOR KHAN: And I understood it that way.

Mr ABRAHIM: Can I add to validate the context of that view. We know that for majority of the time rideshare operators are driving—in a lot of cases they are doing it either part-time or as a second job—on Friday and Saturday nights. A lot of the work they are doing is around the central business district [CBD]. If you match that to the statistics provided by SIRA, the highest risk and when the most accidents are occurring is around the CBD on Friday and Saturday nights. There is alignment with that view that the highest risk and highest locations is where we also see the highest prevalence of rideshare operators. We know that rideshare operators operate any day throughout the week, day and night. However, there is an alignment between the high volume of operators—and we are seeing it through the price surging of Uber and so forth because on Friday and Saturday night is when the highest amount of work is and when the highest volume of drivers are available. We are seeing that impact on the taxis on Friday and Saturday nights.

Can I add a comment to the chief executive officer that when we are talking about inequities, I want to present some statistics about the number of operators who do point to point. There is 1,827 authorised service providers within point to point transport. Out of those, 242 are taxi service providers. As we know, traditional taxis are providing that work, which have class seven and the appropriate premium. Of those service providers, 1,585 are booking service providers, so, for example, the rideshare operators. The current model has only a provision for around somewhere between five to six of those operators to be able to report the 10¢ per kilometre, and so forth. If you take 1,585 service providers and only half a dozen are currently working with the new model, there are more than 1,500 that are potentially flying under the radar.

The Hon. TREVOR KHAN: Really?

Mr ABRAHIM: That fact is, if they do not have the appropriate CTP policy for applying commercial work, they are putting themselves, their passengers and the general public at risk. Although the rules say that you must do it, I believe there is a lack of enforcement at the moment and those issues are similar to point to point. The concern is that, from a point to point perspective, it has been nearly 2½ years since the point to point transport bill passed through Parliament. We are nearly 12 months since the point to point transport regulations were introduced on 1 November. I think we are bit beyond the education process and would like to start to see some more enforcement in regard to people who are not complying or doing the right thing.

Mr DAVID SHOEBRIDGE: The point might be good, but you are over egging the pudding by saying they are putting passengers at risk. It does not help your argument because passengers are not at risk. There is insurance cover and passengers will be covered. The question of whether the appropriate premiums are being collected or whether the appropriate price is being collected is fine—I understand that part of your argument. But potentially scaring the horses by saying that passengers are at risk does not help your agreement. Do you agree?

Mr ABRAHIM: Does that mean that taxis do not have the same premiums, because at the end of the day—

Mr DAVID SHOEBRIDGE: No I am not saying that. You said passengers are at risk but I am putting to you that they are not at risk and are covered by premiums and that you presenting that inflated position does not help your argument.

Mr ABRAHIM: We do not agree with that because we support taxis having the proper cover and we do not encourage or recommend them to do anything otherwise because we only want to see them doing the right thing.

The Hon. TREVOR KHAN: Could they operate without the proper cover?

Mr ROGERS: One of the challenges of the scheme that currently sits in place for ride shares is that ride shares are allowed to operate as a class 1 vehicle.

The Hon. TREVOR KHAN: With respect, I am talking about taxis. The assertion was that you encourage them to have the proper cover. Can you tell me how a taxi could not have the proper cover?

Mr ROGERS: They could not. That is exactly right.

The Hon. TREVOR KHAN: I am not interested in having a shot, but it appears to me that there are self-evident problems that you have identified, including self-evident problems with implementation. But I join

in with my friends when they say that we have a problem and should accept that we have a problem, but also that we should not go beyond into the area of hysteria.

Mr ROGERS: We are not dwelling on that. One of the big issues is the cost of being competitive. I understand that passenger cover is there through the class 1 premiums and that passengers will get covered. I guess it comes down to the cost to be competitive in this space. To look at it from an operator's point of view, it is about being able to offer a commercial offering on a level staying base. That is what we are working towards. The issues have been identified and are being worked on. I am grateful to say there are working groups. I attend a working group with SIRA on a fortnightly basis to work towards getting to a level playing field. We are aiming to get to one scheme and one model where we can say, "If you want to operate in the point to point space you are welcome and this is how it is going to operate."

The Hon. DANIEL MOOKHEY: In the cost model that the Independent Pricing and Regulatory Tribunal [IPART] applies to determine fares, is CPT a component of that?

Mr ROGERS: Yes.

The Hon. DANIEL MOOKHEY: You have said that on average you have experienced a reduction in CPT premiums since the reforms came in. Is that correct?

Mr ROGERS: There has been a decrease, yes.

The Hon. DANIEL MOOKHEY: Do you anticipate that in your next submission to IPART you will favour a reduction in fares on the basis of the reduction in CPT premiums? Are any of the savings going to be shared with passengers?

Mr ROGERS: As an industry, we are reviewing what the business models of the future will be to compete in this point to point space. I cannot comment on an individual networks' commercial representations of how they would do their fare structures. What we do need to do is create a cost base that is equal and then develop competitive business models.

The Hon. DANIEL MOOKHEY: Are you aware of any network that is considering reducing fares or putting in a submission to reduce fares for passengers on the basis of the CTP reductions?

Mr ROGERS: I do not get involved in the pricing structure of—

The CHAIR: We are going a little beyond the terms of reference.

Mr DAVID SHOEBRIDGE: I think where the savings are going is a fair question to ask. I will address a couple of questions to the Motorcycle Council. Did SIRA give any justification, other than its reliance upon Victorian data, for why it thought there would be additional motor accident claims for motorcycles?

Mr WOOD: Initially it referred to the hospital triage data. We questioned that by virtue of the fact that we know that there are a lot of unregistered motorcycles in that data. As I said, we consulted with a hospital data expert, who said that the database is not designed to assign fault.

The Hon. TREVOR KHAN: Did you provide a written submission to SIRA on this?

Mr WOOD: We have had correspondence with SIRA and have written asking those sorts of questions.

Mr DAVID SHOEBRIDGE: Did it write back and put any of this to you in writing?

Mr WOOD: The only query was in its latest letter regarding the triage data and we queried it at a meeting with in June.

The Hon. TREVOR KHAN: My concern is that you have raised a number of queries, which is fine, but I am wondering if you have provided SIRA with a positive assertion backed up with research that supports your proposition and, if so—

Mr WOOD: The only data we have to support our proposition is the RMS data, which, as I said, shows that motorcycles are probably at fault in 55 per cent of crashes, and they are crashes that are reported to the police.

The Hon. TREVOR KHAN: You have identified two factors: the first is that motorcyclists are at fault approximately 50 per cent of the time. The second factor—and I think I can summarise this as your position—is that a motorcyclist who is involved in an accident is more likely to sustain more serious injury than a driver or passenger in a motor vehicle. Is that correct?

Mr WOOD: Yes.

The Hon. TREVOR KHAN: There are two parts to it: one is the capacity to make a claim on the basis that they are not at fault and the second is that what is being treated and the expense of the injuries that are being treated. Yes?

Mr WOOD: Yes. Data that SIRA and the former Motor Accidents Authority [MAA] provided showed that the cost of a motorcycle injury is greater than that of a car injury.

Mr DAVID SHOEBRIDGE: But if the pricing model is starting on a false assumption that the motorbike is at fault in 90 per cent of motor accidents then you are you going to be unfairly whacked with premiums. I suppose what you are asking us to do is get SIRA to justify the 90 per cent and provide the data to you and to us?

Mr WOOD: Yes.

Mr DAVID SHOEBRIDGE: Has SIRA provided any detail about the number of additional claims to date?

Mr WOOD: No. When we met with SIRA in June we asked if that information could be provided.

Mr DAVID SHOEBRIDGE: What did they say?

Mr WOOD: They did not respond.

Mr DAVID SHOEBRIDGE: Computer says no?

The CHAIR: On that point, you said that they said it was too difficult.

Mr WOOD: Yes, they said it was too difficult for them to produce a bar chart like this. They are saying it is difficult to separate motorcycle data from other data.

Mr DAVID SHOEBRIDGE: They have just set up a whole new information technology [IT] system and go on about their data lake, or whatever it is they call it. Are they really telling you that with their whole new IT system and new data lake, they cannot pull out motorcycle claims?

Mr ANTONY: Yes.

Mr DAVID SHOEBRIDGE: That seems remarkable.

Mr WOOD: Yes, that is why we want to continue to pressure them to provide the data.

Mr DAVID SHOEBRIDGE: You said you have concerns about a statement SIRA had up on its website?

Mr WOOD: That was regarding the 90 per cent. As I said, we do not think SIRA can substantiate the claim.

Mr DAVID SHOEBRIDGE: Is it still on the website?

Mr WOOD: Yes.

Mr DAVID SHOEBRIDGE: When you pointed out your concerns, what did SIRA say?

Mr WOOD: Not a great deal. For the 90 per cent, I suppose they also referred to the Victorian data. For many years in Victoria, if you were at fault, you could make a claim. SIRA was looking at the number of motorcycle claims that were made in Victoria, But, again, that is reliant on the New South Wales scheme being identical to the Victorian scheme and our view is that it is not. One of the main differences is that Victoria has recreational registration.

Mr DAVID SHOEBRIDGE: Victoria has tens of thousands of additional motorcyclists with recreational registration for their dirt bikes?

Mr WOOD: Yes and they are making a contribution to the scheme.

Mr DAVID SHOEBRIDGE: And they are more likely to make a claim under the scheme than unregistered dirt bikes in New South Wales?

Mr WOOD: Yes. It has changed the culture in Victoria regarding riders wanting to ride with other riders who are riding on unregistered motorcycles. It brings some responsibility to what they are doing.

Mr DAVID SHOEBRIDGE: The last time you appeared before the Committee, you said there had been some productive discussions with the then Roads Minister about recreational registration and bringing the

unregistered dirt bikes from the dark into the light. What has happened since about getting a similar recreational registration scheme in New South Wales to the very successful one in Victoria?

Mr WOOD: Unfortunately, the officer who was doing it and was making good progress on getting the scheme up and running has moved on. My correspondence with his replacement has not been so positive, so it has stalled. It was at the stage where the previous manager was having meetings with the landowners to see what their issues were and meetings with what was the MAA and SIRA about what the premium cost would be.

Mr DAVID SHOEBRIDGE: The reports that I had hear from Victoria are that the recreational registration and having dirt bike riders go from being unregistered riders to registered riders has not only contributed money to the motor accident scheme, but has also meant that because riders had a registration to lose and were at risk with their registration, it improved their behaviour and improved relationships with landowners in Victoria. Is that still the position as you understand it?

Mr WOOD: Yes, that is still the position.

Mr DAVID SHOEBRIDGE: Have you had an explanation for why we cannot progress that in New South Wales?

Mr WOOD: The difficulty, I think, hinges around what would be the CTP premium.

Mr DAVID SHOEBRIDGE: Almost anything is better than nothing though, is it not?

Mr WOOD: Yes.

Mr DAVID SHOEBRIDGE: Because that is the current system.

Mr WOOD: Yes, but I guess for the scheme to work it needs to be attractive enough for someone who currently has an unregistered bike to register it.

Mr DAVID SHOEBRIDGE: Surely the Victorian model is a good starting point because it is working.

Mr WOOD: It is an excellent starting point. It has been in place for quite a number of years now.

The Hon. TREVOR KHAN: Mr Rogers, with regards to the rideshare operators and Uber, how many actual operators are there in the market apart from Uber?

Mr ROGERS: As the Deputy Chair mentioned, just for background, to operate in the point-to-point market you need to be an authorised service provider; if you want to do rank and hail work you have got to be registered as a taxi service provider; if you want to do booked work you have got to be registered as a book service provider [BSP]. Taxi networks will be both because we do rank and hail and booked work. Rideshare operators will be classified as a BSP. Currently, to date, there are 1,585 individual BSPs registered; Uber is one of them.

Mr DAVID SHOEBRIDGE: I could be wrong, but a lot of those were the sort of traditional hire car industries?

Mr ROGERS: And they were transitioned, yes.

Mr DAVID SHOEBRIDGE: And a lot of that industry has sort of dissipated and disappeared, has it not?

Mr ROGERS: No, that is not necessarily correct. That industry is still operating. What happened on 1 November last year is those authorised providers were transitioned across to the Point to Point Commission. The Point to Point Commission has been in contact with those providers to say they should look at paying the fund levy and register for that. What we are setting out now is those businesses that are operational. There were more than that that were registered, but as they did not declare and as we started to move that may shrink a little bit further; however, at present there are 1,585 active BSPs registered through the Point to Point Commission.

The Hon. TREVOR KHAN: Many of those would have the old hire car plates.

Mr ROGERS: A number of them may have the hire car plates, I would not know. I do not know. If they are running a class A, so some of the premiums are already calculated for a bit higher than the class 1s, we do not know. So the whole point is they could be a new operator that has started, they are running on a class 1 premium; what will happen in terms of them paying their share of the 10¢ per kilometre? We are working with the SIRA, and I totally understand there needs to be a rollout time frame to do this, but what will be important is not targeting the big people; it is making sure those people—

The Hon. TREVOR KHAN: Sorry, what is "big people"?

Mr ROGERS: The large operators, the large networks. We will be making sure that we have a scheme that if you want to operate in this space you are welcome to, but there are rules and there are rules for the appropriate insurance you need to undertake, and we need to have the roadmap, which we are developing to get to that point, because, at present, of the 1,585 only half a dozen are being developed in the trial. We need to make sure we get that rolled out because all 242 taxi service providers that are registered are paying the appropriate premium for their taxis.

The Hon. DANIEL MOOKHEY: But the market share of that 1,585 is not normally dominated by Uber. That is correct, is not?

Mr ROGERS: The market share in metro. What we want to make sure here is that yes Uber are metro centric, but we have got to make sure that we consider the whole of the geographical distribution of New South Wales.

The Hon. TREVOR KHAN: Are you saying that if I go back to Tamworth I am going to find all these point-to-point operators, am I?

Mr DAVID SHOEBRIDGE: I know of one in Tamworth.

Mr ROGERS: We are also looking into the CTP space and the whole introduction of rideshare. It is making sure that people get registered, that is the big challenge. It is about the people out of the 1,500, are there others who are not even registered still operating in this space? What appropriate level of cover are they undertaking? There are a number of challenges and obviously with a new commission we need to work through those things. So it is about yes we know there are 1,585 that are registered; how many more are not? That is another question that needs to be looked at to make sure they get the appropriate level of insurance.

Mr DAVID SHOEBRIDGE: If the 1,400 proposed additional claims do not eventuate, has SIRA promised a retrospective rebate to motorcyclists? Have you got at least to that point?

Mr WOOD: No, we have had no undertaking.

Mr DAVID SHOEBRIDGE: Do you think that would be a fair position to adopt?

The Hon. TREVOR KHAN: That is a Dorothy Dixer. Of course he is going to say yes it is a wonderful idea.

Mr DAVID SHOEBRIDGE: Have you asked that of SIRA?

Mr WOOD: No we have not asked that directly of SIRA.

Mr DAVID SHOEBRIDGE: What about the normalisation mechanism? Do you think the normalisation mechanism over time will produce a fair corrective in the premiums?

Mr WOOD: We are hoping that it will, yes.

The CHAIR: Thank you very much for coming along today to give evidence. We appreciate your written submissions prepared beforehand.

(The witnesses withdrew)

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

The CHAIR: I welcome our next witness. Would you like to make a short opening statement?

Ms FLORES: I am here not because I have great expertise in CTP but because Unions NSW believes that the scheme, given there is a strong likelihood that the scheme will be merged with workers compensation and that there will be a one-stop injury shop, we are certainly interested in being involved in that process and we have some concerns and questions about that. Given that I have looked into the area of CTP to a degree and probably have more questions than answers at this stage, it is an area that overlaps with workers compensation. Obviously some of our workers will find themselves falling under both schemes. We represent workers who work in vehicles or in a registered plant.

Additionally, restrictions placed on workers compensation with the exclusion of journey claims, or most journey claims under workers compensation, means that more of our members are placing greater reliance on CTP where once they would not have. We are also interested and have been quite concerned about the growth of the gig economy, and that would include the rideshare and delivery food services that are out there at the moment. We have concerns about safety, obviously, and the safety net provided to these workers. We note that in relation to the dispute resolution process under CTP there seem to be many similarities with the workers compensation dispute resolution system. We are concerned about the possibility of merging those and how that might fix problems.

We also remain concerned about SIRA's role and function as regulator and reviewer of CTP matters. As with workers compensation, we do not feel it is appropriate that SIRA conducts CTP dispute resolution and regulates insurers simultaneously. We do not support the concept of internal reviews and suspect that internal reviews simply act as a barrier to resolving disputes and dragging out the process. We support a removal of this internal review process from SIRA and we suggest that it be undertaken by an independent body such as the Workers Compensation Commission. From what I have read, it appears to be, as with workers compensation, a highly adversarial system. Just the other day I read an article in the *Sydney Morning Herald* of 20 August 2018, entitled "'Delay, deny, don't pay': How CTP insurance turned into a nightmare".

In this article the legal fraternity warned that reforms to improve the dispute resolution process have failed to tackle the aggressive and adversarial nature of the process. Unions NSW agrees with the submission by the Law Society of New South Wales and is concerned with what we believe is SIRA's obsession with combating fraud in the personal injuries schemes. We agree that the standing committee would be assisted in monitoring the level of fraud and exaggerated claims because we certainly do not see how the workers compensation system could possibly be exaggerated at this point and from my reading I find it difficult to believe the same with the CTP, not to say there is not fraud but is it really to the level that we are led to believe?

Finally, we are concerned about classifications of injuries as minor where they may not be. Where a claimant is unable to return to work due to injury for a significant period of times such as the 26 weeks, as suggested by the Law Society; we would argue this is not a minor injury. We do have concerns about people's delay in returning to work and the lack of support in getting people the help they need to adequately get better and return to work. Whenever we are looking at workers and the struggle that they deal with in the injury space, we have concerns. I cannot say that I can answer every question here but those are certainly my concerns and why Unions NSW has submitted a submission to this review. Thank you.

The Hon. LYNDA VOLTZ: I start with the changes made to journey claims and the CTP no fault scheme. One of my concerns has always been a blurring of the line, particularly in industries such as the construction industry where people are working from job to job. Where does the actual no fault CTP click in and where does the workers compensation element click in?

Ms FLORES: I am still unsure of this myself. I know there have been issues. I know that the Police Association has had a case recently and I note that section 35 of the workers compensation legislation has been removed but I would suspect that if you are conducting work and the vehicle in which you are in is a work vehicle, then my view would be, if you are injured, then that would fall under the workers compensation scheme. Are you asking about a situation where—

The Hon. LYNDA VOLTZ: If I drove to the Parliament, that would be my journey claim?

Ms FLORES: That is right.

The Hon. LYNDA VOLTZ: But if I drove from my house to a meeting in Newcastle with the member for Newcastle—

Ms FLORES: That would be work.

The Hon. LYNDA VOLTZ: —that would be workers compensation?

Ms FLORES: Yes.

The Hon. LYNDA VOLTZ: In the construction industry, given that people are going to different sites and getting allowance to travel to different sites, does it start from home to that site and is it a journey claim or is it a workers compensation claim?

Ms FLORES: I think there is argument that it could fit into the workers compensation space. I do not think that is particularly clear at this stage. I personally would probably try to argue that it is a workers compensation claim. We have a situation where a couple of nurses were injured when they were getting out of their car in a car park. There are still arguments around where the journey ends and where work begins. I do not think that is settled yet.

Mr DAVID SHOEBRIDGE: But most people form the view that the Fred Nile amendment has been utterly useless in covering injured workers; you basically have to be working in the vehicle or in the course of a work-related journey once you have commenced working?

Ms FLORES: Yes.

Mr DAVID SHOEBRIDGE: And in fact it has been next to useless for providing proper protection for injured workers on journey claims.

The Hon. TREVOR KHAN: Is that a question?

Mr DAVID SHOEBRIDGE: Is that right? It is just the case. It is the South Australian amendment, it is useless and most people say it does not cover construction workers, is that right?

Ms FLORES: I would agree that it is not particularly helpful but I would say that there is still a lack of clarity and I am concerned about the area. I think we need better clarity and stronger laws to ensure that workers are protected, particularly those workers where there is a blur. The construction industry, for example, is a good example.

The Hon. LYNDA VOLTZ: What was the Police Association example?

Ms FLORES: The police officer who was severely injured in that particular instance was not actually driving himself; he was injured by a drunk driver who drove into him whilst he was conducting random breath testing so he was not actually driving himself but he was on the road obviously and was severely injured. Fortunately the police are not subject to the 2012 amendments so we seem to have sorted that one out and he will have the coverage that he needs for that serious injury.

The Hon. LYNDA VOLTZ: What about cyclists—and they are often young people and teenagers—doing delivery jobs?

Ms FLORES: That is what we are worried about. That is an area of concern. We know that the Transport Workers Union were challenging one of those organisations Foodora. They have now announced that they will leave Australia.

The Hon. DANIEL MOOKHEY: They phoenixed, didn't they?

Ms FLORES: Yes. The question is that obviously those companies are claiming that these people are independent contractors. We would argue that they are not; that it is a form of sham contracting, so there are great concerns. There are a lot of young people and they are on all sorts of vehicles.

The Hon. LYNDA VOLTZ: How does a 17-year-old kid on a bicycle constitute an independent contractor?

Ms FLORES: I do not think they do but this is not what these companies are stating. They are saying these people have—

The Hon. LYNDA VOLTZ: So essentially a young kid on a bike delivering pizzas for a pizza operator who gets hit by a car is currently being picked up under the CTP no fault scheme rather than the workers compensation scheme?

Ms FLORES: I do note—and these are in their early stages—but I have had some conversations with icare that these young riders, and partly through some organisation that we are doing at Unions NSW, are actually making workers compensation claims. Where those go, we do not know yet, and I have had a very brief conversation with someone from icare who is as equally confused.

Mr DAVID SHOEBRIDGE: But the issue is not so much the journey claim; if they are delivering pizza they are clearly working.

Ms FLORES: They are working.

Mr DAVID SHOEBRIDGE: The issue is not whether or not it is a journey claim; that is a false issue. The issue is whether or not they are a worker and that is where the problem lies?

Ms FLORES: That is it; that is where the problem lies, yes.

Mr DAVID SHOEBRIDGE: It is not in the journey claim; that is another argument.

The Hon. LYNDA VOLTZ: But there was never an implication that it was a journey claim when they are working and they are on their bike, if they are hit currently they are being picked up under CTP as opposed to workers compensation.

Mr DAVID SHOEBRIDGE: But it is not because of journey claims, it is because of the definition of worker.

Ms FLORES: Because of the definition of whether they are a worker or not.

The Hon. DANIEL MOOKHEY: But it is the case, though, that in companies like Foodora, one of the upsides of their preferred labour model, which is to treat them as independent contractors or sham contractors, is effectively to transfer the liability for workers compensation on to car users to be covered by CTP, that is correct, is it not?

Ms FLORES: Correct.

The Hon. DANIEL MOOKHEY: It is the case that as other operators or other transport delivery companies—for example Coles and others—emerge to mimic similar labour arrangements the risk is that we will have a lot more?

Ms FLORES: Correct.

Mr DAVID SHOEBRIDGE: One of the answers to that is actually fixing up the definition of worker?

Ms FLORES: That is right.

Mr DAVID SHOEBRIDGE: So that those kinds of delivery operators are deemed workers under the workers compensation scheme so that the proper person is paying the premiums—

Ms FLORES: That is correct.

Mr DAVID SHOEBRIDGE: —being the punitive employer as opposed to other motorists who are sucking it up with additional green slip costs?

Ms FLORES: Absolutely.

The Hon. DANIEL MOOKHEY: But you would agree with me that the purpose of the CTP scheme is not to allow employers to transfer their liabilities on to it, that is correct?

Ms FLORES: But we believe that is will be happening if we do not get that clarification and given that Foodora have now—

The Hon. DANIEL MOOKHEY: Phoenixed—

Ms FLORES: Phoenixed, that may not happen because the workers are all young people and they are all very vulnerable and quite scared, so it is not easy to get one of those young workers to stand up take on one of these organisations.

The Hon. TREVOR KHAN: What is the position of a taxidriver who hires a taxi from one of the yards, pays for his fuel, pays the hire fee, pays, I think, a cleaning fee, goes out on the road and blunders through a red light so he is at fault. Is he covered by workers compensation?

Ms FLORES: No.

Mr DAVID SHOEBRIDGE: Normally not. They are normally treated as bailees, are they not?

The Hon. DANIEL MOOKHEY: They are bailees.

Ms FLORES: Again they would fall into that independent contractor space rather than the worker definition.

The Hon. TREVOR KHAN: This is the problem that I have. If that is the case, that is the traditional model. I see someone shaking their head in the background. They may assist in due course, I suspect. That is the model that has been around for decades if not 100 years.

Ms FLORES: It has been around but the concern we have now is it is exploding.

The Hon. TREVOR KHAN: I accept that but it is either fixed or it is not fixed in terms of that taxi driver—that is the basic model. There is a great deal of emphasis placed on the gig economy but the problem has existed for 100 years.

The Hon. DANIEL MOOKHEY: Ms Flores, the circumstance the Hon. Trevor Khan just described is best characterised at law as a bailee/bailor relationship—that is correct, is it not?

Ms FLORES: Yes.

The Hon. DANIEL MOOKHEY: And a bailee relationship is different from an independent contracting relationship or a subcontracting relationship.

Ms FLORES: Yes.

The Hon. DANIEL MOOKHEY: As a bailee, it is a common principle in common law that you are responsible for your own insurances. In the circumstance that the Hon. Trevor Khan just described, the most typical circumstance is if a taxi driver could afford it they would have their own insurance policy.

Ms FLORES: Yes, they would have their own.

The Hon. DANIEL MOOKHEY: If it is the case that New South Wales is still the last jurisdiction in Australia—

The Hon. TREVOR KHAN: Do you really think that is the case?

The Hon. DANIEL MOOKHEY: I think it is a fiction as well.

Ms FLORES: Yes.

The Hon. DANIEL MOOKHEY: But it is the case that New South Wales is the last jurisdiction in Australia which even recognises in law the concept of bailee/bailor.

Mr DAVID SHOEBRIDGE: It is probably not Ms Flores' area of expertise.

Ms FLORES: No, it is not my specialty, I have to say.

Mr DAVID SHOEBRIDGE: Could I put this to you? Comparing the traditional rationale for the bailee relationship of a taxi driver was—

The Hon. TREVOR KHAN: I am not justifying what happens, Mr David Shoebridge. It just seems to me that there is a long-term problem.

Ms FLORES: There is, probably.

Mr DAVID SHOEBRIDGE: Just let me finish, the Hon. Trevor Khan. But the taxi driver was getting access to what was considered to be a very valuable asset, being the taxi plate and the taxi—

Ms FLORES: Yes, that is right.

Mr DAVID SHOEBRIDGE: —which used to be valued in the order of $300,000. And they were the bailee of that particular vehicle with a licence plate. It is quite different—

Ms FLORES: And there was a cap, wasn't there, on the number of those?

Mr DAVID SHOEBRIDGE: Yes. But that is quite different to a young person who brings their bike to work and gets, at best, a food delivery hamper on their back—

Ms FLORES: Yes, that is all they get.

Mr DAVID SHOEBRIDGE: And that is why we should be looking for additional protections for those young, vulnerable workers.

Ms FLORES: Yes, that is correct. And of course there is—

The Hon. TREVOR KHAN: Mr David Shoebridge, you must not get into taxis, because a lot of them are relatives of mine and the Hon. Daniel Mookhey—they are pretty vulnerable.

The Hon. LYNDA VOLTZ: Point of order: Maybe if we just let Ms Flores finish her—

The CHAIR: Hang on. Everyone has had a say. Let the Hon. Trevor Khan finish and then we will get back to Ms Flores.

Mr DAVID SHOEBRIDGE: I have heard that has changed; that is the history of it though.

Ms FLORES: And I do not disagree. You are absolutely right about this problem. There are probably many problems in the taxi world. It is a growing area of concern because we now have Uber, Foodora—I cannot think of them all but there are so many. They seem to pop up every day.

Mr DAVID SHOEBRIDGE: I think we are furiously agreeing that that is not a good model going forward for delivery riders, as I understand the tenor of—

The Hon. TREVOR KHAN: I am not sure if it is what you call "furious", but I am mildly persuaded—

Mr DAVID SHOEBRIDGE: We are mildly persuaded that we are agreeing.

The CHAIR: Do we have any further questions for the witness? The Hon. Lynda Voltz has quite rightly pointed out that we should be hearing from her, not ourselves.

Mr DAVID SHOEBRIDGE: Ms Flores, you say that you have concerns about the regulator also having a dispute resolution role in CTP. Is that because of the poor experience you saw in workers compensation?

Ms FLORES: Yes, absolutely.

Mr DAVID SHOEBRIDGE: Can you articulate that further?

Ms FLORES: I have done a little bit of reading. From my reading it seems to be a very similar model—quite adversarial. The union movement wants workers to be well and at work. Anyone who is injured needs to have the best experience possible, however they are injured, so that they can get back to work as quickly as possible and back into fulfilling, useful work. From what I am reading and seeing, this adversarial model is not going to achieve that. As is the case with workers compensation, we are very likely to end up with a person who is injured physically ending up with a psychological injury on top of that due to the system they have had to go through to get any sort of assistance. That will lead to someone generally unable to work at all. Once workers are psychologically injured, getting them back to work is nigh on impossible.

Mr DAVID SHOEBRIDGE: I thought one of the other concerns you had was about the conflict of interest between being the regulator—

Ms FLORES: It is the case. It is a conflict of interest. If you are regulating insurers you should not be making decisions about the decisions that insurers have made. That is an absolute conflict. There needs to be an independent body that works in this space and makes these decisions. We note that it appears that the internal reviews will continue in the workers compensation space so I imagine that will continue in this space, but we continue to be concerned.

Mr DAVID SHOEBRIDGE: In terms of the change to CTP, where you have seen an expansion of the no fault cover, that will have provided some benefits to injured workers who had their journey cover removed.

Ms FLORES: It will. That is correct—not entirely. Again, I do not have expertise in this area. I do not really understand when I look at the terms of reference how that will diminish the cost. Looking at statistics, there does appear to be some reduction in cost, I do not see how that could be the case. But absolutely, unless of course behaviour is completely reckless, we are not completely opposed to that model.

Mr DAVID SHOEBRIDGE: Some critics of how this scheme was rolled out have said there has not been enough information given to the public about the new types of benefits available and how to make those claims.

Ms FLORES: I would agree.

Mr DAVID SHOEBRIDGE: Has SIRA reached out to Unions NSW or any of your affiliates and said, "Here is some information. Please share it with your members. This is how people make claims?"

Ms FLORES: No. We do have a meeting with SIRA coming up. They have not sent me the agenda yet so I will not be too critical at this point because that is happening next week.

The Hon. DANIEL MOOKHEY: Did they call it yesterday?

Ms FLORES: They called last week.

The Hon. LYNDA VOLTZ: I bet there is a run of that with SIRA.

Mr DAVID SHOEBRIDGE: They are always so timely.

Ms FLORES: That may be on the agenda. If it is not given to us we will certainly be asking the questions because we have not yet been provided any information. It is certainly information we would provide to our members.

The CHAIR: Is it worth you requesting that ahead of the meeting?

Mr DAVID SHOEBRIDGE: I think you just did, didn't you, Ms Flores?

Ms FLORES: We will request that. I have to send my agenda to SIRA tomorrow.

The Hon. DANIEL MOOKHEY: We should make a recommendation about appropriate meeting procedure, I think.

Ms FLORES: And they are yet to send the agenda to me. It may happen and we will certainly ask the questions.

Mr DAVID SHOEBRIDGE: If anybody else wants a meeting with SIRA they should try to get on our witness list. We can maybe have an extra day of hearings just in order to populate the next set of meetings with SIRA.

Ms FLORES: They have been very interested in meeting with us, particularly in the workers compensation space, since all of this began, so it is interesting.

The Hon. DANIEL MOOKHEY: We try to do it every two years.

The CHAIR: Are there any further questions from members in relation to the terms of reference?

Mr DAVID SHOEBRIDGE: One of the things that surprised me is the lack of individual examples that are coming forward of people going through the system. Given it is a whole class of new benefits and given that you would imagine there would be a lot of teething problems with it, what kind of numbers have you had reported to you?

Ms FLORES: This is a question I have. I have no numbers. I have no-one at this stage, and I have talked to my affiliates. We have always supported the concept of transparency of reporting from SIRA. In looking into this matter I have found it very difficult to find very much information. I certainly support anything that would increase that information that is available to the public, and easily available. We have a huge array of people out there on our roads. There are many different languages spoken, different backgrounds and different levels of education, so whatever information is available obviously needs to report functionally what it needs to report but there needs to be transparency and the public needs to be able to understand what it needs to understand, if that makes sense.

