REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

STATUTORY REVIEW OF THE STATE INSURANCE AND CARE GOVERNANCE ACT 2015

At Macquarie Room, Parliament House, Sydney on Tuesday 7 November 2017

The Committee met at 9:30 am

PRESENT

The Hon. Shayne Mallard (Chair)

The Hon. David Clarke
The Hon. Wes Fang
Mr David Shoebridge
The Hon. Lynda Voltz

The CHAIR: Welcome to the Standing Committee on Law and Justice statutory review of the State Insurance and Care Governance Act 2015. This is the first time this Committee, and indeed any upper House committee, has conducted a statutory review of an Act, so it is unusual. This statutory review is separate from the Committee's regular oversight reviews of compulsory third party [CTP], workers compensation and dust diseases lifetime care and support schemes. Our oversight reviews examine how these schemes are operating. However, this statutory review focuses on the State Insurance and Care Governance Act and it looks at two key issues: first, whether the policy objectives of the Act remain valid; and secondly, whether the terms of the Act remain appropriate for securing those objectives.

Before I commence, I acknowledge the Gadigal people who are the traditional custodians of the land upon which we meet today and I pay respect to elders past and present of the Eora nation and extend that respect to other Aboriginal people present. At today's hearing we will hear from legal organisations, employer groups and unions as well as government representatives from icare, the State Insurance Regulatory Authority [SIRA] and SafeWork NSW.

I will make some brief comments about the procedures 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 or witnesses, people in the public gallery should not be the primary focus of any 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 any action for defamation. The guidelines for the broadcasting of proceedings are available from the secretariat.

There may be some questions that witnesses could answer only if they had more time or certain documents to hand. In those circumstances witnesses are advised that they can take a question on notice and provide an answer by Friday 24 November 2017. I remind everyone here today that committee hearings are not intended to provide a forum for people to make adverse reflections upon others under the protection of parliamentary privilege. I therefore request that witnesses focus on the issues raised by the inquiry and the terms of reference and avoid naming individuals unnecessarily. Witnesses are advised that any messages should be delivered to Committee members through the Committee staff. 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 persons in the public gallery who have hearing difficulties. Finally, could everyone turn their mobile phones to silent for the duration of the hearing. I welcome our first witnesses from the Law Society of New South Wales and the Australian Lawyers Alliance.

PAUL MACKEN, Solicitor, Law Society of New South Wales, affirmed and examined

ANDREW STONE, New South Wales State President, Australian Lawyers Alliance, affirmed and examined

The CHAIR: You have both made submissions. Would you like to make opening statements?

Mr MACKEN: Just briefly. The Law Society's submission should be received shortly; we have not had it signed off but you will receive it in the next day or two. So far as the Law Society is concerned, the critical thing in this legislation is what appears to be a conflict between sections 23 (a) and 23 (e), and that is the conflict we would most like to see resolved. That is, that the purpose of the State Insurance Regulatory Authority [SIRA] is partly to avoid conflicts of interest but they are put in a situation of conflict of interest to the extent that they are required to deal with disputes and, apart from some other incidental things, that is the main thing that the Law Society is concerned about.

The CHAIR: We will discuss that further in a minute. Mr Stone, you have made submissions.

Mr STONE: We have made submissions. I apologise for their brevity; it has been a long year and the amount of consultation we have had to undertake over new Acts, as a volunteer organisation, has stretched our resources. We are a little weary. Nonetheless, as always, we are delighted to be here. I want to make some slightly longer opening comments. In regard to structural change, we endorse the change that has occurred. The monolithic WorkCover bureaucracy very much needed to be taken behind the shed and killed with an axe. To an extent, it has been. There are still problems that remain. It has led to some improvement but there are still plenty of areas that can be addressed. I briefly mention five points. First—and I know this is wishful thinking on my part but having read the submissions you have received from each of SIRA and icare it is patently obvious that they still have no capacity for providing this Parliament with an analysis of what occurs—they are puff pieces. They are long lists of achievements but there is not a single problem or structural fault or area of concern that they identify within either of their submissions. It is the same as their annual reports.

Maybe this is naive and optimistic of me but my belief is that the idea of an authority is that it is meant to be able to make a report to Parliament that says, "Here are the positive achievements and here are the areas of concern that we are bringing to you." They are either going to tell you this afternoon that they run the world's most perfect services, of which there is not a single fault that they can identify or that they are incapable of identifying any, in which case go and find a group of people to run these things who are capable of identifying that; or they are going to tell you that they are not allowed to do it and they are being restrained somewhere in the submissions and what they are allowed to say. I would like to see a world in which there was honest and open analysis of the operation of the schemes in which they can say, "Look, we have come up with the following friction points between having two different organisations and here is how we are going about solving them." But it is the complete absence of anything from either of the organisations involved to identify what it is that they could do better. That is my first point.

My second point, having read their submission, is simply to say, "Thank goodness for the Workers Compensation independent review office [WIRO] because look at the refreshing analysis you get there of a government body being prepared to say of another government body that there are some things it could do better." It is independent, forthright and analytical. I can only urge this group to take great care to protect WIRO and its role within the scheme. As somebody who comes from the motor accident side of compensation, I am at times envious that there is a government body that in fact reviews government performance of workers compensation, where we do not have anything doing the same within the motor accidents sphere and it is largely up to the legal profession to hold them up to that level of accountability. I urge this Committee to take great care to ensure that that independent role for WIRO is preserved because that is where you will get some genuine independent analysis.

The CHAIR: That was a strong endorsement of this Committee's report on the last inquiry into workers compensation.

Mr STONE: Bearing in mind the Chair's initial remarks, there are continued rumours—and I do not put it any higher than that—that WIRO is not popular within aspects of the workers compensation bureaucracy. It gets strangled on resources and it gets projects cut off. There are others who can better answer that from a more informed position than I am. I continue to urge this Committee to keep a watchful eye as to moves to see it crimped, shut down or castrated in the variety of ways at which bureaucracies are expert at killing off those who are their critics. I cannot put it any clearer than that.

Thirdly, I would like to endorse the WIRO observations. I think 10 observations are set out on the first page of its submissions and 9.5 of them have my wholehearted support. In fairness I should say that there is

criticism of the State Insurance Regulatory Authority [SIRA] bureaucracy in relation to its consultation. Speaking for the motor accident side of the SIRA bureaucracy, which I appreciate is not what WIRO interacts with, the motor accidents side is very good at consultation. We have had endless meetings with them this year over scheme reform. If we want a meeting with them to talk about issues they very much make themselves available. Sometimes I wish they would not make themselves available at the McKell building at the other end of town but they make themselves available. They have on occasion come to us. They are very good at taking meetings to hear our concerns. So with that part of SIRA bureaucracy there are no concerns.

Mr DAVID SHOEBRIDGE: Do those meetings result in any effective change or is it a cup of tea and a pat on the head?

Mr STONE: No. There have been instances where it has been very effective in getting across our concerns. There have been others where it has taken multiple meetings and I am still not sure that our concerns have been heard. It depends on the issue and it depends on the personalities. At times it has been very effective and at other times it has been less effective. When it is less effective they are not very good at telling you and explaining why. They will generally tell you when they agree with you. If they do not agree with you usually you do not hear as much about why not and the reason for it.

Fourthly, to endorse what Mr Macken said, there is concern that not all the conflicts have been addressed. In particular, on the motor accident side, SIRA is developing and expanding its role in two significant respects. The first is that it is getting much bigger in the advice business. Under the current motor accident scheme the claims advisory service provides a bit of advice to claimants. SIRA is radically expanding its advice giving role. There is talk about it retaining a panel of solicitors to provide advice in statutory benefit claims. That in turn raises quality and independence issues. We have a meeting with SIRA next week to discuss what it is going to be doing about it and how it is going about doing it. There are some real concerns about what the regulator is doing in the advice business in addressing how to bring a claim within the scheme that it regulates. I will come to the grounds of the conflict in a moment. Secondly, as Mr Macken said, there is dispute resolution.

Let me illustrate it in this way. It would be of enormous concern to the legal profession if the Premier or the police Minister managed to go to a meeting of all the Supreme Court judges and told them what they wanted to do about sentencing because of concerns about an outbreak in crime. I think we would all agree that that is a gross breach of the separation of powers under the Westminster system. Within the SIRA system there is nothing that stops the general manager responsible for motor accidents going into a room with all the CARS assessors—or whatever they are going to be called under the new scheme—and saying, "Listen ladies and gentlemen, we have some concerns about fraud. Here is what we would like you, as the group of assessors or the group of MERIT reviewers, to do about it." There are real concerns about the independence of the dispute resolution service where a regulator, whose primary concern is reporting back about the premium, is then able to influence the decision-makers within it. That, I think, is a more expanded version of what Mr Macken was concerned about.

Finally, and briefly I refer to their regulatory role and regulating insurer conduct. I noted within the WIRO submission the observation that it is frustrating that, on the workers compensation side, there is no system of financial penalty for misbehaving scheme agents. This is a submission I have been raising with the motor accidents side of SIRA for the better part of five to six years. One of the big problems as a regulator is that they have nothing between a slap on the wrist—if they say, "We record a non-compliance on the computer system" and, "We suspend your licence." If you stuff around a claimant or an injured worker and cause them misery for three years in the way you have handled it and we investigate and it turns out you have given them a truly miserable time that ought not to have occurred, there is no provision in the system for us to say, "The cost of that to you is $5,000" and we pass it on to the injured person's compensation and say, "Sorry this happened to you."

It would be a significant improvement within the system if there was something we could do and there was some penalty that falls somewhere between, "We are recording a non-compliance on the computer system"—who cares—and, "We suspend your licence." That is a penalty that will never happen because it is too apocryphal. Those were perhaps slightly lengthier opening comments but I am otherwise happy to take questions.

Mr DAVID SHOEBRIDGE: Mr Macken, one of the objects of this statutory review, which was inserted in the Act, was to look at the objects of the Act. A number of submissions, including from the National Insurance Brokers Association, state that they hunted high and low in the Act and they could not find any objectives.

Mr MACKEN: Correct.

Mr DAVID SHOEBRIDGE: I might start there. Do you think we should insert some overall objects into the Act and, if so, what should they be?

Mr MACKEN: Obviously it would provide some clarity. I do think there should be objects inserted. You can derive some understanding of the objects of the legislation from the second reading speech, and that is how the Law Society has approached it. I think everybody was aware that the most important objective of the legislation was to remove conflicts of interest. As a corollary of that, the biggest concern is that it has not done it in every area. The starting point was to do that. We now have, for example, SIRA responsible for minimising the cost of injuries but also responsible for dispute resolution and advising on claims. A great way to minimise cost is to advise people not to pay them and to determine disputes in favour of insurers.

Mr DAVID SHOEBRIDGE: Are you talking about section 23 (b) of the State Insurance and Care Governance Act 2015 which states that the principal object of SIRA—not the Act—in exercising its functions are as follows:

> (b) to minimise the cost to the community of workplace injuries and injuries arising from motor accidents and to minimise the risks associated with such injuries …
>
> (e) to provide for the effective supervision of claims handling and disputes under the workers compensation and motor accidents legislation …

Mr MACKEN: Correct.

Mr DAVID SHOEBRIDGE: You could achieve (b) by monstering people under (e).

Mr MACKEN: Yes, of course, and it creates one of the conflicts that the legislation, in my mind, was designed to resolve.

Mr DAVID SHOEBRIDGE: Practically, from your experience in CTP and workers compensation, how does that play out? In what particular parts of SIRA's activity are we seeing that conflict play out?

Mr MACKEN: SIRA is responsible for the Merit Review Service [MRS] in workers compensation, which reviews decisions by insurers as to the rate at which weekly compensation is paid to workers. It starts from a decision by an insurer that goes through a calculation and says this is what you will or will not get, and then an internal review by the insurer. So icare has two shots at determining how much a worker should get from their money and then it goes to the Merit Review Service, which is part of SIRA, and they say whether or not they agree with the insurer and whether the worker should or should not get money in circumstances where one of their objectives is to minimise the cost of the scheme.

Mr DAVID SHOEBRIDGE: Rather unhelpfully, SIRA in their submission do not give us any data about the outcomes on merit review, the extent to which decisions are overturned, the extent to which benefits are returned. We have, I think, three dot points about the fact that they do it and they have reduced the finalisation time. Do you know anything about the substance of the merit review?

Mr MACKEN: Fortunately, they have published, I think, 13 of their several hundred decisions on the website, so that is handy, I guess.

Mr DAVID SHOEBRIDGE: Thirteen?

Mr MACKEN: I think 13. For some reason they do not adopt the approach of other organisations involved in dispute resolution and publish all of their decisions. It is very difficult to get any information about the extent to which they are either upholding or overturning insurers' decisions.

Mr DAVID SHOEBRIDGE: What about general knowledge? How does an injured worker get their matter to merit review? Is it through a lawyer? Is it off their own bat? Do they have to hunt around on the internet?

Mr MACKEN: They now can access legal advice, although the rate at which the advice is paid—it is regulated and you cannot charge the worker themselves, so your costs are limited to the regulated amount, and it is woefully inadequate. But if they can find a lawyer who will work for peanuts they can get a lawyer to assist them in making application to the Merit Review Service. But, of course, if you pay next to nothing for the legal advice, firstly, a lot of lawyers—particularly experienced lawyers in this area—will not do it because, frankly, the professional indemnity costs and risk are much too great compared to the 1,200-odd bucks you are going to get paid for it. Secondly, the sad reality is you eventually get work-to-rule. If a lawyer is only being paid absolute minimum fees to give advice on a merit review, then they are not going to spend their entire weekend doing it, for example; they are going to apply to it such time as is reasonable having regard to the fees they are being paid in most cases—not in all cases, I must say.

Mr DAVID SHOEBRIDGE: So there is that conflict in workers compensation. What about the practical conflict in motor accidents? There has always been the Claims Assessment and Resolution Service [CARS].

Mr STONE: And CARS has existed as a relatively independent body with its own principal claims assessor and with an external workforce for cars—there are barristers and solicitors who do it as a part-time gig at a heavily subsidising-the-scheme rate; they are not paid anything like what they would earn in commercial practice, they do it as a gesture of goodwill to the public. It is some of the lawyer's way of putting back. The concern is that the empire-building that is going on at present around the new dispute resolution service might see more people being brought in full-time, and, in particular, if they are full-time and working permanently in the building, as I think the merit reviewers will be, it is very hard to then see them as being independent in the functions that they undertake.

The CHAIR: What would be your proposal then, either of you, in making it independent? A separate statutory body or—

Mr STONE: We started off with a separate statutory body to determine motor accident claims—it was called the District Court of New South Wales. We tried to make things cheaper by setting up CARS, an alternative dispute resolution service, but we, at least within the bureaucracy, gave it a greater degree of protection in its independence than I believe the dispute resolution service is going to have under the new regime. We have not been consulted over the terms of engagement of people. I have a suspicion that they are going down the path that workers compensation went a few years back of getting in dispute resolvers who have limited expertise in the field but are said to be experts in resolving disputes. It makes a big difference if you do not have the technical knowledge in the area, given the complexity of it, and I think it is fair to say that that was not a great experiment when it was done in workers compensation.

Mr MACKEN: No, that is right. We have done plenty of different submissions about the problems associated with the dispute resolution service, but, quite clearly, if you are going to set up a regulator, as we have, and an insurer, as we have, there should be a separate dispute resolution process, however constructed. You should not have either the insurer or the regulator involved in dispute resolution, and to some extent the insurer is because they conduct the initial decision and then an internal review of their initial decision, which seems kind of silly, if I can put it that way.

Mr DAVID SHOEBRIDGE: I think the actuaries like it because a number of people drop off at that point.

Mr MACKEN: Yes, people give up, I guess.

Mr STONE: And that is put forward as being a sign of success, where insurers are making good decisions because nobody reviews them, not insurers are making poor decisions because it made the review process too complex for people to engage in. What I have never seen that SIRA has done—and Mr Macken might be able to answer this better—is to, in effect, go back and see what is the injustice rate, as in pick a random selection of 10 insurer decisions that were not reviewed and say should they have been reviewed? Get somebody with the capacity to look at it and do random sample audits of should more decisions be being reviewed because they were incorrectly made? Have they ever done any of that sort of investigation?

Mr MACKEN: Not to my knowledge.

Mr STONE: No, and that would be the true test of the system. It is not how many people clear the hurdles to get there and then achieve something, it is how many drop off. The attrition rate is put up as being a success in decision-making, whereas it is equally explainable by being a success in the complexity of the system to let you get to the next level.

The Hon. LYNDA VOLTZ: In the Workers Compensation independent review office [WIRO] submission they say a program was implemented by Insurance and Care NSW to determine whether workers would reach the threshold and scheme agents wrote to affected workers, which is where you got those many letters that were sent out that were inaccurate. Would that not just push up the number of disputes if you run a program to see how many are going to reach the threshold? I am just not sure what kind of program Insurance and Care NSW were trying to implement there. Do you know what that was and what they wrote out?

Mr MACKEN: I think the rationale for it was that the amendments in 2012 to the legislation did have a dramatic impact on a lot of workers at that five-year point, which we are now reaching by reason of section 39. The vast majority of workers are having their entitlement to weekly compensation cut off at the five-year point. The insurer, under the direction of the regulator, considered that that was somewhat harsh and difficult for injured workers, which is kind of them really. So they decided that they would try as best they can to mitigate

the hardship by informing workers of the circumstances by which they might avoid the axe, so to speak. Unfortunately, they did it inaccurately and, arguably, they should not have done it at all.

The Hon. LYNDA VOLTZ: But that was prompted by Insurance and Care NSW.

Mr MACKEN: Yes, but I think it was SIRA that directed them to do it. They would be able to give you evidence about that. But I am fairly certain it was SIRA.

The Hon. LYNDA VOLTZ: I will be asking them about that as well.

Mr DAVID SHOEBRIDGE: Is this conversation not to the point when it comes to that issue about those thousands of workers under section 39? SIRA is doing one thing, icare is doing another thing and nobody really knows who is responsible for any problems and failings. If insurers are not doing the right thing and are sending incorrect notices to workers that they are going to be terminated under section 39, whose job is it to oversight them? Is it SIRA under their effective supervision of claim handlings and disputes or is it icare under its role of managing the insurers? Whose job?

The Hon. LYNDA VOLTZ: Well, monitor the performance of the insurers.

Mr MACKEN: It would be SIRA, but SIRA, of course, also has the obligation to keep claims cost to a minimum.

The Hon. LYNDA VOLTZ: Icare has to monitor the performance of the insurer, does it not? Is that not part of their functions?

Mr MACKEN: Yes, although they are the insurer.

The Hon. LYNDA VOLTZ: But their functions?

Mr MACKEN: That is introspection, I guess.

The Hon. LYNDA VOLTZ: There is a conflict already.

Mr DAVID SHOEBRIDGE: They are managing the scheme agents, so if the scheme agents are sending out the wrong notice.

Mr MACKEN: Yes that is right. They are contracting with the scheme agents and therefore managing them, yes.

Mr DAVID SHOEBRIDGE: That brings us back to the point you started with: What the bloody hell is section 23 (e) of the Act doing having SIRA oversighting the claims handling and disputes?

Mr MACKEN: Yes.

Mr DAVID SHOEBRIDGE: At that point there is a conflict and they are probably doing some of what icare could do and some of the independent dispute resolution body should be doing.

Mr MACKEN: Yes, quite right.

Mr DAVID SHOEBRIDGE: I could be wrong.

Mr STONE: To come to the question of whose responsibility, the analogy I would come up with is that if bank was sending out incorrect information to its customers, you would expect both the bank board to do something about it, which would be the icare role, and the banking regulator do something about it, which is the SIRA role. I do not think it is wrong that there might be two separate responsibilities to fix a problem, but it becomes more complex when they are both government bodies and they are reporting to different Ministers.

The Hon. LYNDA VOLTZ: You could get a situation where the board says it is the regulator's job and the regulator says it is the board's job.

Mr STONE: That is the other problem.

The Hon. LYNDA VOLTZ: When you do not have a clear definition of whose responsibility it is.

Mr STONE: I like a system whereby it is the responsibility of both, if you are going to have two.

Mr DAVID SHOEBRIDGE: Of course, icare does not have any responsibility for this insurers or the specialised insurers.

Mr MACKEN: That is quite right.

Mr DAVID SHOEBRIDGE: Has SIRA taken a role in oversighting those insurers under section 39?

Mr MACKEN: They have more of a role as an educator. For want of a better expression, they educate self-insurers and specialised insurers about what SIRA think should be done. Having said that, there is no real way that they can compel self-insurers or specialised insurers to act according to what SIRA thinks is the appropriate way to act, save to the extent that they grant the licences, I guess. The legislation determines what a self-insurer or a specialised insurer has to do. In respect of section 39, the legislation does not require them to do anything.

Mr DAVID SHOEBRIDGE: Other than to stop paying them at a certain point.

Mr MACKEN: They stop paying at Christmastime.

The CHAIR: Self-insurers are on our witness list for later today.

Mr DAVID SHOEBRIDGE: I come back to the role of SIRA in dispute resolution. If we accept that the CARS model has broad acceptance—it kind of works and is semi-independent and there is a review to the District Court if you do not like it as a plaintive—what model do you think should be dealing with the statutory complaints under motor accidents? We are going to a raft of new statutory disputes.

Mr STONE: It is not easy, because you do want something that is cheap, efficient and fast. If it is going to be a small argument over whether your make-up pay should be $500 a week or $520 a week, you do not want to expend a vast amount of time and effort on arguing over $20 a week.

Mr DAVID SHOEBRIDGE: Or whether you are entitled to an extra five physiotherapy visits and other small claims.

Mr STONE: Yes. If you look at the Medical Assessment Service [MAS], it is an unwieldy tool taking upwards of four or five months for a MAS dispute to determine small treatment expenses. I accept that speed always equates to roughness—the faster you get it, the rougher the justice. This is unfortunately pretty much a given, so we should accept that there needs to be a system but there needs to be some advice available to people within that. Given that we still have not seen the final regulations on the motor accident side, I cannot be definitive about any of this, but we have tried to prioritise that disputes at an early stage that have later significant consequences and cannot be cleaned up later need better resourcing. By that I mean, it is what we call "claim killer" disputes: If it is a preliminary dispute about whether you are entitled to bring your claim at all that should be better resourced at an earlier stage than a $20 a week dispute.

Mr DAVID SHOEBRIDGE: Threshold disputes?

Mr STONE: Yes, you put it more eloquently. The other safeguard, as I see it, within the current system is that for those who go on to have a fault-based damages claim, there is the capacity to still claim what you missed out on at the earlier stage. There are some disputes that people let go at an early stage, because they know they can clean them up later on, to put it in lay terms. Of course, nobody has brought a claim under this system yet; this is starting 1 December. If it works that way, that would be encouraging but that is a watch-and-see, because we have not yet seen how it is going to work and we have not even seen the guidelines filling in the details. But there is concern that whatever the new version of CARS will be will not be as independent as the current version of CARS. It may seek to move staff in-house, but we do not know how that is going to look and there is certainly concern that the merit reviews service also will not be independent in terms of its advice and its function as well as the degree of ease of access to it. Again, we have not seen all the regulations and the guidelines and cost structures.

Mr DAVID SHOEBRIDGE: The concern that has been raised with me is that in 2015, after a decade-long experiment of an ever bigger WorkCover where an attempt was made to do everything under one roof with the conflicts of interest and bureaucracy that generated, Parliament chopped it in two in 2015 to reduce the conflicts of interest. But we are going back to recreating those conflicts by building this new empire within SIRA, where the dispute resolution and the regulatory bodies together are going to create a new version of the conflict of interest we got rid of in 2015.

Mr MACKEN: That is what is happening.

The CHAIR: You are hypothesising, but we are talking about the current Act.

Mr DAVID SHOEBRIDGE: No, the statutory dispute mechanisms being proposed under the Motor Accidents Compensation Act are likely largely to lie within SIRA. If that happens, you are going to be creating a new version of the conflict of interest we got rid of in 2015.

Mr STONE: A different conflict, but one of an equally serious nature in terms of not having independent decision-making.

The CHAIR: We are talking about a hypothesis, but is there not a way to establish an independent body within SIRA?

Mr STONE: That is it: How does the structure remain independent, for example, if there is not a recreation of the principal claims assessor role to act as a buffer between the actual assessors and the bureaucracy? We have not yet seen how the structure is going to play out, who will be employed to do it, the terms under which they will be employed. There has not been a lot of consultation about how that is going to occur.

Mr MACKEN: Even when the funding comes from the body that has been set up, an allegedly independent structure, that creates at the very least a perception that there is something wrong. They are funding it, so how are they influencing behaviour? One of the problems that Mr Stone identified in that relatively small claims should have an efficient dispute resolution process, in the past the way that was dealt with, and frankly dealt with very efficiently, was that when there were transactional costs associated with dealing with a dispute that was a relatively small amount of money, if those costs were meted home to the insurance company in circumstances where they had made the wrong decision about those claims, it solved the problem. Insurers obviously did not want to be hit with the transaction costs of going to a dispute resolution tribunal, for want of a better term, over $500 and so end up paying $5,000 or more for the privilege. That meant they would make intelligent, informed and proper decisions about those small claims, and often would bite the bullet and say there might be an argument about whether they need five more physiotherapy sessions, but for goodness sake we will pay it.

Mr DAVID SHOEBRIDGE: We would rather pay it on physio than on a lawyer.

Mr MACKEN: It is easier to pay than to spend it on the lawyers. That informed the behaviour of insurers, but that has now gone. There is no skin in the game, so to speak, for insurers. They pay their own costs, although they pay them with someone else's money in the case of the scheme agents, and they do not pay the workers' costs win, lose or draw. There is now an independent body paying their costs, so from that point of view, while elements of the changes to the cost situation in workers compensation are good, the removal of skin in the game makes it much more prone to what you might call less than ideal insurer behaviour.

Mr STONE: I endorse that comment entirely.

Mr DAVID SHOEBRIDGE: The submissions from Unions NSW and the Construction, Forestry, Mining and Energy Union [CFMEU] point to the lack of any objective in this scheme that clearly says this scheme should provide just and fair compensation for those who are injured. It seems remarkable that that is not in this scheme. Do your organisations have a view about whether a similar objective should be inserted?

Mr STONE: There were objectives in the Motor Accidents Compensation Act 1999. In particular, there were anti-fraud objectives and maintaining stable premium objectives but there was also ensuring proper compensation of the most seriously injured. We protested against the removal of that objective in the new bill and were unsuccessful. That objective has been removed from the new bill.

Mr DAVID SHOEBRIDGE: We are now looking at a statutory review of the objects and the outcomes of the State Insurance and Care Governance Act 2015. So I am asking you whether you think an objective to that effect should be inserted, relating to both workers compensation and compulsory third party insurance [CTP].

Mr STONE: Yes, in that it is a good symbolic gesture. Do I think, on its own, it is likely to lead to any cultural change? I am less enthused. Yes, of course I support that being the objective. That should be the objective; it is the reason we have these schemes. On the other hand, I have seen that the weight of objectives in changing cultural behaviour—over 20 years of observation—is next to nothing.

Mr MACKEN: The terms "just" and "fair" are difficult. Arguably what is currently provided in the workers compensation legislation is not just and fair. Certainly in a lot of people's minds it is not. There is a reason. We understand the reason for that—it has to be relatively cost competitive to the schemes elsewhere, or everybody disappears from New South Wales. It is a sad thing that, right across Australia, we are in a race to the bottom in terms of delivering benefits to the injured. We understand that reality. So "just and fair" is, maybe, not the term to use if people do not see it that way. Perhaps there a requirement that they deliver the "appropriate compensation in accordance with the legislation" would be as high as you could put it.

Mr DAVID SHOEBRIDGE: We do not yet have your submission, Mr Macken, so maybe you could work out what form that objective should take.

The CHAIR: Mr Shoebridge could help write it for you!

Mr DAVID SHOEBRIDGE: It is not my job to write it.

The CHAIR: Any further discussion?

Mr DAVID SHOEBRIDGE: Is there any evidence of the board of SIRA grappling with the kinds of system design issues? Are the minutes of the board published? Are the papers from the board published? There is quite an extensive little board sitting there. Do we know what it is doing?

Mr STONE: I do not.

Mr MACKEN: We may have to take that on notice, but I do not think they are.

Mr STONE: If minutes are published I am unaware of it. At a board level they have never sought to consult with the legal profession, as far as I am aware. I have met Mr Matthews on a couple of occasions, coming and going from various events. The profession did have individual discussions with a couple of board members a year-and-a-half ago, during the course of the redesign of the motor accident scheme, but in terms of the board engaging at a consultative level with scheme stakeholders, I am not aware of that having occurred.