Mr DAVID SHOEBRIDGE: There is one of two conclusions we can come to on the basis of this sort of silence. The scheme has been operating since 1 December last year. Either it is going amazingly well and nobody has any problems with it or nobody knows about it.

Ms FLORES: I would suspect nobody knows about it.

The Hon. TREVOR KHAN: But that cannot be right—really?

Mr DAVID SHOEBRIDGE: I do not know.

The CHAIR: Or it could be six months. The reality is it is six months.

The Hon. TREVOR KHAN: That cannot be right. We have representatives of the Law Society and the Bar Association—

Ms FLORES: But these are very prestigious groups of people who are highly educated. We are talking about the average person who uses the road daily. I mentioned this to a few friends and they said: "What's that?" Your average road user would have—

The Hon. TREVOR KHAN: Do not know about CTP?

Mr DAVID SHOEBRIDGE: The no fault benefits they can now obtain.

The Hon. DANIEL MOOKHEY: That is also SIRA's evidence from their surveys. It is the first to acknowledge there is a lower level of awareness of the no fault component.

Ms FLORES: Absolutely. I think you could say the same of many things. I have worked in industrial law prior to this. People have an assumption that the law is on their side and will be helpful if and when they need it and will support them if and when they need it. That is an assumption that I find is problematic because when they do need it and they go to the experts for the advice they need they often find that the law falls short of

providing that support and I would suspect the same would apply to CTP. I can honestly say some people—and some of them are quite well educated, I only mention that because I have a birthday lunch to attend today—say "What's that?" There are problems.

The CHAIR: There are no questions on notice. I thank for your attendance.

(The witness withdrew)

(Short adjournment)

IAN CAMERON, Professor of Rehabilitation Medicine, University of Sydney, sworn and examined

IAN HARRIS, Orthopaedic Surgeon, South Western Sydney Clinical School, University of New South Wales, affirmed and examined

NICK GLOZIER, Professor of Psychological Medicine, University of Sydney, affirmed and examined

The CHAIR: Welcome to our next witnesses. Do any of you have an opening statement?

Professor CAMERON: I have an opening statement. My name is Ian Cameron. My background is as a medical specialist and also as a researcher and educator. I provide treatment and assessments for people injured in motor vehicle crashes and I also conduct research about recovery from motor vehicle crashes. I work with colleagues from different professional backgrounds in the John Walsh Centre for Rehabilitation Research in the faculty of medicine and health at the University of Sydney.

I want to make a few remarks about the scientific studies that are relevant to what we are talking about today. It is generally accepted that appropriate objectives of insurance schemes for people injured in motor vehicle crashes are to assist people to recover from the injuries sustained, to assist people to return to a normal life, including work if appropriate, to provide greater assistance to people with more severe injuries and to minimise psychological distress, which is often a factor in these situations.

Professor HARRIS: I wanted to give some background or context as to where my opinion is coming from. I am an academic who studies injury, injury effects and the effects of compensation on injury. I did my doctoral thesis on the effect of compensation on health after injury, and I did some large studies in New South Wales looking at different compensation schemes. I am also a clinician and I specialise in trauma surgery. I have been managing patients after motor vehicle accidents for over 25 years and seen them through subtle changes in legislation over that time. I am concerned about the negative effects that occur sometimes from being involved in such systems and that has been the focus of some of my research.

The CHAIR: Subtle and not so subtle changes.

Professor GLOZIER: I am also a doctor as well as an academic researcher. I am a psychiatrist. I specialise in the public health aspects of mental illness, particularly looking at mental illness and sleep and function and disability and impairment. I was one of the authors of the World Health Organization's classification of disability and a contributor to the Diagnostic and Statistical Manual (DSM-5), which is the American version that gets used here.

The CHAIR: The DSM?

Professor GLOZIER: Yes. I work across a range of areas clinically from the pointy end in an inner city crisis team all the way through to assessment and management for both aspects of SIRA, both workers' compensation and MAA.

The CHAIR: Initially I direct my questions to Professor Harris but please feel free to contribute. Do you have concerns about patients in compensation schemes?

Professor HARRIS: That is a general question.

The CHAIR: To start with.

Professor HARRIS: I have concerns with the processes that patients go through when they are put in a compensation scheme and we have done some research on this and a lot with Professor Cameron as well. There are a lot of negative aspects. People talk about the adversarial nature. That is well known, but also the blame focus on who is at fault also has a negative aspect. There is this constant requirement to prove the degree of your disability or illness, and the illness focus. It is particularly a problem in patients who do not necessarily have an identifiable pathological injury. Perhaps the more straightforward cases are patients with a simple fracture. They have surgery and the injury heals and they go back to work. They do not have a lot of involvement in the system. They love their job and they want to get back to work and they are not interested in anything else.

The other end of the spectrum would be someone with a very minor injury, perhaps a non-detectable injury. The problems with worry about their future or about their injury get enhanced, reinforced and magnified by a system that is constantly focused on the potential cause in the future, the risks, the harm and all the terrible things they are going to do, and they get completely absorbed by this. It is such a negative feature that you can predict pretty early that these people will not return to normal function.

The CHAIR: It is all encompassing.

Professor HARRIS: Yes. Under different circumstances outside of such a system they should recovery quite normally.

The CHAIR: In your expert opinion, what do you think is the most important aspect of helping these people recover from their juries? Is it removal of worry, or a combination of that and having a robust system?

Professor HARRIS: Certainty, because there is a lot of uncertainty in the system. Having clear pathways for people is very important. There are two problems with that. One is that, yes, we have very uncertain pathways. People do not know what is going to happen to them. They do not know where their involvement in the system is going to lead them. Often many of them say after two or three years, "If I had known this is what would have been involved in the process, I never would have gone down this path. I would have gone back to work and I would be a lot happier." The other thing is that some of the research we have done has shown that people have a very poor understanding of the system in the first place. Yes, the system is complicated, but the other factor is that people have no idea about the system when they are going into it. They think it is a fairly simple thing: they will put in a claim and everything will be fine, and it ends up snowballing.

The CHAIR: In your research, are there aspects of a system that can make it better or worse for recovery?

Professor HARRIS: Yes. Having a system that does not involve—this is going to get a bit tricky. Systems that are well defined that do not involve questions—questions over fault, over whether you are able to pursue common law or not—do better. For instance, comparing the New Zealand system, everybody is covered and this is what you are covered for—no questions asked. The doctor does not get sued, no-one gets sued and you get paid this amount. It is very clear. Everyone knows what they are going to get. A system like that is better than a system where you are perhaps thinking of the possibility of common law. There could be much greater rewards for you. You are very worried about your future, that worry gets transferred into: The conversation now has to be greater because my anticipation of what is going to happen is so fearful, so negative that I need greater compensation for this.

The CHAIR: Is that a research and evidence-based view you have formed? What research is there to support that?

Professor HARRIS: Yes, there has been a lot of research comparing different compensation systems, compensation systems before and after changes in legislation. Some of the research that I have done as well has shown that some of the biggest factors include legal involvement, pursuing common law and blame. When you blame someone else for your injury that also has very negative consequences.

The CHAIR: Get the lawyers out of it.

Professor HARRIS: Yes, exactly. Being involved in a compensation system itself regardless of the particulars of that system has very negative aspects. People who are treated outside of the compensation system do better.

The CHAIR: I will ask you to comment on that further in a moment. Following on from that, at some point we are all concerned with costs. Are there some aspects that you think could assist to reduce costs or ensure that these schemes remain affordable and that the premium dollars are diverted to the more seriously injured?

Professor HARRIS: We did an analysis of MAA data before it became SIRA data. By far and away the largest cost, and you would know this, anyway, is for people with basically non-detectible injuries. These are people complaining of neck pain or sprains and strains that have no identifiable pathological process on scans. That makes up a far greater proportion of payments for MAA than spinal injury, head injury and all the serious things that require large amounts of money. There are very few of them. There are thousands more of these minor cases, which are taking up the majority of the money.

The CHAIR: Feel free to comment on that if you care to, otherwise I will move to a specific question.

Professor GLOZIER: Two comments. First, with regard to the injuries in the areas that I see, we have a much smaller evidence base. There is some work in Victoria in respect of working with psychiatric injuries and those areas. We have far less systemic information published compared to whiplash or other physical injuries. It is an area which is much harder to comment on. The other thing with regard to the system—and I do not know how true this is—is that patients quite frequently tell me that when they have tried to access treatment under one system and have been refused, they are not able to access treatment under another system. Whether that is true or not or whether it is a general practitioner [GP] or patient perception, I do not know, but it does seem to lead to these unusual inequities in access.

The CHAIR: What type of treatment are you referring to? Are you referring to psych treatment or physical treatment?

Professor GLOZIER: Psych treatment. I do not know if it is true, but the claim is repeated again and again that when the insurer has said no to someone being referred to a psychologist, their GP has then told them that they cannot access that through the Better Access initiative. I do not know if it is true, but it is certainly repeatedly said.

Mr DAVID SHOEBRIDGE: It is not true at all. There is no legal provision that says that people's benefits under Medicare are limited because an insurer has made a determination under motor accidents or that people's benefits under workers compensation are limited because an insurer has made a reference under motor accidents. It is not true.

Professor GLOZIER: Anecdotally, I see it enough to show that it is a perception out there.

Mr DAVID SHOEBRIDGE: They may feel that because they got a no from their GP their GP was discouraged from doing other claims. That would be unfortunate and is not the way the law works.

The CHAIR: Is it is a real concern that people will seek out a psych diagnosis in order to receive compensation?

Professor GLOZIER: That is a different question.

The CHAIR: I am asking for your opinion. There is that conjecture. Are there doctors that will give a diagnosis without providing treatment and care? It is ultimately about the injured person.

Professor GLOZIER: From the psychiatric side, it is not uncommon to have one assessment authorised by the insurer for assessment with a treatment plan to be made that then has another delay before it can be initiated. There is an assessment step that occurs quite frequently.

Professor CAMERON: From a non-psychiatrist point of view, there will be many people who have both physical and psychological symptoms that do not necessarily constitute "injuries", per say. To draw that distinction can be difficult both in the physical domain and the psychological domain.

The Hon. TREVOR KHAN: Could you expand on that?

Professor CAMERON: To amplify Professor Harris's example, if I am injured in a motor vehicle crash and develop neck pain, the pain is real and is there, but there may be no detectable pathology. Similarly, as a result of that, I may be very concerned about my situation and worried about whether I will recover, and therefore may have psychological symptoms of feeling unwell—

The Hon. TREVOR KHAN: Depressed and powerless.

Professor CAMERON: Yes. One of the big issues is what is a symptom versus what is an injury, or, from the psychiatric point of view, what is a diagnosis.

The Hon. LYNDA VOLTZ: You are not referring to problems such as post-traumatic stress disorder [PTSD], where, after a serious accident, someone suffers from insomnia and a range of those injuries?

Professor CAMERON: I think it is probably best that Professor Glozier comments on that, because PTSD is a definable condition where there are specific criteria that need to be fulfilled before the diagnosis can be made.

Mr DAVID SHOEBRIDGE: Do we not then look to the Diagnostic and Statistical Manual of Mental Disorders criteria? Is it not a well trod path to look to the criteria to determine whether it is just anxiety or an identifiable mental illness or condition?

Professor GLOZIER: The vast majority of people operating in the medial and psychological sphere do not use the DSM in that particular way. General practitioners almost never go through the specific criteria to decide whether someone is in or out or meets those diagnostic criteria. It is incredibly uncommon that even psychologists do that in the reports I see. Some do—some are very good at it—but it is uncommon. We are relying upon a set of diagnostic criteria that were developed for American psychiatrists. Psychiatrists are meant to use them here, but they are not used by the rest of the clinical world and, a lot of the time, practitioners would not know how to use them.

Mr DAVID SHOEBRIDGE: Is it that they should be using the DSM criteria but are not, or is it that they are using other criteria that are perfectly fine and are appropriate for determining whether or not there has been an injury?

Professor GLOZIER: There are two issues. The first is the definition to enable someone to meet various thresholds within the system. The second is whether or not someone has symptoms and impairment of a severity and chronicity that need treatment. Those are not the same thing.

Mr DAVID SHOEBRIDGE: But that has not answered my question.

Professor GLOZIER: Could you please repeat your question?

Mr DAVID SHOEBRIDGE: Should practitioners be using the DSM criteria? Is it helpful in terms of determining whether or not an injury has happened and, if not, should the other criteria that practitioners are using inform decisions about injury in a way that it currently does not, because the guide to permanent impairment under both the CTP and the workers compensation scheme use the DSM criteria?

Professor GLOZIER: For us, the injury is the accident itself. Then we have the definition of whether the person meets certain criteria, which is the DSM diagnostic criteria. In terms of deciding whether someone is a minor injury or not a minor injury, that relies upon the use of the DSM criteria, and that is embedded within the legislation. So people should use that in order to determine which threshold people get. In terms of deciding whether to use treatment, if I was a clinician working outside the system, meeting those specific diagnostic criteria would not drive the treatment decisions and I do not think they should drive the treatment decisions.

Mr DAVID SHOEBRIDGE: I am asking whether the DSM criteria are appropriate for determining, for example, whether someone meets the definition of a minor injury?

The Hon. LYNDA VOLTZ: Should it be embedded in the legislation?

Mr DAVID SHOEBRIDGE: Should DSM be embedded if it is not the kind of criteria being applied across the rest of the professional?

Professor GLOZIER: There was quite extensive consultation about the definition and the consensus was that the best way of determining the definition of "minor injury" was to use the DSM criteria for those two specific disorders that are considered minor injuries. There are symptom scales and a general practitioner version of ICD-10, which has very similar criteria.

The Hon. TREVOR KHAN: What is ICD-10?

Professor GLOZIER: It is a classification system where, again, someone has to tick a certain number of boxes to be in one box or another box—classified as a disorder or not a disorder. Every system relies upon cleaving the world at the joints.

Mr DAVID SHOEBRIDGE: I am not asking this for an academic reason. One of the things we were asked to inquire about and are looking at is whether or not the current definition of "minor injury" is right and is working or whether it should be amended. That is what I am asking you. Currently, for psych injuries, it uses the DSM criteria. Should we look to see if additional criteria are used or should we stick with DSM because it is the best in an imperfect world?

Professor GLOZIER: Currently, we do not know. It is way too early to know what the impact of these specific criteria has been?

The Hon. TREVOR KHAN: Do have a feeling in your bowels as to whether it is heading in the right direction?

Professor GLOZIER: I saw the first dispute around minor injury that was psychiatric and have seen two others since. Anecdotally, based purely on the three I have—so this is not an evidence-based approach—I would say that using those criteria is a good definition and enabled me to categorise two people who had quite significant disorders that I thought really did need treating and were quite unwell and impaired. In the other case, which I though met minor injury, she was far less impaired and far less symptomatic and had returned to fairly normal functioning already.

Mr DAVID SHOEBRIDGE: This is about treatment beyond 12 months? Nobody is questioning that people who may not meet the DSM criteria but have a real need for treatment in the first 12 months should get it regardless of whether they met the definition of minor injury. We are talking about treatment post 12 months. Is that what you are talking about?

Professor GLOZIER: I do not know yet. I have not been in the system long enough for that. All those people I have seen have obviously been injured since 1 December, so I do not know what their course is after 12 months.

The CHAIR: I would like to come back to the time. The Hon. Trevor Khan?

The Hon. TREVOR KHAN: There was some nodding and facial expressions and I am just wondering if the other professors have a view.

Mr DAVID SHOEBRIDGE: This is about some of the orthopaedic thresholds. They cannot comment on the psych.

Professor CAMERON: I did want to comment that I have seen some people with physical injuries and I would agree that it is too early to know. The physical injury criteria have been operationalised in a way that I feel I can work with them reliably, and at this very early stage that is going okay.

The CHAIR: In terms of that minor injury, with those injuries, in your opinion, is six months a reasonable time to expect recovery for minor injuries?

Professor HARRIS: I think it is more than enough. If it is a minor injury as defined, a physical minor injury, I would expect it to recover within three months. So I think six months is quite generous.

The CHAIR: Do you agree with that, Professor Cameron?

Professor CAMERON: Yes. The definition of chronicity is normally after three months; therefore, six months should be sufficient, yes, I agree.

The Hon. DAVID CLARKE: Professor Harris, in your introductory remarks you raised concerns of injured parties, the adversarial system, the question of fault, and you threw in the question of non-identifiable injuries. Keeping in mind that we are dealing with a specific scheme here in New South Wales, what, in specific terms, would you recommend or suggest? These general things in specific terms, most of all what would you specifically suggest?

Professor HARRIS: To be done to the scheme?

The Hon. DAVID CLARKE: Yes.

Professor HARRIS: One option—this is going to sound crazy but I do not think it is—is to not compensate people for medical care, because people are covered for medical care; they get treated under Medicare, and their coverage for medical care in many cases leads to overtreatment. I see this all the time. I am doing some research at the moment and I have done some in the past in workers compensation but also I am doing some with motor accidents, in how much treatment people get. Back pain is a classic example, or neck pain, after an injury. You may not have an identifiable injury, traumatic injury, resulting from that accident, but anybody who gets an MRI scan of their neck or their back is going to show something—you are going to see a lot of things there—and if you are complaining of pain and you have got something in your scans, and you complain enough, you are going to end up getting operated on.

You are more likely to get operated on if you are covered under the compensation system; you will not get operated on if you are not covered under the compensation system because the surgical fee, for instance, in a public hospital to get a spinal fusion, for example, would be a few hundred dollars. Under the compensation schemes surgeons are being paid up to and over $50,000 for a single procedure. This is why this procedure is largely done on compensated people and it is not done on uncompensated people.

The Hon. DAVID CLARKE: In the same specific terms as you have described with that suggestion, are there any other suggestions that come to mind that you feel would be—

Mr DAVID SHOEBRIDGE: Less likely to bring the Government down other than reducing medical benefits.

Professor HARRIS: Limiting access to common law. They are the ones that do worst. They get a payment, but healthwise they do far worse.

Mr DAVID SHOEBRIDGE: They are also the most injured normally.

Professor HARRIS: Allowing for that. We have done studies on adjusting from the severity of injury and it is still the case that they do significantly worse. In fact, in many studies that we have reviewed we have tried to predict how patients will go after an injury—do females do worse or is it the severity of the injury or the greater the injury? In many of the studies the number one factor is whether they have been treated under a compensation system or not. In the severity of the injury, age, degenerative, any other factor, that is the biggest factor that brings them down.

The Hon. TREVOR KHAN: I think at least Professor Cameron might want to say something. He is being slightly more sphinx-like.

Professor CAMERON: I am happy to say I think there are a number of things, and they are on the record as a result of the submissions that I and my colleagues made before this legislation was enacted. The other thing would be to have a non-fault-based system. So I guess I am agreeing with Professor Harris. We have done some research specifically comparing New South Wales with Victoria. In Victoria people perceive a fairer scheme that appears to be associated with better recovery. There are likely to be a lot of factors there; it has had a stable scheme for a long time. But we can see there are differences, so a fully no-fault scheme would be well and truly on my list.

The CHAIR: Is there evidence about what types of compensation schemes deliver better or worse outcomes for injured?

Professor CAMERON: In general, yes. There is a relatively small number of studies that have shown if you change the scheme what happens. That is an area of current research, in fact.

The CHAIR: The fact of change itself?

Professor CAMERON: Yes. In the 1999 change in the legislation there was a definable improvement in recovery for people with whiplash, which meant that a few thousand people a year in New South Wales recovered from whiplash who did not recover with the previous legislation. There are only a few studies like that available, but there are evaluations in progress with this last change in legislation in December 2017. Probably in three years or so we will know definitively, we will have some idea prior to that, but because some health outcomes take a long time, fortunately in a small number of people, we do want to have long-term follow-up.

The CHAIR: Just on timing, because you mentioned it, back on the minor injury threshold, and you mentioned three years might be a good time to determine it, what do you think would be a good time to determine whether that threshold is working or not? For example, if SIRA were to set a time—we are all saying it is early days at six months—what do you think would be a reasonable time for SIRA to be able to make that assessment specifically on the minor injury threshold?

Professor CAMERON: It would need to be defined carefully what "working" meant. In my perspective, "working" means people recovering, getting back to work, getting back to normal daily activities. The research we have done in the past suggests that somewhere between a year and two years for the majority of people you know what stability is going to be. So I would say somewhere around a year to two years.

The CHAIR: In that time frame can I move to psychological injuries? Sometimes they emerge some time after an accident or a crash or whatever happens. What, in your view, is the best treatment for those that emerge after that period?

Professor GLOZIER: To answer your specific question, there are very, very few conditions emerge in a delayed fashion, particularly after an accident, and the concept of delayed post-traumatic stress disorder PTSD, which we see in some military settings and certain other settings, does exist, but it is remarkably uncommon and I do not think I have seen any with a motor vehicle accident. What you do sometimes see is the double accident where someone has had an accident that has, if you like, primed them and they have seemed to be okay after the first and then they get the second accident where they just decompensate dramatically and no-one can quite understand whether—

The CHAIR: The eggshell-skull style kind of thing.

Professor GLOZIER: Yes, the eggshell skull. The reality is under that system all of the injury gets attributed to the second accident, that is just the way the system works. I think if you are worrying about the delay bit you are really talking about tiny numbers here. Could I just go back to the treatment issue because I think it is interesting? I would agree, and I think Professor Cameron's data showing that the arguments over access to treatment, if you have those and you have a worse outcome overall, the other thing I would add is the concept that you have shown to have actually benefited from the treatment.

I see again and again and again people who have had 12 or 18 sessions with their psychologists who have had actually made absolutely no gains whatsoever and they end up in this sort of contested situation where their insurer says, "There is no point in us paying for it" but the individual says, "But that's my psychologist". So at the outset they have not been given the frame, "The treatment is there to help you get better and if you are not getting better, if you have shown no capacity to benefit, why would anyone carry on treating you?"

The CHAIR: That is why we are here.

Mr DAVID SHOEBRIDGE: All of you seem to say at one level or another that immediate non-contested access to treatment is a really good thing, is that as I understand it?

Professor CAMERON: Yes.

Mr DAVID SHOEBRIDGE: Do you all agree—you are all nodding?

Professor GLOZIER: If you have a certain threshold. I think there is a danger in medicalising things, particularly in our area.

Mr DAVID SHOEBRIDGE: But as soon as you have a threshold you have a contest?

Professor GLOZIER: There will be pros and cons to that approach.

Mr DAVID SHOEBRIDGE: On balance is it better to say in terms of the immediate medical treatment, do we put a threshold in and then have an argument over the threshold and deal with the consequences of that or do we not have a threshold and say immediate access on a population-wide basis is going to be the best thing, without fight?

Professor CAMERON: I am going to argue for immediate access and the small amount of data we have after December suggest that is happening. I think the issues arise later on. I think there is a real risk of overtreatment in compensation settings and that disadvantages people firstly who are going to recover anyway because there is cost; they might have imaging and they get worried, but also at the other end of the spectrum some people are going to have difficulty recovering and the treatment that they have, as Professor Glozier has just said, is not necessarily beneficial, so I have caveats to that.

Mr DAVID SHOEBRIDGE: Does anybody else want to put some caveats on or just mirror that?

Professor HARRIS: That is exactly what I have been saying, that it is a clear system where there is no contention. You just treat everybody upfront and sort it out later. That is a reasonable way of doing it.

Professor GLOZIER: I would agree, the only caveat being that there is a time frame for review that you have shown capacity benefit but I agree the open system is fantastic.

Mr DAVID SHOEBRIDGE: Reflecting on what has happened since the scheme was changed, have you seen the kinds of benefits that you would expect to see from getting rid of the contest and having immediate access to treatment? Has it produced the benefits that you would have predicted if you were here telling us about it two years ago?

Professor CAMERON: I think it is too early to say. I do not know. I do not have sufficient information to know that, based on the clinical experience or on the evaluation we are doing.

Professor HARRIS: In my experience the immediate access to treatment coverage for treatment has not made a difference in my clinical practice because they all get treated anyway. What happened before was an accident happened, you have a driver at fault and a passenger next to them. They have an injury, they come in and they get treated. They still get treated now in exactly the same way. That has not changed—the access to treatment in an acute situation. I am not talking about later things.

Mr DAVID SHOEBRIDGE: We are not in the United States. They do not check the insurance cover as you come off the ambulance trolley; I understand that.

Professor CAMERON: I does not actually make a difference. The difference that is made is the payment to the doctors but for the patients themselves, it has not made much difference.

Mr DAVID SHOEBRIDGE: Professor Glozier?

Professor GLOZIER: By definition the only ones I see within the system are the ones where there have been disputes about access to treatment so I can only comment on the ones who have not had treatment. I have not seen those who have received the treatment.

The CHAIR: Just on that point. You are not aware of any statistics yourself but I understand that SIRA has commissioned two independent studies of the new scheme. Are you aware of those studies?

Professor CAMERON: Yes, I am, because I am involved in working on one of them.

The CHAIR: Can you comment on those and do you think having that information available will assist to determine whether the new scheme has met its objectives?

The Hon. TREVOR KHAN: That is almost a Dorothy Dixer.

The CHAIR: I am interested in your view. I have not seen them so I do not know.

Professor CAMERON: I am happy to give my opinion. Firstly, it is way too early to know what the outcome is going to be. It does appear that people are getting early treatment. We do not know how effective that is. One of the evaluations that I am involved with with a group working with me—and there is another completely

independent group at Macquarie University—is based on what is in insurer files and we will have quite a reasonable idea eventually from that source. The other evaluation is one done independent of the insurance companies where we will compare health outcomes after the legislative change with health outcomes from quite another big group of people who had their accidents before the legislative change, so we will compare about 2,000 with injury before with about 500 after. As I said before, I think we will need one or two years to know the answer to that.

The Hon. DANIEL MOOKHEY: Professor Harris, you did your doctorate in the study of various compensation schemes, is that correct?

Professor HARRIS: Yes, the effective compensation outcome after injury.

The Hon. DANIEL MOOKHEY: Presumably you studied compensation schemes that spanned more than one jurisdiction?

Professor HARRIS: My studies actually were in New South Wales and I compared workers compensation to third party to no compensation so there were the three comparatives.

The Hon. DANIEL MOOKHEY: Within your field of study did you find any evidence that the culture that the contest on medical treatment in CTP was greater than the other schemes?

Professor HARRIS: No, in fact the research that I have done—and I did a systematic review on this—showed no difference, depending on the type of scheme, even in CTP, but this is some years ago; this is fault-based CTP versus workers compensation and it actually did not show a difference. The compensation system had a negative effect regardless of the type.

The Hon. DANIEL MOOKHEY: Are you aware of any evidence that would suggest that the New South Wales compensation scheme that we are currently inquiring into deviates massively from the norm of other countries or jurisdictions in respect of the culture of contest that exists when it comes to medical treatment?

Professor HARRIS: No, well, they all vary based on whether they are fault-based or not and access to common law. That is largely where they vary. They are the variances that concern me.

Mr DAVID SHOEBRIDGE: But in your clinical work, most of that is in that very acute phase, is it not? ?

Professor HARRIS: Yes, but I follow them up for years. I see patients for many years after their accidents.

Mr DAVID SHOEBRIDGE: In your clinical work there is no issue about liability in that immediate acute work. When does the fact of the dispute with the insurance company start having some sort of clinical significance, as you see it? How far down the track are we talking about normally?

Professor HARRIS: Normally within a few months. By then patients are either sorted out whether they are covered or not or whether they are seeking more treatment and it is at that stage where you are looking at perhaps more elective treatment: Does this patient need a referral to a pain clinic or a referral to rehabilitation or another specialist or if they need surgery, is that going to be covered by compensation or not because that is when it does make a difference. If someone comes in after an accident, they get treated but if somebody needs an operation, there is a big difference between whether they are covered or not.

Mr DAVID SHOEBRIDGE: But if somebody needs immediate access to a pain clinic because they have chronic unmanageable pain from an orthopaedic injury—

Professor HARRIS: No, they will not get into public.

Mr DAVID SHOEBRIDGE: They will not get it in the public?

Professor HARRIS: No.

Mr DAVID SHOEBRIDGE: So that is when they would need access to compensation in order to deal with their chronic unmanageable pain?

Professor HARRIS: That is what I am saying—

Mr DAVID SHOEBRIDGE: But your recommendation—

The Hon. TREVOR KHAN: Let him answer.

Mr DAVID SHOEBRIDGE: Let me finish: Your recommendation earlier was we should remove compensation benefits. That would seriously harm those people?

Professor HARRIS: No, it harms them by compensating them. It is the opposite of what you say. What happens is: If patients are caught up over this acute period, they are now three months, and they are worried about their ongoing, say, neck pain, because that is a very common one, if they are covered by compensation, that patient will led down a path which will be harmful to them. If they are not covered by compensation, they will not.

The CHAIR: In your research.

Mr DAVID SHOEBRIDGE: No, my question was about somebody who you agree has chronic unmanageable pain and needs to go to a pain clinic.

Professor HARRIS: Yes.

Mr DAVID SHOEBRIDGE: I thought you said they would not get in under the public system?

Professor HARRIS: Yes.

Mr DAVID SHOEBRIDGE: Therefore they need to have compensation under a statutory scheme to get to the pain clinic—

Professor HARRIS: No, I did not say that.

Mr DAVID SHOEBRIDGE: —if they want to go to the pain clinic, they either have to pay for it themselves or they get it under a compensation scheme—

The Hon. TREVOR KHAN: He did not agree with one of your propositions.

Mr DAVID SHOEBRIDGE: I am asking what happens to them—they just do not get it?

Professor HARRIS: The biggest predictor of them developing chronic pain is whether they are under a compensation system or not. I rarely see any of my patients have problems with chronic pain if they are not treated in a compensation system. If you speak to the people who run the chronic pain centre—the biggest at North Shore—nearly all of their patients are compensated. And it is not because they can afford it; it is because they are the patients that they see. The biggest change I saw in legislation was the change to workers compensation whereby it no longer covered transport accidents. It used to be impossible to get these people back to work. Now they all go back to work. They do not have chronic pain. They do not see any for years and years. That is what has made the biggest difference that I have seen. The compensation system is the home—

The CHAIR: I am sorry, Professor Cameron, we have just one minute left—

The Hon. TREVOR KHAN: I am not in control, but it would seem to me this is an invaluable discussion.

The CHAIR: I am happy to continue if our witnesses—

Mr DAVID SHOEBRIDGE: I am happy to stick to it.

The CHAIR: Thank you, Professor Cameron.

Professor CAMERON: I am essentially agreeing with Professor Harris but I did want to say that within the public health system there are pain services and chronic pain services. People do have access to those services. Admittedly it is with a delay for many people.

Professor HARRIS: Particularly if they do not get in.

Professor CAMERON: I work with pain services in a rural area of New South Wales. For those people who get treatment there is a waiting list.

The CHAIR: I turn to whole person impairment. We have talked about the other aspects, but in your opinion how long does it take for an injury to stabilise before a reliable assessment can be made about whole person impairment? Could you answer that in relation to above the 10 per cent threshold and below the 10 per cent threshold but not the minor injuries we have dealt with?

The Hon. DANIEL MOOKHEY: As a corollary to that, later in the treatment path is there a medical point at which reassessment might be required?

Professor CAMERON: I am happy to take it on because I do think about this a fair bit. It will depend on the injuries but on an overall average people will be stable and sufficiently recovered about 12 months after injury. Of course, there are variations there but that is a reasonable rule of thumb that has stood up pretty well in the last 20 years or so since we have had a whole person impairment.

The CHAIR: You can do a reliable assessment at 12 months.

Professor CAMERON: Yes. Sometimes you can do it earlier—for instance, if someone has had an amputation you can do it the next day.

Mr DAVID SHOEBRIDGE: It does not grow back.

Professor CAMERON: Yes. But then for some other people with complex injuries—say, complex brain injury—it will probably need to be more than 12 months.

The CHAIR: Do you say that for both above the 10 per cent—I know it is an arbitrary amount but do you say it for both?

Professor CAMERON: Yes, I do.

The Hon. DANIEL MOOKHEY: Is there evidence of deterioration or improvement later on?

Professor CAMERON: The definition of permanent impairment is that the person should not deteriorate. Occasionally there will be some sort of totally unexpected complication. My understanding is the system allows for a further assessment at a later time if that has occurred.

Mr DAVID SHOEBRIDGE: As someone with a shoulder injury ages they are likely to need a revision of the rotator cuff surgery or someone with a knee injury may need a revision. That is fairly predictable in some injuries. You say "no further treatment".

Professor CAMERON: I am happy to defer to Professor Harris on that.

Professor HARRIS: The definition of stability is that a condition will not change by more than a couple of per cent over the next 12 months. I think 12 months is about right. It is always going to depend. If their fracture does not heal, for instance, and they are still getting treated at 12 months, you cannot predict what is going to happen to them. But certainly the majority of cases have stabilised by 12 months.

Professor GLOZIER: That is not entirely true for psychiatric injuries, in part because so few people have actually received treatment by 12 months.

Mr DAVID SHOEBRIDGE: Does that mean you do not know how they will respond to treatment?

Professor GLOZIER: You do not know how they will respond to treatment, particularly those who have only been dealt with by their GPs. It is incredibly common. Again, it is systematic. I am seeing people for assessment for whole person impairment and maximum medical improvement who have never actually been prescribed an antidepressant, for instance, or if they have they have been prescribed one, it has not worked and, unlike if you are prescribed an antihypertensive or antidiabetic medication where your general practitioner will review it, find out if it is working and if it is not, change it, in psychological medication they just carry on prescribing it, whether or not the person takes it.

The CHAIR: Whether they need it or not.

Professor GLOZIER: There are a number of times we are making these decisions on people who have not been remotely adequately treated.

Mr DAVID SHOEBRIDGE: It seems to me there is a problem in how psychological injuries are being treated in terms of not being adequately diagnosed by GPs and psychologists—sometimes they are but it seems to me you are suggesting there is some kind of systematic problems in how people with psychiatric illnesses are being addressed. Maybe they are not getting the adequate level of professional care they deserve.

The Hon. DANIEL MOOKHEY: As a corollary to that, once diagnosed, is psychological injury as capable of being stabilised as much as physical injury?

Professor GLOZIER: Yes, absolutely, particularly when we are talking about physical injuries where there are significant psychological factors and chronic pain and those other areas as well. We may see fluctuations. Those of us who do those assessments take into account the day to day or the week to week fluctuations. In much the same way as when you get your goniometer out and measure the range of movement, that will change day to day for individuals. So yes it is. It is very hard to compare across disorders around how valid and reliable their measurements are, but if you take disputes and claims about the assessments under the workers compensations system, psychiatric assessments of impairment get appealed just as frequently as orthopaedic ones do on the basis that they have been done incorrectly. I do not know exactly what that tells us but it certainly does not tell us we are doing in necessarily in a much worse way.

Mr DAVID SHOEBRIDGE: What about access to treatment? That was my question. Are people with psychiatric injuries getting adequate access to treatment? It sounds to me as though you are suggesting they are not. They are getting inadequate care and they are not bouncing to professional.

Professor GLOZIER: I am suggesting that it is not so much the access to treatment in primary care. They are seeing their primary care physicians but they are not being treated adequately by that group.

Mr DAVID SHOEBRIDGE: On notice, could you consider any recommendations you might suggest to us to address that? The idea that people with psychiatric injuries are not getting the right care is troubling to me, when we have a whole scheme designed to help them.

Professor GLOZIER: There are two different things there. There are a whole set of GPs who have received extra training in dealing with mental ill health. Maybe you might want to make some recommendations that people see specific kinds of GPs. That is probably a very difficult one considering the spread of those. But certainly the treatment should be reviewed. The treating clinician should be reviewing the efficacy of their treatment and, if it is not efficacious, actually doing something about it.

The CHAIR: We are over time and I am conscious of that but I just want to ask this final question. In terms of treatment, can you give us an indication of what you think the recovery rates are of people with psych injuries with no physical injury, and then of those with psych and soft tissue injuries only?

Professor GLOZIER: I do not know the actual data of those. With the first of those, we see very few psych without physical injuries.

Professor CAMERON: Very few.

The CHAIR: Of those, what is the recovery rate?

Professor GLOZIER: I have no idea. I have never seen the data. I do not know if the data exists in a way that we can access it.

The CHAIR: What about with only soft tissue injuries as well?

Professor CAMERON: Again it depends how you define "recovery". Long-term recovery to getting back to work and living a normal life is more than 90 per cent. A number of people will have some degree of continuing pain. That is the reality. Many people—about 20 per cent of people in Australian society generally—have long-term pain. In terms of getting back to a normal life, it is the vast majority: 95 per cent plus.

Professor GLOZIER: If you take psychiatric illnesses full stop—take out the motor accident part of it—

The CHAIR: I was going to differentiate—that was my next question.

Professor GLOZIER: If you take that out, if people have met the criteria for a more serious psychiatric disability, not a minor injury, full remission is uncommon. The norm is to have residual symptoms, not expecting complete remission. However, if you have had one clinically significant illness, or injury in this particular case, the likelihood of recurrence is around 50 per cent.

The CHAIR: Does that change for motor accidents?

Professor GLOZIER: I do not know.

The CHAIR: There was one question on notice.

Mr DAVID SHOEBRIDGE: I think Professor Glozier answered it as he wished.

Professor GLOZIER: I think so.

The CHAIR: If there are further questions the Secretariat will contact you and they are returnable in 21 days.

(The witnesses withdrew)

GENEVIEVE HENDERSON, State Practice Group Leader (MVA NSW), Slater and Gordon, sworn and examined

The CHAIR: Thank you for appearing today. Do you have an opening statement?

Ms HENDERSON: I do. I will introduce Slater and Gordon. Thank you for inviting us to be here. Slater and Gordon is a large consumable firm with lawyers providing services across Australia with offices in New South Wales, the Australian Capital Territory, Victoria and Queensland. We specialise in personal injury and employ accredited specialists in all jurisdictions. As I just mentioned, I am the leader of the New South Wales motor vehicle accident group and therefore I have extensive experience in motor vehicle accident claims under the Motor Accident Scheme as it was until 1 December 2017. As with everybody else in this space, my experience in the new scheme is limited to the nine months that it has been in operation since 1 December.

I would like to stress that my experience is in New South Wales and if the Committee is interested in other schemes I have access to professionals in Victoria and the Australian Capital Territory schemes. If there is any interest in comparing and contrasting how other schemes operate I do not have that area of expertise, but I have access to that expertise. Slater and Gordon appreciates the opportunity to assist the Committee in conducting this review. Slater and Gordon was active in the reform process in 2013 and again in 2016 and did put forward submissions in May 2016. The new scheme under the Motor Accident Injuries Act is the one we have and Slater and Gordon is committed to helping make it work honestly and fairly for those injured on New South Wales roads.

At the outset, I feel it is worth differentiating the position of claimants and insurers within the scheme. Injured have varied backgrounds and histories, no experience in personal injury claims and have ill-informed expectations of an outcome of a claim. Insurers, on the other hand, have common characteristics, endless experience of personal injury claims and clear expectations of outcomes of claims. So far Slater and Gordon represents about, and it is difficult to get the firm data, 65 people injured in motor vehicle accidents occurring on or after 1 December 2017 but has been in contact and spoken with many more who we have helped informally. These claimants are most currently in the statutory part of the scheme but may have common law entitlements. Much of the work so far has been done and is likely to have been done on a pro bono basis, which we are very willing to give at this time.

The claims experience we have gained so far on this small amount of data is far from encouraging in so far as it relates to insurer behaviour. This is best demonstrated by case examples, which I have with me today and I would like to go through with you. I have five of them. In relation to the drafting legal issues and errors in the scheme I have read and am in broad agreement with Australian Lawyers Association [ALA] submissions on these points. If the Committee would like further information about the legal problems in the scheme I defer to the legal representatives appearing this afternoon on those points, some of the examples within ALA are Slater and Gordon cases. In so as far as the scheme design limits access to paid legal advice it will come as no surprise that I advocate that this is a weakness in the scheme. I am a lawyer.

I emphasise the role of legal advice and where I see the problems with scheme. The role of providing advice in the scheme has shifted from private sector lawyers to in-house insurer legal teams and to CTP Assist for information, not legal advice, and decision-making within the DRS based on that information. I appreciate and support that there should be only limited need for independent legal advice and advocacy within the statutory part of the scheme That is the design and we accept that. However, this means that the success of the statutory part of the scheme depends on: Insurers making fair, timely, evidence-based decisions and correct decision; insurers providing full information as to entitlements, even against their own financial interests; CTP Assist filling the gap if information is deficient; DRS making independent decisions all the while sitting within SIRA, which I do think is a problem, and; SIRA, the regulator, being able to identify and exercise control of insurer behaviour and identify and correct systemic errors.

I have observed through the 60 cases that we have that insurers are throwing huge resources into challenging the claim at the liability notice after 26 weeks, the first liability notice. This includes investigation reports, crash reconstruction reports and accountant's reports. They are not putting the same energy and resources into working with treating medical providers and obtaining treating notes and opinions. Instead, we are observing that they are falling back on their stable of medico legal experts. I am concerned that insurer behaviour remains aggressive, adversarial, and they are keen to take advantage of what seem to be technical points. While this continues the need for legal advice and advocacy, even at the statutory benefits stage of the scheme, does remain essential and is now being provided by lawyers on pro bono basis.

Last, and before I turn to the examples which I have, I would like to state that in my experience dealing with SIRA as a regulator has been entirely positive. There is very good engagement, they are accessible and they are responsive. I have no criticism of how SIRA is dealing with the complaints we have put to SIRA. They have been dealt with one way or another. Whether it is cutting through I am not sure. To make the scheme work they will have to step up because we are not there any longer and one day we will not come to the forums to provide advice because we are no longer in this part of the scheme. You will be dependent on SIRA. There will need to be greater monitoring of insurers, particularly the spend, checking decisions through random audits, whatever it takes to ensure insurers with a vested and financial interest in the scheme do what it needs to make the scheme work. I have five case examples which I can hand up.

The CHAIR: We cannot inquire into particular cases.

Ms HENDERSON: These address the systemic errors.

Mr DAVID SHOEBRIDGE: My question is can you give us any examples?

Ms HENDERSON: The first example is ELM, an NRMA matter. This has come to serious attention. They have dealt with this with the NRMA. It is a graphic example of what can go wrong when an insurer is left to their own devices.

The CHAIR: Is this the first example?

Ms HENDERSON: Yes.

The CHAIR: We will hand that to members. There is some identifying information and I ask members not to refer to that.

Ms HENDERSON: I did try to de-identify. It is important for members of the Committee to understand the facts as it will put in graphic relief the behaviour of insurers. This accident happened very early in the scheme, on 11 January 2018. ELM, who is a child, together with his father, HM, and mother, TM, were involved in a catastrophic motor vehicle accident. The mother was killed in the accident. This is only briefly described. I am going through facts for the tribunal. This is case example one. The errors that are revealed are legal error and liability notice, failure of the insurer and the minor injury determination. The facts are not within that document.

The mother was killed, the child as airlifted to the Randwick children's hospital and was treated for a head injury, for facial scarring going across the front of the face extending across both eyebrows, and a suspected pancreatic injury. The claimant's father was told that his child had had a fit whilst in hospital. The father was airlifted to a different hospital, St George Hospital, where he was treated for orthopaedic injuries. On discharge, the child received counselling from the school counsellor for psychological impact of the death of his mother and for his own injuries. He was left with facial scarring. He was treated by his general practitioner. There were clinical notes. He continued to receive treatment from Randwick children's hospital.

The personal injury claim form was lodged for the child and for the parent. I will deal with the child's claim first. The claim form was lodged and the initial claim was accepted. In the usual liability notice the insurer said, "Yes, we have accepted your claim. We will be in contact with you. We will do what we need to do. We will develop a plan for you." NRMA did not contact that child. They made one telephone call to the claimant's father and the claimant's father, who had been discharged himself from St George Hospital, said that as far as he could see his child was doing okay, but the claimant's father had not seen the notes from the Randwick children's hospital.

By the time NRMA came to making a minor injury decision, the only information they had to make the minor injury decision was the original medical certificate from the hospital and the claim form, and that was it. They did not have any clinical notes, they had not followed up and they did not know the current status of that child. This was brought to their attention. Thankfully, through an internal review, which was through Slater and Gordon, that decision was overturned. That is the failure on the minor injury determination. It was clearly wrong that it was made with no evidence and with no attempt to get evidence.

The second error by NRMA was in the initial liability notice. It stated that if you are found to be mostly at fault at six months, you will lose your rights. They had completely misstated the law, because if you are a child you continue to have rights after six months, regardless of fault. That was a systemic error within their documents. The third error was a complete failure to contact that family about that child. This is a scheme that is supposed to provide support for recovery. That child was never contacted. To this day, the GP is having difficulty getting the clinical notes from Randwick children's hospital. When I rang the internal reviewer about this matter, that person said, "I am really under the pump. I have got a lot of stuff on my plate. I do not think I can chase those clinical notes. I do not know if I am going to get them", which is a problem within the scheme. It is a problem when insurers are not properly resourcing themselves.

The CHAIR: Were those concerns raised with SIRA?

Ms HENDERSON: Yes, all of these concerns were raised with SIRA. To its credit, it has dealt with them. I have been told and contacted by SIRA that they have brought the systemic issues to the fore. Sadly, this case continues to have some problems. The father lodged his personal injury claim form on the twenty-eighth day. He received a liability notice that said, "Thank you very much. You have lodged your claim form. We accept liability." Further down the form it stated: But you have lodged it late so you do not get your first 28 days. That claimant is grieving the death of his wife, his son may have an head injury—his son certainly did—he did not notice that the document said that. He had 28 days to seek a review of that decision, which was actually wrong.

Fortunately, I suppose, I was acting for him and I noticed this was an error. It was not clear and was not highlighted in any way. Internally, I rang the insurance and said, "You cannot count. You do not take the date of accident, you start the next day." After a bit of a fight and being on hold for half an hour, he came back and said, "Terribly sorry. Our internal training is wrong. We cannot count. You are right. We will send you a new decision." That first decision was clearly wrong. NRMA has a history with 28 days. This case example is within the ALA documents, which is also a Slater and Gordon case, but it took the point it was the twenty-eighth day. If it falls on a Sunday, do you have to lodge it on that day? They took that all the way through the internal review of the DRS and argued that the Interpretation Act does not apply. You are probably aware of that.

The CHAIR: Yes, I am aware of that.

Ms HENDERSON: This is an example of an insurer taking very technical points in circumstances where you would think that they would not, but they did, and they do.

Mr DAVID SHOEBRIDGE: Ms Henderson, did the lawyers get paid for the services they provided?

Ms HENDERSON: No. None of the services that I have described are billable under the motor accidents scheme and, no, we will not be paid for any of that work. We acted for this family for lots of reasons. We wish to stay in the scheme. Lawyers are looking for how we can provide legal services. We are not, unlike the insurers, billing for work that we cannot do. We are not billing claims. Claimants are receiving letters stating, "Beware, lawyers cannot be paid." Some of that is right; some bits we cannot be paid for. We could not be paid for any of the work I have described. The one with the NRMA, which is the ALA one, where the DRS dispute happened, yes, we did. That was over the 28 days. They were forced to concede that 28 days does not fall on a Sunday; the Interpretation Act does apply. That is a billable event and Slater and Gordon were paid $1,600 for doing that work. The other work, dealing with the child, trying to get the treatment expenses up, that is not billable work. Slater and Gordon will only be paid if there is a dispute within the scheme that goes through a DRS dispute where there are fees attached or if there is a common law dispute, which there may well be down the track, or at least there will be common law rights.

The next example is, again, the 28-day issue. It is an another example of an unreasonable request. I cannot recall who I died, but, again, another death claim. This is case is example four. A personal injury benefits claim form was lodged. It was a nervous shock claim. The person was grieving the death of a family member who came within the class that is required. It was for a three-week closed period of time off. It was supported by a medical certificate, by wage documents to show his income beforehand and the fact that it was not paid. The insurer said, "Thank you very much. We accept liability." There was no issue about anything except, "We want 52 weeks of payslips before we will pay this." I think 52 weeks of payslips is an unreasonable request for someone who is claiming a short closed period of compensation. This gentleman does not get payslips. He is employed. He is not a self-employed person, but he could not produce 52 weeks of payslips. He produced all the documents he did have. I do not know what has happened. I will have to see if they have paid, but last I saw they were requiring 52 weeks of payslips.

The last example, number five, is QBE. This is a rather long-running series of unpleasant disputes. This is a 51-year-old self-employed person. Prior to the accident, she had an injury to her shoulder, which had been treated by a surgeon, Dr Vera Kinsel. On 20 April 2018 she had a motor vehicle. It was reported, there were witnesses; there is no issue that the accident occurred. As a result, she sustained a full thickness tear in her supraspinatus, which was revealed on a magnetic resonance imaging [MRI]. She saw the same treating specialist who was very much aware of the previous medical condition. That treating specialist recommended that she undergo further surgery. Within the notes from the specialist it says, "MRI tear with evidence of an acute injury". She required surgery to return to work, so she cannot return to work until the surgery has occurred. QBE have denied the surgery on the question of causation. It says that the accident did not cause the injury. This is something that we are increasingly seeing. Accidents are being denied, not on the basis of duty or breach, but on the fact that the accident—

Mr DAVID SHOEBRIDGE: Medical causation.

Ms HENDERSON: Medical causation. This is becoming a recurring theme and insurers are going to great lengths to find evidence to say that the accident did not cause the injury. In this case, not going to the treating specialist, however. In this case, QBE arranged for private investigators to interview the claimant and all witnesses to obtain a factual report and obtained two expert reports from Associate Professor Robert Anderson. Professor Anderson's report is based on factual errors.

The CHAIR: Can I interrupt you there? There have been a couple of occasions when we have identified practitioners. We would rather that we do not identify them for these purposes.

Ms HENDERSON: Of course. There was a liability expert in that claim and they were denied on the basis of that expert. A lot of money was spend and this was still within the first period. It was to get the early treatment that would get her back to work. QBE did a lot of work and spent a lot of money to say no based on that issue. As you will be aware, there is a move for more joint medico legal reports. Slater and Gordon supports joint medico legal reports. We want to shut down disputes just as much as anybody else does. QBE put up three joint medico legals and we put up three joint medico legals and QBE said, "Nope, we don't like any of the ones that you have put up; we are going to go with our doctor." Of the three that were put up by Slater and Gordon, one was a motor assessment scale assessor and the two others were local or went to the area where the claimant lived, so they would have been suitable for this particular claimant. There was no reason given. QBE said, "Nope, we want to have our own."

The last problem with this case was that when arranging the medico legal, they did not get all the relevant medical evidence from the treating doctor. They had not done what they are required do under the medical assessment guidelines, which is to obtain all the treating reports, get opinions from the treating doctors and not to use medico legals if not needed. They failed to do that and, in our view, failed to do what they are required to under the guidelines. This was brought to QBE's attention and, in the last I heard, they have in fact cancelled the medico legal appointment that they arranged because we said, "This is ridiculous; you really must go to the joint doctor." Those are the examples that I wished to bring up.

The CHAIR: The reason we are not identifying doctors is that we are not inquiring into particular cases.

Ms HENDERSON: I understand.

Mr DAVID SHOEBRIDGE: You give some anecdotal reports about the change in where disputers are happening. Having technically got rid of liability in terms of fault, are you saying that you are now seeing a change in the landscape where the real fights are now over medical causation? Is that one or two cases or is it a repeating theme in the work that you do?

Ms HENDERSON: I think it is a repeating theme. I have to say, I was seeing that even before the new Act was introduced. There was no fault aspects in the old Act either and there were some judicial decisions around causation and whether evidence from an investigator about the level of damage in a motor vehicle accident could impact upon whether a doctor could say that an injury occurred from a motor vehicle accident. We were seeing that well before the new Act, but it seems to be the point in the new Act that they are bringing up very regularly.

Mr DAVID SHOEBRIDGE: If there is a dispute about medical causation under the new statutory benefits, how is it resolved? Where does an injured person go to have the dispute resolved?

Ms HENDERSON: There will be a liability notice issued. The first liability notice will say, "We do not accept that there is an injury." Then there will be an internal review, which is what is happening in the case example that I have provided. If the insurer does not change its mind—and I very much doubt that QBE will change its mind in circumstances where it has gone to a lot of effort to prove that the factual circumstances do not support that there was an injury—it will go through a DRS merit review dispute.

Mr DAVID SHOEBRIDGE: What troubles me about the example you gave of the women with the shoulder injury is that her treating specialist seemed to have no ambiguity. Her opinion was very clear. Do you think that SIRA or the legislation should have a direction that says that unless there are compelling reasons, the treating surgeon's opinion as to causation should be accepted.

Ms HENDERSON: I would support that, absolutely.

Mr DAVID SHOEBRIDGE: In your experience, when disputes travel to a tribunal of some sort—whether it is a bureaucrat in SIRA or an external tribunal—do the decision makers tend to give appropriate weight to the opinion of the treating surgeon? Do treating surgeons tend to be believed about causation, as opposed to medico legals who get brought in?

Ms HENDERSON: Often, treating specialists do not make decisions on causation. Often, they are not asked to make decisions on causation because many insurers will fall back on medico legals and those questions

are asked there. Most treating doctors are not that interested in causation. It is not their role; their role is to identify an injury and to treat and injury. However, in this case, the treating specialist did make a decision on their view of causation. The person who is most disinterested in the treatment of the claimant is the treating specialist and if they have a view—they are the ones who are the most disinterested and I think they will have the best opinion—it should be take into account. The direct answer to your question is that often treating specialists are not asked for causation; I think they probably should be.

Mr DAVID SHOEBRIDGE: Is that the culture on both sides of the record around not approaching the treating surgeon and going to someone who you feel will have a more reliable slant, either pro or anti?

Ms HENDERSON: It is partly that and partly that we do not want to trouble the treating surgeon with things that are not part of their treatment purview. From a claimant and plaintiff lawyer point of view, we are very keen not to wreck the relationship between the treating doctor and the person being treated. Getting invasive, ugly requests for reports from us does not help that.

The Hon. TREVOR KHAN: Indeed, that is the case both ways, is it not? Sometimes treating doctors do not like—

Ms HENDERSON: That is exactly right. The culture was—and it was certainly a practice that I adopted—to not ask the treating specialist about the causation issue. Their opinion on whether treatment is necessary should absolutely take priority—they are the ones providing the treatment. Causation is a more complicated question, but if they have a view I think it should be sought first and the guidelines say it should be sought first. It should at least be asked, which it has not been in this case.

Mr DAVID SHOEBRIDGE: The no-fault scheme was designed to get rid of many of the disputes, but if instead what we are seeing is the weaponising of medico legals either side on causation as opposed to liability then we do not seem to be very far advanced.

Ms HENDERSON: I agree.

The Hon. TREVOR KHAN: You obviously followed the rationale behind the changes that were made in the CTP scheme from the get go?

Ms HENDERSON: Yes, I was involved in that.

The Hon. TREVOR KHAN: There was a variety of factors that came into play in terms of the decision to change the scheme, yes?

Ms HENDERSON: Yes.

The Hon. TREVOR KHAN: Some of those factors related to insurer behaviour and some of them related to claimant behaviour and some of them related to lawyer behaviour, particularly in some areas of the State and city. Is that right?

Ms HENDERSON: Absolutely, yes.

The Hon. TREVOR KHAN: What is your firm's position on claims farming?

Ms HENDERSON: I though I would be asked that. Claims farming is a difficult question—what do you mean by claims farming? Slater and Gordon was in the press for having been involved in—

The Hon. TREVOR KHAN: On 24 June of this year.

Ms HENDERSON: Absolutely. The majority of Slater and Gordon's work comes from traditional pathways but, of course, the digital space is becoming bigger and is used by mot people. So, yes, we explored digital pathways for referral sources. What I can say absolutely at the headline is that referral pathways do not mean breaching people's privacy or taking on unmeritorious claims. There was a great deal of due diligence within both of the referral pathways that were in the press with Slater and Gordon.

The Hon. TREVOR KHAN: Would you like to identify what those two referral pathways were?

Ms HENDERSON: Absolutely. The two referral pathways were PreLegal and HealthEngine. PreLegal did not operate in New South Wales because there was a paid referral source involved in that. Before Slater and Gordon became involved in any of those referral pathways, we did a very detailed due diligence on both. That due diligence involved our professional standards group and our internal council and required them to look at exactly how both pathways worked. The reporting said that there was some contention about whether we should follow these pathways, and that is true. It was not universally accepted that it was a good way to go, but it was a space that we decided we would pilot and both pilots did take place. There was due diligence. That meant listening

to the phone calls that were being made and identifying whether any breaches of privacy were occurring. We were satisfied that it did not occur.

The Hon. DANIEL MOOKHEY: Sorry, when you say you were listening to phone calls, did you employ a call centre?

Ms HENDERSON: There was a random audit. I would be going beyond my level of knowledge.

The Hon. TREVOR KHAN: PreLegal was, in a sense, a call centre, which rang people who had been involved in accidents.

Ms HENDERSON: Yes, it was.

The Hon. DANIEL MOOKHEY: Was it a contract call centre or did Slater and Gordon do it in-house?

Ms HENDERSON: It was not in-house, it was external. Just to qualify this, I have very limited knowledge because this was conducted through Victoria. PreLegal, let me just explain what that is, identified potential clients through online advertisements, surveys, competitions or service websites. People opted in on these websites to receive contact regarding their potential claim. PreLegal then telephoned the person, conducted a preliminary claim assessment and if the person consented, transferred that client to Slater and Gordon's direct lawyer intake team or our new client services team for further advice and screening. So it was an opt in by a call centre and then it went to our internal new client services team where they would be screened again.

The Hon. DANIEL MOOKHEY: But what standards did you apply in the call centre?

Ms HENDERSON: The first call centre?

The Hon. DANIEL MOOKHEY: Yes. Most call centres in respect to a lot of these calls—for example, insurer-based call centres or bank-based call centres all work according to codes of conduct, all of which have training requirements, all of which have a whole bunch of things which have been standards which have been voluntarily endorsed. Did any such apply in respect to the call centres that Slater and Gordon employ?

Ms HENDERSON: Can I take that on notice? I think the answer is yes, but I would like to check with the people who are directly involved.

The Hon. DANIEL MOOKHEY: Can you identify as well on notice the code of conduct that was applied?

Ms HENDERSON: Yes, absolutely I can.

The Hon. TREVOR KHAN: What about Compass Claims? How did they fit into the scheme of things?

Ms HENDERSON: I am not aware of Compass.

The Hon. TREVOR KHAN: Compass Claims, at least according to the ABC article, referred 549 customers between March 2016 and August 2017 and received $1,100 commission for each customer that became a Slater and Gordon client.

Ms HENDERSON: I am not aware of Compass.

The Hon. TREVOR KHAN: What about Medibank Private? What was the arrangement with them?

Ms HENDERSON: I have some knowledge but not a lot of knowledge of Medibank Private. This is an arrangement whereby if Medibank Private identify that a person has compensable rights and they are claiming through Medibank Private, that they will refer those people to Slater and Gordon to see whether those rights are being exercised and if the treatment expenses are properly paid through a compensable scheme, to make sure that they are paid through a compensable scheme.

The Hon. TREVOR KHAN: Are there any other firms that Slater and Gordon was involved in in getting client referrals, apart from I think we might now be up to four?

Ms HENDERSON: I have not said about Compass yet, but the two that I am very much aware of are PreLegal and Health and Injury Management, which are claims farming which fall within that definition of claims farming. Medicare, I do not think that is claim farming, that it is a referral. But I cannot answer that.

The Hon. DANIEL MOOKHEY: Before we move much beyond your last answer, is there a financial arrangement between Medibank and Slater and Gordon?

Ms HENDERSON: I would have to take that on notice.

The CHAIR: Could you also take on notice the Compass Claims question?

Ms HENDERSON: Yes, certainly.

The CHAIR: The secretariat will provide you with those questions.

The Hon. TREVOR KHAN: In terms of looking at the article, PreLegal, which has a lovely name that gives it a degree of authority, would seem to have been a subsidiary of Prolearn Corporation, which had a background in direct marketing for vocational education courses. Noting how the vocational education market had a problematic history, can you explain how a rebadged vocational guidance flogger of courses would have the expertise to be referring clients to Slater and Gordon?

Ms HENDERSON: I cannot answer that question. If you wish me to answer I will have to take that one on notice as well.

The Hon. TREVOR KHAN: Please do. It seemed to me that in the original inquiry hearings that dealt with the issue of lawyer behaviour, this issue of claims farming was condemned by, amongst others, the Law Society and the Bar Association, and yet your firm, it would seem, has engaged in precisely the behaviour that had been the subject of concern by the profession.

Ms HENDERSON: I do not think that is a fair comment.

The Hon. TREVOR KHAN: Is it not?

Ms HENDERSON: No, I do not think it is. Let me explain why. The two pathways that we have referred to are digital pathways, but at no time was privacy breached and there was due diligence about what was going on. When they came to Slater and Gordon, and they did come to our lawyers, at no time did we bring unmeritorious claims. So the referral came to us, yes, but the way they were dealt with by our lawyers was entirely appropriate.

The Hon. TREVOR KHAN: And at least to some of these firms you were paying these third party, what may well be shonks, for the purposes of getting these referrals.

Ms HENDERSON: No, I do not accept what you just said. The referral pathways are the ones that we have described. I will come back to you about Compass. I have to rely on those above me. I did not make these decisions.

The Hon. TREVOR KHAN: You are the one in the hot seat, but I am not suggesting you are the one that has made the decisions.

Ms HENDERSON: I am in the hot seat, but I have great confidence in the due diligence that was done by those above me. They are very responsible people. Because we work in multiple jurisdictions we are very careful not to breach the laws within any of the jurisdictions. These were referral pathways, yes.

The Hon. TREVOR KHAN: This was the sort of model, was it not, that was adopted in Britain, including your subsidiary firm in Britain? This claims farming was a real problem in Britain, was it not?

Ms HENDERSON: I understand that is the case, yes.

The Hon. TREVOR KHAN: And your sister firm, or your subsidiary in Britain, was engaged in taking referrals from claims farmers there. It is a transfer, is it not, from your British experience to Australia?

Ms HENDERSON: I cannot answer the question why this decision was made. It was not mine.

The Hon. TREVOR KHAN: Would you like to take that on notice, as to whether this was a practice that your firm adopted in Britain?

Ms HENDERSON: I will take that on notice, if you wish me to answer that question.

Mr DAVID SHOEBRIDGE: In some of your earlier answers you were saying some activity may be seen as claims farming, some activity is referrals from partners?

The Hon. TREVOR KHAN: Partners?

Mr DAVID SHOEBRIDGE: Or referrals from people you have a partnership relationship with? I understand Medibank Private has an interest in having people exercise their compensatory rights because that benefits them in terms of recovering their statutory payments.

Ms HENDERSON: Yes.

Mr DAVID SHOEBRIDGE: You could say you may have a commercial relationship with them. If you do not have a conflict of interest, that is how business is done.

Ms HENDERSON: I agree with you, yes. I do not know the full relationship, but yes, that is how I would describe it.

Mr DAVID SHOEBRIDGE: Can you tell the Committee what the principled position is? What set of principles does your firm have when looking at these kinds of arrangements, either a partnership or information supply, however you want to describe them?

The Hon. TREVOR KHAN: In terms of looking at principles, principles that lawyers in your firm were very uncomfortable about, were they not?

Mr DAVID SHOEBRIDGE: Could you just answer my question? What kind of principles was your firm looking at?

Ms HENDERSON: The principles included: that there was consent; that the person had opted in for legal advice; and that when we contacted them, that we provided them with proper legal advice and did not make unmeritorious claims. When we gave the call centres, when we referred the activity of making the outbound calls that were made, based on the back of that information that was received. I understand that there was due diligence about how those calls were being made to see that they did not breach any of the regulations or the guidelines about outgoing calls. I do not have specific knowledge about all that activity, but I can say that I am confident, having spoken to the professional standards people, that we did this within the context of not breaching people's privacy and not harassing them, and certainly not making unmeritorious claims.

The New South Wales experience and the claims farming experience involved people either breaching privacy making phone calls for information that they had received, not with consent of the person. That is not what we did. It also involved making claims that were unmeritorious and with partnerships with groups—and I have seen some of the material that has come through from the police. That is not what we were doing. This was a referral pathway using a digital platform. Slater and Gordon piloted two or three, two at least that I know of, and the partnership with Medicare—

Mr DAVID SHOEBRIDGE: Medibank.

The Hon. LYNDA VOLTZ: Did you partner with any other—

Mr DAVID SHOEBRIDGE: Ms Henderson had not finished.

Ms HENDERSON: We have not been, and never would be, involved in any claims farming that meant making unmeritorious claims. I was as horrified, Slater and Gordon was as horrified as the material that came out of the police inquiry, as any other law firm. I have, and Slater and Gordon stands up for what they have done. The pilot schemes; yes, we did it. Yes, we did some referral marketing: But is that the sort of activity that is illegal? No, it is not.

The Hon. TREVOR KHAN: Is that the criteria that you as a lawyer—

Mr DAVID SHOEBRIDGE: Point of order: I do not think that Ms Henderson had finished. She was in the middle of explaining that.

The CHAIR: Order! The Hon. Trevor Khan is entitled to ask a question and he will do so.

Mr DAVID SHOEBRIDGE: But not to interject in the middle of the witness answering a question.