The Hon. LYNDA VOLTZ: What about the statement of business intent? Have you seen that?

Mr MACKEN: No.

Mr STONE: No; but, with the very greatest respect to the people who commit a lifetime to developing such documents, they tend to be full of meaningless blather.

The Hon. LYNDA VOLTZ: It is just that they are required to do one and submit it to the Minister and the Treasurer.

Mr STONE: I have read the submissions they have made to you, and it is a remarkable document in terms of setting out all the positive achievements of the organisation, but in terms of a critical analysis of the way in which it is operating, and the way in which it could improve—

The CHAIR: That is our job.

Mr STONE: —I am none the wiser for having read them.

Mr DAVID SHOEBRIDGE: They read like shopping lists.

The Hon. LYNDA VOLTZ: You should see their commercial minds and hearts pamphlet.

Mr STONE: I have no doubt there are a number of smiling people capable of appearing in those brochures.

Mr MACKEN: In fairness, they may be struggling to understand their objectives themselves.

Mr DAVID SHOEBRIDGE: Part of the redesign was to have the board as a more independent board than it had previously been—more of an advisory board, a more independent board. As key users of the system is there any evidence that you have seen that that independence is a function—either in their seeking some external advice, going beyond the bureaucracy, having sub-committees or anything you would expect from an independent board?

Mr STONE: At a board level, no. We just do not engage at a board level.

Mr MACKEN: No. The activities below the board level would not suggest that that is taking place, in my view.

Mr STONE: I would be speculating.

Mr DAVID SHOEBRIDGE: This is the last set of questions in the area that I am concerned about. The workers' compensation scheme has a substantial surplus but the definition of the surplus is dependent upon which particular prudential margin is adopted. Who do you understand sets the margin, and on what basis are they setting that margin?

Mr MACKEN: My understanding is that the board of SIRA would set the margin.

Mr STONE: I would assume that, but I do not know.

Mr DAVID SHOEBRIDGE: The history of the scheme is that a decade ago it was set at 100 per cent funding ratio, which, when the global financial crisis [GFC] came proved to be inadequate, and it went into deficit. Then there was a proposal to set it at 110 per cent, which seemed to be effective. But there are suggestions now that it has gone up to a prudential margin of about 123 per cent, or maybe even higher. That

figure determines whether or not there is a surplus of moneys available to pay back to injured workers. It is probably one of the crucial figures in the scheme. Do you know how it has been set, or on what basis?

Mr STONE: You would have to ask SIRA.

Mr MACKEN: Yes; no, is the answer.

The CHAIR: They are coming in this afternoon.

The Hon. LYNDA VOLTZ: When the Melbourne Cup is on!

Mr MACKEN: It is on, is it?

The CHAIR: What is the Melbourne Cup?

The Hon. LYNDA VOLTZ: I am the only one who cares.

The CHAIR: Thank you for coming in again; you are regular faces at our inquiries. I think you took one or two questions on notice. I remind you that they need to be returned to us by Friday 24 November. It is a shorter period. The secretary will contact you early next week in relation to the questions you have taken on notice. I thank you for your submission and for your ongoing submissions to our inquiries.

(The witnesses withdrew)

(Short adjournment)

LUKE AITKEN, Senior Manager, Policy, NSW Business Chamber, affirmed and examined

ELIZABETH GREENWOOD, Policy Manager, Workers Compensation, WHS and Regulation, NSW Business Chamber, sworn and examined

GARRY BRACK, Chief Executive, Australian Federation of Employers and Industries, affirmed and examined

JILL ALLEN, Policy Manager, Australian Federation of Employers and Industries, affirmed and examined

ALAN BECKEN, Chairperson, NSW Workers Compensation Self Insurers Association, affirmed and examined

MICK FRANCO, Honorary Executive Member, NSW Workers Compensation Self Insurers, affirmed and examined

The CHAIR: Good morning and welcome to the statutory review of the State Insurance and Care Governance Act 2015, a one-off inquiry. I welcome our next significant group of witnesses. Would each organisation—not each person, if we can avoid it—like to make a brief opening statement? We have submissions from you all now.

Mr AITKEN: The NSW Business Chamber welcomes the opportunity to appear before the Committee today as it conducts its statutory review of the State Insurance and Care Governance Act 2015. As the Committee would be aware, the chamber is one of Australia's largest business support groups with a direct membership of more than 20,000 businesses, providing services to over 30,000 businesses per year. We work closely with our members to assist them in both identifying and advocating on issues that impact on their business operations. In relation to workplace health and safety and workers compensation issues specifically, the chamber engages with its members through the provision of direct advice, through a formal policy committee, as well as through ad hoc policy surveys.

We have drawn on this broad engagement with our members as well as our own direct engagement with State Insurance Regulatory Authority [SIRA], icare and SafeWork NSW in providing a submission to this review. While at the time of their formulation the chamber did not actively call for the establishment of three new agencies to undertake the functions of the former WorkCover NSW, we did believe that the creation of SIRA, icare and SafeWork NSW would help to clarify the multiple functions that have been undertaken by the former WorkCover and address potential and perceived conflicts.

While we believe that the policy objectives for which these agencies were established remain very much valid, from feedback from members and from our own experience there continues to be significant confusion as to their roles and responsibilities. As our submission suggests, amendments to clarify the specific functions of these agencies within the 2015 legislation would be appropriate. We do note, however, that with three pieces of legislation relating to these agencies—the Workers Compensation Act 1997, the Workplace Injury Management and Workers Compensation Act 1998 and State Insurance and Care Governance Act 2015—continuing to operate, consideration should be given to consolidating these Acts as they all share common policy objectives. Thank you.

The CHAIR: Thank you.

Mr BRACK: Thank you for the opportunity to appear before the Committee. According to Minister Perrottet, the legislation under review was intended to achieve a consistent and robust approach to monitoring and enforcement of insurance and compensation in the State. Australian Federation of Employers and Industries [AFEI] is concerned only with the workers compensation and the related work health and safety issues rather than the other matters that might be before the Committee under that legislation. The purpose of the legislation is to assist in the delivery of effective return to work—a scheme for that purpose for workers compensation for workers genuinely injured at work. That is not being achieved, in our view.

Employers' workers compensation premiums are being spent on a wide range of issues including speculative social programs, grants—some of which have to be regarded as questionable—delivery of ineffective design in claims management, excessive staffing, indisciplined in the whole process of the scheme, failure to report publicly, the monopolisation of the insurer function, no employer on the board, and no consultation with employers et cetera apart from what we have here. In our view, these things require close attention. There are details I could go into in each one associated with the effectiveness of the scheme and the elements required for that, the discipline that is required to have an effective scheme, and disclosure questions. All of those things go to how the scheme functions and whether it will run off the rails in the absence of those things. In our view, it is on the way off the rails.

Many of the relevant aspects of those factors are not being properly managed or implemented. Indeed, some that should be there are being deliberately refused by icare in the operation of the scheme. Our concerns are significant. Are the objects of the Act appropriate? Well, they may be, but not if you do not achieve all of those related issues. Is the legislation splitting up the functioning into several bodies the right kind of approach? Well, it could be, but only if those other things are being dealt with. Effectiveness of the scheme, disclosure of the relevant details and discipline are three key aspects that are not there now. Without them, we may as well not have made the move in the first place.

The CHAIR: Thank you.

Mr FRANCO: I thank the Committee for inviting us to give evidence today. The Self Insurer's Association, as you may recall from previous inquiries, is a body that represents 60 large employers in New South Wales. In addition to self-insured employers, the association also represents specialised insurers—for example, industry pooling arrangements like StateCover Mutual Limited. It represents a large part of the workforce in New South Wales. The submission presented by the association on 31 October is succinct; it speaks for itself. I understand that it was circulated this morning so I will not read it again. The association has nothing to say about compulsory third party [CTP] insurance or the other function of the State Insurance Regulatory Authority [SIRA], we are only concerned about workers compensation.

The associations continues to support the separation of the insurance function from the regulatory function. That was a good idea and it should continue. The main concerns of the association are the definition of what SIRA will represent in the future as a workers compensation regulator for the whole system, not just the scheme—not just the icare (Insurance and Care NSW) nominal insurer part of the system but the whole system. The self insurers do not participate in the icare part of the system. The association and its members are very concerned about the continuing function that SIRA managers with one aspect of the dispute resolution—the merit review part of the workers compensation system. The association is of the view that it is completely inappropriate for a regulator to have stewardship over a part of the dispute system and that should cease. That dovetails into the whole issue of dispute resolution, which was the subject of another inquiry last year. The association is concerned and disappointed that the fruit of that inquiry has not crystallised into any kind of suggestion for reform at this stage.

The CHAIR: There is still time.

Mr FRANCO: Indeed. Merit review should not be part of SIRA as a regulator. The other comment that the association and its members would make about SIRA relates to the whole topic of licensing self insurers. Self insurers have participated in a long discussion with SIRA over two years relating to a review of the licensing criteria, the development of a new licensing model and the transitioning of self insurers from the old to the new. Whilst on the one hand the discussions have been collaborative and cordial, and the regulator has taken on board a lot of the views of the members of the Self Insurer's Association, some of our members are of the view that the whole process has evolved over time, it is still evolving and there is a great deal of uncertainty as to what the requirements will be for a self insurer under the new licensing criteria and, in particular, how they will be judged. That is a concern to our members. Whilst SIRA has been good about talking to our members, the whole process has been quite uncertain.

As a regulator, I think it is fair to say that our members would express the view that SIRA should be a prudential regulator only. It should be concerned about financial issues and should have little or nothing to say about how, for example, claims should be managed. That has been a long-term debate between the association and SIRA, and the former regulator as well. We are still at odds on that issue. My personal view is that SIRA as a workers compensation regulator is still defining itself. I and some of the members have concerns about the treatment self insurers receive from the regulator as opposed to how the regulator deals with the other part of the system—icare. I am not sure that there is a similar approach and I suspect that the treatment of the two parts of the system by the regulator may well be disparate. It manifests in issues such as section 39 of the Workers Compensation Act, which I know is not for today but it is a significant problem for the system, particularly coming to the end of the year when a lot of injured workers in New South Wales are about to be jettisoned out of the system. How icare may deal with that is potentially different to the advice self insurers have received in how they might go about dealing with that issue.

The CHAIR: The advice coming from SIRA?

Mr FRANCO: Yes.

The CHAIR: The Committee touched on that earlier today.

Mr FRANCO: Yes. I expect the Committee will have already heard a lot of the comments I have made, so I will not labour those points but we are happy to take questions.

Mr DAVID SHOEBRIDGE: One of your previous ongoing concerns was the expensive biannual auditing that you were subject to. Has that been resolved in your discussions with SIRA?

Mr FRANCO: It is very unclear. In the new licensing criteria one of the things deleted has been the work health and safety audits, which were a large cost driver. Under the new system of licensing it is a tiering model—from top tier to fourth tier and if you get down to the bottom of the tiers your licence is at risk. A number of the things introduced include claims management, audits, stricter criteria around the submission of data, all of these matters are a cost driver. SIRA was good enough to engage Ernest and Young to conduct a forum into cost and the report from that inquiry is yet to manifest. The concern our members has is that they have reduced cost by taking out work health and safety audits but they have replaced it with a number of other levels of activities as part of this new tiering system and we think, at best, the cost savings will be marginal.

Mr DAVID SHOEBRIDGE: Ernst and Young were doing a review. Does that include the four-tier system?

Mr FRANCO: Yes.

Mr DAVID SHOEBRIDGE: Do you know if that review has been completed?

Mr FRANCO: I have participated in a telephone conference where members gave feedback and we are waiting on a report. I think Mr Becken can answer that.

Mr BECKEN: To my understanding, the Ernst and Young document has been provided in draft. I believe SIRA has released it as late as the day before yesterday. I can tell you at a quick glance the incurred costs in the introduction and management of this new licence versus the cost savings of removing the work health and safety auditing requirement comes out, if my memory serves me correctly, to be $110,000 to $120,000. I do not know if that is an annual cost. That is an approximate cost. However, in speaking with the members, when you consider the costs associated with managing a self-insured licence we dare say that the benefits maybe minimal or marginal at best.

Mr DAVID SHOEBRIDGE: Sort of accounting-error or rounding-error territory?

Mr BECKEN: I do not know if it is rounding error. We requested that SIRA perform a financial impact feasibility study. It was kind of the cart before the horse.

Mr DAVID SHOEBRIDGE: Assuming that SIRA did not conduct merit review, where do you say those disputes should be determined?

Mr FRANCO: That is a very difficult question. As a lawyer practising in the area of workers compensation I would say that it should be under one body as a minimum. Whether you put that under the Workers Compensation Commission or you create a completely new body, such as a personal injury tribunal, that is a matter for debate. The latter would be my preference.

Mr DAVID SHOEBRIDGE: But not expanding the empire of SIRA, to build from that and pick up all of that?

Mr FRANCO: Correct. As a regulator, it should not be dealing with disputes.

Mr DAVID SHOEBRIDGE: Mr Brack, what is your view? Do you think SIRA's role should expand so that it is determining disputes? Expand the merit review or shrink the merit review?

Mr BRACK: Well, under the heading "Discipline", which I have mentioned earlier, there is a whole range of things but one of them is associated with the question of disputation, investigation and surveillance. They are all part of the same debate. They arise when employers say, "I do not think that claim is genuine", or when the doctor says, "You have got X" but there is a dispute about those kinds of things. In our view, it is almost every player gets a prize as it stands now and there needs to be some re-examination of the way you deal with it. Where do you deal with it? I do not necessarily think that should be SIRA but something needs to be done in relation to the present structure and the nature of decisions and the outcomes.

Most claims, we know, are ultimately approved and even if the employers say, "Well, there is no evidence that this happened, for these reasons and we think this is a bogus claim", employers still lose out. That does not mean that the employer cannot be wrong, because employers can be wrong, they can have a negative view when no negative view would be appropriate in the circumstances. But if you ask a room full of employers, "Have you had a workers compensation claim in the last three years?" every hand goes up. If you ask, "Have you had a bogus workers compensation claim in that period of time?" almost as many hands go up. So there is a general dissatisfaction with the way the system functions and therefore this question of where you handle disputes and how you handle them is an important issue. But even though I am being very circular, I do

not suggest that SIRA ought be the body to do it, unless we can get a more balanced outcome. So it is a possibility but not one I immediately subscribe to.

Mr DAVID SHOEBRIDGE: Mr Aitken or Ms Greenwood?

Mr AITKEN: We would probably agree with those comments from Mr Brack, that it is not something to be considered in detail but there are obviously some issues there. The feedback that we receive from members regarding concerns around bogus claims are the same. So potentially it should be taken outside of SIRA but where to? I would not want to offer a suggestion at the moment.

Ms GREENWOOD: Having said that, I have approached SIRA about this allegation, as we did have a member survey and this did come out of the member survey. I have met with SIRA and we are co-designing a process to ensure that it does get investigated. So that is something that we are looking at working with SIRA in making sure that they are adequately investigated and making it—

The CHAIR: You are talking about bogus claims?

Ms GREENWOOD: Yes, specifically bogus claims.

The CHAIR: That is an outstanding figure that you are suggesting—100 per cent of employers say they have had a bogus claim.

Mr BRACK: Almost.

The CHAIR: I would like to see empirical evidence. Do you have research? What level of bogus claims is there from the survey of your members?

Ms GREENWOOD: It was quite a common theme from our survey of members. We spoke to a person within SIRA who explained the process and how there is a transfer; they rely on referral from icare to SIRA of bogus claims.

The CHAIR: Alleged bogus claims. It would be alleged bogus claims at that point?

Ms GREENWOOD: Yes, alleged bogus claims.

The CHAIR: Or disputed claims.

Ms GREENWOOD: The current process is to complain to the insurer, to icare; icare is to investigate; and then icare, if they feel there is merit, will refer it on to SIRA. The feedback that we have received from SIRA is that that has dropped off. Given that is their feedback and taking that in conjunction with feedback we have been getting from members, we expressed concern and how, if allegedly bogus claims were not adequately investigated, that would have an adverse effect on the scheme.

The CHAIR: Just to be clear, you are suggesting they have dropped off because they are being paid out at the icare level?

Ms GREENWOOD: Yes.

The CHAIR: As opposed to being escalated?

Ms GREENWOOD: We have had specific feedback from members to say that when they have spoken to icare the response has been, "It is too expensive to investigate. It is easier just to accept it and move on."

Mr DAVID SHOEBRIDGE: Almost every actuarial review of pretty much every statutory scheme in Australia and in the United States, in particular of workers compensation schemes, shows that bogus, inflated or fraudulent claims are a tiny fraction. Do you have any evidence to suggest otherwise because literally almost every review does?

Mr BRACK: It is worth observing, when I made that comment before, when I asked the room, "Have you had a claim?" hands go up. Many employers would have had multiple claims so when you say, "Have you had a bogus claim?" and almost as many go up, that is a smaller proportion than 100 per cent. But nonetheless, what the scheme formally says is bogus and what is actually bogus are not the same things and there is a failure in the triage process right from the outset. If an employer even tries to talk to icare, if they are lucky enough to get to talk to them—and it is hard just to get calls returned and frequently that does not happen—most of the time all the response they get, and this is in our submission, is to be told, "Just put in the claim". They put in the claim and it gets approved, even though the employer will have said, "But what about this or that?" Those things are not investigated. The notion that it is too expensive is absolute nonsense. I am sure that was said.

The Hon. LYNDA VOLTZ: Let us get to the heart of this. You are not disputing medical evidence because medical evidence is based on assessment.

Mr BRACK: No. Medical evidence may indeed be right but there are a lot of cases, we know, where the doctor says, "Here is the client; here is my customer" and they give the patient a medical certificate. There is plenty of evidence about that. So it does not mean that a doctor's certificate equals genuine; it just means a doctor's certificate triggers acceptance of the claim.

Mr DAVID SHOEBRIDGE: There is not a single case study that you put forward of a bogus claim, other than this anecdotal evidence, but there are some case studies that seem to point to identifiable system problems. So I suppose in the absence of any evidence other than anecdotal—not even anecdotal but just generalised evidence about fraudulent claims—there is not much we can do. When I read your submissions there seem to be scheme design problems that you want us to raise.

The Hon. LYNDA VOLTZ: For example, the threshold level where the premiums are being pushed up so high.

Mr DAVID SHOEBRIDGE: Yes, that is what we should concentrate on.

The Hon. LYNDA VOLTZ: There is a $22,000 workers compensation claim where the premiums over three years have gone up to $97,000, which is a significant increase on a $22,000 claim. Whether or not you want to dispute the nature of those claims, is that not the more systemic problem?

Mr DAVID SHOEBRIDGE: We are in your hands. If you want to spend the hour dealing with fraudulent claims, which all the evidence says is a fraction of the scheme cost and they are not identified in your submissions, we can do that but there is a whole series of substantive issues raised in your submissions. Do you want to focus on them?

Mr AITKEN: Just to finish on Ms Greenwood's point, where employers have put up their hands and said, "I have serious concerns around that", there is some recommendation that those claims be investigated appropriately.

The Hon. LYNDA VOLTZ: Looking at your premiums again, we have talked about the dispute resolution mechanism for the claimant—the person who has had the injury. What is the dispute mechanism for the employer who now has to deal with a single insurance point that is not necessarily meeting the conditions?

Mr BRACK: We had an employer who rang up icare with a dispute about a particular claim. He got on the phone and the phone was answered presumably by the reception person, the initial person. When the employer said, "I want to make a complaint about this" the initial person came back and said, "Employers do not make complaints"—that is, they do not handle employer complaints. Is that a system problem? It is a fundamental system problem. Employers are not being consulted and, when they get on the phone what they say is not then being investigated. In those cases, employers inevitably have the view that the system is crook.

Mr DAVID SHOEBRIDGE: What about the relationship with the scheme agent? Surely that is your starting point. Employers Mutual Limited [EML] is going to be the sole guerrilla in the field. What is the relationship with EML because surely that is where you first start?

Mr BRACK: Scheme agents come in for a lot of stick from our members because of the poor standard of service. When you talk to scheme agents they say, "We have been instructed by icare not to do this or to do that." They then do or do not do whatever it is in their connection with our member who they deal with and they do not do what you would expect they ought to do for the effective management of the scheme. Now that is not just a generalised statement; we get that every day of the week. People say, "I have tried to get hold of them and the outcome is hopeless."

The Hon. LYNDA VOLTZ: You are referring to premiums and to the guy who disputed the premiums and who had his case handed from QBE to icare. He could not get an accurate figure on the premiums. What kind of dispute mechanisms should be in place to deal with those kinds of disputes?

Mr BRACK: You need to be publishing information about how all that stuff works. We have had members who have not been able to get information from icare about what their premium will be—this is months after the date when it is supposed to have been released—or they are getting information that seems to be inconsistent with logic, for example, "Your premium has gone up by 200 per cent." They do not say, "Your premium is going up by 200 per cent", they say, "Your premium will be X." The employer says, "X? That is up by 200 per cent." Then they do a recalculation and it comes down to an amount that is not 200 per cent; it is only, say, $30,000 more than the original figure last year.

The Hon. LYNDA VOLTZ: That is right. They have a 300-page document which contains a two-page complicated formula. People do the sums. There is no dispute mechanism that employers can use and say, "There is a problem here because you keep saying this and the calculations say that."

Mr BRACK: If you could get to icare.

The Hon. LYNDA VOLTZ: Yes, that is right.

Mr BRACK: If they return your call and they do it expeditiously you might achieve an outcome in a reasonable time. The outcome might be satisfactory but it still might not be satisfactory, for example, an employer who had a premium that was over $2 million and who paid a deposit premium of $900,000. Then when they do the adjustment they are told that their total premium is $30,000 not over $2 million. Nobody can understand it. They are told, "That is the way the formula works."

The Hon. DAVID CLARKE: Going back to the issue of bogus claims, you are saying that bogus claims are more than just a small proportion of claims?

Mr BRACK: No doubt.

The Hon. DAVID CLARKE: You are?

Mr BRACK: I am.

The Hon. DAVID CLARKE: Do you have anecdotal and/or specific evidence?

Mr BRACK: Employers with whom we deal every other day are talking about the problems they have with claims. If you had a disciplined and effective system those things would not surface in the way that they do. We have plenty of examples of claims where the insurer or the agent approves them. They approve them because the whole rationale from icare is, "Approve almost everything." If you get that you get more claims, you get higher costs and you get an ineffective system.

Mr DAVID SHOEBRIDGE: But claim numbers have been going down year after year. How does this relate? Claim numbers have gone down substantially.

Mr BRACK: They have been going down; that is right.

Mr DAVID SHOEBRIDGE: How can you say there is a culture of approving bogus claims that has claim numbers going up when claim numbers have been going down dramatically?

Mr BRACK: I am looking at the next step. I am looking at the history, then they go down, and then what is the next step? As you well know there have been bogus claims. Bogus claims would have included backs, hearing loss, RSI, PTSD and the next major one is mental injury—psychological injury at work. We are going to see a massive increase in costs. These are the highest average costs—the highest average duration claims around the place. SafeWork NSW is working on a program to put that back into a formal requirement that employers have to devise a mentally healthy workplace. The costs are going to be massive. The industrial relations issues they want to pursue are just intolerable. We will find that there will be another surge and the scheme will go down the drain.

The Hon. DAVID CLARKE: Will you supply the Committee with detailed information on the extent of these bogus claims as you see them?

Mr BRACK: Does that mean the names of employers?

Mr DAVID SHOEBRIDGE: One case.

Mr BRACK: If they are prepared to, yes, we will.

The Hon. DAVID CLARKE: Except one swallow does not a summer make. Will you supply more than one case? Will you give the Committee detailed information to show that there are widespread bogus claims out there? I put the same question to Mr Aitken.

Mr BRACK: I will take that question on notice.

Mr AITKEN: I suggest it might be worthwhile asking SIRA how many claims that they currently investigate. I do not think the number would be huge but if they are not investigating any of those they are not getting any referrals from icare. I think that goes to the system issue that we are speaking about.

The Hon. DAVID CLARKE: Are you saying that bogus claims are certainly more than just a small proportion?

Mr AITKEN: I would say that there are probably more than are currently being investigated.

The Hon. WES FANG: Do you have empirical evidence of that or is this just anecdotal evidence?

Mr AITKEN: From our feedback with members who have put a claim in that something is wrong with icare, it has not then been referred to SIRA which is the authority to go and get more—

The Hon. WES FANG: You have the survey results. What are the numbers on your survey?

Ms GREENWOOD: Can I put a bit of context into this? I think we have two issues. We have a survey. I have not worked out the percentage of those who have complained about bogus claims but it certainly was a trend. I had a conversation with someone from SIRA who said to me that his role was to consider referrals from icare and that he had not been receiving any and, therefore, it was not an issue. My response to him was, "That is not what our members are saying." We had a meeting. He disclosed some statistics to me that he asked me not to disclose elsewhere so I am not able to disclose that. May I suggest, for empirical evidence, that the question be put to SIRA this afternoon.

The CHAIR: We will do that.

Ms GREENWOOD: They can respond and say that over a period a number of bogus claims were referred to them and a number are currently being referred to them.

Mr BRACK: Could I give you an example which is not, of course, numerically strong but it tells you what we are dealing with. One of our members has a supervisor going on long service leave in six months time. They told the next guy down the line that they would like him to do this guy's work while he is away. He says, "I do not like that computer stuff. I do not know whether I would want to do that". They said, "Do not worry; we will provide you with training to get you up to speed by the time he goes and if you are not able to cope with it we will organise something else." Two weeks later he provided a doctor's certificate which said he had an adjustment disorder". I wondered what an adjustment disorder was so I organised to see the psychologist who gave him the certificate. I said, "Where does this adjustment disorder come from?" They said, "We are not allowed to use the term 'stress' any more so we had to come up with something." I said, "But you just made that up—adjustment disorder. Where is the medical certainty about that proposition?" I was told, "We just had to do it."

I said, "Why did you give him a certificate at all?" I was told, "He was worried." Ultimately that gets reversed, the guy's claim is rejected, he is then told that his claim is rejected and he leaves. The other employees are told that the claim was rejected and one of them said to the HR person, "What about the go-cart business?" He was going to use his workers compensation stuff to pay for the go-cart business. It is just one example. It is not numerically strong but it tells you about some of the things. If we had not interceded in that matter the claim would have been approved, he would have got the money and the employer would have gone down the drain. There are plenty of those sorts of things that we have to deal with. I accept that it is not numerically strong but it is the sort of thing that comes up and that employers have to deal with.

The Hon. DAVID CLARKE: Could we get some specific details of some of these cases? Ms Greenwood, you referred to statistics that you were given that you are unable to pass on to us, but you might also be able to give us some material while not specifically referring to the exact detail of those.

Mr DAVID SHOEBRIDGE: Just for the record though, the term adjustment is not made up by a GP; it is a specific criteria under DSM-5 and has gone through some of the most rigorous scrutiny by the global profession of psychiatrists to find its way into DSM-5. It was not made up by a GP.

Mr BRACK: It was at this stage.

The CHAIR: We will move on now from that subject. I was interested in the chamber's conclusion in your submission—which I think is unique in all the submissions, but I might be wrong—which was that we should consider consolidating the Acts. That is a pretty radical proposal for us to be looking at—we are looking at one Act—to consolidate the Workers Compensation Act, the Workplace Injury Management and Workers Compensation Act, and the State Insurance and Care Governance Act. I just want to explore that. Where are the overlaps and where do you think the benefits would be to consolidate those, removing any red tape that you feel is causing problems when you go to different Acts?

Ms GREENWOOD: The overlaps between the 1987 Act and the 1998 Act are that they need to be read together. They both cover the same subject matter in certain circumstances. Then you have the 1987 Act expressly referring to the 1998 Act and the two have to be read together.

Mr DAVID SHOEBRIDGE: Does that mean the 1998 Act wins in the event of inconsistency and then you add the regulations and the guidelines in the other and it is a nightmare?

Ms GREENWOOD: Whichever is the more specific Act takes precedence. They are both dealing with the same subject matter, so it is logical that instead of having the two it should be consolidated into one. We now have the 2015 Act, which takes a concept that is used in both the 1987 Act and the 1998 Act, being the authority, and it splits into three agencies. There have been some amendments to make it clear that Insurance and Care NSW is the relevant agency, but there are still sections in there that refer to the authority.

The Hon. DAVID CLARKE: Mr Franco, were you trying to make a point there a little earlier?

Mr FRANCO: There are so many points I would like to make but I note the time. Just on that last point, there is definitely an argument for consolidation of the two workers compensation Acts and what they describe as subordinate legislation. For the benefit of our audience here today: a lot of work has been done on that issue through the parks inquiry that was instigated and conducted by WIRO. That was never completed, it was shelved. It can be completed. If the Government saw fit to extend some funding for that, that might be a way forward. The draft report was the product of contributions from stakeholders throughout the whole system. It was an excellent piece of work aimed at ultimately rationalising the legislation, simplifying it, removing anomalies and making it easy to operate. That is something that is in the interests of the whole industry to complete.

Mr DAVID SHOEBRIDGE: Ms Greenwood, your head was nodding during that.

Ms GREENWOOD: It seems to me Victoria has got a similar situation as New South Wales with the two pieces of legislation, but then when you go to the other States it is quite simple: there is one Act; it takes you from the beginning to the end.

The CHAIR: This is outside our terms of reference but I just wanted to look at it, we will be doing an inquiry into workers compensation again in the second quarter of next year. Might I suggest that you reactivate some of that thinking in your submission so we can look at that? That is the appropriate forum for that. I just thought it was relevant in that they are related Acts.

Mr FRANCO: I just want to add to a different point in relation to the bogus claims. I am not so sure what a bogus claim really is. It is not so much a problem for self-insurers; if self-insurers are confronted with a claim that is not justified by the evidence, the self-insurer takes the appropriate step and declines the claim and deals with it in the dispute resolution system, which is less than satisfactory but it is a pathway. What I would like to point out is that under the old WorkCover there was a fraud branch—it was not very good. You could refer allegations or instances of alleged fraud and usually you were told "Run your case through the old compensation court or the commission and come back to us when you get the judgement". What I would be interested in knowing from the current regulator SIRA is what infrastructure exists to deal with alleged fraudulent claims and what action does the regulator take to investigate those matters if presented by a self-insurer, an employer or a scheme agent under the icare system. That would be good to explore.

Ms ALLEN: This issue has assumed some prominence and urgency since we have had the transfer of the claims from CGU and QBE and from our members' experience a lot of those claims have gone into a metaphorical black hole. There are a number of claims, we would not know scheme-wide how many, but given the feedback from our members, there are a fairly large number of claims that are sitting there that are not even being processed in accordance with the usual procedures let alone satisfactory procedures, and that does have a significant impact on premiums for many employers. Mixed in with all of those are claims which, of course, employers believe should not have been accepted in the first place. As Mr Franco said, the term "bogus claim" has not been defined and it covers a multitude of situations. But it is certainly one that we know from daily experience, from calls that are made to our call centre, that pretty much every day there will be at least one, if not more, calls about a claim that they do not believe should have been accepted, and they have cogent reasons for believing that.

Mr BRACK: Could I just leave the Committee with one emphasis? Publication of data: not happening. It should be comprehensive, timely, repeated, quarterly—six-monthly at the most. It should be the same sort of data that the actuaries get. We used to get that, they get it in other States. We do not get the financials, we do not get the actuary stuff and we do not get adequate information about where they are spending all of our money.

The CHAIR: This is from SIRA and icare, you want more transparency by both bodies?

Mr BRACK: Absolutely, both of them.

The CHAIR: And what datasets would you like to see and how would that help you?

Mr BRACK: The stuff the actuaries get. We used to get that stuff in detail.

The CHAIR: That is to establish the fees?

Mr BRACK: No, it is the whole scheme operation.

Mr DAVID SHOEBRIDGE: Can we maybe break it down into identifiable things that you want transparency on?

Ms ALLEN: In our submission we did enumerate.

Mr DAVID SHOEBRIDGE: I have got that. Could we start maybe somewhere very simple, which is merit review decisions? So when SIRA has reviewed a decision of an insurer through the merit review process they do not have a system of publishing those decisions?

Mr FRANCO: That is correct.

Mr DAVID SHOEBRIDGE: For transparency, do you think all of those decisions should be published so you know why decisions are being made about your members' money?

Mr BRACK: That is one thing.

Mr DAVID SHOEBRIDGE: We will start there.

Mr BRACK: Everything the actuary gets.

Mr DAVID SHOEBRIDGE: Can we just start there? Is there agreement that they should be published?

Mr FRANCO: Yes, absolutely. WIRO publishes its decisions—they are de-identified. There is no reason why the merit review agency cannot do the same thing, and that will be extremely helpful to injured workers and employers of New South Wales.

Mr DAVID SHOEBRIDGE: The next thing it seems to me there is uncertainty about is the working capital that is required for the system, whether there is a 100 per cent funding ratio, a 110 per cent funding ratio, a 120 per cent funding ratio or a 140 per cent funding ratio. Obviously if the scheme is going to operate at 140 per cent funding ratio a lot more premiums will have to be collected to meet that. Do you know how or why those funding ratios are being set?

Mr BRACK: If you lower the probability you increase the apparent good fortune of the scheme. If the funding ratio is high with an 80 per cent probability but you lower it to 75 per cent probability the funding ratio goes up even further. You have to look at the reason.

Mr DAVID SHOEBRIDGE: I think they are using an 80 per cent probability.

Mr BRACK: No, it fluctuates between 75 per cent and 80 per cent.

Mr DAVID SHOEBRIDGE: Do you know why those settings are being made and are you engaged in that decision-making?

Mr BRACK: We are certainly not engaged in them, but you can anticipate that if the scheme is looking a little less beautiful then with the funding ratio that you want to be high, one way to get it to be high is by lowering the probability of that outcome.

The CHAIR: I am interested in exploring how we can strengthen the employers' relationship with icare and SIRA, which you have raised as an issue. We have not picked up on it in other inquiries, though we have made a recommendation about improving scheme agent training in relation to injured workers. Do you have any suggestions about how to improve the interaction with employers?

Mr BRACK: If you look at their website, you can hardly find the word "employer" anywhere, so there is a mindset question: Who is going to instruct them as to what they should do? SIRA has some powers, but not adequate powers, and can design what ought to be provided. Data is fundamental, so that employers know how the scheme is performing and what that is going to do to their premiums. They will have to provide a justification through the data as to why premiums might go up. We get told premiums have gone down, but every employer we speak to says that industry rates have gone down but premiums have gone. It is important that they be instructed to publish stuff, because that is the source of solving problems. They need to be told to engage with employers when employers want information about their premiums, about a disputed claim, about the progress of a claim, about why an employee has not done something they should have done, about why an employee did not go to a doctor when they were supposed to have an appointment, about why their compensation is still being paid even though they did not do something they are fundamentally required to do—all of those things.

The Hon. DAVID CLARKE: Are you saying that they are not engaging with employers?

Mr BRACK: Absolutely they are not.

Ms ALLEN: We have said that in previous submissions. This time last year, we said the same thing.

The Hon. DAVID CLARKE: Are you confirming it today?

Ms ALLEN: We are.

The CHAIR: What is the view of the NSW Business Chamber?

Ms GREENWOOD: I must admit we have a very good working relationship with SIRA. In terms of transparency, I think it is more around the legislation and the premium guidelines. I am hopeful that it will improve over time. We also meet a fair bit with icare; however, the information that comes out of icare is quite lacking.

The CHAIR: Is there no formal consultative body with the employers, a roundtable or anything like that?

Ms GREENWOOD: No, there is no roundtable.

The Hon. LYNDA VOLTZ: Do you represent some employers when there are disputes with SIRA and icare?

Ms GREENWOOD: Yes.

Ms ALLEN: Yes, and that is an important point. An employer organisation can go to icare and SIRA at any point and raise issues, have the discussion and transparency and establish a good working relationship. What we are talking about is the operation of the scheme and what happens to the around 280,000 individual employers who are in that scheme as well as their relationship particularly with icare, because that is their first point of contact—in fact, their only point of contact. Most employers would not know about SIRA. It is their operations with icare where there is a massive failure, from what we see in our membership, in the scheme at the moment. In many claims there is non-communication, and this is a fundamental flaw because the whole scheme, as we understand it, is predicated on returning workers to health and work, their existing job, as soon as possible. I think I said last year that employers have been reduced to a bit player in that process. The whole process is managed by the claims agent and by the rehab provider. The employers' view and their role is often very difficult for the employers to establish.

The Hon. LYNDA VOLTZ: I think you said last year that employers had difficulty, when the worker was trying to get back to work, in contacting icare to start the process of getting them back to work. You said it was taking three or four weeks. Has there been any improvement?

Ms ALLEN: That is right; often that is the case.

Mr DAVID SHOEBRIDGE: Mr Aitken's submission suggests having employers engaged and sitting down around the same table when determining suitable duties.

Mr AITKEN: Yes.

Mr DAVID SHOEBRIDGE: That would appear to be practical—you have the worker, the doctor, the rehab provider and the employer working out what suitable duties are available. Mr Franco, how does that work in the self-insurer world? I will compare what you tell us with how it works in the icare world.

Mr FRANCO: It is not so much of an issue, because we do not have the interaction with the scheme agent or icare. We are the insurer, as a self-insurer, and historically self-insurers have managed the issue of return to work reasonably well, in our experience.

Mr BRACK: That is our experience of dealing with them as well.

Mr DAVID SHOEBRIDGE: Mr Becken, are there formal guidelines for having the employer involved when suitable duties are being discussed?

Mr BECKEN: As part of our regulatory requirements to SIRA we have to provide what is called an injury management program, which sets out how we will manage the return-to-work process. In the conversations around the table about providing the nominated doctor, self-insurers have strategies such as developing a network panel of doctors and providing the network panel of doctors to transition injured workers from being unfit to how to get through the process of workers comp on a volunteer basis. That means the workers are not told that they have to go, but they are given the opportunity. In the self-insured world they can establish a network panel of doctors, and those doctors understand how to negotiate the workers compensation.

Mr DAVID SHOEBRIDGE: Nobody wants the employer to have the power of nominating the treatment doctor. You are talking about a transition back to work.

Mr BECKEN: Correct. In terms of the question about suitable duties, some self-insurers can establish a network panel of doctors, where workers can go voluntarily and are not required to go. We understand they have the choice, but if workers have concerns or just want to have treatment for the injury that has occurred, they can elect to use this doctor or they can see their own doctor. The most important thing is that primary care is received, and the next step can be explained to the injured worker. I can only imagine the challenge that injured workers face when daunted with the process of having to lodge a workers compensation claim.

Mr DAVID SHOEBRIDGE: What is the role of employers in proactively identifying suitable duties in the icare world?

Ms ALLEN: It is absolutely crucial. It is a legislative obligation.

Mr DAVID SHOEBRIDGE: How does it work in practice?

Ms ALLEN: The problem is there are often issues in what the nominated treatment doctor will say is the worker's capacity and his or her ability to come back to work and perform those duties. There are often issues surrounding the diagnoses and the time frame of those diagnoses. A lot of these decisions are made remotely from the employer and involve the rehab provider and the doctor.

Mr DAVID SHOEBRIDGE: We are not talking about an employer second-guessing the opinion of the nominated treating doctor. We are talking about suitable duties, given that—

Mr BRACK: No, there is a knowledge gap.

Mr DAVID SHOEBRIDGE: —they are different things.

Mr BRACK: Most general practitioners [GPs] are not trained in what the workplace does. They might know about that workplace, but nothing about this workplace. The question of suitable duties comes down to whether the doctor understands what is available and whether the doctor will say that the person with a particular condition is capable of doing a particular job in a workplace that the doctor does not understand.

Ms ALLEN: It is certainly not about the employer questioning the diagnosis. The employer accepts what the doctor has said. It is from that point on.

Mr DAVID SHOEBRIDGE: Ms Greenwood, I thought you were seeking to put your view about the role of the employer in determining suitable duties in a return-to-work plan. How does it work?

Ms GREENWOOD: The feedback that we have been getting from our members is that there is a distinct lack of consultation and communication, and that there is a lack of understanding of the employer's business. The combination of those two translates into an inferior outcome in identifying suitable duties.

Mr DAVID SHOEBRIDGE: Are employers willing to spend the time to sit down with the rehabilitation provider and talk through the workplace? Are they willing to spend that time?

Ms GREENWOOD: Our feedback is that yes they are.

Mr AITKEN: Once they realise that they hold the can when it comes to return to work. Everything is lumped on the employer in terms of increased premium. One of the things that we identify—I would like to flag it to the Committee—is that we have seen a transition of claims agents, and some of our members have been left a little bit high and dry with claims that have not transferred effectively because claims agents are exiting the market, so they are not working as responsibly to the claims as would be optimal. Unfortunately, that means that it is the employer that takes that premium increase. They cannot put their hands up to icare and say, "That transfer was out of our hands."

Mr BRACK: But of course employers with premiums up to $30,000 are not claims-cost impacted. A very small employer may have no suitable duties, and to put the person onto partial duties may incur a cost that they are unable to sustain. So it is not always plain sailing. Employers are not always the good guys—sometimes because they think it is too difficult for their businesses—but in most cases, in our experience, they want to get them back.

Mr DAVID SHOEBRIDGE: That hard and fast $30,000 threshold seems to be something that produces a whole lot of adverse consequences—either in employers not employing or being far more aggressive in how they deal with the workers compensation claims or the like. Should there be some sort of sliding scale so that you do not have this harsh threshold? Has that been explored with icare? Maybe you can take that on notice.

Mr BRACK: It was $10,000 once; now it is $30,000. You might come up with lots of other things that try to ease the move into claims experience cost.

The CHAIR: We have to wrap it up.

Mr DAVID SHOEBRIDGE: Given we have run out of time, could you take on notice whether a sliding scale might be a way of avoiding that?

The Hon. LYNDA VOLTZ: I ask that each of the organisations answer that question.

The CHAIR: That concludes the time for your evidence. We had a very broad discussion, some of which I think was outside our terms of reference—it was more operational—but it helps us understand the situation from your perspective as employers and agents. If you have taken questions on notice—I think you have taken a few—you need to return them to us by Friday 24 November. That is a little sooner than usual because of the time of the year. The secretariat will contact you early next week in relation to the questions you have taken on notice. Thank you for your evidence today; we will probably see you again next year.

(The witnesses withdrew)

IAN TUIT, Industrial Officer, Public Service Association of NSW, affirmed and examined

SHAY DEGUARA, Manager Industrial Specialists, Public Service Association of NSW, affirmed and examined

EMMA MAIDEN, Assistant Secretary, Unions NSW, affirmed and examined

FLORES NATASHA, Industrial Officer, Unions NSW, affirmed and examined

The CHAIR: Would the organisations like to make opening statements?

Ms MAIDEN: Sure. I will kick off. We would like to thank the Committee for the opportunity to address our submission regarding the State Insurance and Care Governance Act. Obviously the Act created the three separate bodies from WorkCover—icare, SIRA, SafeWork NSW—in order to get rid of the conflicts of interest that existed within WorkCover. That was certainly something that we supported, and continue to support. However, we do not believe that the organisations are operating effectively, and we think that the Act can be amended to improve their operation.

We make four recommendations in our submission. We criticise the operation of the State Insurance Regulatory Authority [SIRA]. Specifically we criticise its lack of willingness to take action against employers, and a lack of cooperation between SIRA and icare. We do not find particular fault with the objectives and functions of SIRA as set out in the Act. Given that, we recommend that a tripartite consultation mechanism be established in the Act, enabling genuine consultation with all stakeholders. That is in line with the Australian governments' obligations under International Labour Organization [ILO] conventions. Unions NSW has talked about that before this Committee previously. We believe such a mechanism will improve the operations of SIRA, particularly if the second part of our recommendation is actioned, which is to ensure that there is genuine engagement with that tripartite consultation mechanism.

Our second recommendation involves criticisms of the approach of icare to the thousands of workers due to be cut off the scheme on Christmas Day this year. The failure of icare to consider the psychological impact of the date is very difficult for us at Unions NSW, and for the injured workers that we talk to, to comprehend. Further, the assistance provided to these workers by icare—namely, providing contact numbers for various charities, suicide hotlines, homelessness information and Human Services details—is tokenistic and extremely troublesome. We believe the failure to address the timing, if not the substance, of the section 39 cut-offs stems from the failure to ensure proper tripartite representation on the boards of icare and SIRA. So we recommend that the Act be amended to give dedicated board positions on both bodies to representatives—not just of unions but also of employers and the community.

Our third point relates to very serious concerns about the willingness of SafeWork NSW to enforce the Work Health and Safety Act 2011. Employers blatantly in breach of legislation are not penalised. In some cases unions have reported SafeWork's failure even to attend a worksite where there has been a significant and potentially fatal safety breach. The statistics regarding enforcement activity in recent years are woeful. They are on page 45 of our submission from last year, which we forwarded to you.

Unions NSW supports a robust regulatory system that ensures all workers come home safely. This is really the best way to reduce workers compensation costs, not getting rid of so-called bogus claims that we heard about from the previous people before the Committee. Yet SafeWork is really missing in action when it comes to enforcement. We recommend the Act be amended to put more emphasis on compliance and enforcement to ensure that this key activity is taken seriously. The final recommendation is in relation to the Act and whether or not it is meeting its objectives. Here we refer to our submission to the first statutory review of the 2012 workers compensation changes. We urge the Committee to consider the stories shared by injured workers in our annexure to that submission and the recommendations we put forward on page 48 and onwards.

The overwhelming evidence put forward in this submission is that despite the clear objectives and functions of the State Insurance Regulatory Authority [SIRA] set out in schedule 6 of the Act, there is a complete failure by that organisation to carry them out. The system and its agencies have not supported injured workers. They have not effectively prevented workplace injuries. We really think that one of the concrete things that this Committee could recommend out of this review is to deal with the issue of data collection that was also dealt with as a recommendation from this Committee from the review of the legislation that happened last year. We need clearer data. It needs to be timely. This is obviously something on which we are on a bit of a unity ticket with the employers in this regard. We urge that that recommendation be actioned so that the disconnect between the objects of the Act and reality can stop being a political football, basically.

Mr DEGUARA: Thank you for hearing from us today. We also would like to acknowledge the submissions from Unions NSW and the Construction, Forestry, Mining and Energy Union [CFMEU], who are here today. They have provided a very detailed history of a lot of the interactions that unions have had with SIRA and icare. Despite not sharing the same view as the WorkCover Independent Review Office [WIRO] on many matters, we also find ourselves supporting their submissions and their conclusions as well. The State Insurance and Care Governance Act is an enabling Act which basically enables some agencies to work with the principal pieces of legislation. As far as these pieces of principal legislation being work health and safety legislation, they do not go far enough to protect workers. The other Acts in the legislation package also do not go far enough to support workers when they get injured. That system is still broken and those pieces of legislation need more attention.

We also note the Minister's second reading speech in relation to this Act and that there was supposed to be more transparency, which is why we are here today. Despite the legislation enabling the formation of subcommittees, for example, the respective boards for SIRA and for icare are not made up with workers representatives. They are made up with appointed people, and that is fair enough, but there is also the ability to have subcommittees in the legislation. None of these subcommittees have been formed, there are no formal structures for those subcommittees, and industry partners are not represented in any formal consultation mechanism. So transparency has not eventuated in that area.

We also note that for icare there are no formal objectives; there are only functions in the Act. The Act has been written without objects. The objects are referred to in a business plan. We have asked for that business plan and we only received a copy of it last night, but we have not had a chance to review it. This is not transparent to the public. There is $180 billion or something in the annual report which says they have insured $30 billion odd under management. That has the ability to affect so many people's lives. If we do not have any idea of what they are making decisions about, is the idea to maintain the solvency of the scheme or is the idea to actually give money back to injured workers or drivers? We do not know what the focus is there.

Similarly, as WIRO has commented, we do not think SIRA is regulating properly. They have in their annual report a lot of letters being sent but they seem to have detected one fraud case. WIRO themselves tried to help them in this. They had merit reviews in which they had some indication that there actually breaches of the Act by the insurers and they were not being followed up. SafeWork is in a similar situation in which they are not regulating as we think they should. They are under the Department of Finance, Services and Innovation. They do not seem to have the freedom to look after workplace safety as we think they should. Their safety strategy is based on targets which were mostly met in June 2012 when the workers compensation laws changed legislation about liability. Therefore we have partially met a lot of those targets six months after, but four years before the actual strategy was launched. In that sort of area, they do not think there is that much work to do as far as regulation, and we think they should be doing more work.

On that issue about statistics, the statistical bulletin was supposed to be reissued. It was reissued after the functions of WorkCover inquiry, but it has not been a regular thing since then. They issued two years and now they have stopped issuing them again. Like the employers and like Unions NSW, we hope that something that comes out of this inquiry is the reissue of data relevant to the whole range of issues in relation to safety incidents and also into how they manage claims and workers compensation injuries as well.

The Hon. LYNDA VOLTZ: I think the $180 billion you are referring to was actually the—

Mr DEGUARA: Insured.

The Hon. LYNDA VOLTZ: That is the State Government assets it covers as opposed to money being in the scheme. The money in the scheme is $32 billion, with $27 billion that is their liabilities. That works out roughly at about 118 per cent or 119 per cent of liabilities, which in a workers compensation scheme is possibly what you would expect them to be sitting at, depending on what the global market is sitting on at the time, is it not?

Ms MAIDEN: I do not know. We would like to see more money returned to injured workers.

The Hon. LYNDA VOLTZ: Would we not all?

Ms MAIDEN: And we have seen 17 per cent premium reductions since 2012 for employers. In terms of where that magic number is, I am not sure Unions NSW really has a firm view, except that we would like to see that cushion above the 100 per cent to be as low as possible so that as much of the benefits as possible are being returned to injured workers as well as keeping the costs in a reasonable range for employers, but ensuring that the premiums relate to their behaviour and motivate changes in behaviour in a good sense and also relate to the instances of injuries and their return to work behaviour.

The Hon. LYNDA VOLTZ: And that is one of the concerns that business has raised in the past, where there are the employers who do the right thing and try to get people back to work, but the premiums go up. The ones that are getting the premium reductions are the ones that are doing their best to avoid workers compensation claims.

Ms MAIDEN: I am not sure that the evidence supports those submissions from the employers. I can certainly understand why employers that are discouraging claims would have reductions in their premiums. That is behaviour we certainly would not want to continue. That is something that SIRA should be cracking down on but we are not seeing that in terms of their compliance activity. But the instances of proper return to work behaviour by employers are, in our experience, minimal. There is lip service at best paid to that obligation in the legislation. That is why our comprehensive submission from last year went to that in some detail.

The Hon. LYNDA VOLTZ: Is there not a disincentive in the scheme? We are talking about a 17 per cent reduction in premiums to employers, yet we just received evidence from the NSW Business Chamber and industry association that they are getting complaints about increases. Where is that 17 per cent landing? There is a disincentive against a workers compensation claim because that is how you get your reduced premiums.

Ms MAIDEN: Well, that is despicable behaviour from employers and we should have SIRA taking action against those employers in a very public way.

The Hon. LYNDA VOLTZ: You can also have a very large employer with a good health and safety record but at some point they will have compensation claims. So a very good employer could be financially penalised simply by its size.

Ms MAIDEN: We would like to see much more transparency around the way premiums are calculated. It is very murky in how that operates. If you are going to be using premiums to seek to modify the behaviour of employers to ensure they take their work, health and safety obligations seriously, to recognise those kind of facts that perhaps with a large employer there are going to be claims every now and again, and if they have got good systems in place and they are taking their obligations seriously you do not want to unnecessarily punish them, we need much more transparency so that we can get that greater connection between improper employer behaviour in reducing claims but also in the way they manage claims once they happen.

Mr DEGUARA: Could I just add one other thing? In the Public Service Association about 95 per cent of our members are covered by self insurance, so the calculation does not really affect us. What does affect us is the regulator's inability to regulate. An example of what does affect the private sector more so than us, is a few years ago they had a construction blitz for six weeks and they made the money back six times in under payments and non-payment of the workers compensation scheme. Imagine if we had a scheme that was actually fully funded by everyone putting in their bit? What is happening is that people in the construction industry, for example, as you know will just pay for five employees rather than 55, and that is part of the problem. If we had a better regulation regime we would be able to save money from the system.

The Hon. LYNDA VOLTZ: There probably needs to be a mechanism for premiums and who is paying what. At the moment both worker and employer organisations are complaining about the complexity of icare and getting immediate disputes resolved in the short term. This comes up in return to work as well. Is there a better way of streamlining the split between SIRA and icare, where we have some regulation in icare and some within SIRA, or are you happy with the separation?

Ms FLORES: I do not think we have a problem with the two separate bodies but what we have experienced is certainly an inability of those two bodies to discuss. We meet regularly with icare and SIRA and I must say that those meetings are often quite helpful and useful. However, what we do learn from those meetings is that SIRA does not usually know what icare is doing and icare does not know what SIRA is doing. Information is scant. I support Ms Maiden and Mr Deguara, we certainly need greater transparency. We need more data collection, I would agree with the employers in that. We certainly need to see the data, and we need it quickly and regularly. At the moment we do not know a lot of what is going on because we just do not have the information.

Mr DAVID SHOEBRIDGE: I want to ask you about the capital management policy. You may not have looked at it in detail but icare has said that they basically needed 27 per cent surplus, which is my dumbing down understanding of how they operate. You basically need a 27 per cent surplus of funds over liabilities in accordance with general insurance obligations and they have said they need the same kind of surplus as private, general insurance firms. Do you think the big statutory fund is comparable with a private, general insurance firm?

Ms MAIDEN: No. Our original submission back in 2012 went quite pointedly to the assumptions that were being made at the time to come up with the $4 billion deficit of the scheme. There are different assumptions that should apply when it is a public scheme in effect compared to a private one. It is unreasonable to apply the same standards because—obviously this is not an area of my expertise, and thank you for simplifying the way it is expressed—private and public are not the same markets and you need to make assumptions. That means the surplus could be smaller.

Mr DAVID SHOEBRIDGE: More importantly, it could be redistributed. The difference between a 110 per cent funding ratio and a 127 per cent funding ratio is about $2 billion, which I would imagine your members would greatly appreciate being distributed to injured workers rather than held in the finance markets for some kind of perceived future risk.

Ms MAIDEN: Exactly. I think $2 billion would go a substantial way towards reversing the majority of the changes to workers compensation—the cuts that were made in 2012—and give a huge amount of dignity back to those workers.

The Hon. LYNDA VOLTZ: Earlier you said that you had been given the business plan.

Mr DEGUARA: We were sent it last night but we have not been able to review it yet.

The Hon. LYNDA VOLTZ: So you cannot table it?

Mr TUIT: Section 11 of the Act says that there should be an annual business plan prepared by the organisation. I looked for it on their website; it is not publicly available. So I rang them and a week later, which happened to be two days ago I think, a document was sent to me. It would not open—it opens with an error message "broken file".

Mr DEGUARA: We are happy for your information technology department to look at it, if we can forward it to your secretariat.

Mr DAVID SHOEBRIDGE: You did not manage to get it open?

Mr DEGUARA: No. You might have more luck.

Mr DAVID SHOEBRIDGE: So there is a problem with transparency.

Mr TUIT: Absolutely.

The CHAIR: Can I just clarify which organisation you are referring to?

Mr DEGUARA: That is icare.

The CHAIR: We will ask them about that this afternoon.

Mr DAVID SHOEBRIDGE: One of the key recommendations of the Public Service Association is that the annual statement of business intent should be published on the icare website, which is currently only provided to the Minister and Treasury?

Mr DEGUARA: That is right.

Mr TUIT: I can only think the purpose of the legislation is for transparency in the public interest. It should be available on their website; it is their operating business plan. Why is it limited to just two individuals, as important as they are?

The CHAIR: Ms Maiden, in your opening statement and your submission you talk about the performance of SafeWork NSW.

Ms MAIDEN: Yes.

The CHAIR: You have criticised that organisation for its lack of inspections and enforcement. SafeWork NSW is giving evidence to the Committee this afternoon. Have you seen its submission?

Ms MAIDEN: I have not.

The CHAIR: I want to get some sense of perspective. On page 8 of the SafeWork NSW submission it states:

SafeWork NSW enforcement actions in 2016/17 included:

- 32,056 inspector interactions;
- 10,496 inspectors notices issued;

. 33 successful prosecutions; and

10 enforceable undertaking.

Are you saying that is historically inadequate?

Ms MAIDEN: Page 45 of our submission contains historical data on prosecutions—for example, in 2003 there were 400 prosecutions. If you put that figure in context it is 10 per cent of the prosecutions that were being taken in 2003. I really do not think it is reasonable to say that employer behaviour has suddenly become compliant. Prosecutions are always based on policy in what you are trying to particularly target. We are still seeing workers dying and being maimed every day. The number of penalty notices issued in 2003—that does not look right, does it? Sorry, this is different. There were 18,000 penalty notices issued in 2003. That is significantly more than the notices—not quite double.