The CHAIR: Would you like to finish? I am conscious of the time. We do have further questions. If you could succinctly finish your answer. We have heard that point numerous times.

Ms HENDERSON: The legality is not—not at all, not at all.

The Hon. DANIEL MOOKHEY: How many referrals did these pilot programs actually produce?

Ms HENDERSON: I cannot answer that question.

The CHAIR: Would you like to take that on notice?

The Hon. TREVOR KHAN: Hundreds and hundreds.

The Hon. DANIEL MOOKHEY: Can you take that on notice?

Ms HENDERSON: I will take that on notice, because I do not think that is the answer.

The Hon. DANIEL MOOKHEY: How many of the referrals then lead to—

The Hon. TREVOR KHAN: Twenty-fourth of June, an ABC article. Have a look.

Ms HENDERSON: Do not believe everything you read in the papers, I have to say.

The Hon. DANIEL MOOKHEY: Point of order: I am asking the question. How many of those referrals therefore lead to meritorious claims?

Ms HENDERSON: I cannot answer that question.

The CHAIR: Can you take that on notice?

Ms HENDERSON: I can take that on notice. Bearing in mind, are we confining to New South Wales?

The CHAIR: Yes.

The Hon. DANIEL MOOKHEY: Are you still currently engaged in these practices?

Ms HENDERSON: No, they have ceased.

The Hon. DANIEL MOOKHEY: When did they cease?

Ms HENDERSON: I would need to know the date. I have to take that question on notice. I do no know when it ceased but I can check.

The Hon. DANIEL MOOKHEY: Why did they cease?

The Hon. TREVOR KHAN: Probably bad publicity, was it not?

Ms HENDERSON: I think that was probably part of it, yes. Certainly, these referral pathways were not good for our business. They were pilots.

The CHAIR: Are there other entities, other than these PreLegal and HealthEngine? Are you able to either take that on notice or answer whether there were other partnerships?

The Hon. DANIEL MOOKHEY: Is the Medibank arrangement continuing?

Ms HENDERSON: I would need to take that on notice.

The Hon. DANIEL MOOKHEY: What is the economic importance of the CTP scheme in claims to Slater and Gordon as a percentage of your revenue in New South Wales?

Ms HENDERSON: I am not sure whether I have the authority to answer that question.

Mr DAVID SHOEBRIDGE: Perhaps you can take that on notice.

Ms HENDERSON: Yes, I will take that on notice.

The Hon. DANIEL MOOKHEY: You are a publicly listed company, are you not?

Ms HENDERSON: Yes, we are.

The Hon. DANIEL MOOKHEY: You are required to make such disclosures to the Australian Stock Exchange.

Ms HENDERSON: Yes. If that information is publicly disclosed, yes, you will be able to see it. But I will take that on notice.

Mr DAVID SHOEBRIDGE: Your firm operates in jurisdictions around the country.

Ms HENDERSON: It does.

Mr DAVID SHOEBRIDGE: Are there any jurisdictions you can point to which have a rugged or robust framework for dealing with things such as claims farming—

The Hon. TREVOR KHAN: Queensland.

Mr DAVID SHOEBRIDGE: —that you can point us to that in your experience works in order to stop unethical claims farming practices?

Ms HENDERSON: I have to say that I think New South Wales has done the best job. I do not have experience in any other State about claims farming practices. But in my view, the best way to stop unmeritorious claims is to prevent them from being paid by insurers and to prosecute those who make the unmeritorious claims. I do not think that the referral pathway of itself is the problem.

The Hon. DANIEL MOOKHEY: Is not the best way to deal with unmeritorious claims—

Ms HENDERSON: If I can just finish this to complete my thought?

The CHAIR: I am going to wind this up shortly.

Ms HENDERSON: I do not think that the referral pathway is the route of this evil except that it breaches people's privacy and it is horribly annoying and personally I do not think it is a good thing to do. But the real evil within the compensation schemes is if it promotes unmeritorious claims. When that referral gets to the person who is making that claim, a lawyer or whoever it is who is promoting that, if they do that, that is illegal. The lawyer should be struck off and arrested, the people involved should not be promoted. Slater and Gordon did not do any of that. Yes, we got involved in the referral pathways, which you have visited and some that we have talked about: But did we make unmeritorious claims? No, we did not, and I think that we have a good reputation within the CIP scheme.

Mr DAVID SHOEBRIDGE: Are you comfortable that the regulator is on the lookout, because there were some pretty telltale signs, from what I understand, the same firm getting the same doctor, doing the same reports, with similar classes of claims, and then all being wrapped up in a particular way?

Ms HENDERSON: Yes.

Mr DAVID SHOEBRIDGE: Are you confident that the regulator is actually out there looking for these things?

Ms HENDERSON: By the regulator do you mean the Legal Services Commissioner, or do you mean SIRA?

Mr DAVID SHOEBRIDGE: I mean SIRA.

Ms HENDERSON: They clearly were not. The material that I know is only that, which you probably all are aware, which is the results of Project Raven—whatever it was called. It was very telling. A lot of people fell down in the regulation space, including within the insurance companies for paying out unmeritorious claims on a commercial basis, and others. It seems to have been cleaned up by police action. I think striking solicitors off, jailing lawyers, jailing others involved has been one of the best things that has come out of the reform process.

Mr DAVID SHOEBRIDGE: There were multiple failures.

Ms HENDERSON: Multiple failures.

Mr DAVID SHOEBRIDGE: Multiple failures; the regulator, insurers, law firms, multiple failures.

Ms HENDERSON: Yes, multiple failures, absolutely.

The CHAIR: I will finish there, we are over time. Thank you for coming today. The secretariat will be in contact with you regarding the questions on notice. The answers are required to be returned within 21 days.

(The witness withdrew)

(Luncheon adjournment)

JOHN MURPHY, Chair, Motor Accident Insurance Committee, Insurance Council of Australia, affirmed and examined

JAMES DUNWOODY, Chair, NSW CTP Claims Managers Committee, affirmed and examined

ESTELLE PEARSON, Actuary and long-term advisor to the Insurance Council of Australia, affirmed and examined

The CHAIR: Thank you for your written submissions. Rest assured, members of the Committee have read them. Do any of you wish to make an opening statement?

Mr MURPHY: The Insurance Council of Australia [ICA] welcomes the opportunity to contribute to the Committee's inquiry. The ICA is the representative body of the general insurance industry, and its members include the four insurance groups that underwrite the New South Wales compulsory third party scheme. The ICA remains optimistic that the scheme will achieve the Government's objectives. The scheme's design features are likely to benefit those seriously injured on New South Wales roads and to improve outcomes for many injured people. The cost to motorists has also been reduced.

Premiums collected by insurers in the first six months of 2018 were $320 million lower than those collected in the first six months of 2017, which is a reduction of 23.8 per cent. The ICA is confident that the scheme's design will lead to a greater proportion of benefits going to the most seriously injured road users. Seriously injured not-at-fault road users will now also receive treatment and care for life. All road users will receive statutory benefits for loss of income and treatment for at least six months. The new scheme will also reduce common law claims for minor injuries with a welcome change in focus to recovery and rehabilitation. Early and regular payments for loss of income and timely access treatment and rehabilitation will help to deliver improved return-to-work and recovery outcomes. This will be supported by the vocational education and return-to-work support provided by the State Insurance Regulatory Authority.

The statutory benefit structure means the time taken to resolve many claims will be significantly reduced. While damages claims may still take a number of years to resolve, injured people will be receiving income loss and treatment benefits prior to the resolution of their damages claim. The ICA is optimistic that the Government's reforms will reduce opportunities for claims fraud and exaggeration. The legislation also ensures that any excess profits will be returned to motorists through lower compulsory third party premiums. The ICA will continue to work with SIRA on the excess profit-and-loss adjustment mechanism.

This new CTP scheme is a major piece of reform. As with any reform of this scale, further refinements and classifications will be required. Policy decisions about benefit design necessarily involve decisions about the distribution of finite resources to injured parties. The ICA will continue to work with the Government and SIRA to ensure that refinements maximise the benefits for motorists and those injured on New South Wales roads and maintain scheme efficiency. We are happy to answer any questions the Committee may have.

The Hon. LYNDA VOLTZ: You say there has been a $320 million reduction in CTP collections. Given that your profit margin has gone from 9 per cent to 7 per cent, how much of that $320 million is a reduction in the profits of insurance companies?

Ms PEARSON: Most of that reduction is in the benefits to injured people. There is also a flow-on reduction in the profit margin to insurers and a significant reduction in the amount of legal costs being paid to plaintiff lawyers.

The Hon. LYNDA VOLTZ: We have a bar graph provided as of the motorcycle industry's submission from SIRA indicating that insurance companies' profits from 19 per cent to 7 per cent.

Ms PEARSON: The 19 per cent profit is a hindsight measure of profit rather than a prospective measure of profits. So I believe that the profit margin included in premiums was an estimated 8 per cent.

The Hon. LYNDA VOLTZ: Was? In the past?

Ms PEARSON: In the past.

The Hon. LYNDA VOLTZ: Rather than 19 per cent?

Ms PEARSON: I think the 19 per cent is a measure of hindsight profit. It is a measure of profit a number of years down the track.

Mr DAVID SHOEBRIDGE: No, 19 per cent is the actual profit; 8 per cent was the predicted profit. That is the difference.

Ms PEARSON: That is correct.

The Hon. DANIEL MOOKHEY: To be fair, 8 per cent was the filed profit.

Ms PEARSON: That is correct.

The Hon. DANIEL MOOKHEY: That is the number you filed, and then the actual number earnt was 19 per cent.

Ms PEARSON: That is correct.

The Hon. LYNDA VOLTZ: So if you are reducing from a 19 per cent profit on CTP collections down to 7 per cent, what is the financial figure for the insurance companies on that difference?

Ms PEARSON: I think that there is a misunderstanding. There needs to be an understanding about the difference between the filed profit and the actual profit. In terms of filed profits, the premiums that were in place in the six months, 12 months ago, would have included a file profit margin, I believe, of 8 per cent. The new profits is 8 per cent on a lower number.

The Hon. DANIEL MOOKHEY: So, for the last financial year, or even the current year—you tell me which you would prefer to answer—what was your filed profit and what was your actual profit?

Ms PEARSON: We do not have those figures at this stage.

The Hon. DANIEL MOOKHEY: What are the last available figures that you do have?

Ms PEARSON: I believe that the last available figures are in the SIRA's publication "Motor Injuries Insights" for 2017. I believe that the most recent year that that dealt with was the 2016 underwriting year. From memory I believe that that was showing an estimated profit of the order of 7 per cent. But I would have to take that on notice to confirm those figures. I am working on my memory of the "Motor Injuries Insights" publication.

The Hon. LYNDA VOLTZ: You said that part of the drop in figures was actually a drop in claimant benefits for that $320 million.

Ms PEARSON: Yes.

The Hon. LYNDA VOLTZ: Given that under the old scheme 45 per cent of the average green slip, which was a figure of 230, was being collected. That figure of the new green slip should have gone to 249, or 57 per cent. How has the actual figure dropped?

Ms PEARSON: I am sorry. Could you repeat the question, please?

The Hon. LYNDA VOLTZ: You said less was being paid in claimant benefits. That was where some of that $320 million drop was.

Ms PEARSON: Yes. If I could just clarify, the reduction in benefits is largely around people who had minor injuries, and the legal costs associated with those benefits.

The Hon. TREVOR KHAN: That had been a real problem—the high administrative costs of dealing with small claims.

Ms PEARSON: Yes, we had seen an increase in the number of claims for minor injury between 2008 and 2017—of the order of about 4,000. At the same time, serious injury claims were flat. In fact, road casualties feel from 29,000 to 22,000. Under the new scheme it is estimated that there will be a reduction in minor injury claims of about 4,000, which in essence takes us back to 2008. That is where a lot of the reduction in benefits comes from.

The Hon. LYNDA VOLTZ: Yes, but that is not the question I was asking.

The Hon. TREVOR KHAN: Sorry.

The Hon. LYNDA VOLTZ: The point I was asking about was that you said you had a reduction in CTP collection of $320 million and part of that reduction—that is money you have collected—was claimants' benefits. So it is not an actual reduction. You are saying that there is a drop in expenditure.

Ms PEARSON: That is correct. Under the new premiums—under the new scheme—there is an estimated reduction in minor injury claims of the order of 4,000.

The Hon. LYNDA VOLTZ: Okay. Let's go back to the CTP money collections. Of that $320 million, what is the breakdown? My original question was: how much of that $320 million is actually a reduction in profits? What constitutes that $320 million reduction?

Ms PEARSON: I would have to take that on notice and come back to you with those figures. What I can say at a high level is that part of that reduction is 4,000 less minor injury claims. Minor—

The Hon. LYNDA VOLTZ: Sorry, we are talking about collections.

The CHAIR: Please let her finish.

Ms PEARSON: Four thousand less minor injury claims and a reduction in legal costs across both those claims, other minor injury claims that remain in the system, and some moderate injury claims as well. The focus of the new system is on periodic payments for treatment and weekly benefits and a return to work and rehabilitation.

Mr DAVID SHOEBRIDGE: As I understand it, you are collecting $320 million less in premiums. That is on the expectation that there will be less benefits and other things paid out in those classes. That is what we are talking about, isn't it?

Ms PEARSON: That is correct. It was the escalation in benefits, particularly for minor injury claims, together with the increasing proportion of money going to lawyers, together with concerns about excess profits, in hindsight, being earned by insurers and the high costs of premiums to motorists, that led to reforms.

The Hon. LYNDA VOLTZ: So if there was an expectation that in the future the claims would be reduced and that was why you were collecting less, do you have an explanation for why SIRA's figures showed that under the average green slip price reduction there would actually be more in claimant benefits?

Ms PEARSON: I would have to take that on notice. I do not have SIRA's figures in front of me. There is of course the extension of benefits to those people who are at fault in the accident. I understand that the costing includes about $3,000 or $4,000 additional people who previously had a benefit entitlement of only around $5,000. Those injured people now have access to medical benefits and weekly benefits for up to six months. I would also say that from some very early information that SIRA made available about the profile of claimants, it appears that that at fault claimant group is more severely injured than the not at fault group.

Mr DAVID SHOEBRIDGE: Mr Dunwoody, you might be the person who has the most experience with dealing with claims managers. Can you tell us about the new statutory claims resolution system that has been established and what has been the experience from an insurer perspective?

Mr DUNWOODY: By that you mean you mean the statutory benefits?

Mr DAVID SHOEBRIDGE: The one that SIRA is running, yes, the statutory benefits.

Mr DUNWOODY: Is that the disputes resolution service?

Mr DAVID SHOEBRIDGE: Yes, the DRS or whatever you want to call it?

Mr DUNWOODY: Yes, the DRS. The Insurance Council has submitted to the workers compensation review the design principles associated with what we believe is a strong dispute resolution system. With only about 130 cases, I think, that have gone through DRS it is very early to say and I suppose we will await and make judgement later once we see some more decisions made through the DRS.

Mr DAVID SHOEBRIDGE: But you are not saying anything different here to what you said in the other review, which is ideally you have an independent decision-making body separate to the regulator, that is the preferred model?

Mr DUNWOODY: We have specified the design of what we deemed or believed to be a good dispute resolution model. SIRA and the Government have set up a system that is supposed to reflect this. We have got to see in the future whether this will be the case or not.

Mr DAVID SHOEBRIDGE: Well the DRS thing does not fit your design criteria because it is not independent of the regulator.

Mr MURPHY: It is a fine point but the DRS does not report to the Motor Accidents Insurance Regulator; it is an independent branch within SIRA. It is within SIRA but it is not in the same branch as SIRA as the Motor Accidents Insurance Regulator.

Mr DAVID SHOEBRIDGE: So is it your position that that is sufficient independence?

Mr MURPHY: I think our position is there is no evidence as yet that it is not working.

Mr DAVID SHOEBRIDGE: In terms of the timeliness of the process, do you have any data or information about the timeliness of the process at the moment?

Mr DUNWOODY: Again, it is very early to say. Anecdotally, from what I have heard it has been reasonable but I cannot really comment on any specific examples or a general trend at this stage.

Mr DAVID SHOEBRIDGE: Are you aware of any clear material from SIRA that identifies the process, who is making the decisions and how the decisions are made? Is there a clear structure that has been given to you?

Mr DUNWOODY: Yes. I believe all insurers have been briefed on the process, how it works and how it links into the internal review process. There is transparency through the publication of decisions and outcomes. I believe SIRA has published a few of those already.

Mr DAVID SHOEBRIDGE: A few?

Mr DUNWOODY: Yes, I think approximately five or six have been published but there have been very few decisions made.

Mr DAVID SHOEBRIDGE: Do you think it is fair for SIRA to choose which they publish or should there be a default that all should be published?

Mr DUNWOODY: It is probably fair to suggest that we publish or information should be shared as much as possible, yes.

Mr DAVID SHOEBRIDGE: Do you know in what circumstances a SIRA employee will be put on a DRS matter, what circumstances an external barrister will be put on it and what circumstances another third party, if you know what criteria SIRA is using to determine that?

Mr DUNWOODY: No, I do not have the specifics of it. It is a question for SIRA, I would suggest.

Mr DAVID SHOEBRIDGE: Wouldn't you think that would be important if you wanted to have faith in the independence of a system, that you know on what basis different classes of decision-maker are being put on disputes, whether they are an employee or an external person?

Mr DUNWOODY: Well, that information is publicly available. A list of assessors is available on the SIRA website.

Mr DAVID SHOEBRIDGE: No, my question is not a list; my question is: In what circumstances is a SIRA employee determining something, in what circumstances is an external person determining something? Do you know on what basis that is being done?

Mr DUNWOODY: No, I cannot comment on that, no.

Mr MURPHY: I think that would be a question better directed to SIRA.

The CHAIR: We will be having representatives of SIRA as witnesses later in the day so we will happily direct that question to them.

Mr DAVID SHOEBRIDGE: Lastly, do you know if there are different processes for different classes of disputes; does everything get the same process or do they get different processes and in which case what are the different processes?

Mr DUNWOODY: There are four categories of dispute types—claims disputes, medical disputes, miscellaneous disputes and I cannot remember the last one.

Mr DAVID SHOEBRIDGE: Are you confident that you know the pathways for each of these disputes, how they will be allocated and how they will be determined?

Mr DUNWOODY: Yes, we are pretty confident.

Mr DAVID SHOEBRIDGE: Can you provide, perhaps on notice, what information you have that you rely upon—

Mr DUNWOODY: Yes, absolutely, we can take that on notice.

Mr DAVID SHOEBRIDGE: —to find out how those disputes operate?

Mr DUNWOODY: Sure.

The Hon. DANIEL MOOKHEY: Do you recall that at our last hearing into CTP the Insurance Council advanced a proposition that in order for the insurers to remain in the scheme they would on average be seeking a return on equity of 12 per cent and this was in the wake of the discussion we were having about the independent review of insurer profits which took place in 2015. Do you maintain that view, that that is the sort of return on equity that is required in order to keep the four participants in the scheme?

Ms PEARSON: That is obviously a question for each insurer but we can say that I think that sort of return on capital would still be relevant. What needs to be remembered is that the design of the new scheme aims for the scheme to be more stable and less capital intensive. Therefore, whilst you might have the same return on capital, that would be a lower amount of profit if there is a lower amount of capital.

Mr MURPHY: If I could just add?

The Hon. DANIEL MOOKHEY: Please?

Mr MURPHY: A required return on capital is not a fixed number through time.

The Hon. DANIEL MOOKHEY: No.

Mr MURPHY: It varies according to low-risk rates of return and it would be a mistake to confuse a profit margin with return on capital.

The Hon. DANIEL MOOKHEY: I was not asking about a profit margin. I was pretty clear that it was about whether or not the Insurance Council maintained the view that it adopted two years ago, which is that 12 per cent is reflective of the dynamics that you just described. Is that still the case?

Ms PEARSON: Each insurer will have their own target but 12 per cent probably remains at a reasonable benchmark but each insurer would form their own view.

Mr MURPHY: Whilst interest rates remain low it remains a reasonable benchmark.

The Hon. DANIEL MOOKHEY: Going forward, how many billions in premiums did you collect in New South Wales last year for the scheme?

Mr MURPHY: I do not have the figure exactly to hand but the premiums collected in the first six months of last year was $1.36 billion, so you could roughly double that—about $2.7 billion.

The Hon. DANIEL MOOKHEY: And how much of that was paid to claimants?

Ms PEARSON: To date, a very small amount of that has been paid to claimants. I do not have the numbers in front of me but it would be a very small amount so far paid to claimants, remembering of course in the old scheme, I think the average payment delay was sort of three to four years, on average, so to date there would not have been very much paid.

The Hon. DANIEL MOOKHEY: But the basis of the Government's reform was that generally we were seeing 45¢ out of every dollar collected being returned to claimants?

Ms PEARSON: With the benefit of hindsight, yes.

The Hon. DANIEL MOOKHEY: The Government has adopted a general view that that should go to 57¢, that is correct, is it not, to the best of your knowledge?

Ms PEARSON: I am sorry, I am not familiar with that particular percentage.

The Hon. DANIEL MOOKHEY: Are you aware of how much is paid out in claims in Victoria?

Ms PEARSON: I am not aware of that.

The Hon. DANIEL MOOKHEY: In the last hearing we heard that it was 88¢ out of every dollar collected that was being returned to claimants. Understanding of course that there is a wide variance between 88¢ and 45¢; there is equally seems to be a wide variance between 88¢ and 57¢. Do you have any views as to why the Victorian scheme is able to provide a much higher rate of return off premiums collected to claimants the New South Wales?

Ms PEARSON: I think we would need to make sure that we were doing like with like comparisons.

The Hon. DANIEL MOOKHEY: Do you think we have a dramatically different CTP scheme to that which exists in Victoria so that are not like for like?

Ms PEARSON: I am not familiar with the percentages that you are quoting so I would not feel confident that I would be giving an answer that was comparing like with like.

The Hon. TREVOR KHAN: I suspect later witnesses will make a contribution on that subject.

The Hon. DANIEL MOOKHEY: The last time we had an opportunity to have this dialogue the Insurance Council said it was working on a code of practice with SIRA in respect of the use of surveillance, can you give us a progress update?

Mr DUNWOODY: I cannot comment, I would have to take that on notice.

The Hon. DANIEL MOOKHEY: What about in respect to the four insurers and the practices they have adopted themselves?

Mr DUNWOODY: We have been using surveillance for quite a long time and it has not really changed over time from my understanding. It is something I would have to look into further with other insurers to see exactly what their process is.

The Hon. DANIEL MOOKHEY: How much money is being spent annually?

Mr DUNWOODY: I cannot comment on that, I will have to take that on notice.

Mr DAVID SHOEBRIDGE: Are you saying nothing has changed in how you do surveillance of psychological injuries, despite the promises that came from the insurance industry in the last 12 months?

Mr DUNWOODY: No, that is not what I meant to say.

Mr DAVID SHOEBRIDGE: Please feel free to clarify.

Mr DUNWOODY: What I said is that we have been using surveillance for quite a while in CTP. The effort and the change in the legislation has meant that we are more focussed on a person recovering and getting back to work and getting back to health rather than eyeballing them to see what they are doing. Our staff come in every day and we hire staff based on the fact that they have one motivation and that is to help a person recover and not limit recovery.

Mr DAVID SHOEBRIDGE: You are not aware of any change in terms, the code of conduct or any change in insurer behaviour about covert surveillance on psychological injuries, is that your evidence, Mr Dunwoody?

Mr DUNWOODY: I cannot comment, I will have to take that on notice. I do not have that evidence with me, no.

The Hon. DANIEL MOOKHEY: Are you able to explain claims manager practices of SIRA and the extent to which they are intrusive on insurers and the extent to which insurers have to deploy staff resources to meet the claims management request of SIRA and the CTP scheme? Just shortly.

Mr DUNWOODY: We are comfortable with the current requirements from SIRA.

The Hon. TREVOR KHAN: I am interested in whether you, essentially as the overarching body, have received any advices from insurers with regards to the level of intrusion by SIRA in the day-to-day operation of claims and the like? Let me take by way of example, have you received any advices from insurers with regards to requirements for changes in computer systems, for instance?

Mr MURPHY: It is true that all four insurers have built completely new claims systems for the new scheme.

The Hon. TREVOR KHAN: I accept that.

Mr MURPHY: It was something we needed to do to move from a largely lump sum benefit scheme to a pay as you go scheme. We have invested a large amount of money, individually and collectively, to facilitate the interaction of the new scheme and we have no objection to having done that.

Mr DAVID SHOEBRIDGE: Did not SIRA produce its own duplicate pricing engine? All of the insurers have pricing engines which have a live feed through to SIRA, is my understanding, and SIRA went on and produced its own.

Mr MURPHY: Your understanding is not correct. There is not currently a live feed from all of the insurers' pricing engines to SIRA, but that is in the process of being built.

Mr DAVID SHOEBRIDGE: Did SIRA produce a duplicate pricing engine?

Mr MURPHY: They did.

Mr DAVID SHOEBRIDGE: Who paid for it and what is the benefit?

Mr MURPHY: It is a question you will have to ask SIRA.

The Hon. TREVOR KHAN: Let me put this to you: In the process of building the systems has SIRA put on additional demands, for instance the addition of a gender field? Do you know of that issue?

Mr DUNWOODY: No, I cannot comment on that, sorry.

The Hon. TREVOR KHAN: Are you aware of a change in the requirements to move from the vehicle identification number [VIN] to numberplates as the basis of the unique identifier on claims?

Mr MURPHY: I am not aware of that, no.

Mr DAVID SHOEBRIDGE: What about data uploads, have any of your members said to you that SIRA is making unreasonable or repeated demands for multiple daily data uploads that are causing unnecessary costs? Have none of these issues been raised with you?

Mr MURPHY: There have been robust discussions between insurers and SIRA as to what the most effective way to monitor the scheme is. We agree with and support the need to have good data to monitor the scheme.

The Hon. TREVOR KHAN: So do we. What we are asking: Is it, for instance, necessary for SIRA to require two data dumps per day?

The CHAIR: Three.

The Hon. TREVOR KHAN: I am wrong, three data dumps per day. Has anyone spoken to you about that? People have spoken to me about that. I am wondering why the representative body is not here making a case that SIRA might be engaging in a level of bureaucratic overreach. I say that now because SIRA is going to appear at the inquiry and I will be putting questions. It would be helpful if I had evidence from representatives of the insurers before I put allegations to SIRA.

Mr MURPHY: My understanding is the government's expectation was for real-time data. I would agree with an assertion that there is no practical difference between real-time data and once-a-day data. Real-time data is the long-term objective. I guess in the long-term there is scope that real-time data could provide some genuine benefit.

Mr DAVID SHOEBRIDGE: That kind of anamorphic general bland answer does not help us if we want to address a problem. If there are unnecessary costs due to unnecessary repeated data dumps tell us so we can address it. A bland amorphous everything is sweet and we are having robust discussions is not helpful.

The CHAIR: Is there a question?

Mr DAVID SHOEBRIDGE: Is it creating unnecessary costs and should it be fixed?

The Hon. TREVOR KHAN: Do you want to take it on notice?

Mr MURPHY: We will take it on notice.

Mr DAVID SHOEBRIDGE: Are there any other problems that you can identify that we can fix? From your evidence it is all an eight day clock, it is all terrific. Are there any problems? That is why you are here. Are there any problems?

The Hon. LYNDA VOLTZ: You are just badgering the witness now.

Mr DAVID SHOEBRIDGE: You can take that on notice.

The CHAIR: We have hammered that point.

Ms PEARSON: I think what the Insurance Council says is it is very early days with the new scheme. As issues arise and the insurance council, through its members, becomes aware of issues or aspects that appear overly onerous and the insurers do not understand the benefit the Insurance Council will raise it with SIRA.

The Hon. TREVOR KHAN: I am being told that some insurers are not prepared to come forward personally because they are concerned about their relationship with SIRA and they have raised a number of issues with me. Why I do not know, but they have raised it with me. It seems to me that if I am being told it—I am not quite certain why—you, as the body that provides those insurers with a blind, are not representing precisely what I am being told.

Mr DAVID SHOEBRIDGE: It is not from one source. These are multiple complaints. If we are hearing multiple complaints—and our day job is not insurance regulation—why are we getting nothing from you?

Ms PEARSON: We would need to take that on notice, as we previously said.

The Hon. LYNDA VOLTZ: I have one quick question, the refunds on the CTP scheme last time, did the insurance industry express a view about who should be paying the refunds?

Mr MURPHY: We expressed a view about how they should be repaid. The original plan was for insurers to mail cheques to roughly six million motorists of sizes that would vary from little more than $10 to in

some cases a few hundred dollars and in occasional cases four figure sums. We recommended to SIRA that it would be much more efficient and a much better customer experience for there to be a central clearing house to enable people to get their refunds electronically and that is ultimately what has happened.

Mr DAVID SHOEBRIDGE: But a whole lot of people have not accessed it.

Mr MURPHY: That is true.

Mr DAVID SHOEBRIDGE: But everyone would have got a cheque.

The Hon. LYNDA VOLTZ: You expressed a view to SIRA that it should be done electronically, is that what you are saying?

Mr MURPHY: We expressed the strong view that it would provide a better customer service experience for people to be able to get the money electronically into their account rather than receiving small cheques which they would have to take to the bank. Yes, that is true.

The CHAIR: At least we are getting a refund.

The Hon. LYNDA VOLTZ: Not necessarily.

The CHAIR: Not everybody would necessarily receive a cheque.

Mr MURPHY: I think if people have not claimed their refund it might represent an issue in terms of how effectively it has been communicated. Although, I think it has been communicated quite strongly.

The Hon. LYNDA VOLTZ: Here is an example: I have not collected mine. On 16 August, the State Revenue Office sent me an email saying that I had requested my email address be attached to someone else's and sending me a security code. That implies to me that my system has been hacked or accessed in some way through Service NSW and I am not going to open an account with them if I am not sure it is secure. Perhaps that is a reason.

Mr MURPHY: You do not need to open an account with Service NSW to claim your refund.

The Hon. LYNDA VOLTZ: You do.

Mr MURPHY: No, you do not. If you want to claim it electronically online you do. You always have the option of going to a Service NSW office.

The Hon. LYNDA VOLTZ: I can tell you that has not been adequately—

Mr DAVID SHOEBRIDGE: I did not know that.

The Hon. LYNDA VOLTZ: In fact, we asked that question. We will take that up with SIRA.

Mr DAVID SHOEBRIDGE: What would you say to the idea that if people have not claimed their rebate by a month or two months from now that the industry just mail people their cheques?

Mr MURPHY: The industry does not have the money. The industries provide the money to Service NSW.

The Hon. LYNDA VOLTZ: Maybe the Government could do it.

Mr DAVID SHOEBRIDGE: What do you think about Service NSW mailing people their cheques?

The Hon. TREVOR KHAN: Anything he says is gratuitous.

Mr MURPHY: I think you will find it will create a lot of problems.

The Hon. DANIEL MOOKHEY: Sending people money?

Mr DAVID SHOEBRIDGE: People hate getting money in the mail.

Mr MURPHY: For instance, there would be a lot of unpresented cheques, which creates administration and difficulty. There would be a significant number of cases where the last address on file at Service NSW or RMS is not the correct address. There would be a lot of cheques that would not reach their customers. There was a lot of decision about mailing cheques versus electronic transfer of funds. I think the decision to go to an electronic transfer of funds model was the best decision and certainly the one that provides the best customer service.

The CHAIR: To wrap up, can you comment on whether the stated objectives of the new scheme have been met in respect of reduction of claim times, reduction in premiums, reduction of fault?

Mr MURPHY: The evidence on the reduction in premiums is very clear and absolute. As to the other issues, I think at this point in time we have every reason to be optimistic that the objectives will be met. It is premature to be dogmatic about it only eight months in.

The CHAIR: You will be contacted by the Committee Secretariat about questions on notice. You have 21 days to return those answers to questions on notice.

(The witnesses withdrew)

CHRISTOPHER McHUGH, Executive General Manager, Personal Injury Portfolio and Products, Suncorp, sworn and examined

MATT KAYROOZ, Head of Accident and Trauma, Suncorp, affirmed and examined

The CHAIR: Do either of you have a statement you would like to make to the Committee?

Mr McHUGH: Yes, I do. I thank the Committee for allowing time for Suncorp to appear at today's hearing. My name is Chris McHugh. I am the Executive General Manager, Personal Injury Portfolio and Products. I appear today with Matt Kayrooz who is Suncorp's Head of Accident and Trauma. Suncorp provides CTP insurance in New South Wales under the GIO and AAMI brands with around 1.3 million customers. We welcome the reforms to the CTP scheme under the Minister for Innovation and Better Regulation, Victor Dominello, which was introduced on 1 December last year—a little under nine months. We welcome the expansion of no-fault cover, for which Suncorp has advocated for many years, and the shift in focus from compensation to rehabilitation. This unquestionably makes the scheme fairer and improves affordability for New South Wales motorists.

At the outset, I encourage the Committee to recognise that the scheme needs time to consolidate. While we welcome any minor operational changes to improve outcomes for customers and operational efficiency, this is a long-tail insurance scheme that needs time before any material changes are made. Suncorp will continue to advocate a further expansion of no-fault cover and defined benefits for the future. For now, the Government should focus on stability. In implementing the new scheme, we acknowledge that it requires the need for change in culture from a scheme focused on compensation to a scheme focused on recovering. This presents challenges for all stakeholders, including insurers, SIRA, and the legal fraternity. We need to be aware of the challenge and, collectively, we need to respond quickly to any errors, learn from feedback and ensure we all operate within the intent of the scheme.

As outlined in our submission, we appear today to encourage the Committee to consider monitoring the circumstances of those who are seriously injured and deemed at fault to ensure that those people are not materially disadvantaged; ensure the minor injury threshold operates as intended to maintain scheme affordability; and that the scheme continues to combat exaggerated claims and fraud to maintain fairness and equity. I would be grateful if the Committee would accept a supplementary submission from Suncorp to address the issues raised today by other witnesses.

The CHAIR: Is that a written submission?

Mr McHUGH: Yes.

The CHAIR: Do you have copies of that?

Mr McHUGH: At a later date.

The CHAIR: Yes, we are happy to take that.

Mr McHUGH: We welcome the questions.

The CHAIR: You mentioned the expansion of no-fault cover. Can you speak to that. I accept that at the moment the last thing we need is more change. We have not had sufficient time to register where we are, but given that you have raised it, where do you see that heading?

Mr KAYROOZ: I think there are two aspects to that. The first is meeting community expectations. It is fairly well established that if you ask any motorist or person in the community what does their CTP cover, they will actually say it covers anyone for any injury in a motor accident. The new scheme is heading in the right direction in extending that cover for six months for people, but at the end of six months we have the task now of telling seriously injured people, "Look, if you cannot find someone else responsible for your accident, you are on your own."

First of all, we accept the fact that what we have in the cover is a good move. Following on from that, we need to put in place activities to monitor and measure those people who are at fault, or considered at fault—the cover stops at six months—and track them to see what impact it has had on their lives and what has occurred to them. The second one is to come back and meet the community expectation because people expect to be covered. Adjusting the defined benefits can be done. A full scheme will do that, as well as improving health outcomes at the end.

The CHAIR: Speaking of improving health outcomes, ultimately all of this is about the injured person. From your experience, how has no fault improved that?

Mr KAYROOZ: We have had several claims come through over the last three or four months for which we have spent more than $30,000 in medical treatment for seriously injured people. It is getting them back on track compared with before when there was a limited amount of money. For those people $30,000 or $40,000 in the first three or four months means severe injuries. As I said, it is a good step. Some of those people with serious injuries actually need more. It is a dilemma for us because we are the ones who have to deliver the message. The scheme is great for six months, but it does not continue. I do not think there is all that much extra premium that needs to be put in to extend that cover, but it is working well. Some people's lives would be totally different if it was not for the introduction of the scheme and these changes.

The CHAIR: You have put in your submission that the shift from lump sum to statutory benefits has improved the immediacy of treatment, which would be an upside and a good outcome for those injured people. Can you comment on that?

Mr McHUGH: Obviously the ease of reporting, ease of access. The focus on the statutory benefits is to immediately commence interaction with the injured person and then commence treatment. The earlier we can intervene and engage with an injured person and focus on their injury, the better off they will be, not only for the individual but also for the cost of the claim and the cost to the scheme. Just simply that process of early and direct engagement with the injured person improves the ability to provide service and rehabilitation.

Mr KAYROOZ: If I can add, that really assists in those low-impact collisions with low injuries. We immediately get in there, get them some physio and get them better. We know the medical evidence says that after three months you should be right, and up and going. For the seriously injured, it is a bigger process and we encourage them—

The CHAIR: On the minor injuries, one of your recommendations is that there be a confirmation of the definition of minor injury.

Mr KAYROOZ: I think it needs clarity. In moving forward, with the drop in premium, part of that is actually developing certainty. Without certainty in grey areas, there are fluctuations in claims costs and fluctuations in anticipated costs and after three years there are various fluctuations that result in large fluctuations in end profits, and insurers have actually had the benefit of that over years. Coming in to define the benefit takes away the grey area. Our issue with the minor injury is that the definition of it is still a little bit grey. How it works is a grey area. We should monitor it and watch it, but introducing grey areas, as we said, will introduce uncertainty and will result in flexibility in whether premiums go up and whether there are lower profits than expected or higher.

Mr DAVID SHOEBRIDGE: The rationale that persuaded the majority in Parliament to put a basic statutory definition in while allowing the regulations and guidelines to put in some more finely grained detail around minor injury was that if we had a nimble regulator who could see a problem, they would be able to intervene and tweak the definition of minor injury so the costs of the scheme did not blow out. Do you see some benefit in that?

Mr KAYROOZ: Yes, definitely. Our argument is to get the certainty. We are not saying to change it at the moment. We just need to have a really close watch on it.

Mr McHUGH: We have flagged it as a potential risk but we absolutely believe in that principle and that is how it should operate.

Mr DAVID SHOEBRIDGE: But your recommendation is that Parliament should confirm a definition of minor injury to avoid any weakening through common law claims. That goes against the concept I put to you. I agree that it depends upon a nimble, well-informed regulator, but a nimble, well-informed regulator should be keeping an eye on pressure points on minor injury and then be working with all sides to try to make sure that we do not get a scheme blow out so that we have small-scale constant observation, rather than letting the scheme work its way up to another disaster and then every 10 years have another major statutory intervention. Do you really want a more defined test in the legislation or do you want to leave it with the current model where we can work on it?

Mr McHUGH: I think the principle is right but we still think there is a grey area and it comes down to scheme design and whether or not we want to have sufficiently grey areas and if there are any warning signs or markers—and there potentially may be in relation to the number of legally represented statutory claims in the scheme at this early time. What we are doing is flagging the early warning sign and perhaps that is a solution for consideration.

Mr KAYROOZ: The point with the legally represented claims statistic is that we do not have any problem with serious injury claimants having a legal representative—in fact, we encourage it for serious injuries

straight away—but we are starting to see some claims, where it was a low-impact collision with no observable injury, having legal representation straight away but not having treatment. Over the past two years, we have been quite shocked at what the New South Wales Strike Force Ravens uncovered and we did not expect lawyers to be convicted or arrested and charged. There is a sign there when they are coming in legally represented—it is a sign. We have faith in the system but we are saying that that a weak point in the system with regard to the test for minor injury will come through.

Mr DAVID SHOEBRIDGE: But insurer behaviour was a problem under the previous system whereby insurers were making commercial decisions to cut deals repeatedly with firms that were outliers and that were clearly potentially problematic. Insurers were making commercial decisions which collectively created system-wide problems—wrap this up for $20,000 rather than fighting it for $50,000. If you have kept doing that then the insurers are part of the problem. What have you done in your systems to make sure that you are not part of the problem?

Mr McHUGH: You are right, but it was not insurer conduct that was the problem; it was a point in the process. We are analysing claims far more rigorously with respect to any warning signs in relation to exaggerated claims or unmeritorious claims. We have got particular groups who are now trained and skilled in reviewing those cases. However, our focus should be rehabilitation and the injured person. But we are fundamentally changing the claims management process to be more acutely aware of the warning signs in relation to those unmeritorious claims.

The Hon. TREVOR KHAN: This is one of the problems. Were you here for Slater and Gordon's contribution?

Mr McHUGH: No.

The Hon. TREVOR KHAN: One of the issues that arose was the assertion that the insurers are essentially engaged in a systematic process of disputing causation and that that is raising a whole series of problems with regard to stress on claimants and the like.

Mr DAVID SHOEBRIDGE: The assertion was that the focus has moved from disputing liability, per say, to disputing medical causation.

Mr McHUGH: There is absolutely no systemic process around making that switch. Causation is always a factor that needs to be considered in relation to a claim. However, we think the process needs to start with the questions: should the claim be made in the first instance and is there enough evidence to suggest—I am talking about minor claims—that the claim should be made. It should never get to that point. Causation may be a factor but at the end of the day if an accident has occurred and someone was injured the scheme should respond. That is our intent.

Mr DAVID SHOEBRIDGE: This is not the fraud issue. A concern was raised—which I will allow you to respond to—that insurers' behaviour has changed in the no-fault scheme so that instead of contesting fault, insurers are contesting medical causation. The claim was that it was a noticeable trend and change. What is your response to that assertion?

Mr McHUGH: No, the focus of Suncorp has been to understand the changes, proactively move to a focus on rehabilitation and recovery, as opposed to a liability determination, and ensuring that we are responding within the required timelines.

Mr DAVID SHOEBRIDGE: I will give you the opportunity to take it on notice to check whether there has been any changes in the system, policy or process that has been adopted for the issue of causation to make it a more robust test.

Mr McHUGH: We will take that on notice.

Mr KAYROOZ: We are happy to take that on notice. In reference to what you said about insurers just paying to get rid of the claims, I think that was a fundamental issue of the old common law model. Since 2013, we have been advocating with paper that it is an issue and it is a commercial decision and that is has happened in all common law States in Australia over the past 20 or 30 years. We get to a point where it is a commercial decision. We can go to court and fight it with the adversarial costs and the friction costs, but is cheaper to pay $20,000 than it is to fight for $50,000 and still get the $20,000 awarded in the courts because of various court decisions.

Mr DAVID SHOEBRIDGE: But they are quite different decisions, are they not? Testing things with competing medico legals and fighting with competing medico legals is quite different to getting 30 cases from a particular solicitor with a particular doctor and thinking something is going wrong—they are quite different.

Mr KAYROOZ: Yes, but, again, it is inherent in the system and the whole system works that way.

The CHAIR: Can I move to the new scheme? I have a question about the profit normalisation mechanism. I am interested in the incentives for innovation. I am not sure that we have ever had incentives before, so that itself is radical. You made a comment about your innovations?

Mr McHUGH: From our perspective, the innovation bonus is ill defined or inadequately defined for insurers to be able to adequately invest in innovation outcomes that will improve outcomes for claimants and customers.

The CHAIR: You say that you have but you just have not had guidance on whether it would be acknowledged?

Mr McHUGH: That is correct.

The CHAIR: There is an incentive?

Mr McHUGH: Theoretically, yes there is.

The CHAIR: And that is a SIRA initiative?

Mr McHUGH: Yes.

The CHAIR: Have you asked SIRA for clarification?

Mr McHUGH: We have addressed all the issues we raised in our submission with SIRA.

The CHAIR: What sort of response have you had?

Mr McHUGH: With respect to innovation, they are happy to receive submissions; it is whether or not we receive a response—

The CHAIR: So you have not received a response on it, or it is not clear?

Mr McHUGH: I think the process is ill defined and I think we have to go to revisit what the process is by which we drive that and, equally, the recommendation is that we get better guidance from SIRA on how we would navigate that.

The Hon. TREVOR KHAN: Do you innovate and then go to SIRA and say, "Have a look at what we have done", or do you go to SIRA and say, "This is what we are thinking of doing"?

Mr McHUGH: Our expectation is it should be the latter. It is a challenging one. We should be innovating in a competitive scheme regardless. That said, we also want to be focusing on things that both the regulator and us will see as a benefit for the scheme. So under those circumstances it should be the latter where we go, "This is an opportunity we see. We would like to invest in that opportunity. Would you support that in the context of innovation?"

Mr DAVID SHOEBRIDGE: I have an email—I cannot remember if it came from a Mr Dutton or a Mr Hadley, but it was raising concerns about multiple data uploads. Is that a concern for Suncorp?

Mr McHUGH: Yes, it is.

Mr DAVID SHOEBRIDGE: Can you tell me how it works?

Mr McHUGH: As we have sort of iterated the process obviously there is the desire to have multiple data downloads three times a day.

The Hon. TREVOR KHAN: It is three, is it?

Mr McHUGH: Yes, three. At this point in time we do not see the benefit in multiday data downloads with respect to what it then translates into in customer outcome. Equally, where there are issues with data—if there is some incorrect information—

The Hon. TREVOR KHAN: Like a birthdate?

Mr McHUGH: Yes, which should be correct, absolutely—it is an important data entry that is not always correct. There is a 24-hour period, which theoretically that needed to be rectified. With three data downloads and if you had one of those instances occur on every single circumstance, you have a team of people that are constantly trying to facilitate data rectification as opposed to focusing on injured people and rehabilitation.

The Hon. TREVOR KHAN: Let us suppose you leave a date out because it is not on a form or whatever, what happens when you do your download missing the date or part of the date out?

Mr KAYROOZ: It spits back as an exception and those exceptions we have got a 24-hour turnaround. We get the morning download, we have got 24 hours in the morning to get back and then actually address it otherwise we are in breach of the regulation.

The Hon. TREVOR KHAN: And what happens if you are in breach of the regulation?

Mr KAYROOZ: I think it builds up and we get notices from SIRA that it is not acceptable.

Mr McHUGH: We have raised this issue with SIRA and they are responding to it.

The CHAIR: What is the solution to that?

Mr McHUGH: The multiple data loads are there. Whether or not we see value in that, we think that is onerous.

The CHAIR: But taking that example of the one misreported, how would that be rectified?

Mr McHUGH: With the circumstances we have we need longer. I think they are going to be adjusting it to three days.

Mr KAYROOZ: Three days SIRA proposed.

The CHAIR: Going to the other extreme in that innovation world of real-time reporting, would that assist or is that just a pipe dream of expense? Everybody is setting up their systems to do so, do you think that is a reality?

Mr McHUGH: We have met their requirements with respect to that. I think it is an example of whether or not a cost-benefit analysis has been done in advance of those requirements.

The Hon. TREVOR KHAN: Can I just go back to the example of the three times a day then leading to an objection, or whatever it is called?

Mr KAYROOZ: A breach.

The Hon. TREVOR KHAN: Was there ever an explanation as to why these tight time frames were imposed in the first place?

Mr McHUGH: There may have been explanations in the context of a working party, but certainly at my level in the organisation—I was a member of the implementation group with the Minister and these issues were not discussed or were raised as to why.

The Hon. TREVOR KHAN: Because clearly on both ends of the political spectrum it has been an issue that has been raised by a number of parties with us. We struggle to see the benefit of it. I take it you struggle to see the benefit of it. Is that right?

Mr KAYROOZ: Yes, that is correct.

The Hon. TREVOR KHAN: How does SIRA justify what seems to be an exercise of bureaucratic intrusion?

Mr McHUGH: It is a good question to be posing to SIRA.

The Hon. TREVOR KHAN: I will be.

Mr McHUGH: We are very open in dialogue with SIRA; we raise all of these issues, there is nothing that we raise here that we do not raise directly with SIRA. I think they have got a view that there will be in time both regulatory governance and consumer benefits associated with the infrastructure. I think that is their aspiration and vision. Personally, it is not clear to us, but that is my understanding of their intent.

The Hon. DANIEL MOOKHEY: Firstly, I congratulate you on getting a meeting with SIRA; you have done better than a lot of other people have done. Thank you also for your appearance today. It is good to hear directly from an insurer as opposed to from the Insurance Council—it is quite a different experience. Apart from SIRA checking the integrity of your data entry, what are the other purposes for which they wish to see your data three times a day? Are they shadow-managing your claims management?

Mr McHUGH: As it pertains to claims management, from anecdotal examples in conversations, it enables them to be able to manage a dispute or an issue better.

The Hon. TREVOR KHAN: What, three times a day?

Mr McHUGH: On the concept of real-time data.

The Hon. LYNDA VOLTZ: Is it only CTP or is it the other—

Mr McHUGH: This is specifically relating to CTP.

The Hon. DANIEL MOOKHEY: If it is the case that they wish to have all the information available to them in the event that there is a dispute, that presumes that there is going to be a high level of disputation and therefore they require all the data, and it also requires them to essentially be watching it all the time. How many staff resources did that involve on SIRA's end and how much time is involved on yours?

The CHAIR: I think that is a question for SIRA.

The Hon. DANIEL MOOKHEY: How much is involved on yours?

Mr McHUGH: That is a very complicated question because it starts with the infrastructure build. It has been a very expensive process and obviously in relation to exceptions there are numbers of staff involved in that process.

The Hon. DANIEL MOOKHEY: How much staff does Suncorp have to deal with SIRA?

Mr McHUGH: We operate across both workers compensation in the management of the scheme—

The Hon. LYNDA VOLTZ: You can take it on notice.

Mr McHUGH: We will take that on notice.

Mr DAVID SHOEBRIDGE: As I understand it, when policies are written there is a risk equalisation mechanism. I have heard it suggested that SIRA's model is enormously complex and unnecessarily complex, which is creating unnecessary costs. Maybe that is not right; maybe it is fine for Suncorp, I do not know. But are there concerns about the risk equalisation mechanism and whether or not it is producing unnecessary costs?

Mr KAYROOZ: I think we are being very open in our suggestions of the risk equalisation mechanism [REM] coming in. From the very start we said you do not have the claims experience to develop a complex model as to where you want. The extremities are really obvious—younger drivers, new cars, regional areas, older drivers—

The Hon. DANIEL MOOKHEY: My mum.

Mr KAYROOZ: We suggested that it should be eight or nine buckets to start with. As we get experience and start to develop it it has been extended to over 144 buckets—a very complex system, which has involved massive work and actuarial work to try and put it in place and the accuracy of it is doubtful because of the complexity of it.

Mr DAVID SHOEBRIDGE: Could you on notice, because 144 seems a lot, give us some indication of what the cost of that might be incurred by Suncorp to deal with that? And maybe if you have got suggestions about the way forward it is an invitation to do it on notice.

The Hon. DANIEL MOOKHEY: Equally, on notice or now, the same with the profit normalisation mechanism and SIRA's work in that.

The CHAIR: Thank you, gentlemen, we appreciate your time today and your providing a submission to us. The Committee has resolved that questions on notice should be answered and returned within 21 days. The secretariat will be in touch with you about that.

(The witnesses withdrew)

TERRENCE STERN, Chair, Injury Compensation Committee, Law Society of New South Wales, affirmed and examined

ROBERT SHELDON, Chair, Common Law Committee, New South Wales Bar Association, affirmed and examined

ELIZABETH WELSH, Common Law Committee, New South Wales Bar Association, affirmed and examined

ANDREW STONE, NSW President, Australian Lawyers Alliance, affirmed and examined

The CHAIR: Welcome, thank you for joining us today and for providing written submissions to the Committee. We welcome your attendance and your input. Do any of you have a statement you would like to make to the Committee first?

Mr STONE: First of all, I extend to the Committee thanks for having us here. We very much value and appreciate this process and the review that it brings. Such is our enthusiasm for it that you will note that one of the Australian Lawyers Alliance [ALA] recommendations is, that at least in the short term, this Committee move back to an annual review of the CTP scheme. When the 1999 Act was commenced this Committee did conduct an annual review of it. It was felt when the scheme was stable and functioning smoothly that the Committee could drop back to a two-year review, and given how new this scheme is, and given the significant number of issues we are bringing forward raising with it, we would like the Committee to give some consideration to coming back to an annual review.

The second thing I would like to do is acknowledge that Mary Maini and her team at SIRA have been remarkably helpful and patient over the last six months in dealing with the new scheme in terms of: (a) their sharing a data, which has generally been very good; and (b) their willingness to take what seems like endless phone calls from me drawing to their attention teething issues with the new scheme. So, kudos to them; they are consultative and they are approachable. My usual complaint is that does not extend to what they are willing to do in relation to this Committee. Yet again, you have the blancmange submission that tells you nothing about anything that is going on within the scheme. We do not know what is going on with the vast majority of statutory benefits claims because they do not see lawyers. Claims Assist, on the other hand, is in touch with all of them. And where is something from Claims Assist telling you about the claimants' experience? We get statistics on how many phone calls Claims Assist make, but we get told nothing back from Claims Assist about: These are problems. Are you experiencing the same problems? How can we work together to address them?

Lawyers do not want to be involved in statutory benefits claims. We want an insurer to get together with a claimant, sort out what you need by way of weekly payments and sort out your treatment expenses. We have no interest in being involved in that, save that we want the claimant to be treated properly and fairly. The concern is that from the smallish number of claims that are being seen by legal practitioners, there are multiple instances of claimants not being treated property and fairly, and we have given you a number of case studies in relation to that. This was all predicated on cultural change. Lawyers would get out of statutory benefits; claimants would be treated differently by insurers. That means insurers writing them letters properly telling them about their entitlements, sending them letters that are accurate and truthful. And yet we have seen too many examples of that not occurring. If you are taking lawyers out of the playing field of statutory benefits, then the insurers should be de-escalating from their usual full war footing that they bring to litigated claims.

Yet, within the statutory benefits regime—all right, except that they will still use claims staff who are highly experienced and legally trained—you might have hoped they would start accepting some of the words of treating doctors and relying less on the usual suspects such as medico legals. Yet, we are still seeing plenty of paid medico legals within the statutory benefits scheme, rather that relying on treating doctors. We are seeing investigators being sent out to people's homes to take statements from them—and of course I have my suspicions about what occurs when that happens—to try to cut off people's future benefits. We have seen for statutory benefits claims, just to work out somebody's weekly wage loss, insurers paying more than $8,000 to forensic accountants to produce 50-page reports to shut down somebody's weekly benefits claim, who is self-employed. Yet the claimant is meant to, on their own, contest or challenge whether a forensic—I struggle to read some of those reports, let alone the average member of the public to say: This is why you have miscalculated my weekly benefits.

We have come across a case more recently of the insurer using an accident reconstruction expert, sending it off to say: From that level of impact you could not possibly have this level of injury. Get me involved and I can tear those reports apart, but an average member of the public, how are they even meant to know that they can challenge it, let alone pursue it through an internal review and then have a lawyer for $1,600 take that through a

merit review to dismantle a report that the insurer will have paid upwards of $5,000 to obtain? Why is all of that still going on over disputes where the margin is a couple of hundred dollars a week in your weekly benefits for pay? Yet, that is what we are seeing. There is enormous concern. We have given you examples of those sort of teething problems in the statutory benefits scheme. SIRA is not stepping up and saying: Yes, this is happening. Frighteningly, one of the insurers seems to have—with a number of claimants—managed not to take any tax out of their weekly payments and has started writing to people saying, "When you get your tax refund, you owe us some money. So, could you let us know when your tax refund comes in because we would like some money back."

The Hon. DANIEL MOOKHEY: Which insurer?

Mr STONE: Allianz. I do not know how many, it could be five, it could be 50. I have asked SIRA for how many people are involved and I do not know. They might be able to tell you.

Mr DAVID SHOEBRIDGE: Did SIRA say that should not be happening?

Mr STONE: Yes, of course. I am not even sure that CTP insurers across the board are sending people pay slips for their weekly payments so people can check that the right amount of tax is being taken out. Yet SIRA do not come to this group and say, "There are teething problems within the scheme. Here are six of them. Here is what we have done to address them. Here is 10 of them and here is what we have done to address them." They are very good at talking to us; less good at talking about it publicly. The final two points from me—just by way of tidying up on some of the ALA submissions—the good news is that I believe the 151Z problem that we addressed you about, we need not take you to. It is being fixed and I anticipate it will be fixed retrospectively on the Minister's commitment. That will solve that problem.

The other one is, you may have detected a degree of passion in the submission about sending foreign tourists home with nasty injuries and absent insurance where we have pulled them apart on New South Wales roads and we are not prepared to pay to put them back together. The Singaporeans have had their stoma reversals done in Singapore. They have paid for it themselves. They are out of pocket to the tune of tens of thousands of dollars. The good news I can report is that this week Allianz did offer them an advance on damages, for one of them, that will at least tide over some of the short-term problems. But there is still a major problem in that area that needs to be fixed, that costs next to nothing to fix and it stops us being as horribly mean as we are currently being on a complete misunderstanding of how travel insurance works. That was an opening from me.

The CHAIR: When you say it "costs next to nothing", do you have any basis for that?

Mr STONE: I am not the actuary. I had raised it asking can we have a costing on what it would cost to revert to paying the treatment expenses of people going back overseas and I have not received an answer. I understood those inquiries were being made. SIRA may be able to tell you what the cost is. But SIRA will say that it is government policy, I anticipate. I would like to think that government in implementing that policy at least worked out what it was costing and what they were saving.

The CHAIR: Are there any other opening statements?

Mr SHELDON: The Bar Association endorses just about everything Mr Stone just said. We have one major problem at the moment dealing with the terms of reference for this Committee. That is the term of reference that directs attention to the question of the proportion of benefits going to the most seriously injured road users. Members will have seen in our submission an estimate calculated by reference to Minister Dominello's statement about the number of cars on New South Wales roads, the average premium, and the amount thereby collected as risk premium by the insurers, which we think is very close to $1 billion in the nine months so far this year.

Looking at the monthly filing summary that we have been provided with by SIRA, we think that about 2 per cent of that has been paid out in circumstances where the Minister was suggesting that 53 per cent would be paid out in the first 12 months. We are not anywhere near the percentages that the Minister suggested and we are nine months into the year. He did not draw any distinction between the first or any other period of the 12 months. The second element of that arose yesterday out of something attributed the Minister on Channel 7, to the effect that—this deals with the profit equalisation scheme—any excess at the end of three years over what is the determined acceptable profit will go back to motorists in the form of either reduced premium or remission of premium previously paid.

If that were to occur, we understand it to be a fundamental departure from the basis upon which this scheme was championed inasmuch as a figure was set for the average green slip involving an average reduction in premium. Throughout the consultation process it was made—we thought—fairly clear that if the scheme could be made to perform as desired, any slack would go to the injured people. We see that as a fairly fundamental issue, particularly in circumstances where, as things stand at the moment, the scheme is not compensating people as the Minister indicated it was intended to do.

Mr STERN: I do not want to duplicate or to repeat anything which has been said and with which the Law Society agrees. I was involved in the whole of the process of the formulation of this legislation. It was arrived at after a long actuarial process that costed each of the elements. After costing the anticipated 7,000 at-fault cases for six months after costing common law and after costing all the other elements, it was determined that there had to be a radical truncation of the rights of people with minor injuries because there was not enough money to go around. If members were to look at the compulsory third party scheme for the period 1 December 2017 to 31 July 2018 and the number of at-fault claims, they would see that to date there were 658.

It is quite obvious that the end-of-year figure will be massively down from 7,000. Yes, it is early days and some of those 2,465 fault-not-yet-determined cases will be decided to be at-fault at the end of the day, but most of them will not. That that is so can be seen from the figures published earlier in the year given there has been time to make the adjustment, and the figures have remained consistent. The only conclusion that is likely to be able to be drawn is that there was and will be into the future an over-estimation of the number of people at fault and the cost of the scheme to them.

I said I did not want to repeat or to duplicate what has previously been said, but the Law Society strongly agrees with the statement made by Mr Sheldon that the purpose of the scheme was to properly compensate injured people. Where it can be seen that it has failed to do so for a large number of people with injuries classified as minor but which are not really minor in terms of the consequences, real consideration will need to be given at some time down the track—perhaps in another year—to a re-costing of the scheme to see will whether it is appropriate, feasible and just to rework the definition of "minor injury". Ms Welsh from the Bar Association has dealt with that and I have no doubt she will speak to it again, so I will not repeat what she said.

As the Committee knows, the Law Society has been arguing very strongly for a personal injury tribunal. Members will have seen the arguments for it in submissions, so I will not repeat them in any detail. Obviously members will have taken on board the Law Society's advocacy for legal representation, so I will also not go into that.

The CHAIR: We have that in your submission.

The Hon. DAVID CLARKE: Mr Stone, in your opening comment you referred to "bad examples" of process behaviour. You talked about treating doctors being up against medico legal doctors, and you referred to insurance companies spending whatever it takes on long reports and writing to injured parties requiring them to refund tax and so on. It is behaviour not in the spirit of what the new scheme was meant to represent. How is this to be fixed? Will it be by way of voluntary change of attitude, by way of SIRA being more forceful, will it require legislative intervention, or will it require a mixture of all three?

Mr STONE: There has to be some voluntary adoption of cultural change. There certainly has to be some very proactive regulation by the regulator. In fairness, I am aware that some vigorous action has been taken quietly by the regulator. However, again, it distresses me that the regulator does not come before this inquiry to tell the Committee about the vigorous action it is taking because it seems, at least for the purposes of this group, "nothing to see here" is the only submission it is capable of making. That frustrates me beyond belief.

The Hon. TREVOR KHAN: You should be on this side of the desk.

Mr STONE: I want to be on that side of the desk. Does the Hon. Trevor Khan think that I do not want to examine the regulator?

The Hon. TREVOR KHAN: We should probably do a hot-tubbing exercise.

Mr STONE: If the Committee ever wants a counsel assisting, I am up for it. The legislative remedy has to come after the first two have been tried. SIRA must be prepared to turn up to tell the Committee what it has been doing and to explain how widespread the problem is. My problem is that within the statutory benefits regime I hear what feeds back to me through people who go to solicitors. The vast majority are not going to solicitors and I do not know what is happening to them. I do not know whether they are being bullied out of their entitlements or if they are being paid fairly and properly. I must trust SIRA and what it learns through the claims assist process to report back on whether or not it is working.

Mr DAVID SHOEBRIDGE: But we also need to see from SIRA, what kind of expenditure insurers are doing in meeting these statutory claims, don't we?—if it is an outlier that they are spending $8,000 on a forensic accounting report or if they are really gearing up and spending a large amount of scheme money in trying to defeat statutory benefits in circumstances where workers or motorists are not represented.

Mr STONE: We know the answer to that. In the first six months there was $1,650 paid by the scheme to plaintiff's lawyers to represent people and there was just over half a million dollars—wasn't it, Ms Welsh?—paid by insurers in investigating that would be medico legals, investigators, forensic accountants and accident

reconstructions. Sorry, Ms Welsh is telling me that medico legals was $25,000 and their investigations was up to nearly $1.4 million. So, whatever every "insurer investigation" is, it is $1.4 million.

Mr DAVID SHOEBRIDGE: That might be defined as unilateral disarmament.

Ms WELSH: No, when the insurer refers to medico legal, that is outsourcing a medical opinion, but they have in-house medical people who they call upon to give opinions about these claims. We do not necessarily know what the opinion is; we just get the feedback that someone did not get an approval for something because someone has given an opinion. So there are a whole lot of resources in the background that are not going to show up on these document. There are still medical professionals who are called upon to decide whether something should be disputed or not.

Mr DAVID SHOEBRIDGE: What about in-house legal resources, as well?

Mr STONE: A number of their claims staff are 20- or 30-year solicitors. In one of the case studies the ALA gave you—with due respect to the gentleman from Suncorp here earlier—was, I think, about GIO. On an internal review over whether there was a minor psychiatric injury the GIO staff member conducting the internal review preferred their own psychiatric opinions, looking up the DSM, than the opinions of the treating psychiatrist, and had been on the telephone to the claimant adducing evidence from the claimant to support the opinions that they were providing. SIRA say, "No, we want the insurer to talk to the claimant." That involves an enormous amount of trust on our collective parts that what is occurring during those conversations is to assist the claimant in their best interests, rather than getting them to make the admissions against their interests.

To give you another example—I do not know if Ms Henderson have you this one earlier today—a claims officer had rung the parent of an injured child. The dad had replied, "The boy is doing okay." And "The boy is doing okay," combined with what was in the medical certificate in the claim form was enough to say that it was a minor injury. All we needed was a photograph of the boy because he had a scar from eyebrow to eyebrow, and that gets you beyond minor injury. Apparently, the claims officer did not ask for that of dad, and had not requested any reports from treating doctors in ruling it to be a minor injury.

For all I know, these are the only five bad cases that exist in the system but I do not think so. It would be odd that it is just those ones that come and it is not happening to a whole lot of other people who do not know that they have some recourse. And do not get me started on the 28 days and the Interpretation Act. That was a complete piece of nonsense.

Mr DAVID SHOEBRIDGE: One of the recommendations—I think it might have been one of the ALA's recommendations—is that the work that the WorkCover Independent Review Office [WIRO] is doing in the worker's compensation scheme should be mirrored in the statutory benefits part of the CTP scheme. Do you think that that would at least put a cop of the beat, almost?

The Hon. TREVOR KHAN: I do not think he has to spend terribly long addressing this issue. He has got us over the line—

Mr DAVID SHOEBRIDGE: Maybe you and me, I do not know.

Mr STONE: I think there is a good deal of advantage to that. I do not want to undersell that when I get on the phone and email SIRA there are people there working very hard to try and address some of the issues. But, yes, I am with you entirely.

The Hon. TREVOR KHAN: No, I am with you.

Mr DAVID SHOEBRIDGE: This is lovely to watch!