Mr DEGUARA: They are improvement notices and prohibition notices.

Ms MAIDEN: So these are improvement notices?

Mr DEGUARA: Yes.

Ms MAIDEN: When you think about circumspect interactions, that will include telephone calls. I do not know off the top of my head the number of workplaces there are in New South Wales but the figure of 30,000 is really a drop in the ocean in those workplaces.

The CHAIR: The Committee will ask SafeWork NSW about that this afternoon. Just to clarify, you are referring to page 45 of your submission to our workers compensation review held earlier this year, not to this review?

Ms MAIDEN: I am, which we attached to our current submission.

Mr DEGUARA: It is a bit of a contest. There are 315 or so inspectors and it is 32,000 so you can times that by 100. You have basically got everyone doing 100 interactions.

Mr DAVID SHOEBRIDGE: Which could be saying, "We are not going to go to the worksite after the union raises a concern."

The Hon. LYNDA VOLTZ: Interaction does not mean you have been to the worksite.

Ms MAIDEN: That is right. And in that number of 315, I know when we used to have the formal advisory council we found it impossible to get the number out of WorkCover at the time—the number of those positions that were filled. So I would be very curious to know. We might have that many positions but how many are filled? The other statistic was the number of workplace visits they did in a week. I think we got that once and it was something like one or two.

The CHAIR: We are investigating how it breaks up into three bodies and whether there has been a better outcome. I would like to focus a little on work safety as it is very much your area and no-one else has commented on that. Do you want to explore a bit more how it contrasts before? What can we recommend in any sort of structural way that should be addressed in any issues that you can see?

Ms MAIDEN: I will let the other members say something as well, if they have anything to supplement. But my experience of it is that it really has not changed, having it separated out into a separate body. Under WorkCover NSW the whole system of compliance and enforcement moved towards an educative approach to employers—not a stick but a "let us help you do the right thing" kind of attitude to employers. We are not saying in some circumstances that that is not the right way to go but when that is the only tool in your toolkit as the enforcer of work health and safety in the workplace, it just means you do not get taken seriously.

Mr DAVID SHOEBRIDGE: We have the benefit of an excellent submission from the Construction, Forestry, Mining and Energy Union [CFMEU] and the summary about SafeWork NSW on page 19 of their submission is this:

> SafeWork NSW appears to value its educational and advisory role more than its regulator role. Since 2015, much time has been spent discussing the organisation's Roadmap through multiple workshops with external facilitators, at the expense of actual regulating.

Ms FLORES: Yes.

Ms MAIDEN: I would completely agree with that statement.

The Hon. LYNDA VOLTZ: And that would be reflected in the figures we are getting relating to prosecutions.

Ms MAIDEN: That is right. They established a return-to-work inspectorate. That happened before the separation. We have very little data as to how that is operating. We think that is a good idea but it happened before the change. We certainly need much more focus on return-to-work issues. It is very difficult to get those disputes remedied and there are serious, potentially fatal, accidents at workplaces where you cannot get an inspector to visit. There are workplaces that have systemic similar injuries and yet claims are denied because workers are told, "Oh no, that is just because you are 58", even though practically every woman that works at that workplace gets a shoulder injury of almost exactly the same kind, yet there is no enforcement activity.

Mr TUIT: Perhaps I could offer some extra information about the performance. The most recent SIRA issued statistical bulletin of workers compensation data that has been published is for the 2014-15 financial year. We are looking back with some 28 to 40 months in time. I do understand that there has been a problem with the Australian Bureau of Statistics [ABS] supplied denominator data and that has interrupted the publication to some degree. However, the most recent data that we can look at has been provided by SIRA to SafeWork Australia. In their annual "Comparative Performance Monitoring Report 19th Edition", published in October this year, we can see there is no room for complacency on the issue of work health and safety in New South Wales. According to the SafeWork Australia data supplied by SIRA, in New South Wales last financial year we had 41 work-related traumatic fatalities and an additional seven fatalities involving an occupational disease.

By the nature of the diseases that number will increase over time; there will be more logged in that last financial year. We had nearly 32,000 serious claims for workers compensation. A serious claim we define as an incapacity that results in a total absence from work for one week or more. We have something like 3.4 million workers in New South Wales and I think the estimate is that there is something like 360,000 to 380,000 workplaces in New South Wales. There are a lot more policies issued but a lot of those are for small businesses that are mum and dad operations. In the context of 32,000 serious claims, 33 prosecutions conducted by SafeWork looks very modest indeed. So there are a couple of issues that indicate some room for improvement. One is the quality of the workers compensation data that is published and the timeliness of it. We are looking backwards, as I say, 28 to 40 months. Perhaps it would be possible for the organisation to publish that data more frequently, closer to real time, even if they have to badge this as provisional data subject to change over time as the workers compensation cases settle. A look at provisional data sooner is better than looking at more settled data going back three years plus.

The CHAIR: Getting data would help you understand where there might be a spike in workplace issues. Two or three years old is too late to know.

The Hon. WES FANG: I draw you back to the example you were highlighting earlier when you said there was an example where a claim had been rejected. You could not get an inspector to visit a worksite where almost all the employees had the same injury occurring. As to an anecdotal example, can you provide hard evidence on that?

Ms MAIDEN: It is one of the stories attached to our submission of last year.

The Hon. WES FANG: It is in another one?

The Hon. LYNDA VOLTZ: It is in another submission.

Ms MAIDEN: I cannot remember the name off the top of my head but I can provide that on notice. It was a retailer in the southern part of the State, so a large employer that you would expect would have systems in place to deal with these kinds of issues. The worker concerned was stacking shelves and the shoulder injury she got was incredibly common in her workplace and yet her claim was denied because the independent medical officer said that it was age-related. She was a woman who was around the age of 60, as I recall. I can provide on notice the reference to the correct story.

The Hon. WES FANG: I guess I am more concerned that SafeWork would not provide an inspector to inspect—

Ms MAIDEN: No, that was a different example I was referring to which is referred to in our submission. They are two separate issues.

The Hon. WES FANG: They are two separate issues. In the way that it was presented it appeared that there was an injury with a systemic issue in the workplace and you could not get SafeWork to provide an inspector to do that?

Ms MAIDEN: Well there was no enforcement action and that claim was denied as well. SafeWork should have procedures in place so that it can see where there are patterns of injuries, especially with a large employer like that, to make sure that their systems are reviewed so that those hazards are eliminated. It is not

that hard to do. It is a repetitive lifting kind of injury and yet it was not on their radar at all. In fact the employer managed to get away with that and the claim in relation to that individual was declined.

Mr DAVID SHOEBRIDGE: The CFMEU has a number of case studies where it has made complaints and either an inspector turned up but failed to issue an improvement notice or they failed to turn up at all. When we know that falls from heights account for a large proportion of serious workplace injuries, including fatalities, this example that it gave concerned me. I wondered whether it was more widespread. The example is as follows:

> In June 2017, CFMEU organisers attended a large site following a telephone call reporting a serious safety issue. When the organiser attended the site he noticed a steel frame weighing in excess of 20kg had fallen some distance endangering the safety of everyone in the vicinity. Further investigation showed that a worker had fallen 2-3 metres and was taken to hospital for assessment.
>
> Despite being a dangerous incident, SafeWork NSW did not send an inspector to the site. SafeWork later notified the principal contractor that it would not be investigating the incident and allowed the site to be disturbed.

Is that rare?

Mr DEGUARA: The previous safety officer at the CFMEU told me of the fatality—let us say there was a fatality—but the rest of the site was allowed to continue working a few metres away from the fatality. That has occurred in the past.

The CHAIR: Do you mean the fatality location?

Mr DEGUARA: Yes. There is a definition in there that is a bit unclear. Rather than close down the whole floor or the whole area, they just closed down a part of it. It must be horrible for the workers. I find that appalling.

Mr DAVID SHOEBRIDGE: But in this case an inspector did not even turn up.

Ms MAIDEN: Yes. I think that is the example to which we are referring specifically in our submission. It is our understanding—obviously the CFMEU has much more exposure to this—that the failure to have proper safety procedures is widespread not just in the construction industry. Transport is also a dangerous industry; there are a lot of fatalities there, even more than in construction. There is a failure by inspectors to visit in circumstances where you need enforcement action to change employer behaviour, even with an improvement notice. An improvement notice is a relatively straight forward piece of documentation which basically says, "This is the problem."

Mr DAVID SHOEBRIDGE: Stop letting workers fall three metres on your worksite.

Ms MAIDEN: Exactly. And they need to rectify it either immediately or within a certain amount of time. It tells them what they have to do. We are not seeing the visits, we are not seeing the improvement notices and legal action is not being taken.

The CHAIR: Are you suggesting that the 2015 legislative changes that created SafeWork have resulted in a more dangerous workplace if there are fewer inspections? Is there evidence of that?

Mr DAVID SHOEBRIDGE: I thought their position was that nothing much had changed.

Ms MAIDEN: Yes, that is my position, Mr Shoebridge.

The CHAIR: I was not asking Mr David Shoebridge the question.

Mr DAVID SHOEBRIDGE: But I thought that is what they said quite explicitly.

Ms MAIDEN: My position is not that it is worse, I do not think, but I am open to be corrected. But my position, and you can see from the data, is that it has been declining and getting worse over a number of years. That trend has continued with the creation of SafeWork NSW, not because of the creation of SafeWork NSW.

The CHAIR: You say the data of claims?

Mr DEGUARA: Of enforcement activities.

Ms MAIDEN: Enforcement activity data.

The CHAIR: But not the claims.

Ms MAIDEN: That trend has not been reversed by the creation of SafeWork NSW. I suppose in some instances that trend has continued so it has got worse. But given that we saw that trend beforehand, I do not think you can link it to the creation of SafeWork NSW. But it has not been the panacea to solve the systemic

problems with a lack of enforcement activity from the relevant statutory body that existed before SafeWork NSW was created.

Ms FLORES: I guess our hope may have been that if one organisation was left basically to deal with safety that may improve, simplify or streamline matters, but that has not been our experience. I meet regularly with affiliates and we discuss health and safety. A lot of the information I have is anecdotal but I am hearing time and again that SafeWork does not enforce the law. They often remove PINs that are quite legitimate. I have a few examples. I do not know whether the AMWU has put in a submission but they certainly have had experiences where health and safety representatives have issued PINs which SafeWork inspectors have then removed and these have been for significant issues such as forklifts that do not work and have faulty lights and beeps and what have you. I could probably take that on notice and get more information to you but time and again I hear from affiliates very worrying stories about SafeWork's lack of enforcement of the regulations.

The CHAIR: For the benefit of Hansard what does PIN mean?

Ms FLORES: Provisional improvement notice.

Mr DAVID SHOEBRIDGE: Which are issued on site.

Ms FLORES: They can be issued by a trained health and safety representative or a SafeWork inspector.

Mr DEGUARA: Our union looks after SafeWork inspectors. Most of them want to do the right thing. The problem is the philosophy from the top. They are under a department which is also dealing with business innovation so they feel very reluctant to deal with things that may be annoying business while they are also trying to help business. That is why this advisory thing seems like an easier fit for them for their own personal careers. We have a number of examples in the public service where the same thing happens as well. We had an example a few weeks ago when someone in a group home rang us. We rang up SafeWork. They did not even write a note. Then we rang up again saying that they the worker have now put a cease work order on, which is under section 84 of the work, health and safety legislation. Then they did not want to deal with this client who was not controlled or managed.

Basically management said, "You are going to have to do it" and then we notified them. It escalated again and they Safework said, "That is okay. They do not have to go to work. They have casuals coming in." The casuals got beaten up. Then they had a meeting the next week with the inspector and they put an improvement notice on it. They could have had those casuals not being beaten up by the client if they got in at the very start of the conversation. It is a reluctance to get involved. A number of inspectors have had their career limited by being too active in the regulatory front in the past. The current chief executive officer Peter Dunphy is a bit more proactive than the previous one. It takes a long time to change the culture.

Mr DAVID SHOEBRIDGE: Does it require some further statutory intervention to have a standalone statutory inspectorate which is not responsible to, say, the Minister for Finance? Would that improve things or is it simply a question of government policy?

Mr DEGUARA: I think if you had a standalone inspectorate but you also had a body which was independent from government which had a tripartite sort of view which managed the safety inspectorate, it would probably be helpful. We used to have that and the employers, the unions and the Government all got on and we did a lot of good things. It does not seem to be proactive because it is all relying on the Federal SafeWork Australia doing the policy work. Quad bikes is a good example, and that is in their submission. In the six years while have been talking about it we have had more than 100 deaths across the country. For farmers in your constituency these are kids at their workplace, which is the farm. People in urban parks and stuff like that are getting rolled and killed because they have not taken any initiatives to put proper things in place before they sell these materials to businesses in the community and to government as well.

The CHAIR: It is a complex issue and there is no agreement on it.

Mr DEGUARA: In the 10 years before that more than 100 people were killed in that decade as well.

The CHAIR: I know; it is tragic.

Mr DEGUARA: Other countries have put in not only the training stuff but also proper engineering controls onto this equipment if they get them, and they have banned some of them as well.

The CHAIR: I think it is the subject for another inquiry.

Mr DEGUARA: It is in the submission of SafeWork.

Mr DAVID SHOEBRIDGE: Moving from SafeWork and getting back to workers compensation, one of the repeating concerns is that nobody quite knows where icare begins and ends in dealing with problematic behaviour by insurers and nobody quite knows where SIRA begins and ends. Either in your submission or in the CFMEU submission you talk about the pre-injury average weekly earnings [PIAWE] forms having been changed and worked through—icare delivered something and SIRA did not even know what was happening. Can you talk us through that?

Ms MAIDEN: I think this is in our submission. From what I understand SIRA created the form. In fact, as significant stakeholders we would expect to be consulted around that kind of new information coming out. We became aware that the new form had been created only because one of the members of the CFMEU had received it and forwarded it on. The CFMEU raised the query with SIRA and their concerns about the failure to consult us. SIRA escalated the query to icare but would not pass on icare's response to the CFMEU. The CFMEU was then able to locate the form on icare's website. After going directly to icare, icare sent the response it sent to SIRA directly back to the CFMEU. It almost seems Laurel and Hardy-esque in its absurdity.

It did create anxiety for injured workers when you have been using a different form and all of a sudden there is this new one you are being told you have got to use, and you will be concerned that hang on a minute, is this a new type of calculation? If I am using the wrong form does that mean my weekly payments are going to suddenly be cut off? Then when they go to their representative, the union, they have to go through this ridiculous rigmarole to try and get to the bottom of what is behind the change, is it right, is it the right form, all the rest of it? It seems like a small example but it does kind of show just the way things are not working properly.

Mr DAVID SHOEBRIDGE: Meanwhile, we are two years down the track and pretty much every stakeholder says the way that pre-injury average weekly earnings are calculated needs to be fundamentally reformed so people can understand it.

Ms MAIDEN: Yes.

Ms FLORES: Absolutely.

Mr DAVID SHOEBRIDGE: And the best we have got is some new form. Is that where we are up to?

Ms MAIDEN: There was another committee that was formed with the CFMEU New South Wales representative on there, Ms Hayward. They were trying to form regulations—that was one of the 2015 promises by the Minister because there was an acknowledgement that there was a problem. WIRO acknowledged there was a problem, there was a tripartite acknowledgement of it, and it said that you need to change the legislation.

The Hon. LYNDA VOLTZ: So it is a legislative problem?

Ms MAIDEN: Yes.

Mr DAVID SHOEBRIDGE: But is that because nobody knows whose job it is to advocate for the change? Is it icare's job? Is it SIRA's job?

Ms MAIDEN: We do not know the internal workings, but there are six definitions of pre-injury average weekly earnings [PIAWE] in the legislation. It is a mess and it needs to be fixed up.

Ms FLORES: I think the example was provided primarily just to show that disconnect between the two organisations and the time taken from all perspectives really—icare, SIRA and the CFMEU in trying to obtain that information when had there been genuine consultation and if the organisations were working constructively together that would not have occurred.

Ms MAIDEN: And you do have to question if they were working properly together would we have got an answer to this PIAWE problem that everyone agrees is a problem, where we have had the committee that Ms Hayward sat on for Unions NSW, we have had the parks inquiry—there have been quite strongly expressed views on the solution. It is not like even the solution needs to be worked up; there seems to be some unanimity around that as well between the parties and yet it has not happened, and I think it is reasonable to question whether it is because this is a bit of a grey area in the sense that is it regulatory or is it to do with insurance and working out weekly payments?

The Hon. LYNDA VOLTZ: But is it not even more fundamental that you get areas where SIRA should take a role, and this is the section 39 letters that were sent out where they were perhaps misleading and did not inform workers of their right—they were sent out by icare. The clear indication is there that SIRA should have acted in that regard, but obviously there was no consultation because WIRO saw it as a problem and it obviously was not picked up before it was done.

Ms MAIDEN: And we have had extensive meetings with icare and SIRA, separately of course, about section 39. We have learned things, but I feel their approach to consultation is very much about ticking the box to say "We met with Unions NSW for an hour on XYZ date", and, to be honest, we spend a lot of time on these meetings and I do not feel we get a lot of input into the decisions that the organisation is making for that time. We do have a substantial amount of expertise among our affiliates in relation to workers compensation and safety, under the advisory committee model, under previous models where employers, unions and WorkCover would sit down and work up codes of practice or work up new ways of working in a way that would meet the needs of workers and employers and the regulator, and that just is not the way it happens anymore.

I was interested to hear before that the employers are apparently working with SIRA on bogus claims. That is the first I have heard of that. Cry me a river for all those employers having to deal with this terrible situation. You have got 4,000 workers who are going to be cut off on, and every worker that I spoke to when I did our return to work inquiry last year, those 100 stories—and I would, again, encourage the Committee to read those stories; it is heartbreaking; there are instances of bogus claims and there is no evidence that it is extensive at all—workers want to get back to work, they do not want to be injured, but they are having their lives ruined not just by their injury but by the way this scheme operates.

Mr DAVID SHOEBRIDGE: There is a whole series of submissions that have said SIRA is failing to do its work. One of its statutory obligations is to provide for the effective supervision of claims handling and disputes and the section 39 issues keep coming up again and again. When icare sent out a faulty notice which did not advise workers of their rights and their need for independent legal advice, SIRA did nothing at all; it required WIRO to intervene to sort it out. Is that non-action by SIRA general?

Ms FLORES: That is quite the norm, yes, and we found WIRO to be the most helpful solution in these situations.

Mr DEGUARA: But WIRO does not have any enforcement powers.

Mr DAVID SHOEBRIDGE: But in getting a result for your members, WIRO is the one that does it, not SIRA. Is that right?

Ms MAIDEN: Correct.

Mr DEGUARA: They have got persuasion powers but not enforcement powers.

Mr DAVID SHOEBRIDGE: The access to information, Family and Community Services managers put out a quarterly dashboard that says in detail how many case managers they have, how many face-to-face meetings have happened in relation to a risk of harm—very detailed quarterly reporting which allows you to track the organisation over time. Why is it, do you think, that SIRA is 2½ years behind delivering some detailed data on how the workers compensation scheme operates?

Mr TUIT: A part of it is because it is in the nature of the claims data; it takes a little while for it to settle down as claims progress and mature, I think that might be the term. But it is a bit difficult to understand why the most recently published data is for the 2014-15 year. One of the uses of the workers compensation claims data is by SafeWork NSW; they look at the claims data to design interventions—for example, the Roadmap. If there is a long lag, they might be missing out on some trends in what is happening in workplace injury and therefore they might not be best targeting their efforts towards meeting those emerging issues. That is a problem. It is probably a very good topic for you to pursue this afternoon: Why does it take so long? What are the complexities?

Mr DEGUARA: In the past, things like self-insurers as well have also been a reason for delay. Self-insurers were not always required to provide their information. The TMF, which is the Treasury Managed Fund, 10 per cent of the workforce did not always provide their information quickly. But one of the things of icare that was promised was that they were going to provide all this stuff in a timely manner. There are going to be claims—deafness claims happen sometimes 20 years after; they are not going to be hitting straightaway, but most claims, 90 per cent of them, should be able to be reported within a reasonable period of time, and that could be something that the Committee recommends as well.

Mr DAVID SHOEBRIDGE: What about the financial position of the statutory fund? Again, the reporting is very late and there is no detailed reporting available why the surplus is being reduced or increased or trends. Do you think that at a minimum we should be getting quarterly reporting on the nature of the fund and what, if any, trends are appearing in the fund so we can get a sense of the financial stability of the scheme?

Mr DEGUARA: That was the whole reason we had the $4.1 billion deficit, because they just changed the assumptions. It went from two, or one and a bit, to 4.1 because they just changed the assumptions overnight about the returns and stuff.

Mr DAVID SHOEBRIDGE: So to avoid having one of those again, surely we should be requiring that regular quarterly reporting and transparency on the nature of the fund?

Ms MAIDEN: Yes, absolutely we should. It is important that we not jump at any bumps in that data to have possibly a regulatory response or to reduce premiums. The data should be available, but we need to look long term in terms of the structure of the scheme and the way premiums are calculated, not jump at changes in that if the data is available. We need more information about the number of claims. We need more information about the circumstances when people are returning to work. We need more information about whether they are returning to their current employer or a new employer. We need much more information about the role independent medical examiners [IMEs] are playing in the scheme. Unions NSW 100 per cent supports getting rid of contracting out of the insurance arrangements and bringing that within government. In terms of the data issue that you raise, I would think that would be a way to ensure that you can get timely data and the kind of control that should be there for government to have information at its fingertips.

Mr DAVID SHOEBRIDGE: In its submission icare says:

> A major achievement of icare has been the initial delivery of its world-class enterprise insurance technology solution.

Surely one of the deliverables on that should be transparent reporting of information, should it not?

Ms MAIDEN: That is right. It should be, and we have not seen that.

The CHAIR: We have visited that theme a few times today. Thank you for representing your members before the Committee today; your evidence has been very helpful. You took a number of questions on notice. The Committee has resolved that answers to questions on notice be returned by Friday 24 November, giving you less time than normal. The secretariat will contact you early next week in relation to the questions you have taken on notice. Thank you for your ongoing appearance before this Committee; we will see you this time next year.

(The witnesses withdrew)

(Luncheon adjournment)

DON FERGUSON, Group Executive, Integrated Care, icare, sworn and examined

TIM PLANT, Group Executive, Self Insurance, Community and Innovation, icare, affirmed and examined

VIVEK BHATIA, Chief Executive Officer, icare, affirmed and examined

JOHN NAGLE, Group Executive, Workers Insurance, icare, sworn and examined

The CHAIR: Would you care to make an opening statement?

Mr BHATIA: First of all I would like to say thank you to the Committee for the opportunity to present today. We put forward a submission to the inquiry and we definitely welcome the opportunity to take it as a time to reflect on the feedback that the Committee gathers through the various stakeholders in the ecosystem, and also reflect on how that can course-correct our journey.

To kick off the inquiry I would like to talk about the last two years of icare and reaffirm the reason for the formation of icare. Committees in the past have recommended the separation of the regulation and operation responsibilities of the erstwhile WorkCover. Icare was formed as a result of one of those recommendations. It was amalgamated into all the other different insurance schemes that the Government ran—that was the Lifetime Care and Support Scheme, the Dust Diseases Scheme, the self insurance schemes, the Home Building Compensation Fund schemes. As a result, the State insurer, which is now icare, looks at about $4 billion worth of premium that it collects, and has a cumulative balance sheet with assets of more than $32 billion. The assets are obviously there to back the liabilities which have a very long tail, given the personal injury and home-building compensation schemes.

From an organisation standpoint there are three things that we focus on up front. One is to look at customer experience and, as a result, try to improve customer outcomes. For us that was focused around looking at what the key enabling drivers were to change that—whether it was technology, platform or, more importantly, the culture of the frontline, which needed to shift from what has heretofore been quite an adversarial scheme to being something more focused around the human-centred needs of the person at the other end—as opposed to the process, which had gained importance.

For personal injury schemes it was supposed to be about the person, not about the process. With respect to the focus over the transformation journey—which, admittedly, we are only at the beginning of—there has been a constant shift in terms of understanding where those pain points are. There is a lot of anecdotal evidence in a system like ours. There are 80,000 people who unfortunately are injured every year in the State of New South Wales that we cover. I would like to remind the Committee that we only have about 82 per cent to 83 per cent of the market share. So within our construct that is about 80,000 people every year who get injured. So we need to make sure that we have empirical evidence that we can base our strategy and decision-making on, which is why we incorporated the Net Promoter Score, which is a global standard of measuring customer advocacy to understand where those pain points are and how we can make significant steps or strides to try to improve that performance.

But that is just about customer experience. Then, focusing that on customer outcomes—whether it is a return to wellbeing, a return to work or quality of life outcomes based on the World Health Organization standards—how do we measure those individual outcomes and very clearly articulate that there has been an improvement? By that I mean, having a baseline and then seeing what the improvements are. To run these schemes we all know very well that you need to have financially viable and sustainable schemes, otherwise we cannot fund the treatment, the care cost, and the income replacement for individuals who are participants and beneficiaries of the schemes for, in certain cases, long decades. Hence, having an efficient and effective scheme is a key factor that we focus on.

The third point is about changing the culture. It is about how we make sure that the frontline—the scheme agents—have been transformed. How do we ensure that it is about making the focus around the process—about the hoops and the guidelines—rather than about what we can do to ensure that the individual feels supported post injury, and has the support of the employer to return to work in the most efficient way?

The CHAIR: Thank you for that. We are very familiar with—what did you call it?—the "transformation journey". You have explained it to us before, at our last inquiry. You are familiar with our recommendations.

Mr BHATIA: Absolutely.

The CHAIR: You may have picked up, after listening to the evidence earlier today, that with respect to both you and SIRA we are interested in exploring the ways you think the 2015 legislation could be made

better structurally so that we can make a recommendation that would improve your organisation's lines of responsibility. Where would you see that there could be some improvements made so that you could do your job?

Mr BHATIA: Thank you for the question. From our perspective we operate as any other insurer in the system. As the WIRO submission says, there are, more than 60 insurers in the workers compensation system. We are one of them—admittedly the largest by a long distance. We would obviously want the regulator to be on an equal footing in how they regulate all the players in the market. For us, we also understand that we play a major role and we have a huge responsibility, given the market size that we have. Hence the onus and the responsibility on us to be able to operate with the regulator so that the system actually improves is much higher—the onus and the bar remains higher. We very much accept that.

The CHAIR: And is that happening?

Mr BHATIA: We have a very strong dialogue with the SIRA on a regular basis. Individually I meet the chief executive officer and on most occasions the secretary of the department of finance and the chair of the SIRA board on a regular basis. I and Mr Nagle also present to the SIRA board at least twice a year on how the scheme is going.

The CHAIR: The secretary of the Department of Finance is on the board of SIRA. Is that right?

Mr BHATIA: He is. But we present to the full board as well. Then there is a whole raft of operator level conversations that happen on a regular basis, both for the nominal insurer and for the Treasury Managed Fund [TMF], both being part and parcel of the workers compensation scheme, and through HBCF, which is the Home Building Compensation Fund, which is also regulated by SIRA. We also have conversations around the lifetime care and the dust diseases schemes. SIRA's role in that is to collect the levy on our behalf for both of those schemes. In both those cases we have annual conversations when the levy collection happens. There is a regular dialogue in terms of how we work together, but I do admit that we are both evolving as organisations. We are learning to be regulated and I think they are learning how to regulate.

The CHAIR: I am sure we are going to discuss this more.

The Hon. LYNDA VOLTZ: Yes. Section 11 of the Act requires for you to do a business plan.

Mr BHATIA: Yes.

The Hon. LYNDA VOLTZ: Could you provide a copy of that business plan in hard copy to the Committee?

Mr BHATIA: Yes—can do.

The Hon. LYNDA VOLTZ: You will do that on notice?

Mr BHATIA: Yes. We will take it on notice.

The Hon. LYNDA VOLTZ: Is there a reason why it is not on your website?

Mr BHATIA: It is provided to the Treasurer as the shareholder Minister. It is basically in emphasis the strategic plan that is on the website. Our strategic plan is on our website. The business plan is a Word document which is not on the website.

Mr DAVID SHOEBRIDGE: But it is a clear statutory requirement for you to have it. I found it surprising when I heard from the Public Service Association [PSA]. It is not a long Act; it does not have a lot of those express statutory requirements about what you are to do and there is a very clear requirement to produce it. I found it surprising that it was not on the website.