Ms WELSH: Can I say something about Mr Clarke's issue? There is a step that precedes that, which is that this scheme was designed on the assumption that this would be a scheme in which insurers acted very differently to the way that they behaved under the old scheme. It was an act of faith from the Minister that we would not see this insurer behaviour any more. The problem with that assumption is that it was completely misconceived because it is in their DNA to say no. If you give an insurer an opportunity to say no they will take it whenever they reasonably can. I am not even take the extra step there of saying "when they reasonably should". But that is what their job is. They do not want to spend the money. They are not going to spend it if they do not have to. The culture change has not happened, and I do not think it will happen.

The Hon. TREVOR KHAN: With respect, I think that is two different points. Cultural change in any organisation is profoundly difficult, whether we are dealing with pre-revolutionary Russia or post—

Ms WELSH: Sure.

The Hon. TREVOR KHAN: It is the same people who are operating the system, and they operate in a particular way. That is a slightly different issue than insurer DNA. Cultural change is profoundly difficult to achieve and that is, I suspect, what we are seeing. I half want to agree with you, but I am not going to paint the bogeyman—

Ms WELSH: I do not expect everyone to completely agree with that statement.

The Hon. LYNDA VOLTZ: It perhaps goes to the point made by the professors who did the studies about the no-fault claim and people feeling that they will be looked after. The system is still adversarial.

Ms WELSH: The thing is that for the 26 weeks that you are meant to get the no-fault benefits if you have a minor injury—or anyone; it does not have to be a minor injury—the perception was that that would be a relatively easy thing to get. If you needed it and your treating doctor said you needed it, it would be provided. What is happening is that if a treating doctor says, "My client needs to see a psychologist," it is being second guessed or the referral is not good enough and you have to go back and get another one. There are barriers put up all the time, and these people who are unrepresented are easily defeated. They are not going to keep going back. Once they are rebuffed—twice or three times et cetera—they are going to give up.

The Hon. DAVID CLARKE: When does one have to start looking at legislative intervention?

The Hon. TREVOR KHAN: Not now!

Mr STONE: The problem is that it is very hard to design legislation that deals with that. The concern around the behaviour is that—

The Hon. DAVID CLARKE: We are not talking about big changes, here. We are talking about cultural—

Ms WELSH: The insurers should just relax a bit. There is plenty of money in the scheme. They should just pay these people for their wage loss for the first 26 weeks if they have a medical certificate and give them some medical treatment. They are meant to be helping them.

The Hon. LYNDA VOLTZ: That 1.7 per cent that you have identified is all that is being paid out at the moment—

Ms WELSH: That is right.

The Hon. LYNDA VOLTZ: —out what should have been about 50 per cent.

Mr SHELDON: According to the Minister it should be 53 per cent of the premium collected to date. Can I just come back to something Mr Shoebridge said and reiterated by Mr Khan. And I will deal with your point as well, Mr Clarke. It is not necessarily the case that this is culture. What has happened—the way we see it—is that the insurers have enormous resources—financial, legal, medical and facts investigation, whatever. Essentially, each injured road user is, on his or her own, dealing with a massive organisation. So we fear it is an opportunistic occurrence whereby the little guy is being pushed from pillar to post to achieve a particular outcome within his claim or her claim for that insurer. The overall position reached is that not to many people will get much money.

At the moment we would suggest that the figures support that view. The anecdotal evidence supports the view that there are opportunistic behaviours emerging, which are not necessarily the same as those in an adversarial system or to be attributed to culture. In the old system, eventually they knew they would have to confront a properly prepared and resourced claimant. In this one if they play their cards correctly they do not need to confront a properly resourced claimant at any point. So, to answer the last question you put, some sort of moral presumption—rather than legal at this stage, because it is so early—in favour of the treating medical opinion should be the sort of prevailing approach that is taken by the insurers, rather than, as Mr Stone said, escalating it into a sort of preparatory scuffle for a subsequent litigated claim, which, as we understood it, is to be avoided in most cases.

Mr DAVID SHOEBRIDGE: Some sort of higher threshold? There may be exceptional circumstances to not accept the treating doctor's opinion on a treatment course or a capacity issue.

Mr STONE: It says that at the moment. The guidelines provide that you have to have good reason to not rely on the treating doctor's opinion and organise a medico legal report.

Mr DAVID SHOEBRIDGE: It that test too light? Most people, if they have a reason, think that it is a good reason. Maybe it needs to be an exceptional reason.

Mr STONE: I am more than happy to see that be the higher standard in the guidelines.

Mr DAVID SHOEBRIDGE: Do you agree with that construct? Most people, if they have a reason, normally think that it is a good reason.

Mr STONE: Yes.

Mr DAVID SHOEBRIDGE: So almost any reason is enough to deviate?

Mr STONE: That is in part a regulator who is prepared to stand over you and say, "No, no. That is not a good reason. Go back and redo it", but that requires the regulator to be there. I come back to Mr Clarke and say that I think there is one tool in the kitbag about which we have made submissions and about which I very much invite you to ask SIRA this afternoon, and that is: Publish comparative data, in that this Act for the first time gives the capacity to publish identified data saying, "Insurer X is doing this well, insurer Y is doing that well". Until this Act it had always had to be that the industry data was published in aggregate.

We made a specific submission: When are we going to see this? That, I think, will have enormous market power if you are the lagging insurer on admitting liability, in making payments or if you are the one alleging excessive amounts of contributory negligence; that will bring at least market forces to bear on the conduct. We have been asking SIRA: When is the first comparative data going to be published about insurer time lines and conduct within the scheme?

The Hon. TREVOR KHAN: And their answer?

Mr STONE: Have not been given a date as to when we are first going to see some published.

The Hon. DANIEL MOOKHEY: Are they committed to it?

Mr STONE: I cannot answer that. It is in the Act and it has been talked about. Indeed I have been saying to them, "Sit down with us and talk about what would be some useful comparative data because what you do not want to do is ask for comparative data that then sees people gaming the system?"

The Hon. DANIEL MOOKHEY: So what is the useful comparative data that they should be publishing?

Mr STONE: Dates or period of time to making payment for treatment expenses; delays in admitting liability.

Mr DAVID SHOEBRIDGE: Proportionate claims accepted or rejected?

Mr STONE: Proportionate claims accepted versus rejected, proportionate claims where they are alleging in excess of 50 per cent contributory negligence. There are all sorts of markers that you could build in that would kick who is doing well and who is not. To be blunt, that is exactly the data everyone should look at when they buy their CTP policy.

The Hon. DAVID CLARKE: What was the response to your request to SIRA to sit down with you to put into effect what you laid out?

Mr STONE: "It's on an action list we haven't got to yet".

The Hon. TREVOR KHAN: Are you able, on notice, to give us a list of the key performance indicators [KPI] you think would be appropriate?

Mr STONE: Yes.

The Hon. DANIEL MOOKHEY: In the absence of such data being published, are you able to identify anecdotally now an insurer that is doing the best and an insurer that is doing the worst? We have no rules of evidence here.

Ms WELSH: I do not think I can.

The Hon. DANIEL MOOKHEY: You might wish to take it on notice.

Mr STONE: No, it just invites so many phone calls.

The CHAIR: SIRA can do the work for you.

Mr STONE: In fairness, you have to draw the distinction between new staff poorly trained versus systemic, and that is hard. I am accepting that this has been a vast amount thrust on the insurers at short notice that has required them to hire a lot of new staff, some of whom I really feel have not got much idea what they are doing and are out of their depth. Again, I have to do the mental calculation across to market share. I get no complaints about CIC Allianz because that subset of Allianz has almost no market share; NRMA has over 30 per cent market share.

The Hon. DANIEL MOOKHEY: Perhaps we should concentrate on the insurers that have a large market share?

Mr DAVID SHOEBRIDGE: Or perhaps you can take the question on notice?

Mr STONE: I would be reluctant to answer that question on notice. On the other hand, it is a very fair question to ask of SIRA because they are the regulator; I am not.

The CHAIR: We will have the opportunity to do so.

Mr STONE: I will go this far. I think QBE is probably doing a little better across-the-board than the other three. I do not know that I would draw rankings between the next three. I think QBE is doing a little better; they have not been perfect but I think they have been a bit better at addressing it than some of the other three.

The Hon. DANIEL MOOKHEY: Are you detecting anyone who is particularly good at the culture change dimension that you described?

Mr STONE: I am a poor judge of that because the things that come to me are where it is going horribly wrong and usually capable of being documented. Who is friendlier when they chat on the phone to people? It is hard for me to tell because I am not there when they telephone the claimant. There are 20 members of the claims assist, plus members of the claims assist staff who are assisting claimants to talk with insurers. A poll of them would probably be more useful than a poll of me. I would love to see that outcome.

Mr DAVID SHOEBRIDGE: One of the key changes in the scheme—and there is a kind of rationing mechanism—is the definition of minor injury. One of the purposes of not having a firm and absolute statutory definition was so that as problems became apparent, either a blowout in costs or an unfair operation, that could be changed without it having to come back to Parliament. One of the concerns you raise is particularly back injuries and how the definition of minor injury is excluding a lot of quite significant injuries from ongoing compensation. Do you want to expand on that?

Ms WELSH: For my part, I am keeping an eye on that but we have only just got to the sixth—we are at the eight months now—but it was only after six months that people started to leave the scheme if they were designated to have a minor injury. We have not really got a feel yet for how many examples there are of people with significant neck and back problems who are out of the scheme but there are definitely people with significant ongoing soft tissue injuries who cannot work because of their injuries and I think over the next few months we should have a better feel for what is going on. It may take another six months to be able to say anything that is based on enough examples to be able to say something that might be reliable. I wish I could say more but it is very hard at this stage.

Mr DAVID SHOEBRIDGE: Are there any other emerging pressure points on that definition of minor injury?

Ms WELSH: The anecdotal evidence that I am getting from the claimants with whom I have had contact is that every time they ring an insurer it is reinforced to them that they have soft tissue injuries. It is a real reinforcement—"You have a minor injury. You have a soft tissue injury." There is definitely an eagerness to get people into that minor injury categorisation early and maintain that. I think that is another thing that could tend to deter someone. The thing that goes with that is that a lot of those people with minor neck and back injuries, which can be quite significant whiplash injuries with a lot of pain, is that they can have some psychological issues.

I have seen some examples of insurers fobbing off requests for psychological treatment in those people. I see that as a way of cutting off a potential way across the minor injury test because if those people did have a psychological condition that was more than an adjustment disorder, they would not have a minor injury. I think that the insurers are focusing a lot of attention on getting those people out of the scheme early and not giving them psychological treatment because they see that as a potential issue that is going to arise.

Mr DAVID SHOEBRIDGE: I thought, maybe from the Australian Lawyers Alliance submission, that there seemed to be a problem with the definition of minor injuries insofar as for back or cervical injury someone had DRE2, which is like an identifiable product, unless it is producing radiculopathy or impacting upon a nerve, they are not meeting the definition of minor injury. I could be wrong; maybe I misread it?

Ms WELSH: That is right—you have to be three.

Mr STONE: There is the gross inconsistency that somebody could have a DRE2 level of impairment, which is 5 per cent whole person impairment in cervical, the thoracic and the lumbar spine. It would be 15 per cent whole person impairment yet it would still be a minor injury. That is grossly inconsistent. We are too early to say. I have to say it is relatively rare to get the trifecta. Quite often you will get cervical and lumbar; the thoracic spine is a little bit more sturdy. You do not often get your 5 per cent for the thoracic.

Ms WELSH: But a 10 per cent whole person impairment is enough to wipe someone out of manual work if they are a labourer, a panelbeater or a construction worker. They would be minor and they would be out after six months. If they are in their thirties, it is going to be catastrophic for them.

Mr STONE: But what we do not know is the number of those people who will have a 10-centimetre scar, a cracked rib or something else that takes them over minor. What we do not really have any feel for yet is those who are dragged out purely because it is neck and back versus those where, oddly enough, something that is less troubling to them than their neck and back sees them stay within the scheme and their neck and back covered. We are probably another six months away from having meaningful data on that.

Mr DAVID SHOEBRIDGE: One of the other aspects that was raised in your submission is the nature of the current dispute resolution model for statutory benefits. Do you think there has been sufficient information coming from SIRA about the processes that are followed and the independence of the statutory benefits dispute resolution model? How is it working?

Mr STONE: There have been five or six de-identified decisions published on the SIRA website. The very first of them was one involving a wages dispute. The decision itself ran to 20 or 30 pages. I am not sure that a member of the lay public could have read and understood the decision. It was one that involved a challenge where the insurer had challenged the weekly payments using a forensic accountant's report. The assessor found that the claimant, having gone and got some evidence from their own accountant, presumably at their own expense, to meet the forensic accountant report, for which I suspect the insurer had to have paid more than $5,000, you could not get it for less than that, the assessor preferred the claimant's accountant over the insurer's accountant in terms of how they treated deductions in trying to work it out.

This is proving horribly complex for people. I have seen numerous requests where the first thing the insurer says is, "We have to work out what you have earnt over the last 52 weeks, can we have 52 weeks of pay slips? And can we also have your bank statements for the last 52 weeks?" Blow the privacy on whatever else might be in your bank statements that they can then look over, but "we need 52 weeks of bank statements so we can see all the deposits going into your bank account". There are quite onerous demands being put on people to meet what was meant to be a simple and straightforward issue. Especially for the self employed, they are getting hammered in statutory benefits.

The Hon. TREVOR KHAN: This is the second time I have heard of the 52 weeks of pay slips. It is a long time since I have worked in a company but insurers would often ask for an annualised indication of pay and you would press a button on a computer, this was early 80s, and you would get a 52-week statement of what the employee earnt. Is that difficult?

Mr STONE: If you are off work and your place of work is an hour away from where you are then that might be difficult. Why they are not calling your employer and getting the data for themselves rather than making the injured person, trying to get on with their recovery, run around and get it.

The Hon. TREVOR KHAN: Is the CTP insurer entitled to ring their employer?

Mr STONE: Yes, you have signed an authority on the claim form that allows them to request information from your employer.

Mr DAVID SHOEBRIDGE: It is standard. You give them permission to access employee and medical records.

The Hon. TREVOR KHAN: I have heard of the 52 weeks of pay slips, but the computer says yes or no and it seems to me an employer can provide that information without a great deal of difficulty. I would have thought you ask an employee for 52 weeks of pay slips and if they are anything like me you would have real difficulty providing last months let alone 52 weeks worth?

Mr STONE: And you are fortunate that you have held the one job for 12 months. But if you, as many people now do, work doing labour hire across three different labour hire companies and 20 different placements in the course of a year it becomes a whole lot more work.

The Hon. TREVOR KHAN: True. That may entitle an insurer to seek information that goes beyond a few weeks concerning the earning capacity of that employee.

Ms WELSH: You do wonder why. If someone has a job at the time of the accident then they have the job and they are not doing it, it does not matter how long they have had it. Why would you not look at what they were making at the time? Why do you need to go back 12 months?

The Hon. TREVOR KHAN: I do not disagree with that. Twelve months seems to be extraordinarily long and I do not understand that. But, if it was three months, you could still say the computer says give us a break down.

Mr STONE: If there is one employer. It gets more complex beyond that. It is the self-employed where it is not that easy to work out what they have made in the last 12 months especially if your work is lumpy, whether your invoices were paid this month or last month or this quarter or last quarter. They get a lot more complex.

The Hon. TREVOR KHAN: I expect for many self-employed people it gets a lot more complex because in a number of circumstances it might be that the level of income asserted is perhaps accurate but is not reflected in the bank statements.

Mr DAVID SHOEBRIDGE: Not what they have told the tax commissioner.

Mr STONE: Live and die by the sword, is a phrase I use quite frequently in my daily practice.

Mr STERN: I have a bit of involvement in the dispute resolution system, having been appointed one of their dispute resolution people. I think I can tell you there have been very few merit reviews actually conducted to date and very little involvement of external dispute resolution people. I do not know to what extent the internal dispute resolution people have been involved. My impression is that the number of merit reviews up to now would be very small, reflecting the infancy of the system and reflecting the lack of information and reflecting the lack of legal representation. I would be interested to know what the actual figures are. Mr Stone said there had been six sets of reasons published on the website, that is a tiny set of reasons. We are early days but it is hard to judge to what extent the dispute resolution system is operating effectively.

Ms WELSH: I saw a merit review decision today from Monday for someone who had an accident in January this year. He is a self-employed person and his books are pretty good. There was an issue. The insurer made a determination which undervalued his loss by $650.

The Hon. TREVOR KHAN: Weekly?

Ms WELSH: Weekly. An internal review upheld the original decision, unsurprisingly. Then no money for a couple of months. So he got $400 a week for the first few weeks, a little more after that, then he got his $1,400, no money for two months, and now there is a merit review which says he should be paid an amount of money just over $2,000. He is self-employed and he has had no income for two months. He has closed up his workshop, he cannot work at the moment and it has been very stressful for him.

Mr DAVID SHOEBRIDGE: This is a DRS?

Ms WELSH: No, this is just getting to the merit review stage. It is lucky he is articulate and he has had some help because you wonder whether you would get past that second stage of the in-house process and whether you would keep going at that stage or whether you would say it is not very good, I am not happy with it but I will put up with it. If you can make a recommendation that there be some proper review of what happens with the insurer review of its own decision, you need to see that they are overturning some of them, if it is a rubber stamp it will deter another layer of people from pursuing their rights.

The Hon. TREVOR KHAN: Will not WIRO address that?

Ms WELSH: It does not address it until it has happened, that is the problem. I am not in the commission and I am not doing WIRO stuff very much at all these days, but it is my understanding that you still have to go through the insurer process before you get to WIRO.

The Hon. LYNDA VOLTZ: They are without income for two months until they get to that?

Ms WELSH: Exactly.

The CHAIR: On that point, I thought there was an early intervention point to head that off.

Ms WELSH: I do not know, if you are an unrepresented person trying to navigate this system you are following the queues of the insurer and you are relying on the information they give you.

The CHAIR: I accept that. We were on the point of early intervention of WIRO.

Ms WELSH: Maybe there is. I cannot answer that.

The CHAIR: Would a similar thing assist in this space.

Ms WELSH: I can take that on notice if you want.

The CHAIR: No.

Mr STONE: There are all sorts of concerns about what is going on, as far as I am concerned, in relation to tax. One of the issues I have raised with SIRA in the last month is what percentage of people are actually getting their primary exemption in where it is the insurer paying them to ensure it is not 46¢ in the dollar in tax coming out, and is claims assist helping people to get primary exemptions in? The further complexity is what is going to happen when people start returning to work part-time because in workers' compensation your workers' compensation comes through your employer, so there is no primary exemption issue. Here that will not happen. So, for example, if you go back to work 50 per cent of the time your employer will have the primary exemption, they will take a modest amount of tax out in your first 50 per cent. You cannot have a primary exemption for your second 50 per cent that you are getting from the CTP insurer and they will take 46¢ in the dollar out and all of a sudden your mortgage is going under again.

Having raised the issue with SIRA the answer I got back was, well, the claimant can make an application to the Australian Tax Office for exceptional circumstances and variation. It is some answer. I expect it is a Federal tax problem that cannot be fixed otherwise. I would be delighted to know if those at claims assist have been trained as to how to assist people to make the application to the tax office if and when the situation arises. Or, if any of the friendly helpful insurance people we heard from earlier have trained their staff how to assist the claimant, because you do not want us near the system apparently. So at that point either SIRA has to step up or the insurer has to step up just to make sure that people are not losing 46¢ in the dollar in tax out of the second half of their weekly payments.

Mr DAVID SHOEBRIDGE: SIRA has on its website a flowchart in blue and pink about how you resolve complaints and disputes and there is no reference of legal assistance other than right down the bottom where it says "accessing legal services" and if you think you need legal advice you have some options, this can include SIRA's legal advisory service. Is SIRA's legal advisory service able to give legal advice to individual claimant's, how does that work?

Mr STONE: There is a pilot scheme, and SIRA can better articulate this but this is as it has been explained to me at meetings: There is the claims assist service and we are consistently told and have been told for a decade it does not provide legal advice but it is meant to help people through the claims process. SIRA has developed a pilot program, they have appointed a couple of senior legal practitioners who are being paid by SIRA a modest amount to provide assistance at the stage where somebody has already done an internal review and you can then get legal assist to say, "We think your internal review result is not right, you have good grounds to bring a merit review". It is basically telling people: You have good grounds to go to the next stage. As I understand it, the person giving that assistance, that is all they are able to tell you. They are not allowed to draft anything to help you bring the merit review, they are not allowed to help you with the merit review. It is just to say: Go on, you have been through two levels, but give it one more go.

Mr DAVID SHOEBRIDGE: Who is their client in that case? Who are they acting for and who is paying them?

Mr STONE: They are being paid by SIRA but they are giving independent advice to the claimant, and knowing the half a dozen people they appointed, I am comfortable that they will give good independent advice.

Mr STERN: There were six people appointed under this pilot scheme. I was one of them, by reason of the fact that I am a senior practitioner. There has been very little activity. I assume that the referrals are random. I have had one referral since the beginning of the year.

Mr DAVID SHOEBRIDGE: You are one of the six?

Mr STERN: I am one of the six.

Mr DAVID SHOEBRIDGE: You have had one referral?

Mr STERN: Just one referral.

The Hon. TREVOR KHAN: Obviously you know who the other practitioners are?

Mr STERN: Yes, I do.

The Hon. TREVOR KHAN: Have you spoken to them as to whether you are just being cut out?

Mr STERN: Nobody is cutting me out. The only reasonable inference is that there has not been a lot of referrals.

Mr STONE: But then we do not know how many have gone to internal review. We do not know how many people have been told by the insurer, "This is your lot in life", and have not even bothered to challenge it through an internal review, remembering that this is advice given about whether to advance from the internal

review stage to the merit review stage. But SIRA can tell you precisely how many referrals there have been, because they pay for them.

Ms WELSH: When you look at the assumptions that were underlying the legal costs regulation during the consultation phase, it was assumed by the actuaries that there would be thousands of disputes in this scheme. It was that number of disputes that largely fed into there being a very modest amount allocated for legal fees when someone requires a lawyer. We have been sidelined by that actuarial process because you cannot really provide legal advice necessarily within the scope of the $1,500, $1,600, $1,700 that might be available, certainly in a more complex dispute.

But there is not really any acknowledgement in this scheme that the legal profession has a legitimate role in it. We have been involved in this consultation process so closely all the way through yet we do not appear to have a legitimate place in it. If you look at the Transport Accident Commission's [TAC] protocol in Victoria, it is acknowledged that the legal profession has a role to play and it should be acknowledged in this State that we have a role to play. There should be an adequate amount to provide some legal advice to people who find themselves in difficulty, certainly to the extent that you might find in Victoria, or the way things are done in New South Wales under the workers compensation scheme in respect of there being enough money to give somebody some legal advice.

The CHAIR: Did you say you cannot provide legal advice for $1,600 or $1,700?

Ms WELSH: No, there is a capped amount in relation to a dispute and that is all you can get. It would not be enough to permit you to run—

The CHAIR: You would not run a fully blown contested hearing, but you could provide some initial advice.

Ms WELSH: You could provide some initial advice, possibly.

Mr DAVID SHOEBRIDGE: Does that include disbursements?

Ms WELSH: It depends on what it involves.

The Hon. TREVOR KHAN: If you take instructions, you really cannot half do it.

Ms WELSH: That is right.

Mr STONE: Call it $400 an hour, that is four hours for people who have to pay city rents, staff and practising certificate fees and everything else. If you have a 50-page accountant's report, plus sorting through somebody's tax returns and take some instructions from them, that might get you to four hours. But in terms of writing a submission, lodging an application, reading the insurer's response to the application and dealing with the process from there, you are doing all of that for love.

The Hon. TREVOR KHAN: Have you seen what a practitioner gets for running a Legal Aid matter? Their hourly rate is far lower.

Mr STONE: They are on about $200 or so an hour. Even eight hours is not going to get you to the end of that dispute.

Mr DAVID SHOEBRIDGE: Are disbursements recovered separately?

Ms WELSH: They do not provide for much at all in the way of disbursements. If you get a medico legal report, it is capped; you have got to find a doctor who will do it within the cap.

Mr STONE: Forensic accountant fees are uncapped, but the amount of work that it requires to brief a forensic accountant in terms of pulling the material together, writing them a letter of instructions, giving them the assumptions of what the client spends on this and that, that takes quite a chunk of time because the report is only as good as the assumptions that go into it and you have to do a lot of work to get the instructions out of the client to make the assumptions.

Mr DAVID SHOEBRIDGE: In respect of the regulator costs, should there be a capacity to seek an uplift in a complicated matter? A complicated matter clearly requires more than $1,600. Is there any capacity to say, "To fairly compensate, we think it should be 50 per cent more"?

Mr STONE: There is currently no such capacity.

Ms WELSH: This is another area that needs to revisited once it is understood what can be provided in the scheme. My understanding is that in Victoria you get about $6,000 for a statutory benefits dispute in the motor accidents scheme.

Mr DAVID SHOEBRIDGE: There have been so few specific instances raised with us about how the statutory scheme works, yet it has been operating since 1 December. Mr Sheldon, you say the figures show that a very small amount of benefits have been paid out. Is this partly because nobody knows about it?

Mr SHELDON: The people who would know about it and would be able to put it into context are us, but we have been excluded from the system, as it were, so we do not hear about it. We have to rustle up solicitors who have had potential clients come through the door. That is how we get the anecdotal material.

Mr STONE: There will be super-profits in year one. We have a scheme that has got a new benefit for 7,000 at-fault drivers for six months and we launched it in a blaze of secrecy. There has not been a single advertisement in the newspaper anywhere, saying, "By the way, New South Wales has now got this new, beaut scheme whereby anybody injured in an accident is entitled to six months of benefit. Come and see us." Not anywhere have we told anyone about that. When they first introduced the scheme in Victoria, TAC was on the front of—I think it was Australian Football League rather than the Victorian Football League but it was on the front of a jersey. I think it was Richmond. Victoria will no doubt yell at me that I have got that wrong.

The CHAIR: Are you recommending that we advertise CTP reform on jerseys?

Mr DAVID SHOEBRIDGE: Well, somewhere.

Mr STONE: Somewhere telling people that they have this new right. This was Robert's point earlier. There has been a massive under take-up on the at-fault benefit. In turn, that means there will be super-profits in year one, and somewhere about year three or four it will come down to a battle of whether the insurer's actuaries are smart enough in hiding those super-profits versus SIRA's actuaries trying to claw them back.

Mr DAVID SHOEBRIDGE: Maybe we need the no-fault Sydney Swans so people find out about it.

The Hon. DANIEL MOOKHEY: To what extent do you think the profit normalisation device by SIRA is equipped to effectively recover the windfall gain?

The Hon. TREVOR KHAN: You would not know at this stage.

Mr STONE: (a) You would not know; and (b) I suspect they will never know because short of doing the basic accountancy degree and the actuarial studies on top of it, it will come down to the capacity of accountants on one side to hide things versus the capacity of the other side's accountants to find it.

The Hon. DANIEL MOOKHEY: Have you had much information from SIRA or are you aware of SIRA putting information in the public domain about where they are up to on the development of that mechanism and when we can expect to be in a position to judge it properly?

Mr STONE: That has never been a part of the process that the lawyers have been a party to discussion on. The sole part of us was when we argued in bringing it into the scheme to make it at least five years rather than three. Otherwise, those have been discussions between SIRA and the insurers. I do not know how far advanced they are with that process.

Mr DAVID SHOEBRIDGE: One of the issues that I cannot get my head around is hardship payments and the restoration of hardship payments. What is the practical effect of the absence of hardship payments?

Mr STERN: Mr Stone makes an excellent point on that in his paper that Allianz has this case of foreign tourists that are very badly injured. They have to look after themselves when they go back home and even though Allianz down the track—there is no common law claim allowed for two years—is going to have to pay out a whacking amount of money, no hardship payment is made now because there is no provision for it, and Allianz says, "We are not allowed to do it."

Mr DAVID SHOEBRIDGE: The obvious example is if, say, the primary income earner in a family is killed in a motor accident. That can be devastating emotionally and financially. Can hardship payments be made in those circumstances?

Mr STONE: I have not seen how statutory benefits work in a death case in respect of replacing income. I must say, I have not looked at whether that runs under the Act or not. Most people will not need a hardship payment if they are being paid a wage and if their medical expenses are paid. There will be some outlying cases where you still need it. It seems silly to take it out if it is something that could usefully be there.

Mr DAVID SHOEBRIDGE: It should go back in?

Mr STONE: It should go back in. With the Singaporeans, I was contemplating trying to get them a hardship payment until this week because, of course, they are not even allowed to make a claim for 20 months. But we were able to show that one of them was already over 10 per cent, which allowed us to put on the claim.

Having put on the claim, we can then ask for a discretionary exemption and if we can get a discretionary exemption I can litigate in the District Court and they forgot to pull the hardship provisions out of the District Court legislation, so if I could got there I could have got them a payment.

Thankfully, this week, Allianz has come to the party to provide them with something, but we remain reliant on the good grace and favour of Allianz, rather than having any recourse of anyone we can go to and make a demand in circumstances where we have a very badly drafted provision that says that those who are overseas can only get quarterly payments in arrear once they have proven that their condition is permanently stabilised and that they cannot return to work, which may take years for some people.

The CHAIR: I see that is in the submission so we have that. Thank you for your submissions today—

Ms WELSH: Could I just say one thing in relation to the issue of data collection? I will be very quick.

The CHAIR: Yes.

Ms WELSH: Real-time data collection is important from the insurer's perspective and the regulator's perspective because they can identify if there is something that may amount to fraudulent activity going on, whether it is a blip in claims in a particular area or that sort of thing. It is important also from the insurer's perspective in terms of the data that Mr Stone is going to come back to you on with regard to reporting individual insurer behaviour. That is one of the advantages of the real-time data. I do not think any of us have any interest in whether the insurers have to report once, twice or three times daily, but the quality of the data is important.

The Hon. TREVOR KHAN: To justify my concern, I am not arguing that it should be weekly, but it seems to me that three times a day is an extraordinary impost unless it can be demonstrated that it does actually achieve an outcome. I have to say that our experience with SIRA and the opaqueness of process leave me with the feeling that SIRA requires a lot but nobody knows what happens to the data from there. I think that if SIRA is going to require an expensive process there should be a positive outcome.

Ms WELSH: That is the point I was going to pick up on because in the data-collection process thus far, of the total 6,000 claims as of the 31 July, there was no occupation nominated for 48 per cent of the claims and 19 per cent were non-earners. Around 70 to 75 per cent of people who are making claims are either non-earners or do not know what their occupation is. It is about the quality of the data. It does not matter if they are collecting all of this raw data—it has to translate into actual figures that can be used to assess whether there is enough money in the scheme to have a better minor injury test of whether the money is getting to the right people, etc. That is all I wanted to say.

The Hon. TREVOR KHAN: I invite you to take on notice the question of what criteria you think would be useful in terms of published data.

Mr STONE: I was intrigued to learn that insurers only have 24 hours to correct the data after an identified breach. I would love it if there was any imposition on any insurer to do anything in relation to a claimant within 24 hours, in terms of paying a medical bill, approving something or even responding to correspondence. It is a timeframe that SIRA has imposed on the insurer for SIRA, but it is seven days, 10 days, 14 days or two months for the timeframes in the world that we operate in.

The Hon. TREVOR KHAN: I can remember as a lawyer in the old days before we had email that if we got a response back within a few days we were doing wonderfully. Now, if you have not responded by 5 o'clock in the afternoon there is suddenly a hysterical email coming back to you. Everyone's timeframes are being compressed, but whether it is a productive compression of timeframes is another thing.

Mr DAVID SHOEBRIDGE: And of course every dollar that the insurers have to spend on potentially aimless and pointless data crunching is money that is not available to go back to claimants and is money that is sucked up into the premium.

Mr STONE: I am not sure that if they could save it on the data they would suddenly walk out into the street and find some injured people to pay more to, but that is a different question.

Mr DAVID SHOEBRIDGE: In any event, it is unproductive expenditure.

Mr STONE: That may be. I encourage you to ask about it, but I encourage you to spend a little more time asking about the other side of the equation—namely, what are the insurers doing in terms of their service quality directed to claimants and what is SIRA doing to supervise that.

The Hon. DANIEL MOOKHEY: With regard to the appearance of evidence in claims, disputes and assessments that has been derived by surveillance undertaken by an insurer, are you able to give us any views as

to whether there has been a cultural improvement on the part of insurers as to how they gather that evidence and how they use it in claims, assessments and disputes?