Mr BHATIA: There is a clear requirement to produce it. We basically ask Treasury, because it is a Treasury requirement for us to produce it as the commercial policy framework which we adhere to and we provide it to them on behalf of the Treasurer. We have not in the past thought to put it on the website. But it is something we can take on notice and do. As far as we understand the obligation is not to produce it on the website.

Mr DAVID SHOEBRIDGE: No. The statutory requirement is for you to produce the document, so it is obviously an important document, then to give it to one or two Ministers—the Treasurer and the finance Minister, maybe—

Mr BHATIA: It is just the Treasurer.

Mr DAVID SHOEBRIDGE: If it is a document that is guiding your business, if you want to be transparent with your stakeholders, would you not put it on your website?

Mr BHATIA: As I said—I probably did not articulate myself very well—the document that guides our business is the strategic plan, which is on our website.

The Hon. LYNDA VOLTZ: Yes, but your strategic plan says that you aim for transparency: "We make things transparent. We make transparent what to expect, when and why." Would your business plan not be part of that?

Mr BHATIA: That is the business plan.

The Hon. LYNDA VOLTZ: No, this is your icare strategic plan.

The CHAIR: We do not have the business plan.

Mr BHATIA: I am not quite sure whether from a semantics perspective there is a difference between a business plan and a strategic plan. The world I have operated in, they are the same.

The Hon. LYNDA VOLTZ: Are you saying your strategic plan for the financial year 2017-18 is your business plan?

Mr BHATIA: That is the main part of our business plan.

The Hon. LYNDA VOLTZ: Is that the business plan you provided to the Minister?

Mr BHATIA: That is, substantially. There is obviously a covering note on that, but that is the predominant part of the business plan that was provided.

Mr DAVID SHOEBRIDGE: To be clear, we are talking about the statement of business intent that is required to be submitted to the Minister and the Treasurer not less than three months after the commencement of each financial year—that is what we are talking about.

Mr BHATIA: Yes.

Mr DAVID SHOEBRIDGE: It seems to me an important document, because it sets out the objectives of icare NSW and its main undertakings—obviously that should be publicly reported; the nature and scope of the activities to be undertaken—that should be publicly reported; the accounting policies to be applied in the financial reports—that should be publicly reported; performance targets and other measures by which performance of icare NSW may be judged in relation to its stated objectives—that should be publicly reported; and any other matter required by the Minister. It would be useful to know what that is.

Mr BHATIA: Yes.

Mr DAVID SHOEBRIDGE: I cannot understand why it is not on the web.

Mr BHATIA: I take that on notice. We will put it on the web. There is nothing to—

The Hon. LYNDA VOLTZ: Sorry to interrupt—I want to clarify, because if it is "Our strategy for 2020" then it is on the web. Is that the document?

Mr DAVID SHOEBRIDGE: No.

Mr BHATIA: That is the main sense of the document. This is just in an easy-to-understand form.

The Hon. LYNDA VOLTZ: Is this the document you provided to the Minister or is it not?

Mr BHATIA: There are two documents that are provided to the Minister. This is one of them.

The Hon. LYNDA VOLTZ: And what is the other one?

Mr BHATIA: The other one is the one that covers it and puts it in a Word format which is the format that is required to be submitted as a statement of general business intent for all commercial entities in government.

The Hon. LYNDA VOLTZ: And it differs from this document?

Mr BHATIA: It does differ from the document in terms of its format and, to an extent, the content as well.

The CHAIR: Under the Act, you submit it to the Minister and the Treasurer, accepting that Mr Shoebridge is talking about transparency, but you have fulfilled the obligation of the Act.

Mr BHATIA: Absolutely.

The CHAIR: I guess the Minister or the Treasurer would need to approve publication, just as a point of perspective.

Mr DAVID SHOEBRIDGE: I am not suggesting you have not complied with the statutory requirements. I am just saying it looks like a key document and it surprises me that it is not publicly available.

Mr BHATIA: I take that on notice.

The Hon. LYNDA VOLTZ: Getting back to the financials, you stated $32 billion was what you held and a long tail in liabilities, but your liabilities are $27 billion, are they not?

Mr BHATIA: Yes.

The Hon. LYNDA VOLTZ: Does the long tail include the entire $27 billion?

Mr BHATIA: That is correct.

The Hon. LYNDA VOLTZ: It is $32 billion in what you hold and your liabilities are $27 billion.

Mr BHATIA: The only point to be noted that each of those liabilities has a different probability of adequacy [POA] that we hold it on, based on the accounting standards of each and every scheme, which is very different. For example, the lifetime care scheme, the Treasury Managed Fund scheme, the dust diseases scheme, have no risk margins or they are calculated at a POA of about 50 per cent.

The Hon. LYNDA VOLTZ: Are you including sporting insurance in that $32 billion?

Mr BHATIA: Yes—everything.

The Hon. LYNDA VOLTZ: That is not just the workers compensation scheme.

Mr BHATIA: No, it is all the schemes together.

The Hon. LYNDA VOLTZ: You are including your sports insurance. How many people are covered by your sports insurance in that figure?

Mr BHATIA: That is a very minor part—out of the $32 billion, $4 million is the fund for sporting injuries.

Mr DAVID SHOEBRIDGE: Could you explain to me and the Committee what the difference between having an 80 per cent and a 75 per cent probability of adequacy means in your liability valuation?

Mr BHATIA: Sure. The rationale for 75 per cent or 80 per cent or—

Mr DAVID SHOEBRIDGE: First of all, what it means—what is a probability of adequacy—and then you might tell us whether you have chosen 75 per cent or 80 per cent.

Mr BHATIA: Sure. Probability of adequacy from actuarial evaluation standards means that there is a 75 per cent chance that the assets will meet the liabilities that eventuate when the tail finishes.

Mr DAVID SHOEBRIDGE: Yes.

Mr BHATIA: The Australian Prudential Regulation Authority [APRA] specifies that general insurers have a 75 per cent probability of adequacy while ascertaining the funding ratio or the capital standards. The nominal insurer has for a while adopted an 80 per cent POA. The reason that 80 per cent POA has been adopted is because of the constant volatility in the scheme and because of the changes that have happened in 2012, 2014 and 2015. As such, the volatility is much higher. For long-tail schemes, most insurers will probably adopt as high as a 90 per cent POA so that there is sufficiency built into the assets to cover the liabilities, because the valuations can change very dramatically based on an interest rate change or based on a limited liability company [LLC] change—not even a real interest rate change but a LLC change over the next five to 10 years might dramatically change what your liabilities today are. As we all appreciate, these are not fixed numbers; they are numbers that are calculated on a whole lot of assumptions. The assumptions are predominantly what the actuarial standards govern.

Mr DAVID SHOEBRIDGE: But the actuarial standards applied pretty much in every other State compensation scheme adopt a 75 percent POA, rather than an 80 per cent POA?

Mr BHATIA: That is true.

Mr DAVID SHOEBRIDGE: In fact, almost uniformly, apart from New South Wales. Why are we out of step?

Mr BHATIA: I am not sure whether Victoria or Queensland have had the changes that we have had over the past five years in our schemes, which means that the certainty of claims and the way things are made—the nature of claims, the behavioural patterns—are not certain. And because they are not certain it is difficult to measure volatility, which means that you will be more conservative and have a higher POA.

Mr DAVID SHOEBRIDGE: The effect of moving from 75 per cent to 80 per cent is to reduce the surplus?

Mr BHATIA: The surplus has always been 80 per cent. For the first time last year we reported at 75 percent. If you look at the last three years it has always been reported as 80 per cent POA. That is what our accounting standards are. In our accounting standards we have always reported that our financial results for the last years have always been a POA of 80 per cent.

Mr DAVID SHOEBRIDGE: In the RiskNet submission it says that the latest valuation—30 June 2017 valuation—has a funding ratio of 115 per cent using an 80 per cent probability of adequacy.

Mr BHATIA: That is correct.

Mr DAVID SHOEBRIDGE: Have you used the 80 per cent or the 75 per cent?

Mr BHATIA: The 115 per cent is at the 80 per cent POA, at 75 it would be 119.

Mr DAVID SHOEBRIDGE: Which one are you using when you are checking on your performance and seeing the adequacy of your funds set aside?

Mr BHATIA: From a working capital policy perspective we use 75 per cent, which is what the Australian Prudential Regulation Authority [APRA] standard is and what the standard for the other statutory jurisdictions are as well.

Mr DAVID SHOEBRIDGE: The current scheme was 119 per cent at 30 June 2017.

Mr BHATIA: That is correct.

Mr DAVID SHOEBRIDGE: What is it now?

Mr BHATIA: It is 119.

Mr DAVID SHOEBRIDGE: Using 75 per cent?

Mr BHATIA: Yes.

Mr DAVID SHOEBRIDGE: What adequacy ratio do the other statutory schemes around the country use? You have adopted a 127 per cent funding ratio.

Mr BHATIA: A 120 per cent to 140 per cent range.

Mr DAVID SHOEBRIDGE: But your capital management policy says 127 per cent. Therefore the range is 120 per cent to 140 per cent, is that correct?

Mr BHATIA: That is correct.

Mr DAVID SHOEBRIDGE: What do the other statutory schemes around the country use?

Mr BHATIA: They use very different ratios.

Mr DAVID SHOEBRIDGE: What are they?

Mr BHATIA: At the moment most of those schemes are sitting at your 130, 140, 120. That is what they are all sitting on at the moment.

Mr DAVID SHOEBRIDGE: But what are their targets?

Mr BHATIA: Their targets are anywhere between 100 to 110, 115 probably.

Mr DAVID SHOEBRIDGE: So their targets range between about 100 per cent and 115 per cent, is that right?

Mr BHATIA: That is probably correct.

Mr DAVID SHOEBRIDGE: Why again are we out of step at 127 per cent?

Mr BHATIA: Can I please explain that? Every other jurisdiction's workers compensation sits on the State's balance sheet and is guaranteed by the Government; the nominal insurer is not. That has been the core determinant in making sure that we are taking a very different approach in how this is managed.

Mr DAVID SHOEBRIDGE: Realistically, the scheme is not going to be allowed to go bust by the State Government?

Mr BHATIA: With due respect—

Mr DAVID SHOEBRIDGE: Realistically, adopting just the general insurance funding ratio is inappropriate because there is not that same insolvency risk, which is what is acknowledged in all the other statutory schemes?

Mr BHATIA: If I look at the general private insurers, they have about a 50 per cent loading to the minimum APRA standards. If I was running the same scheme as a private insurer, my board would have asked me to have 180 per cent funding ratio. I am not using what the private industry would use. You ask any private insurer and they will tell you that for a long-tail class they will have a 50 per cent loading to the minimum prescribed ratio of APRA. The board has fiduciary responsibility of the nominal insurer as per the Act. If you get a letter of guarantee that basically says what you just said in effect is actually going to happen, that is not what the legislation says. The legislation for the nominal insurer is very clear in terms of being ring-fenced on the State's balance sheet, which means that I cannot rely on State funding should the scheme go to deficit. That is not what the rules of engagement are from my perspective for the board of icare.

Mr DAVID SHOEBRIDGE: When icare was established the effective unstated policy was at 110 per cent?

Mr BHATIA: Yes.

Mr DAVID SHOEBRIDGE: What engagement did you have with employers who were paying premiums and the workers and their representatives who were getting the benefit of premiums when moving the funding ratio from 110 per cent to 127 per cent, given that it effectively took $2 billion out of the scheme and put it into managed funds?

Mr BHATIA: We did not take out any money physically from anything to do anything.

Mr DAVID SHOEBRIDGE: It went from being available to be either returned to employers in premium cuts or more hopefully—

Mr BHATIA: That is still available from a government policy perspective.

Mr DAVID SHOEBRIDGE: —returned to workers in benefits.

The CHAIR: Order! Only one speaker at a time.

Mr DAVID SHOEBRIDGE: It came away from that and it is now being held in managed funds.

Mr BHATIA: If I can say that optionality for the Government is always there. They can choose at any given point in time to dictate what the funding ratio should be and whether any monies on top on that can be deployed for any other use.

Mr DAVID SHOEBRIDGE: Mr Bhatia, you are not answering my question. The decision to go from a 110 per cent funding ratio to a 127 per cent funding ratio—

Mr BHATIA: A 110 per cent was never—

Mr DAVID SHOEBRIDGE: Unstated, we agreed on that earlier?

Mr BHATIA: Yes.

Mr DAVID SHOEBRIDGE: To go from 110 per cent to 127 per cent effectively took $2 billion from being able to be given in benefits or in premium cuts. Instead, it was set aside to meet future liabilities. So $2 billion was taken from working funds, if you like, and set aside. What engagement did you have with employers and worker groups when you did that?

Mr BHATIA: Mr Shoebridge, can I say that is not how it works. We do not take out any money from any fund and put it into a different fund. That was never the case.

Mr DAVID SHOEBRIDGE: No, it had to be held back.

Mr BHATIA: Those moneys were—

Mr DAVID SHOEBRIDGE: Your target is to hold that money on investment rather than have it available for distribution.

Mr BHATIA: That money was always an investment. It was never lying in a cash fund. That is the first point that we want to make. At no point in time did the numbers change from having funds in one place to being transferred to a different account to invest.

Mr DAVID SHOEBRIDGE: If the Government comes to you and says, "We want to give a billion dollars to those injured workers who are going to be cut off the system under section 39."

Mr BHATIA: They can say that tomorrow.

Mr DAVID SHOEBRIDGE: They will say, "How is the funding going?' You will say, "Because we have a 127 per cent funding ratio there is no available surplus." If you had a 100 per cent funding ratio there would be a $1 billion or so available surplus and you could say to the Government, "Yes, there is $1 billion in surplus." That is the reality of it. I am asking you if that reality is true and what engagement did you have when you changed the ground rules?

Mr BHATIA: I did not change the ground rules. This is the point that we are trying to make: We set the ground rules. When the icare board was formed for the first time the board had fiduciary responsibility for setting the funding ratio of the solvency guidelines.

Mr DAVID SHOEBRIDGE: And it went from 110 per cent to 127 per cent? We have covered that territory.

Mr BHATIA: I do not think we have moved from 110 to 127; we have set the funding ratio at 127.

Mr DAVID SHOEBRIDGE: The transcript will show that we agreed earlier that it was effectively set at 100 per cent. We have moved from 110 per cent to 127 per cent. Let us not have that false argument. I am asking you what engagement you had with stakeholders who were either going to be paying the premiums or not getting the benefits when that change happened?

Mr BHATIA: The decision of moving the capital funding ratio was made by the board based on APRA standards. It is their prime responsibility to make that decision based on their responsibilities as a fiduciary holder of the nominal insurer fund.

The Hon. LYNDA VOLTZ: Are you saying that APRA told you to set it there?

Mr BHATIA: APRA did not tell us to set it. APRA gives the guidelines to the insurance industry, which we believe is the best in class standard for people to adopt and the board, which has the fiduciary responsibility of the fund, adopted that ratio.

The Hon. LYNDA VOLTZ: Have we not just ascertained what the other funds are setting?

Mr BHATIA: The other funds are on the Government's balance sheet. We are not on the Government's balance sheet.

Mr DAVID SHOEBRIDGE: Do you agree with me, though? What is 17 per cent of the funds? If we are going from 110 to 127, what does 17 per cent represent in a dollar figure now to the nearest $100 million? What does it represent?

Mr BHATIA: It would be about $1.5 billion.

Mr DAVID SHOEBRIDGE: Probably more than that; closer to $2 billion would it not?

Mr BHATIA: Yes, $1.5 to $2 billion.

Mr DAVID SHOEBRIDGE: So it is a $2 billion decision. I am surprised that it was made in a board meeting, without engagement with the employers and the injured workers representatives who are going to be paying the cost of it. I find that very surprising.

Mr BHATIA: Yes, I can understand your point of view. I can completely understand what you are saying. From our perspective I think what you have to appreciate is that the board has the responsibility of making sure that the funds remain solvent for a longer time. We have to find a benchmark that makes sense for a fund to stay solvent over a long time. It is one of the clear objects that the shareholder, the Government, has told us to do. From that perspective the board looks at it and says, "What benchmarks do we use to ensure that we have the right funding ratio set up?"

Mr DAVID SHOEBRIDGE: But if a board is going to make a fully informed decision about that, understanding what the reality will be, it needs to be advised that it will mean there is $2 billion less to pay for benefits and these kinds of benefits will be at risk or these kinds of benefits cannot be provided. That is the reality of it.

Mr BHATIA: I do not agree with that. The reason I do not agree with that is that at no point in time does it take away the role of the regulator to set a funding ratio which it can set at any given point in time.

Mr DAVID SHOEBRIDGE: The regulator here being?

Mr BHATIA: SIRA or the Government to basically make a policy decision based on the funds that are there.

Mr DAVID SHOEBRIDGE: Of course SIRA or the Government can intervene but until they intervene your board, based upon the advice you got, which is solely about APRA ratios, has set the figure.

Mr BHATIA: Yes, that is true.

Mr DAVID SHOEBRIDGE: Simply that SIRA or others could intervene and have a different figure does not answer the query about what processes, what engagement and what information the board was given when you were setting that figure.

Mr BHATIA: The information is given based on all the different aspects that we look at. So we look at all the different schemes and then we look at what is the difference between our scheme and their scheme and what is the difference between our scheme and the private insurers.

Mr DAVID SHOEBRIDGE: But the opportunity costs of taking the $2 billion off the table for return to benefits—

Mr BHATIA: There is none.

Mr DAVID SHOEBRIDGE: That is the reality of it. That does not seem to have been before the board.

Mr BHATIA: There is none.

Mr DAVID SHOEBRIDGE: The inability to fund a decent payment to injured workers being terminated under section 39 does not seem to have been on the table when the board was making that decision. Surely those things should be on the table.

Mr BHATIA: I completely disagree. The fact is that the setting of the target funding ratio by the board does not influence those factors about the availability of the money because that money is there for a policy to be made at any point in time.

The CHAIR: I think, Mr Bhatia, we are going around in circles. You have answered the question and there is acceptance of a disagreement about that with Mr Shoebridge. Do you want to move on to new questions?

The Hon. LYNDA VOLTZ: When you had your business intent perhaps you had to set up performance targets.

Mr BHATIA: Yes.

The Hon. LYNDA VOLTZ: You are saying that the Government said that the objective of the long-term financial viability was one of its objectives?

Mr BHATIA: Yes.

The Hon. LYNDA VOLTZ: Was another objective about reducing premium costs?

Mr BHATIA: Yes. You have to balance those.

The Hon. LYNDA VOLTZ: So would not an increase from 110 to 127 be mutually exclusive of another policy objective of government?

Mr BHATIA: In running an operation there are always trade-offs. You look at what gets primacy and what does not. But at the same time the benchmark for us is to make sure that the sustainability of the funds is of core primacy. We have to adopt a benchmark to understand what those funds should be reserved at. At the same time we have to benchmark what the premiums are and how they are benchmarked with other jurisdictions. When you look at those two you find that is why the range adopted is not 127. Up to 120 is fine and due consideration was given. There was not a blanket decision. The number comes up at 127 so we will adopt 127. We said we will adopt a range. What we do not understand is that a yield cost change can move the funding ratio by three points and there is nothing that you or anybody else can do that will influence that.

The Hon. LYNDA VOLTZ: I think some of us made that argument at the time of the legislation. We will go to some other points. WIRO has raised in its submission concerns regarding the decision to send out

section 39 notices. Can you run through what happened and how there came to be information that did not include the rights of the workers?

The CHAIR: I will add to that, if I may. I am interested in whether there was confusion between SIRA and your organisation in that communication.

Mr BHATIA: I will hand that to Mr Nagle to answer.

Mr NAGLE: We respectfully understand WIRO's position but we disagree with it. We engaged quite extensively with SIRA when we understood the enormity of the section 39 process. We worked through a series of actions we were going to take, which included the communication strategy. We then took that to WIRO and got feedback from them. The difference in opinion we had at that time was that we found it was better to encourage workers to contact us, to talk to us, rather than to get a complicated letter. So we started with an agreed format that we agreed with SIRA regarding communication. Following further representations from WIRO we changed the letter.

The Hon. LYNDA VOLTZ: Yet with the injured worker average earning form, that was not the process you followed.

Mr NAGLE: Pre-injury average weekly earnings [PIAWE]?

The Hon. LYNDA VOLTZ: Yes.

Mr DAVID SHOEBRIDGE: Before we go on to PIAWE, which is a separate issue, the concern was that the initial letter you sent out said that the only method under which a worker was able to be entitled to continue to receive weekly payments was to attend an assessment determined by the insurer whereas, of course, they could attend their own assessment determined by their own independent legal advice. That was the point of difference.

Mr NAGLE: And our letter says they can and we ask them to call us to talk about it. The letters are there and very clear.

Mr DAVID SHOEBRIDGE: Yes but the absence of an expressed statement in that letter saying, "You are entitled to get independent legal advice and get your own assessment" was the concern. As I understand it, you accept that was a valid concern and you changed your letters to include it?

Mr NAGLE: That is right. So our strategy was to try to encourage people to talk to us because we recognised that these are confronting letters and we wanted to engage people individually and talk through their circumstances.

Mr DAVID SHOEBRIDGE: But they might be better off talking with their own lawyer, might they not, who is unambiguously on their side?

Mr NAGLE: And that was the representation from WIRO and that is what we responded to.

Mr DAVID SHOEBRIDGE: But do you accept, on reviewing it, that there could have been some earlier engagement with WIRO and other stakeholders before that kind of letter goes out? We are talking about 6,000 very vulnerable injured workers here. There are lessons to be learned from that in engagement before you make that kind of communication.

Mr NAGLE: I think so but we also reserve the right to make a call of our own. We thought our strategy was right. Following further representations, we rethought that strategy.

The Hon. LYNDA VOLTZ: Run through why you followed that process in that regard but not in regard to the new forms. Run us through that process and the concerns that have been raised regarding the average weekly earning forms.

Mr DAVID SHOEBRIDGE: I do not think anyone understands what happened so let us know what happened.

Mr NAGLE: PIAWE we saw as reasonably simple. It is a process that has a lot of criticism. What we realised is that through the various classes of injured workers PIAWE reflects their individual award. So most of our claims are for white-collar workers who do not have overtime and who do not have shift allowances, et cetera. Yet with the original form you had to work your way through every step. We said that we would try to digitise it and make it a simpler form. So if you were not in an industry where you had those areas you could just go straight to your wages, sign it off and send it in. If you did have shift allowances or other allowances, you could open up the form.

The Hon. LYNDA VOLTZ: But what was the process of consulting with SIRA about that step?

Mr NAGLE: I am not sure that we did at that time.

The Hon. LYNDA VOLTZ: You said earlier that in relation to section 39 you did consult with SIRA but on these forms you did not. Is there a reason for these different processes?

Mr NAGLE: Only that we saw PIAWE as a source of irritation and we thought it was a simplification.

The Hon. LYNDA VOLTZ: But it is an area in which you said yourself that you had had lots of criticism. If you had had lots of criticism would you not assume that SIRA was involved in the area, given that its role is to oversee? Would you take it to SIRA if you were making a change? Would you talk to SIRA? I assume that it would have received feedback on that criticism.

Mr NAGLE: Not that I have heard of, no.

Mr DAVID SHOEBRIDGE: Is there a clear statement from the organisation about when you consult with SIRA and when you do not? SIRA's role is to oversight the process. Does that mean engaging with you when you are changing the forms on the process? Does it just mean a kind of higher level thing? I do not know, and I do not think anybody knows, where SIRA's role begins and ends.

Mr BHATIA: Having been part of organisations and even leading organisations which have been regulated by gold-standard regulators like APRA, I do not think anybody disputes the fact that they have that standard not just locally but globally. Things like forms are operational matters. I would never go to APRA to change my claims form. We operated on the basis of what is an operational matter and what is a systemic matter. Section 39 is a systemic matter; it is a regulatory requirement. It has come out of legislative change, hence engaging with them makes sense. But it is an operational matter. Everything we do on an operational basis I think is the responsibility of the operator not to have a conversation with the regulator on a day-to-day basis. The regulator's role is to oversee the function from the prudential standpoint and, if they receive any noise from the market, basically to address it.

The Hon. LYNDA VOLTZ: If you go to SIRA's section of the Act you find that it is required to provide for the effective supervision of claims handling and disputes. You have an area about which there has been a lot of criticism, which is what you said to me, but there has been no feedback from SIRA which surprises me. Given that its role is to promote efficiency and to ensure that claims are handled efficiently, would that not be part of the legislative requirement?

Mr BHATIA: It is not practically possible to take every piece of operational change and run it past the regulator, otherwise all we would be doing is doing business with ourselves.

Mr DAVID SHOEBRIDGE: I fully understand your position about operational and systemic. If there is a reason for dividing the two it is so you can get on and do your operational business and they can have the systemic oversight. I fully accept that. When it comes to PIAWE, that revolting acronym which I hope can be reformed, there is so much attention on this and so much angst across the system that that was probably a systemic problem and getting the form right was part of a systemic solution. That may be a judgement call but it seems to me that most stakeholders think it was probably a systemic problem. Is there any reflection on that?

Mr NAGLE: Clearly on reflection, yes. We consulted at the time with employers and scheme agents because they are the people who use the PIAWE form. We then ultimately tested it in a couple of areas. We thought it was fine. It was fulfilling a need of simplifying process. On reflection, yes, maybe we should have gone to SIRA earlier.

The CHAIR: For the benefit of Hansard, will you define PIAWE.

Mr NAGLE: Pre injury average weekly earnings.

The CHAIR: Are you aware of the submission and did you hear evidence earlier today from employers?

Mr NAGLE: Yes.

The CHAIR: Mr Brack from the Australian Federation of Employers and Industries was a strong critic of icare. I will explore some of the issues he raised. I do not want you to defend; I want you to constructively discuss these issues. Mr Brack was concerned about the foundation—an issue that was raised in a previous inquiry. The foundation is not in the Act but talk to us about the foundation and how it fits into the organisational structure and your mission.

Mr BHATIA: Absolutely. One of the key aspects of forming icare was to make sure that it recognises some of the systemic issues that stem from injury and disability. One of the biggest challenges when people are

off work is exclusion—social exclusion and community exclusion. There is also lack of self-confidence and the spiralling mental health issue. There are also challenges about accessibility of services in regional areas that typically have been operated and are available in metropolitan areas but they have not had the funding or the reach to go into regional areas. Looking at some of those key areas and also looking at the already existing grants that each of the different schemes used to have in the past, we consolidated that into something more meaningful under the auspices of a foundation where there is proper governance and proper processes of understanding. Where do the grants go and how do we monitor them? What is driving efficacy? What is driving the effectiveness of return-to-work programs and, more importantly, resilience programs.

When somebody is injured the effect of that is not just for the person but also for the family—for near and dear loved ones. One of the key elements that we found missing was carer resilience, especially young carer resilience. We used the foundation to fund programs on young carer resilience. We also used the foundation to partner with Spinal Cord Injuries Australia to open a rehabilitation facility in Lismore as a test case so that we can then fold it out to other regional sites if that becomes a success. Again those top-class facilities for people with spinal cord injuries were not available to people in regional areas. They were coming all the way to Sydney to access those facilities. The foundation is used for such injuries.

The other thing that we are doing at the moment is mental health and small business. We know for a fact that mental health at the workplace is a challenge that we face in society. The bigger businesses have infrastructure by the name of human resource departments, employee assistance programs, et cetera, to be able to help those individuals. Small to medium businesses do not really have those kinds of facilities and infrastructure. We are trying to understand through partnership with the Hunter Institute of Mental Health, which is now called Everymind, what core pinpoints we can address in small to medium businesses for mental health. The foundation is being used for both—for the preventative side—understanding where some of the more innovative things are happening—and also for scaling. Where the innovative things have been proven, how do we scale it so that it is for the broader benefit of New South Wales society.

The CHAIR: Have you drawn the decision to do that out of your strategic plan?

Mr BHATIA: Yes.

The CHAIR: What is the governance structure?

Mr BHATIA: A board sub-committee oversees the foundation and makes all decisions based on that.

The CHAIR: On its allocation of money.

Mr BHATIA: Absolutely.

The CHAIR: Your submission states $100 million over five years.

Mr BHATIA: That is correct.

The CHAIR: Mr Brack from the employer's federation said there is inadequate consultation with employers. The organisation is very worker-centric, including in its language on the website, and employers felt that the NSW Business Chamber had a better relationship with you. Respond to that question and let us know what other mechanisms you have in place.