Mr STONE: I have not seen enough under the new Act to be able to say because, of course, we have not yet got to any damages claims under the new Act and I have not been involved in statutory benefits. I have not heard anything about the use of surveillance in statutory benefits under the new Act. Under the old Act, there were some surveillance guidelines brought in a few years ago after some agitation we brought here. There were some restrictions put in place in relation to the surveillance of children and insurers had an imposition on them that they were not to pursue surveillance as a matter of course but rather because there was a bona fide suspicion that there was something amiss in the claim.

The Hon. TREVOR KHAN: Was that a few years ago?

Mr DAVID SHOEBRIDGE: A year and a half ago, I think.

Mr STONE: It came up again a half and a half ago because it was raised in the context of a exacerbating psychiatric impediment, but I think if you go far enough back you will see that the Bar Association, when I appeared on behalf of it on a previous occasion—and it could be going back four, five or six years—agitated for rules and we referred to some Victorian rules in relation to the willy-nilly use of surveillance, rather than when there was a proper basis for it. Some rules and guidelines were brought in at that stage and there is still a clause in the guidelines that says that before an insurer gets to surveillance they need to have a good need for it. I do not know that there is as much surveillance going on as there once was, but the easiest way to ask would be to ask NRMA, which is the largest insurer, how much it has spent on surveillance in each of the last five years and if you cannot ask NRMA, SIRA should be able to pull it out of its databank and tell you.

Mr DAVID SHOEBRIDGE: The Insurance Council Australia said that to the best of its knowledge—at least when it appeared before the inquiry—there had not been any significant change in relation to how it undertook surveillance for psychological injuries, which I found surprising given that it was a substantial issue that was raised only 18 months ago. But you are not aware of any change?

Mr SHELDON: I would not think we would be though.

Mr STERN: Why would there be any surveillance at all at this stage? Until the condition stabilises we do not know whether there is going to be a claim.

Mr SHELDON: For all we know, there has been.

Mr DAVID SHOEBRIDGE: What about pre-1 December claims.

Mr STERN: That is a different story.

Mr STONE: The plural of anecdote is not data and we can only deal with it on an anecdotal basis in the cases we see. The good data would be with SIRA, which would be able to pull out of its computer bank what is being spent by each of the insurers. You could do a year-on-year comparison for the last five years. I would have thought that SIRA is capable of producing that data upon request, to see if there is an easing off in the use of surveillance. What the insurers spend on it will tell you. But it should be capable of identification, I would have thought.

The CHAIR: Thank you very much for attending today and for your written submissions. The Committee has resolved that any answers to questions taken on notice should be returned with 21 days. The Secretariat will be in touch with you about that.

(The witnesses withdrew)

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

MARY MAINI, Executive Director, Motor Accidents Insurance Regulation, State Insurance Regulatory Authority, sworn and examined

The CHAIR: I welcome our next witnesses to this 2018 review of the compulsory third party insurance scheme. Thank you for coming along today and for providing a written submission, which you can assume we have read. Do you have an opening statement you would like to make to the Committee?

Ms DONNELLY: I would like to make some opening remarks. Thank you to the Committee for the opportunity to appear today. I would like to begin by acknowledging the traditional custodians of the land and pay my respects to elders. Noting that the terms of reference are focused on the new scheme, I thought I might make a few comments about where we are with the new scheme. Clearly, it exists to serve two groups in particular in the community: the people who own vehicles and who are policy holders, and the people who are injured and their families—people who are injured through motor vehicle accidents.

Some of the objectives of the scheme are focused on early and appropriate treatment, rehabilitation and care in order to encourage optimal recovery and maximise return to work and other activities of life, early financial support, and also affordable premiums. While there have been early measurable results in terms of reduced premiums, the work in order to deliver the benefits for injured people requires sustained work on culture change. The previous scheme had issues with delay and with an adversarial culture. The Committee will be aware—we have given evidence before—of the clear evidence about adversarial systems creating perceptions of injustice and that there is real evidence that that can impede health and social outcomes for people who have had an injury. We acknowledge that there is work to do on ensuring that those benefits flow to the injured people who were the other people that the scheme exists for.

While it is early days, we are committed to being an active steward of the scheme and working with service providers and stakeholders in monitoring and providing data analysis, advice, reporting to government and reporting publicly. I thank the various service providers and stakeholders, whether they be service providers like insurers and legal providers, health practitioners, experts and also community groups who have, working with us and with the Government, delivered an enormous amount of change in bringing in that new scheme, and I think it is really important to acknowledge all of that work. We also acknowledge that in working with those stakeholders we are dealing with a very active and committed group of people who have quite diverse views sometimes and we are committed to continuing to work with them.

I am happy to provide further information as the Committee requires. I have seen in a number of the submissions—and I also acknowledge that it is quite early days in the scheme and so some of the data and some of the submissions it has asked for it is impossible to have at this point, so we will need to actively provide further information—and I heard the previous witness talking about surveillance. It certainly is correct that you can have insights from the expenditure.

Ms DONNELLY: I will say that that is quite correct. Mr Stone was saying that you can certainly have insights from the expenditure, and I touched on that in my responses to the previous hearing in tracking that and then digging beneath it to make sure that we are making the right assumptions. But it is certainly something that we can analyse and provide. We have already asked the team to start working on that so we can provide some insight on trends in spend on surveillance. Lastly, I would like to acknowledge the correspondence from the Chair in relation to my evidence in the previous hearing in the other inquiry on workers compensation and assure you that I have considered that carefully.

The CHAIR: Miss Maini, do you have anything?

Ms MAINI: No.

The Hon. TREVOR KHAN: I make the observation, the letter was not from the Chair, although it was under her signature, it was on the unanimous resolution of the Committee.

The CHAIR: That is quite right.

The Hon. LYNDA VOLTZ: But it can be said it is from the Chair, because she signed it.

The CHAIR: Mr Khan is quite right, it was on a resolution of the Committee which was unanimous.

The Hon. LYNDA VOLTZ: Have you had a look at the Bar Association submission?

Ms DONNELLY: I have, yes.

The Hon. LYNDA VOLTZ: And you have had a look at the figures they provided on claims in the first six months?

Ms DONNELLY: I have.

The Hon. LYNDA VOLTZ: Do you have any comments on that?

The CHAIR: Could the figures be clarified?

The Hon. LYNDA VOLTZ: Are they accurate, at point 7, that the scheme collected a total of $16 million, in the same period the insurance premiums were totalling $930 million, the amount paid out compared to the amount collected is equivalent to $1.72 million?

Ms DONNELLY: I have some other figures that I think shed some insight. We have done a comparison of the first six months of this year compared to the first six months of last year and there is an interesting insight to be drawn from that. What we can say is that the average premium was more than $120 higher in that period last year and that more than double the amount in benefits has been paid out this year than was paid out to people who had accidents in that period of January to June last year.

The Hon. LYNDA VOLTZ: That makes it what, 3 per cent or 4 per cent?

Mr DAVID SHOEBRIDGE: Did you say you have got an analysis comparing the first six months of last year and the first six months of this year and you have done that data analysis?

Ms MAINI: It is the first six months of what occurred in the commencement of the 1999 scheme, compared to-—

Mr DAVID SHOEBRIDGE: Here is a simple question: Where is it?

The Hon. LYNDA VOLTZ: Can we stay with my question, that $1.72 million had been paid out? Is that figure correct?

Ms MAINI: Yes.

Ms DONNELLY: Yes.

The Hon. LYNDA VOLTZ: That is correct? Does that compare with what the Minister projected would be paid out, $1.72 million?

The CHAIR: Can you clarify that you are referring to the Minister's second reading speech?

The Hon. LYNDA VOLTZ: Yes.

Ms DONNELLY: We might need to give you some more information about that. I have not got the second reading speech in front of me.

The Hon. LYNDA VOLTZ: Let us go to the motorcyclists' submission where there was a claim that there would be an estimated 1,400 additional claims for motorcyclists. That would not be supported by the figure that is before us now, would it?

Ms DONNELLY: I do not have that submission in front of me.

The Hon. TREVOR KHAN: Is not the point that the assessment was made by SIRA that there would be 1,400 additional claims and that therefore they were not entitled to a reduction in average premium because of those 1,400 claims. Their evidence was that proposition is not supported by the evidence. Are you able to respond to that?

Ms DONNELLY: I think it is important to stress that for some of these assertions it may well be too soon to draw a conclusion. When you estimate the number of claims in a year, and we are eight months into that year, there are people who have not been injured, who unfortunately will be injured.

The Hon. TREVOR KHAN: Yes, in that four months, that is quite right.

Ms DONNELLY: There are people who have not put in claims yet. To the earlier point about the cost of those claims, a proportion of those people have only really just begun to access treatment, to access income support benefits. None of those people will have had enough time elapsed to have sought access to lump sum benefits. So when insurers are collecting a premium, they are required to collect enough premium in that year to fund all of the claim costs that might actually be paid out over many years, and you would not expect to see a high proportion paid out in the first few months.

The Hon. TREVOR KHAN: We agree with that, but this dealt with claims.

Ms DONNELLY: Yes, and with the motorcyclists.

The Hon. TREVOR KHAN: You would have done some form of projection, I assume, that would have identified these lags in time, that people will not put in all their claims the day after the accident and the like. You would be developing some sort of trend line to make an assessment of performance—

Ms DONNELLY: That is right.

The Hon. TREVOR KHAN: —against expectation, would you not?

Ms DONNELLY: Absolutely. Those estimations are not just SIRA's. We engage independent actuaries, reputable firms. We have them peer reviewed. There is a lot of discipline that goes into them. But, you are absolutely correct, we need to track and we are tracking actively as the claims come in: Are we observing in the actuals what was predicted?

The Hon. TREVOR KHAN: Yes.

Ms DONNELLY: I would have to say I did read through the submission, there are a couple of submissions from the motorcyclists and the submission from the Motorcycle Council. We remain very willing to engage with them, exchange data, monitor the situation with them.

The Hon. TREVOR KHAN: I am sure, but in terms of the trend, are you able, either now or on notice, to indicate whether your expectation of claims performance is actually being met, is it being exceeded, or is it below trend?

Ms DONNELLY: Very happy to provide more information on that.

Mr DAVID SHOEBRIDGE: The Motorcycle Council's evidence to us was when you came to them with the 1,400 additional claims as the projection, they did not think that was right, it did not play out when the accident notification forms came in, which was a no-fault initiative. They only saw a tiny proportion of increased claims that were on the ANFs, which was no-fault, and they said that you were using Victorian data, which was inappropriate because they have a large pool of recreational licence holders which is not replicated in New South Wales. They also said you are relying upon an erroneous assumption of a 90 per cent at-fault rating for motorcyclists. They had a whole bunch of reasons that they gave for why the projection was wrong. They were not able to explain to us what your response was to those reasons other than you stuck with your 1,400 assessment, which now does not seem to be being played out in the data.

The Hon. TREVOR KHAN: It might be.

Mr DAVID SHOEBRIDGE: I hoped you would respond to their package of concerns.

Ms DONNELLY: I would be very happy to give you an explanation on the issues that they have raised.

The Hon. TREVOR KHAN: On notice.

Ms DONNELLY: Yes.

The Hon. LYNDA VOLTZ: To be clear, you are going to take those projections on notice, is that right?

Ms DONNELLY: Yes.

The CHAIR: But your answer here today, so far, pending those numbers, is that you have eight months of data?

Ms DONNELLY: Yes, we have eight months of data.

The CHAIR: On a 12-month projection?

Ms DONNELLY: That is right. It is also a new scheme and these are new entitlements. It takes a little while before you have certainty about where that will stabilise.

The Hon. TREVOR KHAN: I think we can all accept that various witnesses have appeared and have given what I will call their "gut reactions"—not all negative—to the scheme. Essentially, with eight months of data it might be possible for you to give, with all the caveats involved, some indications about where the scheme is going.

Ms DONNELLY: We can give you what we have with the data we have now. We are very fortunate that we can look at the commencements of previous schemes, like the 1999 scheme. That was probably before most of us had anything to do with the area, but some of us would have. They would remember that it took some years to get the data and to understand the trends. We are intending that we will be able to see those trends and come to a mature assessment as early as possible.

Mr DAVID SHOEBRIDGE: But if you have done that analysis, why do you not share it with the Committee now? You have done the analysis—

The Hon. TREVOR KHAN: But she just—

Mr DAVID SHOEBRIDGE: No. I assume a report has been done. Why was the Committee not provided with a copy of that report or a summary of the report before you came here to give evidence? I do not understand.

Ms DONNELLY: I do not have a report as an artefact on the experience for the eight months. There certainly will be documentation about the forecasting done that was part of the conversation that the motorcycle—

The CHAIR: Are you saying in response to this question from the Committee today that based on the data you have you will provide a response? You do not have an existing report, but you will provide what you can on notice?

The Hon. LYNDA VOLTZ: But would you not have thought the Committee would ask that question? Given that the whole system has been changed to increase the amount of money going back into claims, surely you would have anticipated that the first question the Committee would ask would be how much was going back?

The Hon. DAVID CLARKE: Do any of your staff have that information?

Ms MAINI: What we are reviewing is the whole scheme performance from 1 December to 30 June. We are doing a complete analysis of that, and a report will be available in September.

The Hon. DANIEL MOOKHEY: Ms Donnelly, you said that you had undertaken a comparative analysis of the first six months of the new scheme and the last six months of the old scheme. Is that correct?

Mr DAVID SHOEBRIDGE: That is past tense.

The Hon. DANIEL MOOKHEY: Did I hear that correctly?

Ms DONNELLY: The analysis is looking at payments for accidents occurring between 1 January and 30 June 2017, which were in the old scheme—but it is for last year—and payments in relation to the accidents occurring between 1 January and 30 June 2018 are in the new scheme. The amount that has been paid out this year is more than double what was paid out for the equivalent accidents—

The CHAIR: So you are comparing the two six-month periods?

Ms DONNELLY: Yes.

The CHAIR: The same period last year and this year, and you are saying that double has been paid?

Mr DAVID SHOEBRIDGE: No.

The CHAIR: I just want to understand that.

Mr DAVID SHOEBRIDGE: As a question of clarification, I thought Ms Maini said it was the first six months of the previous scheme.

Ms DONNELLY: She did, but that is not correct.

The CHAIR: To clarify, the period you are talking about—

Ms DONNELLY: To clarify, it is for the first six months of last year and the first six months of this year. The first one being in the old scheme.

The Hon. DANIEL MOOKHEY: We have established that there is a seasonally adjusted study. That is great. You say it has doubled. What proportion of dollars raised in the first six months was paid out?

The Hon. LYNDA VOLTZ: Or give us the dollar figure.

Ms DONNELLY: I can tell you that the proportion will be higher because the amount is higher and the premium was lower.

The Hon. DANIEL MOOKHEY: The premise of the Government's reform case was that 45¢ out of every dollar raised in premiums would be returned to claimants. Is that correct? And that was found to be unacceptable?

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: All sides of politics agreed with that.

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: On top of that, the Government's stated objective is to get it towards 57¢.

Ms DONNELLY: That is right.

The Hon. DANIEL MOOKHEY: That is correct?

Ms MAINI: Yes.

The Hon. DANIEL MOOKHEY: How are we tracking?

Ms DONNELLY: I think the figures I have just given you suggest that the return of the premium dollar to claimants is tracking higher in the new scheme than in the old scheme. However, I must say again that it is difficult to come to a conclusion about that until you start to factor in how much is paid out in all the benefits, including the lump sum payments.

The Hon. LYNDA VOLTZ: What is that dollar figure?

Mr DAVID SHOEBRIDGE: You did not give any figures.

The CHAIR: Excuse me! Everyone needs to take a breath.

The Hon. LYNDA VOLTZ: That is why I am asking. What is the dollar figure for payouts for that six months?

Ms DONNELLY: In the first six months last year they add up to about $7.5 million.

The Hon. LYNDA VOLTZ: No, I am asking about this year.

Ms DONNELLY: This year it is around $19 million.

Mr DAVID SHOEBRIDGE: What was the projection for this year? You must have that figure.

Ms DONNELLY: I do not have the figure for that six-month period in front of me. I am happy to provide more information.

The Hon. DANIEL MOOKHEY: Out of every dollar that arrives in premiums, we have established that the reform case was 45¢ and we were targeting 57¢.

Ms DONNELLY: Yes.

The Hon. DANIEL MOOKHEY: What is the balance of that 43¢? What should we be assuming about those 43¢? Where is it going to? How much is going to lawyers and how much is going to insurer profits?

Ms MAINI: I will have to take that question on notice and provide more information on what was the past—that is, what was the 43¢ in the old scheme—and what is the assumption and the projection in the new scheme.

The Hon. DANIEL MOOKHEY: Moving forward, the profit versus the realised profit—

The Hon. TREVOR KHAN: Again, what did you think we were going to ask today, with respect?

The CHAIR: I am not sure that is a fair question. We are asking the witness to guess what the Committee would ask. I do not know that that helps.

The Hon. TREVOR KHAN: We were always going to ask about how the scheme was working.

The Hon. LYNDA VOLTZ: I would like to finish with these figures. You have $19 million and $7 million, which is the figure for last year. What was the collection of compulsory third party premiums?

The Hon. DANIEL MOOKHEY: Good question.

Ms DONNELLY: For that six-month period?

The Hon. LYNDA VOLTZ: Yes.

Ms DONNELLY: I am not sure if I have that information with me. Perhaps one of the team has it.

The Hon. LYNDA VOLTZ: What was the premium collection in the first half of this year?

Ms MAINI: The insurer premium collection in the first half of this year has been approximately $1 billion.

The Hon. LYNDA VOLTZ: What was it in the first six months of last year?

Ms MAINI: It was just under $1.35 billion. That is a net reduction of 23.5 per cent.

The Hon. DANIEL MOOKHEY: In premiums collected?

Ms MAINI: Yes.

The CHAIR: You collected less and you paid out more; in fact, double?

Ms DONNELLY: Yes.

The Hon. LYNDA VOLTZ: Yes. But what does $19 million represent of the $1 billion.

Mr DAVID SHOEBRIDGE: It is 1.9 per cent.

Ms DONNELLY: It is claim payments.

The Hon. DANIEL MOOKHEY: What other moneys were paid out that were not claimed in that six-month period?

Ms MAINI: We provide payments data as a monthly "scheme at a glance" to a lot of the providers. The payment data would be claimant legal, claimant cost—

The Hon. LYNDA VOLTZ: I want the figures.

The Hon. DANIEL MOOKHEY: If you were able to provide the category and the figure at the same time, that would be great.

Ms MAINI: I will have to provide that breakdown on notice.

Mr DAVID SHOEBRIDGE: So you are providing that data to a series of stakeholders on a monthly basis?

Ms MAINI: Yes.

Mr DAVID SHOEBRIDGE: I have read your submission twice now—all five and a half pages you provided to this Committee. Where do I find the data you have given to the Committee?

Ms MAINI: I am not sure.

Ms DONNELLY: We have some reports that are on our website and we have emailed links to them.

Mr DAVID SHOEBRIDGE: I am tempted to move an adjournment motion because I am finding this so utterly unsatisfactory with the absence of any sufficient data to test these witnesses.

The Hon. TREVOR KHAN: You are not going to win at this stage. From my position, it might be that it will not end today, but we are here and the witnesses have been kind enough to turn up.

Mr DAVID SHOEBRIDGE: I hear you. One piece of data we do get in your submission relates to CTP refunds. It is a highly contentious issue; there is a lot of concern about how they have been paid and what proportion has been paid. I will read the entire submission that you provided to the Committee on CTP refunds. It states:

> As at 1 May 2018, $62.5 million has been refunded to 1.1 million of the 4.2 million NSW vehicle owners eligible for a refund. This figure is expected to rise following the community information media campaign which is continuing to have coverage throughout NSW.

Ms DONNELLY: Yes.

Mr DAVID SHOEBRIDGE: Okay. What about the $3.9 million in refunds? What is your expectation? How many will be repaid? What are you doing? How will you ensure that people get their refunds? Do you seriously think that amount of information was adequate for the Committee to undertake its task?

Ms DONNELLY: In terms of the refunds, there has been a media campaign, a range of different channels through regional and metro New South Wales, billboards, and social media. We have seen an increase in the amount refunded and everyone else who has not collected their refund yet will be getting individual letters to remind them of the opportunity to claim their refunds.

The Hon. DANIEL MOOKHEY: So you are mailing them?

Ms MAINI: Yes.

Ms DONNELLY: Yes.

The Hon. LYNDA VOLTZ: In fact, I got one of those letters. At the same time that I got one of those letters I also got an email from Service NSW asking me to add my email to an account—an account I do not hold.

Mr DAVID SHOEBRIDGE: How many have been repaid, as we sit here? What is your prediction of the number that will ultimately be repaid? How much money is sitting in a pool, not yet repaid? I assume it is in the hundreds of millions of dollars. What are you going to deal with that money? These are all such obvious questions. I am embarrassed to have to ask them of you; could you answer them, please.

Ms DONNELLY: I am happy to answer them.

Ms MAINI: Over $185 million has been repaid to 2.1 million policy holders. With the amount of money that, at the end of the period, is not claimed, it is the intention to reduce premiums.

Ms DONNELLY: Reduce the levy.

Mr DAVID SHOEBRIDGE: How much has not been paid, and what do you expect not to be repaid?

Ms DONNELLY: Our intention is to work as hard as we can to have it claimed, which is why media campaign, letters, social media, publicity and—

The Hon. DANIEL MOOKHEY: Why aren't you just sending people a cheque.

The Hon. TREVOR KHAN: Let her finish the answer.

The CHAIR: Yes, let her finish.

Ms DONNELLY: My understanding is that for people who are coming into Service NSW there is a proactive "Have you claimed yet?" face-to-face reminder. There are many different ways that we are working to have everyone claim it. That is certainly, to my mind, the best outcome.

The CHAIR: Just on that, am I correct in understanding that there are individuals in Service NSW who will help you do that?

Ms MAINI: Yes.

Ms DONNELLY: There are individuals who will help you do that. There are individuals who are helping people with their cost of living more generally, and CTP is always in that.

The CHAIR: Getting money out of the Government?

Ms DONNELLY: Yes.

The Hon. LYNDA VOLTZ: If I go to the Service NSW website and I put, "How to claim" into the Service NSW website it tells me: check on eligibility requirements, select "claim on line" button. Nowhere on that page does it tell me that I can get it any other way than on line.

Ms DONNELLY: I am happy to take that on board.

The Hon. LYNDA VOLTZ: Take it on board. You are saying that you are running an extensive advertisement campaign. I read that web page, and the only time I found out that I could get it any other way than on line is when someone told me before this Committee today. If you look at the Service NSW website it says you have to have a Service NSW account, and claim it on line. Do you think that that is an extensive advertising campaign?

Ms DONNELLY: That is not the advertising campaign that I am talking about.

The Hon. DANIEL MOOKHEY: How much money has been spent on the advertising campaign and how much will be spent?

Ms DONNELLY: It is about $1.9 million.

The Hon. DANIEL MOOKHEY: That has been spent or will be spent?

Ms DONNELLY: That is the total budget, roughly—$1.94 million, I think.

The Hon. DANIEL MOOKHEY: What is the duration of the campaign? When did it start and when will it finish.

Ms DONNELLY: The campaign ran from March until June.

The Hon. DANIEL MOOKHEY: That is it?

Ms DONNELLY: That is it, so far.

The Hon. LYNDA VOLTZ: Plus the letters.

Ms DONNELLY: There is an evaluation being undertaken to ensure that it is value for money.

The Hon. DANIEL MOOKHEY: Do you flag that there is another to come?

Ms DONNELLY: That is a decision for a subcommittee of Cabinet that approves advertising.

The Hon. DANIEL MOOKHEY: Why don't you send a cheque?

Ms DONNELLY: In terms of sending a cheque, there are a few issues with that. It costs more to administer. There is a risk that they will be returned to sender and lost.

The Hon. DANIEL MOOKHEY: But you are mailing people now.

Ms DONNELLY: Certainly, but a cheque that is not returned to sender is gone. A letter that reminds you to access the payment is not like the cheque lost in the mail. Research would indicate that there is a higher risk of them not being cashed or deposited.

The Hon. DANIEL MOOKHEY: Does research also indicate that there is a higher risk that people will receive their refund and actually cash the cheque? What analysis was undertaken in this respect? From what I understand, from the figures you just gave us, two million people have not got it. You have just said to us that you are going to mail them anyway. I accept that a cheque based transmission of funds is old school—almost from the era of Trevor Khan!—but my point is still made. Surely you would expect more people to use it than all the other devices that you are currently contemplating.

Mr DAVID SHOEBRIDGE: Particularly as they have been resistant to your current methods.

Ms DONNELLY: I am tempted to ask how many people have a cheque book still.

The Hon. LYNDA VOLTZ: I have one.

Mr DAVID SHOEBRIDGE: I still have to deal with Government agencies for Government information.

The Hon. LYNDA VOLTZ: Try getting an FOI without one.

The Hon. DANIEL MOOKHEY: The majority of Australian corporations still distribute dividends through cheques. This is not an unprecedented idea that you will come home and a cheque arrives in your mail box.

Ms DONNELLY: I understand the question. I am happy to provide more information about the thinking behind this.

The Hon. LYNDA VOLTZ: Is the $1.9 million in advertising paid for by the $10 administration fee you are charging?

Ms DONNELLY: No, it is paid for from the Motor Accidents Operational Fund from SIRA.

The Hon. LYNDA VOLTZ: What is the $10 million? Is that covering the letters that are going out?

Ms DONNELLY: I am sorry—the $10 million?

The Hon. LYNDA VOLTZ: Sorry, the $10 administration fee.

Ms DONNELLY: It is not a $10 administration fee.

The Hon. DANIEL MOOKHEY: Is it $8.65?

Ms DONNELLY: There is a $7.87 Service NSW administration fee.

The Hon. DANIEL MOOKHEY: What are the components of that? What cost is that recovering?

Ms DONNELLY: It is in line with the charges that Service NSW charges to other agencies for using the Service NSW network and the staff and the website et cetera.

The Hon. DANIEL MOOKHEY: I understand that every time Service NSW undertakes such an agreement with an agency, that they enter into an agreement. They disclose what exactly that charge is meant to recover. I know this because I have GIPA-ed a lot of them.

Mr DAVID SHOEBRIDGE: Using his chequebook.

The Hon. TREVOR KHAN: Jeez, you need to get a life.

The Hon. DAVID CLARKE: Are you saying there is a service fee on the refund? Did I understand you correctly?

Ms DONNELLY: Yes, there is.

The Hon. DAVID CLARKE: So they are paying a service fee for a refund of their own money?

Ms DONNELLY: No.

The Hon. LYNDA VOLTZ: Yes.

Ms DONNELLY: There is an administration cost to delivering the refunds.

Mr DAVID SHOEBRIDGE: Yes. That is a yes.

The Hon. LYNDA VOLTZ: That is a yes.

The Hon. DANIEL MOOKHEY: Did you model Service NSW as being the best agency to distribute the cheques, or did you undertake any analysis? Was it subject to other tenders? Were there other people—for example, the insurance companies—who were prepared to distribute the funds?

Ms DONNELLY: Certainly there would have been some analysis of the options.

The Hon. DANIEL MOOKHEY: Are you able, on notice—or perhaps, now—tell us what was done?

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

The CHAIR: I would like to move this along.

The Hon. LYNDA VOLTZ: I would like to ask one question. In the letter that you sent did you inform people that they could access the refund by any other means than going on line?

Ms DONNELLY: I would have to check. I have had one of those letters too. I am sorry, I just cannot recall what is in it. Certainly you can call Service NSW or go in to Service NSW—

The Hon. LYNDA VOLTZ: I know, now, that you can call. I read the letter, and I was not aware of it until I came today, which implies that it was not in there.

The Hon. TREVOR KHAN: Or that you did not read the letter.

The Hon. LYNDA VOLTZ: No, I read the letter.

The CHAIR: The witness has said that she will answer that, for the avoidance of doubt. Mr Khan, did you have a question.

The Hon. TREVOR KHAN: I want to move on to another area. I am happy if David leads off. I want to get onto—

Mr DAVID SHOEBRIDGE: I could make a trite observation that four lines in your submission on this issue is not adequate. With respect to accessing legal services, SIRA has put out this flow chart.

Ms DONNELLY: Yes.

Mr DAVID SHOEBRIDGE: It says, "Accessing legal services. If you think you need legal advice you have some options. This can include SIRA's legal advisory service." How many services has the legal advisory service provided?

Ms MAINI: Four.

Mr DAVID SHOEBRIDGE: Four! That is not many.

Ms DONNELLY: It is in a pilot phase.

The Hon. TREVOR KHAN: How long has the pilot phase been operating?

Ms DONNELLY: I think it was just launched on 1 January.

The Hon. TREVOR KHAN: So it has been operating as a pilot phase since 1 January and there have been four!

Ms MAINI: That is right.

Mr DAVID SHOEBRIDGE: Could I suggest this?—It is not working. Could I also suggest that your not telling us that, is a significant failing. I am giving you an opportunity to respond to those two things. It has

been running since 1 January. You have only had four. It is not working. Your not telling us that is a failing. What do you say to both of those propositions?

Ms DONNELLY: I am not sure that we are at a point where we can say it is not working, but we are going to have it evaluated.

The Hon. TREVOR KHAN: How can it be working if there has been four accesses to the system?

Ms DONNELLY: It is a pilot in order to have a safety net in case there are matters for which injured people cannot engage a lawyer and recover legal costs. So if those matters come to our attention our CTP Assist service can provide access to free legal advice.

The Hon. TREVOR KHAN: I am not being critical of you in the way that Mr Shoebridge is because after all I am a Government member but can I just say that if you are saying you have had a pilot operating for eight months and you have had four people and we have had Mr Stern come along and express some bewilderment that he has only had one referral to him for advice—

Ms DONNELLY: That is right.

The Hon. TREVOR KHAN: —in that period of time, I think you are going to have a hard job convincing us that this is actually a pilot that is being undertaken?

Mr DAVID SHOEBRIDGE: A pilot without a plane.

Ms DONNELLY: Let me say: I understood the question to be inferring that it is not working.

Mr DAVID SHOEBRIDGE: No, I said it was not working. That was my proposition.

Ms DONNELLY: It is your proposition that is not working?

Mr DAVID SHOEBRIDGE: Yes. It is not an inference; it is a direct proposition.

The CHAIR: Just let the witness answer.

Ms DONNELLY: Part of my intention in having the pilot established was to avoid a situation where an issue came up that perhaps was not anticipated where the provision for people to seek legal assistance and have the costs recovered meant that they could not seek legal advice, so as a safety net.

The Hon. TREVOR KHAN: An admirable intention.

Ms DONNELLY: If there have only been four accesses to that service now, it is surprisingly low but to some extent we cannot yet draw a conclusion about whether that is reassuring that people are not needing it or in fact we need to improve that service to make it more available.

Mr DAVID SHOEBRIDGE: Moving on from the pilot—

The Hon. DANIEL MOOKHEY: Before we do, when is the pilot finishing?

Mr DAVID SHOEBRIDGE: As soon as they've got sufficient data.

Ms DONNELLY: We were planning to evaluate it once we had 100 referrals. At the current rate it could be going for some time.

The Hon. LYNDA VOLTZ: A fair while at that rate then.

The Hon. DANIEL MOOKHEY: Do you have a view as to how long this pilot will continue and when the evaluation will be available?

The Hon. TREVOR KHAN: I will certainly be out of Parliament by then.

Mr DAVID SHOEBRIDGE: Sorry, just stopping there. If you were going to review it after you had 100 referrals and you have only had four, how can you say in good faith to me that you cannot work out whether it is working or not? How can you give us that answer in good faith? If you are only going to review it after you got 100 referrals and you have had four—

Ms DONNELLY: I said I think it is too soon to know that it is not working. It is not meant to replace the access to legal advice that is provided for in legal costs. It is meant to be a safety net.

Mr DAVID SHOEBRIDGE: So how much have you paid out to date? You have had four references to the Legal Advisory Service?

Ms DONNELLY: Yes.

Mr DAVID SHOEBRIDGE: How many private lawyers have you paid for advice for the statutory scheme and how much in total have you paid?

Ms DONNELLY: Sorry, for this pilot?

Mr DAVID SHOEBRIDGE: No, assuming that it was not meant to replace private legal services, how much have you paid for private legal services and how many solicitors have been paid?

Ms MAINI: I will have to provide that data in more detail because it is legal costs.

The Hon. TREVOR KHAN: Is this scheme not designed, as I understood it—

Mr DAVID SHOEBRIDGE: Trevor, can I get an answer first?

The CHAIR: One at a time.

The Hon. TREVOR KHAN: No, is it not a different point. Is this scheme not designed to provide legal advice to claimants during the internal review phase?

Ms DONNELLY: No, it is not.

The Hon. TREVOR KHAN: It is not?

Mr DAVID SHOEBRIDGE: It is only once the internal review goes to the DRS that they get legal costs, is that right?

Ms DONNELLY: That is right.