Mr BHATIA: I will respond in two ways. I heard Mr Brack's evidence earlier today. Clearly it means that no matter whether we are engaging with the employer groups on a consistent basis I think that across the past 10 months we have engaged all the employer groups. We have had about 40 meetings in total. Clearly it is not effective, or at least they feel that they are not being listened to. It is something that I will take on board. We will work with both those employer groups that came today to understand what we can do to make that engagement more effective.

The CHAIR: I would be interested to hear about that.

Mr DAVID SHOEBRIDGE: Mr Brack complained that your website does not include immediate reference to employers or immediate jump off points for employers. I have looked at your website on a personal computer and on a mobile device and his complaint is not made out.

Mr BHATIA: It does include employers.

Mr DAVID SHOEBRIDGE: The clearest initial links and buttons take you to information for employers. It opens with "How do I get a quote?" which is not an employee.

The CHAIR: You might take it on notice and respond to that area of the engagement of employers. The organisation said that they had difficulty just on telephone communications with your organisation, which I

know is contrary to the evidence you have given us, which we have accepted, about your relationship with injured workers and so forth now with case managers and so on.

Mr BHATIA: It is quite fascinating. As I said, feedback is always valuable and I take it because it always helps us do better. But we have had more than 200,000 phone calls with employers buying policies, modifying policies, asking questions about premiums, since we opened our doors in February this year, and given the fact that now we manage policies directly—all the modifications, the actual binding of the policies, the submission, the issuance of the policy documents, the collection of the premium; that is all done internally—we have had more than 200,000 phone calls, which, for us, is manned by Service NSW. They measure customer service and they have got a 4.8 out of 5 score on that.

The CHAIR: If you can take on notice how you might strengthen that relationship and consultation with employers. As I said, the NSW Business Chamber was not quite as critical; they said they had a fairly good relationship.

Mr DAVID SHOEBRIDGE: Could I just go back to the icare foundation? The only criticism I have heard about that has come from Mr Brack and the submission that his organisation made. I have had a significant number of people state it as a positive thing, but when you are talking about a scheme with $3 billion or so of churn every year, devoting $20 million a year to try to make it work better seems to me to be a rational investment, and maybe too small. I assume that you are looking at the size of the scheme?

Mr BHATIA: Yes.

Mr DAVID SHOEBRIDGE: And an investment of $100 million over five years is a fraction of 1 per cent.

Mr BHATIA: It is. I think the part about that is that most of that money is actually being spent in very unmeaningful ways or irrelevant ways because they were just being given away as a thousand bucks or 20,000 bucks here and there, which was not meaningful or not pointed in the directions where the biggest pain points were.

The CHAIR: You gathered them in together when—

Mr BHATIA: We are going to bring it together, and it makes sense to be able to do so. But I am probably with you on the fact that for me that is kind of the base level. We should be able to do that well and then put a claim to increase that point forward. I could not agree more in terms of the fact that the scheme is designed to do a lot more than what actually it says there.

The CHAIR: My final point, which we have gone over in other inquiries before and we touched on at the beginning of this discussion with you, is transparency of data. Employers are wanting to see how these premiums are arrived at, why they are so different between different employers. Claims injuries, the unions would like to see more information—that might be a SIRA question as well—but more timely, contemporary information on claims injuries by sector, that type of thing. What are you doing about more transparency?

Mr DAVID SHOEBRIDGE: And to be clear, the evidence was that the most recent comprehensive publication of New South Wales specific data was from 2014-15, and that seems impossibly late.

Mr BHATIA: When I heard that this morning it was something that is clear feedback for us. The publication is not ours, the publication that you just spoke about and referenced, but from our perspective one of the key things that comes out is the ability for us to be able to share information based on industry, based on eye-level data, with as many people as possible, including putting it on the website. It is something we are acutely conscious about. The challenge you always have is we have data with varying degrees of quality from five different scheme agents over a long time.

The CHAIR: The suggestion from the unions was you could brand it preliminary or something like that to give that warning.

Mr BHATIA: I think that is exactly right.

The CHAIR: It has been hard for us to identify objectives. We have mainly been relying on the second reading speeches, and transparency was a strong point in both those speeches.

Mr BHATIA: Which is why I also take the point that Mr Shoebridge made about the business intent. I absolutely understand and we will get more transparency on that one.

Mr DAVID SHOEBRIDGE: This cannot be just tomorrow by saying "I want to get the data out".

Mr BHATIA: There is already work.

Mr DAVID SHOEBRIDGE: I assume that there are processes in place that are getting to the point where there will be a nice dashboard that we can all look at the end of November and say, "There is all the data". What are the processes that are in place to have that lovely dashboard? When Family and Community Services are embarrassingly more transparent than your organisation, there is a problem. When can we expect the data?

Mr BHATIA: There has been a lot of work at the moment happening in terms of making sure the data is consumable. It can be synthesised, it can be cleansed and it can be triangulated. So now we have that into our database and the question is whether it is a one-month or a two-month exercise for us to be able to start making it public.

Mr DAVID SHOEBRIDGE: So if I was to diarise now when to go on the icare website and see this lovely dashboard, what date should I put in my diary?

Mr BHATIA: I would say quarter one next financial year.

Mr DAVID SHOEBRIDGE: Does that mean 31 March or 1 February?

Mr BHATIA: I would hope it was 1 February.

The Hon. LYNDA VOLTZ: That is longer than one or two months away.

Mr BHATIA: With a lot of the technology and data stuff, unfortunately it is like the iceberg thing: there is a lot of work that happens and there is nothing that you can see.

The Hon. LYNDA VOLTZ: You front-end load it on your software. The communications industry does this all the time when it is pulling down SAS data and converting it. It is just a matter of getting the front-end software correct, launching it and testing it, because that is its job: to crunch the numbers.

Mr BHATIA: We have SAS data, we have an actuarial team which looks at data, but the base data needs to be accurate otherwise it is garbage in and garbage out.

Mr DAVID SHOEBRIDGE: But you have got the base data sorted now?

Mr BHATIA: That is what we have been working on—to cleanse it. Now it is translating it into something more meaningful, which we will put forward.

Mr DAVID SHOEBRIDGE: The union movement generally supports the idea of data being produced through your organisation, which is the most current data because it is about claims, it is about the current situation, and then having a protocol to provide that to SafeWork NSW so that they can see if there are any alarming trends developing in workplace injuries. Do you have that relationship with SafeWork NSW and is part of your data exercise going to be cutting the data to give to SafeWork so they can do that?

Mr NAGLE: If I could answer that one? We all share the same data. All the data goes through what is called a common depository. It is owned by SIRA, so that data is accessible both by SafeWork and ourselves. So all of our data goes through that depository. Unfortunately, because our data on the nominal insurance side comes from the scheme agents still at the moment, it comes about eight weeks late, so we have a lag in our data. That then goes into a SIRA repository, it is modified in terms of cleansing—any data areas are tidied up et cetera. But everyone in government has that data.

Mr DAVID SHOEBRIDGE: But are you identifying trends, because for you it is a financial cost and it is a human cost—

Mr BHATIA: Absolutely we are.

Mr DAVID SHOEBRIDGE: But for SafeWork it is also a potential need for regulatory intervention or prosecutorial intervention. What is the relationship you have with SafeWork to make sure that you say, "This is our twentieth shoulder injury from a supermarket on the South Coast. Someone go down there and sort it out"? That is one of the things we had raised with us.

Mr NAGLE: We are discussing that with them right now in terms of we have shown them how we have developed our datasets and we are showing them what we can create. What we have started to do is ask different questions of the data than traditionally has been asked. So we are getting much better views and insights into what the data is telling us and we can now carry down to postcode; we can say in any postcode in New South Wales these are the injuries, these are the largest employers, these are the employers who have had an outbalance of claims. That is the data that we want to get onto our website. But we are also working separately with SafeWork to say what data is useful to them, by industry group or by individual. In terms of giving them names, that is a bit more difficult at the moment.

The CHAIR: Why is that?

Mr NAGLE: Privacy.

The Hon. LYNDA VOLTZ: You cannot release it, but you would be able to see where there are clusters.

Mr BHATIA: Absolutely, we see trends and clusters.

The Hon. LYNDA VOLTZ: If the building industry in Botany has a sudden spike, you would know that that is where inspectors should be.

Mr BHATIA: We want to make that public. We believe that information should be made public, and we are working towards that.

The Hon. LYNDA VOLTZ: We would be happy to see that.

Mr DAVID SHOEBRIDGE: From 1 February.

Mr BHATIA: One of the things we want to see is by postcode, by employer, by industry to be able to drill down and see the claims.

The Hon. LYNDA VOLTZ: By employer, you mean by employment category.

Mr BHATIA: Absolutely.

The Hon. LYNDA VOLTZ: I go back to an earlier statement you made about Service NSW being your point of contact. One of the concerns the employer organisations had was premiums and the assessment of premiums. When they have a dispute about a complicated financial problem, there seems to be no mechanism for employers to air their view. Where is their dispute mechanism?

Mr BHATIA: I do not think there is a dispute mechanism for premium at the moment.

The Hon. LYNDA VOLTZ: That is the impression we are getting.

Mr BHATIA: I understand the need for that, because many employers are saying they are unhappy with their premium. I am never happy with the premium that I pay to insurance companies either. I have to shop around for the best premium, and I understand that employers do not have the ability to shop around. Hence, we have a higher bar to try to be more transparent. Making people understand how insurance premiums are calculated is not the easiest thing to do.

The Hon. LYNDA VOLTZ: That is the problem. They are being referred to a 300-page document with two pages of calculations. They do the calculations based on what they think is a fairly complicated process and still come up with a sum that is different from the sum being provided. With which body can they go through their concerns point by point?

Mr BHATIA: We have a dedicated underwriting team of people working in the insurance industry and who understand how insurance is calculated. They work with employers on a day-to-day basis. For example, if the employer calls up Service NSW, which is an icare number—Service NSW is not what you would classify as Service NSW; it is not the centre—

The Hon. LYNDA VOLTZ: I get what you are saying.

Mr BHATIA: It is a dedicated branch that only services icare clients. As soon as there is a complex premium question, they will do a warm handover to a team of qualified underwriting people, who will then walk through with the employer their circumstances and whether there are any modifications based on individual circumstances.

The Hon. LYNDA VOLTZ: Did you see the case put forward by the Federation of Employers and Industries, I think?

The CHAIR: On notice.

Mr NAGLE: The NSW Business Chamber gave an example.

The Hon. LYNDA VOLTZ: Yes, that is the one.

Mr NAGLE: We have asked them for that information so that we can track that call.

Mr BHATIA: That is very bizarre.

Mr NAGLE: It is not a standard answer that we would give. Our appeals process team looks at these questions with employers. Since January we have had 89 premium reviews. A lot of the calls we get are around how people can pay their premium, the factors that have gone into the premium calculations—so wages, loss history, changes in their occupation. A lot of them require very simple explanations, but where somebody has a more complex issue—they may have gone from being an SME-rated employer to what we call an experience-rated employer based on size and they may have moved through the year into that program—their calculation gets more complicated. That is where a lot of our calls come from.

Mr BHATIA: We had 89 review calls from 200,000 policies.

Mr DAVID SHOEBRIDGE: It is a small number.

The CHAIR: We are running out of time, so this is the last question and it will be put on notice if more time is required.

Mr DAVID SHOEBRIDGE: I have two questions to go on notice. A number of concerns have been raised with my office about the substantial cost of icare signage on your building. People cannot work out the rationale for a monopoly provider or a government agency to be engaging in broad commercial advertising. Please provide the cost and the rationale for it. Second, repeated concerns have been raised in submissions that in the process of the transfer to a single scheme agent I think it has been winnowed down to three scheme agents. That process has resulted in the interim claims handling scheme agents being GIO and—

Mr BHATIA: Allianz.

Mr DAVID SHOEBRIDGE: Because they do not have any long-term stake in the game, it is a mechanistic, unengaged process with claims falling through the cracks. There are repeated concerns about that in the submissions we have. Can you provide responses to both of those questions?

Mr BHATIA: Absolutely we can.

The CHAIR: If members of the Committee have any further questions, they can put them on notice. Thank you for appearing before the Committee this afternoon. The Committee has resolved that answers to questions taken on notice be returned by Friday 24 November. The secretariat will contact you early next week in relation to the questions that you have taken on notice.

Mr DAVID SHOEBRIDGE: It is still better than before icare. This is inevitably a critique session, but there has been a substantial improvement.

(The witnesses withdrew)

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

The CHAIR: Welcome to the first inquiry into the statutory review of the State Insurance and Care Governance Act 2015. Would you like to make an opening statement?

Ms DONNELLY: I would like to make a brief opening statement and I start by acknowledging the traditional custodians of the land on which we meet. We provided a brief submission by way of background, and I thank you for circulating the note around advice on the scope of this inquiry. I might direct my opening comments to the scope, the terms of reference of the review and make a few comments about the objectives of the 2015 reforms and the terms of the Act. In my view, there are three key things that I pulled out of the Minister's second reading speech concerning the objects of the Act and the separation of the provider and the regulator. I think this remains a valid objective.

My experience in the face of setting up SIRA and currently is that there certainly were concerns by some of the self-insurers and specialised insurers that were evident to me when beginning to regulate the scheme and that there was conflict of interest. There are difficulties in regulating complex insurance and, in particular, hybrid markets where you have a public provider and private providers because independence is important. I also observed that the capabilities and systems—and data would be a key one—are something that an independent regulator needs to have strong capability in, and that was not as you would want to see it at the time that we set up SIRA.

In the objective of improving customer centricity, there is very strong evidence that that remains a valid objective. There is very strong evidence—confronting evidence—that people who are injured who are in compensation schemes can do poorly—perhaps even more than people who do not have compensation. The nature of a compensation scheme can impact participant health. It can be stressful. It can create a perception of injustice that impedes recovery and return to work. So there are definitely substantive objectives around improving the experience of claimants as well as policy holders, who are the customers of the system, that will, if not addressed strongly, lead to poorer outcomes for those people for whom the schemes exist. I can talk a bit more about that, and I would also be quite happy to provide, on notice, evidence about the importance of the customer experience in achieving better health and recovery outcomes.

I will talk to the terms of the Act. First of all, in the conflict of interest and separation of regulator and provider, I have a few observations from my experience within SIRA where I think there are some anomalies—probably in the drafting, really. To be consistent with the intent of the legislation there are a few things that I would suggest could be looked at by the Committee. I am happy to talk further about those.

In the objective of having improved experience for claimants in particular, I think that in the terms of the Act that question raises some bigger issues about whether you can legislate in a prescriptive way about treating people with respect and responding with empathy. I think it begs the question of whether or not the legislation encourages an ongoing, continuous monitoring of performance at a system level and improving the performance. The use of data is absolutely key, and whether or not the legislation is flexible enough to enable digital service delivery if people require that, rather than statutory forms, et cetera. I think these are the challenges, and I would suggest that the Committee might like to think about the more recent legislation—the amendments this year with respect to the Motor Accidents Injuries Act. It is enabling us to quite strongly transform the availability and use of data.

The intention within SIRA is to have a consistent, robust regulatory approach. We are making changes now to the ability to access data and improve transparency in the CTP scheme. I think that the current model is a superior model because we will be able to leverage that in the other schemes. Clearly, there is a strong commitment from the people in SIRA to see that the benefits of what we are putting in place for people who are injured on the roads can then be moved in to benefit people who are injured in the workplace. I am very happy to take questions.

I will just add that I have not been able to review all of the submissions but those that I have reviewed I have noted that there are some points that have been made that are more operational than the scope of this Committee's work. I am committed to ensuring that SIRA goes through and looks at those and reflects. Then we will get in touch with those particular organisations, where the submissions have been made public, and—either face-to-face or in writing—follow-up with them.

The CHAIR: I really appreciate that you have come prepared to advise us of some suggestions as to how to improve the Act and of your organisation's ability to do its job. You submission does not do that, because, as you said, our advisory notes have clarified it more for you. It would be good if you made a

supplementary submission that went through that in detail, but we are going to ask you about it anyway. I am going to ask you about—you invited questions on it—the intended legislation's drafting issues. Would you like to go through some of those?

Ms DONNELLY: Some of those relate to the workers compensation legislation in particular. Section 154B could be amended to clarify that SIRA—

The CHAIR: Sorry, is this in the Act we are reviewing?

Ms DONNELLY: No, it is in the workers compensation legislation.

The CHAIR: You can point us to it but that is probably for our inquiry next year into the workers compensation—

Mr DAVID SHOEBRIDGE: We may as well hear it if it is relevant to how they undertake their statutory functions.

Ms DONNELLY: I suppose I am thinking about them as amendments that could have been consequential but were not, in terms of drafting. I will give you an example that seems quite anomalous to me. Self and specialised insurers are required to notify the nominal insurer of a workplace injury, which may have made sense in the old WorkCover predecessor organisation, but I think it would be more effective if they notified SIRA, and SIRA has a relationship with SafeWork, because the nominal insurer is, in fact, a competitor.

There is a related provision in the 1998 Act which confers power on both SIRA and the nominal insurer to collect and analyse and use data from self and specialised insurers. Part of the thinking behind that was the separation to enable there not to be a conflict. It would seem to me that that is inconsistent with that, because SIRA is regulating self and specialised insurers as well as the Treasury Managed Fund, the normal insurer managed for icare, whereas icare was clearly perceived, in the lead-up to those reforms, as a competitor. There are some things of that nature that I think are anomalies.

The CHAIR: We note those but I suggest you bring them forward to us again when we have our inquiry into the workers compensation schemes.

Mr DAVID SHOEBRIDGE: Both of those anomalies are about icare—about information or material going to icare. I am interested in things that relate to SIRA. Rather than saying that you do not want this to go to icare, what are the difficulties with the legislation as it applies to SIRA?

Ms DONNELLY: That is a good question. I will probably point to some of the provisions that are new. They are really subsequent to these 2015 reforms. For instance, I think there would be merit in looking at the legislation for motor accident reforms and confirming that all insurers, including icare, the Treasury Managed Fund, are required to provide SIRA with policy and claims data.

I do not want to sound like a regulator that is just saying, "Give us the data," so I will talk to you a little bit about what, in practice, we are able to do because of the reforms in CTP. We have worked very hard since the legislation went through in March. We are now very close to going live with a SIRA data lake within the Data Analytics Centre, which has daily and, in some cases, close to real-time data feeds from the CTP insurers about both policy and claims information, in which we can detect early if there is an interesting, undesirable trend in the management of a claim or in any other area. That data is being built into visualisation tools—a dashboard—so that we have very rapid updating of the performance of the scheme.

The advantage of SIRA having that sort of thing in workers compensation is, firstly, that we are regulating the self and specialised insurers as well as those insurers in workers compensation that are managed by icare. So we would be able to have a view of the whole system and the performance. Secondly, because SIRA funds and provides all the support for SafeWork, and we are both regulators, there can be appropriate mechanisms for that information to be made available to SafeWork for the whole system, again.

Mr DAVID SHOEBRIDGE: Why don't we start at the fundamentals, here? Are you saying that the Treasury Managed Fund and the self-insurers and the industry insurers are not giving you the data now?

Ms DONNELLY: You heard the previous testimony, and I will build on that. The data that we receive in workers compensation is not timely. There are problems with the quality.

Mr DAVID SHOEBRIDGE: But that was all just about scheme agents, and that scheme agent process is being informed. There will be a single scheme agent and that data seems to be on track from icare. You were talking about Treasury Managed Fund and self insurers and the industry insurers—those three schemes.

Ms DONNELLY: Yes.

Mr DAVID SHOEBRIDGE: Do they not give you data?

Ms DONNELLY: Yes, they give us data but it has the same sorts of problems as were being described of timeliness and quality. It is certainly not the kind of data environment that would enable us to respond quickly to trends.

Mr DAVID SHOEBRIDGE: Are you saying that to fix that you want a legislative requirement for them to provide you with timely data in a form that is determined by the needs of SIRA?

Ms DONNELLY: I am suggesting that the Committee might want to have a look at the reforms for motor accidents, which I think are more modern and more contemporary.

Mr DAVID SHOEBRIDGE: Realistically, we are not just going to go trawling through the motor accidents legislation to have a look for the different provisions about data. The question is: What do you want?

Ms DONNELLY: I want there to be clarity that data should be provided to the regulator.

The Hon. LYNDA VOLTZ: Rather than it being optional.

The CHAIR: Was that prescribed in the compulsory third party [CTP] insurance reforms?

Ms DONNELLY: Yes, and also in the home building compensation reforms this year.

The CHAIR: The Minister for Finance is very focused on data mining and responding quickly to trends. That was an objective, I believe, of the CTP reforms. You are saying it looks like it is happening.

Ms DONNELLY: Yes.

The CHAIR: We should look at that.

Ms DONNELLY: That is my suggestion.

The CHAIR: And mirror some of that regulation—that might answer some of the transparency questions too.

The Hon. LYNDA VOLTZ: If they are doing it in one part of the industry, there is no reason they could not be doing it in the other part.

Ms DONNELLY: That is right. And there is a further advantage that I think comes from having a consolidated, robust regulator. These are both schemes that deal with people, provide services to people, who have injuries. So you are able to then think about the insights about what kinds of pathways of treatment are more effective and are working for people.

The CHAIR: The bigger picture.

Ms DONNELLY: Are there any insights that come from being able to look at both of them?

The CHAIR: Is the SIRA data lake—a lovely term; I have not heard that before—internal?

Ms DONNELLY: It is hosted in the data analytics centre. One of the advantages is it is very flexible in terms of—and here is another term—ingesting data so that you do not have the same issues that you have with the more traditional corporate data repository [CDR], which is the warehouse that was mentioned by icare witnesses. You do not have the problems of needing to have very structured data provided in exactly the right format or else it is not usable. Something that is far more contemporary, as in our data lake, does not have those sorts of barriers to bringing data in and being able to use it very quickly.

The CHAIR: Thank you.

Mr DAVID SHOEBRIDGE: A series of submissions have said there is a conflict of interest in SIRA having both the regulatory role in workers compensation and also a dispute resolution role and a claims determination role in merit review. Do you accept that there is a conflict there? Do you see a benefit in it? What are your thoughts?

Ms DONNELLY: My thoughts are that the conflict of interest that drove the 2015 reforms was really a top order issue between somebody who is both offering services in a market and then regulating others. I have read some of the submissions. I think the argument is not so strong in this space but I am not saying that there could not be situations where there would be a conflict. I think we should reflect and work out whether it is material and whether it can be managed. The conflict of interest is less when the regulator has clear responsibility for there being effective dispute resolution services in place. A number of the other submissions, Mr Shoebridge, also clearly showed that there is an expectation that the regulator is not going to be at a distance, monitoring performance on a quarterly basis and not intervening. That is the other side of that equation: Do you

want a regulator that has an active involvement in reviewing decisions in resolving complaints? In which case, if there are occasions where a conflict arises, it may be outweighed by the benefit of having dispute resolution services run by the regulator.

Mr DAVID SHOEBRIDGE: They are quite distinct things—resolving complaints and supervising claims handling and actually determining disputes through merit review. I think it is wrong to conflate them and I do not understand why you conflate them.

Ms DONNELLY: Okay. I have certainly had lots of discussions with stakeholders in which not everyone thinks they are completely distinct, because a complaint may be able to be resolved early and not result in a dispute. But I do take your point that there are some disputes that require judicial or quasi-judicial consideration, and they are about the law.

Mr DAVID SHOEBRIDGE: They are merit determinations.

Ms DONNELLY: The merit determinations.

Mr DAVID SHOEBRIDGE: That is the nature of them—you are determining the quantum or the bona fides of a claim. That is where the conflict of interest lies. Do you accept there is a conflict there?

Ms DONNELLY: I accept that there can be. I think there is a question about whether it is of the same magnitude. I will also say that we obviously know that the Minister has announced that he is going to have a review of dispute resolution. I think it would be quite proper for me to retain an open mind and not be defending a position going into that. I am sure that will be explored in that review.

The CHAIR: One of the major recommendations of our last inquiry was the one-stop-shop proposal.

Ms DONNELLY: Yes.

Mr DAVID SHOEBRIDGE: Given that there are concerns about there being a conflict, that makes the concerns about a lack of transparency and of publishing of the merit review decisions even more concerning. Why is it that there has only been a baker's dozen of merit review decisions published? If you are making good decisions and you are hoping to affect stakeholder behaviour, why do you not publish all the decisions?

Ms DONNELLY: The decision to date has been that there are 700 a year and publishing every single one of them may not add value in terms of insights and that there is a smaller set that are notable decisions. We take great care to make sure that the privacy of individuals is protected. That said, I have also invited different stakeholders at different points to let us know what they think the types of decisions are that they would be interested in seeing published. We are open to enlarging the practice.

Mr DAVID SHOEBRIDGE: Almost any system is improved by having adequate transparency and exposing your decision-making and your thinking to external scrutiny. If the merit review is all being done in a black box—and it sounds to me as though 98 per cent of decisions are done in a black box because they are not being published—that is a real problem in terms of the integrity of the system. Do you accept that? If 98 per cent of the decisions are in a black box and nobody can see, you have a problem.

Ms DONNELLY: I accept that there is a view, I accept that we need to reflect and I think that it will be a matter that is aired in the dispute resolution review. And I will be listening.

Mr DAVID SHOEBRIDGE: But if we are just going to wait for the outcome of the dispute resolution review, which is probably going to reform the whole system, right now you have 687 decisions which nobody has seen and only 13 that have been published. You could resolve that now by making them anonymous and then publishing them. Pretty much every stakeholder who is engaged on it would say, "Well done." Everybody who is important to you in the scheme would say, "Well done." Why do you not do it?

Ms DONNELLY: I would prefer to invite, of the 3,000 or so decisions that we have, some insight about which types of decisions are going to be most beneficial for us to prioritise to publish.

Mr DAVID SHOEBRIDGE: Rather than worry about doing that and you working out what you think is important, categorise them, publish them all and then, as I said, pretty much every stakeholder who is engaged on this has asked you to do it. Why not just listen to them, respond to them and do it?

The Hon. DAVID CLARKE: Is there a downside to them all being published?

The CHAIR: The resources of it.

The Hon. DAVID CLARKE: What is the downside to it?

Ms DONNELLY: I think it is partly the resources, whether there is a benefit and the need to do so with care to protect privacy.

The Hon. DAVID CLARKE: Assume that would be done.

Ms DONNELLY: I am prepared to consider it.

The CHAIR: You say there are 3,000?

Ms DONNELLY: Yes.

The CHAIR: The 700 was for the year, was it?

Ms DONNELLY: Yes.

The CHAIR: I am not from the sector but I would think there would be more than 13 landmark decisions to guide people. I am not sure whether that means of the 700 some 500 or 300 should go up. I personally accept that there is a resourcing issue and I very much appreciate the privacy issue.

Mr DAVID SHOEBRIDGE: It is not a resourcing issue.

The Hon. DAVID CLARKE: Assuming there was not a resourcing issue and a privacy issue, would you have any objection?

Ms DONNELLY: No, I would not.

The Hon. DAVID CLARKE: You would not?

Ms DONNELLY: No.

The Hon. DAVID CLARKE: You would see no reason why they should not all be published?

Ms DONNELLY: No.

The Hon. DAVID CLARKE: Subject to those two things?

Ms DONNELLY: Yes.

Mr DAVID SHOEBRIDGE: You said that customer experience is one of the key focuses for you, is that right? I have that written down here from your opening statement with a ring around it.

Ms DONNELLY: What I said was that seemed to be clearly one of the objects of 2015 reforms and there is very strong evidence that the experience of claimants and injured people is an important determinant of their outcomes, which is important for us.

Mr DAVID SHOEBRIDGE: About 6,000 injured workers will have their benefits terminated in the next 12 months or less because of section 39 of the Workers Compensation Act. What have you done to ensure that their customer experience, so to speak, is not distressingly awful?

Ms DONNELLY: We have obviously been aware of this for a long time because the legislation went through in 2012. We began a program of actions about 18 months ago where we worked closely with all the insurers, requiring them to identify the people who they thought might be impacted by section 39; to provide us with estimates with that data; to begin to raise that informally with those people; and to offer supports and programs.

Mr DAVID SHOEBRIDGE: What support have you offered?

Ms DONNELLY: We have offered some supports.

Mr DAVID SHOEBRIDGE: What supports?

Ms DONNELLY: We have a support and information service that they can call. We can provide them with information. We can provide them with advice about their rights in terms of disputes. Often we will refer them to the Workers Compensation independent review office [WIRO] and they have other support. We can refer them through to a number of providers in Ability Links and Human Services Network [HSNet] that can assist them. We have worked through the program—

Mr DAVID SHOEBRIDGE: Sorry, you said Ability Links and Human Services Network?