The Hon. TREVOR KHAN: But that is the point that I am raising in terms of the pilot scheme. It is not for the DRS phase; it is for earlier?

Ms MAINI: The pilot is designed to provide assistance to people for those claims that they cannot recoup costs under the cost regulations.

Mr DAVID SHOEBRIDGE: So it is the internal review?

Ms MAINI: It is the earlier phase.

Mr DAVID SHOEBRIDGE: How many internal reviews have there been?

Ms MAINI: As at June there were 313 internal reviews.

The Hon. TREVOR KHAN: Does that include merit reviews?

Ms MAINI: No, they are just internal reviews with insurers.

The Hon. TREVOR KHAN: How many merit reviews have there been?

Ms MAINI: I will have to provide more of that detail for you.

Mr DAVID SHOEBRIDGE: You must know how many merit reviews there have been; you surely came armed with that information. I am happy to give you a minute to look for it, Ms Maini.

The CHAIR: Take your time.

Ms MAINI: I am just going off the data that says as at 30 June; we have got data as at 30 July but we are doing a complete review as at 30 June. In terms of the internal reviews with insurers, there have been 315; 147 relate to minor injury disputes, 48 relate to amount of weekly benefit payments, 44 around treatment and care—whether that was reasonable—and 20 relate to whether the injured person is mostly at fault. The outcomes of those have been that 141 have had their decision upheld, 59, which is 19 per cent, have had the decision overturned, 19 have been withdrawn, 17 declined and 79 are in progress.

Mr DAVID SHOEBRIDGE: What is the difference between having the decision upheld and having it declined?

Ms MAINI: The declinatures could be because there is not enough information.

Mr DAVID SHOEBRIDGE: You are saying none of the 141 who got a negative response had the initial decision upheld that they challenged, or the 17 who were declined or the 19 who were withdrawn—of that pool, four have got legal advice?

Ms MAINI: They are not necessarily the same pool. I need to confirm whether they are the same pool.

Mr DAVID SHOEBRIDGE: So it may not even be four?

Ms MAINI: Yes. So I will need to come back and confirm if they are the same four.

Mr DAVID SHOEBRIDGE: But that was the class of people who were meant to be assisted with the Legal Advisory Service, correct?

Ms MAINI: Not necessarily anyone who is going through internal review; it could be earlier; even prior—

Mr DAVID SHOEBRIDGE: But that is just part of the class; there is a bigger pool?

Ms MAINI: Part of it could be prior to internal review. The types of questions that the CTP Assist service is receiving is: "I have an issue around calculation of weekly benefits" and interpretation of weekly benefits or a definition about what those benefits mean. They are the questions we are getting. They are the matters that have been referred to the advisory service.

The Hon. TREVOR KHAN: But you have only referred four?

Ms MAINI: The question that we ask is—

Mr DAVID SHOEBRIDGE: "Do you speak Mongolian?"

Ms MAINI: No, no, no. The question that is asked is: "Have you actually gone back to the insurer and clarified with the insurer?" If they have said, "We have clarified with the insurer we don't understand", that is when we offer the assistance service.

The Hon. TREVOR KHAN: Is there a set script that your telephone advisory service is provided with to deal with a referral to your pilot program?

Ms MAINI: Yes, we have got a script. I can provide that.

Mr DAVID SHOEBRIDGE: I asked earlier how many lawyers have had their legal fees paid in the dispute system. You have the data in front of you now. As at 30 June how many lawyers have been paid and how much has been paid?

Ms MAINI: I can provide more detail for you but we have paid in terms of insurer legal fees—and I will actually run through—

Mr DAVID SHOEBRIDGE: Insurer legal fees, how much?

Ms MAINI: If I could—

Mr DAVID SHOEBRIDGE: Well no, just give us the insurer legal fees?

Ms MAINI: As at 30 June, because we are doing the analysis as at 30 June.

The Hon. TREVOR KHAN: Yes, 30 June is a good base.

Ms MAINI: As at 30 June, with insurer legal fees, there has been $979 paid; claimant legal in terms of injured people legal fees is $1,760.

Mr DAVID SHOEBRIDGE: So in the first seven months of operation $1,760 in total was paid for private lawyers?

The Hon. TREVOR KHAN: That cannot be right, can it? That is about 1½.

Ms MAINI: Sorry, thousands.

Mr DAVID SHOEBRIDGE: $1,760.

The Hon. LYNDA VOLTZ: I think $17,000 was the figure.

Mr DAVID SHOEBRIDGE: No, no, what is the figure? Well, given that you paid $979 to the lawyers insurer—

The Hon. TREVOR KHAN: That cannot be right; that is 1½ claims—DRS disputes.

Mr DAVID SHOEBRIDGE: That is consistent with what the lawyers have told us.

The Hon. TREVOR KHAN: No, it is not.

Mr DAVID SHOEBRIDGE: It was; they said $1,600.

The Hon. TREVOR KHAN: That is right, $1,600 for one; we have $1,700. It cannot be one claim.

Mr DAVID SHOEBRIDGE: You have the data there, Ms Maini. Is the data the complete and utter total amount of money that was paid to all lawyers in New South Wales, statutory benefits, $1,760?

Ms MAINI: At this point in time that is what the data is showing.

The CHAIR: It is not at this point in time; it is as at 30 June?

Ms MAINI: Sorry, at 30 June.

Mr DAVID SHOEBRIDGE: Can I just test something with you: If private lawyers have been paid a total of $1,760 and your Legal Advisory Service has provided four episodes of advice, what advice are claimants getting in terms of their legal rights that you are aware of? What on earth is happening?

The CHAIR: Do you want to clarify that question in terms of the nature of the advice. You cannot give the advice.

The Hon. LYNDA VOLTZ: Any advice.

Mr DAVID SHOEBRIDGE: What is happening? Who is giving legal advice? Where is the legal advice happening?

Ms MAINI: At the moment people are getting legal advice because our figures indicate that there is legal representation and that is at about 20 per cent.

Mr DAVID SHOEBRIDGE: They are not being paid?

Ms MAINI: They may not be paid or they have not submitted accounts yet because they are not in the lifecycle.

Mr DAVID SHOEBRIDGE: How many disputes have been filed? They have done their internal review and they are not happy with the internal review, how many disputes have been filed?

Ms MAINI: As at 30 June there were 68 disputes.

The Hon. TREVOR KHAN: How many have been finalised?

Ms MAINI: They are in progress. Let me check.

The Hon. TREVOR KHAN: Some of them have been finalised. At least five or six decisions have been published on the website.

Ms DONNELLY: Ms Maini is looking at the analysis as at 30 June. The latest information I have would indicate there would be 13 matters finalised. I would like to confirm that.

Mr DAVID SHOEBRIDGE: How many motor accidents have there been since 1 December?

Ms DONNELLY: We can tell you how many claims, which is not necessarily the same as how many motor accidents because there are more than one person in vehicles.

Ms MAINI: From now to?

Mr DAVID SHOEBRIDGE: From 1 December.

Ms MAINI: To 30 June?

Mr DAVID SHOEBRIDGE: To whatever you have got. Ms Donnelly seems to have more up to date data, so whoever has the most up to date data.

The Hon. TREVOR KHAN: Are we not better to work on a consistent set of data, which is 30 June?

The CHAIR: For consistency 30 June.

Ms MAINI: Up to 30 June, 5,137.

Mr DAVID SHOEBRIDGE: Of all of those claims only 13, probably less than 13, had worked their way to finalisation in the statutory dispute process. What is your expected timeframe for those statutory dispute claims to run? If someone has a dispute how long do you expect them to take from start to finish, what are your projections?

Ms DONNELLY: My data would indicate that the average time they are taking so far is 16 to 18 days. I think there is a larger observation here. The intent of the new scheme is to not be adversarial, to provide benefits faster, to not have delays, to not make it a fight and not have so many complaints and not so many disputes. I know that we have said and everybody has said it is early days and I think we have to very closely monitor whether we

have achieving that. It may well be that the low numbers are because we are having some success, some green shoots that would indicate that perhaps there are not the same levels of disputes. I am not saying that every single one of them can be avoided but it would be good to have very low numbers.

Mr DAVID SHOEBRIDGE: Good to have some data though.

The Hon. DANIEL MOOKHEY: Have you got an evidence base that would allow us to take that hope and say yes or no? What evidence base should we be using to judge this? That is not an arbitrary question, how is SIRA judging this, what measures do you have in place?

Ms DONNELLY: We are releasing monthly and quarterly data of what we see. We have some KPIs, and we spoke of the efficiency one before. We are urging caution until we have a longer period of time to see whether or not the behaviours emerge.

Mr DAVID SHOEBRIDGE: How many claims were denied up to 30 June? That is a starting point.

Ms MAINI: I will have to confirm that one.

The Hon. TREVOR KHAN: Where is this data released?

Ms DONNELLY: It is on our website. I shot an email over to the Committee clerk with links.

The Hon. DANIEL MOOKHEY: You were here for the evidence of the panel that preceded you, the lawyers, correct?

Ms DONNELLY: I came as they were finishing.

The Hon. DANIEL MOOKHEY: The thrust of their submission was effectively that the limited use of lawyers in the system, could be right or wrong, by denying people representation, and the data Mr Shoebridge adduced seems to support that, effectively what you are doing is not removing disputes from the system you are sending them underground. It might be the case that the reforms have produced less contact with the system and people are going without their rights being claimed. What steps does SIRA have in place to determine whether that culture is taking root or not?

Ms MAINI: What we are doing is a complete review of every claim where the insurer has gone through the internal review process and is overturned to see what the trends are. We are monitoring data and trying to understand if there are any patterns that are coming through. We have commissioned two independent reports looking at how people are progressing in relation to minor injuries. We are also, whilst we are doing all of that, actively monitoring insurers in terms of consistent file reviews. We have reviewed over 485 files to date. Some of those are on early determination of liability, others are on decision-making and notification to injured people and making sure that injured people are getting communicated to properly and advised of their rights.

Ms DONNELLY: We are proactively calling people a few weeks into their claim and having a conversation with them explaining we are from the independent regulator and a friendly person who can have continuity of relationship as a person that they can call to see whether or not they are on track with their claim, there is any assistance we can give, an assessment of whether they are not satisfied with things so far.

The Hon. DANIEL MOOKHEY: How many people have you called?

Ms MAINI: We have contacted over 10,000 so far.

Mr DAVID SHOEBRIDGE: There were 5,137 claims lodged between 1 December 2017 to 30 June 2018.

Ms DONNELLY: We have begun calling people who were in the old scheme as well.

Ms MAINI: In terms of the new scheme it is 1,647.

Mr DAVID SHOEBRIDGE: There were 5,137 claims lodged between 1 December 2017 to 30 June 2018. Surely you will be able to tell us because you say you are monitoring end-to-end performance closely to ensure the Government's objectives are achieved, that is from your submission, how many of those were refused? How many were rejected—because you are closely monitoring this.

Ms MAINI: I will have to take that on notice.

The Hon. TREVOR KHAN: And are you able, in taking it on notice, to differentiate between insurers in terms of their rejection rates? Are you intending to publish data with respect to the performance of the scheme not only in an aggregated sense but also by reference to the different insurers?

Ms DONNELLY: Yes.

The Hon. TREVOR KHAN: When is that to occur?

Ms DONNELLY: I am happy to give you more information. We are working through an insurer supervision framework collecting the metrics but we will lead with data about complaints in the first instance. We are actively working through, in order to have procedural fairness for the insurers, our systems for ensuring we are capturing all complaints accurately and then we will move to start publishing.

Mr DAVID SHOEBRIDGE: But complaints are different to denials.

Ms DONNELLY: I take that point.

Mr DAVID SHOEBRIDGE: The question is not just about complaints.

Ms DONNELLY: That is a fair question and we can get you an answer to that. That is an important measure for the performance of the scheme, I agree.

Mr DAVID SHOEBRIDGE: Ms Donnelly, you said that you hope there is a green shoots, there is a lovely change in culture and you are not having disputes because everything is decided in a positive way. Even the most rudimentary test of that would require you to know how many claims have been refused and yet you are sitting here in charge of this scheme and you cannot give us that information. It does not fill me with hope that you are doing your job of working out whether the scheme is working or not. Can you see how that would be the most rudimentary data, but you do not have it, and how that might lead to a lack of confidence that you are actively monitoring the scheme.

The Hon. TREVOR KHAN: He is not speaking for all of us.

Mr DAVID SHOEBRIDGE: From my part.

Ms DONNELLY: I can. It does not mean that my offices do not know and are not acting on it. I am happy to give you some information about it and what we are doing.

The Hon. DANIEL MOOKHEY: In the last filing of premiums that were approved by SIRA, what was the profit margin for insurers?

Ms DONNELLY: Eight per cent.

The Hon. DANIEL MOOKHEY: In the last data that was available to SIRA what was the realised result?

Ms DONNELLY: The realised result for the previous scheme?

The Hon. DANIEL MOOKHEY: Yes, give us the last—

Ms DONNELLY: Over many years, on average, it was 21 per cent.

The Hon. DANIEL MOOKHEY: Have you got any sense as to where it is currently trending under the new scheme and how are you monitoring?

Ms DONNELLY: We are monitoring it. For an assessment of profit, again, that is something that takes some time. You need to know what are all the claims that will be paid out in a period, what are the costs of those claims.

The Hon. DANIEL MOOKHEY: You have actuaries who will give you expert guidance. That is correct, is it not?

Ms DONNELLY: Absolutely we do.

The Hon. DANIEL MOOKHEY: What is the expert guidance they have given you about the first seven months?

Ms DONNELLY: The expert guidance they have given me is that I probably cannot expect to have an accurate assessment of the profit in the first year of the scheme, at least until we start seeing people making claims for the lump sum benefits, and they cannot begin making those claims until 20 months after their claim.

The Hon. DANIEL MOOKHEY: I accept that. I understand it is a new scheme and that actuaries like to have right-billed data to produce their models, and that is valid. But where are we up to on the profit minimalisation model?

Ms DONNELLY: On the excess profit and loss mechanism?

The Hon. DANIEL MOOKHEY: Yes.

Ms DONNELLY: We are quite well progressed with that in respect of guidelines. We are in the process now of doing some due diligence and particularly looking at accounting standards, any issues with co-regulators such as APRA, et cetera, and then we will move to some more stakeholder engagement. We aim to finalise the guidelines for that in October this year, perhaps a little after.

The Hon. DANIEL MOOKHEY: When do you anticipate the first use of the mechanism?

Ms DONNELLY: I think it would be difficult to see it being able to be used in 2019, certainly not until the end of that. You need to have some sense of what is the cost of the claims in terms of those late lump sums. However, we will monitor really closely. If we had actuaries advising us that it looks like there is some reliable estimates of the profits being excess, then we would act.

The Hon. DANIEL MOOKHEY: You are anticipating first use of the new mechanism circa 2020-21?

Ms DONNELLY: Circa 2020, most probably.

The Hon. DANIEL MOOKHEY: Will it be with the purpose of closing the gap between realised profit and filed profit for the years that it applies, or is it the case that the insurers will have an opportunity to say whether that number should be something other than the filed rate at the time that the premium set in?

Ms DONNELLY: There is an upper limit for excess profit of 10 per cent in the range, and—

The Hon. DANIEL MOOKHEY: That is 10 per cent off their seven?

Ms DONNELLY: Sorry?

The Hon. DANIEL MOOKHEY: The range is?

Ms DONNELLY: Three and 10. There is also an excess loss mechanism at the floor and there is a cap in that range. The mechanism will operate that if the industry profit is over 10 per cent then the mechanism will be activated. You might need to remind me of your question.

The Hon. DANIEL MOOKHEY: I think you answered it.

Mr DAVID SHOEBRIDGE: I think it was when and I think you answered that.

The Hon. DANIEL MOOKHEY: Where are we up to with the risk equalisation mechanism?

Ms DONNELLY: It was implemented in July last year.

The Hon. DANIEL MOOKHEY: What has been its effect?

Ms DONNELLY: We have seen some improved competition in offering policies, particularly to young drivers. One of the objectives of the risk equalisation mechanism is to reduce the incentive in insurers for adverse selection of risk, and so the burden of, I guess, the cross-subsidisation of carrying the risk of higher cost, higher risk drivers is shared more equally.

Mr DAVID SHOEBRIDGE: Perhaps you can give us some actual detail on that on notice. It was meant to be one of the significant benefits in the reforms.

Ms DONNELLY: It certainly is.

Mr DAVID SHOEBRIDGE: But, again, I look to the submission and the information on the risk equalisation mechanism is as rare as hen's teeth. Perhaps on notice you could also address the concerns that have been raised by some in the insurance industry about the 144-odd segments of data they are required to provide for each policy. What is the rationale for that and what are the benefits?

Ms DONNELLY: I am happy to provide the information. I will say that we have a very expert subcommittee of our board advising us on this and actively looking at the risk equalisation mechanism, and the feedback from insurers is going into that ongoing review and management.

Mr DAVID SHOEBRIDGE: What is the feedback from insurers?

The Hon. TREVOR KHAN: They say there are too many categories.

Ms DONNELLY: There are some very, very interesting arguments between insurers and actuaries about—you would need to have a risk equalisation mechanism that is innovative—it is complicated. Where does any level of burden and complication yield value and when does it not? So we are working with that expert committee to ensure that—

The Hon. TREVOR KHAN: The suggestion is nine categories as opposed to 140-odd is an extraordinary width of differences of opinion, is it not?

Ms DONNELLY: There are swings and roundabouts as well. If you have fewer categories, are you doing it fairly?

Mr DAVID SHOEBRIDGE: A better description would be mice and elephants; they are well out of whack.

Ms DONNELLY: It is a complicated matter. I am happy for us to take some—

Ms MAINI: What we were wanting to do was provide a summary of where it is at, and then give the Committee an opportunity to have a briefing.

The Hon. DANIEL MOOKHEY: That is useful. We appreciate the details—

The CHAIR: We have one minute left.

The Hon. TREVOR KHAN: Can we extend it for 15 minutes?

Mr DAVID SHOEBRIDGE: I am comfortable with that.

The Hon. DANIEL MOOKHEY: It is up to the witnesses, of course.

The CHAIR: Are you able to stay for 15 minutes?

Ms DONNELLY: Certainly.

The Hon. TREVOR KHAN: It might save coming back, then again it might not.

The CHAIR: I very much doubt that, given Mr Shoebridge's earlier comments.

The Hon. DANIEL MOOKHEY: Whilst I appreciate you need the time to get the detail on that, the purpose of establishing this mechanism in law was fundamentally the fact that a lot of advice came to this Committee and to the Parliament that we are at real risk of market exit by one of the four.

Ms DONNELLY: That is right.

The Hon. DANIEL MOOKHEY: An already oligarchistic market structure that is bereft of competition in many sectors was going to get worse. Part of the reason this was established was to effectively ensure that no one insurer was stuck with the high-risk pull. What effect has it had on that dimension? I am very interested in the detail. I am equally interested in the extent to which it is meeting the higher end objectives that the Parliament has set for the mechanism. What has been the effect, what has been the feedback? Is it working? Does it require further change? Is it suitable for the task?

Ms DONNELLY: In my opinion, it does reduce the risk of having further exits. It is complicated to explain, but once—if insurers are working towards an adverse selection approach then if an insurer ends up having more than a viable share of the high-risk policies, their claims costs are going to be higher, they are going to need to put their premium up. Therefore, they are less competitive in attracting policyholders who are lower risk, and there is a spiral.

Mr DAVID SHOEBRIDGE: We know all this. That is why the mechanism was put in place. The Hon. Daniel Mookhey is asking: Is it working? Is it achieving the objectives? Is it retaining market share? No-one is arguing the rationale for it. We want to know if it is working.

Ms DONNELLY: I think it is too soon to draw our conclusions about exits or, in fact, the other objective is to reduce barriers to entry, which in my view it does do.

Mr DAVID SHOEBRIDGE: Have any new entrants knocked on the door and said, "We love your risk equalisation mechanism. It looks terrific. Can we enter the market?"

The Hon. TREVOR KHAN: No.

Ms DONNELLY: I am hesitating because—

Mr DAVID SHOEBRIDGE: Maybe you can tell us on notice.

Ms DONNELLY: —I would see that as commercial-in-confidence for anyone we might be having a conversation with.

Mr DAVID SHOEBRIDGE: You can deal with it on notice.

The Hon. TREVOR KHAN: We have evidence and we have received advices from various insurers that you are requiring three data dumps a day. Why is that?

Ms MAINI: When we set up real-time reporting, we were actually asking for more regular feeds as we are actually reviewing the time and the amount of feeds that are required by insurers. We did that initially to understand how it was working and progressing and to make sure that the quality of data was correct.

The Hon. TREVOR KHAN: How is the quality of data improved by requiring it to be delivered three times a day?

Mr DAVID SHOEBRIDGE: Is the morning data better than the afternoon data, which is better than the evening data?

The Hon. TREVOR KHAN: Do not be trite. I am interested in what the rationale was.

Ms MAINI: The rationale was that we wanted to ensure that we had real time data so that if at any point in time there was a serious injury or someone was in need, we could activate that and know that throughout the day, rather than at the beginning of the day or end of the day.

The Hon. DANIEL MOOKHEY: Why is that SIRA's responsibility?

Mr DAVID SHOEBRIDGE: You want to know if someone has—

Ms DONNELLY: There is a range of reasons. We do unfortunately see some quite catastrophic road crashes. They may happen over the Christmas period and there is an expectation that we would know what insurer is looking after a family to ensure that help is being provided. If we do not know, we ring around. I would also say that there are people who now call us if they are experiencing a difficulty and because the data is up to date and correct we do not have to ask them to tell us all about it again. There is a benefit to the injured person in that if they have told someone once they do not have to keep repeating it.

The Hon. DANIEL MOOKHEY: In order to understand that there has been a catastrophic injury—

Ms DONNELLY: Can I finish my answer?

The CHAIR: Please.

Ms DONNELLY: Ms Maini and I met with Suncorp last week and talked through the concerns that they raised in their submission—

The Hon. TREVOR KHAN: They are not the only ones.

Ms DONNELLY: I know they are not the only ones and there has been active consideration and consultation about the approach that we are taking to data collection with regard to what items should be tier 0, tier 1, tier 2 and tier 3 and which timeframes should apply—

Mr DAVID SHOEBRIDGE: Tier 1, tier 2 and tier 3 mean nothing to me, for the record.

Ms DONNELLY: Sorry, those tiers are a way of communicating clearly to insurers which elements of the data are important to get right. For instance, one of the data items mentioned in one of the submissions was a claimant's date of birth. If the insurer does not have the right date of birth for the person, they risk misidentifying which person they are talking to and which person they are sharing information with. That is a key part of identifying a person. There will be other data sets that we will be more relaxed about saying, "You've got some time." However—

The Hon. TREVOR KHAN: But is that not an audit function issue?

Ms DONNELLY: No, because the point that some of the insurers have made to me is that they having a conversation with someone who has a claim and they are asking for treatment and benefits. They are actually on the phone to them, so while I take the point that somethings are not essential to have absolutely right on that day, if they do not have the correct date of birth for a person, there should be point in the first three days when they are making sure they are talking to the right person and have some of those details. We are open to constructive feedback and input from the insurers about whether we have the elements of data to be accurate early right, but it is not the case that they should be receiving a claim from someone but not having any interaction with them for quite a period of time—they are supposed to be delivering a service and engaging with them.

The Hon. DANIEL MOOKHEY: You have outlined that the reason why you require three data dumps a day of all matters—

Ms DONNELLY: No, it is not all matters.

The Hon. DANIEL MOOKHEY: How many matters are there? Of all the claims, how many are you getting three times a day?

Ms DONNELLY: There are some data elements that need to be kept up to date and correct and some insurers are not doing it in batches; they are just doing it in a real time feed.

The Hon. DANIEL MOOKHEY: The proposition that you have advanced is that the reason why it is necessary for SIRA to have this data is so that you are aware of catastrophic instances—

Mr DAVID SHOEBRIDGE: And also so you do not have to ask the claimants to provide the information twice because they have already provided it to the insurer.

The Hon. DANIEL MOOKHEY: They may be valid purposes for why SIRA should have the information, but Mr Khan's question was why you need to get it three times a day, because we have had a lot of evidence that it is creating a lot of unnecessary cost, duplication and burden that could otherwise be avoided.

The Hon. TREVOR KHAN: One assumes that is the case on both sides—on the insurer's side and your own. I assume you are getting the information and doing something with it, otherwise it is a complete waste of time. But I want to know why this interaction is on this level of intensity.

Mr DAVID SHOEBRIDGE: There may be extremely good reasons, but we do not know from your submission and we have not had it explained to us yet.

The CHAIR: Let the witness answer, please.

Ms MAINI: We are reviewing that now.

The Hon. TREVOR KHAN: I have a question about taxis and the interim system. Did you require that the insurers put in place some of form of system to deal with the change in how taxis were to pay their premiums?

Ms MAINI: Yes.

The Hon. TREVOR KHAN: Was that then scrapped?

Ms MAINI: No, my understanding is that it is not scrapped.

The Hon. TREVOR KHAN: My understanding is that it is a work in progress as far as the taxi industry is concerned and that is has not been resolved. Is that right?

Ms MAINI: That is right. We are still working through how we can ensure that we are able to move to a new premium collection without excessive system costs and also make sure that we can accommodate to collect premiums and identify ride-share providers.

The Hon. TREVOR KHAN: Have you required the insurers to introduce changes to their computer systems which are now going to have to be further amended?

Ms MAINI: We have asked for changes to computer systems from all the insurers. We have been doing that since the commencement of the December reforms. What we have said to insurers is that we will be pausing on the requirements for the taxi solution until we have more information about what the future state will be.

The Hon. TREVOR KHAN: Essentially, you have required them to introduce changes that will change again. Is that right?

Ms DONNELLY: No, not necessarily.

Ms MAINI: No, it may well be that it ends up as the end point. We are just trying to make sure that we pause and ensure that we are aligned with what we require from ride-share providers, from taxis and from everyone else in terms of being able to collect and report on premiums.

The Hon. TREVOR KHAN: Did you require them to change their systems in terms of the unique identifier for claims from the VIN to the numberplate and, if so, why?

Ms MAINI: I do not want to mislead and I am not across that level of detail but I will take that on notice and provide an answer.

The Hon. TREVOR KHAN: Could you explain to us the rationale of relying upon a registration number as opposed to a VIN, noting that a VIN cannot be changed but registration numbers can?

Ms MAINI: I will take it on notice.

The Hon. DANIEL MOOKHEY: Are you also able to provide on notice a reply to the Taxi Council's submission that risks are identical between ride sharers and taxis and, secondly, could you give us an update as to how the development of a risk-rating model for ride sharers is going and what the data is so far showing in that respect?

Ms DONNELLY: Are you suggesting that we take that on notice? I am happy to.

The Hon. DANIEL MOOKHEY: You can answer it now but we only have five minutes and the Hon. Lynda Voltz has been waiting very patiently, so answering on notice is fine.

The Hon. LYNDA VOLTZ: I want to go back to the figures you provided earlier, particularly the 2017 figures. You said you collected $1.35 billion and paid out $7 million. Is that correct?

Ms DONNELLY: Yes, $7.5 million.

The Hon. LYNDA VOLTZ: That is about half a per cent.

Ms DONNELLY: That was last year, under the old scheme.

The Hon. LYNDA VOLTZ: Given that 45 per cent is the expected payout, does that concern you that—

Ms DONNELLY: In the old scheme?

The Hon. LYNDA VOLTZ: In the old scheme, yes, as opposed to 57 under the new. Does not half a per cent strike you as very low?

Ms DONNELLY: And that is part of the reason for concern about the old scheme, because people waited for a very long time for a settlement and to receive their benefits.

The Hon. TREVOR KHAN: I do not understand the figures.

The Hon. LYNDA VOLTZ: You are saying "We are only paying $19 million of $1 billion now because figures will be paid out in the future", but we are talking about 18 months ago—$7 million only out of $1.35 billion, it is nowhere near the figures.

Ms DONNELLY: Which was even worse.

The Hon. TREVOR KHAN: It said $7 million on new claims. Is that what the thing is?

Ms DONNELLY: It is in relation to accidents that occurred in that six-month period, so people who were injured in that six-month period, how much they received in that six-month period. It is not all claims. To clarify that further, in the old scheme there would have been a whole lot of payments that related to people who had accidents in the years before.

The Hon. TREVOR KHAN: Tail.

The Hon. LYNDA VOLTZ: Yes, I understand tail.

Ms DONNELLY: That is not the case for the new scheme. So this is really like-for-like comparison.

The Hon. LYNDA VOLTZ: Except we are 18 months on now. Was that $7 million paid out in that period or has more of that $1.35 billion been paid out now?

Ms DONNELLY: To your question: If we go back to the first six months of 2017, the accidents that occurred there, there would have been a higher proportion of payments that have been paid out in the 12 and more months since June 2017. That just is not part of my comparing apples with apples.

The Hon. LYNDA VOLTZ: Of that $1.35 billion there is probably more than $7.5 million, it has just been paid out over a longer period of time. But do you have those figures?

Ms DONNELLY: We would certainly have them in our office but we do not have them here.

Mr DAVID SHOEBRIDGE: And you took on notice to give us that more detailed data including as against what your projections were, given how fundamentally changed it is with the upfront payments for statutory benefits.

Ms DONNELLY: Could I clarify? I thought Ms Voltz was asking around the old scheme claims for the first six months of 2017, you would like to know a year on, 18 months on, how much they have paid.

The Hon. LYNDA VOLTZ: You have said they are $7 million over $1.35 billion. I assume that is what has been paid out, but that is only what was paid out in that first six months.

Ms DONNELLY: That is right, so that I could do a like-for-like comparison.

The Hon. LYNDA VOLTZ: With the $1 billion now, what the $19 million is you are getting some of those claims paid quicker?

Ms DONNELLY: Yes.

The Hon. LYNDA VOLTZ: It is the comparison, but the amount that is actually paid out you do not have.

Ms DONNELLY: Yes. To encapsulate it, there is less premium being collected and more than double paid out in benefits.

The Hon. LYNDA VOLTZ: In the short term.

Ms DONNELLY: In a very early comparison, trying to have an apples with apples comparison.

Mr DAVID SHOEBRIDGE: But what I thought you had agreed to earlier was you were going to provide what your projections were in terms of—

Ms DONNELLY: Yes, we did agree with that and I am not questioning that.

Mr DAVID SHOEBRIDGE: I will be frank with you, given that the whole idea was to move to a no-fault early payment of weekly expenses and medical expenses, and we are talking of 5,000 claims, it seems a very small amount of money to be paying out, which is $19 million for 5,000 claims, given there was such a big transfer meant to be to that early payment. I will be interested to know what your projections were and how you think that is tracking. You are going to give that to us on notice, is that right?

Ms DONNELLY: Yes. I was not questioning that; I was just trying to clarify what it was—and I must say I am still not clear what the question was that I have taken on notice from Ms Voltz.

The Hon. TREVOR KHAN: The secretariat will assist.

Mr DAVID SHOEBRIDGE: The question I have is about this 28 day issue, which has been raised repeatedly—28 days in which to make a claim for the new statutory benefits, and it may have been the same insurer that was making two errors: one was counting Sundays and the other one was counting the day of the accident itself, which had material impacts in terms of putting claimants through significant stress, denying their claims, one of which had run all the way through to DRS. Can you provide us with the circular you gave to insurers to correct them and to clarify the position, and can you tell us when that circular went out?

The Hon. TREVOR KHAN: Can I ask also, you might be able to do it now, if you can explain why that problem was not corrected by your three-a-day data dumps? It must have been blindingly obvious to you that at least one insurer had got it entirely wrong. Why did that have to go through all the way to a dispute resolution hearing?

Mr DAVID SHOEBRIDGE: Have you issued a circular?

Ms MAINI: I will have to come back and check that.

The Hon. TREVOR KHAN: Can I ask: Why did you not pick it up earlier? Do you know why?

Ms MAINI: No.

Mr DAVID SHOEBRIDGE: But it ran all the way through to the dispute thing, and that seems bizarre that you let that run all the way through and you did not intervene earlier and say, "Hang on, this is obviously wrong".

Ms MAINI: Again, I really do not want to mislead. We understand that the particular insurer—and I will need to confirm as to—

Ms DONNELLY: Misunderstood the Interpretations Act.

The Hon. TREVOR KHAN: I think that is obvious. I think a number of people have pointed that out. For somebody who only operated in the traffic court, I understood that concept. I am confused if you are requiring three-a-day data dumps so that you make sure that people's date of birth is right but on something like this, this was allowed to escalate to the issue that it had.

The CHAIR: I think the point has been made. We are five minutes over time and we will wind up the hearing. Thank you for coming today. As you would be aware from previous appearances, the Committee has resolved that questions on notice should be provided in 21 days. The secretariat will assist you with the provision of those answers.

(The witnesses withdrew)

The Committee adjourned at 17:05