Ms DONNELLY: Yes. I would like to finish my answer to the question. There was a recommendation from this Committee that we look at the programs that are available and make sure that they are open to the group of people who are impacted by section 39. We have done that. We have ensured that there are programs that can place them in jobs with a range of different supports and protections around them so that they are aided

to do that and there is funding from us; that there is equipment and workplace modification services that are provided and funded by SIRA and that those were tailored to be available; and also training programs that could be provided. We have a program around transition to work in which they can access funding for immediate barriers to job seeking and also have a grant of funding if they are able to find a job. There is a work trial program. More recently I have approved a program called "Community Connect", under which they can obtain other funding if there are services in the community they would need to pay a fee for to help them with that transition. In addition to that, we have required that the insurers offer these programs. I know that the number of people now who are exiting from last September until the end of June next year is 4,112. I know that 98 per cent of them have access to some form of workplace rehabilitation service.

The CHAIR: Did you say 98 per cent?

Ms DONNELLY: Yes. We have ensured that insurers are engaging with them and offering the programs. It is their role to manage the claims. That is what they are being paid for. We have required them to provide those services with this group as a priority group. We have also worked with Centrelink to put in place arrangements so that instead of there being a usual shorter period before people can apply for benefits, if they are transitioning across they can do so 13 weeks in advance. We have required the insurers to provide formal notification at least 13 weeks in advance to enable people to connect with Centrelink. Of course, they are also provided with other support people who can help them in making that connection. In some cases they are providers who are culturally appropriate in regional New South Wales and so on. The other thing we have done is written to insurers communicating that we want them to offer to pay people in advance for those who are exiting from the scheme around Christmas so that they are receiving their final payments in advance of that time. That is a benefit at least that we can give.

Mr DAVID SHOEBRIDGE: Have claims agents and your own staff said to you that there is a great degree of distress amongst those injured workers about losing their benefits the day after Christmas, and that the timing is particularly traumatic for them? Has that feedback come to you at all?

Ms DONNELLY: Yes.

Mr DAVID SHOEBRIDGE: Have you made a submission asking the Government to change the date to take it past Christmas because that date is causing this deeply unnecessary emotional distress?

The CHAIR: Order! This question is outside the terms of reference. The Committee has been prepared to talk about section 39 of the Workers Compensation Act and about systems.

Mr DAVID SHOEBRIDGE: This is a system.

The CHAIR: No, this is about the impact of another Act.

Mr DAVID SHOEBRIDGE: This is about customer experience. This is a key customer experience.

The CHAIR: I have not entertained a point of order but this is outside the terms of reference.

The Hon. LYNDA VOLTZ: The Chair does not have to entertain a point of order. The Chair can make a ruling.

The CHAIR: I rule the question to be outside the terms of reference. Ms Donnelly, you do not need to answer the question.

Mr DAVID SHOEBRIDGE: If you had to use one word or a short phrase to summarise the customer experience for those customers who are having their benefits terminated under section 39, how would you characterise it?

Ms DONNELLY: I am not here to make commentary on the legislation itself because, as you know, my job is to deliver on the will of the Parliament.

Mr DAVID SHOEBRIDGE: And I am asking what the effect of that is because you said that is one of the goals of this complete customer experience.

Ms DONNELLY: My focus has been—

The Hon. WES FANG: Point of order: I refer to the Chair's preference ruling on section 39. We are coming to the same point via a different road.

The CHAIR: Order! I uphold the point of order. Ms Donnelly, you do not need to answer the question.

Mr DAVID SHOEBRIDGE: Is it true that the connection services that have been provided are capped at $1,000 for both transport and engagement?

The CHAIR: Order! I have ruled that section 39 of the Workers Compensation Act is outside the terms of reference. We explored the terms of its relationship with icare and SIRA earlier and the issue of the letter, which I thought was a valid area to look at. We are now going into operational matters of section 39 of the Workers Compensation Act. It is outside of the terms of reference.

Mr DAVID SHOEBRIDGE: Do you know when the last statistical bulletin for workers compensation was published?

Ms DONNELLY: I do not, I am sorry. I can find out for you.

Mr DAVID SHOEBRIDGE: The last one I can find is on the website of SafeWork NSW but it is the workers compensation bulletin generally. The statistical bulletin I have is for 2013-14. Someone suggested that there might be a 2014-15 bulletin but I have not been able to find it. Is it your understanding that is the kind of vintage we are talking about?

Ms DONNELLY: That is the kind of problem that I was alluding to before. If there is not a 2014-15 report public yet—and I am sorry that I just cannot recall offhand—there certainly is one that will be produced. I do not want to ask your question for you but I think what you are saying is am I happy with the time lag. No, I am not.

Mr DAVID SHOEBRIDGE: But that is not an eight-week time lag, which is what we were getting from icare. It said there was an eight-week time lag in getting the information from the scheme agents.

Ms DONNELLY: Yes.

Mr DAVID SHOEBRIDGE: There is a 3½ year time lag. I cannot understand how there is a 3½ year time lag. Can you explain to me why there is a 3½ year time lag? I do not want a generic reference to dirty data. You can clean up data that you get within three years, I would imagine.

Ms DONNELLY: It is not three years. I am sorry that I am not 100 per cent sure of the publication date for 2014-15—but let us take that and that is a two-year time frame. Think about getting data about claims for 30 June eight weeks afterwards to icare. Then there is a process of cleaning that data and making sure it is complete and the technology is not necessarily adequate for turning that into usable information. Then there is a process of us obtaining that from the whole of the system, from all the insurers and analysing it, and it is quite a comprehensive report.

Mr DAVID SHOEBRIDGE: But the last one I can find is 2013-14, so that is for data on 30 June 2014.

Ms DONNELLY: It has not just been published though, so it is not a three-year gap.

Mr DAVID SHOEBRIDGE: Well a 2½ year gap. There is an eight-week delay in getting the data from the scheme agent, so there is eight weeks. How do we explain the other 94 weeks?

Ms DONNELLY: If you would like me to provide a detailed explanation of the process and the inadequacies for the platforms that we are using now, I am most willing to do that. I am not wanting to defend them because our intent is to make investments and utilise the data lake, the platforms I have talked about before, and transform it.

The CHAIR: "Platforms" meaning the software?

Ms DONNELLY: Meaning all sorts of software, being able to clean data very quickly, not having a whole record about a claim rejected because one field is wrong and then you have to go back to the insurer and get them to correct it before you can even use it so you do not have a complete dataset. I am happy to go into detail about it. But I think the important principle here is that we are not saying that is good enough; we are working very hard to improve it.

Mr DAVID SHOEBRIDGE: It is not only not good enough. I do not accept a situation where a regulator, with the resources that you have, cannot tidy up the data in a sufficient way to publish it within 2½ years of the time to which the data relates. I cannot accept it. You simply saying, "It is technical and difficult. Do you want me to give you a long, boring technical explanation" does not seem to answer a fundamental failing in your agency. Are you going to be able to fix it up within your agency or are you saying you are going to require statutory intervention to get it sorted?

Ms DONNELLY: I can fix it in my agency without statutory intervention and that is with the cooperation of insurers. However, it has been easier to fix. My suggestion is it is our experience that it is easier to fix when it is clear legislatively. That has been the experience with the CTP insurers.

The Hon. LYNDA VOLTZ: Can we look at it this way. Is the failure a technical failure in that you need to invest in more data space, more software front loading or to integrate between the two different organisations? What is the barrier? Or are you resolving those barriers now? Are they the barriers we are going to have resolved by 1 February?

Ms DONNELLY: It is principally about moving to contemporary technology. That is clearly part of it and we are committed to that. If you want to require an insurer to transfer information to a regulator in close to real time, my experience is it is easier if the legislation is very clear.

The Hon. WES FANG: But this is a different issue. Once you have the information you are not processing it correctly or you are not able to interpret the data that you have in order to produce a report. So it is not an issue of their reporting to you; it is an issue of you interpreting and generating a report out of the data.

The Hon. LYNDA VOLTZ: It is a software upload.

Ms DONNELLY: Yes.

The Hon. LYNDA VOLTZ: And is that a matter of investment or is it a matter that it is just technically difficult?

Ms DONNELLY: There will need to be investment. We have taken the approach to prioritise building that kind of capability for CTP first.

The Hon. LYNDA VOLTZ: Given that your Act requires you to keep the Minister informed, is that the avenue you have pursued? People have been talking about this data for a while. You have a fundamental problem which needs greater investment. Has the Minister been informed of this, as per the Act?

The CHAIR: I think Ms Donnelly has answered the question in the sense that she said CTP was prioritised.

The Hon. LYNDA VOLTZ: No, this is different.

Ms DONNELLY: It is implied—

The Hon. LYNDA VOLTZ: Do you have enough resources to do it?

Ms DONNELLY: This is not a question of whether we have enough resources; it is a question of find a solution and fix it and do it in one scheme first to test it.

The Hon. LYNDA VOLTZ: A lot of industries deal with this. The insurance industry does it all the time and the communications industry does it all the time. In particular, the bigger communication carriers that have smaller carriers sitting under them need to be able to integrate that SAS data. It is not a new concept; it is something that is common in the services industry across the financial sector. Why have we got a problem at SIRA that we are not experiencing in other sectors of the community where a similar type of data is transferred between different carriers within those industries?

Ms DONNELLY: Without getting too technical, I would like to correct one statement. The problem is that we are using tools that are statistical analysis tools like the Statistical Analysis System. I have been a user of SAS throughout my career, which requires an expert to go away, generate code and so on.

The Hon. LYNDA VOLTZ: Yes, that is right. That is what people pay someone to do. That is a resource you bring in.

Ms DONNELLY: But it is time-consuming. We are wanting to move to much more agile ways of doing analytics.

The Hon. LYNDA VOLTZ: I just want to be clear because in my family I have had people who ran businesses in that sector. It is something that people do all the time. While it is time-consuming that is why they are paid to do that job because they have the capacity to do it. Time-consuming or not, it does not take 2½ years. To do the front ends, there are people who are experts in that area. Why is there a barrier at SIRA that does not exist somewhere else?

Ms DONNELLY: I feel that I have answered the question. I am happy to take it away and give you more technical information.

The Hon. LYNDA VOLTZ: Are you moving away from SAS? Is that what you are telling us?

Ms DONNELLY: I think we will continue to use SAS. I must say I believe it is a good product. I just think that when someone from SafeWork, for instance, asks me, "What is the trend with a particular type of injury?"—Peter Dunphy and I have had these discussions—to send someone away for a time who has a queue of queries to run in SAS is not a contemporary approach. We can be much faster.

The Hon. LYNDA VOLTZ: No-one is asking you to do that. We want to be able to pull down data in SAS. In this region and in this industry we are seeing sparks. It would be no different to how you download and convert SAS data when you put language in the front of the software and convert it into something that is readable.

Ms DONNELLY: I think there are other tools that we are exploring that are more advanced than that.

The Hon. LYNDA VOLTZ: What is the problem with that tool?

Ms DONNELLY: I do not want to run a commentary on the merits of different analytical tools.

The Hon. LYNDA VOLTZ: I go back to my original question. Given that your Act requires the board to keep the Minister informed, have you kept the Minister informed of these problems?

Ms DONNELLY: I would like to check whether that has been the content of different ministerial advice. We certainly have had active conversations with the Minister about the priority area of CTP where we have been working on data digital. It is very clear I think that all of our stakeholders understand we have to make progress in lifting our analytic capability.

Mr DAVID SHOEBRIDGE: But things have got worse, not better. The delays are getting longer. I have just checked the publication date for the 2013-14 statistical bulletin and that was published just under two years after the close of that financial year. It was published on 19 May 2016. If the website is right, we are still awaiting the publication of 2014-15 data and it is now almost 2½ years. Things have got worse. How do you explain things getting worse when people have been asking for more timely data?

Ms DONNELLY: I am happy to take that on notice and answer it. My recollection is that it has been a delay in obtaining complete data to be fed in for the analysis. But I am happy to take that on notice and ensure that that is the correct explanation.

The CHAIR: Is it your expectation that the work you are doing in CTP, which is the forms, which we will be looking into in the first or second quarter next year with great interest, will be transferred across to data? It would be helpful for us somehow to reinforce that in our recommendations. What we want is timely data and we would like more of it to be public.

Ms DONNELLY: It is absolutely critical.

Mr DAVID SHOEBRIDGE: Regardless of what you do when you transfer over, digesting a 2½ year backlog is going to be a lot harder than digesting a 12 month backlog. So addressing the backlog seems to be a matter of urgency.

The CHAIR: Ms Donnelly has taken that on notice.

Mr DAVID SHOEBRIDGE: No, it is a different point. You are simply saying, "We are going to do it in CTP and we will have a new shiny system in due course." That new shiny system will be a great deal easier to implement if you have not got a 2½ to 3½ year delay and backlog. Surely you realise that the two goals are consistent.

Ms DONNELLY: I do not disagree with you; I agree with you.

Mr DAVID SHOEBRIDGE: Surely you accept that it is failing when it is getting worse and not better.

Ms DONNELLY: I have talked to you about that report. To answer your question directly about the backlog, if you like, of historical data, I think it is important that we migrate the considerable period, going back 10 or 20 years, of historical data for the schemes that we are stewarding. It is not a simple, trivial task to migrate it into a better environment where you have more agile analytics. It is absolutely doable. It is critical but it is not a trivial task and that is what we have ahead of us.

The CHAIR: The datasets supplied to you from the CTP insurers, is that more simplistic than workers compensation data?

Ms DONNELLY: No, it is more comprehensive and it requires less of the clunky—

The CHAIR: The CTP data?

Ms DONNELLY: Yes.

The CHAIR: But that is working now?

Ms DONNELLY: The feeds are working, yes.

The CHAIR: It is being tested at the moment?

Ms DONNELLY: What we are testing is the visualisation through dashboard, et cetera, and we are finishing building that.

The CHAIR: The sooner you can use them the better.

Ms DONNELLY: Certainly. There was another question about premiums and transparency. We have a direct link now between the premium filings coming in from CTP insurers into the green slip price check. That has been live for a couple of weeks. There have been more than 30,000 hits on that site which enables people to calculate with different scenarios: What would my premium be? What would it have been without the reforms? What is it now? It is a very intelligent easy-to-use tool. That is the future that we want to work towards. It is not a trivial exercise.

The CHAIR: That would be employers plugging into the system? It would be outward facing?

Ms DONNELLY: I would very much want to have employers able to also have a calculator. We have been consulting with employers recently, asking them about different facets of the premium regulation system that we have been building. Having a calculator is something that they are asking for. We have delivered it successfully in an improved version for CTP. That has to be where we go as well for workers compensation.

Mr DAVID SHOEBRIDGE: Who instituted the pre-injury average weekly earnings expert panel? Did SIRA bring that together?

Ms DONNELLY: For the review of options for government about whether or not there is a regulation, and the Tania Sourdin review, yes.

Mr DAVID SHOEBRIDGE: When did that expert panel report?

Ms DONNELLY: Professor Sourdin reported to us in March this year.

Mr DAVID SHOEBRIDGE: Have you published that report?

Ms DONNELLY: I am about to publish the report. I have noted the Government's response to the Committee's review of workers compensation. Certainly there is a commitment there that we will work with the Committee on the way forward. I am happy to talk to you about what that report says, if you are interested.

Mr DAVID SHOEBRIDGE: Let us just start here. It reported in March on a key issue that pretty much every stakeholder has said is a problem in the scheme. It is now November. Why does everything take six or more months in your agency?

Ms DONNELLY: That particular report has four recommendations. They all lead back to the conclusion that only legislative change will address the issue. When that happens I am bound to provide government advice. It becomes Cabinet in confidence, of course. I am now in a position where I can release that report.

Mr DAVID SHOEBRIDGE: A report saying that there needs to be legislative review is not Cabinet in confidence. It is only Cabinet in confidence once it becomes part of a Cabinet reporting process.

Ms DONNELLY: Exactly.

The Hon. LYNDA VOLTZ: But it is not part of the Cabinet reporting process.

Mr DAVID SHOEBRIDGE: It was an expert panel that you undertook with a variety of different stakeholders. This might be the answer, but are you saying that the bulk of the delay was in the Cabinet process?

Ms DONNELLY: I am not able to comment on government policy deliberations in Cabinet. I am able to say to you that if something is appropriately classified as Cabinet in confidence I am not able to release it. If I have a clearance to release it I can release it.

Mr DAVID SHOEBRIDGE: Do you now have clearance to release it?

Ms DONNELLY: It is being published this week. I am very happy to share it with the Committee and to acknowledge that the Government's response is to work with the Committee on the way forward. I am also quite happy to have a separate informal meeting, if you like, about it with the Committee.

The Hon. LYNDA VOLTZ: Were any amendments made to the report in the past six months?

Ms DONNELLY: No.

The Hon. LYNDA VOLTZ: So the report will come out in whole?

Ms DONNELLY: It will come out in whole as it was provided to me.

The CHAIR: Mr Andrew Stone from the Australian Lawyers Alliance said in regard to SIRA that there is no evidence of penalties for misbehaving scheme agents. Will you comment on your role in that regard?

Ms DONNELLY: We have penalties and compliance activities that range from a very active, now quite sophisticated, process of insurer supervision right through to prosecutions. We have quite a suite of activity that ranges across both. To give you a sense, we have an automated system that looks at the performance of all the insurers and scheme agents across the workers compensation system which brings together information. It is completely structured around what the risks are. The system will tell a portfolio manager who is responsible for that insurer that a risk has emerged. They get allocated for management. When I looked late last week we had more than 200 risks across the system that we were managing. They might be: Your return to work results are not so good, data is not of good enough quality for us to use, or there may be a range of other matters. We have a process then that the insurer or scheme agent is notified that we have these risks. We have regular meetings with them and communication. We will also recognise that icare is managing the nominal insurer and is effectively the insurer on the hook, so they are included in that as well.

In a way of procedural fairness we seek with them, "Can you validate this?" If they validate it, the next step is they are required to come up with an action plan about how they are going to bring their performance back to our expectations, and we track whether it has. It stays as a risk on that system being actively monitored until it goes back into a green from a red or an amber. On top of that, we have quite a considerable program of compliance activity and prosecutions. You will be aware of what we have been doing with Strike Force Ravens and CTP, and that is obviously quite an extensive program, but within the workers compensation space we have more than 100 investigations on foot at the moment and about 40 of those are tracking towards prosecutions.

The CHAIR: This is not insurers now; you are talking about alleged fraudulent claims for workers compensation?

Ms DONNELLY: These are not insurers. For instance, we have had a number of improvement notices on employers, we have matters where there has been effectively a syndicate of claims that are fraudulent where we have had prosecutions.

The CHAIR: That leads to my second question—it is a good segue. The group that were the employers, which also included the self-insurers association, took a lot of time talking about bogus claims. We have not heard that evidence before—we certainly heard it in CTP. Mr Franco talked about the old fraud branch in WorkCover.

Ms DONNELLY: We have been growing our capability and I think you appreciate that you do not stand up this sort of capability from nothing overnight, but we have been working very hard. So far, in this financial year—so in the last three months—we have had three convictions for fraud that fit into that category. One of those people got a custodial sentence, another has had an intensive corrections order. We are working very closely with the Australian Taxation Office's Phoenix Taskforce. We have a number of matters in that space where we have been investigating and we are moving towards preparing for prosecution. Obviously I am not going to divulge too much about those particular matters. We have issued penalty infringement notices.

We have had a program of audits; for the last three months we have had an audit where we are using our data and targeting areas where we believe there was risk. We have been to over 300 employers and we have identified that about 93 of them are not compliant in terms of paying adequate premium. A number of those have been referred now to our prosecutions area; they are looking at building the investigation about whether there are prosecutions. A lot of the effort that we have been doing is in partnership with SafeWork inspectors where they have been to see over 500 employers about risks around giving people who are injured workers suitable employment. We have sourced, using our data, the areas where we believe there was a risk and have proactively gone out to those, which a number of those have led to improvement notices as well.

The CHAIR: You may have seen the evidence—it is very anecdotal evidence, particularly from the employers federation, that there is allegedly a rise in fraud. Icare talk about 80,000 injured workers a year—that is 82 per cent of the market, so that is 100,000 injuries—and you just talked about three prosecutions. Is there evidence of increased fraud in the Workers Compensation Scheme?

Ms DONNELLY: There are over 90,000 claims in the whole system. I do not believe we have got a mature enough understanding as we do in CTP about knowing yet whether there is a greater level. I do know that the work that we are doing in using data to work out whether there is risk is improving and is enabling us to tackle it. I do know that there is basically organised criminal activity that is a bit similar to CTP. With us, we have one matter still in progress where there are a number of people who I think will come to justice. It is not so much that there is a whole lot of people but that there could be some sizeable dollars involved.

The CHAIR: Is what is believed to be fraud impacting upon premiums and should we be concerned about that?

Ms DONNELLY: I do not see any evidence that it is. What I am interested in doing is leveraging the capability that we have built in working through with CTP to ensure that there is not.

The CHAIR: As a deterrent. The last question to Mr Shoebridge.

Mr DAVID SHOEBRIDGE: A series of submissions say that SIRA does not exercise its role as a regulator to hold insurers to account when they do not comply with the Act. As you would know, there is a series of financial penalties to insurers who do not comply with their obligations under the Act: there is a penalty under section 54 of the 1987 Act if benefits are terminated without due notice, and there is a penalty under section 74A of the 1998 Act if benefits are not paid promptly. How many penalty notices has SIRA issued over the last three years under either section 54 or section 74A?

Ms DONNELLY: SIRA has been in existence for two years.

Mr DAVID SHOEBRIDGE: Then make it two years, and if you have any evidence about WorkCover for the 12 months before that, WorkCover as well for the 12 months before that.

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

Mr DAVID SHOEBRIDGE: Are you aware of any? Because the evidence that I have had is none.

The CHAIR: I think the witness said she would take that on notice. Thank you for coming in this afternoon. You have taken some questions on notice. The Committee has resolved that answers to questions on notice be returned to us by Friday 24 November. The secretariat will contact you within the next week about the questions you have taken on notice.

(The witness withdrew)

(Short adjournment)

PETER DUNPHY, Executive Director, SafeWork NSW, affirmed and examined

The CHAIR: I welcome the last witness to our inquiry into the State Insurance and Care Governance Act 2015. Would you like to make an opening statement?

Mr DUNPHY: Yes. I thank you, first, for the opportunity to be here today. I would like to provide a brief summary on the role of SafeWork as a regulator for work health and safety. With the commencement of the State Insurance and Care Governance Act, one of the key changes was the abolition of the WorkCover Authority of New South Wales and the establishment of SafeWork NSW as the State's new independent work health and safety regulator, with the exception of mining which is still administered by the Mines Inspectorate.

SafeWork NSW focuses on harm prevention and improving the safety culture in New South Wales workplaces. We work with the New South Wales community specifically to reduce work-related fatalities and serious injuries and illnesses. The Work Health and Safety Act, which adopts the national model framework for work health and safety laws, establishes SafeWork NSW as the New South Wales work health and safety regulator. The functions and powers of SafeWork are set out in the Work Health and Safety Act. The key functions include advising and making recommendations to the Minister for Innovation and Better Regulation and reporting on the operation and effectiveness of the Act; monitoring and enforcing compliance with the Work Health and Safety Act; providing advice and information on work health and safety to duty holders under the Act and to the community; collecting, analysing and publishing statistics relating to work health and safety; and fostering cooperative consultative relationships both between duty holders and persons to whom duties are owed and also their representatives in relation to work health and safety matters.

We also promote and support education and training on matters relating to work health and safety and engage and promote the coordination and sharing of information to achieve the objects of the Act, including sharing information with corresponding regulators. We conduct and defend proceedings under the Work Health and Safety Act and any other function conferred under the Act. SafeWork also regulates and administers the Explosives Act 2003 and the Rural Workers Accommodation Act 1969, and is the co-regulator of the Dangerous Goods (Road and Rail Transport) Act 2008.

In 2015-16 one of the first things that the newly formed SafeWork did was to engage with workplaces to develop the Work Health and Safety Roadmap for NSW 2022, which is a six-year strategy to reduce fatalities and serious injuries. One of the key actions in building the roadmap was to build SafeWork as an exemplar regulator, and that is one thing we are focusing on. New South Wales continues to experience ongoing reductions in injuries and illness rates. In terms of our 2017 customer service survey results, we have shown very high levels of customer satisfaction with the quality of SafeWork staff and the services provided. We have shown increases in customer satisfaction compared to results in previous years, and the overall customer satisfaction score was 92.4 per cent. In addition, 90 per cent of respondents believe that safety makes their business productive and 88 per cent stated that safety saves their business money. The survey results indicate that businesses see the value of safe work practices and the support services provided by SafeWork NSW.

The CHAIR: Have you read the submissions of the unions that appeared before this Committee earlier today?

Mr DUNPHY: Yes, I have read their submissions.

The CHAIR: I am not putting words in their mouth, but my interpretation of their concern is that SafeWork has an educative role but there has been a shift away from your enforcement role and your prosecution role. The unions therefore think your role is not well balanced compared to previous times and this is evident in your prosecution numbers. In your submission you said that there were 32,000 inspect interactions and 33 prosecutions, I think. Union witnesses said that in 2003 there were 400 prosecutions by your predecessor. I am interested in this number in the context of your statement that injury rates are going down. Please respond to the unions' assertion.

Mr DUNPHY: SafeWork is part of a national framework in terms of the national model work health and safety legislation that has been adopted in most jurisdictions. We have certainly adopted that in New South Wales and part of the adoption is a uniform approach to national compliance and enforcement. We have adopted the national compliance and enforcement policy, which really sets out the approach for how to achieve the best outcomes in terms of compliance, enforcement and advisory services. In terms of the national policy, we try to ensure that we both provide positive motivators and carry out compliance monitoring to ensure people are compliant with their obligations and that there are strong deterrents.

Certainly, in the legislation and the way we administer that legislation, in all our engagements with industry we take a number of things into consideration in the national compliance enforcement policies. What action we take will depend on the level of risk. It will depend on the seriousness of the breach. We look at the compliance history of the organisation and we look at the risk priorities. That is set out in our road map in the sorts of things that we do.

We follow what is called a "responsive regulator". That is the compliance pyramid. Most of our work is focused on trying to get people to comply with their obligations. Most people are willing to do that or to try to do that. Where we find that there is either non-compliance or people who are not willing to comply with their obligations then we will take a different approach. That will escalate from encouraging and assisting through to directing compliance, which may be through notices through to deterrence action, which can include prosecutions, injunctions or withdrawal of licences.

We take a risk-based approach but also a responsive approach based on all those criteria in what we do. We try to achieve the right balance, because you cannot prosecute everybody and you also need to make sure that you are providing support for people who are trying to do the right things in the 700,000 businesses. Most of those—97 per cent—are small businesses so we need to make sure we provide them with the support that they need to understand their obligations and comply with them. So we spend a lot of time in ensuring that industry and businesses have the capability to comply with legislation. Certainly, where there is a breach we do not resile from the fact that we need to send out strong messages and we need to ensure that, as part of the whole framework, there are consequences when people do not comply with legislation, and that we are willing to take those actions.

In the national targets, we are part of the national framework and there was a commitment to reduce fatalities and serious incidents. We have already, since the period when that commenced in 2012—the 10-year period—seen a 23 per cent reduction in fatalities, a 23 per cent reduction in serious incidents, and a 25 per cent reduction in musculoskeletal disorders. So we are seeing historically low levels in the number of fatalities and serious incidents, but at the same time we still need to continue to push that, and we need to continue to do better. While a number of years ago we may have done more prosecutions we try to get that balance right, and we try to get the best outcome. We are certainly seeing a much lower number of serious incidents and fatalities than we would have seen in those previous periods.

The Hon. LYNDA VOLTZ: What data are you basing that on?

Mr DUNPHY: There is a report that comes out annually, and we are benchmarked against other jurisdictions.

The Hon. LYNDA VOLTZ: That is a Federal report?

Mr DUNPHY: It is a Federal report, yes—the Comparative Performance Monitoring Report. It comes out annually. It benchmarks us against every other jurisdiction. The last one, which came out in June, showed the last two quarters. The data is a bit delayed in that period. The last two quarters were 2013-14 and 2014-15, but it did show that in our infringement notices we increased the numbers from 55 to 92 over that period. That is a 40 per cent increase over a year. We increased the number of improvement notices by 5,098 to 6,545—another 22 per cent increase in that period. In prohibition notices, we increased—

The Hon. LYNDA VOLTZ: I was talking about the injury—

Mr DUNPHY: The injury figures are also reducing. In that report it also provides a comparative—

The Hon. LYNDA VOLTZ: Yes, but that is post the changes to the Workers Compensation Act, is it not?

Mr DUNPHY: We were talking before about the compliance. I just wanted to say that in compliance—

The Hon. LYNDA VOLTZ: But I understand that the Act changed significantly. For example, journey claims would have been taken out, would they not?

Mr DUNPHY: It is corrected. The data is corrected to reflect differences between jurisdictions. So they do try to compare apples with apples.

Mr DAVID SHOEBRIDGE: Were you giving us 2014-15 data?

Mr DUNPHY: I am. It is 2014-15 data. More recently, in the data we can see, for instance, that in the last financial year the number of fatalities were 52. That had gone down from 60 in the previous year. While that is still too high we are seeing improving trends in serious incident and fatality data.

The CHAIR: What sort of timely data do you get from SIRA in identifying where there may be a spike in a sector of the economy where you start to get claims? An example would be the silicosis that we discussed in our inquiry into dust and diseases. There was a spike in that area and SIRA said that it was dealing with you in identifying a program to address it. How does that work?

Mr DUNPHY: It is under the road map, and the road map sets the strategic directions. It is risk-based, so we are using SIRA data. But we do not just use SIRA data; we try to triangulate as much data as possible. We use hospital admissions data and whatever data we can get our hands on that will help us form the picture of where the risks are. We have identified in the road map that there are six industry sectors that we will particularly target over the next six years. There are also a number of hazard areas that we are focusing on specifically. One of the strategies is around chemicals. We did an analysis of the highest volume chemicals that are used in workplaces. We have identified and listed 10 which are our priorities for the strategy. We only released that two weeks ago. The top two are formaldehyde and silica. We know that silica is an issue so we really are focusing on that. We have a major campaign—a very ambitious campaign—and it is a very proactive program of going out and checking workplaces to make sure that they are complying with their obligations. That came out of the data that we received through SIRA—

The CHAIR: It was a recommendation of our inquiry, I might add, into dust and diseases.

Mr DUNPHY: Absolutely. We had already identified that, I think, before the recommendation came out.

The CHAIR: We were very concerned.

Mr DUNPHY: We recognised that and were already looking at that as an issue but the inquiry was certainly very helpful.

Mr DAVID SHOEBRIDGE: The question was about the timeliness of the data, which you have not answered.

Mr DUNPHY: In fatality data, we keep our own records. As I mentioned before, we report annually on the number of fatalities. SafeWork Australia puts out a national monthly report in that regard. The fatalities figures are up to date on the month. For the serious incidents, where people are off work for more than five days, we rely on the workers compensation data for that. That takes more time to come through.

Mr DAVID SHOEBRIDGE: How long?

Mr DUNPHY: It depends on whether it is the official report. For instance, the reports that come out at the national level which we rely on were, as you have mentioned, over 2014-15. So the most recent data was for the 2014-15 period. Having said that, we do get provisional data through SIRA. It is not the official data that is released but it is data which we use for our own purposes to do our risk assessment to identify where the risks are.

Mr DAVID SHOEBRIDGE: How long for the provisional data?

Mr DUNPHY: That can vary. There can still be a lag of, maybe, up to six months, but we try to get more recent and clear data. SIRA has to collect the data from various sources—the self-insurers and the nominal insurers, as you probably would have heard today, and all of the specialised insurers. So they have to do that. They also need to cleanse the data. We even try to get provisional data so we can use that to assess—

Mr DAVID SHOEBRIDGE: The long and the short of it is that you are not getting clean data until at least two years.

Mr DUNPHY: It can be delayed in the clean—

Mr DAVID SHOEBRIDGE: Rather than saying "it can be delayed", it would be useful for you to give specific answers that we can understand. I asked whether it was normally about two years and your answer was that it can be delayed. Do you see how that is a very frustrating answer and how that does not really answer the question?

Mr DUNPHY: I can see your point.

Mr DAVID SHOEBRIDGE: If I ask is it normally at least two years before you get clean data, what is your answer?

Mr DUNPHY: It depends on how clean the data is. If it is official data to be released, yes, it can take up to that period for the data to be provided.

Mr DAVID SHOEBRIDGE: No, it could take up to five years. I am asking what the standard delay is. Is it two years before you get clean, reliable data? Is the normal delay at least two years?

Mr DUNPHY: To get the SafeWork Australia data, which is released publicly, the most recent one which was released in June was for 2014.

Mr DAVID SHOEBRIDGE: I do not want to keep chasing my tail here. I am not interested in the publicly released data. I am asking when you get clean, reliable data. You must know this. Tell me how long it takes—the delay in your getting clean, reliable data about injuries.

Mr DUNPHY: I am not too sure what you mean by "clean and reliable", but in the data that we can use—

Mr DAVID SHOEBRIDGE: One that does not have errors that has not been corrected—data that is accurate.

Mr DUNPHY: The 2014 data is the most recent data.

The Hon. LYNDA VOLTZ: Look at it this way: Has SIRA provided you with data that is readable and accessible that you can use in any lesser period than the two-year publicly available information?

Mr DUNPHY: I guess that is why I am having difficulty answering your question, Mr Shoebridge, because we do get data from SIRA which is not the final published data but it is data for our purposes that is absolutely fine for us to be able to do our risk assessments and to identify where the priorities are.

The CHAIR: I think he is getting at the question of how old that data is.

Mr DAVID SHOEBRIDGE: SIRA said that they do not want to have somebody continually running data requests for you and that it is time delaying to run data requests on their database. They do not like doing that. I am trying to work out what the truth is in you having regularly available data that allows you to see the trends in workplace injuries so as you can go in and proactively regulate. The information I am getting from you is not the same as we got from SIRA.

Mr DUNPHY: In the data that we use, it will depend on the project. If we are doing silica, we will ask for what data is available. We do try to get the most recent data from the workers comp database.

The Hon. LYNDA VOLTZ: How long would it take them to turn around that silica information once you put a request in?

Mr DUNPHY: Depending on how urgent it is—

The Hon. LYNDA VOLTZ: Let us just assume it is urgent. Assume you thought it was really important to make workplaces safe and you wanted it as quickly as possible.

Mr DUNPHY: It can take a number of weeks to get that information.

Mr DAVID SHOEBRIDGE: The bigger problem is this: You are saying we have a problem with silicosis so we want the data on silicosis. We have a problem with construction injuries on the North Coast so we want the data on construction injuries on the North Coast. The problem is you have to generate the problem and give the problem to SIRA so they generate the data. But if you had good data, the data would identify the problem in the first place. That is the problem with the two-year delay. Do you understand that?

Mr DUNPHY: Yes. I totally understand that.

Mr DAVID SHOEBRIDGE: That is what I am asking you about. When do you get the data that identifies the problem as opposed to access to data when you already know there is a problem?

Mr DUNPHY: We get some of the data through the reports that are provided by SIRA, which will be either the published reports that they do, the statistical bulletins. The other is we get up to date monthly data, as I said, from SafeWork Australia in the fatality data. That is regularly provided. We also get our own data. Workplaces need to notify us of certain notifiable incidents, so we use our own data about that, and that is in real time. We get that information as well.

The Hon. DAVID CLARKE: You talked earlier—I think it was in your opening remarks—about sending a strong message. Your submission shows that for 2016-17 there were 33 successful prosecutions, 32,000 inspector interactions, and more than 10,000 notices issued. How do these successful prosecutions compare to previous years?

Mr DUNPHY: It varies.

The Hon. DAVID CLARKE: I heard a figure mentioned of 400.

Mr DAVID SHOEBRIDGE: More than 400.

The Hon. DAVID CLARKE: How is it possible that in one year—I do not know how many years ago that was—there were 400 prosecutions and most recently there were 33 successful prosecutions? Is that sending a strong message?

Mr DUNPHY: The number of prosecutions will depend on them making their way through the courts. We may have and we are investigating more than 70 matters at the moment—

Mr DAVID SHOEBRIDGE: Mr Dunphy, you are not seriously saying that a difference from 400 to 33 is because of the time it takes to put prosecutions through the court. That is not your serious answer, is it?

Mr DUNPHY: No, I am not saying that.

Mr DAVID SHOEBRIDGE: Could you address the substance of the answer rather than divert?

The Hon. DAVID CLARKE: This is for a full year, 2016-17. Previous to that were for full years—we are comparing apples with apples.

Mr DUNPHY: I can tell you if I go back five years with the data, in 2010-11 we had 89 successful prosecutions. The 400 is going back many years.

The CHAIR: It is 2003—I noted it down from the union submission.

Mr DUNPHY: It is going back quite a way. If we go back five years, in 2010-11 we had 89 successful prosecutions.

The Hon. DAVID CLARKE: Yes.

Mr DUNPHY: In 2011-12 we had 84 and in 2012-13 there were 78 successful prosecutions.

The Hon. WES FANG: They are all pretty consistent numbers.

Mr DAVID SHOEBRIDGE: Can we keep going?

Mr DUNPHY: In 2013-14 it was 41 successful prosecutions and then 2014-15 there were 88 successful prosecutions.

The Hon. DAVID CLARKE: In 2016-17 there were the smallest number of successful prosecutions in 15 years.

Mr DUNPHY: It is the smallest number—yes.

The Hon. DAVID CLARKE: Yes. How many prosecutions in 2016 were actually instituted?

Mr DUNPHY: The number of successful prosecutions is quite high, so that would probably be the bulk of the prosecutions that we would have brought.

The Hon. DAVID CLARKE: Is there any explanation for the fact that even in recent years there has been a big drop from the eighties and nineties down to 33 successful prosecutions? There have been a lot of inspector notices issued. With all those inspector notices being issued and only 33 successful prosecutions, is that sending, to use your words, a strong message?

Mr DUNPHY: Part of the prosecution strategy is to publish our prosecutions and to send a strong message, so we certainly do that. In the total numbers, as I said, that will depend again on the matters and whether we have assessed that there are appropriate matters for prosecution.

The Hon. DAVID CLARKE: Except that I do not think an inspectors notice issued is really a strong message. It might be a bit of a message, but it is not a strong message. Prosecution is a stronger message.

Mr DUNPHY: Where it is appropriate, it is—yes. As I said, we will prosecute matters depending on whether there is the evidence to file a prosecution and whether there is an appropriate case.

The Hon. DAVID CLARKE: There was evidence to issue 10,500 inspectors notices in 2016-17 but there were only 33 successful prosecutions. That is a very small "strong message" being sent. There has actually been a drop—

Mr DUNPHY: There has for that year. I think what you will find for the next year is that the numbers are not going to be at that level because we know we filed quite a significant number of prosecutions.

The Hon. DAVID CLARKE: What are the figures showing, when you say in the following year there will be—

Mr DUNPHY: They will be more in the ballpark of where we have been before.

The Hon. LYNDA VOLTZ: But they are not, are they? That is not true. I am looking at the figures now. In 2004-05 you had about 400; in 2005-06 you had about 420; in 2006-07 you went down to 250; and from 2007-08 it has been stable at around 80, has it not?

Mr DUNPHY: Yes.

The Hon. LYNDA VOLTZ: Something happened between 2004-05 and 2006-07 that changed. It had been 400 in the years before that, had it not?

The Hon. DAVID CLARKE: Even in recent years it has collapsed from the high eighties to 33.

Mr DUNPHY: The other thing to point out in the 33 figure is that we also do enforceable undertakings, so that is another feature of the legislation now. It has taken some time for those—

Mr DAVID SHOEBRIDGE: Ten.

Mr DUNPHY: We did 10—yes.

The Hon. LYNDA VOLTZ: That is not much, considering what they were before.

Mr DAVID SHOEBRIDGE: I suppose the question is this: The inspectors notices are issued when there is a breach and you have to sort it out. That is when an inspectors notice is issued—when there is a breach.

Mr DUNPHY: That is correct.

Mr DAVID SHOEBRIDGE: So if there were 10,500 identified breaches where inspectors notices had been issued, what is the thinking in SafeWork that says less than half of one per cent of those end up being prosecuted in either a successful prosecution or an enforceable undertaking? What is the thinking that leads to the other 99.5 per cent not being prosecuted?

Mr DUNPHY: Because, as I mentioned before, we follow the national compliance and enforcement policy and there is a graduated response. It will depend on—

Mr DAVID SHOEBRIDGE: It is not a pyramid; this is a needle. There is a tiny fraction.

The Hon. DAVID CLARKE: There are 10,500 inspector notices and 10 enforceable undertakings. It is almost invisible, the number of enforceable undertakings.

Mr DUNPHY: I do not think you can say a notice is going to end up in a prosecution or enforceable undertaking.

The Hon. DAVID CLARKE: No. I understand that.

Mr DUNPHY: The notices are designed to secure compliance.

The Hon. DAVID CLARKE: We are talking about people's lives and safety.

The Hon. LYNDA VOLTZ: They used to parallel penalty notices, did they not?

Mr DUNPHY: Not necessarily.

Mr DAVID SHOEBRIDGE: The answer is you have got a pyramid and the top of the pyramid is so small that you could not see it. Less than half a per cent of the pyramid is the top of the pyramid where you are doing prosecutions.

Mr DUNPHY: Yes, and that is—

Mr DAVID SHOEBRIDGE: It is sending a strong message, but the strong message is, "We do not prosecute."

Mr DUNPHY: That is certainly not our message at all. We do prosecute. There has been in that period a smaller number of prosecutions that have gone through.

The Hon. DAVID CLARKE: Would you agree that the perception is that it is not a very strong message? Would you agree that it would not be unreasonable for people to assume that it is not a very strong message, with 10,500 inspectors notices issued, 10 enforceable undertakings and 33 prosecutions?

Mr DAVID SHOEBRIDGE: There is not a snowflake's chance in hell of you being prosecuted. Is that not the message?

Mr DUNPHY: Not necessarily.

The Hon. LYNDA VOLTZ: Well we have seen—

The CHAIR: Order! The witness will be allowed to answer the question.

Mr DUNPHY: As I said, you cannot just prosecute for the sake of prosecuting—we have got to have a case. We certainly go through the process of ensuring that every serious incident that occurs is assessed and we determine to see—

The Hon. DAVID CLARKE: Clearly, there was a case a few years ago when there were 400 successful prosecutions.

Mr DUNPHY: Yes.

The Hon. DAVID CLARKE: Are you saying that things have improved so much that the only sufficient, serious cases now constitute less than 10 per cent of what they were a few years ago?

Mr DUNPHY: It was not a few years ago; it was some time ago.

The Hon. DAVID CLARKE: How many years ago?

Mr DUNPHY: You are saying over 10 years ago.

The CHAIR: Fifteen years ago: 2003.

The Hon. DAVID CLARKE: A few years ago.

Mr DAVID SHOEBRIDGE: It was 2004-05: 12 years ago.

Mr DUNPHY: As I said, we follow the national compliance enforcement policy. We identify where inspections should be undertaken. We also identify whether there is a need for a full investigation. We have an independent panel that assesses whether matters go to full investigation. It is actually designed to try to make sure that we pick the right matters. As all regulators, you have got to chose what are the appropriate ones to do. We do a lot more in terms of investigating and some of those do not end up being followed because of the evidence that we have. Certainly we will follow-up seriouss incidents and determine whether there are grounds for—

Mr DAVID SHOEBRIDGE: Your position is to follow up serious incidents?

Mr DUNPHY: Yes.

Mr DAVID SHOEBRIDGE: The submission of the Construction, Forestry, Mining and Energy Union [CFMEU] to this Committee states:

> In June 2017, CFMEU organisers attended a large site following a telephone call reporting a serious safety issue. When the organiser attended the site he noticed a steel frame weighing in excess of 20kg had fallen some distance endangering the safety of everyone in the vicinity. Further investigation showed that a worker had fallen 2-3 metres and was taken to hospital for assessment.
>
> Despite being a dangerous incident, SafeWork NSW did not send an inspector to the site. SafeWork later notified the principal contractor that it would not be investigating the incident …

That is not consistent with you chasing up serious incidents.

Mr DUNPHY: We do. I do not know the particulars of that case or the site. I would be happy to take that on notice to provide better information because if there is a serious incident we do follow it up.

Mr DAVID SHOEBRIDGE: I thought you said that you had read the submissions before you came here?

Mr DUNPHY: Yes, but that does not identify the site.

Mr DAVID SHOEBRIDGE: Surely when you read this submissions you would have said, "What the hell is going on here?" You would have chased it up. I quote another example from that submission:

> In June 2017, CFMEU organisers attend a large worksite after receiving complaints from workers on the site. The organisers immediately noticed a number of safety issues …
>
> 1. workers using ladders to access higher levels while carrying a number of objects;
>
> 2. workers using ladders while carrying large pieces of timber;

3. no stretcher access for emergency services to enter or exit the site safely in the event of an accident;

An inspector attended the site at the request of the union and declined to issue an improvement notice for the safety hazards despite acknowledging the legitimacy of the complaints raised by the union.

The organisers attended the same site over a number of days identifying the same or similar hazardous behaviour.

Did you take any steps to find out whether or not that was true?

Mr DUNPHY: Unless we know the particular site—

The Hon. DAVID CLARKE: Would you be prepared to follow up that particular case? Would you be prepared to contact the union and say, "Can you identify to me the incident that refers to?" You could then look at that and come back to the Committee on that specific example?

Mr DUNPHY: My question is—

Mr DAVID SHOEBRIDGE: On pages 19 to 20 of the CFMEU submission there are three incidents. The third one concerns an employer on the North Coast who threatened to terminate employees if they reported safety issues to the union. Can you provide the Committee with a response to those on notice?

Mr DUNPHY: Yes, I am happy to do that.

Mr DAVID SHOEBRIDGE: If you cannot find the contact details for the CFMEU, you can contact me and I will put you in contact them.

Mr DUNPHY: I am happy to provide that on notice. I should also point out that if anybody is unhappy with the decision of an inspector, there are rights of review. That was open if the union believed it was inappropriate or was unhappy with the decision. The union has an internal right of review. I am not aware of those matters being raised as an internal right of review.

The CHAIR: When did the national compliance enforcement framework come into play? Do you know the date it started?

Mr DUNPHY: With the commencement of the work, health and safety model legislation. That was established in 2012.

The CHAIR: It is national legislation?

Mr DUNPHY: In New South Wales we have administered the work, health and safety model legislation. As part of that arrangement we have also agreed as regulators to have a consistent approach to enforcement compliance.

The CHAIR: It has been established that there is a consistent approach around Australia because employers cross borders and so forth?

Mr DUNPHY: Yes.

The CHAIR: Is my interpretation correct that there has been a philosophical shift in the national framework away from prosecution to warnings? I do not think we are comparing apples with apples, but the 2003 figure was 300 prosecutions.

Mr DUNPHY: Yes.

The CHAIR: Were there inspector notices back then? My background is in hospitality where the last thing you want is a prosecution. It scares the hell out of you when you get a health inspection notice for compliance. If they come back and you have not done it you will then be prosecuted, named and shamed. That is a very strong deterrent, contrary to what I have been hearing here. Is that where this has been heading nationally, particularly with so many small businesses in the sector?

Mr DUNPHY: You will see across all of the regulators, we have been trying to get a balanced approach in providing advice and assistance, securing compliance through notices and directive actions as to what we require, and where there are flagrant breaches of the law prosecuting. That is the approach we take.

Mr DAVID SHOEBRIDGE: So the test is flagrant?

Mr DUNPHY: No. If there is a serious breach, we have identified culpability, it goes through looking at the level of harm. Again, you would want to see what the risks were. You would want to see what the seriousness of the breach was. You would be looking at the previous compliance history of the operator and whether it is a priority area in some of the risk areas. We consider all of those things.

The Hon. LYNDA VOLTZ: In the past six months how many prosecutions have you launched?

Mr DUNPHY: In filing prosecution matters in the courts, I can certainly provide that on notice.

Mr DAVID SHOEBRIDGE: The concerns are the change from 2003-04, that data would be useful. If you could give the Committee the successful prosecutions commenced, the notices and the like from 2003-04 we could get a sense of the data.

The CHAIR: And when those inspector notices came into play? Was that 2012?

The Hon. LYNDA VOLTZ: There have always been infringement notices, have there not?

Mr DUNPHY: We have had infringement notices—

The Hon. LYNDA VOLTZ: In fact, they went from about 600 in 2010-11 to about 30 or 40 in 2012-14.

Mr DUNPHY: A feature of the new national legislation is inspection reports. Part of the agreed approach is when inspectors go to a site and they issue a report it will also document agreed arrangements as to actions that might be taken on that site. That could be in lieu of a notice as well and that is another avenue that is now available.

Mr DAVID SHOEBRIDGE: Why have you not provided the Committee with the data on inspector reports?

Mr DUNPHY: We can.

Mr DAVID SHOEBRIDGE: Do you say that they are useful?

Mr DUNPHY: Yes. I can certainly provide the Committee with the data on the number of inspection reports that we issue.

The CHAIR: This inquiry is looking at the effectiveness of the creation of the three agencies out of the one and whether we can recommend any adjustments to improve the overlap of responsibilities of those agencies. At the end of the day, balancing getting even better outcomes for injured workers and employers. Have you put your mind as to how the Act has affected your organisation to date? What has caused you some tensions or interaction difficulties with agencies? What would you like to see more clearly defined or addressed?

Mr DUNPHY: We do meet with both icare and SIRA and coordinate sharing information about the ongoing activities we do. We do have regular contact with both agencies. As to the work we would be doing with them, we continue to look at where there are opportunities for us to work together. There are a number of areas we are interested in working together—for instance, icare has been working on our Get Healthy at Work program. We are also at the moment developing a mental health strategy. They are also very interested in that as well. We will continue to work with them with opportunities in the work that they do. We see that both SIRA and icare are also another avenue for people to get information and advice. We certainly work with them on our prevention messaging and where there is an opportunity for other channels to get that information out as well. For us it is about ensuring that we have got good coordination across the groups—how people might be able to access information and knowledge. Certainly, the data is an important point and we are working with both icare and with SIRA to try to get more timely and better data. I think we all recognise that is something that can be improved in our work.

Mr DAVID SHOEBRIDGE: Mr Dunphy, nothing could be more serious than a death in a workplace, is that right?

Mr DUNPHY: Absolutely.

Mr DAVID SHOEBRIDGE: You have close to real-time data on deaths, is that right?

Mr DUNPHY: Yes.

Mr DAVID SHOEBRIDGE: And you have been tracking those deaths now in real time for how many years?

Mr DUNPHY: Going back for many years. So we would have good records going back for quite some time.

Mr DAVID SHOEBRIDGE: I assume whenever there is a death an investigation is done and you determine whether or not there was a breach of work health safety laws or occupational health and safety laws. Is that right?

Mr DUNPHY: Pretty much. There will be some times when we may not do an investigation or we would not go to a full investigation, where it might be death from natural causes or it is not work-related; it is a death at a workplace that has been notified to us.

Mr DAVID SHOEBRIDGE: But unless it has been identified as a death from natural causes or unrelated to work very early on—

Mr DUNPHY: If we believe it is work-related, yes.

Mr DAVID SHOEBRIDGE: You will always do an investigation to determine whether or not there has been a breach, is that right?

Mr DUNPHY: That is right.

Mr DAVID SHOEBRIDGE: Could you give us the data then, going back over the past decade, of the number of deaths where there has been a breach identified of the occupational health and safety, or work health safety laws? And then can you advise in how many of those you commenced a prosecution?

Mr DUNPHY: We can certainly attempt to have a look at that, yes.

Mr DAVID SHOEBRIDGE: You say you can attempt to have a look at that. Are you saying it would not be possible to work out whether you commenced prosecutions in relation to deaths?

Mr DUNPHY: No, I think we certainly could but I am just wondering whether that is within the scope of the terms of reference.

Mr DAVID SHOEBRIDGE: Well one of the concerns is, in splitting the three organisations up your organisation is now within Finance, whatever the new Finance grouping is called, and the relationship in Finance is one of cooperating with business rather than prosecuting business. The concern expressed by a number of stakeholders is that that has led to a softening of prosecutions and a reduction in prosecutions. So I suppose the data for that is important.

Mr DUNPHY: Yes.

Mr DAVID SHOEBRIDGE: You are not resisting giving us the data, are you Mr Dunphy?

Mr DUNPHY: No, not at all. I am just trying to understand on what basis—

Mr DAVID SHOEBRIDGE: Does that explain it for you?

Mr DUNPHY: Yes.

The CHAIR: I will allow that because the evidence you have is that the change has resulted in fewer prosecutions and it would be interesting data for us to look at.

Mr DUNPHY: Yes, I would be happy to.

The Hon. LYNDA VOLTZ: I seek clarification on something you said earlier. In regard to the cases that were outlined from the CFMEU you said that they could go to an internal review process. But you can only do an internal review process, can you not, if there has been a notice issued?

Mr DUNPHY: No, if you have not issued a notice—

The Hon. LYNDA VOLTZ: Sorry, if you have issued a notice?

Mr DUNPHY: If you have not. There are reviewable decisions, so a decision to issue or not to issue a notice is a reviewable decision under the legislation. It is open to a worker, to a health and safety representative or to anybody who has an interest in the matter at the workplace, to seek an internal review of that matter.

The Hon. LYNDA VOLTZ: Yes but I am looking at your website and the provision in appendix 8. The rule refers to the provision regarding the issuing of notices. Have unions taken up the internal review process when a notice has not been issued?

Mr DUNPHY: Yes, there would be cases of that.

The Hon. LYNDA VOLTZ: There would be?

Mr DUNPHY: Yes.

The Hon. LYNDA VOLTZ: Any recent cases?

Mr DUNPHY: There is one I would be aware of, yes. There was a recent case where a union did seek review of a notice. That was in relation to a particular matter.

The Hon. LYNDA VOLTZ: They sought review of a notice?

Mr DUNPHY: Yes.

Mr DAVID SHOEBRIDGE: Mr Dunphy, is the best evidence you can give that you are only aware of one?

Mr DUNPHY: Offhand it is.

The Hon. LYNDA VOLTZ: But they were seeking a review of the notice, were they not?

Mr DUNPHY: No, they were seeking review of a decision not to issue a notice.

Mr DAVID SHOEBRIDGE: So a technical right to have a review that nobody is exercising is a problem in the legislation, is it not? If there is a right to have a review but nobody exercises it, something has gone wrong.

Mr DUNPHY: No, people do review it. We do many reviews of notices.

Mr DAVID SHOEBRIDGE: Could you let us know how many reviews have been issued of a failure to issue a notice and how many reviews have been done of decisions to issue a notice?

Mr DUNPHY: I would be happy to provide that.

The CHAIR: Going back for two years?

Mr DAVID SHOEBRIDGE: Or for as long as this system has been in place which I think is 2½ years or so?

Mr DUNPHY: It is a feature of the legislation, yes.

The Hon. LYNDA VOLTZ: Do you meet with unions?

Mr DUNPHY: We do, yes.

The Hon. LYNDA VOLTZ: And have you made it clear to them that they could apply for that process?

Mr DUNPHY: I do not recall specifically referring to that provision, to raising that particular issue. But we certainly meet with them and talk about compliance with the legislation and also what they can and cannot do.

The Hon. LYNDA VOLTZ: What they can and cannot do?

Mr DUNPHY: In their roles and responsibilities under the legislation. We did have a conference just two weeks ago which was our Consultation @ Work conference. It was held during work health and safety week, where we invited not only unions but also health and safety representatives. We talked about consultation provisions regarding the legislation and the roles of health and safety representatives [HSRs] and also of others under the legislation.

The CHAIR: Mr Dunphy, thank you for coming in this afternoon. You are our last witness today. Mr Shoebridge has another question, if it is a brief one, otherwise we will put it on notice.

Mr DAVID SHOEBRIDGE: The figure of 32,056 inspector interactions, it is hard to get meaning from that unless we know what those interactions are. On notice, could you give us a breakdown of that?

Mr DUNPHY: Yes, we can break that down.

The CHAIR: It was suggested they could just be phone calls, so if you can give us some more information around that.

Mr DUNPHY: Yes.

The CHAIR: Thank you for coming in. I think it is the first time you have appeared before a committee which I have chaired. You can see there is interest in your area.

Mr DUNPHY: I appeared when I was heading up the Dust Diseases Board.

The CHAIR: The Committee has resolved that answers to questions on notice be returned by Friday 24 November, a shorter time because of the time of year. The secretariat will contact you early next week in relation to questions you have taken on notice. Thank you for coming in today and for your evidence and your submission.

(The witness withdrew)

The Committee adjourned at 4.46 p.m.